08_Protection of the Rights and Liability of the States for Loss and Damage Caused to Citizens by Breaches of the European Community Law_KY[english]

On 8 May 2015, the Supreme Court of Cassation of the Republic of Bulgaria issued a ruling which specified the procedure for the protection of natural and legal persons and the liability of the state for loss and damage caused by breaches of the community law. The ruling establishes the procedure for the court to hear such cases. What has been known so far is that the relevant cases are to be brought to the competent national court and heard in accordance with the provisions of the national legislation.

In 1991, the Court of Justice of the European Communities ruled its judgment in the Case of Andrea Francovich and Danila Bonifaci and others v Italian Republic (joined cases C-6/90 and C-9/90). Two references for a preliminary ruling had been submitted by Italian regional courts with regard to Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. In its judgment, the Court upheld the principle that a State must be liable for loss and damage caused to individuals by breaches of Community law. Furthermore, the Court specifies the conditions for State liability. The State is liable for loss and damage, when there is Community law for which no implementing measures have been adopted within the prescribed period, its provisions are unconditional and sufficiently precise, the law entails the grant of rights of individuals, and there is a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties.

There are subsequent judgments of the Court of Justice, pointing out the conditions for filing a claim against a State and emphasizing that Member States are liable for breaches of the Community law committed by the judiciary. In its case-law, the Court has ruled explicitly that the Community law is to be applied instead of the national law, where the latter excludes the State's liability for loss and damage caused to individuals in breach of the Community law by a judgment of a national court of last instance.

Prior to 8 May 2015, Bulgaria did not have explicit provisions on how proceedings had to develop in cases brought against the State under Article 4(3) of the Treaty on the Functioning of the European Union. The lack of clarity led to disputes on the jurisdiction and disputes

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whether the claim had to be lodged under the State Liability Act or under the Obligations and Contracts Act. The procedure envisaged for the protection of citizens is quite relevant because, in the former case, the state fee is BGN 10 for natural persons and BGN 25 for legal persons, whereas the state fee is in the amount of 4 % of the value of the claim lodged under Article 49 of the Obligations and Contracts Act. The size of the state fee might prove prohibitive for the injured parties to exercise their rights.

Cases have been brought to the Sofia City Court under Article 4(3) of the Treaty on the Functioning of the European Union and the litigation is still pending. One of those cases was dropped since the claimant had failed to pay the state fee in the amount prescribed by the court, claiming that the state fee was in the amount of BGN 25 and it had been paid at the time of the submission of the claim. After the failure to fulfill the instructions of the court, the action was terminated and the appellate court confirmed the termination ruling. Therefore the claimant, a legal person, filed a private cassation complaint. It pointed out to the Supreme Court of Cassation that it was necessary to establish the procedure for the claims under Article 4(3) TFEU, to give instructions on how claims lodged against the State for loss and damage caused by breaches of the Community law, and to specify the competent court.

The Supreme Court of Cassation has ruled on that complaint, stating that, under the Bulgarian laws, the State’s liability for loss and damage caused by breaches of the Community law under Article 4(3) TFEU has to be redressed under the Liability of the State and Municipalities Act. The Supreme Court of Cassation also upholds that it is an objective liability for which reparation is due for all pecuniary and non-pecuniary loss and damage resulting directly and immediately from the loss or damage. The existence of culpable behavior on part of the official is irrelevant.

The Court has stated that the cases have to be brought under the State Liability Act which contains special rules to facilitate the access to justice, i.e. minimal state fees in the amount of BGN 10 for natural persons and BGN 25 for legal persons. As a result, the Supreme Court of Cassation has repealed the attacked ruling of the appellate court that confirmed the termination of the legal action and has referred the case back to the Sofia City Court to continue the proceedings.

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It is yet to be seen how these cases will be heard after the ruling of 8 May 2015 so that to assess whether they would constitute effective redress.

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