



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS BULGARIA



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**British Institute of
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Comparative Law**

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I. General Collective Redress Mechanism

The legal provisions of the Chapter 33 of CCP are applicable, Articles 379-388.

1. Scope/ Type

a) Horizontal

The approach is horizontal. The CCP provisions regarding the horizontal collective redress mechanism are applicable to infringements of any collective interest.¹ For instance this mechanism is applied to commercial law disputes, namely for repealing of a resolution of the general meeting of a joint-stock company with issued bearer shares;² furthermore for protection of collective interest against unfair competition such as misleading or comparative advertising, imitation or abuse of stronger bargain power³; environmental claims⁴ as well as for protection of collective interests of consumers.⁵

b) Injunctive or compensatory or both

According to Article 379 of the CCP, a collective action can take the form of

- A claim for declaratory judgement⁶
- A claim for injunction, or
- A compensatory claim.⁷

2. Procedural Framework

a) Competent Court

The court competent to hear the action is the district court⁸.

b) Standing

Collective action can be brought for protection against infringements of collective interest, namely where, due to the nature of the infringement, the circle of the affected persons cannot be defined precisely but is identifiable – Article 379 (1) of CCP. The standing is granted to any of the following:

- Any persons who claim that they are harmed by the infringement of collective interest (injured parties),
- An organisation established ad-hoc for protection of the persons affected by a certain infringement of collective interest, or
- An organisation established for protection against infringements of collective interests.

¹ Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 773.

² According to Article 74 (4) of the Commercial Act every shareholder may bring an action before the district court of the company's seat for the repeal of a resolution of the general meeting of a joint-stock company with issued bearer shares or by an investment company of the open-end type when such resolution is inconsistent with a mandatory provision of the law or with the articles or, respectively, the Articles of Association of the company. The action shall be examined according to the procedure established by Chapter Thirty-Three "Proceedings on Collective Actions" of the Code of Civil Procedure. Exclusion from participation shall not be admitted in this case. See Decision № 137 / 26.04.2016 Commercial Case № 156/2016 the Court of Appeal – Plovdiv.

³ Article 98 (4) of Protection of Competition Act 2008 referring to Chapter 33 of CCP.

⁴ Quality of air - Ruling № 84 / 24.02.2015 Civil Case № 24 /2013 the District Court - Smolyan

⁵ Article 186 of the CPA referring to the Chapter 33 of CCP.

⁶ See Ruling № 131 / 10.09.2012 Commercial Case № 1036 /2010 the Supreme Court of Cassation, II commercial division; Decision № 2718 / 05.04.2016 Civil Case № 12066 /2011 the City Court – Sofia;

⁷ See also Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 774.

⁸⁸ According to Article 380 (1) of CCP. See also Chernev, Silvi Collective Actions, Trud i pravo, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017]; Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 774.

In Bulgarian legal literature it has been pointed out that the uncertainty about identification of individuals affected (only identifiability of their class/group) is a characteristic of the subject of the procedural relationship, including in cases where the action is brought by organisations designated to protect the collective interests. This is because the subject of a procedural relationship is always the class (the group) and the organisation-plaintiff has the role of a special kind of a representative who performs all procedural actions in the name of and on behalf of all persons who constitute the class (the group).⁹ This is a feature of collective actions which distinguishes them from joint claims brought by relatively large groups of individually defined persons under the conditions of the subjective joinder of claims¹⁰. Whether a person belongs to the class (the group) or not, is determined based on specific criteria related to the particular features of the committed infringement over a given period of time and within certain territorial limits, for instance all customers of a certain telecommunication company XYZ for year 2016. Therefore, legal authors assume that the composition of the class (the group), though not individually defined, is rather stable and unchangeable.¹¹ Furthermore, the legal authors stress out that despite meeting the class-defining characteristics, the persons who have explicitly requested to be excluded from the collective action (performed the right on Opt Out), are no longer an element of the circle of persons whose interests are protected in the collective proceedings (the class/group).

c) Availability of Cross Border collective redress

The horizontal collective redress mechanism can be applied also to cross-border disputes. The general procedural rules on parties located abroad will be relevant, namely rules on summonses (Articles 40, 48 of CCP), rules on territorial judicial competence for a defendant without a permanent address in Bulgaria (Article 107 of CCP), establishment of facts which have occurred abroad (Article 548 of CCP) as well as the Part VII of CCP “Special rules regarding proceedings in civil cases subject to operation of Community law”.

Bulgarian legal practice however does not seem to have experienced so far any such cross-border collective redress proceedings.

d) Opt In/ Opt Out

Principal availability of both options

Bulgarian legislation allows both options, namely the court hearing the case shall:

- accept for participation in the process other injured parties, organisations for protection of the injured persons, organisations for protection of the injured collective interest, or organisation for protection against such infringements that have requested a participation in the process within the stipulated term (Opt In), and
- exclude injured parties who have stated within the timeframe set that they will pursue their defence independently in a separate process (Opt Out) – Article 383 of CCP.

Conditions

The legal provisions prescribe some general requirements the parties should meet, namely they need to belong to any of the following categories “injured parties, organisations for protection of the injured

⁹ Chernev, Silvi Collective Actions, Trud i pravo, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017]; see also Decision № 207 / 24.01.2012 Commercial Case № 580 /2011 the Supreme Court of Cassation, II commercial division; Decision № 2718 / 05.04.2016 Civil Case № 12066/2011 the City Court – Sofia.

¹⁰ Chernev, Silvi Collective Actions, Trud i pravo, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017] see also Decision № 198 / 02.10.2013 Civil Case № 1420 /2013 the Supreme Court of Cassation, III civil division.

¹¹ Some changes in the class members may occur in the event of a succession which happened after the infringement, inasmuch as the rights protected by the collective action may pass to the successors and are not strictly personal – Chernev, Silvi Collective Actions, Trud i pravo, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017]

persons, organisations for protection of the injured collective interest, or organisation for protection against such infringements” (Article 383 (1) of CCP). It is up to the judge discretion to decide if a certain person or organisation is meeting these criteria, which raises some concerns in the legal literature about court capability to respond to the even higher and more complex requirements for the role of the court in the collective actions proceedings. Courts are not only expected to comply with all formal requirements of the legal procedure, but also to ensure a fair trial for all parties involved.¹²

Opt-out justified by the sound administration of justice

The dispositive principle is one of the fundamental principles of Bulgarian Civil Procedure Law – Article 6 of CCP. Persons can freely decide whether to commence a court proceeding for protection of their civil law rights, define the scope of protection of their rights, or even terminate the civil court case (or their participation in it) at any time. Therefore, the provision of Article 383 (1) p. 2 of CCP (Opt Out option) can be considered compliant with the main principles of Civil Procedural Law.

Specific measures related to the fact that affected persons are not identifiable

The class of affected persons needs to be defined in the legal claim without identifying each and every individual. For this purpose, the law requires that the court hear in an open session (with summoning of the plaintiff and the defendant) all parties' observations on the circumstances determining the class of the persons affected and the manner of communication of the collective action to the public – Article 382 (2) of CCP. The Court states an appropriate way of communicating the claim (how many messages, by what media, and for how long they should be made) as well as an appropriate term after publishing in which injured parties can declare whether they are willing to participate in the proceeding (Opt In) or will pursue protection of their rights in a separate proceeding (Opt Out) – Article 382 (2) of CCP.

e) Main procedural rules

Admissibility and certification criteria

Article 381 of CCP requires that the court hearing the case verifies the admissibility of the claim¹³ and the regularity of the claim¹⁴; the court shall additionally ex officio verify the ability of the person or persons who have brought the action to seriously and in good faith protect the injured parties and bear the costs of the proceedings, including expenses. The court may hear in an open session the person or persons who filed the claim. The court will only allow the hearing of the case should any of the plaintiffs meet the above-mentioned conditions – Article 381 (3) of CCP.¹⁵

Single or Multi-stage process

It is a multi-stage process. Initially, in a closed session the court verifies the admissibility and regulatory of the claim as well as the certification of the plaintiff – Article 381 (1) of CCP.

Afterwards, in an open session with summoning of the parties, the court hears the parties' observations on the circumstances determining the class of the injured parties and the manner of communication of the collective action to the public – Article 382 (1) of CPP.

¹² Chernev, Silvi Collective Actions, Trud i pravo, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017]

¹³ According to Article 130 of CCP where, upon verification of the statement of action, the court establishes that the action brought is inadmissible, the court shall return the statement of action.

¹⁴ Regulated in Articles 127 and 128 of CCP – the statement of action must have certain content and attachments in order to be considered regular for hearing.

¹⁵ See Ruling № 5951 / 14.11.2016 Commercial Case № 7904 /2013 the Sofia City Court – the proceeding was terminated because the organisation-plaintiff could not provide evidences for having sufficient financial resources for bearing the costs of proceeding.

The whole collective action can in general go through three instances - first, appeal and cassation. The cassation is admissible only for civil claims for damages over 5,000 BGN¹⁶.

Case-management and deadlines

Apart from the general procedural deadlines¹⁷, the Code of Civil Procedure contains special provisions on deadlines specific to the collective actions, for instance the deadline for Opt Out/Opt In – Article 382 (2) of CCP. The duration is defined by the court and is announced to the public so that the interested parties can request to be excluded from, respectively included in the proceeding.

Expediency (particularly in injunctive cases)

Article 310 of CCP provides a summary procedure only for cases of ascertainment and cessation of infringement of rights under the Consumer Protection Act (injunction).

Evidence/discovery rules

General procedural rules are applicable – Chapter 14 “Evidence” of CCP.

The main principle is that each party bears the burden of proof for the facts their claims and objections derive from – Article 154 (1) of CCP. Exceptions are facts based on presumptions (Article 154 (2) of CCP) as well as any facts of common knowledge and any facts known to the court ex officio, of which the court is obligated to inform the parties (Article 155 of CCP).

Acceptable are the following evidences – testimony, explanations by parties, written evidences, expert witnesses, and inspection and certification.

Interim measures

According to Article 385 (2) (3) of CCP, the court hearing the case, acting on a request by the plaintiff, may rule on adequate interim measures for protection of the harmed interests. The ruling may be modified or vacated by the same court in case of any change of circumstances, errors or omissions. The ruling is subject to appeal and cassation review, which do not prevent the enforcement of the ruling, unless the court competent to examine the appeal orders otherwise.

The interim measures requested by the plaintiff are not binding for the court hearing the case, which can rule measures deferring from the suggested ones.¹⁸

Court directed settlement option during procedure

The court which the action has been brought before is obliged to direct the parties to a settlement and explain thereto the advantages of considering any options for reaching a voluntary resolution of the dispute (Article 384 (1) of CCP).

Additionally, a special provision in the summary procedure (Article 315 (1) of CCP) requires that the court, during the hearing for examination of the case, re-invite the parties to reach a settlement.

Bringing a collective action is not considered an obstacle for out-of-court settlement. For this purpose, the parties may attend hearing before reconciliation commission or mediator. If the parties reach agreement on commencement of mediation or another procedure for voluntary resolution of the dispute, the court proceeding shall be stayed.¹⁹ In case a settlement has been reached, it then needs to be approved by the

¹⁶ Article 280 (2) CCP.

