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Collective Redress
in CEE & SEE

Bulgaria

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a) Current collective redress regime

- **What forms of collective redress are available in Bulgaria?**

Currently, the Bulgarian Code of Civil Procedure establishes the main statutory framework for collective redress in Bulgaria by laying down rules for consolidating multiple claimants and their claims into a collective action (*производство по колективни искове*). With this form of collective action, claims are brought on behalf of claimholders who have all been harmed by the same infringement.

Elements of collective consumer protection are also provided in the **Bulgarian Consumer Protection Act**. This legislation confers the right on certain administrative bodies and associations to bring a collective action aimed at protecting consumers' rights. Collective actions can seek the suspension or prohibition of actions or business practices that infringe upon the collective interests of consumers. The redress awarded by the competent court in a collective action are not intended to compensate the damage suffered by each individual, but rather aim to eliminate the actions or practices that harm the collective interest.

For the purposes of this Guide, the focus will primarily lie in collective actions under the Bulgarian Code of Civil Procedure, which are the collective redress mechanisms relevant for damages claims.

As a preliminary note, Bulgaria has not yet implemented the provisions of the Representative Actions Directive (EU) 2020/1828. However, several legislative draft bills have been drafted and tabled in the Parliament in this respect. In the coming months, the provisions of the Directive are expected to be implemented into Bulgarian law, which will fundamentally usher in a new Bulgarian collective redress regime.

b) Key features of collective redress in Bulgaria

- **Is collective redress available in all areas of law or only in certain sectors?**

Collective actions under the Bulgarian Code of Civil Procedure are available in all areas of law and in all claims that can be pursued in the civil courts.

Collective actions under the Bulgarian Consumer Protection Act are limited to actions seeking the protection of consumers' rights.

- **Who is entitled to bring an action (e.g. individuals, groups, qualified entities)?**

A collective action under the Bulgarian Code of Civil Procedure can be initiated by any interested party. In practice, such actions are usually initiated by entities explicitly established for this purpose.

A collective action may legally be brought by: (i) multiple individuals or entities that are not organised as a special claims vehicle, who claim that their collective interest has been harmed or threatened; (ii) an *ad hoc* special claims vehicle established for the purpose of protecting the harmed or threatened collective interest or for protection against a specific type of infringement; (iii) both options together (*i.e.* individuals/entities and a special claims vehicle both participate as claimants in the collective action).

The right to bring actions under the Bulgarian Consumer Protection Act is restricted to certain administrative bodies and non-profit associations.

- **Which mechanism applies – opt-in, opt-out or both?**

The Bulgarian Code of Civil Procedure provides for an “opt-in” procedure when it comes to participation in collective actions. In general, the claimants in proceedings may be individuals harmed by an infringement and/or legal entities acting as “procedural substitutes” for the claimholders.

In the initial statement of claim (*Искова молба*), the claimants must specify the common collective legal interest at the base of the collective action. More specifically, they must outline the common specific characteristics of the infringement. Usually, the common specific characteristics of the infringement relate to the spatial or qualitative dimensions of the violation affecting the injured individuals/entities, which could stem from tort or contract liability on the part of the defendant.

The general rule in such proceedings is that claimholders are not determined by name or other individual features, but rather are identifiable by common specific characteristics. In order to join a collective action, claimholders that are entitled to participate in the collective action must explicitly request to participate in a collective action that has already been initiated.

Upon initiation of collective redress proceedings, the court orders the case to be disseminated in the mass media. The court also sets a deadline by which all individuals/entities may request to join the collective action. This possibility is indicative of the opt-in principal, where anyone who meets the common specific characteristics of the infringement can participate in the collective action by filing a request.

However, the Bulgarian Code of Civil Procedure grants all claimants (who have been granted that status by explicit ruling of the court) the right to request their own exclusion from the collective action and to separately and independently pursue an individual action against the respondent in parallel court proceedings (these proceedings will be different in scope, involving the defence of the claimant's individual interest rather than the collective interest of the whole group of individuals/entities sharing the common specific characteristics of the infringement).

In a public hearing, the court renders a ruling in which it (i) accepts individuals/entities as claimants (where they have submitted their request within the deadline) and (ii) excludes individuals/entities that have requested their own exclusion with the intention of independently pursuing an action in defence of their individual rights and legal interests.

