Bulgarian Court Awards Compensation for Damages for Infringement of EU Law

On 11 February 2020 Sofia Appellate Court issued a decision to overturn a decision of Sofia City Court and ordered the Supreme Administrative Court to pay “Boss Rental” BVBA, a private company, more than BGN 900 000 in property damages suffered as a result of infringement of European Union law. The infringement occurred when the Supreme Administrative Court refused to recognize the right to a tax credit of the company. The decision is not final and is subject to appeal, but it is a big step forward. Many companies have sufficient grounds to file corresponding claims when courts refuse to take into consideration the provisions of EU law and the practice of the Court of Justice of European Union, and can claim compensation for damages for infringement of EU law.

The responsibility of Member States is enshrined in the Founding Treaties of the European Union. Article 4, para. 3 of the Treaty on European Union (previously Article 10, para. 5 of the Treaty Establishing the European Community) introduces the principle of sincere cooperation. In accordance with this principle, the Union and the Member States must assist each other in carrying out tasks which flow from the Treaties. The Member States must take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States must also facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.

Accordingly, if the States do not adhere to these obligations, they bear responsibility. When a private person incurs damages for failure of the State to fulfil its obligation to comply with European Union law, this person may file a claim for damages before national courts.

In its Judgment of 19 November 1991 in Joined Cases C-6/90 and C-9/90, *Andrea Francovich and Danila Bonifaci and others v Italian Republic*, the Court of Justice of the European Communities sets out the principle that Member States are obliged to make reparation for the loss and damage that they have caused to individuals through infringements of Community Law. In its case law, the Court also sets out the conditions under which States are held liable, and by subsequent decisions sets out the prerequisites for bringing an action, including for breaches of European Union law by the courts.

In its judgement in the *Köbler* case, the Court found that the State was liable even for

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damages that have occurred as a result of a Supreme Court decision which is contrary to EU law. The principle of the rule of law requires that every State body should carry out its activities within the framework set by the law, including in compliance with the law of the European Union and accordingly – to be held responsible if it commits an infringement.

In Bulgaria, many lawsuits have been instituted on claims for damages against the State for non-compliance with EU law, which develop and end with varying results. For a long time, it was unclear how these claims should be dealt with – whether under the State and Municipal Liability for Damages Act or under the Obligations and Contracts Act, or what state fees were due. It is well-known that the higher amount of the state fee impedes access to court and the possibility of defence. On appeal in one of these cases in May 2015, the Supreme Court of Cassation decided that these claims should be dealt with in accordance with the State and Municipal Liability for Damages Act.

In November 2015, an interpretative case was opened in which the General Assembly of the Judges of the Civil and Commercial Colleges of the Supreme Court of Cassation and of the Chambers of the Supreme Administrative Court had to indicate which court was competent to hear claims for infringement of the law of the EU and what is the procedural order for their consideration. The proceedings in the interpretative case were stayed until delivery of judgment of the Court of Justice of the European Union in case C-571/2017, and was subsequently scheduled for February 2020. No interpretative decree has been issued as of yet.

Meanwhile, in November 2019 the State and Municipal Liability for Damages Act was amended. New provisions were included, regulating the proceedings for claims for damages suffered as a result of infringement of EU law, with the clarification that proceedings which are on-going at the time of the entry into force of the law shall continue before the courts that are currently considering them, including on appeal and cassation appeal. The provisions of the law are sure to cause problems in practice. It will be very difficult to determine when a violation of EU law is sufficiently serious to have grounds to file a claim. The term “sufficiently serious” derives from the practice of the Court of Justice of the European Union and refers to a manifest and grave disregarded by the State of its obligations under EU law. Merely not observing EU law might not be enough to assume that there has been a sufficiently serious

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violation.

The changes to the law envisage filing claims in accordance with the Administrative Procedure Code and the Civil Procedure Code, depending on which State body will be the defendant in the proceedings. When actions are brought against several defendants, including an administrative court, the Supreme Administrative Court, or when the damages are caused by an administrative activity, the claims will be brought in accordance with the Administrative Procedure Code.

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