¹⁷ For instance, one week for the defendant to take a stand to the statement of action (Article 312 (2) of CCP), fortnight – for lodging an appeal against the decision of the first instance court (Article 259 (1) of CCP).

¹⁸ In this regard see Ruling № 184 / 30.03.2009 Commercial Case № 164 /2009 the Supreme Court of Cassation, II commercial division

¹⁹ See Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 778.

reconciliation commission as well as the court hearing the collective action case. The court checks whether the settlement agreement conflicts with the law or with good morals as well as if the measures it provides are suitable and sufficient for protection of the collective interest at stake.²⁰ The settlement agreement only takes effect after the court's approval – Article 384 (3) of CCP.

In case of out of court settlements: judicial control

According to Article 384 (2) (3) of CCP, the court approves the settlement, agreement, conciliation or another accommodation reached on a partial or complete resolution of the dispute only if the accommodation does not conflict with the law or good morals and if the harmed interest can be protected in a sufficient degree through the measures included in the said accommodation. The accommodation on resolution of the dispute takes effect only after it has been approved by the court.

3. Available Remedies

a) Type of damages

The law provisions do not specify the type of damages that can be claimed in the collective compensatory action proceedings.

Bulgarian case law seems to accept the view that both pecuniary and non-pecuniary damage can be sought in such proceedings, depending on the specific facts and circumstances of each case.²¹

b) Allocation of damages between claimants for compensatory claims/ distribution methods

The court may decree that the compensation be credited to an account of one of the plaintiffs, to a special account jointly disposable by the plaintiffs, or to a special account jointly disposable by the injured parties – Article 387 (1) of CCP. The court may obligate the plaintiffs to transfer the compensation to a special account jointly disposable by the injured parties, taking adequate measures to secure the execution of this obligation Article 387 (2) of CCP.

- Availability of punitive or extra-compensatory damages and their conditions – N/A
- Skimming-off/ restitution of profits - N/A
- Injunctions

The court hearing the collective action case may order the defendant to perform a specific act, to refrain from performing a specific act, or to pay a specific amount – Article 385 (1) of CCP.

Moreover, the court is not bound to accept the measures for protection requested by the plaintiff. Considering the specifics of the case and after considering the stand of the defendant, the court may as well order other measures which ensure adequate protection of the harmed interest, i.e. to act ex officio – Article 385 (4) of CCP. However as per the legal literature the court cannot grant damages in an amount higher than requested by the plaintiff.²²

c) Possibility to seek an injunction and compensation within one single action

It is possible for the plaintiff to bring several actions against the same defendant by a single statement of action if the said actions fall within the competence of the same court and are subject to examination in the procedure of the one and same type – Article 210 (1) of CCP. When the actions brought are not subject to examination in the one and same type of procedure or the court determines that the joint examination

²⁰ See Markov, Metodi "Collective actions for consumer protection", in "Society and Law", 2007/9, p.19.

²¹ Ruling № 411/01.08.2016 commercial case № 754/2016 the Supreme court of Cassation, II commercial division.

²² See Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 779.

of the said actions will be considerably impeded, the court can decree a dis-joinder of the actions – Article 201 (2) of CCP.

d) Possibility to rely on an injunction in separate follow-on individual or collective damages actions

It is possible to rely on an injunction decision in the follow-on actions for damages.²³

According to Article 386 of CCP, the judgment of the court has legal effect for the infringer, the person or persons who have brought the action, as well as those persons who: 1. Claim they are harmed by the established infringement, and 2. Have not declared they wish to pursue a remedy independently in a separate procedure (did not Opt Out).

The persons who opted out may avail themselves of the decision by which the collective action has been granted, however they are not bound by the decision for dismissing the collective action.²⁴ That is why a list of the excluded persons must be attached to the decision of the court – Article 386 (2) of CCP.

e) Limitation periods

General rules are applicable – limitation period is 5 years.²⁵

4. Costs

a) Basic rules governing costs and scope of the rules

Some legal authors express regrets that the Bulgarian legislator has failed to lay down special rules on fees due on collective actions. In the Bulgarian legal system, the court fees in civil cases are particularly high (in the majority of cases they are determined as a percentage of the material interest to be protected). In the absence of special rules to determine the fees, the courts must look for the volume of material interest, which will usually be measured in thousands or even in millions of Bulgarian leva (BGN) for the compensatory collective actions. The fees set by the general rule will be impossibly high, and in practice, the applicability of the compensatory collective redress will be frustrated²⁶. There are suggestions that a special charging system for the collective action be introduced which takes into consideration the important role of the collective redress institute for the protection of minor individual interests for which no adequate legal remedies would otherwise be available.

Costs consist of:

- Court fees – the injunction action can be considered as a claim for unappraisable interest (without a certain material interest), therefore the court defines the amount of the due fee and it can vary between 30 BGN and 80 BGN per claim – Article 71 (1) of CCP in connection with Article 3 and 4 of the Tariff for state fees collected by the courts under the Civil Procedure Code from 2008.²⁷ Court fees for a claim with a certain material interest is 4% of the amount of the claim, but not less than 50 BGN.²⁸

²³ See Civil case 4247/2014 of City Court – Sofia Civil Case (injunction) and the follow-on № 16588/2015 City Court – Sofia (damages on collective interests).

²⁴ See Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 779.

²⁵ Article 110 of the Obligations and Contracts Act.

²⁶ This opinion is shared by Chernev, Silvi Collective Actions, *Trud i pravo*, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017] as well as by Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, *Economic and Social Alternatives*, 2015/1, s. 147.

²⁷ Тарифа за държавните такси, които се събират от съдилищата по Гражданския Процесуален Кодекс (ГПК) [Tariff for state fees collected by the courts under the Civil Procedure Code promulgated in State Gazette 22/28.02.2008, the last amendment promulgated in State Gazette 35/02.05.2017]

²⁸ Tariff for state fees collected by the courts under the Civil Procedure Code from 2008 [Тарифа за държавните такси, които се събират от съдилищата по Гражданския Процесуален Кодекс (ГПК)] – promulgated in State Gazette 22/28.02.2008, the last amendment promulgated in State Gazette 35/02.05.2017

- Expertise remuneration - depending on complexity and scope of the tasks – between 500 and 1000 BGN, or even higher;
- Advocate fees – for claims for unappraisable interest the minimum fee is 300 BGN²⁹, in practice however it varies and could be much higher than that and can reach up to a few thousands BGN. For claims with a certain material interest the exact amount of advocate fee depends on the amount of the claim – the higher the latter is, the higher advocate fee is.³⁰
- Costs for publishing³¹ – they depend on the media and the size of the publication, and may vary between 10 and 30 BGN.

b) Loser Pays Principle (and exceptions from it)

Loser Pays principle is applicable to civil proceedings, including collective action ones, as per the Bulgarian law in force.

According to Article 78 of CCP, the fees paid by the plaintiff, the costs of the proceeding, and the fees for one lawyer, if any, are paid by the defendant commensurate to the portion of the action granted. The defendant, too, has the right of payment of the costs incurred commensurate to the portion of the action dismissed. If the defendant has not provided an occasion for institution of the case or if the defendant admits the claim, the costs shall be awarded against the plaintiff.

The legal provision allows a decrease of lawyers' fees, namely if the fees paid by the party are excessive considering the actual legal and factual complexity of the case. In such case the court, acting on a motion by the opposing party, may award a lower amount of the costs in this part, but not less than the minimum amount set per Article 36 of the Bar Act.

Parties in financial hardship are entitled to a Legal Aid³². If the claim of a recipient of legal aid is granted, the lawyers' fees paid shall be awarded in favour of the National Legal Aid Office commensurate to the portion of the action granted. In the cases of a judgment adverse to the recipient of legal aid, the said recipient shall owe costs commensurate to the portion of the action dismissed.

5. Lawyers' Fees

Availability (or not) of contingency fees and their conditions

The Bulgarian legal system allows conditional fee arrangements between a lawyer and a client, except for cases involving non-material interest (such as collective action for injunction) – Article 36 (4) of the Bar Act.

However according to the established Bulgarian case law³³, conditional fees are not recoverable as they depend on the outcome of the case and, hence, have not been paid up by the end of the trial, e.g. by the end of the final court hearing before the court decision³⁴.

29 Ordinance of the Supreme Bar Council No 1 from 2004 on the minimum advocate fees

³⁰ Article 7 (2) of Ordinance of the Supreme Bar Council No 1 from 2004 on the minimum advocate fees – promulgated in State Gazette 64/23.07.2004, the last amendment promulgated in State Gazette 84/25.10.2016

³¹ Article 382 (2) of CCP.

³² Requirements are set in Article 83 (2) of CCP.

³³ Interpretation Ruling № 6 / 06.11.2013 Interpret. Case № 6 / 2012 General Assembly of Civil and Commercial Divisions of the Supreme Court of Cassation

³⁴ See Article 80 of CCP “The party who has moved for the award of costs shall present to the court a list of costs not later than before the close of the last hearing in the court of the relevant instance. Failing this, the said party shall not have the right of appeal against the judgment in its part concerning the costs.”

6. Funding

a) Availability of funding

Based on the information collected for the purposes of the current study, it can be summarized that collective actions for protection of collective interest are funded by various sources, namely by the state budget (collective actions brought by the Commission for Consumer Protection), private donations³⁵, own financial resources of plaintiffs, or state funding for qualified consumer organisations.³⁶

b) Origins of funding (public, private, third party)

As mentioned above, there are various sources of funding – state budget, private donations, own financial resources of plaintiffs or state funding.

c) Conditions and frequency of resort to third party funding

No relevant information on third party funding has been found.

d) Control of funders (Courts/Legislators/Self-regulation)

No relevant information on control over third party funding has been found.

The system for control of spending the budget funding received by consumer organisations is regulated in the Chapter 5 of the Ordinance #RD-16-1117/01.10.2010.³⁷

e) Claimant-Funder relationship

No relevant information on the relationship between claimants and third party-funders has been found.

7. Enforcement of collective actions/settlements

a) Framework for enforcement

The general provisions of the Code of Civil Procedure (Part V of CCP) are applicable, namely:

- Title 2 “Enforcement of Pecuniary Receivables” – for compensatory redress;
- Title 2 “Enforcement of Non-Pecuniary Receivables”, Chapter 45 “Performance of Specific Act” – for injunctive redress. According to Article 527 of CCP, where the act cannot be performed by another person but depends exclusively on the will of the execution debtor, the enforcement agent, acting on a motion by the execution creditor, shall compel the said debtor to perform the act, imposing thereon a fine not exceeding BGN 200. If even after that the execution debtor fails to perform the act, the enforcement agent shall impose thereon successive new fines up to the same amount.

b) Efficient enforcement of compensatory/ injunctive order

The level of efficiency of enforcement of orders for protection of collective interests seems to be the same as the one of the other orders.

c) Cross border enforcement

Legal Framework is in the Code of Civil Procedure:

- Chapter 57 “Recognition of and Admission to Enforcement of Judgments and Judicial Acts Subject to Operation of Community Law;

35 See the website of the Association for Legal Aid of Consumers – <http://zastitanapotrebiteelite.com/%D0%BD%D0%B0%D0%BF%D1%80%D0%B0%D0%B2%D0%B8-%D0%B4%D0%B0%D1%80%D0%B5%D0%BD%D0%B8%D0%B5/> [last visited on 20.05.2017]

³⁶ See Ordinance #RD-16-1117/01.10.2010 on conditions and rules of providing financial resources to consumers’ organisation by the state [Наредба № РД-16-1117 от 1 Октомври 2010 г. за Условията и Реда за предоставяне на финансови средства на представителните сдружения на потребителите от държавата (Загл. Изм. – ДВ, Бр. 5 от 2012 Г.)]

