



01.02.2021

## MISSION REPORT

following the Fact Finding Mission to Bulgaria on 24-26 February 2020

Committee on Petitions

Members of the mission:

Dolors Montserrat

(EPP, ES) (Leader of the mission)

Loránt Vincze,

(EPP, RO)

Cristian Terheş,

(S&D, RO) / as from 13.05.2020 (ECR))

Tatjana Ždanoka

(Greens/EFA, LV)

Ex officio members:

Petar Vitanov

(S&D, BG)

Tsvetelina Penkova

(S&D, BG)

Andrey Slabakov

(ECR, BG)

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## 1. Introduction

The fact-finding mission to Sofia, Bulgaria, from 24 to 26 February 2020, was organised by the Committee on Petitions pursuant to Article 228 of the Rules of Procedure of the European Parliament and it was authorised by the Bureau of Parliament on 16 November 2019. The purpose of the fact-finding visit was to meet with the petitioners, ministers and government officials, civil society representatives, consumer organisations and the Bulgarian Ombudsman regarding numerous petitions received on alleged unfair contract terms in mortgage loans. MEPs also travelled to Montana to investigate the compliance of landfill sites with the environmental and waste legislation of the European Union and to meet with the petitioner and with regional authorities.

## 2. Petitions

Summary in Annex I

## 3. Summary account of meetings

*Monday 24 February 2020 at 15:30*

### **Meeting at the Bulgarian Ministry of Justice:**

The representatives of the Ministry present: Minister of Justice, Mr. Danail Kirilov, Deputy Minister Ms. Desislava Ahladova, responsible for the supervision of public and private bailiffs, Mr. Grigor Todorov, Mr. Georgi Dankov, Ms. Bilyana Bilyakova, Ms. Mitka Zaharlieva, Mr. Vasiliy Druzhinin, Ms. Daniela Belchina, Ms. Irina Kuzmanova, Ms. Abrashova.

Minister Danail Kirilov took the floor and thanked the MEPs for the first mission of the European Parliament to Bulgaria while during his mandate as the Minister of Justice. He explained that he was the Chair of the Legal Committee of the National Assembly of the Republic of Bulgaria (the National Assembly) before taking up his present function. The Minister worked on the reform of the Code of Civil Procedure (CPC). The first amendments to the CPC were introduced in 2017, and subsequently in 2019.

### **Background information on the reform of the Code of Civil Procedure**

When amending the CCP, the National Assembly sought to balance the rights and obligations of debtors and creditors. Important amendments in the execution procedure and order procedure (the last one adopted in 2017) were introduced..

The Minister pointed out that the reform managed to strike a good balance between the interests of the investors and the economy, on one hand, and debtors, on the other hand. He reminded that back in 2005 it was very difficult for banks and other financial institutions to collect debts.

The Head of the Delegation, Ms. Dolors Montserrat, presented the members of the delegation and asked about the amendments to the CCP introduced in 2019:

- What are the consequences for both the debtors and the creditors?
- If the consumer's rights will be better protected now?

- If the debtors that entered into contractual obligations before the reform will have the right to appeal?
- If there is a control over private companies providing loans?

Answers to the questions:

Minister Kirilov answered that the Bulgarian authorities received a letter about breaches of consumer rights from the European Commission in January 2019. The infringement procedure was then launched (EU Pilot) but the substance of the breach, i.e. unfair terms in the consumers' contracts and control over the terms, fall outside of the scope of the Ministry of Justice. The authorities responded to all claims by amending the Code of Civil Procedure. The Ministry of Economy is more competent about these matters.

Currently, the courts must monitor the existence of unfair clauses and therefore, the workload of the judges has increased substantially. Payment order enforcement proceedings became more difficult, more similar to the claims proceedings. The lender needs to provide all details regarding the debt. If the judges suspect that there is bad faith, they immediately move to the claims proceedings. After the reform, it will be possible to challenge actions of the bailiffs and the lenders will have more difficulties to recover the debts. If the subpoena is issued, it triggers the claims procedure. In the normal procedure, the lender has to pay high fees.

Ms. Desislava Ahladova added that after the reforms there is more transparency and more communication. The appeal is symmetrical to the order proceedings. Courts are required to check all annexes and amendments to the general terms of the contracts. In the past, contracts were not attached to the documents for proceedings, nor were the annexes. There was a high probability of unfair clauses. Now the court will be able to stop the procedure. The period within which the debtor can complain against the procedure will be increased (from two weeks to one month). The debtor will pay the legal costs that do not exceed 5% of the value of credit/debt. legislation The debtor who states that he/she cannot pay will have more time to prepare his/her defense. The document setting all the collections made by the bank should be attached to the papers presented before the court. The amendments from 2019 also tackled inconsistencies in the field of consumer protection (according to the directives). The court is obliged to issue an enforcement order according to the enforcement procedure.

The whole list of amendments introduced in December 2019 is very long:

- the rule of justiciability (*types of matters that a court can adjudicate*);
- the debtor will bear lower costs;
- the most vulnerable debtors will receive better protection (lower fees, limitation of the fees collected by the private bailiffs);
- there will be a balance between the methods of collection and the amounts collected;
- each party will be able to ask for an estimate of the auctioned property;
- bailiff's refusal of estimate or his refusal of commissioning a third party can be appealed;
- all disputes between the banks and the consumers will be treated by the civil procedural law;
- debtors are not obliged to explain why they oppose the creditor's claims, they just fill-in the form provided by the court;
- the list of properties which cannot be seized is extended.

Ms. Belchina added that a new form of the enforcement order had been published last Friday (20 February 2020) in the State Gazette and was going to be regularly used.

Mr. Kirilov and Ms. Ahladova on the so called “secret rooms” (allegedly a special storage room in the Sofia Regional Court containing archives of all private civil cases).

These allegations were refuted by the Bulgarian Supreme Court of Cassation. Of course no abuse shall be allowed. The debtor has to provide substantiated grounds when he/she contests the claim: this is sufficient for the court. The debtor needs to submit the contestation to the court. Any debtors’ assets cannot be used to collect the debts.

Ms. Ždanoka requested more information

- on the situation concerning private bailiffs;
- on Ministry opinion on the alleged corruption of courts and bailiffs;
- on inspections that are/were made.

Mr. Dankov explained that the legal status of the private bailiffs is based on the 2005 Private Bailiffs Act. The Bulgarian State commissions bailiffs to enforce the collection of private claims.

The Chamber of Private Bailiffs was established in order to supervise the conduct of bailiffs. The Inspectorate of the Ministry of Justice organises general inspections and financial inspections (Article 75(8) of the 2007 Judiciary Act).

When the court issues the writ it transfers the case to the bailiff for execution. Then the bailiff notifies the debtor of the court’s order and collects the debt (written papers are required).

Minister Kirilov on the alleged cases of corruption:

When there is a suspicion of corruption, there are mechanisms for supervision and inspections, but the Ministry of Justice has no responsibility about this. Following multiple accusations, the Ministry of Justice requested disciplinary proceedings against bailiffs.

From the statistics: In 2019, there were 34 disciplinary proceedings (15 proceedings requested by the Chamber of Private Bailiffs, 16 by the Ministry of Justice and 3 requested jointly) (*Annex V*).

There were suspicions of bailiffs interfering with the auctions of properties. Now, after the regulation on the electronic public auctions everybody can follow the bidding procedure.

Mr. Dankov added that there were 60 proceedings per year. In 2020 already, there were 5 disciplinary proceedings initiated by the Ministry of Justice. One of the petitioners (Mr. Iliev) had proposed that disciplinary proceedings be carried out by the Ministry and not by the Chamber of Private Bailiffs.

Mr. Loránt Vincze asked in relation to the regulation on the application of the amended law on 19 December 2019:

- if there was a dialogue between the petitioners and lawmakers;
- if the modifications introduced were sufficient. Does the Ministry expect the infringement procedure launched by the EC to be over?;

Minister Kirilov answered that the enforcement order procedure has been modified. About the infringement: information about amendments was sent to the EC long ago. There will be no follow-up on the infringement. The harmonisation procedure has also been accomplished.

Ms. Bilyakova added that all necessary legislative steps have been taken. The formal letter of formal notice from the EC (before the EC initiates infringement procedures) has been received in January 2019. She added that changes to the proceedings regarding payment orders have been on the Ministry's agenda for years.

Minister Kirilov said that not all necessary amendments to the Code of Civil Procedure and the criminal and civil legislation have been adopted yet. There will be differences in practice. The Supreme Judicial Council discusses if all the payment proceedings should be made electronically. The regional courts are overloaded with cases. New system has been operating only for 2 months and there are discrepancies between Sofia (capital) and the rest of the country.

#### On the Association of Banks in Bulgaria:

Minister explained that the banks are not happy about introduced changes. They will face difficulties when collecting their claims. Generally in his opinion, new rules should be streamlined and the legal culture improved. Access to easy loans should be restrained.

He added that the civil society organisations are interested in the issue of consumer loans but not at the same level as before. He suggested to address the Ombudsman about this. In his opinion, there were public relations agencies that supported petitioners in 2015-2017 (in practice, the PR agencies inspired the petitioners). He stated that the present situation in Bulgaria is not worse than in other countries. The bank places trusts in the debtor by providing the mortgage. He noticed that the petitioners are making numerous complaints. Mr. Iliev (one of petitioners) is a debtor in his capacity of a legal entity, not natural person.

Ms. Bilyakova explained that public consultations were conducted when the amendments were proposed, for instance a conference organised by the Ministry with numerous stakeholders in which the Supreme Judicial Court was involved. She added that if a judge suspects an infringement of EU law, he/she can appeal the judgment of the lower courts.

Ms. Belchina added that the group mandated with preparation of amendments agreed to one common draft. The Bulgarian MPs introduced the amendments after widespread social consultations. The Legal Committee of the National Assembly discussed the proposed amendments as well.

The Head of the Delegation gave the floor to the Bulgarian ex officio members.

Mr. Andrey Slabakov argued that there were only 15 inspectors in the Inspectorate for control, therefore, it is impossible to deal with all private bailiffs that are engaged by the private companies.

Ms. Tsvetelina Penkova stated that the changes from 2018/2019 were made after recommendations. She asked if there was an impact assessment *ex post* or analysis of the amendments.

The members of the delegation were informed that the Supreme Judicial Council asked all courts about the practice in payment proceedings and that the Legal Committee at the National Assembly has been informed. They are going to prepare a legal analysis after some time elapses following the introduction of the amendments. They are open to suggestions from the NGOs.

Ms. Montserrat explained that in Spain the consumer contracts should be signed in the presence of a notary. Concerning petitioner's claims, in her opinion, the enforcement procedure should be stopped immediately after the debtor's claim.

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*Monday 24 February 2020 at 16:35*

**Meeting with the petitioners at the European Parliament Liaison Office (EPLO) in Sofia**

Petition No. 0063/2017

Mr. Ivailo Iliev

The petitioner stated that Bulgarian authorities are not complying with EU law. Bulgarian authorities try to convince the EU representatives of the opposite. When the European Parliament began considering his petition, there were 150 cases pending for several years. There are unresolved cases from 2007 already. In 2016 the anticorruption process began. The petitioner claims that enforcement orders are not improved and documents are not being delivered to debtors.

Petition No. 0514/2018

Mr. Ivailo Iliev

He stated that it is impossible to defend oneself without being notified with written documents/evidence. In his opinion, when debtors receive only payment orders, it is not enough. There should be a separate document informing them about legal checks performed, information about possibilities for appeal and the reasons for the enforcement orders. He said that the anticorruption unit stated that the delivery of payment order only is a standard action of the courts.

Petition Nos. 0838/2017 and 0720/2018

Ms. Violeta Gospodinova

Ms. Ivanova representing the petitioner from the Petition No. 0838/2017:

Her bank obtained an immediate enforcement order based of an extract of the books (financial records) from the bank. The judgment against her was issued in a closed court hearing and a private bailiff in Varna started a procedure of the collection of the debt. The petitioner stated that she has never been informed about the launching of this procedure, which began more than 2 years ago, and in the end, her property was auctioned off.

Petition No. 0720/2018

Ms. Violeta Gospodinova



The petitioner stated that her bank purchased the property at a very low price, not equivalent to her debt. When the case was brought to her attention, she objected to the procedure. The petitioner could not obtain information, nor recover her property that was auctioned. She made recourse to the Supreme Court of Cassation which decided to overturn the previous decision, but the petitioner has definitely lost her property because it was sold. She claims that the bank and the bailiff did it in a concerted manner.

Petition No. 0408/2017

Ms. Manolova (previous Bulgarian Ombudsman) spoke on behalf of the petitioner (mainly on the new amendment introduced in December 2019 to the Bulgarian Code of Civil procedure).

Ms. Manolova explained that in the past the courts did not check unfair clauses in the contracts. Enforcement orders were issued without legal proceedings by the courts. In her opinion, amendments introduced in December 2019 are only partially solving the problems because a debtor's property can still be sold. A debtor can pay the loan back but his property will not be returned to him. In her opinion, the infringement procedure should continue.

Petition No. 1045/2018

Mr. Z. A. (anonymous petitioner), Mr. Radoslav Daskalov on behalf of the petitioner

When the court starts to enforce banking contracts, a fee is required by the court and it can be high. The petitioner complained that debtors were being expropriated from their properties. The writ of execution is still mandatory.

Petition No. 0810/2018

Mr. P. A. V. (anonymous petitioner)

The petitioner (74 years old) was expropriated from his property. Other debtors were deprived of their properties for 2 years. There are missing documents in this case. He claimed that the application of the Directive 93/13/ECC on unfair terms in consumer contracts should be reassessed and discussed again. He called for the establishment of a special committee to discuss what happened.

Petition No. 0606/2018

Ms. Milena Dimitrova

The petitioner's bank increased the interest rate of the loan without informing her. Then the bank started an enforcement case (issued a writ of execution) against her. The petitioner could not pay the governmental charge (fee) and she was exempted from it. Nevertheless, by an allegedly unjustified bank's decision she lost her case. Recourse was made to the Supreme Court of Cassation who acknowledged that the debtor was misled.

Petition No. 1193/2018

Mr. M. A. (anonymous petitioner)

The petitioner stated that the payment order proceedings do not comply with the relevant EU legislation. The court is not deciding ex officio in its opinion and there are unfair terms in the order of proceedings. People become homeless after being evicted from their properties. He claimed that the number of cases of evicted consumers is growing.

Petition No. 0358/2019

Mr. Iliev on behalf of Mr. M. A. (anonymous petitioner)

He called for the creation of a special committee to investigate the problem of misconduct of private bailiffs. In his opinion, the Sofia City Court continues to prosecute the debtors.

Petition No. 0609/2018

Ms. Tsetska Hadzhigeorgieva, Ms. Milanova (her lawyer)

The petitioner has been trying to retrieve her family's apartment for the last 10 years. Private bailiffs finally sold the property in a very speedy way. There was no legal possibility to stop it. Now the debtor has no remedy and cannot contest the sale or other enforcement actions. The debtor should submit a case against the private bailiff but it is too expensive for her.

Petition No. 0051/2019

Ms. Elitsa Vasileva (the petitioner), Mr. Ivailo Iliev on behalf of the petitioner

The petitioner was a guarantor of a debt. A private bailiff has frozen her accounts, allegedly without a valid judicial decision. The petitioner claimed that private bailiffs do not serve the necessary documents to debtors.

Petition No. 0036/2019

Mr. Dimitar Panayotov (represented by Mr. Shaitonov)

He stated that the level of corruption in Bulgaria is high. Courts are pronouncing judgments against debtors without the necessary evidence. The debts are sometimes of a very low value. He complained about the insolvency procedure.

Petition No. 0037/2019

Ms. Mariana Ilieva, (her lawyer spoke in her name)

The petitioner is the debtor's wife who tried to stop the sale of the couple's property (an apartment). She contacted the private bailiff but the apartment had been sold. She claimed that the law is applied in a different manner depending on the individual.

Petition No. 0040/2019

Mr. A. M. (anonymous petitioner)

He complained that despite the recent changes to the Code of Civil Procedure, there is no genuine change, only the names of the regulations were amended. In his opinion, the proceedings are in breach of the Constitution.

Petitioners from Petitions Nos. 0102/2019, 0346/2019 and 0764/2019 were not present.

Petition No. 0849/2019

Ms. D. M. (anonymous petitioner)

She presented herself as a consumer who was misled by the terms in the loan. She stated that the interest rate on her loan has increased seven times. Bailiffs allegedly forced her to sign a document (to defreeze accounts of her guarantors). Now she has to pay back 23,000 leva.

*Petitioner from the Petition No. 0855/2019 was not present.*

Petition 0863/2019

Ms. Lilyana Gyurova

The petitioner said that interest rate on the petitioner's loan has raised in a significant manner. Using an enforcement order, the bailiffs have sold her property at a very low price. A second property of hers has been also taken over by a private bailiff.

Petition 0864/2019

Mr. Ventsislav Pavlov

The petitioner's loan in Bulgarian leva was later changed into a loan in Swiss francs with a very high interest rate (within a Bulgarian branch of the Piraeus Bank). It was virtually impossible for the petitioner to pay back the loan or to reschedule his loan. His request to do so has disappeared; his apartment was sold and then resold at a significantly higher price.

Petition 0877/2019

Ms. Albena Ivanova

In the petitioner's opinion, the financial institutions (private banks) that seized her properties have damaged her. She was allegedly threatened by very aggressive bank representatives. As a result, she lost her income sources and is now in economic instability.

Petition 0878/2019

Ms. Tanya Mihaylova

The petitioner's husband suffered from schizophrenia. After he contracted loans, the couple had problems with private bailiffs. She claimed that her husband could not be held responsible for his actions. As a result, they have lost two apartments. Her husband has since passed away.

Petitioner from the petition 0879/52019 was not present.

Petition 0922/2019

Ms. Raina Mihailova and her lawyer Ms. Boykova

In the petitioner's opinion, the courts' magistrates are privileged and the executive branch is expending its influence: judges are violating procedural rights, cases are fragmented, evidences are not given. The petitioner's court case has lasted for 5 years, because the judges were waiting for interpretation of documents.

Petition 0925/2019

On behalf of Ms. Ekaterina Yaneva her lawyer Ms. Filipova

The petitioner's monthly payments from the loan have been rising. She got an accelerated court claim. In her opinion the amendments from December 2019 do not change the legal order in an effective way. The consumers need to be active in order to prove that there are unfair clauses in contracts. The consumer are in weak position. If the clauses are unfair, the property should be returned to the debtor, but this is not the case.

#### Petition 1018/2019

Mr.Mihail Kocev

In 2012, the petitioner was sentenced and private bailiffs sold his property. In 2013, he was removed from his house. He claimed that the machine of corruption protects private bailiffs.

#### **Questions and answers session with the petitioners:**

Mr. Cristian Terheş observed that many of the petitioners requested the European Parliament to solve legal cases. He asked if they had addressed the European Court of Human Rights (ECtHR), and if they did, what the result was.

On this question, petitioners answered that their cases were dismissed by the ECtHR on the basis that these are internal problems of the Member States.

Mr. Terheş asked if the bailiffs fall under the structure of the executive, legislative or judiciary power.

The petitioners answered that private bailiffs have extremely broad powers as they are heard at court cases behind the closed doors and debtors are notified by them.

On the recourse to the ECtHR, they said that there was no possibility of referral to the ECtHR (Article 6 and Article 47 of the European Convention on Human Rights (ECHR)) because the Supreme Court of Cassation made an interpretation that does not allow the debtors to complain before the ECtHR. In their opinion, the only institution that was helpful was the Bulgarian Ombudsman.

Mr. Terheş asked if the petitioners referred their complaints to the Bulgarian Constitutional Court.

The petitioners clarified that in Bulgaria citizens cannot contest decisions of other courts before the Constitutional Court. In 2012, the Bulgarian Ombudsman referred their cases to the Constitutional Court. However, the decision was in favour of the banks. The petitioners stated that the lawyers' rights are not respected in Bulgaria.

Ms. Tatjana Ždanoka requested more information about the movement "Solidarity", in particular about its structure and its way of working. She reminded that at the Ministry of Justice the delegation was told that they were consulting the "Solidarity" organization.

Mr. Iliev explained that the "Solidarity" movement was a citizens' movement. The organization was registered three years ago. Formally, it is a NGO and keeps official records. The fee to join amounts to 5 leva (approximately 2.5 euros) per month and the yearly fee is 20

leva (approximately 10 euros). The registration process is electronic. There are members from countries other than Bulgaria as well. The NGO brought before the courts around 350 cases. He explained that the debtor must pay the court a fee between 30 and 80 leva (between 15 and 40 euros) per an unfair clause claim, and this has not changed after the amendment to the Civil Procedure Code. Moreover, in his opinion the amendments are not going to be fully implemented because the judges will not be able to perform all necessary checks in practice.