Nevertheless, if the court upholds a collective action, both the individuals/entities that opted in and those that requested to be excluded can benefit from the court's decision and the factual circumstances established in that decision to bring forward an individual claim. Because of the decision, the claimholder will face a lower burden of proof and will only need to prove the harm and the causal link between the defendant's wrongdoing and the harm suffered.

Under the Bulgarian Consumer Protection Act, on the other hand, the opt-in mechanism is the sole applicable procedure, with individuals required to actively assign their claims to the Bulgarian Consumer Protection Commission or other non-profit entity engaged in the collective action. In such cases, individuals can also assert their claims individually, in parallel to the collective action.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

For a collective action to be admissible, claims must be brought on behalf of claimholders who have suffered harm resulting from the same infringement. There is no specific requirement for the claims in a collective action to be identical, but there must be a particular connection between all claims (*i.e.* they must have a similar factual basis). There is no minimum threshold for bringing an action either under the Bulgarian Code of Civil Procedure or the Bulgarian Consumer Protection Act.

- **What remedies are available (e.g. monetary compensation, injunctive measures, redress measures)?**

The remedies available under the Bulgarian Code of Civil Procedure are (i) injunctive measures aimed at the cessation of the infringement, (ii) redress measures, including orders to undertake certain actions or refrain from undertaking certain actions, and (iii) monetary compensation for damage caused as a result of an infringement. In the case of monetary compensation, this is awarded to the claimant (consumer associations, special claims vehicle, etc) and must, therefore, be further divided between the claimholders.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

The main aim of collective proceedings is to achieve the declaratory effect of the court's decision and to eliminate the source causing the harm, rather than the effective recovery of the damage suffered. Hence, members of a collective action cannot recover their individual losses through the collective action. The claimed damages must be collectively established by the claimant and differs from the individual damage suffered by claimholders, which are not the subject of the collective action. Individual damages must be claimed in separate court proceedings against the same defendant. In those proceedings, the claimant may rely on the merits of the positive decision rendered the collective action to support his or her individual claim.

- **What types of damage is recoverable (e.g. economic loss, damage to property)?**

The Bulgarian Code of Civil Procedure does not provide specific types of remedies that can be claimed in collective proceedings. Thus, the general civil-law principles in this respect apply (*i.e.* that both pecuniary and non-pecuniary damage may be compensated, including actual loss and loss of profit). Bulgarian law, however, does not allow the award of punitive damages.

- **How are damages quantified? On what basis are the damages divided among class members?**

Damages are assessed based on the specific circumstances of the case, taking into consideration the actual loss or loss of profit suffered by the collective and not by each individual involved in the collective action. The objective is to place the injured party in an equal or similar situation to that which he or she would have been in if the damaging event had not occurred. Compensation should cover all direct and immediate damage causally linked to the infringement but should not include indirect or remote damage. Damage that could not have been predicted at the time of the infringement can be included in compensation only in the event of bad faith on the part of the tortfeasor.

Since compensation is meant to compensate the collective interest, Bulgarian law enables the court to order damages to be paid into special joint accounts of the claimants, or to take measures for the appropriate allocation of these funds.

- **What is the settlement structure, if any?**

No specific rules exist regarding the settlement of collective actions. However, the court has an obligation to recommend that parties enter into extra-judicial settlement negotiations. Settlements may be reached at any time, either extrajudicially through private agreements or within the court proceedings, resulting in a court-issued protocol of the agreement formulated by the parties before the judge. The settlement agreement takes effect upon its approval by the court.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

As a first step, it is necessary to assess whether the claimants have met the prerequisites. This is determined on a case-by-case basis. The course of further proceedings is governed by the rules of the Bulgarian Code of Civil Procedure. There are no major differences between “standard” litigation and collective actions.

- **Is there a deadline by which claimholders must join proceedings?**

Once proceedings are initiated, claimholders must file a request for participation, which, if granted, will allow them to join independently as claimants or to assign their claims to the individual or legal entity (as claimant) within the reasonable time period decided by the court of first instance during the first court hearing. During the same period, individuals who do not wish to take part in the proceedings may inform the court accordingly. The court then decides whether or not to grant permission to other injured claimholders and *ad hoc* organisations that have filed a request to join the proceedings, and decides whether to exclude those claimholders that have so requested. Additional or further claims would have to be pursued in another (second) lawsuit. These two proceedings may later be consolidated if both actions are heard by the same court.