³⁷ See below in the chapter for Special Collective Redress Mechanisms.

- Chapter 58 “Enforcement Pursuant To Regulation (EC) No 1896/2006 of The European Parliament and of The Council creating a European Order for Payment Procedure.

8. Number and types of cases brought/pending

During this study no information on a National Register of Collective Actions existing has been found³⁸.

Since 2016 the Annual Statistical Reports prepared and published by the Supreme Judicial Council contain data also on collective actions.³⁹ For instance, the Annual Report for 2016 states the district courts in Bulgaria heard in 2016 altogether 31 collective actions, out of which in 2 cases the claims were fully granted, in 10 cases – partially granted, and in 2 case the claims were dismissed, however, in the report, it is not specified for which type of rights protection was sought, namely consumer interests, labour rights, or other.

9. Impact of the Recommendation/Problems and Critiques, including

a) Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The impact is visible and positive. For the last few years since the collective redress mechanism was introduced in Bulgarian legislation, quite a few collective actions have been brought and the public awareness of this redress mechanism seems to be raised. The collective actions proceedings are mainly for the protection of collective consumers’ interests and only few proceedings are for the protection of collective interest in areas other than consumer protection.

When it comes to consumer collective redress, it is noticeable that the number of actions brought by consumers’ organisations is significantly lower than the number of those initiated by the Commission for Consumer Protection, mainly due to hindering effect of bearing costs of proceedings as well as the lack of resources for organising and successfully managing such complex proceedings.

The collective redress mechanism also has an impact on businesses, although a more indirect one. The requirement for a public announcement of the collective action brought, along with a corrective statement, encourages the infringers to voluntarily stop the unlawful behaviour (for instance, to cease the unfair practice or remove the unfair term) in order to prevent a harm to their good reputation in the business world. Although not many yet, such situations of proactive rectification can be found in Bulgarian practice, and they are revealing the impact which collective redress mechanisms have on behaviour of businesses.

b) Incompatibilities with the Recommendation’s principles

Based on the information collected for the purposes of the current report, a conclusion can be drawn that Bulgarian legislation in force is to a great extent compliant with the principles of Recommendation from 2013 with few exceptions:

- There does not seem to exist a National Register of Collective Actions;
- There is a room for improvement in regards of the requirement for the collective redress procedures not to be prohibitively expensive. In general, the costs of collective actions procedures in Bulgaria are high, which seems to be an obstacle for bringing new collective actions, especially by consumer organisations.

38 There is an electronic register of courts acts, maintained by the Supreme Judicial Council – this can be found here <http://legalacts.justice.bg/> [last visited on 20.05.2017], however not all collective actions seem to be included in it. Additionally, the Commission for Consumer Protection is working on its own register of collective actions brought by the Commission (it is still under construction and not yet functional - <https://www.kzp.bg/registar-kolektivni-iskove> [last visited on 20.05.2017]).

39 No data on collective actions was included in the report for previous year. This data seemed to be “hidden” in the category “other cases”. Statistical data can be found here – <http://www.vss.justice.bg/page/view/1082> [last visited on 20.05.2017].

– The lack of court chambers specialized in collective redress procedures can be considered as a disadvantage which appears to decrease the efficient case management as some judges are not very familiar with the specifics of this procedure.

c) Problems relating to access of justice/fairness of proceedings including

Restrictions on access to justice negatively affecting collective redress

Only the organisations for which the court has ex officio verified the ability to seriously and in good faith protect the injured party and bear the costs of the proceedings, including expenses, can bring collective actions. The decision is left to the courts discretion, and may create undesirable procedural obstacles for some organisation to prove their capacity and resource to bring such actions and successfully manage the cases.

Time and burden of collective actions on courts and parties compared to non-collective litigation

The collective redress procedure has specifics which require more time for preparing and managing the case both on the side of the parties involved and the judge hearing the case.

Risks of and examples for abusive litigation

Such risks exist in Bulgarian practice, however currently only theoretically. No information on abusive litigations has been found.

Effective right to obtain compensation

The right on compensation for damage on collective interest is acknowledged by general rules on collective redress mechanism. Due to a lack of sufficient case law on collective compensatory redress however it is difficult to assess the effectiveness of this right.

II. Sectoral Collective Redress Mechanism(s)

A. Injunctive Collective Redress – Article 186-187 of CPA

1. Scope/ Type

a. Sectoral

The approach is sectoral. The provisions regarding collective redress mechanisms for injunctive relief are applicable for infringements of legal rules on any of the following:⁴⁰

- consumer contracts negotiated away from business premises and distance consumer contracts, unfair business to consumer commercial practices, sale of consumer goods and associated guarantees, unfair terms in consumer contracts, timeshare, long-term holiday product, resale and exchange contracts (Article 186 (2) p. 1 of CPA);
- package travel, package holidays and package tours (Article 186 (2) p.2 of CPA);
- television broadcasting activities (Article 186 (2) p.3 of CPA);
- advertising of medicinal products for human use (Article 186 (2) p.4 of CPA);
- electronic commerce (Article 186 (2) p.5 of CPA);
- consumer credit (Article 186 (2) p.6 of CPA);
- distance marketing of consumer financial services (Article 186 (2) p.7 of CPA);
- services(Article 186 (2) p.8 of CPA); or
- any other legislation that protects the interests of consumers (Article 186 (2) p. 9 of CPA).⁴¹

b. Injunctive or compensatory or both

Articles 186-187 of CPA are regulating injunctive collective redress – namely for the cessation or prohibition of actions or commercial practices in detriment of collective interests of consumers.

There are attempts in Bulgarian legal literature for defining the term “collective interest of consumers”. Some authors consider it as an abstract interest of consumers in fair functioning of the market and compliance with legal provisions aimed at securing such fairness.⁴²

Furthermore, legal authors also share the view that the detriment of consumers’ interest exists not only when consumers have actually suffered damage, but also in the cases when their interests have been put at risk.⁴³

Both Bulgarian case law and legal literature accepts that this action can also take a form of a claim for a declaratory judgment, for instance for declaring of certain unfair contract terms as null and invalid.⁴⁴ In

⁴⁰ Basically in Article 186 (1) p. 1-8 of CPS are listed the acts transposing to the national legislation the provision of the EU acts listed in the Annex I to the Injunction Directive.

⁴¹ Some legal authors point out that Bulgarian legislator has not limited the application of the injunctive collective redress only to infringements of the acts listed in the Annex I to the Injunction Directive – see Markov, Metodi “Collective actions for consumer protection”, in “Society and Law”, 2007/9, p. 13.

⁴² Varadinov, Ognyan Lukanov Unfair Commercial Practices in transactions between trader and consumer: Analysis of Chapter IV, Section IV consumer Protection Act, 2014, p. 232.

⁴³ Varadinov, Ognyan Lukanov Unfair Commercial Practices in transactions between trader and consumer: Analysis of Chapter IV, Section IV consumer Protection Act, 2014, p. 233.

⁴⁴ Decision № 207/24.01.2012 Commercial Case № 580/2011 the Supreme Court of Cassation, II Commercial division; Decision № 160/15.12.2011 Commercial Case № 1072/2010 the Supreme Court of Cassation, I Commercial division. See also Sukareva, Zlatka Consumer Law, 2015, p. 232.

support of this view is also the procedural rule of Article 379 (2) of CCP explicitly allowing collective actions for declaratory judgement.⁴⁵

2. Procedural Framework

a. Competent Court

The court competent to hear the action is the district court⁴⁶ in the place where the infringement was committed or the one in the place of the defendant's registration – Article 190 of CPA.⁴⁷

b. Standing

Collective action for injunction can be brought by any of the following:

- Qualified consumer protection organisations⁴⁸ which are registered in Bulgaria.⁴⁹ According to an opinion in the legal literature, the procedural legitimation of those organisations is established by the law, and it does not depend on the indication of more than two identified persons whose rights and interests as consumers have been affected or injured by the infringement,⁵⁰
- The Commission for Consumer Protection.⁵¹ The Commission itself, in its capacity as a state body established by law to protect group interests belonging to a certain category of consumers, is the plaintiff, not the consumers;⁵²
- Qualified consumer protection organisation from any other member state of the EU, if an infringement of collective interests of consumers committed in Bulgaria have effects also on its territory and it is included in the list of qualified organisations prepared by the European Commission published in the Official Journal of the EU.⁵³

c. Availability of Cross Border collective redress

According to Article 186a of CPA, an action for injunctive collective redress can also be brought by a qualified consumer protection organisation from any other member state of the EU, provided that an

⁴⁵ Some authors disagree with the opinion that this provision is applicable to collective action under CPA, hence although allowed by general procedural rules, collective actions for declaratory judgment are not applicable for protection of collective consumers interests – Varadinov, Ognyan Lukanov Unfair Commercial Practices in transactions between trader and consumer: Analysis of Chapter IV, Section IV consumer Protection Act, 2014, p. 234 and p.237.

⁴⁶ According to Article 380 (1) of CCP. See also Chernev, Silvi Collective Actions, *Trud i pravo*, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017]; Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 774.

⁴⁷ Ruling № 1546 / 12.07.2013 Appeal Commercial Case № 790/2013 the Court of Appeal – Plovdiv; the court cannot decide ex officio that it has not territorial competence to hear the case – Ruling № 769 / 29.04.2011 Appeal Civil Case № 1213/2011 the Court of Appeal – Sofia; in case of unfair contract terms – the infringement is committed (thus competent is the district court) in the place, where the standard T&Cs have been drafted/approved, not in the places where consumer contracts referring to these T&Cs have been concluded – Ruling № 2725 / 20.09.2013 Civil Case № 693/2013 the District Court – Plovdiv; if the place where the infringement was committed cannot be identified, the competent is the court of the defendant's registration – Ruling № 185 / 04.03.2014 Commercial Case № 587/2014 the Supreme Court of Cassation, I Commercial division.

⁴⁸ The current list can be found here <http://www.mi.government.bg/bg/library/spisak-na-kvalificiranite-organizacii-v-republika-balgariya-koito-imat-praven-interes-da-predyavyavat-43-c293-m0-1.html> – [last visited on 20.05.2017]

⁴⁹ See Markov, Metodi "Collective actions for consumer protection", in "Society and Law", 2007/9, p.14.

⁵⁰ Gradinarova, Tanya The procedural legitimation in the class action in Bulgarian civil proceedings, Academic papers, University-Russe, 2015, volume 54, series 7, p. 73

⁵¹ According to Article 186 (3) of CPA

⁵² Ruling № 193 / 19.04.2017 Commercial Case № 400 /2017 the Supreme Court of Cassation, I Commercial division, which refers to Decision № 207/24.01.2012 Commercial Case № 580/2011 the Supreme Court of Cassation, II Commercial division.

⁵³ According to Article 186a (1) of CPA

infringement of collective interests of consumers committed in Bulgaria has effects also on its territory, under two conditions:

- The infringement affects consumers' interests, protection of which is one of the goals of the organisation;
- The organisation is included in the list of qualified bodies prepared by the European Commission and published in the Official Journal of the EU.