Mr. Loránt Vincze took the floor and said that in the Ministry of Justice the delegation was informed that legal changes to the Civil Procedure Code have been made recently. The law will be implemented soon. There must be a period left to observe the effects of these changes. Therefore, the petitions will not be closed. The only way forward now is to stop the way the banks proceed i.e. to stop them from obtaining the writ of execution. There should be a special procedure to be launched and banks should be excluded from this procedure.

Ms. Dolors Montserrat explained that the petitions will not be closed and that there will be a report and recommendations after the FFV, and members of the Committee on Petitions will vote on them.

The Chair asked about the fee for each separate case of claim. The answer was that this fee varies from 40 to 80 leva (approximately 20 to 40 euros) for each separate claim (provision). The fees are not affected by the proposed changes and the petitioners considered that there should be only one fee. The fee is not limited and it can go up to 5% of the amount of the claim. On the question on obligation of a notary presence, it was explained that it is not obligatory to sign the contract with a notary. On the question about fees paid by debtors, it was explained that the quick procedure fees are not unlimited.

Petitioners asked in what manner the European Parliament could help the petitioners. They suggested that the secondary legislation is also important. The petitioners indicated that, on the improvement of access to the courts, they should be able to bring the case to the Court of Justice of the EU. They insisted that the ECtHR in Strasbourg was flooded by the BG cases.

On the Chair's question if the execution process is suspended if an appeal is brought to the court, petitioners' answer was that it is not suspended.

Mr. Terheş said that The European Commission sends experts to Bulgaria to carry out a yearly check on judicial reform, the fight against corruption and the tackling of organized crime. He explained that there are mechanisms in place and that the judicial system is being monitored, and that the petitioners should notify the EC experts. The petitioners stated that they did not have the chance to do so and there were of opinion that there is a general problem of EU law not being respected.

*Meeting closed at 19:45*

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Tuesday 25 February 2020 at 9:00

## Meeting at the Bulgarian Ministry of Economy

Mr. Emil Aleksiev, Head of the Consumer Policy Unit, welcomed the delegation.

Ms. Montserrat introduced the members of the delegation and asked:

- The delegation knows about the amendments from December 2019 that will soon be implemented. Are the banks going to enforce the decisions of the judiciary?
- Is it necessary to go to the notary when signing a contract?
- If there are unfair clauses in the contracts and the debtors contest them, do they have to pay a fee? Is the procedure of enforcement suspended if the consumer makes a contestation?

Mr. Aleksiev answered that the Directive on unfair clauses (Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts) applies to all parties and not only to the banks (the authors of the petitions focused on banks). The amendments introduced in December 2019 are already being enforced. The banks will be entitled to launch the enforcement as they did before. The new elements are checks (if consumer complains to the court, the judge is obliged to make an *ex-officio* check and to examine the clauses (to determine if there were unfair clauses in the contracts between the debtor and the creditor). The debtors can lodge their objection within 30 days (prior to amendments, it was 14 days).

On the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts:

There were preliminary questions to the ECJ about the application of this directive. Banking institutions and general terms of contracts are the main subject of complaints not only in Bulgaria, but also in other Eastern European countries and in other MS such as Spain, Italy etc. The sum that can be deposited as a collateral (after the amendments) is 1/3 of the value of a debt (prior to the amendments it was 100%) in order to stop the enforcement proceedings.

The consumer does not have to turn to the courts. He/she can turn to the consumer protection organization to have the contract examined. The consumer protection body can make a collective claim. If there are unfair clauses, then the consumer can turn to the court.

Ms. Dolors Montserrat stated that the consumer is in a weak position. If he/she wants to challenge the case, he /she needs to pay the fee. She asked if consumers have the right to have an *ex officio* lawyer (especially the ones that are vulnerable).

Mr. Aleksiev answered that a fee is obligatory. The legislator may decide to change that. In theory, only the sum up to 1/3 of the debt is due and the debtor can stop the enforcement (now he/she has one month to do so just by objecting). The judge makes the check.

Ms. Tatjana Ždanoka asked about the contract issue, if there are changes in currency and changes of the interest rate. What does the Ministry do to inform the people how to read the contract? What assistance is does it offer? Do they think that they should inform people about the risk?

Mr. Aleksiev answered that his unit has a different task of conducting the policy of the consumer protection. There is another unit responsible for implementation of the policy and for information to help people avoid traps in the contracts.

Mr. Loránt Vincze added that the Ministry of Economy as the legislator could provide the delegation with the information about existing possibilities for consumers to contact the legislator. He demanded more precisions on the subject of contracts (standard contracts): if the creditor could be attacked in court by one person or by a group of consumers (collective action). He asked who could modify the contracts.

Mr. Aleksiev answered that the Commission on Consumer Protection is responsible for providing information to consumers about the banking system. It gives advice and ensures the consumers' general safety. It aims at protecting the economic interest of consumers, and is dealing with unfair terms of contracts.

As for the access to justice, the best solution is to make a collective claim.

Concerning contracts with unfair clauses:

On prevention: there are regulations that are mandatory for all traders and service providers. The Bulgarian National Bank is a referee for the banks (but the Bulgarian National Bank does not provide the examination of the contracts). The Financial Supervision Committee supervises the banks but has no power as regards unfair terms in contracts. General terms of contract are obligatory. The Commission for Consumer Protection has to approve the terms. The Commission for Consumer Protection gives preliminary approval of the contracts.

Ms. Dolors Montserrat said that the regulator must check contracts and it was the case in the past. She wanted to know if there were any changes after the reform. The Committee on Petitions received many petitions about contracts. She asked if it was possible for poor families to afford to launch the judicial procedure. If the court decides that the contract clauses were unfair, is there a possibility to compensate consumers (if they have already lost their assets and properties and have no money for launching the judicial redress). She asked if there are *pro bono* lawyers.

The Minister of Economy, Mr. Emil Karanikolov joined the delegation. He took the floor and explained that the Ministry is responsible for business investments, but also for consumer protection. The Ministry responsible, being consumers as well, works intensely to protect the consumers' interests. He stated that consumers in Bulgaria were increasingly aware of their rights. He explained that the Code of Civil Procedure was amended at the end of 2019: now courts will be able to control the clauses of the contract. The Commission for Consumer Protection works as well.

On the remunerations: Mr. Karanikolov informed the delegation that the average salary in Bulgaria is 305 Euro and the salaries have increased by 10%. The Commission for Consumer Protection controls a whole range of institutions. The Ministry is considering an increase in its staff.

On the standards: there was a meeting held concerning assessment of standards. For example, there is an evaluation of assets during an auction at which properties are sold. Debtors never accept the proposed price, therefore they start the process of putting in place a system of independent evaluations to establish the value of assets; the same applies for experts and expert witnesses in court.

Mr. Cristian Terheş suggested dividing the issue concerning the amendments and the legislation and the cases with which the delegation deals with. He also wanted to know why the standard contracts have abusive clauses. Concerning court orders to people who lost their houses in 2018,



he asked about solution for them. He asked about the solution to fix the problems of the people that lost their properties.

Minister Karanikolov said that there were unlawful activities that made this situation possible. If the court finds out that the law has been violated, than there is no deadline for the people who lost their properties to claim it through the proceeding in the court (no statute of limitation). This procedure is somehow long and complicated.

On the solutions for consumers who lost their properties, the Minister explained that the consumers were not aware of the legal consequences of the contracts. There were public consultations carried out during the legislative process but they were limited to the public present. He noticed that consumers' organizations are currently more active. The consumers were absent at the beginning of the consultations, therefore their point of view was not represented. He agreed that the consumers were the weaker part but he mentioned that there were also some unlawful actions from their part (hiding of debtors and evading paying back their debts).

Mr. Cristian Terheş stated that the government should protect the consumers and there must be a balance between the interest of banks (free market) and the protection of consumers. That would be beneficial for all parties. There should be a change in the legislation to provide legal aid to innocent people affected by these problems who were trapped in the scheme. He asked about a way to compensate and help them.

The Minister answered that the mechanisms in Bulgaria are like the ones in the EU: the stakeholders are part of the debate on the legislation. In the past, the consumers did not participate in the law-making process. The stakeholders (such as organizations, NGOs, consumers' organizations) should seek to participate and speak up. Those who suffer damage should take their cases to the court and start the procedure of recovering the lost property.

Ms. Tatjana Ždanoka took the floor and asked about a court decision from January 2020 (*document annexed in Annex IV*) about payment to specify each contractual term of the claim in the procedure at the court. The fee is 80 leva (approximately 40 euros) for each separate claim. She asked the minister to explain it.

Concerning the Unit of Consumers' Protection, she noticed that it got a very small budget, and suggested that it should get more funding in order to increase the number of controllers, or the authorities should raise their wages. She asked the Minister to share the statistics of the cases in courts when the claimants won their cases.

On the first issue, Minister Karanikolov stated that the judiciary is independent of the executive and the legislative branches and courts can claim the fees. It is not in the remit of the Ministry of Justice to mandate the judiciary change it. He argued that the fees are not that high and if the claimant wins, he/she will have the money reimbursed by the losing party.

On the Unit of Consumers' Protection he said that civil servants in Bulgaria are not well paid but their wages have been recently increased by 10% (those of teachers and doctors by 15%). The increase should be equal for the civil service and the rise cannot be one-time-only.



On the statistics, he answered that the data would be presented by the Commission for Consumer Protection at the meeting the following day (details and breakdowns).

Mr. Loránt Vincze asked how to establish a balance between the stakeholders' interest at the credit contracts issue. He found that the amounts asked by court to assess if there are unfair clauses in a contract were too high. When challenging the contractual clauses, each clause has to be paid for separately, which seems disproportionate. There should be one fee for the whole claim. He suggested to the Ministry of Economy to make a recommendation to the Ministry of Justice to alleviate the problem.

The Minister answered that the Ministry could make a recommendation to the Ministry of Justice to reconsider this fee. Introducing one fee for the whole claim should be possible and acceptable.

The Head of Delegation, Ms. Dolors Montserrat, summarized the discussion and described the existing situation is the public evaluation of property;

- the weak point is the average salary in Bulgaria of 305 euros does not allow people to pay excessive fees and to remunerate lawyers. She asked if the Ministry as a consumer' protection office suggested measures for the most vulnerable people to have access to justice (such as compulsory *pro bono* lawyers). She stated that the most vulnerable citizens never pay fees if their income is under the minimum wage
- acknowledged that despite the reforms, judges must control the contracts and the consumers must pay for assessment of clauses by court. How does the Ministry monitor the contracts with unfair clauses? How can it guarantee that this kind of contracts cannot exist? How could it check on this issue? There must be a legal certainty that the banks can recover their debts but the consumers must be sure that the contracts that they sign do not contain unfair clauses;
- and highlighted the situation when a bank can invoke the enforcement clause automatically and that the consumer will lose the property immediately and will never obtain it back, even when the court decides after a long procedure that he/she should obtain it back (because it was illegally sold). She asked what could be done in this situation. The Bulgarian legislation should include preventive measures.

The Minister answered that everybody has the right to protect themselves. The Committee on Consumer Protection decides if the contracts are legally correct and gives its approval. In his opinion, the court supervision is efficient. He agreed to the fact that fees are too high. He explained that this is the question for the court. After the amendments from December 2019, additional clauses from contracts will be checked. He asked the Chair about the situation in her country (Spain) when this kind of situation happens. He wanted to know what would be a legal way in order to remediate the situation when a property was sold and the court decided that the contract had unfair clauses.

Ms. Dolors Montserrat explained that in Spain, a property could not be auctioned in such a fast way thanks to preventive measures. The contract must be signed in the presence of a notary who will check on the clauses. The Central Bank of Spain also checks it. Above a certain value there are public evaluations. If there are unfair clauses then the execution is suspended and the asset cannot be auctioned. About 15 years ago, the legislation in Spain has been modified after the EU tribunals pronounced sentences on abusive mortgage cases. Ms. Montserrat clarified that the regulations in Spain were introduced to avoid abusive clauses in contracts. Legal

certainty is important also for the investors and the banks. She pointed to the fees that consumers have to pay in Bulgaria.

The Minister said that the Spanish model seems to be a good one. He asked about the liability. Ms. Dolors Monserrat said that the cost for a notary is half/half but the notary is not legally responsible for what he certifies/the notary profession is a trusted profession.

*The meeting closed at 11:00.*

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Tuesday 25 February 2020 at 12:00

### **Meeting at the Bulgarian National Bank (BNB)**

The Deputy Governor, Mr. Radoslav Milenkov, in charge of the banking supervision, welcomed the delegation and presented his team.

Ms. Dolors Montserrat introduced the members of the delegation and explained the purpose of the visit. Ms. Dolors Montserat asked if the Bulgarian National Bank (BNB) supervises credit contracts and if there are supervisory mechanisms in place to verify the non-existence of unfair clauses in consumer contracts. She asked about the supervision procedure: who is liable, who should provide compensation if there were inaccuracies in the contracts. Finally, she asked about what legislative measures can be taken in order to avoid this type of unfair contract.

Mrs. Neli Draginova, Chief of the Legal Department of the BNB, explained that the banking supervision of the commercial banks (according to the Bulgarian National Bank Act) is the duty of the Bulgarian National Bank. The law regulates the legal relations between customers and banks. The BNB looks after the main risks for the banking sector in order to guarantee a stable supervision. Consumer credit and mortgage loans are not under their remit. The Consumer Credit Act governs them.

The banking supervision mandate covers only the credits that are in the scope of the law. The BNB received complaints from the clients of the banks which were:

- property related;
- about the size of the credit;
- about the rate size;
- about the banks' refusal to renegotiate some clauses of the contracts.

She stated that disputes about the above provisions could only be resolved in court. There are limits in the BNB's competence because it cannot replace banks.

Ms. Dolors Montserrat said that the banks should have clear rules about the credits. She asked about measures that the BNB would suggest to the delegation regarding the petitions received by the Committee on Petitions about the terms of mortgage loans.

Ms. Neli Draginova explained how the part concerning the supervision of banks in Directive 93/13/EEC on unfair terms in consumers' contracts has been transposed. On the hypothecary/mortgage loans, the lender should provide clear information. The BNB follows the established principles on information requirements: the registration is carried out by the BNB. Concerning the corporate loans, she stated that the Credit Institutions Act applies to them. The role of the BNB is to supervise the international commercial banks (licensing).

Ms. Dolors Montserrat asked why unfair clauses still existed if the Directive on mortgage loans had been transposed correctly. She asked how situations where consumers agree to these clauses could be prevented.

The answer was that the competent body on the consumer credit is the Commission for Consumer Protection.

Ms. Tatjana Ždanoka stated that in her country, Latvia, when unfair contracts are discovered, the banks are heavily punished financially. She said that satisfactory communication with clients and a flow of information between clients and banks is necessary. The consumers should be diligent, they should read the clauses before signing them, etc. She asked about the recommendations to aid the consumers and to solve their problems and wondered if the BNB would agree to give more power to the Commission for Consumer Protection.

Mrs. Neli Draginova agreed that Banks should be supervised. She added that consumers often underestimate the costs to be paid. This should be stated very clearly in the contracts. The BNB instructs banks only when its advice has been sought. The BNB acts when asked, when the citizens addresses it.

On the law on consumer protection: The BNB appoints the chairs of the committees supervising consumer protection. The BNB provides expertise in this way. The consumer protection supervising body prepares an annual report.

Mr. Loránt Vincze explained that the delegation had a better understanding of the situation after the meetings last day and this morning but is still unclear who is responsible for what. The system is more burdensome on the consumer than on the banks. He asked the BNB representatives to describe the system, and if it is fair to the consumers. He wanted to know how the BNB could intervene for the sake of consumers.

In their answer, the representatives of the BNB said that its actions were compatible with EU law. The BNB supervises the stability of the banking system. The credits/contracts are the competence of the Commission for Consumer Protection.

On the law on consumer protection: The BNB is not responsible for consumer protection. The BNB does not have such competence. The protection of consumers is not within the remit of the BNB; as such, the problem of unfair contract clauses falls outside its competence.

Mr. Cristian Terheş said that he understands that the BNB is not checking the consumer loan contracts, but only the corporate loans. He asked if the BNB checks the clauses and annexes when it supervises the corporate contracts.

The answer was that the BNB supervises the risk, the limits and the quality of the parties to the contract. It focuses on the question whether the loan is well protected. The technical aspects are being checked and the reliability of the placement is checked, but not the conditions.

Mr. Cristian Terheş asked what the BNB does in the case of unfair clauses between banks, or when the banks are giving bad loans to the clients. He asked for suggestions of solutions to the problems described by the petitioners.

The representative of the BNB answered that a fair and balanced environment between different banks is necessary.

Mr. Loránt Vincze asked what the BNB does when the Commission for Consumer Protection discovers malpractices.

The representative of the BNB answered that there are sanctions, but it is not for the BNB to make proposals for an improvement. The BNB works to reduce the number of unlawful mortgage loans.

Ms. Dolors Montserrat stated that more concrete proposals are expected from the BNB representatives regarding the resolution of problematic contracts with unfair clauses. She suggested that there should be clarifications made to improve the existing system.

*The meeting closed at 11:55*

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*Tuesday 25 February 2020 at 16:00*

## **Meeting at Montana, Bulgaria**

*Visit at the landfill facility in Montana (Petition No. 1408/2012), in the presence of the Deputy Mayor of Montana Mr. Tihomir Antonov (responsible for the European Integration and Economic Development), and the Deputy Mayor Mr. Diman Georgiev (responsible for ecological matters,*

*public relations, construction and communal activities of Montana), the manager of the facility Ms. Zhivkova and the petitioner, P. P. (anonymous petitioner) and his representative/lawyer Mr. Barbanov were present.*

*(in Annex VI documents sent by the petitioner after the FFV and in Annex VII the EC communication received in July 2020)*

First, the delegation visited the landfill where the Deputy Mayor explained the waste treatment system in place. There is also a sorting facility in operation. This amenity is in receipt of EU funds.

The meeting continued at the administrative part of the landfill facility, where Ms. Montserrat introduced the member of the delegation.

The petitioner, representing the movement “Ekoglasnost”, took the floor and explained that the establishment of the landfill in Montana began during the communist regime in Bulgaria. The area of Montana is remote. Initially, there were two areas indicated for the landfill. The landfill should be covered by a layer of earth (10-15 centimeters) each day, but this is not being carried out. The current mayor of the city of Montana is in his 6<sup>th</sup> mandate now. In the petitioner’s opinion, the landfill operated for two and a half years illegally (the distance to the nearest inhabited property was less than 800m). In 2005, permission was granted by the court which allowed the facility to open. In 2009, a letter was sent objecting to the conditions of the landfill establishment. The mayor of Montana was asked to reduce the distance between the landfill and the first inhabited buildings in the village of Nikolovo to 800m from 1 km and promised daily coverings of the landfill every day in order to comply with the hygiene requirements. In the petitioner’s opinion, this was done in order to avoid a court case and to finalize the investment. The petitioner added that citizens are not allowed to enter the facility. They may enter with the assistance of the police. The petitioner and his lawyer have been banned from entering.

Ms. Dolors Montserrat asked if it was true that in 2010 the court suspended the permit because the distance of 1000m between the landfill and the households was not respected. She wanted to know what the regional authorities did in order to mitigate to the situation. She said that the delegation heard from the petitioner that 10-15 cm of soil must be added every day on the top of the landfill and a greenbelt surrounding the landfill should be installed. She asked about the legislation concerning this issue.

Mr. Diman Georgiev, Deputy Mayor (in charge of the environment and construction matters) took the floor and explained that the village of Nikolovo is more than 1100 meters from the landfill. The landfill covers 19 hectares, a part of it (two cells) is old and therefore in 2015 it was no longer operational and it was sealed. The new cell will be filled until it reaches maximum capacity. A fence surrounds the entire landfill. There is a treatment facility as well and a laboratory that measures the quality of the water. The Ministry of Environment and Waters settled the conditions for the landfill but these recommendations are not compulsory. The landfill facility received a new comprehensive license. The landfill is covered with soil every day and the fence composed of trees is in place as well. Local farmers use part of this fence for their own cultivation. In one part of the fence there is a vertical rock therefore it is not possible to plant any trees. The site undergoes a series of checks by authorities on a regular basis. The landfill causes a lower level of disturbance in terms of bad smell when compared to other similar facilities. He suggested that all conditions comply with the EU legislation. From this point of view, the Montana municipality is a leader. There is another facility for ecological waste planned nearby, but local authorities are still waiting for a place to build it.

Ms. Dolors Montserrat stated that members of the Committee on Petitions would make their recommendation on the issue (but the Committee on Petitions is not a court with judicial powers).

Ms. Tatjana Ždanoka asked if an obligatory environmental impact assessment (EIA) was conducted in accordance with EU law. She also mentioned the problem of water used for cleaning at the facility and asked where it went after the cleaning phase.

