

Fact-finding visit to Bulgaria

24-26 February 2020

General information

Bulgaria - officially the Republic of Bulgaria - is bordered by Romania to the north, Serbia and North Macedonia to the west, Greece and Turkey to the south, and the Black Sea to the east. A predominantly Slavonic-speaking, Orthodox Christian country, Bulgaria was the birthplace of the Cyrillic alphabet, which was created there towards the end of the 9th century AD.



Bulgaria's population is around 7.4 million (Bulgarian 84.8%, Turkish 8.8%, Roma 4.9% and other and unknown 1.5%). With a territory of 110,994 square kilometres - divided into 27 provinces and a metropolitan capital province (Sofia-Grad) Bulgaria is Europe's 16th-largest country. The capital and largest city is Sofia, the 15th largest city in the European Union. It hosts some 1.23 million residents within a territory of 492 km². Other major cities are Plovdiv, Varna and Burgas.

Bulgaria is a parliamentary democracy where the prime minister is the head of government and has the most powerful executive position. The current President is Rumen Radev, Bulgaria's fifth democratically elected president, who was sworn in for a five-year term in January 2017. The current Prime Minister is Boyko Borisov who became prime minister for the third time in May 2017 following the victory of his GERB party in the April election. Mr Borisov's GERB party formed a coalition with the United Patriots - an anti-immigrant grouping.

The political system in Bulgaria has three branches - legislative, executive and judicial - with universal suffrage for citizens at least 18 years old. The Constitution also provides possibilities of direct democracy, namely petitions and national referenda. The Bulgarian parliament, the National Assembly, is a body of 240 deputies elected to four-year terms by direct popular vote. The National Assembly has the power to enact



laws, approve the budget, schedule presidential elections, select and dismiss the prime minister and other ministers, declare war, deploy troops abroad, and ratify international treaties and agreements.

Bulgaria entered the EU in 2007. It has an open economy that historically has demonstrated strong growth, but its per-capita income remains the lowest among EU members and its reliance on energy imports and foreign demand for its exports makes its growth sensitive to external market conditions. Its market economy is part of the European Single Market and mostly relies on services, followed by industry - especially machine building and mining - and agriculture. Bulgaria is a developing country and ranks 52nd in the Human Development Index, the lowest development rank in the EU alongside Romania. Widespread corruption is a major socio-economic issue. With a 43/100 score Bulgaria ranked lowest of Western European and EU countries in the 2019 Corruption Perception Index (CPI), a corruption index established yearly by Transparency International. The CPI uses a scale of zero to 100, where zero is highly corrupt and 100 is very clean. Overall in 2019, Western Europe and the EU is the highest scoring region with an average of 66/100.

In the 1990s Bulgaria moved from a centralised, planned economy to a more liberal, market-driven economy. The reforms included privatisation of state-owned enterprises, liberalisation of trade, and strengthening of the tax system. The changes initially caused some economic hardships but later helped to attract investment, spur growth, and make gradual improvements to living conditions. Bulgaria's per-capita income remains the lowest among EU members, and its reliance on energy imports and foreign demand for its exports makes its growth sensitive to external market conditions.

Despite a favourable investment regime, including low, flat corporate income taxes, significant challenges remain. Corruption in public administration, a weak judiciary, low productivity, lack of transparency in public procurements, and the presence of organised crime continue to hamper the country's investment climate and economic prospects.

Reason for the PETI fact-finding visit

The coordinators of the Committee on Petitions decided to organise a fact-finding visit to Bulgaria as a result of the, relatively, large number of petitions it has received from Bulgarian citizens on the Bulgarian Code of Civil Procedure (CCP), and in particular on the order for payment procedure. Petitioners allege breaches of consumer rights, corruption, the role of bailiffs, violation of the right to a fair trial, and breaches of Directive 93/13/EEC on unfair terms in consumer contracts. Apart from the "CCP" petitions¹, the fact-finding visit will also look into the subject of a Bulgarian petition (1408/2012) on waste and compliance with environmental legislation with regard to projected landfill sites in the municipality of Montana.

¹ Petitions 0063/2017, 0838/2017, 0408/2017, 0514/2018, 1045/2018, 0810/2018, 0720/2018, 0606/2018, 1193/2018, 0609/2018, 0051/2019, 0036/2019, 0037/2019, 0040/2019, 0102/2019, 0346/2019, 0358/2019, 0764/2019, 0849/2019, 0855/2019, 0863/2019, 0864/2019, 0877/2019, 0878/2019, 0879/2019, 0922/2019 and 0925/2019.