Bulgarian legal practice however does not seem to have experienced so far any such cross-border collective redress proceedings.

d. Opt In/ Opt Out

Principal availability of either/or/both options?

The general procedural rules of the Chapter 33 "Collective actions" of CCP are applicable.⁵⁴

Furthermore, some legal authors state that only the entities with right of standing can exercise Opt In/Opt Out rights, not individual consumers, as the latter cannot anyway be constituted as plaintiffs in the proceedings under Article 186 of CPA.⁵⁵

Opt-out restricted to in-jurisdiction claimants?

No such restrictions exist.

If opt-out, is it justified by the sound administration of justice?

As stated earlier, the dispositive principle is one of the fundamental principles of Bulgarian Civil Procedure Law – Article 6 of CCP. Persons can freely decide whether to commence a court proceeding for protection of their civil law rights, define the scope of protection of their rights, or even terminate the civil court case (or their participation in it) at any time. Therefore, the provision of Article 383 (1) p. 2 of CCP (Opt Out option) can be considered compliant with the main principles of Civil Procedural Law.

Specific measures related to the fact that affected persons are not identifiable

The general procedural rules of the Chapter 33 "Collective actions" of CCP are applicable.⁵⁶

e. Main procedural rules

Admissibility and certification criteria

The general procedural rules of the Chapter 33 of CCP are applicable, namely the court shall ex officio verify the ability of the person or persons who have brought the action to seriously and in good faith protect the injured parties and bear the costs of the proceedings, including expenses.

Some legal authors however consider these rules of general procedural law as inapplicable to collective actions under Article 186 of CPA as such can be brought only by qualified organisations (either national or from other EU member states), which have already been tested and found by the Ministry of Economy to be serious, reliable and capable for performing activities to protect consumers interests.⁵⁷ Furthermore,

⁵⁴ See above Part II "General Collective Redress Mechanism"

⁵⁵ Varadinov, Ognyan Lukanov Unfair Commercial Practices in transactions between trader and consumer: Analysis of Chapter IV, Section IV consumer Protection Act, 2014, p. 240.

⁵⁶ See above Part II "General Collective Redress Mechanism"

⁵⁷ Varadinov, Ognyan Lukanov Unfair Commercial Practices in transactions between trader and consumer: Analysis of Chapter IV, Section IV consumer Protection Act, 2014, p. 236.

these organisations are receiving state funding for their activities, including for bringing collective actions for protection of consumers interests.⁵⁸

Single or Multi-stage process

The general procedural rules of the Chapter 33 of CCP are applicable i.e. it is a multi-stage process and the whole collective action for injunctive relief can in general go through three instances - first, appeal and cassation.

Case-management and deadlines

Apart from the general procedural deadlines⁵⁹, the Code of Civil Procedure contains special provisions on deadlines specific for the collective actions, for instance the deadline for Opt Out/Opt In – Article 382 (2) of CCP.

Expediency (particularly in injunctive cases)

Article 310 of CCP provides a summary procedure for cases of ascertainment and cessation of infringement of rights under the Consumer Protection Act (injunction).

The procedural rules require that on the day of receipt of the statement of action, the court verifies the conformity thereof and the admissibility of the action. The court instructs the plaintiff to supplement, clarify or eliminate the contradictions in the allegations, namely whichever of them are obscure, deficient, or imprecise – Article 311 of CCP.

According to Article 312 of CCP, on the day of receipt of the answer of the defendant, or upon reaching the time limit for receiving such an answer, the court sitting in a closed session (in camera) issues an order in which it:

1. schedules a hearing of the case for a date within three weeks;
2. prepares a written report on the case;
3. invites the parties to reach a settlement and explains thereto the advantages of the various options for reaching a voluntary resolution of the dispute;
4. pronounces on the motions for evidence, thus only admitting the evidence which is relevant and admissible;
5. determines an amount and a time limit for depositing of the costs of evidence collection.

The court serves upon the parties a duplicate copy of the above-mentioned order, and in addition to the said duplicate copy serves upon the plaintiff a duplicate copy of the defendant's written answer as well as the evidence attached thereto, and instructs that the parties within one week take a stand to the instructions given and the report on the case and undertake the relevant procedural steps. The court also advises the parties on the consequences of non-compliance with the instructions – Article 312 (2) of CCP. Where the parties fail to comply with the instructions of the court within the time limit set, the parties forfeit the possibility to do so later, unless the omission is due to special unforeseen circumstances (Article 313 of CCP).

The court publishes its decision with the reasoning within two weeks after the hearing during which the examination of the case was concluded (Article 316 of CCP).

⁵⁸ See below about the funding.

⁵⁹ For instance, one week for submission by the defendant to take a stand to the statement of action (Article 312 (2) of CCP), fortnight – for lodging an appeal against the decision of the first instance court (Article 259 (1) of CCP).

Evidence/discovery rules

General procedural rules are applicable – the Chapter 14 “Evidence” of CCP.

Interim measures

The general procedural rules of the Chapter 33 “Collective actions” of CCP are applicable.⁶⁰

Court directed settlement option during procedure

The general procedural rules of the Chapter 33 “Collective actions” of CCP are applicable.⁶¹ The court which the action has been brought before is obliged to direct the parties to a settlement and explain thereto the advantages of considering any options for reaching a voluntary resolution of the dispute (Article 384 (1) of CCP).

Additionally, a special provision in the summary procedure (Article 315 (1) of CCP) requires that the court, during the hearing for examination of the case, re-invite the parties to reach a settlement.

In case of out of court settlements: judicial control

The general procedural rules of the Chapter 33 “Collective actions” of CCP are applicable.⁶²

3. Available Remedies

a. Injunctions

According to Article 187 of CPA, when it is found that a particular commercial practice or action constitutes an infringement under Article 186 of CPA, the court may:

- Obligate the manufacturer, the importer, the trader and the supplier to publish, in an appropriate manner and at their expense, the judgment or part thereof and/or make a public corrective statement in order to eliminate the effect of the infringement;
- Order the manufacturer, the importer, the trader and the supplier to stop the unfair commercial practice or remove the unfair terms from the contract within a certain period;
- Make other appropriate measures for termination of the infringements, on the request of the persons under Article 186 (1) of CPA.
- Moreover, the court is not bound to accept the measures for protection requested by the plaintiff. Considering the specifics of the case and after taking into consideration the stand of the defendant, the court may as well order other measures which ensure adequate protection of the harmed interest, i.e. to act ex officio – Article 385 (4) of CCP.

b. Possibility to seek an injunction and compensation within one single action

It is possible for the plaintiff to bring several actions against the same defendant by a single statement of action if the said actions fall within the competence of the same court and are subject to examination in the procedure of the one and same type as per the general procedural rules (Article 210 (1) of CCP). When the actions brought are not subject to examination under the one and same type of procedure or the court determines that the joint examination of the said actions will be considerably impeded, the court can decree a dis-joinder of the actions – Article 201 (2) of CCP.

⁶⁰ See above Part II “General Collective Redress Mechanism”

⁶¹ See above Part II “General Collective Redress Mechanism”

⁶² See above Part II “General Collective Redress Mechanism”

c. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

It is possible to rely on injunction decision in the follow-on actions for damages in accordance with the general procedural rules for collective redress.⁶³

d. Limitation periods

General rules are applicable – limitation period is 5 years.⁶⁴

4. Costs

a. Basic rules governing costs and scope of the rules

Costs consist of:

- Court fees – the injunction action can be considered as a claim for unappraisable interest (without a certain material interest), therefore the court defines the amount of the due state fee and it can vary between 30 BGN and 80 BGN per claim – Article 71 (1) of CCP in connection with Article 3 and 4 of the Tariff for state fees collected by the courts under the Civil Procedure Code from 2008.⁶⁵ These rules are applicable regardless of the plaintiff – the same court fees are due by the consumer protection organisations bringing collective action for injunctive relief as well as by the Commission for Consumer Protection.⁶⁶
- Expertise remuneration - depending on complexity and scope of the tasks – between 500 and 1000 BGN, or even higher;
- Advocate fees – for claims for unappraisable interest the minimum fee is 300 BGN⁶⁷, in practice it varies and could be much higher than that and can reach up to a few thousands BGN. The Commission for Consumer Protection is using the services of its own legal counsellors, therefore is not bearing the additional financial burden of advocate fees.⁶⁸
- Costs for publishing⁶⁹ – they depend on the media and the size of the publication, and may vary between 10 and 30 BGN.

b. Loser Pays Principle

Loser Pays principle is applicable to civil proceedings as per the Bulgarian law in force. The general rules of CPP are applicable.

5. Lawyers' Fees

Availability (or not?) of contingency fees and their conditions

The Bulgarian legal system allows conditional fee arrangements between a lawyer and a client, except for cases involving non-material interest (such as collective action for injunction) – Article 36 (4) of the Bar Act.

⁶³ See Civil case 4247/2014 of City Court – Sofia Civil Case (injunction) and the follow-on № 16588/2015 City Court – Sofia (damages on collective interests).

⁶⁴ Article 110 of the Obligations and Contracts Act.

⁶⁵ Тарифа за държавните такси, които се събират от съдилищата по Гражданския Процесуален Кодекс (ГПК) [Tariff for state fees collected by the courts under the Civil Procedure Code promulgated in State Gazette 22/28.02.2008, the last amendment promulgated in State Gazette 35/02.05.2017]

⁶⁶ Ruling № 937 / 25.11.2011 Commercial Case № 825 /2011 the Supreme Court of Cassation, II commercial division; see also Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 149

⁶⁷ Ordinance of the Supreme Bar Council No 1 from 2004 on the minimum advocate fees

⁶⁸ Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 149

⁶⁹ Article 382 (2) of CCP.

However according to the established Bulgarian case law⁷⁰, conditional fees are not recoverable as they depend on the outcome of the case and, hence, have not been paid up by the end of the trial, e.g. by the end of the final court hearing before the court decision⁷¹.

6. Funding

a. Availability of funding

Based on the information collected for the purposes of the current study, it can be summarized that collective actions for protection of consumers' interest are funded by various sources – state budget (for the actions brought by the Commission for Consumer Protection), private donations⁷², own financial resources of consumer organisations, and state funding.

The state funding is regulated by the Ordinance #RD-16-1117/01.10.2010 on conditions and rules of providing financial resources to consumers' organisation by the state⁷³. According to this act, consumer organisations that meet certain criteria (stated in Article 3 of the Ordinance) can obtain financial resource from the state budget in order to fund their activities, including protection of collective interests of consumers. For the current year 2017 the total budget secured by the Ministry of Economy for the funding activities of consumer protection organisations in Bulgaria is 70,000 BGN⁷⁴.