*Two specialists from the Regional Inspectorate of Health and the Regional Directorate for Waters joined the meeting.*

Ms. Maria Lazarova (specialist at the Regional Inspectorate of Health) said that there was an EIA done for the first project, when that project was planned to cover 12 municipalities. The authorities did not conduct an EIA for the second project.

Ms. Denitza Slavkova, specialist at the Regional Directorate for Waters, was replaced by Ms. Nikol Duratsova

Ms. Dolors Montserrat presented the facts and the conditions described by the petitioner at the beginning of the meeting and asked both representatives of the inspectorates to explain the current situation. Ms. Slavkova outlined in her answer that she was aware of the procedures in place for the opening of the Montana landfill for a non-hazardous waste. She recalled that when the permit for this landfill was issued, all requirements were met. Since 2010, there were regular supervisions on the site by the Regional Inspectorate for Waters. Each complaint was dealt with, and the situation was remedied. In 2013, the requirement for a mandatory distance was repealed. For the inspectorates, the petitioner's argument about distance is unfounded. The Inspectorate made recommendations to the landfill that were addressed. There were no infringements observed. The regular filling with soil has been done and it is monitored electronically 24/7.

Ms. Duratsova added that the Regional Inspectorate of Health made the recommendations and carried out checks. They did not receive any complaints about the landfill. If they receive information from citizens or from the media, they are capable to undertake examinations. Concerning this site, the compliance with legal obligations has been ensured.

Mr. Loránt Vincze addressed the representatives of the landfill and the representatives of the inspectorates and asked about the exact distance between the village and the landfill. The representatives confirmed that it was 1000 meters.

He asked if the filling of the landfill was done on a daily basis. He mentioned the photos shown by the petitioner allegedly proving the opposite.

The representatives answered that there would not comment on the photos (there is no date on them). There are documents proving that daily fillings are conducted.

Mr. Vincze asked about the vegetation (a green belt) surrounding the landfill.

The representatives answered that a fast growing vegetation belt was required for the municipal landfills, not for the private ones. There will be a follow-up on the checks and the issue will be monitored.

Then Mr. Vincze addressed the petitioner about issues concerning the health of the inhabitants. The petitioner considered that the area of protection has been reduced. He pointed to the health hazards, such as infections, rodents, and called for protection of the public health and the environment.

Mr. Cristian Terheş asked if the representatives of the landfill and the representatives of the inspectorates could confirm that in 2009-2010 the distance between the village and the landfill was 800-900 meters.

The representatives answered that corrective measures were imposed after the recommendations of the court.

Mr. Cristian Terheş inquired if they could explain if the fence has been moved or the edge of village has moved. The local representatives answered that it was not possible to provide the measurements. This information can be requested for from the Ministry of Environment and Waters.



Mr. Cristian Terheş asked how many landfills there were in the municipality.

The representatives answered that there is one registered landfill for 12 municipalities. There is another household landfill from 2015, also managed by the municipality of Montana.

Mr. Cristian Terheş asked the representatives if there were other complaints that the municipality of Montana received from the petitioner (*P.P.*).

The representatives answered that this was not the only request from this petitioner. They have been communicating on multiple occasions. The municipality addressed his complaints. The petitioner added that he was invited only once to the landfill by Ms. Slavkova.

Dolors Montserrat explained to the petitioner that the landfill could be entered if the petitioner asked for a permit.

Mr. Barbanov (the petitioner's lawyer) added that the letter from the Ministry of Health formed part of the license. The issue of covering the landfill with soil and the establishment of the green belt are still to be resolved. Regarding the video recordings, he asked for an internet link to them. He asked when the recordings started and if checks have been performed or not.

Ms. Slavkova answered that the petitioner's statements as well as those of Mr. Barbanov were ill-founded. No danger to human health from the landfill could be established. There are video recordings to prove this. The report with information about the health risk is public and video recordings are kept for two months. There are online video images available. The images are kept for one year.

The Chair asked if the images taken by the petitioner were sent to the environmental authorities. Ms. Slavkova confirmed that the images taken by the petitioner were sent in the fall of 2019 as a claim but no written answer was received from the authorities, only an oral confirmation. The petitioner has been corresponding with the national authorities. He was asked by the Chair to send to the Committee on Petitions any evidence that he had sent the photos to the environmental authorities (no later than the end of April 2020).

*The meeting closed at 17:45*

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Wednesday 26.02.2020

## **Meetings in European Parliament Liaison Office (EPLO) in Sofia**

### **Meeting with the Commission for Consumer Protection at 8:30**

*Present: Mr. Ignat Arsenov (General Director of national control of the market at the Commission for Consumer Protection) and Mr. Erdzhan Ahmed (legal adviser).*

Ms. Dolors Montserrat presented the members of the delegation and stated that they paid a visit to the Ministry of Justice and were informed that the Commission for Consumer Protection was in charge of supervising, monitoring and imposing fines on the banks if there are shortcomings concerning mortgage loans/contracts.

Mr. Arsenov explained that the Commission for Consumer Protection is the main consumer protection body. There are 180 people working in different departments (legal department, department of control, etc.). The Commission for Consumer Protection meets regularly and adopts decisions by simple majority. There are several relevant pieces of legislation, among them a the Consumer Protection Act that addresses unfair commercial practices and consumer disputes, but is also relevant for other branches of the economy, for example, tourism.

The Commission for Consumer Protection is the main supervisor on the consumer loans and mortgages loans. The Consumer Protection Act monitors the existence of unfair clauses in contracts. There are several types of contracts requiring a check of unfair terms. These are contracts offered by private entities. The representatives of the Commission for Consumer Protection can act pursuant to a complaint or on their own motion. They can launch the procedure on behalf of consumers. They supervise the consumer loans or mortgage loans sector, but this is only one of their competencies. They analyse conditions proposed by the banks and other entities. They foster the dialogue with these entities and they provide these entities with advice, but the business entities can agree or not with their suggestions. Sometimes the representatives of the Commission for Consumer Protection start the negotiations. If the banks refuse to negotiate, the Commission for Consumer Protection can submit the case to the court.

Mr. Ahmed added that the problem with contract clauses not being checked has been resolved by the amendments to the Code of Civil Procedure. After their introduction, the checks are mandatory: there is ex-officio check of the contracts. Mr. Arsenov shared his private opinion on the issue. He insisted that any formal procedure requires human and financial resources. Consequently, the Commission for Consumer Protection would need more resources, more people to carry out the checks. Another problem is the excessive length of judicial proceedings in this relation.

Ms. Dolors Montserrat asked if the Commission for Consumer Protection has the authority to supervise the consumer credits and mortgage loans, as well as other credits. She also asked what the Commission for Consumer Protection has done on behalf of Bulgarian citizens affected by the problem of unfair clauses in contracts. Ms. Montserrat wanted to know at what stage the Commission for Consumer Protection checks the contracts, if banks send the contracts to the Commission for Consumer Protection and, in case of ‘bad’ contracts, if they are marketed or not. She asked also if the Commission for Consumer Protection would go to the court if the banks ignored their recommendations.

Mr. Arsenov answered that in 2015, the consumer protection Directive was transposed into national law. More recent amendments were introduced in 2020.

In 2016, the mortgage loans law was introduced, in 2010 the Consumer Credit Act was adopted, and it had been implemented for 10 years now. The Commission for Consumer Protection analyses contracts but is not asked to approve any contract before its entering on the market. The Commission for Consumer Protection can analyse the general terms of contracts. The banks are offering a wide range of products, they are asked to provide general terms of contracts (not only contracts in credit or mortgage but also contracts in telecommunication). The Commission for Consumer Protection performs regular checks of contracts. There have been many complaints introduced by citizens. The Commission for Consumer Protection assists the consumers and can impose fines.



Ms. Dolors Montserrat asked about the legal basis for the fines. She noticed that the recommendations were not mandatory; therefore she asked what the Commission for Consumer Protection does on behalf of the consumers (petitioners).

On this issue Mr. Arsenov said that an imbalance between the lenders (the banks and other financial institutions) and the consumers exists. The former have at their disposal immediate enforceability of the contract. The latter have to launch a procedure. Then the Commission for Consumer Protection has also to launch a subsequent procedure.

Ms. Monserrat asked if the reform (amendments) improved this situation.

Mr. Arsenov answered that the Commission for Consumer Protection can decide if there are shortcomings but it cannot impose any sanctions for unfair contract terms. Fines are imposed when insufficient information is provided. The Commission for Consumer Protection received about 20,000 complaints but not only about consumer loans. In 2019, there have been about 7,500 complaints. A small number of them (72) were deemed unfair, and after the Commission for Consumer Protection's recommendations, these unfair clauses were removed. There were three collective redress cases launched by the Commission for Consumer Protection. To date, there were 14 pending cases against traders. The Commission for Consumer Protection's cases can be joined by other consumer organizations, as well as the individual consumers. The consumer organizations can initiate redress cases. The collective redress cases can be initiated only by the consumer organizations and they apply to all consumers. Recently there were 43 contracts examined and only three had flaws.

Ms. Tatjana Ždanoka asked how much time the judicial procedure takes; why the petitioners did not contact the Commission for Consumer Protection; what the relationship is between the Bulgarian National Bank and the Commission for Consumer Protection; what the consumer protection body is in the Bulgarian National Bank; and if the BNB consumer protection body collaborates with the Commission for Consumer Protection.

Mr. Arsenov responded that the average judicial procedure in Bulgaria lasts 5 years, there are 20,000-25,000 consumers claims. He explained that the Commission for Consumer Protection is the leader of the consumer organizations. He added that reconciliation committees were established for the resolution of disputes, many of them were organised since 2005 (since the Commission Recommendation 2001/310, of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes not covered by Recommendation 98/257/EC, COM (2001) O.J. (L 109) 1016 came into effect). The general reconciliation committees give recommendations (that are not mandatory). Other consumers associations also can initiate the collective redress procedures.

Mr. Loránt Vincze asked if the Commission for Consumer Protection requested to be able to sanction the banks and to protect consumer rights. Mr. Arsenov answered that the Commission for Consumer Protection is an executive body and has no competency for a legislative initiative. He added that the Ministry of Economy could change the Commission for Consumer Protection's competencies.

Mr. Loránt Vincze asked if the Commission for Consumer Protection could go to court with all complaints, and whether they do so in the case of unfair contract terms. Mr. Arsenov replied that only if a bank refuses to modify the clauses, the Commission for Consumer Protection submits the cases before the court.

Mr. Loránt Vincze asked if citizens complaining have to pay any fees for the Commission for Consumer Protection's help. Mr. Arsenov answered that they do not have pay any fees.

Mr. Cristian Terheş asked if checks of the contracts were carried out before they go to the market. Mr. Arsenov replied that checks are done after the complaint has been made.

Mr. Cristian Terheş noticed that the Commission for Consumer Protection's decisions are not binding and it can take up to 5 years for the courts to make a decision. Mr. Arsenov replied that a judgment about one case of collective redress would benefit others (unless they opt out).

Mr. Cristian Terheş asked if the Commission for Consumer Protection pays for every clause of the contract (80 leva) regardless of the number of people affected. The answer was that it does so.

Mr. Cristian Terheş asked if the Commission for Consumer Protection goes to court when the banks have refused to make the requested changes. Mr. Arsenov confirmed that they do so in 100% of cases.

Mr. Cristian Terheş asked what would happen in cases of the contracts with unfair terms, signed before the amendments of the Code of Civil Procedure. Mr. Arsenov said that if the clauses are modified, the general terms in all contracts are modified, but it does not have retroactive application.

Ms. Dolors Montserrat asked whether the reform would have a positive impact on consumers that have lost their property. Mr. Arsenov replied that the reform was satisfactory. In the case of people who lost their houses, it will be necessary to ask for a court judgment; it is the court that decides.

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## **Meeting with the Bulgarian National Association of Active Consumers at 10:00**

*On behalf of the association: Mr. Nikolov and Ms. Angelova*

Ms. Tatjana Ždanoka asked how the association works and if they had contact with the petitioners.

Mr. Nikolov answered that the association assists consumers, informs them and helps them when their rights have been violated in the legislative process. They know about the high number of petitions from individuals. There were few cases of collective redress. Social nets link the consumers. The fee to access the association is 50 leva, the consumers have to bring all documents. In practice, the association was unable to bring cases to the court.

Ms. Tatjana Ždanoka enquired how is the association financed. Mr. Nikolov answered that it gets subsidies from the Ministry of Economy (25,000 euros) and from its projects (time-consuming, not resourceful).

Mr. Loránt Vincze asked if the association was satisfied with the recent changes in the law, if it was involved with the reform, and what it would suggest for the delegation to recommend to the Bulgarian authorities.

The association is satisfied with the directions of the reforms but not completely with its content. The banks have too many privileges which were granted by the authorities many years ago and which are enshrined in Bulgarian law. The accelerated procedure allows the banks to refuse to negotiate, to decline to reschedule debts and to make no efforts to help the debtors. The consumers' expectations were that the banks would stop adding unfair clauses to the

contracts. The expectation was that there would be a criminal liability (as it is the case in Germany) if the bank does not apply the court decision and continue to apply unfair clauses.

Recommendations of the association in order to balance the situation:

- more information should be disseminated;
- very ambiguous contracts should be stopped;
- the Ombudsman helped the association to make some improvements (the role of Ombudsman is crucial).

Mr. Cristian Terheş inquired about the number of cases that the association opened in court. The answer was that there were no collective cases opened because the consumers were not sufficiently involved. There were many individual cases.

Mr. Cristian Terheş asked what the association could do in order to ensure that the court decision is enforceable. Mr. Nikolov responded that it is possible to make a new claim in order to recover lost assets.

Mr. Cristian Terheş asked about the validity of a court decision and if it is possible to appeal against it or to change the court's decision. Mr. Nikolov answered that decisions of the courts are clear; there is no need to go to another court. People cannot afford judicial procedure that is too costly and too long.

Ms. Dolors Montserrat asked if there are *pro bono* lawyers.

The answer was that there are *ex officio* lawyers, but very limited and mostly for criminal cases.

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## **Meeting with the Chamber of Private Bailiffs - the Private Bailiffs Association at 11:00**

*Mr. Georgi Dichev on behalf of the Private Bailiffs Association*

Ms. Dolors Montserrat stated that there are existing laws protecting consumers in Bulgaria. She wondered if the recently introduced reforms are sufficient to fully protect the consumers.

She also requested Mr. Dichev's personal opinion of the imbalance existing between the lenders and consumers and asked if consumers have adequate protection.

Mr. Dichev answered that in 2006 there were serious problems with enforcement of decisions of banks (hundreds of thousand) in Bulgaria. The reforms started in 2006 have attempted to restore the balance: help the lenders to collect their money. He confirmed that the Chamber of Private Bailiffs was very familiar with the problem of imbalance between lenders and debtors. In 2015, the first changes were introduced to the legislation in order to protect the banks and in 2017, more amendments were introduced to protect debtors. The changes introduced to the payment order procedure from December 2019 provide good protection. On the other hand, the bailiffs association fears that there is a risk of going to the other extreme: unfavourable imbalance towards the lenders. Many of them are in despair and they ask for bailiffs' help. In their opinion, the changes introduced in 2015 and 2017 offered a good level of protection.

Ms. Dolors Montserrat asked if the changes made were favourable to the consumers. Mr. Dichev answered that in his opinion, yes. There is excessive coverage of this issue; the protests are excessive, and bailiffs are very transparent.

Ms. Dolors Montserrat asked about his suggestions for a balanced legislation. Mr. Dichev explained that currently there is a good balance with changes introduced by the reform of the Bulgarian National Assembly from 2019, but slightly favouring debtors.

Ms. Tatjana Ždanoka said that the delegation was informed about fines imposed on bailiffs (96 fines; among them 24 fines above 5,000 leva and withdrawals of the right to exercise the profession). She asked if in Mr. Dichev's opinion this is excessive or not. She recalled the monitoring by the Ministry of Justice and hundreds of cases ongoing.

Mr. Dichev agreed that the number of fines is quite important. He insisted that prevention policy is applied and there are strict controls and disciplinary procedures enforced. The proceedings go up to the highest level to the Supreme Administrative Court. This formula had proven to be effective. He stated that private bailiffs are liable and they are sued in courts under the civil procedure. According to the Private Bailiffs Act, private bailiffs are obliged to have a mandatory civil liability insurance, which covers damages stemming from their professional misconduct.

Mr. Loránt Vincze asked how the consumers could get their properties back after the court decision that the clauses in the contracts were unfair. Mr. Dichev answered that the situation is purely legal. The property sold is not recoverable. The banks, or another crediting entity, should pay compensation.

Mr. Loránt Vincze asked which body is responsible for making an estimate of the value of a property. Mr. Dichev answered that there are public auctions of properties. From 2011 on, public auctions became mandatory. The auctions take place in the courts. Bailiffs are not involved in the procedural side of the auctions; they only open the bids of the people interested in buying a property. The final price is the highest price offered by the bidders (it is not the market value). Before 2017, no experts were required, but now this is mandatory. An expert can change the value of the property.

Mr. Loránt Vincze asked if Mr. Dichev knew if banks tried to reach a settlement with debtors (before going to bailiffs). Mr. Dichev answered that during recent years, the banks tried to reach a settlement. There are 200,000 cases every year and banks want to renegotiate or to refinance the loans.

Ms. Tatjana Ždanoka asked about the digitalisation of auctions and for comments on the proposals of amendments in the Code of Civil Procedure that were not adopted; particularly the one that people can sell their properties by themselves and then pay back the banks.

Mr. Dichev said that the digitalisation of auctions was planned. On the second question on proposal of amendments that were not adopted: the Bulgarian National Assembly overturned this option and it was a mistake. Concerning the initial price: if the debtor disagrees with the initial sale price, then he/she can ask for another expert's opinion.

Ms. Dolors Montserrat asked Mr. Dichev to explain how experts are chosen. Mr. Dichev said that there is a list of experts in each court.

Ms. Montserrat wanted to know who pays the fees. Mr. Dichev answered that lenders pay the expert.

Ms. Montserrat inquired about the minimum sale price. Mr. Dichev explained that the legislation does not permit the price to be lower than the value established by the government. There is no minimum price; it is the market value. If nobody bids on the market value, then the auction is cancelled. 45 days later, there is another auction with a price which is 10% lower.

The new initial price is announced and so it continues. If there is no interest, then the auction is postponed.

Ms. Montserrat asked how many auctions could be launched over a property. Mr. Dichev said that there was an endless number possible and the price can go very low.

Ms. Montserrat wanted to know how much the price could be lowered. Mr. Dichev confirmed that there was no limitation; it depends on the court experts' estimates. The fee for experts is between 100 and 150 leva. The auctions and experts fall under the legal responsibility of the Ministry of Justice.

Ms. Montserrat questioned whether, on the foot of the December 2019 reform, bailiffs have to wait until the court has examined the contract clauses before they undertake an enforced execution. Mr. Dichev said that they only deal with the cases that the court directs to them.

Mr. Cristian Terheş asked if the Chamber of Private Bailiffs was approached by the experts from the European Commission who make an annual check on the progress of the judicial system and the situation in Bulgaria,

The Chamber of Private Bailiffs was not approached by the experts.

Mr. Cristian Terheş inquired about the options that debtors might have when they are confronted with the execution. Mr. Dichev answered that the court has the possibility to suspend the execution should the debtor lodge an objection.

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### **Meeting with the Associations of the Private Banks in Bulgaria at 11:30**

*On behalf of the association: Mr. Andonov, Ms. Miteva, Ms. Martseva, Ms. Gigova and Ms. Hristoforova*

Ms. Dolors Montserrat asked if the banks always inform the consumers of the changes introduced in the commercial contracts. She was informed that they changed contract clauses unilaterally. Mr. Peter Andonov answered that the banks never change clauses unilaterally.

Ms. Montserrat inquired if there is a balance between lenders and consumers after the reforms introduced in 2019. Mr. Peter Andonov replied that the banks believe that the reform was in favour of the debtors. In the past, there were many bad loans in Bulgaria, twice the number than in other countries. 18% of the entire portfolio were bad loans. One million and a half of debtors have never repaid their loans to the banks. Half of the banks' capital has been decimated by these bad loans. There are many changes introduced favourable for the debtors. In his opinion, the new legal order can be challenged by the bad loans. Now the share of the bad loans is 7%. He feared that the same mistakes would be repeated if there were a new crisis.

Ms. Dolors Montserrat asked about possibilities for debtors to have options when their property is at stake and about the unilateral modifications of contracts.

Ms. Martseva answered that the Bulgarian legislation does not differ from the legislation of other MS. The contracts can be renegotiated. The banks cannot collect fees for the changes made in contracts from debtors.