The order for payment procedure

The order for payment procedure is a court procedure that is used to simplify the enforcement of a monetary claim or the restitution of movable property when that claim is unlikely to be contested by the defendant. Its object is obtaining a writ of execution without a legal trial.

The Bulgarian Code of Civil Procedure (CCP) provides a simplified procedure by means of which a claimant (creditor) may recover his/her claim from a defendant (debtor). Under the specific provisions² of Article 417 of the CCP a creditor can request the issue of a payment order, ask the court to order immediate enforcement and to issue a writ of execution. Following the receipt of the payment order by the debtor, the debtor may submit a written objection within two weeks. An objection within the meaning of Article 414 CCP is any form of disagreement, any statement from which it is obvious that the debtor is not willing to pay. There is no need to justify the objection.

When the debtor submits an objection in due time, the court instructs the creditor that he/she may bring an action for establishment of the claim within one month. If the creditor does not present evidence that he/she has brought the action within the specified deadline, the court invalidates the payment order, in whole or in part. If no objection is submitted in due time, or if the objection is withdrawn, the payment order becomes effective and on its basis the court issues a writ of execution, which will accordingly be stated on the order.

Within one month of becoming aware of the payment order, the debtor who has been deprived of the option to contest the claim may still lodge an objection to the appellate court, if:

- the payment order was not properly served;
- the payment order was not served to him/her personally and he/she did not have habitual residence in the territory of the Republic of Bulgaria on the day of the service;
- he/she had not been informed in good time of the service due to special unforeseen circumstances;
- he/she had not submitted the objection due to special unforeseen circumstances which could not have been overcome.

² According to the express provision of Article 417 of the Civil Procedure Code (CPC), the applicant may also request the issue of a payment order where the claim, regardless of its cost, refers to:

- an administrative act under which admission of enforcement is entrusted to the civil courts;
- a document or extract from books of accounts which establish claims of government offices, municipalities and banks;
- a deed, agreement or other type of contract, with notary certification of the signatures referring to the liabilities contained therein for payment of money or other fungible things, as well as any obligations to transfer certain property;
- an extract from the pledge registry for a registered security and for enforcement – regarding the transfer of pledged assets;
- an extract from the pledge registry for a registered sales contract retaining ownership until the price is paid, or a leasing agreement – regarding the return of sold or leased assets;
- a pledge agreement or mortgage deed pursuant to Article 160 and Article 173(3) of the Obligations and Contracts Act;
- a valid deed for the establishment of a private, state or municipal claim when its enforcement is done under the procedure of the CCP;
- a notice of deficiency;
- a promissory note, bill of exchange or their equivalent security, as well as a bond or coupons thereto.

Furthermore, the debtor may contest - in a claims procedure - the claim for which a payment order has been issued if new facts or new written evidence of essential importance for the case is found that could not have been known to him/her during the period for filing the objection, or which he/she could not obtain within the same time limit. The action may be brought within three months from the date on which the new circumstance has become known to the debtor, or from the date on which he/she was able to obtain the new written evidence, but not later than one year from the end of the compulsory recovery of the claim.

Enforcement is the final stage of the judicial process. It consists of the possibility for a creditor (claimant) in whose favour a judgment has been delivered to demand that the competent enforcement body take all steps within its remit and prescribed by law to satisfy the claim. Enforcement measures include:

- attachment³of movable property;
- attachment of immovable property;
- inventory and valuation of real property;
- sale of immovable property by public auction;
- attachment of a debtor's bank account;
- attachment of a vehicle;
- repossession;
- seizure of movable property;
- enforcement in respect of shares in a company;
- enforcement of a duty to surrender a child;
- enforcement in respect of marital property.

To set enforcement proceedings in motion, the interested party must apply in writing to a state or private bailiff, annexing a writ of execution or another enforceable instrument. The application must specify the preferred method of enforcement, which may be altered during the course of proceedings (Article 426 of the CCP). The jurisdiction of bailiffs is governed by Article 427 of the CCP).

The bailiff must summon the debtor in writing to satisfy the claim voluntarily, which the debtor must do within two weeks of receiving the summons. The summons warns the debtor that failure to satisfy the claim will result in enforcement action. The summons must specify the attachments and seizures imposed and enclose a copy of the enforceable instrument. When summoning the debtor to satisfy the claim voluntarily, the bailiff must also specify the date on which a property inventory will be compiled and, when enforcement concerns immovable property, send a seizure notice to the property registry.