Some legal authors, however, consider the availability of funding only as a theoretical option without actual practical effect.⁷⁵ Therefore the consumer protection organisations are reluctant to bring collective actions – the amount of expenses will surely be high, and the chances to get compensation – low.⁷⁶

b. Origins of funding (public, private, third party)

As mentioned above, there are various sources of funding – state budget (the actions brought by the Commission for Consumer Protection), private donations, own financial resources of consumer organisations, and state funding.

c. Conditions and frequency of resort to third party funding

No relevant information on third party funding has been found.

d. Control of funders (Courts/Legislators/Self-regulation)

The system for control of spending the budget funding received by consumer organisations is regulated in the Chapter 5 of the Ordinance #RD-16-1117/01.10.2010. The consumer organisation must render an account of the spent resources and provide an annual report for its activities. These documents are reviewed by a Committee appointed by the Minister of Economy which prepares a report with suggestions for approval of certain expenditures of consumer organisations. Non-spent financial resources or resources

70 Interpretation Ruling № 6 / 06.11.2013 Interpret. Case № 6 / 2012 General Assembly of Civil and Commercial Divisions of the Supreme Court of Cassation

71 See Article 80 of CCP.

72 See the website of the Association for Legal Aid of Consumers – <http://zastitanapotrebite.com/%D0%BD%D0%B0%D0%BF%D1%80%D0%B0%D0%B2%D0%B8-%D0%B4%D0%B0%D1%80%D0%B5%D0%BD%D0%B8%D0%B5/> [last visited on 20.05.2017]

73 Наредба № РД-16-1117 от 1 Октомври 2010 г. за Условиата и Реда за предоставяне на финансови средства на представителните сдружения на потребителите от държавата (Загл. Изм. – ДВ, Бр. 5 от 2012 Г.)

74 Order #RD-16-299/02/03.2017 of the Minister of Economy – <https://www.mi.government.bg/bg/themes/sdrujeniya-na-potrebite-326-325.html> [last visited on 20.05.2017]

75 Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 148.

76 Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 148

spent in violation of the provisions of the Ordinance must be returned by consumer organisations to the budget of the Ministry.

e. Claimant-Funder relationship

No relevant information on the relationship between claimants and third party-funders has been found.

7. Enforcement of collective actions/settlements

a. Framework for enforcement

The general provisions of the Code of Civil Procedure (Part V of CCP) are applicable.

b. Efficient enforcement of compensatory/ injunctive order

The level of efficiency of injunctive order for protection of collective consumers' interests seems to be the same as the one of the other order for performing of or refraining from acts – for each case of failure a fine is imposed to the debtor.

c. Cross border enforcement

Legal Framework is in the Code of Civil Procedure Chapter 57 and 58.⁷⁷

8. Number and types of cases brought/pending

In the course of this study no information on a National Register of Collective Actions existing has been found⁷⁸.

Additionally, there does not seem to exist relevant statistical data about collective actions for protection of consumers' interests. The latter actions seem to be included/"hidden" under the statistical category "collective actions" in the Annual Statistical Reports, prepared and published by the Supreme Judicial Council.⁷⁹

Therefore preparing a comprehensive overview on completed/pending collective actions for injunctive relieve (Article 186 of CPA) in Bulgaria appears to be a challenge. Based on various sources⁸⁰ the following summary of collective actions has been prepared:⁸¹

Legal basis	Article 186 CPA	Article 188 CPA	Article 189 CPA
Plaintiff			
Commission for Consumer Protection	73	n/a	n/a

⁷⁷ See above Part II "General Collective Redress Mechanism"

⁷⁸ There is an electronic register of courts acts, maintained by the Supreme Judicial Council – this can be found here <http://legalacts.justice.bg/> [last visited on 20.05.2017], however not all collective actions seem to be included in it. Additionally, the Commission for Consumer Protection is working on its own register of collective actions brought by the Commission (it is still under construction and not yet functional - <https://www.kzp.bg/registar-kolektivni-iskove> [last visited on 20.05.2017]).

⁷⁹ Statistical data can be found here – <http://www.vss.justice.bg/page/view/1082> [last visited on 20.05.2017]. For instance, the Annual Report for 2016 states the district courts in Bulgaria heard in 2016 altogether 31 collective actions, out of which in 2 cases the claims were fully granted, in 10 cases – partially granted, and in 2 case the claims were dismissed, however in the report it is not specified the type of rights which protection was sought, namely whether those were consumer interests, labour rights, or other.

⁸⁰ Such as the Annual Reports of the Commission for Consumer Protection, information found on the websites of qualified consumer protection organisations and in their annual reports, or information provided by some of the organisations.

⁸¹ Data for the following periods – for the last three years (2014, 2015 and 2016) for the Commission; without time limits for any of the other plaintiffs.

Bulgarian National Association Active Consumers	4	3	
Consumers Legal Aid Association – Plovdiv	8		
Federation of Consumers in Bulgaria	1	1	

9. Impact of the Recommendation/Problems and Critiques, including

- a. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The impact is visible and positive. For the last few years since the collective redress mechanism was introduced in Bulgarian legislation, Bulgarian consumer organisations and the Commission for Consumer Protection have brought a few actions, and there is already an extensive case law on this matter. It is obvious though that the number of actions brought by consumers' organisations is significantly lower than the number of those initiated by the Commission, mainly due to hindering effect of bearing costs of proceedings as well as the lack of resources for organising and successfully managing such complex proceedings.

As mentioned above⁸², there is an impact also for businesses, although more indirect one.

- b. Incompatibilities with the Recommendation's principles

Based on the information collected for the purposes of the current report, a conclusion can be drawn that Bulgarian legislation in force is compliant to a great extent with the principles of Recommendation from 2013 with few exceptions:

- There does not seem to exist a National Register of Collective Actions;
- There is a room for improvement in regards of the requirement for the collective redress procedures not to be prohibitively expensive. In general, the costs of collective actions procedures in Bulgaria are high, which seems to be an obstacle for bringing new collective actions, especially by consumer organisations.
- The lack of court chambers specialized in collective redress procedures can be considered as a disadvantage which appears to decrease the efficient case management as some judges are not very familiar with the specifics of this procedure.

- c. Problems relating to access of justice/fairness of proceedings including

Restrictions on access to justice negatively affecting collective redress

Only the organisations for which the court has ex officio verified the ability to seriously and in good faith to protect the injured party and bear the costs of the proceedings, including expenses, can bring collective actions. Decision is left in courts discretion, and may create undesirable procedural obstacles for some consumer organisation for proving their capacity and resource to bring such actions and successfully manage the cases.

Time and burden of collective actions on courts and parties compared to non-collective litigation

The collective redress procedure has specifics which require more time for preparing and managing the case both on the side of the parties involved and the judge hearing the case.

⁸² See above Part II "General Collective Redress Mechanism"

Risks of and examples for abusive litigation

Such risks exist in Bulgarian practice, however currently only theoretically. No information on abusive litigations has been found.

Effective right to obtain compensation

Not applicable to the injunctive collective redress.

B. Compensatory Collective Redress – Article 188 of CPA (group action)

1. Scope/ Type

a. Sectoral

The approach is sectoral, namely the compensatory collective redress is applicable to all cases of damages to collective consumers' interests – Article 188 (1) of CPA.

b. Injunctive or compensatory or both

Article 188 of CPA is regulating compensatory collective redress – for damages to collective interests of consumers. In Bulgarian case law, it is clarified that the existence of several (or even a significant number) individual claims which are joint together only because the damage suffered by individuals is identical does not represent a collective interest. A collective action for damages to the collective interest is not a claim for damages of each of the affected individuals, but of a certain group of injured parties, specified by the plaintiff in the statement of action.⁸³

According to the case law, the provisions of the Chapter 33 “Collective Actions” of CCP are applicable also to the action based on Article 188 of CPA.⁸⁴

2. Procedural Framework

a. Competent Court

The court competent to hear the action is the district court⁸⁵ in the place where the infringement was committed or the one in the place of the defendant's registration – Article 190 of CPA.⁸⁶

b. Standing

Any consumer association can initiate the procedure.

⁸³ Decision № 198/02.10.2013 civil case № 1420/2012 the Supreme court of Cassation, III civil division; Ruling № 411/01.08.2016 commercial case № 754/2016 the Supreme court of Cassation, II commercial division.

⁸⁴ Ruling № 411/01.08.2016 commercial case № 754/2016 the Supreme court of Cassation, II commercial division

^{85,85} According to Article 380 (1) of CCP. See also Chernev, Silvi Collective Actions, *Trud i pravo*, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017]; Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 774.

⁸⁶ Ruling № 1546 / 12.07.2013 Appeal Commercial Case № 790/2013 the Court of Appeal – Plovdiv; the court cannot decide ex officio that it has not territorial competence to hear the case – Ruling № 769 / 29.04.2011 Appeal Civil Case № 1213/2011 the Court of Appeal – Sofia; in case of unfair contract terms – the infringement is committed (thus competent is the district court) in the place, where the standard T&Cs have been drafted/approved, not in the places where consumer contracts referring to these T&Cs have been concluded – Ruling № 2725 / 20.09.2013 Civil Case № 693/2013 the District Court – Plovdiv; if the place where the infringement was committed cannot be identified, the competent is the court of the defendant's registration – Ruling № 185 / 04.03.2014 Commercial Case № 587/2014 the Supreme Court of Cassation, I Commercial division.

No requirement exists for it to be a qualified entity according to the Ordinance of the Minister of Economy. It can be organisation with long-lasting activities in the field of consumer protection or an organisation established ad-hoc for protection of a certain collective interest.⁸⁷

c. Availability of Cross Border collective redress

Cross-border collective redress seems to be available and admissible in accordance with the general rules of the Code of Civil Procedure. No special rules on its availability exist.

d. Opt In/ Opt Out

Principal availability of either/or/both options?

Bulgarian legislation allows both options, namely Opt In and Opt Out in the provision of Article 383 of CCP, which is applicable to all collective actions proceeding.⁸⁸

Conditions for either type (prescribed by law or discretion of the judge?)

It is however doubtful whether the general procedural rule of Article 383 of CCP is completely applicable to proceedings under Article 188 of CPA aimed at compensation of damages on collective interests of consumers (of the whole class/group of affected consumers), and not to individual interests of any particular consumer. A question can be raised why the latter explicitly need to request participation in the collective redress proceeding (Opt In), having in mind they will not be granted individual compensation in this proceeding and their interest as a member of the affected consumer class are already represented in the case.

It would make more sense for affected consumers to Opt Out from the collective redress for damages and seek individual compensatory redress in a separate proceeding.

In conclusion, only the Opt Out option seems meaningful in the proceedings under Article 188 of CPA.

Opt-out restricted to in-jurisdiction claimants?

No such restrictions exist.

If opt-out, is it justified by the sound administration of justice?

The dispositive principle is one of the fundamental principles of Bulgarian Civil Procedure Law – Article 6 of CCP. Persons can freely decide whether to commence a court proceeding for protection of their civil law rights, define the scope of protection of their rights, or even terminate the civil court case (or their participation in it) at any time. Therefore, the provision of Article 383 (1) p. 2 of CCP (Opt Out option) can be considered compliant with the main principles of Civil Procedural Law.

Specific measures related to the fact that affected persons are not identifiable

The class of consumers affected needs to be defined in the legal claim without identifying each and every individual. The general rules on collective actions are applicable, namely the court hear in an open session (with summoning of the plaintiff and the defendant) all parties' observations on the circumstances determining the group of the persons affected and the manner of communication of the collective action to the public. – Article 382 (2) of CCP.

⁸⁷ Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 145; Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 774.

⁸⁸ See above Part II “General Collective Redress Mechanism”

e. Main procedural rules

Admissibility and certification criteria

The general procedural rules are applied - the court hearing the case verifies the admissibility of the claim, the regularity of the claim and additionally ex officio verifies the ability of the person or persons who have brought the action to seriously and in good faith protect the injured parties and bear the costs of the proceedings, including expenses.