Ms. Gigova added that there were debtors that were cheating: when the banks inform debtors of their visits in advance the debtors are absent, and then the official place notifications on the door. She added about changes in contracts: they cannot be altered unilaterally. She added that reversed writ of execution amounts to 1,7% (these are abusive practices).

Ms. Tatjana Ždanoka asked why the banks continue to give the loans (mortgage loans) and suggested to them to re-estimate their policy. Mr. Andonov answered that now the banks have changed the criteria for approving the loans. There are additional requirements and guarantees. Ms. Tatjana Ždanoka demanded to explain the dynamic after the crisis of 2007/2008. Mr. Andonov answered that after 2007/2008 the approval of loans has stopped. The first growth in the numbers of loans came only in 2015 but the lending criteria has become stricter.

Mr. Cristian Terheş asked when the conditions for the accelerating procedure have been imposed. Mr. Andonov answered that in 1997 private banks in Bulgaria collapsed. The IMF imposed requirements. It took five years for the financial sector to recover. 300,000 borrowers had never repaid their loans. On the unfair clauses, he added that there are 1 million cases of bad borrowers but the banks have no observations of the practices mentioned.

Mr. Cristian Terheş inquired why after the two crises banks are still lending as much. Mr. Andonov answered that lately bad debtors are much fewer lately.

Ms. Dolors Montserrat asked the association's advice in order to avoid the situation of the contracts with unfair clauses.

The answer was that the legislator must exercise better control over the contracts.

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### **Meeting with the Bulgarian Judges Association and the Supreme Court Judicial Council of Bulgaria at 12:00**

*On behalf of the Bulgarian Judges Association: Mr. Krassimir Mazgalov, Ms. Albena Boteva, Mr Konstantin Kunchev*

*On behalf of the Supreme Judicial Council: Ms. Daniela Marcheva, Ms. Veronika Imova, Ms. Boryana Dimitova, Ms.Totka Kalcheva, Mr. Angelov*

Ms. Dolors Montserrat put the same question to both organisations if, after the reform of 2019, they believe that there would be more balance.

Ms. Boteva from the Bulgarian Judges Association answered that in her opinion, there would be no balance because the consumers' rights will be overprotected.

Ms. Kalcheva from the legal service of the Supreme Judicial Council explained that they took into account the consumers complaints. There are positive points such as:

- ex-officio checks performed by the courts;
- the execution order can be suspended by a simple objection (no collateral involved);
- the Commission for Consumer Protection should be involved to analyse the contracts as a preventive protection. The consumers can be defended later.

Ms. Dolors Montserrat asked if it is necessary for banks to go to the court. The answer was that the banks cannot go directly to the bailiffs.

Ms. Montserrat inquired if the consumers have to pay a fee for every clause that they challenge. There are no fees for the consumers under the new reform, but the governmental fees have not been affected by the reforms: there are fees for the claims of the consumers, 40-80 leva per claim. The objective will be to have one single fee regardless of the number of clauses.



Ms. Tatjana Ždanoka stated that she received a court order from January 2020 in which consumers had to pay for each claim (*in Annex IV*). Ms. Kalcheva answered that a consumer can ask for exemption and can also lodge an appeal.

Mr. Loránt Vincze asked to specify if the fee applies for each claim or all claims. The answer confirmed that there was one fee per one claim. The fee is from 40 to 80 leva.

Mr. Cristian Terheş inquired how the members of the Supreme Judicial Council are appointed. Ms. Kalcheva answered that the members are elected both by direct election from the judges and some members are appointed by the Bulgarian National Assembly. Concerning the fees for challenging clauses, Ms. Kalcheva confirmed that it is 40-80 leva per clause. Mr. Angelov added that there have been issues of interpretation of the law.

Mr. Theres asked if the Bulgarian Judges Association or judges themselves addressed the problems concerning consumers' contracts in the talks with the representatives of the European Commission monitoring the progress of the Bulgarian judicial and consumer issue.

In Mr. Angelov's opinion, the consumers in Bulgaria tend to go directly to the courts. There are 141 cases in the Sofia Regional Court (civil low procedures). There are speedy procedures, execution orders are automatic, and after the reform the situation has not genuinely changed. The consumer himself has to ask to examine clauses in the contract. The state responsibility and the bailiffs' responsibility are at stake.

*(in Annex II information received after the FFV from the Bulgarian Judges Association; in Annex III : statement on the issued addressed by the Committee on Petitions by the Judges' College of the Supreme Judicial Council)*

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## **Meeting at 12:45 with the Bulgarian Ombudsman,**

*Bulgarian Ombudsman Ms. Diana Kovacheva and her team*

When amendments to the Code of Civil Procedure were discussed in the Bulgarian National Assembly, the Ombudsman made several suggestions: not to sell the property which is a mortgage guarantee of a debtor until the first instance procedure in court is completed. The judges and the Minister of Justice supported this proposal when it was voted on at the Committee on Legal Affairs of the National Assembly, but finally it was rejected by the plenary. This would be an extra protection for a physical person. From the banks' perspective, it is risky and they say they are not going to give loans without guarantees and they support the idea of selling properties quickly.

There is a possibility for a physical person to stop the procedure at any time pursuant to Article 420 of the Code of Civil Procedure as suggested by the EC letter. It takes, on average, between 1 and 2 years, to execute a mortgaged property. Without any protection, this execution can take few months. If a property is sold, and the court decides in the end that there were mistakes, it is too late..

The Ombudsman has some questions that have not been answered by the authorities and they should still be answered. The role of the Commission for Consumer Protection is preventive control of the contracts and the clauses. They are authorised by the law to do so, but they can only provide a recommendation, which can be strengthened. Only around 5% of the contracts containing unfair clauses are coming before the courts (small number of cases). There are the cases when the court is doing this ex officio. The Commission for Consumer Protection is a monopolist (like other monopolist in Bulgaria).

Then after the first instance judgement, the property should not be sold.

The next thing is the third person guaranteeing another person's debt is not part of the judicial procedure. In Bulgaria, they should be summoned and they should have the right to appear before the courts. It is important to strengthen their possibility to defend themselves.

On the fast procedure of execution - there is an automatic control. The execution order can only be issued by the court. It is in the procedure, but the consumer is informed and he/she can oppose the procedure (even though he/she is not appear before the court).

The Ombudsman approves the prolongation of the period to object to this procedure from two weeks to one month. In an ordinary process, the procedure would take five years. When the court issues this order, the consumer can object.

A general problem is the information (when citizens do not provide their current address). Generally, the amendments introduced are good, but there are still things to be improved. The problem is that these changes will be enforced in the future. It will not help those who were already affected. Finally, the Ministry of Justice should control the bailiffs. The Ministry of Justice should supervise the problem of public auctions, the price at which properties are sold, etc.

*The meeting closed at 13:00.*

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## **4. Conclusions and Recommendations**

### **On Consumers' contracts issue**

#### Conclusions

The delegation of the Committee on Petitions concluded that, during the visit paid on 24-26 February 2020 to Sofia, Bulgaria in order to investigate the issues raised in numerous petitions received on alleged unfair contract terms in mortgage loans, it took considerable effort to understand the manner in which the legislation on contractual obligations was applied in Bulgaria.



The members of the delegation observed that the existing system was characterized by legal complexity during the contractual negotiations phase, through the collection of debts, and finally at the phase of exhausting domestic remedies. Problems encountered by petitioners, although having legal ground, appear to be exacerbated by the existing system, which seems opaque and very complex.

In addition, the members of the delegation observed that there is lack of basic legal education and knowledge among the citizens as well as a need for more and simplified information on the legal consequences of entering into contractual obligations concerning mortgages.

As a result, the major shortcomings of the existing legal framework are:

1. missing guarantee of equal rights in procedures for the collection of debts (accelerated collection of debts, accelerated auctions), which do not fully guarantee the protection of consumers;
2. misleading conduct of private banks (for example, concluding large amount of contracts, applying less strict solvency requirements, not informing consumers about potential risks, misleading clauses in contracts);
3. insufficient supervision and sanctioning of private bailiffs;
4. weak consumer protection system, difficult access to free legal aid, particularly for the most disadvantaged consumers.

## Recommendations

The members of the delegation recommend:

1. to establish legal certainty for the banks and investors and, at the same time, to ensure the protection of consumers (the legal framework should guarantee that the rights of both parties are equally represented during the procedures);
2. to provide the Commission for Consumer Protection and other consumer organizations with more flexibility to cooperate with the competent institutions in the review of unfair contract clauses and to actively participate in the process of bank supervision in order to ensure that banks abolish such harmful practices;
3. to provide the Commission for Consumer Protection with more financial and personal resources and to facilitate its functioning on a structural level in order to enable it to fulfil its obligations and competencies, including effective communication with consumers;
4. to grant the Commission for Consumer Protection more independence: it should be guaranteed, particularly in light of its current reliance on the executive branch (the Ministry of Economy in particular);
5. to consider revising the Consumer Protection Law and introducing specific provisions on banks and other financial service providers;
6. to insure a mechanism that prevents and sanctions banks and other financial service providers for introducing unfair clauses in the contracts and breaching the consumers rights;

7. the Bulgarian Ministry of Economy should consider the introduction of one single fee for the assessment of the debtor's contract clauses by the court to the Ministry of Justice, irrespective of how many clauses will be checked;
- 8 to undertake the necessary institutional measures in order to guarantee the efficiency of disciplinary proceedings of the Chamber of Private Bailiffs;
- 9 to conduct an impact assessment on the effectiveness and application of the amendments introduced in December 2019 and in particular : the system of debt collection, if the enforcement procedures ceased when debtors objected, and if the electronic payment procedure is operational;
- 10 to further assess the possibility to remedy the situation by introducing a debt relief mechanism for the conscientious debtors after a certain period of time has passed;
- 11 the Bulgarian National Bank should ensure that the private banks have clear rules about the credits in order to make sure that the consumers are protected in accordance with the EU legislation;
- 12 to provide borrowers and consumers with clear information about the consequences when entering into contract with the bank, in line with the existing regulation; for that purpose, staff working in the bank should be provided with the necessary training;
13. to promote the use of e-government and to provide guidelines to consumers on how to use it, including guidelines for filing complains digitally;
- 14 that the petitioners have recourse to the judicial system individually;
- 15 that the courts themselves apply careful scrutiny when deciding on whether free legal aid should be granted to complainants in accordance with the rules of the Legal Aid Act;
- 16 to review the role of the guarantors of the debt of another person as a part of the legal procedure;
- 17 to insure a sound legal framework, which protects debtors' property(ies) from being sold until the first instance procedure in court has been completed.

#### **In relation to the visit in Montana:**

##### Conclusions:

The delegation finds that the landfill operates correctly. The members of the Committee on Petitions who were present during the visit recommend to conduct fillings with earth on a daily basis, to establish a green belt if feasible, regularly inform local residents on the events related to functioning of the landfill, and to allow online public access to the camera

recordings for a reasonable period of time.

Recommendation:

The petition 0408/2012 should be closed (*the last EC communication dated 31.08.2020 in Annex VII*).

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## *Annexes to the Report*

### **ANNEX I**

#### **Summaries of Petitions**

##### ***1. Petitions on consumers' contracts:***

*Petition No. 0063/2017 by Ivailo Iliev (Bulgarian) bearing 50 signatures, on alleged breach of consumer rights in payment order proceedings in Bulgaria:*

The petitioner complained about the enforcement of payment claims and the way in which they are issued by the Bulgarian courts under the Bulgarian Code of Civil Procedure. The petitioner claimed that Bulgarian courts were not correctly applying Regulation No 805/2004 creating a European Enforcement Order for uncontested claims, Regulation No 1896/2006 creating a European Order for payment procedure and Directive 93/13/EEC on unfair terms in consumer contracts. The petitioner indicated that the Commission, responding to concerns that debtors' rights may not be sufficiently protected in Bulgaria in accordance with the law of the European Union, has already sent out a query - EU Pilot No 8135/15/JUST, seeking information about the application in Bulgarian law of the enforcement order and about the payment order procedures. The petitioner considered that the implementation of the enforced payment claims in Bulgaria fail to guarantee consumer rights and that the European Union should engage in reviewing breaches of the EU law by the Bulgarian judicial system.

*Petition No. 0838/2017 by Violeta Gospodinova (Bulgarian) on a payment order procedure concerning a mortgage loan dispute with a Bulgarian bank:*

The petitioner obtained a mortgage loan from a Bulgarian bank. According to the petitioner, the contract contained unfair terms. The petitioner alleged a violation of Directive 93/13/EEC on unfair terms in consumer contracts. The petitioner claimed that she has paid back part of the loan but the bank addressed the respective Bulgarian court and acquired a payment order for the whole amount of the loan including the interest. On this basis, the property in question was sold through a foreclosure sale. The petitioner claimed that there were procedural shortcomings in the court proceedings under Article 417 of the Bulgarian Code of Civil Procedure that allegedly resulted in the undue loss of the property. The petitioner clarified that the case is currently under appeal.

*Petition No. 0408/2017 by Desislava Filipova (Bulgarian) bearing 4248 signatures, on the legality of Article 417 of the Bulgarian Civil Procedure Code and alleged breach of consumer rights in payment order proceedings in Bulgaria:*

The petitioner complained about the judicial proceedings pertaining to Article 417 of the Bulgarian Code of Civil Procedure and the related private enforcement proceedings by private bailiffs. According to the petitioner, the current provisions of the Bulgarian legislation do not conform with Directive 93/13/EEC on unfair terms in consumer contracts, with the CJEU

jurisprudence concerning the application of Directive 93/13/EEC, and with Article 47 of the Charter of Fundamental Rights of the EU on the right to an effective remedy and to a fair trial.. She claimed that Article 417 of the Bulgarian Code of Civil Procedure granted banks, lenders and private companies the right to obtain quick enforcement orders from national courts for the immediate payment of loans. The petitioner stated that the judicial proceedings under Article 417 are one-sided given that consumers cannot defend themselves in court where rulings are entirely based on the lenders' claims regarding the existence and the amount of the loan. The consumer only becomes aware of the judgment against them once their income and property are seized. The petitioner alleged that the consumers were able to contest the enforcement proceedings in a two-week period starting from the date of the notification of the enforcement and that legal proceedings usually finish after the loan has been paid back following enforcement by bailiffs. The petitioner also stressed that the enforcement proceedings were carried out by both public and private bailiffs. The latter work with a commercial aim and due to the lack of judicial control they are able to guarantee a high profit margin. She complained about the private bailiffs' working methods and alleged that private bailiffs did not correctly execute the enforcement order. The petitioner's complaint that as a result, the consumer is not aware of the judgment against them and thus fails to comply with the two-week period to appeal the order. The petitioner also claimed that due to the lack of laws on bankruptcy, consumers targeted by such enforcement claims were not able to lead a normal life. The petitioner requested the European Parliament to initiate a dialogue with the competent Bulgarian authorities in order to change Article 417 of the Bulgarian Code of Civil Procedure and to reform the private enforcement procedure.

*Petition No. 0514/2018 by Ivaylo Iliev (Bulgarian) on an alleged corruption in Bulgarian courts and violation of the right to a fair trial:*

The petitioner claimed that there was corruption in the Bulgarian courts and that the public institutions were not effective. He also claimed that judgments against debtors were issued in closed-door court hearings and debtors were not afforded full legal protection to guarantee an effective right of defense. The petitioner alleged that a special storage room in the Sofia Regional Court contains archives of all private civil cases, including his case. The petitioner requested the European institutions to conduct a thorough inspection of such storage rooms and the cases of many other Bulgarian citizens whose rights have been violated by the courts and the private bailiffs.

*Petition No. 1045/2018 by Z.T.A. (Bulgarian), bearing 180 signatures, on the alleged incompatibility of warrant, initiation and appeal procedures of the Bulgarian Civil Code with Community Laws:*

The petitioner complained about shortcomings in the Bulgarian Code of Civil Procedure, particularly with regard to enforcement warrants, the initiation of their judicial review and the appeal procedures. He complained that the competent Bulgarian authorities, to which he has tried to refer the issues on multiple occasions, did not have an adequate approach to resolving the situation. The petitioner also referred to petitions Nos. 0063/2017, 0408/2017, and 0838/2017, which concern similar issues but only deal with the issues of payment order proceedings and hence omitted other problematic aspects of the Bulgarian Code of Civil Procedure complained of in the current petition.

*Petition No. 0810/2018 by P.A.V. (Bulgarian) on the legality of Article 417 of the Bulgarian*

*Code of Civil Procedure and alleged breach of consumer rights in payment order proceedings in Bulgaria:*

The petitioner requested an inquiry into the actions of a bailiff under Article 417 of the Bulgarian Code of Civil Procedure, which he deemed unlawful, and about the initiation of disciplinary proceedings and establishment of criminal liability of the bailiff. The petitioner clarified that the European Parliament has received several complaints on this issue from other Bulgarian citizens alleging that the Bulgarian judicial proceedings under Article 417 of the Bulgarian Code of Civil Procedure were one-sided, and that consumers were not given the chance to defend themselves in court, where the judgments were entirely based on the lender's claims regarding the existence and amount of the loan. The petitioner also suggested the European Parliament exercises its right of indirect initiative in relation to Article 435 (2) of the Bulgarian Code of Civil Procedure. The petitioner alleged that the bailiffs abused their power and that they misapplied the legislation and the jurisprudence of the Bulgarian Supreme Court of Cassation.

*Petition No. 0720/2018 by Violeta Gospodinova (Bulgarian) on the alleged fraud and corruption for the unlawful removal of property by banks and private bailiffs in Bulgaria:*

The petitioner was a debtor against whom the creditor (a bank) issued a request to a bailiff to pursue an enforcement case. The petitioner attached a power of attorney, according to which she alleged that the mother of an employee of the bailiff represented the bank. In the petitioner's view, this fact was evidence that there was a connection between the creditor and the bailiff, which undermined the impartiality of the bailiff and the pursuit of the enforcement case. The petitioner argued that the creditor and the bailiff have created a fraudulent scheme in which the creditors buy devalued property at fictitious auctions where the only bidder capable of making a valid offer is a bank. The petitioner considered as acts unlawful where there has been no written request to the competent court and, consequently, no commission from the court to carry out any coercive actions. In that regard, the petitioner requested the European Parliament to apply the mechanisms needed to stop such practices in Bulgaria where the properties of consumers of credit services were seized with the help of bailiffs.

*Petition No. 0606/2018 by Milena Dimitrova (Bulgarian) on alleged violation of the Directive 93/13/EEC and dispute with a bank on a home loan:*

The petitioner was a lawyer and she submitted the petition on behalf of her client. The petitioner explained that there were unfair terms in the loan contract between her client and the bank that allowed the bank to raise interest rates. She alleged that the bank misled her client to sign the contract without proving her income. In 2010, however, the bank acquired an enforcement order without informing the client and without having the right to do so because the client had paid the monthly instalments. She sought a judicial review of the enforcement order. The court concluded that there had been unfair terms in the contract and that the bank had misled the client. Thereafter the bank, through a private bailiff, issued a foreclosure for the flat of the client. The petitioner requested the European institutions, as a last resort, to take action in her case, as her rights have not been protected by the courts in Bulgaria.

*Petition No. 1193/2018 by A.M. (Bulgarian), on behalf of the "Association of Victims of Private Bailiffs and the Judicial System - Solidarity", on solidarity for victims of private enforcement agents and the judicial system in Bulgaria:*

The petitioner complained about the enforcement of payment claims and the way in which they were issued by the Bulgarian courts under the Bulgarian Code of Civil Procedure. The petitioner claimed that Bulgarian courts were not correctly applying Regulation No 805/2004 creating a European Enforcement Order for uncontested claims, Regulation No 1896/2006 creating a European Order for payment procedure and Directive 93/13/EEC on unfair terms in consumer contracts.

*Petition No. 0609/2018 by Tsetska Khadzhigeorgieva (Bulgarian) on an alleged violation of the right to fair trial and a lack of access to court:*

The petitioner complained about not having access to a fair trial regarding her mortgage dispute with a Bulgarian bank. The petitioner alleged that the property had been publicly sold for a price two times higher than the mortgage of the petitioner and her husband. They sought a judicial review of the actions of the private bailiff. The court accepted the complaint as admissible but unsubstantiated. The court concluded that the sale was performed in accordance with the domestic legislation. The petitioner requested the European institutions to investigate her case.

*Petition No. 0051/2019 by Elitsa Vasileva (Bulgarian) on the alleged violation of Directive 93/13/EEC on unfair terms in consumer contracts by Bulgaria:*

The petitioner complained about the non-compliance of the Bulgarian legislation with Directive 93/13/EEC on unfair terms in consumer contracts. According to her, the Bulgarian judicial proceedings under Article 417 of the Bulgarian Code of Civil Procedure did not meet the requirements set out in the Directive and were in breach of the right to an effective remedy and to a fair trial as prescribed by the Charter of Fundamental Rights of the EU.

