

The Supreme Court of Cassation and the Supreme Administrative Court will align jointly their case law on the award of compensation for non-material damages to legal entities

On 8 July 2023, an interpretative case No. 1/2023 was initiated for the purpose of adopting a joint interpretative ruling of the General Assembly of Judges of the Civil and Commercial Divisions (GACCD) of the Supreme Court of Cassation (SCC) and Divisions 1 and 2 of the Supreme Administrative Court (SAC) answering the following questions:

“1. Does our objective substantive law allow for the award of compensation for non-material damages to legal entities?

2. Do European Union law which has direct effect and primacy over national law (article 4(3) of the Constitution of the Republic of Bulgaria) or international treaties ratified in accordance with the Constitution, promulgated in the State Gazette and entered into force which are part of domestic law and take precedence over conflicting provisions of domestic law (article 5(4) of the Constitution of the Republic of Bulgaria) allow for national courts to award compensation for non-material damages to a legal entity resulting from a violation of a subjective right recognized by European Union law or international treaties, and what criteria shall be used to determine said compensation?”

It was necessary to initiate an interpretative case because of the conflicting case law of different judicial panels within the SCC. According to one opinion, the award of compensation for non-material damages pursuant to article 52 of the Obligations and Contracts Act (OCA) to corporate legal entities lacks legal basis, while according to the opposing opinion, since OCA article 45 does not contain any limitation as to the parties to a relationship arising from tort, each party which commits a wrongful act against another, for which it may be held liable, must remedy the harm suffered by the latter party, including a legal entity.

The case law of the SAC too is inconsistent concerning the award of non-material damages to legal entities in claims under article 1 of the Act on the Liability of the State and Municipalities for Damages before SAC. Some judicial panels find claims for payment of non-material damages filed by legal entities to be admissible but said damages must be proven, while other judicial panels find that physical pain and mental suffering are only inherent to individuals and that if the reputation or image of a legal entity are damaged, resulting damages are commensurate to a financial impact and shall, therefore, be seen as material damages.