Single or Multi-stage process

It is a multi-stage process.

The whole collective action for compensatory relief can in general go through three instances – first, appeal and cassation. The cassation instance is excluded for civil law claims with an amount lower than 5,000 BGN – Article 280 (2) of CPP.

Case-management and deadlines

The general procedural rules are applicable - apart from the general procedural deadlines⁸⁹, the Code of Civil Procedure contains special provisions on deadline specific for the collective actions, for instance the deadline for Opt Out/Opt In – Article 382 (2) of CCP.

Expediency (particularly in injunctive cases)

Article 310 of CCP provides a summary procedure only for cases of ascertainment and cessation of infringement of rights under the Consumer Protection Act (injunction). Summary procedure is not applicable to actions for damages.⁹⁰

Evidence/discovery rules

General procedural rules are applicable – the Chapter 14 “Evidence” of CCP.⁹¹

Interim measures

The general procedural rules of the Chapter 33 “Collective actions” of CCP are applicable.⁹²

Court directed settlement option during procedure

The general procedural rules of the Chapter 33 “Collective actions” of CCP are applicable.⁹³

In case of out of court settlements: judicial control

The general procedural rules of the Chapter 33 “Collective actions” of CCP are applicable.⁹⁴

3. Available Remedies

Compensation for damage to collective consumers’ interests shall be granted to the plaintiff – consumer protection organisation. The latter shall be obliged to spend the compensation only for consumer protection purposes – Article 188 (5) of CPA.

⁸⁹ For instance, one week for submitting by the defendant to take a stand to the statement of action (Article 312 (2) of CCP), fortnight – for lodging an appeal against the decision of the first instance court (Article 259 (1) of CCP).

⁹⁰ See Sukareva, Zlatka Consumer Law, 2015, p. 221 referring to Ivanova, Ruzha Blagovest Punev, Silvi Chernev Commentary on the new Code of Civil Procedure, 2008, p. 518.

⁹¹ See above Part II “General Collective Redress Mechanism”

⁹² See above Part II “General Collective Redress Mechanism”

⁹³ See above Part II “General Collective Redress Mechanism”

⁹⁴ See above Part II “General Collective Redress Mechanism”

In the previous version of Article 188 (enforced in 2005 and abrogated in 2008 with the new Code of Civil Procedure) it was stated that the collective interests of consumers were damaged when there was an infringement of the consumer protection legal acts under Article 186 of CPA, regardless of whether the injured party might have been established and the damage was or was not actually suffered or the interests of the consumers were only put at risk – Article 188 (2). According to Article 188 (3), in its previous version, the compensation for consumer detriment was to be determined by the courts in accordance with the requirement of fairness and justice. However, the latter two provisions have been abrogated by the new Code of Civil Procedure, entered into force in 2008. Nowadays, instead of compensation, consumers can seek damages which amount should be substantiated.⁹⁵ Therefore in the civil proceeding for damages of collective consumers interests the courts require that the amount of damages claimed per consumer be specified and supported with evidences, which creates a lot of procedural obstacles for collective actions and is criticized in the legal literature.⁹⁶

a. Type of damages

The law provisions do not specify the type of damages that can be claimed in the collective compensatory action proceedings.

The case law seems to accept the view that both pecuniary and non-pecuniary damage can be sought in such proceedings depending on the specific facts and circumstances of each particular case.⁹⁷

b. Allocation of damages between claimants for compensatory claims/ distribution methods

Should there be more than one plaintiff the compensation shall be granted jointly to all of them – Article 188 (4) of CPA.

c. Injunctions

Available in the proceeding based on Article 186 of CPA.

d. Possibility to seek an injunction and compensation within one single action

It is possible for the plaintiff to bring several actions against the same defendant by a single statement of action if the said actions fall within the competence of the same court and are subject to examination according to the procedure of the one and same type – Article 210 (1) of CCP. When the actions brought are not subject to examination under the one and same type of procedure or the court determines that the joint examination of the said actions will be considerably impeded, the court can decree a dis-joiner of the actions – Article 201 (2) of CCP.

e. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

It is possible to rely on injunction decision in the follow-on actions for damages.⁹⁸

The legal effect of court decision is regulated by the general provisions of the Chapter 33 of CCP.

⁹⁵ Decision 25.04.2017 civil case № 16588/2015 the City Court – Sofia – the action based on Article 188 was dismissed because the plaintiff didn't succeed in proving the amount of damages.

⁹⁶ See Sukareva, Zlatka Consumer Law, 2015, p. 234. Some legal authors even think the chances to get such compensation are equal to zero - Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 146.

⁹⁷ Ruling № 411/01.08.2016 commercial case № 754/2016 the Supreme court of Cassation, II commercial division.

⁹⁸ See Civil case 4247/2014 of City Court – Sofia Civil Case (injunction) and the follow-on № 16588/2015 City Court – Sofia (damages on collective interests).

f. Limitation periods

General rules are applicable – limitation period is 5 years.⁹⁹

4. Costs

Basic rules governing costs and scope of the rules

As mentioned earlier, some legal authors express regrets that Bulgarian legislator has failed to lay down special rules on fees due on collective claims. The fees set by the general rule will be impossibly high, and in practice, the applicability of the compensatory collective redress will be frustrated¹⁰⁰.

- Costs consist of:
- Court fees – Court fees – 4% of the amount of the claim, but not less than 50 BGN.¹⁰¹
- Expertise remuneration – depending on complexity and scope of the tasks – between 500 and 1000 BGN, or even higher;
- Advocate fees – the minimum is 300 BGN¹⁰². The exact amount depends on the amount of the claim – the higher the latter is, the higher advocate fee is.¹⁰³
- Costs for publishing¹⁰⁴ – they depend on the media and the size of publication, and can vary between 10 and 30 BGN.

5. Lawyers' Fees

Availability (or not?) of contingency fees and their conditions

The Bulgarian legal system allows conditional fee arrangements between a lawyer and a client, except for cases involving non-material interest (such as collective action for injunction) – Article 36 (4) of the Bar Act.

However according to the established Bulgarian case law¹⁰⁵, conditional fees are not recoverable as they depend on the outcome of the case and, hence, have not been paid up by the end of the trial, e.g. by the end of the final court hearing before the court decision¹⁰⁶.

⁹⁹ Article 110 of the Obligations and Contracts Act.

¹⁰⁰ This opinion is shared by Chernev, Silvi Collective Actions, *Trud i pravo*, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017] as well as by Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, *Economic and Social Alternatives*, 2015/1, s. 147.

¹⁰¹ Tariff for state fees collected by the courts under the Civil Procedure Code from 2008 [Тарифа за държавните такси, които се събират от съдилищата по Гражданския Процесуален Кодекс (ГПК)] – promulgated in State Gazette 22/28.02.2008, the last amendment promulgated in State Gazette 35/02.05.2017

¹⁰² Ordinance of the Supreme Bar Council No 1 from 2004 on the minimum advocate fees

¹⁰³ Article 7 (2) of Ordinance of the Supreme Bar Council No 1 from 2004 on the minimum advocate fees – promulgated in State Gazette 64/23.07.2004, the last amendment promulgated in State Gazette 84/25.10.2016

¹⁰⁴ Article 382 (2) of CCP.

¹⁰⁵ Interpretation Ruling № 6 / 06.11.2013 Interpret. Case № 6 / 2012 General Assembly of Civil and Commercial Divisions of the Supreme Court of Cassation

¹⁰⁶ See Article 80 of CCP.

6. Funding

a. Availability of funding

Based on the information collected for the purpose of the current study, it can be summarized that collective compensatory actions for protection of consumers' interest are funded by various sources – own financial resources of consumer organisations, private donations¹⁰⁷ and state funding.

The state funding is regulated in the Ordinance #RD-16-1117/01.10.2010 on conditions and rules of providing financial resources to consumers' organisation by the state¹⁰⁸. According to this act, consumer organisations that meet certain criteria (stated in Article 3 of the Ordinance) can obtain financial resource from the state budget in order to fund their activities, including protection of collective interests of consumers. For the current year 2017 the total budget secured by the Ministry of Economy for the funding activities of consumer protection organisations in Bulgaria is 70,000 BGN¹⁰⁹.

Some legal authors, however, consider the availability of funding only as a theoretical option without actual practical effect.¹¹⁰ Therefore the consumer protection organisations are reluctant to bring collective actions – the amount of expenses will surely be high, the chances to get compensation – low.¹¹¹

b. Origins of funding (public, private, third party)

As mentioned above, there are various sources of funding – private donations, own financial resources of consumer organisations and state funding.

c. Conditions and frequency of resort to third party funding

No relevant information on third party funding has been found.

d. Control of funders (Courts/Legislators/Self-regulation)

No relevant information on control over third party funding has been found.

The system for control of spending the budget funding received by consumer organisations is regulated in the Chapter 5 of the Ordinance #RD-16-1117/01.10.2010. The consumer organisation must render an account of the spend resources and provide an annual report for its activities. Those documents are reviewed by a Committee appointed by the Minister of Economy which prepares a report with suggestions for approval of certain expenditures of consumer organisations. Non-spent financial resources or resources spent in violation of the provisions of the Ordinance must be returned by consumer organisations to the budget of the Ministry.

e. Claimant-Funder relationship

No relevant information on the relationship between claimants and third party-funders has been found.

107 See the website of the Association for Legal Aid of Consumers – <http://zastitanapotrebiteLite.com/%D0%BD%D0%B0%D0%BF%D1%80%D0%B0%D0%B2%D0%B8-%D0%B4%D0%B0%D1%80%D0%B5%D0%BD%D0%B8%D0%B5/> [last visited on 20.05.2017]

108 Ordinance #RD-16-1117/01.10.2010 on conditions and rules of providing financial resources to consumers' organisation by the state

109 Order #RD-16-299/02/03.2017 of the Minister of Economy – <https://www.mi.government.bg/bg/themes/sdrujeniya-na-potrebiteLite-326-325.html> [last visited on 20.05.2017]

110 Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 148.

111 Markova, Tatyna Collective Actions – ex-ante analysis of their application in Bulgaria, Economic and Social Alternatives, 2015/1, s. 148

7. Enforcement of collective actions/settlements

a. Framework for enforcement

The general provisions of the Code of Civil Procedure (Part V of CCP) are applicable, namely Title 2 “Enforcement of Pecuniary Receivables”.

b. Efficient enforcement of compensatory/ injunctive order

The level of efficiency of compensatory order for damages on collective consumers’ interests seems to be the same as of the other orders for payment. Enforcement of such orders (for damages on collective consumers’ interests) does not seem to be known to Bulgarian legal practice, so it is difficult to speculate what issues may occur in such enforcement proceeding.

c. Cross border enforcement

Legal Framework is in the Code of Civil Procedure:

- Chapter 57 “Recognition of and Admission to Enforcement of Judgments and Judicial Acts Subject to Operation of Community Law;
- Chapter 58 “Enforcement Pursuant To Regulation (EC) No 1896/2006 of The European Parliament and of The Council creating a European Order for Payment Procedure.