*Petition No. 0036/2019 by Dimitar Panayotov (Bulgarian), on behalf of “Association of Victims of Private Bailiffs and the Judicial System - Solidarity”, on alleged corruption in Bulgarian courts and a violation of the right to a fair trial:*

The petitioner alleged that there was corruption in the Bulgarian courts and complained that the public institutions to which he was referred did not take any appropriate action. He also claimed that judgments against debtors were issued in closed-door court hearings and complainants were not guaranteed the right to a fair trial or the right to defense. In that regard, the petitioner requested the European institutions take action since such judicial practice breached the law of the European Union, thus violating the rights of the debtors.

*Petition No. 0037/2019 by Mariana Ilieva (Bulgarian) on the alleged infringement of EU law by the Republic of Bulgaria through the so-called payment order procedure:*

The petitioner complained of the malfunctioning of the Bulgarian judicial system regarding payment order proceedings under the Bulgarian Civil Code. Among other violations, the petitioner claimed that the Bulgarian courts were not correctly applying Regulation No 805/2004 creating a European Enforcement Order for uncontested claims, as well as Directive 93/13/EEC on unfair terms in consumer contracts. Therefore, the petitioner requested the European Parliament to take action regarding the potential breaches following from the payment order procedures under Articles 410 and 417 of the Bulgarian Civil Code.



*Petition No. 0040/2019 by A.M. (Bulgarian) on non-compliance of Bulgarian law with Regulation 1896/2006 creating a European order for payment procedure:*

The petitioner complained about a regulation of the Bulgarian Ministry of Justice approving standard forms for Order for Payment Procedure, Application for an Order for payment procedure (under Article 410 of the Bulgarian Code of Civil Procedure), and other documents in relation to the Order for Payment procedure. The petitioner alleged that this regulation is not in accordance with the law of the European Union, particularly with Regulation (EC) 1896/2006 for creating a European order for payment procedure and certain judgments of the Court of Justice of the European Union, which are binding upon the Member States. In that regard, the petitioner requested the European Parliament to intervene in order to safeguard the rights of the citizens and to ensure the compliance of the Bulgarian legislation with the law of the EU.

*Petition No. 0102/2019 by H.Y. (Bulgarian) on a mortgage loan dispute:*

The petitioner complained about a mortgage loan dispute and certain shortcomings that arise in relation to the payment order procedure under Article 417 of the Bulgarian Code of Civil Procedure. The petitioner alleged that a Regional Court had issued an order, which was not in conformity with the requirements under Article 417. He further complained about actions undertaken by a private bailiff in that regard.

*Petition No. 0346/2019 by Mekhmed Dermendzhi (Bulgarian) on private bailiffs in Bulgaria:*

The petitioner complained about shortcomings in the 2008 Private Bailiffs Act. In his view, the bailiffs worked in close connection with banks and credit institutions, real estate, heating and construction agencies, and their conduct was not sufficiently supervised and this led to the commission of multiple violations.

*Petition No. 0358/2019 by Mehmed Aifer (Bulgarian) on the alleged misapplication of EU law on unfair contract terms in Bulgaria:*

The petitioner complained about the lack of harmonisation of the Code of Civil Procedure in Bulgaria with EU law, in particular the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and Article 47 of the Charter of Fundamental Rights of the European Union. The petitioner was a debtor in legal proceedings initiated against him and was allegedly deprived of his right of defense in the court. He complained that private bailiffs were conducting enforcement actions without having the necessary authorisation. His efforts to inform the competent state institutions in Bulgaria about this malpractice were unsuccessful. In the petitioner's opinion, there was no legal possibility to challenge the acts of bailiffs and there is was no effective control over them in Bulgaria.

*Petition No. 0764/2019 by A.I. (Bulgarian) on alleged non-compliance of the Bulgarian legislation, particularly Payment Order Procedure and Enforcement Procedure, with the European Union Law:*

The petitioner described the problems he had after his insolvency and his inability to pay back his consumer loan to the bank and the subsequent unfair actions of the private bailiffs. He alleged that the Bulgarian courts were not applying the Regulation No 805/2004 creating a



European Enforcement Order for uncontested claims, the Regulation No 1896/2006 creating a European Order for payment procedure, as well as Directive 93/13/EEC on unfair terms in consumer. Therefore, the petitioner requested the European Parliament to take action against the potential breaches following the payment order procedure and the enforcement procedure under Chapter 5 of the Bulgarian Code of Civil Procedure. He also requested the establishment of a mechanism to compensate for the damages suffered by debtors as well as the hundreds of thousands of small and medium-sized enterprises affected by the allegedly illegally conducted procedures.

*Petition No. 0849/2019 by Desislava Manova (Bulgarian) on problems with Bulgarian legislation and private enforcement agents:*

The petitioner, as a member of the "Association of victims of the private bailiffs and the justice system – Solidarity", complained about an alleged refusal of the judiciary to implement the primacy of European Union Law in Bulgaria. She alleged that the Bulgarian legislation contained legal provisions that were contrary to the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, to Article 47 of the EU Charter of Fundamental Rights, and to the principle of efficiency. According to the petitioner, the provisions of the Bulgarian Code of Civil Procedure, and particularly those of the order and enforcement procedures, did not provide effective remedies against the actions of private bailiffs. She also alleged that most of the cases were not adequately addressed by the regional judges who deliberately did not issue judicial acts.

*Petition No. 0855/2019 by Elka Stoyanova (Bulgarian) on alleged refusal of the judicial authorities to apply the primacy of European Union law in Bulgaria:*

The petitioner, a member of "Association of victims of the private bailiffs and the justice system – Solidarity", complained about the refusal of the judiciary to implement the primacy of European Union law in Bulgaria. She alleged that the Bulgarian legislation contained legal provisions that were contrary to the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, to Article 47 of the EU Charter of Fundamental Rights, and to the principle of efficiency. According to the petitioner, the provisions of the Bulgarian Code of Civil Procedure, particularly those of order and enforcement procedures, did not provide the fundamental right of a fair trial. She also alleged that the regional judges who deliberately did not issue judicial acts initially vitiated most of the cases. She also stated that there was no real legal opportunity to appeal the actions and omissions of private bailiffs, which was further aggravated by the lack of real control over them. The petitioner alleged that a private bailiff seized her accounts, salary and pension, and she received no justification for these actions.

*Petition No. 0863/2019 by Lilyana Gyurova (Bulgarian) on alleged refusal of the judicial authorities to apply the primacy of European Union Law in Bulgaria:*

The petitioner, a member of the "Association of victims of the private bailiffs and the justice system – Solidarity", complained about the refusal of the judiciary to implement the primacy of European Union law in Bulgaria. She alleged that the Bulgarian legislation contained legal provisions that were contrary to the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, to Article 47 of the EU Charter of Fundamental Rights, and to the principle of efficiency. According to the petitioner, the provisions of the Bulgarian Code of Civil Procedure, particularly those of the order and enforcement procedures, did not provide

the fundamental rights to a fair trial and an effective remedy, as provided for by Articles 6 and 13 of the European Convention on Human Rights. She also alleged that the regional judges who deliberately did not issue judicial acts initially vitiated most of the cases. She also stated that there was no real legal opportunity to appeal against the actions and the omissions of private bailiffs, which was further aggravated by the lack of real control over them.

*Petition No. 0864/2019 by Ventsislav Pavlov (Bulgarian) on a bank and a private legal enforcement agent in Bulgaria:*

The petitioner complained about misconduct of a private bank and a private bailiff against him and his family. He alleged that they had benefited from the shortcomings in the rules on the order and enforcement procedures in the Bulgarian Code of Civil Procedure. According to his petition, the bank had sold the guarantee made in its favour at a very low price through the private bailiff without the petitioner knowing or having the opportunity to seek legal protection. He alleged that the law of the European Union was not applicable in Bulgaria because there was no mechanism to complain against the national authority itself for not applying the jurisprudence of the Court of Justice of the European Union.

*Petition No. 0877/2019 by Albena Ivanova (Bulgarian) on alleged mistreatment by the financial institutions in Bulgaria:*

The petitioner complained about misconduct of certain financial institutions. She alleged that she was forced to sell inherited properties despite her desire to repay her loan in instalments. She complained that these financial institutions engaged in harassment and phone threats. The petitioner alleged that the Sofia Regional Court issued the order against her without her participation in a hearing. She requested the European Parliament intervene and restore her civil rights.

*Petition No. 0878/2019 by T. M. (Bulgarian) on alleged infringement of Council Directive 93/13/EEC by the Bulgarian Civil Code Procedure:*

The petitioner, a member of "Association of victims of the private bailiffs and the justice system – Solidarity", complained about the refusal of the judiciary to implement the primacy of European Union law in Bulgaria. She alleged that the Bulgarian legislation contained legal provisions that were contrary to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, to Article 47 of the EU Charter of Fundamental Rights, and to the principle of efficiency. The petitioner claimed that her apartment was pledged as a mortgage loan guarantee. Subsequently a private bailiff proceeded to sell it without issuing or providing her with legal documents. According to the petitioner, the provisions of the Bulgarian Code of Civil Procedure, and particularly those on the order and enforcement procedures, did not provide the fundamental rights to a fair trial and to an effective remedy as provided for by Articles 6 and 13 of the European Convention on Human Rights. She also alleged that the regional judges, who deliberately did not issue any judicial acts, initially mishandled most of the cases. She also claimed that there was no real legal opportunity to appeal the actions and omissions of private bailiffs, which was further aggravated by the lack of real control over them.

*Petition No. 0879/2019 by Lyubomir Kolev (Bulgarian) on his problems with a private enforcement agent:*

The petitioner complained that a writ of execution was issued in favour of his bank-creditor and that the petitioner did not receive any documents from the private bailiff in his case. He alleged that the private bailiff made a public sale of his property at a price lower than the tax assessment, in violation of the legislation. The petitioner also complained that he did not receive any assistance by the Regional Prosecutor's Office.

*Petition No. 0922/2019 by Raina Mihailova (Bulgarian) on judicial acts based on the Order and Enforcement proceedings of the Bulgarian Code of Civil Procedure allegedly in violation of the general principles of the EU law:*

The petitioner complained about allegedly incorrect application of the European Union law by the Bulgarian judges. She claimed that there were systematic violations of the principles of equal opportunities, legal certainty, and effective court proceeding and unjustified compulsory restrictions of the means of proof in cases brought against State institutions. The petitioner alleged that vicious court orders were issued in the order and enforcement proceedings part of the Bulgarian Code of Civil Procedure. She requested a better supervision and effective measures to limit judicial arbitrariness.

*Petition No. 0925/2019 by Ekaterina Yaneva (Bulgarian) on alleged refusal of judiciary to enforce European Union Law in Bulgaria:*

The petitioner complained about an alleged refusal by the judiciary to enforce the primacy of European Union law in Bulgaria and about an alleged misconduct of a bank and a private bailiff. The petitioner complained that the bank that served her the loan treated her unfairly and that the bank took advantage of its own misconduct. She complained also about the lack of opportunity to defend her case before the judiciary and about the subsequent harassment of the private bailiff against her and against a member of her family.

*Petition No. 1018/2019 by Mihail Kocев (Bulgarian) on refusal of the judiciary to implement the primacy of European Union law in Bulgaria in relation with Council Directive 93/13/EEC:*

The petitioner complained about the refusal of the judiciary to implement the primacy of the European Union law in Bulgaria. According to the petitioner, the Bulgarian legislation contained legal provisions that are contrary to the Council Directive 93/13/EEC on unfair terms in consumer contracts, to Article 47 of the Charter of Fundamental Rights of the European Union, and to the principle of efficiency. He alleged that there were breaches in the implementation of the order and enforcement procedures in Bulgaria, part of the Bulgarian Code of Civil Procedure. As a result, many Bulgarian citizens were affected. The petitioner claimed that the judiciary did not issue certain judicial acts, which made the cases initially incorrect. He also alleged that the debtors' procedural rights were often violated and that there was a lack of supervision over the actions of the private bailiffs.

## **2. *Petition on waste management issue:***

*Petition No. 1408/2012 by P.P. (Bulgarian) on behalf of the National Movement "Ecoglasnost", on the compliance with environmental legislation with regard to projected landfill sites in the municipality of Montana, Bulgaria:*

The petitioner alleged that the landfill was operated illegally and that there was a failure to comply with the sanitary and hygiene rules for management. In previous years, the petitioner

has sent several pictures and complained that management obligations like covering the landfill with a layer of soil daily and the construction of a 'greenbelt' have not been fulfilled.

He also expressed concerns about shortcomings regarding access to justice in environmental matters. Furthermore, on 28 September 2012, the Aarhus Convention Compliance Committee revealed that certain provisions of the Bulgarian environmental and territorial legislation infringe the Aarhus Convention, namely Articles 9(2) and 9(3), which allow the public to challenge certain environmental measures before the national courts.

The petitioner's specific complaint was that a landfill permit has been issued in the absence of an Environmental Impact Assessment. He also expressed concerns that the administrative court in Bulgaria has not allowed his participation in the proceedings against the decision of the Minister of Environment and Waters on the decision for non-performance of the environmental impact assessment of the landfill.

In February 2015, the European Commission Services started an EU Pilot investigation on the possible breach of the access to justice provisions of the Aarhus Convention in Bulgaria.

In its response, the EU Commission considers that the organisation and conduct of judicial and legislative procedures fall within the responsibility of the Member States. Regarding the alleged breach of the Aarhus Convention, the Bulgarian authorities denied these 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".

## ANNEX II

### Association of Banks in Bulgaria comments on the meeting on 26.02.2020

*Comments of the Association of Banks in Bulgaria (ABB) regarding a meeting with a delegation of the Committee on Petitions to the European Parliament (EP) scheduled for 26 February 2020 regarding petitions to the EP on enforcement proceedings in the Civil Procedure Code*

1. Following a preliminary study EU Pilot No. 8135/15/JUST by the European Commission on the Bulgarian provisions concerning the accelerated implementation procedure and their compatibility with EU consumer protection law, it has identified the following shortcomings of the effective regulation of the ordinance and enforcement proceedings in Bulgaria as of 2016:

- > possibility of conducting enforcement without performing due judicial procedure of establishing creditor's claim, in which the debtor's involvement is allowed - the result of excessive application (and often abuse) by service of execution orders under Article 47, Paragraph (6) of the Civil Procedure Code (by affixing a notice to the debtor's address, which creates a fiction for its notification in the absence of effective notification);
- > Lack of effective judicial control in enforcement proceedings due to the extremely limited appeal of enforcement agent's acts;
- > Lack of legal framework to ensure that a fair market price is achieved whenever a public auction is held;
- > Lack of legal framework to guarantee the debtor against disproportionate enforcement.

2. In order to overcome the shortcomings identified within the EU Pilot No. 8135/15/JUST procedure, significant regulatory changes were made to the order for payments and enforcement proceedings via a Civil Procedure Code Amendment Act, promulgated in State Gazette, Issue 86 of October 27, 2017, effective from October 31, 2017.

The amendments aimed at achieving the following objectives:

- > Guaranteeing that enforcement will not be carried out without the debtor's right to protection being ensured:
  - o Introducing explicit rules for the conditions under which legal papers are served by amendment to Article 47, Paragraph (3) and Paragraph (6) of the Civil

Procedure Code - a minimum number of visits to the debtor's address has been entered; length of visit period, interval between visits, additional address information, etc.;

- o Introducing an explicit rule that wherever the debtor is not notified (in the event of served notice by sticking), the Court instructs the creditor to make a claim - amendment of Article 415, Paragraph (1), Item (2) of the Civil Procedure Code. In this case, if enforcement is allowed, the Court shall suspend enforcement - a new provision of Article 415, Paragraph (2) of the Civil Procedure Code;
- o Introducing new objections of the debtor as a defence against the execution order: objection that the debtor has paid the debt within the deadline for voluntary execution (new Article 414(a), Paragraph (1)) and objection to the expenses wherever the debtor has not given any reason for the proceedings ( Article 414(a), Paragraph (2));
- o The option of suspending the proceedings was also introduced wherever no convincing written evidence is presented (amendment to Article 420, Paragraph (2) of the Civil Procedure Code).
- > approximation of the order for payment proceedings to the action proceedings;
  - o compulsory development of action proceedings wherever the order has been served under the terms of Article 47, Paragraph (6) of the Civil Procedure Code (by stocking) - new provision of Article 415, Paragraph (1), Item (2);
  - o providing an option in case of rejection of the execution order request the procedure to continue as action proceedings - new provision of Article 415, Paragraph (1), Item (3);
  - o filing a claim by the creditor when the deadline for an opinion on the debtor's objection under Article 414(a) of the Civil Procedure Code for payment and the debtor has not made an effective payment - new Article 414(a), Paragraph (5) of the Civil Procedure Code.
- > balancing the enforcement process by creating new rules and mechanism to protect the interests of both the debtor and the creditor against any unlawful actions by the enforcement agent, with the following major changes being made:
  - o change in local jurisdiction in the initiation of cases - the competent the enforcement agent is the one by permanent, registered or current address of the debtor in case the debtor is a physical person , respectively by registered seat of the debtor in case of a legal entity - amendment to Article 427, Paragraph (1), Item (5) of the Civil Procedure Code;

- o new legal consequences from suspension of enforcement in the event of a preservation order on recurrent receivables (remuneration or other wages for work, pension, etc.) are introduced as follows:
  - the effect of the order is terminated;
  - no deductions are to be made by the employer;
  - no receipts are paid out of the seized account (upon a frozen bank account).
- o limitation of debtor's liability for expenses:
  - Limiting the maximum amount of enforcement costs to a certain percentage of the debt in respect of small claims (up to 3 minimum wages) - new Article 73(a);
  - The debtor shall not be liable for costs and for unused and disproportionate enforcement methods (amendment to Article 79, Paragraph (1), Item (3) of the Civil Procedure Code);
- o Significant extension of the range of enforcement agent's actions subject to appeal by the debtor (amendment to Article 435, Paragraph (2) of the Civil Procedure Code):
  - enforcement agent's refusal to carry out a new evaluation in accordance with Article 468, Paragraph (4) and Article 48;
  - designating a third party as a guard in the event of default of Article 470, as well as in the cases under Article 486, Paragraph (2);
  - the enforcement agent's refusal to suspend, discontinue or complete the enforcement case.
- o Expanding the range of enforcement agent's actions subject to appeal by the creditor (amendment to Article 435, Paragraph (1) of the Civil Procedure Code):
  - refusal of the enforcement agent to perform the requested enforcement action;
  - refusal of the enforcement agent to carry out a new evaluation in accordance with Article 468, Paragraph (4) and Article 485 of the Civil Procedure Code;
  - suspension, termination and completion of enforcement.
- o Introducing a requirement of proportionality in the enforcement process by criteria of proportionality provided by the law (new Paragraph (2) of Article 441 and new Article 442(a)):
  - amount of current claim;
  - property value;
  - debtor's behaviour during the proceedings;
  - creditor's interest;
  - the option the claim to remain unsatisfied.
- o Introducing exemption from seizure of amounts and income received in the debtor's bank account - new Article 446(a) of the Civil Procedure Code.



- o Introducing an obligation on banks, in the event of a seized bank account - to inform the enforcement agent about the nature of proceeds in order to guarantee the non-seizure of the funds in the account.
- > introduction a working mechanism for achieving real market prices within the enforcement proceeding 3:
  - o increasing the starting price for the sale of movable property and real estate - for movable property 85% of the property value (Article 468, Paragraph (1) of the Civil Procedure Code), for real estate 80% of the property value, but not lower than the tax evaluation (Article 485);
  - o The right of each party to challenge the evaluation and to request re-evaluation (Article 468, Paragraph (2) of the Civil Procedure Code, respectively Article 485, Paragraph (2) of the Civil Procedure Code);
  - o Enforcement agent's obligation to appoint a new evaluation if the cost of carrying out the evaluation is paid;
  - o Arbitration appraisal procedure for real estate - in the event of two or more evaluations, the enforcement agent determines the arithmetic average starting price (Article 485, Paragraph (3) of the Civil Procedure Code);
  - o In the event of an unrealised first sale, the next sale starts at a price of 90% of the initial price of the first sale (versus 80% before the changes);
  - o The deadline for depositing the price of the acquired on public auction property has been extended to two weeks after the distribution enters into force (Article 495 of the Civil Procedure Code).

3. On January 25, 2019, the Permanent Representation of the Republic of Bulgaria to the European Union received European Commission Formal Letter of Infringement 2018/4083.

The Letter explicitly states that the Bulgarian authorities have not notified the European Commission bodies of any changes to the relevant procedural rules with a view to meeting the requirements of case EU Pilot 8135/15/JUST (p. 5 of the EC Letter), even though the changes in the Civil Procedure Code listed in Item 1 above have already been made via amendments to the Civil Procedure Code effective from October 31, 2017 (promulgated in State Gazette, Issue 86 of October 27, 2017).