The bailiff draws up a record of any measure undertaken or performed by him. Where the initial method of enforcement is changed, the bailiff must notify the debtor in writing of the change in accordance with Article 428 of the CCP.

³ Attachment is a legal process by which a court of law, at the request of a creditor, designates specific property owned by the debtor to be transferred to the creditor, or sold for the benefit of the creditor.

The petitions

Complaints about the order for payment procedure

The relevant Bulgarian petitions concern complaints from Bulgarian citizens about the procedure underlying the Bulgarian order for payment procedure, in particular orders for immediate enforcement. This procedure is laid down in Article 417 of the CCP. Petitioners allege that the procedure is incompatible with Directive 93/13/EEC on unfair consumer contracts⁴ as interpreted by the Court of Justice of the European Union (CJEU).

According to the petitioners the Bulgarian procedure infringes EU consumer law and the principle of fair trial. Currently in Bulgaria payment orders and orders for immediate enforcement are issued without any substantive checks by the courts. Consumers can only challenge them under very strict conditions. Certain creditors, such as banks, can obtain orders for immediate enforcement quasi automatically, with very limited possibilities for the consumers to prevent or challenge the enforcement based on unfair contract terms.

According to the CJEU, the system of protection established by Directive 93/13/EEC is based on the idea that the consumer is in a weak position vis-à-vis the trader as regards both his bargaining power and his level of knowledge. This can lead to the consumer agreeing to terms drawn up in advance by the trader without being able to influence the content of those terms. The CJEU further held that, since the imbalance between consumers and traders may be corrected only by positive action on the part of a third party, the national courts should be responsible for guaranteeing the effectiveness of the rights conferred on consumers by Directive 93/13/EEC. For that reason, the national courts are required to assess of their own motion (*ex officio*) whether a contractual term falling within the scope of the Directive is unfair.

Thus, under Directive 93/13/EEC a contract term which has not been individually negotiated and which causes a significant imbalance between the parties' rights and obligations - contrary to the requirement of good faith - to the detriment of the consumer, shall be regarded as unfair and as such shall not be binding.

The CJEU also stressed that the relevant national procedural rules must meet two conditions:

1. they should be not less favourable than those governing similar domestic situations (principle of equivalence) and;
2. they should not in practice make the exercise of rights conferred by the Union legal order impossible or excessively difficult (principle of effectiveness).

The CJEU explicitly stated that the principle of effectiveness should put a stop to national rules of procedure that make it impossible or unduly difficult for consumers to count on the non-binding nature of unfair contract terms.

⁴ OJ L 095, 21.4.1993, p. 29.

After having launched an EU PILOT procedure to obtain information from the Bulgarian authorities on these issues, the Commission launched an infringement procedure. According to the Commission the Bulgarian authorities have made important changes to the CCP. In fact, by Decree of 16 December 2019 a number of amendments was introduced to the CCP.

For instance: "The court shall formally check on the existence of unfair terms found in a contract concluded with a consumer. It shall provide the parties with the opportunity to comment on these matters." Also as regards the deadline for objections against an order for payment the text was changed: "[...] the words 'within two weeks' are replaced with 'within one month'". In the course of the ongoing infringement procedure the Commission is currently examining the changes made to the legislation.

It is unclear however whether the changes made to the CCP mean that any form of redress is available for the petitioners who submitted their cases to the Committee on Petitions.

Complaints about bailiffs

A large number of the petitions received also included complaints about the activities of the bailiffs in Bulgaria. According to the petitioners the role of the bailiffs - who are ultimately in charge of enforcement - is neither transparent nor are bailiffs effectively supervised. Petitioners allege, for example, falsification of enforcement notifications and of the service of documents, lack of information about procedures, fraudulent schemes, and abuses in relation to the compulsory sale of properties.

The enforcement system in Bulgaria is dual - there are state bailiffs (employees of the Ministry of Justice assigned to a regional court) and private bailiffs (independent professionals who are licensed after passing a qualifying exam). Both are appointed by the Minister of Justice. Bailiffs are legal professionals who are part of the Bulgarian regional court system. Most state bailiffs are members of the Association of Bulgarian State Bailiffs which has no regulatory or disciplinary authority.

Activities and profession of private bailiffs are regulated by the Law on Private Bailiffs. All private bailiffs are members of the Chamber of Private Bailiffs – a self-governing organisation that has both regulatory and disciplinary authority. The Minister of Justice is charged with the authority to discipline state bailiffs while private bailiffs are disciplined by an independent body, the Disciplinary Committee, to the Chamber of Private Bailiffs.