8. Number and types of cases brought/pending

In the course of this study no information of a National Register of Collective Actions existing has been found.¹¹²

Additionally, there does not seem to exist relevant statistical data about collective actions for protection of consumers’ interests. The latter actions seem to be included/“hidden” under the statistical category “collective actions” in the Annual Statistical Reports, prepared and published by the Supreme Judicial Council.¹¹³

Therefore preparing a comprehensive overview of completed/pending collective actions for compensatory relieve (Article 188 of CPA) in Bulgaria appears to be a challenge. Based on various sources¹¹⁴ the following summary of collective actions has been prepared:¹¹⁵

Legal basis	Article 186 CPA	Article 188 CPA	Article 189 CPA
Plaintiff			
Commission for Consumer Protection	73	n/a	n/a

¹¹² There is an electronic register of courts acts, maintained by the Supreme Judicial Council – can be found here <http://legalacts.justice.bg/> [last visited on 20.05.2017], however not all collective actions seem to be included in it. Additionally, the Commission for Consumer Protection is working on its own register of collective actions brought by the Commission (it is still under construction and not functional - <https://www.kzp.bg/registar-kolektivni-iskove> [last visited on 20.05.2017]).

¹¹³ Statistical data can be found here - <http://www.vss.justice.bg/page/view/1082> [last visited on 20.05.2017]. For instance, the Annual Report for 2016 states the district courts in Bulgaria heard in 2016 altogether 31 collective actions, out of which in 2 cases the claims were fully granted, in 10 cases – partially granted, in 2 case the claims were dismissed, however in the report it is not specified the type of rights which protection was sought, namely whether these were consumer interests, or labour rights, or other.

¹¹⁴ Such as the Annual Reports of the Commission for Consumer Protection, information found on the websites of qualified consumer protection organisations and in their annual reports, or information provided by some of the organisations.

¹¹⁵ Data for the following periods - for the last three years (2014, 2015 and 2016) for the Commission; without time limits for all the other plaintiffs.

Bulgarian National Association Active Consumers	4	3	
Consumers Legal Aid Association – Plovdiv	8		
Federation of Consumers in Bulgaria	1	1	

9. Impact of the Recommendation/Problems and Critiques, including

- a. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/indirect, economic/social impact)

It is noticeable that the number of collective actions for damages on collective consumer interests is not significant. The reason may lie in the higher court fees (4% of the amount claimed) or in the legislative change from 2008, which require the exact amount of damages to be substantiated.

- b. Incompatibilities with the Recommendation's principles

Based on the information collected for the purposes of the current report, a conclusion can be drawn that Bulgarian legislation in force is compliant to a great extent with the principles of Recommendation from 2013 with few exceptions:

- There does not seem to exist a National Register of Collective Actions;
- There is a room for improvement in regards of the requirement for the collective redress procedures not to be prohibitively expensive. In general, the costs of collective actions procedures in Bulgaria are high, which seems to be an obstacle for bringing new collective actions, especially by consumer organisations.
- The lack of court chambers specialized in collective redress procedures can be considered as a disadvantage which appears to decrease the efficient case management as some judges are not very familiar with the specifics of this procedure.

- c. Problems relating to access of justice/fairness of proceedings including

Restrictions on access to justice negatively affecting collective redress

Only the organisations for which the court has ex officio verified the ability to seriously and in good faith protect the injured party and bear the costs of the proceedings, including expenses, can bring collective actions. Decision is left in courts discretion, and may create undesirable procedural obstacles for some consumer organisation for proving their capacity and resource to bring such actions and successfully manage the cases.

Time and burden of collective actions on courts and parties compared to non-collective litigation

The collective redress procedure has specifics which require more time for preparing and managing the case both on the side of the parties involved and the judge hearing the case.

Risks of and examples for abusive litigation

Such risks exist in Bulgarian practice, however currently only theoretically. No information on abusive litigations has been found.

Effective right to obtain compensation

As mentioned before, in the past according to the version of CPA provisions in force until 2008, when the compensation for consumer detriment should have been determined by the courts in accordance with the requirement of fairness and justice, it seemed to be easier to obtain compensation for harm on collective

consumers' interest. Nowadays, instead of compensation consumers can seek damages (the amount of which should be substantiated), which creates a lot of procedural obstacles for collective compensatory actions.

C. Compensatory Collective Redress – Article 189 of CPA (representative action)

Some legal authors do not qualify this action as a type of collective redress mechanism, but consider it as a means of individual redress very similar to joined individual civil cases.¹¹⁶ This view appears to be reasonable; nevertheless for the sake of completeness this action for protection of multiple consumers' interests has been included in the current study.

A collective representative action can be filed provided that the following prerequisites are met:

- Consumers who have suffered damage are identified and their count is at least two;
- Individual damage suffered by consumers must have been caused by the same producer, importer, trader or retailer, as well as has to have derived from the same infringement;
- A consumer association must have explicitly been granted by consumers with a power-of-attorney for bringing a claim for damages and for litigation representation.
- This redress mechanism is aimed at collecting damages to individual interests of at least two identified consumers, represented in the litigation by a consumer association. The legal basis is Article 189 of CPA.

1. Scope/ Type

a. Sectoral

The approach is sectoral, namely the compensatory redress is applicable to all cases of damages to two or more consumers – Article 189 (1) of CPA.

b. Injunctive or compensatory or both

Article 189 of CPA is regulating compensatory redress – for damages to multiple consumers.

2. Procedural Framework

a. Competent Court

The court competent to hear the action is the district court¹¹⁷ in the place where the infringement was committed or the one in the place of the defendant's registration – Article 190 of CPA.¹¹⁸

b. Standing

Any consumer organisation can initiate the procedure provided it has been granted with a power-of-attorney to bring the action on behalf of at least two identified consumers who have suffered damage by

¹¹⁶ See Sukareva, Zlatka Consumer Law, 2015, p.220 and p. 228.

¹¹⁷ According to Article 380 (1) of CCP. See also Chernev, Silvi Collective Actions, *Trud i pravo*, <http://www.trudipravo.bg/mesechni-spisania/mesechno-spisanie-targovsko-i-obligacionno-pravo/menuconttkp1/240-proizvodstvo-po-kolektivni-iskove> [Last visited on 15.05.2017]; Stalev, Zhivko et al. Bulgarian Civil Procedure Law, 2012, p. 774.

¹¹⁸ Ruling № 1546 / 12.07.2013 Appeal Commercial Case № 790/2013 the Court of Appeal – Plovdiv; the court cannot decide ex officio that it has not territorial competence to hear the case – Ruling № 769 / 29.04.2011 Appeal Civil Case № 1213/2011 the Court of Appeal – Sofia; in case of unfair contract terms – the infringement is committed (thus competent is the district court) in the place, where the standard T&Cs have been drafted/approved, not in the places where consumer contracts referring to these T&Cs have been concluded – Ruling № 2725 / 20.09.2013 Civil Case № 693/2013 the District Court – Plovdiv; if the place where the infringement was committed cannot be identified, the competent is the court of the defendant's registration – Ruling № 185 / 04.03.2014 Commercial Case № 587/2014 the Supreme Court of Cassation, I Commercial division.

one and the same infringement. No requirement exists for it to be a qualified entity according to the Ordinance of the Minister of Economy.

c. Availability of Cross Border collective redress

Cross-border collective redress seems to be available and admissible in accordance with the general rules of the Code of Civil Procedure. No special rules on its availability exist.

d. Opt In/ Opt Out

Principal availability of either/or/both options?

Bulgarian legislation allows both options, namely Opt In and Opt Out – Article 383 of CCP. However due to the specifics of the action under Article 189 of CPA, namely the action is brought on behalf of identified persons who granted a power of attorney to the organisation-plaintiff, only the Opt In option appears to be applicable in such proceeding.

Conditions for either type (prescribed by law or discretion of the judge?)

The legal provisions prescribe some general requirements the parties should meet, namely “injured parties, organisations for protection of the injured persons, organisations for protection of the injured collective interest or organisation for protection against such infringements” (Article 383 (1) of CCP). In proceedings based on Article 189 of CPA relevant will be “injured parties” i.e. consumers who were affected by the same infringement and will join the proceeding for seeking a redress. It is up to the judge discretion to decide if a certain person or organisation is meeting the condition to join the proceeding, which raises in the legal literature some concerns about courts capability to respond to the even higher and more complex requirements for the role of the court in the collective actions proceedings.

Opt-out restricted to in-jurisdiction claimants?

No such restrictions exist.

If opt-out, is it justified by the sound administration of justice?

The Opt Out option does not seem to be applicable to a proceeding under the Article 189 of CPA due to its specifics.

Specific measures related to the fact that affected persons are not identifiable

In this type of redress procedure the persons who suffered damage are identified – Article 189 (1) p. 1 of CPA.

e. Main procedural rules

Admissibility and certification criteria

Article 381 of CCP requires that the court hearing the case verifies the admissibility of the claim¹¹⁹ and the regularity of the claim¹²⁰. As this is not a collective action per se, the requirement for ex officio verification of the ability of the person or persons who have brought the action to seriously and in good faith protect the injured party and to bear the costs of the proceedings, will not be applicable to this action.

¹¹⁹ According to Article 130 of CCP where, upon verification of the statement of action, the court establishes that the action brought is inadmissible, the court shall return the statement of action.

¹²⁰ Regulated in Articles 127 and 128 of CCP – the statement of action must have certain content and attachments in order to be considered regular and processed for hearing.

Single or Multi-stage process

It is a multi-stage process.

The whole procedure can in general go through three instances – first, appeal and cassation. The cassation review is excluded for civil law claims below 5,000 BGN.

Case-management and deadlines

The general procedural rules of CPP are applicable.¹²¹

Expediency (particularly in injunctive cases)

Article 310 of CCP provides a summary procedure only for cases of ascertainment and cessation of infringement of rights under the Consumer Protection Act (injunction). Such procedure is not applicable to actions for damages.

Evidence/discovery rules

General procedural rules are applicable – Chapter 14 “Evidence” of CCP.¹²²

Interim measures

According to Article 385 (2) (3) of CCP acting on a request by the plaintiff the court, hearing the case may rule on adequate interim measures for protection of the harmed interests. The ruling may be modified or vacated by the same court in case of any change of circumstances, errors, or omissions. The ruling is subject to appeal and cassation review, which do not prevent the enforcement of the ruling, unless the court competent to examine the appeal orders otherwise.

Court directed settlement option during procedure

The general procedural rules of CPP are applicable.¹²³

In case of out of court settlements: judicial control

The general procedural rules of CPP are applicable.¹²⁴

3. Available Remedies

Compensation for damage shall be granted to consumers on whose behalf the action has been brought.

According to Article 387 of CCP, the court may decree that the compensation be credited to either an account of one of the plaintiffs or to a special account jointly disposable by all the plaintiffs or to a special account jointly disposable by the injured persons. The court may also obligate the persons who have brought the action to transfer the compensation to a special account jointly disposable by the injured persons, taking adequate measures to secure the execution of this obligation.