By EC Letter of Infringement 2018/4083, an analysis of the regulation was made and the following deficiencies were identified:

- > Lack of an explicit rule that the court should ex officio monitor any unfair \* terms in the order for payment proceedings when issuing the execution order.
- > Ineffective remedies for consumers after issuing an immediate enforcement order:
  - o Short deadlines for objections and complaints;
  - o Lack of sufficient information on the debtor for the remedies.

The EC has made recommendations for changes to substantive and procedural provisions regarding the protection of consumer rights, in particular:

- > compliance with Article 143 and Article 147, Paragraph (2) of the Consumer Protection Act with a view to the proper transposition of Article 3, Paragraph (1) and Article 5 of Directive 93/13/EEC.
- > Review of the Bulgarian procedural provisions governing the execution orders to comply with Article 6 and Article 7 of Directive 93/13 as interpreted by the EU Court of Justice, and in particular the question of national courts' own-initiative review of compliance with EU consumer law before and after the issuance of enforcement orders.

4. In response to the recommendations made in the EC Letter of Infringement 2018/4083, in 2019 new changes were made to the Civil Procedure Code under the Civil Procedure Code Amendment Act, promulgated in State Gazette, Issue 100, December 20, 2019, effective from December 24, 2019, of which changes EC have not been notified in due time.

4.1. The changes in the Civil Procedure Code are in the following directions:

- > introducing a principle in the General part of the Civil Procedure Code that the Court ex officio monitors unfair terms in a contract concluded with a consumer - a new provision in Paragraph (3) of Article 7 of the Civil Procedure Code. The rule applies in all proceedings under the Civil Procedure Code - action proceedings, preservation proceedings, order for payments proceedings, enforcement proceedings, protective procedure.
- > explicit definition of consumer disputes as civil cases - Article 113 of the Civil Procedure Code, which widens the scope of disputes subject to three- instance review (and access to appeal to the Supreme Cassation Court).
- > change in the jurisdiction in order for payments proceedings - amendment of Article 411, Paragraph (1) of the Civil Procedure Code, which aims at the most favourable jurisdiction for the consumer in ordering proceedings (at his current address);
- > extending time limits in order for payments and enforcement proceedings:
  - o The term for voluntary implementation has been extended from two weeks to one month - Article 412, Item (8) of the Civil Procedure Code
  - o the term for filing objections under Article 414 and 414(a) is transformed from two weeks to one month;
  - o the term for appeal against the order for immediate execution is set from two weeks to one month (Article 419, Paragraph (1) of the Civil Procedure Code);
  - o the term for appealing against the actions of the enforcement agent is prolonged from one week to two weeks (Article 436 of the Civil Procedure Code);
- > changes in the requirement to present documents when the debtor is a consumer (changes in Articles 410 and 417 of the Civil Procedure Code):

- o New Paragraph (3) of Article 410 of the Civil Procedure Code aimed at enhanced consumer protection: wherever the claim arises from a contract concluded with a consumer, the contract (if written) shall be annexed to the application, together with all its annexes and amendments, and the general conditions, if any;
  - o New revision of Item (2) of Article 417 on bank claims: to the application, the bank should provide *"an extract from bank's books to which the document giving rise to the bank's claim is presented, together with all its annexes, including the applicable terms and conditions"*;
  - o The change in Item (10) of Article 417 on securities - wherever the security secures a claim arising from a contract concluded with a consumer, the contract shall be annexed to the application, if in writing, together with all its annexes, including the applicable general conditions.
- > Changes in the responsibilities of the court issuing the order:
- o To ex officio monitor unfair clauses - new Article 7, Paragraph (3) of the Civil Procedure Code;
  - o To refuse to issue an execution order - wherever the request is based on an unfair clause in a contract concluded with a consumer or there is reasonable likelihood thereof (new item 3 of Article 411, Paragraph (2) of the Civil Procedure Code);
  - o Indicating in the execution order the possible increase of liability for expenses - if the objection is unfounded, the debtor may bear the expenses higher than the one specified in the order (Article 412, Item (9) of the Civil Procedure Code).
- > New moments in the appeal for immediate enforcement order - a whole new version of Article 419 of the Civil Procedure Code, such as:
- o Removing the restriction on the appeal to be based only on considerations derived from the acts under Article 417 of the Civil Procedure Code - the appeal may be based on any consideration.
  - o An explicit new rule when a court annuls an immediate enforcement order - Article 419, Paragraph (3) of the Civil Procedure Code:
    - Wherever the preconditions of Article 418, Paragraph (2), sentence (1) and Paragraph (3) of the Civil Procedure Code (wherever the document is not formally regular and does not certify any enforceable claim);
    - Wherever the claim is based on an unfair clause in a consumer contract.
- > New grounds for suspension:
- o for collateral up to 1/3 of the amount of the receivable - wherever the debtor is a consumer (new sentence (2) of Article 420, Paragraph (1) of the Civil Procedure Code);

- o without the need for collateral under the terms of Article 420, Paragraph (2) of the Civil Procedure Code - upon presentation of written evidence:
  - that the claim is not due;
  - the claim is based on an unfair contract with a consumer;
  - the amount of the receivable under the contract with a consumer is wrongly calculated;
- o suspension of enforcement by the court hearing the claim under Article 422 of the Civil Procedure Code in any situation of the case - at the debtor's request;
- o The decision to suspend is subject to immediate enforcement, regardless of the appeal - new Article 420, Paragraph (4) of the Civil Procedure Code;
- o An explicitly arranged new possibility for partial suspension of the enforcement (Article 421, Paragraph (2) of the Civil Procedure Code).

4.2. The amendments to the Consumer Protection Act are as follows:

- > Amending the provision of Article 143 of the Consumer Protection Act, which has a new version to be compliant with the provision of Article 3 and Directive 93/13/EEC;
- > The provision of Article 147, Paragraph (2) of the Consumer Protection Act has been brought in compliance with the provision of Article 5, sentence (3) of Directive 93/13/EEC.

In view of the large-scale changes made in the Civil Procedure Code in 2017 and 2019 and amendments to the Consumer Protection Act of 2019, we believe that the Bulgarian law is in compliance with the requirements of Directive 93/13/EEC and conformant with all specific recommendations to the Republic of Bulgaria given by the European Commission in EU Pilot No 8135/15/JUST and in EC Letter of Infringement 2018/4083.

## **ANNEX III**

**The Supreme Judicial Council of Bulgaria statement on the issues raised during the meeting with the delegation of Petitions committee members on 26 February 2020**

*Translated from Bulgarian!*

### **REPUBLIC OF BULGARIA SUPREME JUDICIAL COUNCIL**

#### **EXTRACT**

From minutes №12  
of the meeting of the Judges` College of the Supreme Judicial Council,  
held on **7 April 2020**

#### ***ON THE AGENDA***

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**8. SUBJECT:** Opinion to the EP Petitions Committee

#### **THE JUDGES` COLLEGE OF THE SUPREME JUDICIAL COUNCIL**

##### **DECIDED:**

8.1 Approve a statement on the issues raised during a meeting between members of the EP Petitions Committee and representatives of the Supreme Judicial Council held on 26.02.2020 regarding protection consumers` rights within order of payment procedure to be sent to the Committee.

.....

Chairman:/signature/ Lozan Panov

TO THE EUROPEAN PARLIAMENT  
COMMITTEE ON PETITIONS

#### **OBSERVATIONS**

THE SUPREME JUDICIAL COUNCIL  
OF THE REPUBLIC OF BULGARIA

on petitions filed

DEAR LADIES AND GENTLEMEN,

We hereby submit to your attention a statement on two topics related to the petitions filed:

**First topic:** *A brief review in a procedural aspect of the development of the case-law of*

*courts in the performance of an ex-officio check for unfair terms in consumer contracts.*

With the topic thus formulated we intend to inform you about the work done by the Supreme Court of Cassation and by the courts in the Republic of Bulgaria for the creation and standardization of the case-law of courts on the application of the national procedural norms in view of performance of an effective *ex officio* evaluation of the presence of unfair terms in consumer contracts due consideration being given to the interpretation given by the EU Court of Justice of Directive 93/13, as well as about the participation of the Bulgarian judges in the legislative amendments made in 2017 and 2019.

**Second topic:** *Analysis of norms from the national procedural law, which concern simulated service of process.*

With this topic we intend to inform you in practical terms about the norms existing in the national procedural law about service of process and the legal remedies conferred upon debtors to dispute issued orders for execution that have not been served on them personally.

**1. On the first topic:** *A brief review in a procedural aspect of the development of the case-law of courts in the performance of an ex-officio check for unfair terms in consumer contracts.*

**1.1.** Unfair terms in consumers contracts are regulated in the Consumer Protection Act adopted in 2005, i.e. even before the accession of the Republic of Bulgaria to the EU. The Act transposes in full and accurately Directive 93/13. The national provisions reproduce the terms used in the Directive, such as: consumer; trader; unfair term; term that is not individually negotiated; the consequences from the unfair character of a contractual clause, as well as the indicative list of the terms which may be regarded as unfair (under Article 3 (3) of the Directive), including that is non-exhaustive (Article 143, Subparagraph 19 of the Consumer Protection Act – before the amendment of 2019). In the Consumer Protection Act the national legislator added in 2015 two additional exemplary grounds, on which terms of the contract are to be declared unfair, which is a result from established specific unfair practices of traders applied on the territory of the Republic of Bulgaria. The legislator explicitly declares unfair terms null and void. In the case-law of the Supreme Court of Cassation and the courts of the Republic of Bulgaria it has been consistently and doubtlessly held that a term in a consumer contract may be declared unfair even if not included explicitly in the listing in the law and if it does not introduce conditions similar to the specified ones, if this clause is incompliant with the general ground for unfairness under the norm of Article 143 of the Consumer Protection Act (an unfair clause is a clause that does not meet the requirement for good faith, brings about considerable imbalance between the rights and obligations of the trader or supplier and consumer and is harmful to the consumer). In this respect, the letter of the European Commission under infringement procedure No. 2018/4083, under EU – Pilot No. 8135/15/JUST, received on 25 January 2019 expresses a doubt concerning the precise interpretation of the national legal norm and hence – of discrepancy with Directive 93/13. By the amendment to the Consumer Protection Act of 2019 (20 December 2019) this doubt of discrepancy should be considered legislatively eliminated.

**1.2.** The procedural law (the Code of Civil Procedure – CCP) is in effect since 2008 and it regulates the order for execution procedure. As regards the bank credits, the bank is given the opportunity to obtain an order for execution and a writ of execution (Article 417, Subparagraph 2 of the Code of Civil Procedure), whereby it can take action for immediate enforcement, including in case of a dispute raised against the receivable by the debtor and before the existence of the receivable is established by a legally effective court judgment. The legal framework of the specified remedy for the banks is not new for the Bulgarian law. It existed also under the repealed Code of Civil Procedure (until 2008) however it was not defined

as an order for execution procedure, but as a procedure for the issue by the court of a writ of execution on an extra-judicial ground for enforcement (Article 237 of the Code of Civil Procedure /repealed/). On the basis of the writ of execution the debtor could undertake acts of forcible collection of its receivable without pursuing adversary proceedings against the debtor. The difference between the two procedures (the former and the effective) is that under the former procedure, the debtor, after being informed for the acts of enforcement taken against him, had certain time, in which he could request staying of the enforcement (Article 250 of the Code of Civil Procedure /repealed/), and then he could, whether or not he had requested staying of the enforcement, bring an action against the creditor for the non-existence of the receivables (Article 254 of the Code of Civil Procedure /repealed/), in which it could raise all of his objections. Under the currently effective order for execution procedure the active position of bringing of an action, in case of disputing of the receivable, is vested in the creditor who is supposed to bring an action for the existence thereof (Article 415 and Article 422 of the Code of Civil Procedure). Under both procedural laws the bank must submit to the court documents – “a document or an excerpt from its accounting books whereby receivables of the banks are established”. This document specifies the amount of the claimed unpaid receivable as a principal (the amount lent under the credit), interests and other costs.

The problem with the unfair terms in consumer contracts appeared in the case-law of courts when the banks started filing applications for the issue of orders for execution as in the excerpts from their accounting books they used to include interests that were changed unilaterally by them and that did not coincide with the initial stipulations in the contract and with the repayment schedule. The specified circumstances were not contained in the applications and in the excerpts from the accounting books. They were revealed and examined by the court in the adversary proceedings, i.e. after the issue of the order for execution and the writ of execution and after acts of enforcement had been performed with respect to the debtor.

The ruling on the debtor's objections that the debt has been wrongfully determined because the creditors unilaterally and unlawfully change the credit interests created a trend towards the making of an *ex officio* check by the court whether the receivable ensues from terms that must be regarded as unfair.

**1.3.** Pursuant to the Judicial System Act (ZSV) and the Code of Civil Procedure, the Supreme Court of Cassation (SCCas) has powers to standardize by the adoption of interpretative judgments the case-law of courts and to overcome the irregular case-law of courts – Article 124 of the Judicial System Act. Interpretative judgments are not judgments on specific legal disputes but give principle solutions on the administration of justice and are mandatory for the authorities of the judicial and executive branches, for the authorities of the local self-government, as well as for all authorities issuing administrative acts – Article 130 of the Judicial System Act. This is a procedure specific for our national law, through which the Supreme Court of Cassation exerts control over the accurate and consistent application of the laws, beyond and regardless of the level-based appealing against the acts of the courts of appeal. Relevant to the standardization of the case-law of courts are also the judgments of the Supreme Court of Cassation on the individual cases heard in accordance with the procedure of the cassation proceedings.

In relation to the problem being dealt with and in view of the absence of case-law on it of the Supreme Court of Cassation or of separate courts in 2015, a commission was set up in the Commercial Bench (CB) of the Supreme Court of Cassation and following an inquiry into the case-law of the Court of Justice of the European Union on the interpretation of Directive 93/13, the judges from the Commercial Bench discussed the application of the national procedural norms in view of the trend set by the Court of Justice of the European Union towards *ex officio* evaluation of the terms in consumer contracts as unfair. Training of judges from all-



over the country started immediately with respect to the indicated issues in the case-law as the training was conducted by judges-lecturers from the Supreme Court of Cassation as the National Institute of Justice provided assistance and organization. It should be noted that the specified discussion by the Commercial Bench was held on 27 October 2015 and the first training sessions were taken before the initiation on 23 December 2015 of the file EU – Pilot No. 8135/15/JUST.

**1.4.** As regards the *ex officio* check in the adversary proceedings there was no problem because the case-law of the Bulgarian courts including also the standardization thereof through interpretative judgements, the latter being under the new Code of Civil Procedure – Interpretative Judgment No. 1/2013 of the General Assembly of the Civil and Commercial Benches, binds the court to *ex officio* apply an imperative substantive norm, and it may also rule *ex officio* on a claim for the payment of a default interest, if it finds that the default interest clause is null and void as being in conflict with good morals – Interpretative Judgment No. 1/2009 of the General Assembly of the Commercial Bench.

In particular, as regards the *ex officio* check in the adversary proceedings for unfair terms in consumer contracts, a judgment was rendered in 2016 by a panel of judges of the Supreme Court of Cassation (Judgment No. 23/07.07.16 under commercial case No. 3686/14 of the Supreme Court of Cassation, I Commercial Department), which reflects the adopted opinion of the judges from the Commercial Bench from the discussion held on 27 October 2015. The judgment specifies the procedural acts, including in view of the specificities of the consumer protection deducted from the case-law of the Court of Justice of the European Union, which the court is bound to carry out – to notify the parties that it will make such a check; to allow them to express an opinion and to adduce evidence; as well as of the consumer’s right to waive the remedy. Our observation is that this solution is being applied consistently and without discrepancies by the courts.

**1.5.** As regards the order for execution procedure, the *ex officio* assessment for unfair clauses, without being explicitly set forth until 2019, could be deducted from the provisions of the Code of Civil Procedure. Pursuant to the procedural law (Article 411 of the Code of Civil Procedure) the court must refuse to issue an order for execution, if the request is in contradiction to the law or to the good morals. The unfair terms, unless entered into in conflict with a specific imperative legal provision, lay down, by legal definition, conditions in violation of the good faith and respectively harm the good morals. The provision of Article 411 of the Code of Civil Procedure was in fact the only norm in the procedural law, according to which the court performed *ex officio* a check for possible nullity of the contract, as long as for the adversary proceedings this power is deducted by interpretation. The conclusion that follows is that in the Code of Civil Procedure, in the part concerning the order for execution procedure, the national law provides for an opportunity for the court to assess *ex officio* the unfair character of a term of a consumer contract at the stage of hearing of the application for the issue of an order for execution. The assessment is a possibility, it is based on probability and it is not final.

**1.5.1.** Nevertheless, a check for a possibly unfair character of terms in a consumer contract could not be effectively made by the court upon the hearing of the application mainly for two reasons:

**The first:** According to the case-law of the Court of Justice of the European Union the national court must make an *ex-officio* check for unfair character of terms in consumer contracts if it has factual or legal ground to do so, which may be deducted from the case data. In the order for execution procedure, upon the consideration of the application for the issue of an order for execution the applicant does not submit to the court the contract, from which its receivable ensues. Including on the basis of an application from a bank for a receivable under a credit contract, as noted in item 1.2., the creditor must present a document or an excerpt from its

accounting books, i.e. the amount of the obligation is reflected, but not the way it was formed. In Interpretative Judgment No. 4/2013 of 18 June 2014, the General Assembly of the Civil and Commercial Benches of the Supreme Court of Cassation points out that it is admissible when the court rules on an application under Article 417 of the Code of Civil Procedure to refer also to and to deduct the ground and subject of the receivable from the submitted documents, which are a mandatory enclosure to the application. The solution is also applicable to the check by the court whether the document certifies a receivable subject to enforcement (Article 418, Paragraph 2 of the Code of Civil Procedure). A particularly important factor in the adoption of the interpretative judgment was the created practice, according to which the banks would claim receivables for the outstanding credit balance, which was alleged by them to be declared early payable and respectively the circumstances they relied on had to be certified by an official document or a document issued by the debtor (Article 418, Paragraph 3 of the Code of Civil Procedure). In such cases, the applicants would present the credit contract, which contained the hypotheses, in which the creditor would be able to declare the entire credit early payable.

**The second** reason: According to the specified legislative framework and the case-law of courts until the amendment to the Code of Civil Procedure in 2017 (27 October 2017) the court did not have an obligation to give instructions to the applicant to submit additional evidence and, respectively, even if such instructions were given, the failure to comply with them would not result in any specific legal consequences for the applicant. In this sense, the assessment by the court of possibly unfair terms in the contract, from which the receivable ensues, was admissible but the court could not exercise it effectively when ruling on the application for the issue of an order for execution.

**1.5.2.** Considering these specificities of the national law, the case-law went on towards check for unfair terms upon the consideration of appeals against the order for immediate execution (Article 419 of the Code of Civil Procedure) and upon ruling on a request for the staying of the enforcement (Article 420, Paragraph 2 of the Code of Civil Procedure). The appeal and the petition had to be lodged within short time-limits (2 weeks) after service of the order for execution. These time-limits are favourable for the consumer as long as the acts of enforcement taken so far would not have particularly severe consequences (e.g. completion of a public sale of a real estate), but are on the other hand short in view of the exercising of the consumer's rights. The procedural norms provided for that the debtor could rely on considerations deducted from the acts referred to in Article 417 of the Code of Civil Procedure (in a hypothesis for appealing against the order for immediate execution) and could support his request for staying by convincing written evidence under Article 420, Paragraph 2 of the Code of Civil Procedure. For several years there has been accumulated rich case-law of courts in the field of application of the consumer protection against unfair terms in the contract upon the rendering of acts under appeals against order for immediate execution and mainly on the basis of petitions for staying of enforcement.

The specified peculiarities of the order for execution procedure, the case-law of courts, as well as the difficulties concerning the ex-officio check for unfair terms in consumer contracts are reflected in the replies that the Republic of Bulgaria sent to the European Commission under the initiated infringement file EU – Pilot No. 8135/15/JUST, which were received by the Commission on 14 March 2016.