- **Are there any time limits on initiating court proceedings?**

Since there are no specific or separate provisions regarding collective actions, the statute of limitations according to the Bulgarian Obligations and Contracts Act apply. Thus, the general limitation period is five years. However, there is a shorter limitation period of only three years in the case of claims for remuneration of labour, rent, interest and other periodic payments, and claims for damages and penalties due to non-performance of contractual obligations.

- **Is pre-trial discovery available?**

The Bulgarian Code of Civil Procedure does not provide for a pre-trial discovery process akin to that in common law jurisdictions. Bulgarian civil procedure typically involves the exchange of evidence during the proceedings, with parties submitting relevant documents and information to the court as part of their pleadings and during the trial phase. However, in the course of civil proceedings, courts – at the request of a party – can order the opposing party or third parties to disclose certain documents and information. Such requests, however, should be precise and concern very specific documents.

d) **Costs and funding of collective actions**

- **Is there a rule as to who has to bear the fees / legal fees? Does the “loser pays” principle apply?**

The “loser pays” principle generally applies, with the unsuccessful party required to bear the prevailing party’s costs of the proceedings. Consequently, the successful party is entitled to recover part or the entirety of its costs, including court fees, other incidental expenses (e.g. expert reports, translation costs, etc.) and their own legal costs. The Bulgarian Tariff only regulates the lower limit of lawyers’ fees but no upper limit. However, the legal fees awarded may be reduced at the discretion of the Court (in practice, this rarely happens if evidence is provided that the claimed fees have actually been paid). Court fees are calculated on the basis of the Bulgarian Code of Civil Procedure at a general fixed rate (4% of the damages that were sought from the court). If the parties only win in part, the legal costs are divided between the parties on a *pro rata* basis.

- **How are the costs of proceedings shared among class members?**

In general, this is subject to agreement between the claimant and the claimholders. The court may also provide for a specific splitting of costs in its judgment.

- **Is third-party litigation funding permitted in Bulgaria?**

Third-party litigation funding is not explicitly regulated by Bulgarian law. Therefore, there is no barrier to third-party funding of collective actions. However, such funding arrangements are not common in Bulgaria.

- **Are there any restrictions on third-party litigation funding?**

There are no specific restrictions on third-party litigation funding under Bulgarian law.

- **Are contingency fees permitted in Bulgaria?**

In general, contingency fee agreements are permissible.

The Bulgarian Lawyer's Ethics Code, however, prohibits attorneys from reaching agreement with a client prior to the conclusion of a case in which the attorney's fee is decided exclusively as a percentage of the material interest in the case that the attorney is defending.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

There are no specific limitations on collective actions in terms of the international jurisdiction of Bulgarian courts. In the context of cross-border litigations, the international jurisdiction of Bulgarian courts is limited by international rules on competence (e.g. Brussels I Regulation (recast)). Therefore, consumers assigning their claims to other individuals or legal entities lose international jurisdiction according to Art 17 Brussels I Regulation (recast).

- **Can claims be brought by residents from other jurisdictions?**

Overall, the international jurisdiction of Bulgarian courts is not limited to parties residing in Bulgaria. However, the limitations of international jurisdiction in cross-border cases necessitate that, in the absence of a parties' jurisdiction agreement, a connection must exist with the jurisdiction of the Bulgarian courts. Such a connection arises, for example, when the place of damage is in Bulgaria or when the infringer or harmed person is a resident or is registered in Bulgaria.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

The Representative Actions Directive (EU) 2020/1828 has not yet been transposed into Bulgarian law (although it should have been applicable from 25 June 2023). However, the Parliament has already prepared and voted on two bills for the adoption of the Bulgarian Law on Collective Actions for the Protection of Consumers' Collective Interest. Both bills were rejected for different reasons. The adoption of this legislation, which is expected by the end of 2024, should provide the basis for a far-reaching reform of the collective redress system in Bulgaria and should build on the present legal framework, which already complies with the main elements of the Representative Actions Directive (EU) 2020/1828.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

The Bulgarian collective redress regime is not frequently used. Therefore, only a small number of collective redress cases have ended in a final court decision since the legislative framework came into force.

Based on available statistical data, the bulk of collective actions relate to consumer protection and therefore have been brought by the Bulgarian Consumer Protection Commission. In addition, case law indicates that individuals and entities would rather pursue individual claims for compensation than bring a collective action to seek the protection of a collective interest.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

Medium risk.

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