In the absence of specific EU legislation on bailiffs and for the purpose of the fact-finding visit, it would be helpful for the PETI delegation to inform itself about and discuss with the various interlocutors the role, the activities and the accountability of the state and private bailiffs in Bulgaria, as well as the possibilities for redress for the petitioners.

Waste situation in Bulgaria

Proper legal implementation, application and practical enforcement of EU waste legislation are key priorities of EU environmental policy under the Treaty on the Functioning of the European Union (TFEU). In this

regard, waste management planning is one of the key tools for Member State authorities to convert the principles of EU waste legislation into national, regional and local waste management policies.

The Member States' authorities are obliged to establish one or more waste management plans (WMP) in accordance with Articles 1, 4, 13 and 16 of the Waste Framework Directive (WFD)¹. The plans must - alone or in combination - cover the entire geographical territory of the Member State concerned. The plan(s) must contain an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken with respect to environmentally sound preparation for re-use, recycling, recovery and disposal of waste, as well as an evaluation of how the plan will support the implementation of the objectives and provisions of the Directive. Article 28 of the WFD defines both the mandatory and optional requirements and the content of the WMP. In addition, Article 29 requires the establishment of a waste prevention programme (WPP), integrated either into the WMP, into other environmental programs or as a separate programme. Furthermore, Member States shall inform the Commission of the WMP and WPP and of its revisions.

Bulgaria's waste management economy has come a long way since the country's accession to the EU in 2007. Nevertheless, it is still regularly criticised and continues to face major challenges in the implementation of modern standards and jointly-agreed circular economy targets. Considerable national efforts have been made, but over the years they have come predominantly in the form of programmatic work and the creation of necessary legal bases, rather than in actual regionally implemented successes. The creation of a satisfactory waste disposal solution for the capital Sofia took a long time and was repeatedly the source of negative headlines. The breakthrough in effective investment there and in other places is only very recent. However, an indicator of the still unsatisfactory state of the country's waste management sector is, above all, the extremely high proportion of waste ending up in landfills. However, more extensive analyses reveal a far broader range of deficits and problems, which are due not least to the country's limited economic strength compared to other European countries and its lack of capacities in many areas.

As a result, Bulgaria has failed to fulfil its commitments and self-imposed targets for waste management in many areas, or else only with great delay, has delivered comparatively poor results and information for the sector, and thus quickly ends up in the hot seat for its inadequate waste management. The fact is that, for example, an EU-wide assessment of waste management by the Member States recently placed the country towards the bottom of the list. Using 18 evaluation criteria, only the situation in Greece was even worse. Bulgaria, as well as selected cities in the country, ranked towards the lower end on the most important indicators and comparisons in terms of the implementation of the waste hierarchy and other waste management principles. Often, inadequate data added to the problem, which makes a full final assessment of the situation impossible.

[Petition 1408/2012](#)

Petition 1408/2012 - submitted on behalf of the National Ecoglasnost Movement in Bulgaria - concerns compliance with environmental legislation with regard to projected landfill sites in the municipality of Montana. The petitioner states that a landfill site has been constructed the municipality of Montana and that

EUR 7.5 million of ISPA pre-accession funding was received for it. He alleges that no Environmental Impact Assessment has been carried out for the site. The petitioner has submitted complaints about this situation to the Bulgarian administrative and judicial authorities. He also sent a complaint to OLAF, the European Anti-Fraud Office. All his complaints were rejected.

Furthermore, the petitioner claims that there are no possibilities for access to justice on environmental matters in Bulgaria and also the Aarhus Convention Compliance Committee has indicated that certain provisions of Bulgarian environmental legislation are in breach of the Aarhus Convention, in particular with regard to citizens' right to redress.

With regard to the alleged lack of access to justice the European Commission considers that the organisation and conduct of judicial and legislative procedures fall within the responsibility of the Member States, in this case Bulgaria.

With regard to the alleged breach of the Aarhus Convention the Commission launched an EU Pilot procedure in 2015 to obtain information on the alleged difficulties concerning access to justice. The Bulgarian authorities denied the accusations and referred to national legislation in which the relevant Aarhus Convention provisions are implemented.

In its latest reaction to the petition (4 February 2020) the Commission states: *"The landfill issue was considered as unfounded by the Commission services and there are no new facts/elements to lead the Commission services to reconsider their previous position.*

The access to justice investigation might lead to further steps against Bulgaria only when and if the Commission is in a position to bear the burden of proof as regards a breach of EU law. If the Commission services establish a breach of EU law, they will not hesitate to propose appropriate action."

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