**1.5.3.** It should be borne in mind that as at the period 2015 – 2016, interpretation was made in the decisions of the Court of Justice of the European Union that Directive 93/13 did not admit legal framework of a member state that did not allow the court in an order for execution procedure, although it may have established all the legal and factual circumstances required in this respect, to assess *ex officio* or at any other stage of the proceedings the unfair character of a term in a contract, if the consumer had not filed an objection. The Directive does

not admit also a legal framework of a member state that does not provide for a possibility within the procedure for enforcement against a mortgaged real estate to make an objection of unfairness of a contractual term, on the basis of which the writ of execution is issued, as it does not at the same time allow the court in adversary proceedings to render interim reliefs and, in particular, staying of the enforcement proceedings. Hence, it turns out that a condition for the *ex officio* inspection is the presence of factual and legal circumstances contained in the data under the case, as well as the principle possibility for this assessment to be made even after the issue of the order for execution, if upon the issue thereof such circumstances were not present, as at least the consumers have effective remedies for staying the enforcement until the making of an assessment of a possible violation of the consumer's rights (case C-415/11). The ruling by the Court of Justice of the European Union on many requests for preliminary ruling on this issue shows that the issue is typical not only of the national jurisdictions of the Republic of Bulgaria.

The problems in the case-law of the Bulgarian courts and the relevant case-law of the Court of Justice of the European Union is described also in the official letter of the European Commission of 25 January 2019, which we fully accept and share in front of you.

**1.6.1.** After the deposition of reply of the state on infringement file EU – Pilot No. 8135/15/JUST (after 2016) new measures were undertaken for synchronization of the national procedural framework with the EU law. The described procedure for performance of an *ex officio* check by the court in the order for execution procedure with respect to the terms in consumer contracts did not provide protection to a consumer, if: letter (a) he filed an objection against the order for execution but did not request staying of the enforcement or if letter (b) the order had not been factually served on him.

In the first case, the acts of enforcement continued although adversary proceedings had been initiated, in which the court would consider the terms of the contract and could declare them unfair. After the expiration of the term for lodging of a petition for staying, the debtor did not have the right to request staying of the enforcement. And as a result a situation could occur, in which the terms were declared unfair and a part of the obligation – usually the interests – were not due, but in the meantime the debtor's real estate had been sold.

In the second case, the acts of enforcement were conducted because there was no submitted objection but the order was served through a fiction assuming the actual receipt thereof and the acts of enforcement were conducted although no adversary proceedings were held. The debtor's defence was carried out after learning by the debtor of the issue thereof and submission by the debtor of an objection to the regional court (Article 423 of the Code of Civil Procedure), I.e. the period of time between the conducted enforcement against the property and the learning is of material importance. Of course, after the learning and proving of the circumstances surrounding the objection, the debtor exercises all the rights he has – objection, staying of the execution, conduction of adversary proceedings.

**1.6.2.** As regards the first problem – the failure to meet the time-limit for submission of a request for staying of the enforcement (item 1.6.1. letter (a)) proposals were made for legislative amendments in several variants, which were not adopted in 2017.

However, by the legislative amendment to the Code of Civil Procedure in 2017, in the context of the *ex officio* check for unfair terms in the contracts, the second specified problem was overcome (item 1.6.1. letter (b)). It was provided for that if the order for execution was served by the use of fiction assuming the actual receipt thereof, the court would give instructions and the creditor had to bring an action for the establishment of the existence of the receivable, and the initiation of the enforcement proceedings would be stayed. Hence, acts of enforcement are not taken until the court recognizes with *res judicata* that the receivable exists and is not based on unfair terms.

After the amendment of 2017 the court is bound to give instructions to the applicant for the accurate specification of the circumstances, on which the applicant bases his request and to refuse in case of non-compliance with them the issue of an order – Article 411, Paragraph 2, Subparagraph 1 of the Code of Civil Procedure (item 1.5.). This amendment does not eliminate the difficulties encountered in the implementation of effective preliminary court control over the unfair terms in contracts. Nevertheless, in the cases when the circumstances stated in the application may substantiate a conclusion that the receivable is based on unfair terms, the court may refuse to issue an order for execution. The control is ineffective because it is made dependent on the allegations of the creditor – applicant as the court is not able to require the presentation of the contract and of the general terms and conditions thereto.

**1.6.3.** The legislative amendments of 2019 resolved the problem with the efficiency of the *ex-officio* control by the court over the unfair terms in consumer contracts. The Code of Civil Procedure not only provides for that the court has an obligation to carry out an *ex officio* check for unfair terms (this is specified in 7 newly adopted provisions), including upon ruling on an application for the issue of an order for execution, but the court has also been explicitly given the opportunity to refuse – on the basis of factual or legal grounds ensuing from the applicant's allegations and from the submitted contract, together with the general terms and conditions, to the extent of substantiated probability – to issue an order for execution, if the request (receivable) was based on an unfair term in the contract.

**1.6.4.** The legislative amendment to the Code of Civil Procedure in 2019 resolved also the main problem concerning staying of the enforcement (item 1.6.1. letter (a)). The new version of the norm of Article 420, Paragraph 2 of the Code of Civil Procedure allows the debtor to request staying of the enforcement at any time until completion of the adversary proceedings if the receivable is based on an unfair term in a contract with a consumer, respectively the court may *ex officio* assess in advance that there is such probability.

**1.7.** In summary: In the Code of Civil Procedure, until the amendments in 2017 and 2019 the court made and had to make in the adversary proceedings an *ex officio* check for unfair terms in consumer contracts. In the order for execution procedure, at the stage of ruling on the application for the issue of an order for execution, the *ex officio* check was impeded and was therefore ineffective in view of the lack of a contract with the general terms and conditions presented by the applicant. After 2017, with the creation of an obligation of the court to give instructions to the applicant, a palliative attempt was made to provide wider opportunities to the court to make an *ex officio* assessment for unfair terms, but, on the other hand, the problem concerning the staying of the enforcement until the ruling by the court in the cases of simulative service of the order for execution (item 1.6.1. letter (b)) was resolved. The amendment of 2019 caused overcoming of the procedural problems in front of the court in the order for execution procedure and the *ex officio* check for unfair terms is compliant with the criteria set by the Court of Justice of the European Union.

The development of the amendments to the Code of Civil Procedure was contributed to by many judges from courts of various levels, who played with their experience, knowledge of the problems in the practice and the interpretation by the Court of Justice of the European Union of Directive 93/13 a major role in the adoption of the specified amendments to the law. **The judges from the Supreme Court of Cassation and from the other courts strived throughout the entire specified period to apply the national law in accordance with the interpretation of Directive 93/13 given by the Court of Justice of the European Union, including in the part concerning the set procedural framework, which is applicable according to the national rules.**

The training of the judges from all-over the country resulted in qualitative increase in the knowledge of the EU law and of the case-law of the Court of Justice of the European Union

and the application upon the resolution of specific legal disputes.

**1.8.** Outside the statement thesis set we should note that the case-law of the Supreme Court of Cassation in the adopted interpretative judgments is also protective with respect to the consumer:

Interpretative Judgment No. 4/2013 of the General Assembly of the Civil and Commercial Benches of the Supreme Court of Cassation about the obligation of the bank to notify the debtor – prior to submitting an application for the issue of an order for execution, whereby it requests the awarding of the outstanding credit balance on account of the occurrence of early payability – that it is exercising this right.

Interpretative Judgment No. 3/2017 of the General Assembly of the Civil and Commercial Benches of the Supreme Court of Cassation about the payability in case of early payability of a credit only of the legal interest on the outstanding credit balance but not remunerative interests and fees after the declaration of early payability.

In addition, it should be pointed out that the state fee for a consumer action claiming the establishment of unfairness of one or several terms in a contract amounts to BGN 40 to BGN 80 because the action has indeterminable value. This comes from the mandatory case-law of the Supreme Court of Cassation – Judgment No. 76 of 15 July 2016 under commercial case No. 888/2015, I Commercial Department of the Supreme Court of Cassation.

The interpretation of the provision of Article 72, Paragraph 1 of the Code of Civil Procedure, which is in the sense that for the actions brought by one petition in defence of one interest, one state fee is to be collected with respect to the defended interest, regardless of the number of respondents, results also in the conclusion that the fee in such hypotheses is one regardless of the number of terms that are requested to be declared unfair because the interest **in the consumer's action is one – to find which part of the contract is invalid.**

**2. On the second topic:** *Analysis of norms from the national procedural law, which concern simulated service of process.*

**2.1.** Regardless of the existing case-law of courts with respect to *ex officio* check for unfair terms in consumer contracts in the order for execution and adversary procedure and the problems resolved by the legislation, there is a procedural possibility to have the order for execution, as well as the other court papers, regarded as served on the debtor while the latter has not actually received them. The question is of particular importance not only in the light of lack of *ex officio* check for unfair terms, when the order enters into force without the conduction of adversary proceedings (until 2017), but also in view of the implementation of enforcement against the property of the debtor, which is the content of a part of the submitted petitions.

**2.2.** The Code of Civil Procedure provides for a possibility for simulated service of process – the so called service through “sticking” under Article 47 of the Code of Civil Procedure. This is a regulated fiction – the papers are not *de facto* received by the addressee (the debtor) but according to the procedural norm they are regarded as being validly served with the resulting legal consequences. The rules of service under the specified procedure do not refer only to the papers in the order for execution procedure and the enforcement procedure. They are also applicable to the adversary proceedings, and apply also to the service by enforcement agents and notaries. Rules with similar contents are also contained in other laws. In this sense, we consider that the principle of fairness is complied with.

These rules **are not unique** for the Bulgarian national law because similar rules exist also in acts of the EU law. Such an example is Regulation No. 805/2004 creating a European Enforcement Order for uncontested claims. Pursuant to Article 14 (1) (c) of the Regulation service may also be effected by “deposit of the document in the debtor’s mailbox”.

**2.3.** Pursuant to the Bulgarian law (Article 47 of the Code of Civil Procedure – until the



amendment in 2017), if the debtor (in case of service of an order for execution) is not found at the address specified in the application and a person who agrees to receive the notice is not found, the server must stick a notification on the door or on the mailbox and when they are inaccessible – on the front door or at a visible place around it, resp. if the mailbox is accessible, the notification must be dropped in it. The notification must specify that the papers are in the clerk's office of the court and can be received in two weeks from the date of sticking. If the person fails to appear to receive the papers, the court shall instruct the plaintiff to submit an information statement concerning the address registration and if the specified address does not coincide with the permanent and present address of the person, the procedure will be repeated. Afterwards, the debtor shall be considered notified, as the term for objecting to the order for execution shall start from the expiration of the two-week period from the sticking.

The amendment to the rule in 2017 provides for that the server shall certify that he/she has not found the person at the address communicated to the court when for a period of one month at least three visits to the address were made, in an interval of at least one week between each of them, as at least one of the visits was on a non-working day. After this, if the person fails to appear to receive the papers, the court shall *ex officio* check the address registration of the person and if the specified address does not coincide with the permanent and present address of the person, the court shall order service at the present and permanent address in accordance with the procedure described hereinabove.

The court shall also check *ex officio* the place of work or place of service of the person and order the service thereat too. The server shall collect data and may certify that the person does not live at the address after making an inquiry at the manager of the condominium, the mayor of the respective populated area or otherwise, as the server must specify the source the such data. In the cases under review, upon application of simulated service the court shall appoint a special representative of the debtor.

**2.4.** It should be noted that the address specified in the application from the creditor is the address that is communicated by the debtor in the contract – usually the permanent or present address or a correspondence address. The address is a description of the place where the person lives or receives his/her correspondence – Article 89 of the Civil Registration Act. The permanent address of the person is the address where he/she is registered in the population register and which the Bulgarian nationals are bound to declare to the municipal administration as the permanent address is the address for correspondence of the person with the state authorities (Article 93, Paragraph 5 of the Civil Registration Act). The present address is the one that the person has declared before the municipal administration as an address, at which he/she lives – Article 94, Paragraph 1 of the Civil Registration Act (until 2011 the term used was “the person's address of residence”).

**2.5.** The person may have remained unfound upon the server's visits to the address for various reasons but these reasons can be grouped in two categories – the person was actually not on the address at the moment of the server's visits or he/she was hiding. If the person was actually not in his/her home at the moment of the visits, he/she will be able to familiarize him-/herself with the notification stuck and receive the papers. If the absence was for a longer period or for any other reason the time for receipt of the papers was omitted, as well as if the notification was not found, the debtor has the option to file an objection to the district court against the order for execution – Article 423 the Code of Civil Procedure. The term for submission of the objection (one month) starts running from learning about the order.

The debtor can base his/her objection both on irregular service of the order (failure to comply with the requirements of the law) or on the lack of usual place of residence as at the moment of service on the territory of the Republic of Bulgaria, and on specific unforeseen circumstances, due to which he/she could not learn in due time about the service or could not lodge an objection

due to special unforeseen circumstances. The circumstances may be of any character, such as long-term travel, sickness. Outside these hypotheses a person might be hiding but the law, the server or the court should not presume hiding and the debtor is therefore vested with the specified remedies for disputing the order for execution and the consequences from the successful disputing thereof – lodging of an objection, request for staying of the enforcement. In view of guaranteeing diligent search for the person in order to avoid obstructions to the exercising of his/her rights, as well as to avoid any chance that the person might be hiding, the amendment of 2017 made, prior to the application of the service fiction, the specified amendments concerning the long period of time for searching for the person – one month and an increase of the number and periodicity of the visits – at least three in an interval of at least one week, as well as the requirement that the person must be sought at least once on a non-working day. In this sense, we consider that the principle of effectiveness has been complied with.

## **2.6. In summary:**

The application of the service fiction (deemed service) through sticking of the notification is carried out after the person has not been found at the address specified by the person him-/herself either to the creditor or to the state authorities, including at an address where he/she has stated that he/she lives, and has not been found at his/her place of work. Nevertheless, the exercising of his/her right to appeal is related to the moment of learning about the order for execution. In this sense, the allegations that acts of enforcement have been performed by enforcement agents “obscurely” or “behind the back” of the debtor are unjustified and it does not mean that the petitioners are deprived of effective remedies and of fair trial.

If violations have been committed by the enforcement agent upon the service of process, as well as other violations in the enforcement process, Article 74 of the Private Enforcement Agents Act provides for property liability of private enforcement agents. The liability is for the damages unlawfully caused upon the performance of the activity and is not bound by whether the damages result from the appealable or non-appealable acts, and amounts to the damages actually suffered by the debtor. Private enforcement agents must mandatorily enter into an insurance contract for the damages that may occur as a result from culpable non-performance of their duties – Article 25 of the Private Enforcement Agents Act.

As regards violations of the EU law, liability of the state is provided for in the Liability of the State and the Municipalities for Damages Act in case of a “sufficiently material violation of the European Union law”, including in the course of a justice-administration activity of the courts.

Dear ladies and gentlemen,

We hereby ask you to take into account the arguments presented to you when you rule on the submitted petitions as you consider that at this time the specific complaints raised by the petitioners with respect to the relevant legislation and the case-law of courts on the application thereof are unjustified.



## **ANNEX IV**

### **Sofia City Court decision about payment of claims (on 28.01.2020)**

#### **ORDINANCE**

26185

City of Sofia, 28.01.2020

The chairperson of 25-th panel of the Sofia City Court, in a closed sitting on 28.01.2020, having, observed civil case Ns 3653/2020, during its ex-officio inspection of the validity of the claim on which the hereby case has been initiated, finds that it does not meet the requirements of [art.] 127, para. 1, pt. 4 and 5 and art. 128, pt. 2 of the [the Code of civil procedure] CCP, due to which, and on the ground of art. 129, para. 2 CCP.

#### **ORDERED:**

**LEAVES WITHOUT PROCEEDING** the claim filed by Zaven Takvorov Astadurov.

**INSTRUCTS the claimant and provides him with the opportunity** in a week's term from receipt of the notification by means of a written application with a copy for the defendant:

1/ to specify each separate contractual term, which he finds [to be] unfair, as well as [to specify] by what means each separate term affects his consumer rights, the grounds of the claimed unfairness of the terms;

2/ to present proof of payment of a state fee of BGN 80 for each separate claim to ascertain unfairness of a contractual claim;

3/ to specify the grounds of the invalidity of Contract for the establishment of a mortgage, which he claims;

4/ to present a certificate for fiscal evaluation of the mortgaged property for 2019.

In the event of failure to perform the above instructions in time, the claim motion shall be returned.

A copy of the hereby ordinance to be sent to the claimant.

;

**REGIONAL JUDGE:**

## ANNEX V

Document received by the delegation at the meeting at the Ministry of Justice on 24.02.2020 (statistics of the disciplinary proceedings launched against the Bailiffs)

Ministry of Justice 23/02/20

For the sake of clarity, we are providing the data in table format below:

|        | По искане на<br>СЪВЕТА | По искане на<br>МП | Съместно искане | ОБЩО |
|--------|------------------------|--------------------|-----------------|------|
| 2006г. | 1                      | 1                  | 1               | 5    |
| 2007г. | 1                      | 1                  | 1               | 4    |
| 2008г. | 9                      | 1                  | 1               | 13   |
| 2009г. | 6                      | 6                  | 2               | 21   |
| 2010г. | 10                     | 11                 | 1               | 21   |
| 2011г. | 9                      | 9                  | 1               | 17   |
| 2012г. | 11                     | 5                  | 1               | 16   |
| 2013г. | 10                     | 18                 | 2               | 20   |
| 2014г. | 12                     | 57                 | 26              | 76   |
| 2015г. | 14                     | 28                 | 5               | 47   |
| 2016г. | 26                     | 16                 | 4               | 49   |
| 2017г. | 25                     | 27                 | 8               | 61   |
| 2018г. | 25                     | 9                  | 3               | 24   |
| 2019г. | 5                      | 36                 | 3               | 54   |
| ОБЩО:  | 169                    | 233                | 34              | 436  |

Статистиката показва, че от образуваните общо 436 дисциплинарни производства, по решение на Съвета на Камарата са образувани 169

## ANNEX VI

Documents sent by the petitioner from the petition 0408/2012 after the meeting with the delegation of Petitions committee on 25.02.2020

*Speech Association “Anna Politkovskaya”*

*Winner of the International Award for Human Rights “Golden Dove”*

National Movement “Ecoglasnost”

№ 03-23/23.03.2020

To Mrs Montserrat  
Chair of the **Committee on Petitions**

By **P.P.- Petitioner,**

Response -2

*Against:* Submission - 2, of documents Petition № 1408/2012

*Dear Madam Chair*

I would like according to your instructions from 25.02.2020, within 30 days, two documents.

1. Letter by the Ministry of Health with the app Eco-examination + Health assessment.
  - 1.1. Letter by the Ministry of Health - the coordination for the reduction of the hygiene zone is subject to the following conditions:
    - 1.1.1. **"Daily Flogging"**, can be seen from the name of the object.
    - 1.1.2. **"To build a fence and belt of fast growing tree and shrub vegetation around the site"**, as shown in point 1.
  - 1.2. Eco-examination + Health assessment, bind:
    - 1.2.1. **District Health Center** - to draw up a periodic comparison with the health indicators of the population of the village of Nikolovo for past periods in order to seek a change in the health status, as shown in point 8, page 8.

- 1.2.2. **Regional Environmental and Water Inspectorate** - periodic analysis of environmental determinants in the landfill area, as shown in point 9, page 8.

2. Complex permit.

- 2.1. Requirement 9.4.2. - Immediately after the end of the landfill, at the end of the working day, the holder of this permit shall spray the daily working area of the landfill, page 12.
- 2.2. 'That daily working area is then capped by a layer of earth 0.2 m thick', from the Annex to the Complex Permit — Technical assessment of the applicable conditions in the Complex Permit, page 6.

**Dear Madam Chair,**

**I leave it to you to judge whether the representatives of the state institutions at the meeting on 25.02.2020 in Montana were telling the truth.**

***Application:*** 1. Letter by the Ministry of Health with the app Eco-examination + Health assessment  
2. Complex Permit

**With respect:**

**P. P.**

**MINISTRY OF ENVIRONMENT AND WATER  
EXECUTIVE ENVIRONMENT AGENCY**

**COMPLEX PERMIT**

**No 162-N1/2010**

*(Decision issued by the Executive Director of the Executive Environment Agency  
No 162N1-IO-A0/2010)*

**Operator:** *Municipality of Montana*

**Address:** *1 Izvora Street, Montana 3400*

For the operation of an installation and a facility for the following category of industrial operations as specified in Annex No 4 to the Environmental Protection Act (ZOOS):

**Non-hazardous waste landfill: Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene,** as referred to in point 5.4 of Annex No 4 to the Environmental Protection Act (ZOOS):

**Date of signature:**  
5 July 2010

**Signature:**  
**Vanya Grigorova**  
**Executive Director**  
(Authorised by Order  
No RD-123/09 February 2010 of the Minister  
of Environment and Water)

Complex Permit No 162-N1/2010 of the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.

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**Condition 9.2.1.** The holder of this permit is required to build a gas pipe system to extract the generated gases (for each cell) from the landfill body in accordance with the following requirements:

**Condition 9.2.1.1.** Along with the deposition of waste after the first operational stratum, the holder of this permit is required to start building vertical gas extraction wells. Vertical gas extraction wells must be located at a distance of not less than 50 m and not more than 100 m from one another or from the boundaries of the cell.

