

The Bulgarian Supreme Court of Cassation adopted an interpretative decision concerning the liability of the guarantor with regard to obligations, which are paid in installments

With interpretative decision from 21.01.2022 in interpretative case No 5/2019 of the Common Assembly of the Civil and Commercial Colleges of the Supreme Court of Cassation (SCC) was answered the question from which moment does the term under art. 147, para. 1 of the Bulgarian Law on Obligations and Contracts for engaging the liability of the guarantor start to run for obligations, for which payment in installments is provided, e.g. bank credit or leasing. To this point contradictory views existed in the court practice in that regard: the first was that for each separate installment a separate 6-months' term runs from the due date for engaging the guarantor, after which the opportunity to do so for the specific installment is precluded; according to the second, this 6-months' term runs from the due date of the whole obligation – i.e. the due date of the final installment or the moment the creditor declares the obligation due in advance.

The SCC adopts the second view. Therefore the objectio would have no merit, that the liability of the guarantor has been precluded for separate installments, if the creditor has made his claim within a term of 6 months after the due date of the whole obligation. This solution is justified by the view, that in case of payment in installments, only one obligation exists, the payment of which is separated into pieces in favour of the debtor, but the obligation is not periodic in nature. Therefore, in order for the guarantor to be liable under the same terms as the debtor, the rule of art 147, para. 1 of the Law on Obligations and Contracts should apply only after expiry of 6 months after the due date of the whole obligations, whether it is the end of the negotiated term or in case of declaring the debt due in advance. As an additional positive effect of the decision, this will free the creditors from the necessity to engage the liability of the guarantors for each separate installment as per the payment plan, which in turn will reduce the amount of expenses accrued for this type of obligations.