**Condition 9.2.1.2.** After the last operational stratum has been filled with waste and before building the clay sealing layer and before subsequent recultivation (technical and biological), the holder of this permit is required to build a horizontal gas drainage, including:

- a drainage layer of gravel ensuring the extraction of biogas up to the vertical extraction wells, consisting of gravel, with a thickness of 0.5 m, and perforated pipes of 80 mm in diameter;
- gas extraction pipes of 125 mm and 140 mm in diameter;
- monitoring probes at the connection points between horizontal and vertical gas extraction pipes.

**Condition 9.2.2.** From the date of completing the gas extraction system of each cell, the recovered gases must be removed from the landfill body and conducted to a Biogas Incineration Plant for incineration, using a system of horizontal and vertical gas extraction pipes.

**Condition 9.2.3.** From the date of completing the gas extraction system of each cell, the holder of this permit is required to implement an instruction on continuous efficiency monitoring consisting of the following:

- monitoring of the status of gas extraction pipes by regular inspection of the gas control probes;
- regular measurement of the biogas flow rate and its composition at the gas extraction wells as specified in

**Condition 9.6.1.1.**

**Condition 9.2.4.** The flow rates of waste gases from the releasing devices at the Biogas Incineration Plant, the Stripping

Column and the Pre-Treatment Waste Separation Installation must not exceed the values indicated in Tables 9.2.1, 9.2.2 and 9.2.3.

The presence or operation of any sources of emissions in the ambient air other than the ones described in this Condition and indicated in Annexes No 11.5.2-1 and No H.5.2-1A to the Application are prohibited.

Table 9.2.1

| Releasing Device No | Source of waste gases     | Treatment Facility | Maximum -             | Height of            |
|---------------------|---------------------------|--------------------|-----------------------|----------------------|
|                     |                           |                    | Gas Flow Rate (Nm3/h) | Releasing Device (m) |
| 1                   | Biogas incineration plant | -                  | 8 652.6               | 3                    |

Table 9.2.2

| Releasing Device No | Source of waste gases | Treatment Facility | Maximum Gas Flow Rate (Nm3/h) | Height of Releasing Device (m) |
|---------------------|-----------------------|--------------------|-------------------------------|--------------------------------|
| 2                   | Stripping Column      |                    | 14003                         | *7                             |
|                     |                       |                    |                               |                                |

Table 9.2.3.

| Releasing device No | Source of waste gases                               | Treatment Facility | Maximum Gas Flow Rate (Nm3/h) | Height of Releasing Device (m) |
|---------------------|---|--------------------|-------------------------------|--------------------------------|
| BT1                 | General ventilation in workshop<br>Waste separation |                    |                               |                                |
|                     |   |                    | 1 500                         | 6                              |

TECHNICAL ASSESSMENT

For justification of the conditions contained in the Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, in accordance with the Regulation laying down the terms and conditions and the procedure for issuing Complex Permits (Council of Ministers Decree No 238, 2 October 2009)

1. General

Procedure Coordinator: Manoela Tsvetkova

Team: Lina Petkova

Simeona Yakarova

Conditions 1, 2, 3, 4, 5, 6, 7, 8.1, 10,  
13, 14, 15 and 16;  
Conditions 8.2, 9 and 12;  
Conditions 8.3 and 11;

2. Procedure

1. Letter from the Municipality of Montana, incoming Ref. No 453-MO-1090/29 January 2010, regarding the submission of an application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram.
2. Letter to the Montana Regional Inspectorate of Environment and Water (RIOSV) and the Danube Region



Basin Directorate (BDDR), Pleven HQ, outgoing Ref. No 453-MO-1090/9 February 2010, regarding an opinion on the application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.

3. Letter from the RIOSV of Montana, incoming Ref No 453-MO-1090/18 February 2010, regarding an opinion on the application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.
4. Letter from the BDDR, Pleven HQ, incoming Ref No 453-MO-1090/1 March 2010, regarding: an opinion on the application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.
5. Letter to the Municipality of Montana, outgoing Ref. No 453-MO-1090/18 February 2010, regarding the submission of the original application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.
6. Letter to the Municipality of Montana, outgoing Ref. No 453-MO-1090/16 March 2010, regarding additional information required in connection with the application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.
7. Letter from the Municipality of Montana, incoming Ref. No 453-MO-1090/1 April 2010, regarding the submission of an additional application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.
8. Letter to the Mayor of Municipality of Montana, outgoing Ref. No 453-MO-1090/12 April 2010, regarding the publication of an announcement on public access to an application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.
9. Letter from the Municipality of Montana, incoming Ref. No 453-MO-1090/19 May 2010, regarding the publication of an announcement on public access to an application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene.

Technical assessment attached to the Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene, No 162-N1/2010.

---

#### **Site location:**

The landfill is located at a distance of approximately 4 km to the south-east of the town of Montana, 1 200 m from the Sofia-Montana road and borders on the existing unregulated waste dump. The landfill site is located in the Nedelishteto area within the locality [micro-region] of the village of Krapchene and sits on the high plain and the eastern slope of the ridge above the River Shugovitsa.

The management address of the facility is 52, Slatina, Municipality of Ruse.

#### **Contact person:**

Mariana Petrova, Chief Expert, Environment, Municipality of Montana

According to the operator's letter (incoming Ref. No 453-MO-1090/19 May 2010) regarding public access to an application for a Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram, located in the village of Krapchene, no objections, opinions or proposals have been received in relation to the information provided in the application.

**Justification of the conditions in the Complex Permit for the Regional landfill for non-hazardous waste for the municipalities of Montana, Krivodol, Boichinovtsi, Berkovitsa, Lom, Chiprovtsi, Georgi Damyanovo, Brusartsi, Medkovets, Varshets, Yakimovo and Valchedram**

**Condition No 2 Installations covered by the scope of this permit**

On page 11 of the application, the installation for which the operator applies to obtain a Complex Permit is indicated.

The plans for the site include the construction of the following installations and facilities:

- **a landfill for non-hazardous waste consisting of four cells for depositing non-hazardous waste;**
- **a pre-treatment waste separation installation;**
- **a composting installation;**
- **service buildings, facilities and operations, including:**
  - a checkpoint for registering incoming and outgoing rubbish trucks (loaded and empty);
  - automated electronic scales for weighing and registering the weight of loaded and empty rubbish trucks;
  - a car wash for washing the tyres of trucks leaving the landfill;
  - an office building for the landfill staff;
  - a local waste water treatment plant;
  - a mast power substation;
  - a diesel-powered generator (to provide emergency power supply);
  - a biogas recovery and incineration plant;
  - a mechanical workshop;
  - a shed for the compactor;
  - a tank with a pumping station for potable and process water;
  - a diesel fuel tank;
  - a mobile tank for process water;
  - an open-air storage area.

A master plan for the site indicating the location of each facility is enclosed in sections 1-1 and 1-1A of Annex I.B.I.

**The main technical processes to be carried out are as follows:**

After the rubbish trucks enter the site, they drive through the electronic scales to register the quantity of waste and their licence plate.

The waste is spread and compacted in layers that are 20-30 cm thick. These processes are carried out in working areas that are specified on a day-by-day basis. Ploughing and pushing the waste for the day produces a truncated pyramid, with a height of 1.80 m and lateral faces with an incline of 1:3.

This daily working area is capped by a layer of earth that is 0.2 m thick. The size of the daily working area depends on the quantity of waste arriving on a given day and on the compacting equipment (compactor). In this manner, the strata of deposited, earthed and compacted waste are shaped, with a height of 2 m. At each stratum, a temporary storage site for piling earth to be used to cap the next working area is shaped. It is delivered by a dumper from the site where auxiliary material (earth to be used to cap each stratum) is stored, located in the south-western part of the site, in the immediate proximity of the industrial yard.

In dry and windy weather, the waste has to be sprayed with process water from water trucks in order to reduce the level of dust.

The line of the waste along the slope of the surrounding dyke is determined by the thickness of the recultivation layer. Considering that the landfill bottom is insulated using HDPE foil on top of a clay screen of 0.5 m and given the requirements of Regulation No 8 of 24 August 2004 (State Gazette, No 83/2004), it is deemed that the applicable thickness of the recultivation layer of 1.8 m (0.5 m thick gas drainage, 1 m thick clay, and humus [...])

**REPUBLIC OF BULGARIA**

**MINISTRY OF HEALTH**

Sofia 1000, 5, Sv. Nedelya Sq., tel. 9301, fax 9811833

Outgoing Ref. No 47-22-PSK-0154-2/11 January 2010  
Sofia

TO  
MR ZLATKO ZHIVKOV  
MAYOR,  
MUNICIPALITY OF MONTANA  
1, IZVORA STREET  
TOWN OF MONTANA

Copy: REGIONAL INSPECTORATE OF PUBLIC  
HEALTH PROTECTION AND  
SURVEILLANCE  
MONTANA

The Ministry of Health, on the basis of Article 4 of Ministry of Health Regulation No 7 laying down hygienic requirements for health protection of the urban environment (SG No 46/1992, as amended and supplemented by SG No 46/1994, Nos 89 and 101/1996, No 101/1997 and No 20/1999), and on the basis of the following information provided: BULSTAT/EIK code; Deed No 612 certifying municipal ownership; additional page No 1 annexed to the deed of municipal ownership No 612/22 January 2003; certified spatial sketch map No F00967/9 January 2009 of property No 000265 in the locality of the village of Krapchene, Municipality of Montana; sketch map No F00975/9 January 2009 of property No 000363, locality of the village of Nikolovo, Municipality of Montana, issued by the Agriculture Municipal Service, town of Montana; excerpt from the cadastral register with a sketch map of a landfill for solid residential waste and showing distances to the closest sites that are subject to health protection; final EIA report from February 2000; Ministry of Environment and Water Decision No 42-PR/28 December 2009 on the evaluation of the need to perform an environmental impact assessment; Notice of investment proposal sent to the Minister of Environment and Water; Letter No 10-00-2/10 January 2009 of the Municipality of Montana to the Mayor of the village of Krapchene notifying the investment proposal; Letter No 04-09-58/1 September 2009 of the Municipality of Montana to the Ministry of Health containing information indicating the absence of any objections, proposals or opinions relating to the investment proposal; Opinion No 05-4-35/22 December 2008 of the Montana Regional Inspectorate for Public Health Protection and Surveillance and an expert opinion on a comprehensive environmental assessment, including a health evaluation drawn up by an independent expert, hereby reduces the protective hygiene zone from 1 000 metres to

875 metres (the distance at which the closest site that is subject to health protection, notably the Pastrina Complex (comprising a restaurant with a campsite, without any permanent residents)) for the following site:

EXTENSION OF A LANDFILL FOR SOLID RESIDENTIAL WASTE WITH  
DAILY EARTH CAPPING ON PROPERTY NO 000265, LOCALITY OF THE VILLAGE  
OF KRAPCHENE AND  
LAND PROPERTY NO 000363, LOCALITY OF THE VILLAGE OF NIKOLOVO,  
NEDELISHTA AREA, MUNICIPALITY OF MONTANA

Coordination has been ensured to comply with the following requirements:

1. A fence and a belt of fast-growing trees and shrubs must be set up around the site.
2. If necessary, filters should be provided for the composting building.
3. The disposal process must be strictly observed.
4. Disinfestation must be carried out regularly.

*In case it is established that, as a result of the landfill operations, the existing health and environmental standards are not met at the boundaries of the sites and areas that are subject to health protection, measures must be taken to reduce the release and spread of the pollutants identified.*

**SNEZHANA ALTANKOVA, MD**  
**DIRECTOR, PUBLIC HEALTH DIRECTORATE**  
**(Order No RD 15-2408/10 August 2009)**

**ENVIRONMENTAL EXPERT ASSESSMENT INCLUDING A HEALTH  
EVALUATION CONCERNING SITE:**

**EXTENSION OF AN EXISTING MUNICIPAL LANDFILL FOR  
RESIDENTIAL WASTE, MONTANA AND ITS ESTABLISHMENT AS A  
REGIONAL LANDFILL FOR NON-HAZARDOUS WASTE FOR THE  
MUNICIPALITIES OF MONTANA, KRIVODOL, BOICHINOVTSI,  
BERKOVITSA, LOM, CHIPROVTSI, GEORGI DAMYANOVO, BRUSARTSI,  
MEDKOVETS, VARSHETS AND YAKIMOVO ON PROPERTY NO 000265,  
LOCALITY OF THE VILLAGE OF KRAPCHENE AND PROPERTY  
No 000363, LOCALITY OF THE VILLAGE OF NIKOLOVO, NEDELISHTA  
AREA, MUNICIPALITY OF MONTANA, MONTANA PROVINCE**

**SOFIA, 2010**

|    |   |                             |   |
|----|---|-----------------------------|---|
|    |   |                             | ... such as odours and dust, stop the pollution caused to the area by light waste fractions such as paper, plastic, and with capabilities to reduce noise emitted by operations on the landfill itself. |
| 3. | Introduce a self-monitoring system: regular measurement of the content of harmful substances in the leachate generated by the landfill and in the mechanically treated waste water. | In the course of operation. | Control the quality of waste water discharges after mechanical treatment.   |
| 4. | Introduce a self-monitoring system: regular measurements should be carried out to establish the level of dust pollution in the area of the landfill.                                | In the course of operation. | Limit health risk.  |
| 5. | Regular disinfection and disinfestation measures on the landfill premises.  | In the course of operation. | Limit epidemiological risk.   |



|    |  |                             |   |
|----|--|-----------------------------|---|
| 6. | It is particularly important to keep the road along the waste disposal route clean. If necessary, take measures to improve the quality of the road surface up to the junction with the Montana-Vratsa main road and improve road conditions enabling smooth driving of the rubbish trucks.   | In the course of operation. | Limit health risk.<br>/   |
| 7. | Operate only in daytime work shift mode.   | In the course of operation. | Limit health risk to neighbouring towns and villages.                             |
| 8. | In accordance with the remits of the Montana Regional Health Centre (RTsZ) and Regional Inspectorate of Public Health Protection and Surveillance (RIOKOZ), regular comparisons should be made to the health indicators for the population in the Municipality of Montana, village of Nikolovo, recorded in previous periods in order to detect any change to their health | In the course of operation. | Monitor the health of the population and take preventive measures as appropriate. |
| 9. | In accordance with the remit of the Regional Inspectorate for Environment and Water (RIOSV), regular analysis of environmental determinants in the area of the landfill.   | In the course of operation. | Maintain a clean environment.   |

## ANNEX VII

The EC communication for the members concerning the petition 0408/2012

European Parliament

2019-2024



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*Committee on Petitions*

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31.08.2020

# NOTICE TO MEMBERS

**Subject: Petition 1408/2012 by P P (Bulgarian) on behalf of the National Ecoglasnost Movement, on compliance with environmental legislation with regard to projected landfill sites in the municipality of Montana, Bulgaria**

## 1. Summary of petition

The petitioner indicates that a landfill site has been located in the municipality of Montana, with EUR 7.5 million of ISPA pre-accession funding, without an environmental impact survey having been carried out. He indicates that his complaints to the authorities, the courts and the European Anti-Fraud Office (OLAF) have been rejected. He also expresses concern at shortcomings regarding access to justice in environmental matters. Furthermore, on 28 September 2012, the Aarhus Convention Compliance Committee revealed that certain provisions of Bulgarian environmental legislation infringe the Convention, in particular citizens' right of redress.

## 2. Admissibility

Declared admissible on 8 April 2013. Information requested from Commission under Rule 216(6) (New Rule 227(6)).

## 3. Commission reply, received on 30 January 2015

Firstly, as regards the Montana landfill, the petitioner has already alleged bad management of the landfill, in particular with regard to the level of protection of human health and the environment, in an earlier complaint to the Commission. The Commission services have duly addressed this issue. However, the allegations made by the petitioner could not be proved. The

Bulgarian authorities provided evidence that the landfill operates in compliance with its permit and all necessary measures are taken to protect human health and the environment. Therefore the complaint was closed.

Secondly, the petitioner raises complaints about the judicial proceedings before the Supreme Administrative Court of the Republic of Bulgaria and claims irregularities in the legislative process in the National Assembly during the transposition of the relevant EU legislation into Bulgarian law. In this regard, the Commission would like to point out, that the organisation and the conduct of judicial and legislative procedures fall within the responsibility of the Member States.

Finally, the petitioner considers that the Bulgarian authorities contravened the Aarhus Convention as a result of refusing access to justice in a number of court proceedings related to the Montana landfill. The Commission took note of the information provided by the petitioner and the allegations about lack of access to justice for members of the public concerned.

### Conclusions

Out of the three allegations, two are not founded. On the third one, following a preliminary assessment of the information provided by the petitioner on possible shortcomings in Bulgaria as regards the access to justice and of the publicly available information, the Commission services are assessing whether the legislation in force in Bulgaria may be in contravention of the access to justice provisions of the Aarhus Convention, namely Articles 9(2) and 9(3) as regards the possibilities for the members of the public to challenge before courts general spatial plans, detailed spatial plans and some construction and/or exploitation permits. Therefore, the Commission services have decided to request clarifications from the Bulgarian authorities in this respect.

The Commission will keep the Petitions Committee informed about its conclusions.

#### **4. Commission reply (REV I), received on 27 January 2016**

In February 2015, the Commission Services started an official investigation (EU Pilot) on the possible breach of the access to justice provisions of the Aarhus Convention, namely Articles 9(2) and 9(3) as regards the possibilities for the members of the public to challenge before the national courts general spatial plans, detailed spatial plans and some construction and/or exploitation permits. In their reply, the Bulgarian authorities do not agree with the arguments raised by the Commission and they refer to various pieces of national legislation that would comply with the above provisions. The reply is currently under assessment.

### Conclusions

The specificities of the issues at stake and the legal complexity of the member state's arguments necessitate further assessment and analysis.

#### **5. Commission reply (REV II), received on 31 July 2017**

The EU Pilot investigation regarding the possible breach of the access to justice provisions of the Aarhus Convention in Bulgaria is still ongoing.

The additional remarks provided by the petitioner by e-mail on 12 April 2016 concerned a parallel issue, that of the Montana landfill, and they have been considered by the Commission services as unfounded. In fact, these observations have not provided any new facts/elements which could lead the Commission services to reconsider their previous position.

## **6. Commission reply (REV III), received on 31 August 2020**

The EU Pilot investigation as regards the possible breach of the access to justice provisions of the Aarhus Convention in Bulgaria was closed.

As far as waste management is concerned, the Commission's analysis showed that in the national court's practice it was held that "*the activities listed*" in a municipal waste management programme "*have an impact on the environment, and thus affecting the rights of citizens in the region*" and environmental non-governmental organisations (NGOs). The approach of the national courts related to the river basin management plans has been similar thus ensuring the necessary access to justice as regards waste management and river basin management measures.

This is not the case regarding air quality. Therefore, in May 2020 the Commission launched an infringement procedure against Bulgaria for failure to ensure that natural or legal persons directly concerned by exceedances of the air pollution limits under Directive 2008/50/EC<sup>1</sup> on ambient air quality and cleaner air for Europe, are allowed to bring an action before the national courts. Environmental organisations and natural or legal persons are currently not allowed to challenge the consistency of an air quality plan and to require public authorities to establish air quality plans as the Directive requires. Air quality, however, is not subject to the current petition.

The parallel issue concerning the Montana landfill, is considered unfounded and therefore not followed up by the Commission services.

## **Conclusion**

In view of the above, the Commission does not intend to investigate further the claims raised in the petition because they are considered unfounded.

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<sup>1</sup> Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, *OJ L 152, 11.6.2008, p. 1–44*.

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

| 34        | +   |
|-----------|---|
| ECR       | Ryszard Czarnecki, Andrey Slabakov, Kosma Zlotowski   |
| ID        | Jordan Bardella, Markus Buchheit, Gianna Gancia, Stefania Zambelli  |
| NI        | Mario Furore  |
| PPE       | Alexander Bernhuber, Agnès Evren, Gheorghe Falcă, Peter Jahr, Radan Kanev, Ádám Kósa, Dolors Montserrat, Loránt Vincze                              |
| Renew     | Andrus Ansip, Ulrike Müller, Frédérique Ries, Ramona Strugariu, Yana Toom   |
| S&D       | Alex Agius Saliba, Andris Ameriks, Marc Angel, Ibán García Del Blanco, Sylvie Guillaume, Cristina Maestre Martín De Almagro, Massimiliano Smeriglio |
| The Left  | Alexis Georgoulis, Sira Rego  |
| Verts/ALE | Margrete Auken, Eleonora Evi, Thomas Waitz, Tatjana Ždanoka   |

| 0 | - |
|---|---|
|   |   |

| 0 | 0 |
|---|---|
|---|---|

Key to symbols:

+ : in favour

- : against

0 : abstention