When the compensation is transferred to a special account jointly disposable by the injured persons, these can decide how to proceed with the compensation. If they are not able to organize themselves, they can ask the first-instance court to convene a General Meeting of the injured persons – Article 388 of CCP. The court orders a notice to be published in the form in which the bringing of the action has been published. The General Meeting of the injured persons is presided by the judge and may act if at least six injured

121 See above Part II “General Collective Redress Mechanism”

122 See above Part II “General Collective Redress Mechanism”

123 See above Part II “General Collective Redress Mechanism”

124 See above Part II “General Collective Redress Mechanism”

persons present. The General Meeting of the injured persons elect a Committee to dispose of the assets on the special account.

a. Type of damages

The case law seems to accept the view that both pecuniary and non-pecuniary damage can be sought in such proceeding depending on the specific facts and circumstances of each particular case.¹²⁵

b. Allocation of damages between claimants for compensatory claims/ distribution methods

The compensation will depend on the proven amount of the damage suffered by each individual consumer.

c. Injunctions

Available in the proceeding based on Article 186 of CPA.

d. Possibility to seek an injunction and compensation within one single action

It is possible for the plaintiff to bring several actions against the same defendant by a single statement of action if the said actions fall within the competence of the same court and are subject to examination in the procedure of the one and same type – Article 210 (1) of CCP. When the actions brought are not subject to examination under the one and same type of procedure or when the court determines that the joint examination of the said actions will be considerably impeded, the court can decree a dis-joinder of the actions – Article 201 (2) of CCP.

e. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

It is possible to rely on injunction decision in the follow-on actions for damages

f. Limitation periods

General rules are applicable – limitation period is 5 years.¹²⁶

4. Costs

Basic rules governing costs and scope of the rules

Costs consist of:

- Court fees – Court fees – 4% of the amount of the claim, but not less than 50 BGN.¹²⁷
- Expertise remuneration – depending on complexity and scope of the tasks – between 500 and 1000 BGN, could be even higher in some cases;
- Advocate fees – the minimum is 300 BGN¹²⁸. The exact amount depends on the amount of the claim – the higher the latter is, the higher advocate fee is.¹²⁹
- Costs for publishing¹³⁰ – depends on the media and the size of the publication, and can vary between 20 and 30 BGN.

¹²⁵ Ruling № 411/01.08.2016 commercial case № 754/2016 the Supreme court of Cassation, II commercial division.

¹²⁶ Article 110 of the Obligations and Contracts Act.

¹²⁷ Tariff for state fees collected by the courts under the Civil Procedure Code from 2008 [Тарифа за държавните такси, които се събират от съдилищата по Гражданския Процесуален Кодекс (ГПК)] – promulgated in State Gazette 22/28.02.2008, the last amendment promulgated in State Gazette 35/02.05.2017

¹²⁸ Ordinance of the Supreme Bar Council No 1 from 2004 on the minimum advocate fees.

¹²⁹ Article 7 (2) of Ordinance of the Supreme Bar Council No 1 from 2004 on the minimum advocate fees – promulgated in State Gazette 64/23.07.2004, the last amendment promulgated in State Gazette 84/25.10.2016

¹³⁰ Article 382 (2) of CCP.

5. Lawyers' Fees

Availability (or not?) of contingency fees and their conditions

Bulgarian legal system allows conditional fee arrangements between a lawyer and a client, except for cases involving nonmaterial interest (such as collective action for injunction) – Article 36 (4) of the Bar Act.

However according to the established Bulgarian case-law¹³¹, conditional fees are not recoverable as they depend on the outcome of the case and, hence, have not been paid up by the end of the trial, e.g. by the end of the final court hearing before the court decision¹³².

6. Funding

a. Availability of funding

Funding according to Ordinance #RD-16-1117/01.10.2010¹³³ is applicable also in these actions – Article 6 (1) “c”¹³⁴ of the Ordinance.

b. Origins of funding (public, private, third party)

The main source of funding of actions based on Article 189 will be consumers themselves as well as the own resources of consumer protection organisations, acting as their representatives, including state funding.

c. Conditions and frequency of resort to third party funding

No relevant information on third party funding has been found.

d. Control of funders (Courts/Legislators/Self-regulation)

No relevant information on control over third party funding has been found.

e. Claimant-Funder relationship

No relevant information on the relationship between claimants and third party-funders has been found.

7. Enforcement of collective actions/settlements

a. Framework for enforcement

The general provisions of the Code of Civil Procedure (Part V of CCP) are applicable, namely Title 2 “Enforcement of Pecuniary Receivables”.

b. Efficient enforcement of compensatory/ injunctive order

The level of efficiency of compensatory order for damages seems to be the same as of the other orders for payment.

c. Cross border enforcement

Legal Framework is in the Code of Civil Procedure:

131 See Interpretation Ruling № 6 / 06.11.2013 Interpret. Case № 6 / 2012 General Assembly of Civil and Commercial Divisions of the Supreme Court of Cassation

132 See Article 80 of CCP.

133 Ordinance #RD-16-1117/01.10.2010 on conditions and rules of providing financial resources to consumers' organisation by the state

134 In Bulgarian the letter “b”.

- Chapter 57 "Recognition of and Admission to Enforcement of Judgments and Judicial Acts Subject to Operation of Community Law;
- Chapter 58 "Enforcement Pursuant To Regulation (EC) No 1896/2006 of The European Parliament and of The Council creating a European Order for Payment Procedure.

8. Number and types of cases brought/pending

No information about action based on Article 189 of CPA has been found.

9. Impact of the Recommendation/Problems and Critiques

- Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

No impact of this particular redress mechanism has been observed as there do not seem to be any actions brought on Article 189 of CPA.

- Incompatibilities with the Recommendation's principles

The conclusions are the same as for the other two consumers collective redress mechanisms.

- Problems relating to access of justice/fairness of proceedings including

Restrictions on access to justice negatively affecting collective redress

No restriction for redress mechanism under Article 189 of CPA seem to exist.

Time and burden of collective actions on courts and parties compared to non-collective litigation

The collective redress procedure has specifics which require more time for preparing and managing the case both on the side of the parties involved and the judge hearing the case.

Risks of and examples for abusive litigation

Such risks exist in Bulgarian practice, however currently only theoretically. No information on abusive litigations has been found.

Effective right to obtain compensation

Theoretically, there is effective right to obtain compensation. However due to a lack of case law it is difficult to assess its practical importance.

III. Information on Collective Redress

1. National Registry

Such Register does not seem to exist yet.

There is an electronic register of courts acts maintained by the Supreme Judicial Council¹³⁵, however not all collective actions seem to be included in it.

Additionally, the Commission for Consumer Protection is working on its own register of collective actions brought by the Commission.¹³⁶

2. Channels for dissemination of information on collective claims

There are a couple of channels, namely via:

- Announcement on the website of the Commission for Consumer Protection or other organisations for consumer protection;
- Publications in the press or other information in media;
- Announcement at the defendant premises or vehicles.¹³⁷

¹³⁵ Can be found here <http://legalacts.justice.bg/> [last visited on 20.05.2017]

¹³⁶ It is still under construction and not functional – <https://www.kzp.bg/registar-kolektivni-iskove> [last visited on 20.05.2017].

¹³⁷ Decision№ 6951 20.10.2013 Civil Case № 63/2011 City court – Sofia

IV. Case summaries

Case name Toplofikacia-Sofia	Keywords Toplofikacia, Unfair practices, Central heating
Reference Civil Case № 3912/2008 the Regional Court - Sofia	Summary of claims The plaintiff is a qualified organisation for protection of consumers' interests (Federation of Consumers in Bulgaria), which brought the following claims:
Subject area Consumer	<ul style="list-style-type: none"> ○ Cessation of unfair practices ○ Other appropriate measures for termination of infringement (order for the defendant to improve the contents of invoices for consumers, which must be based on the actually delivered heat energy measured by individual appliances) ○ Damages of collective consumers' interests
Dispute resolution method Group Action	Findings Based on the conclusion of the technical and accounting expertise, which does not reveal any infringements of the normative methodology for accounting and calculation of the consumed heat energy, the court considers that the central heating company "Toplofikacia-Sofia" and the companies – heat accountants did not commit infringements of this methodology during the period specified by the plaintiff Federation of Consumers in Bulgaria.
Court or tribunal Court	
Cross-border character/ implications, if any N/A	Outcomes Settlement: No
Opt-in/out Both	
Type of funding No information on funding available	Remedy: Claim for injunctive relief (Article 186 of CPA) was dismissed; the proceeding for damages on collective interests of consumers (Article 188 of CPA) was terminated by the court.
Costs Loser pays principle applied	
Abusive litigation No	Amount of damages awarded: No damages awarded Distribution of damages: N/A

Case name Toplofikacia-Russe	Keywords Toplofikacia, Unfair contract terms, Central heating
Reference Civil Case № 412/2015 Court of Appeal – Veliko Tarnovo	Summary of claims The Commission for Consumer Protection requested from the Court:
Subject area Consumer	<ul style="list-style-type: none"> ○ To declare a term from the standard T&Cs used by the defendant that the consumers' objections to the amount charged do not exempt them from their payment as unfair, thus null and invalid; ○ To order to the defendant to remove the above unfair term of the content of the standard T&Cs ○ To order to the defendant to publish on their own expense the court decision.
Dispute resolution method Group action	
Court or tribunal Court	

Cross-border character/ implications, if any No information available	Findings The court sustained all three claims. Outcomes
Opt-in/out Both	Settlement: No Remedy: Injunction:
Type of funding State budget (the plaintiff is the Commission for Consumer Protection)	<ul style="list-style-type: none"> ○ Declaring a term as unfair, thus null and invalid ○ Removal of the unfair term ○ Publishing at defendant's expense the court decision in one national daily newspaper and by a notice on the company's website
Costs Loser pays principle applied	Amount of damages awarded: No claim for damages Distribution of damages: N/A
Abusive litigation No	

Case name Energopro Reference Civil Case № 196/2015 District Court – Varna Subject area Consumer	Keywords Electricity, Unfair contract terms Summary of claims The Commission for Consumer Protection requested from the Court: <ul style="list-style-type: none"> ○ To declare a term from the standard T&Cs allowing the supplier to oblige the consumer to pay energy which has not actually been delivered (in cases of an official correction of the readings of the measuring instruments) as unfair, thus null and invalid; ○ To order to the defendant to publish on their own expense the court decision.
Dispute resolution method Group action Court or tribunal Court	Findings The court sustained both claims.
Cross-border character/ implications, if any No information available	Outcomes Settlement: No Remedy: Injunction:
Opt-in/out Both	<ul style="list-style-type: none"> ○ Declaring a term as unfair, thus null and invalid ○ Publishing at defendant's expense the court decision in one national daily newspaper and by a notice on the company's website
Type of funding State budget (the plaintiff is the Commission for Consumer Protection)	Amount of damages awarded: No claim for damages Distribution of damages: N/A
Costs Loser pays principle applied	
Abusive litigation	

No	
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Case name OK Taxi	Keywords Misleading commercial practice, taxi service
Reference Civil Case № 63/2011 City Court – Sofia	Summary of claims The Commission for Consumer Protection requested from the Court:
Subject area Consumer Competition	<ul style="list-style-type: none"> ○ Cessation of unfair (misleading) practice ○ Publishing at defendant's expense the court decision in one newspaper, two news portals and announcing in the defendant's vehicles (taxi cars)
Dispute resolution method Group action	The collective action brought by the Commission for Consumer Protection was preceded by a case and a decision of the Commission for Protection of Competition (the CPC) (Decision # 1089/02.12.2008 case № K3K-539/11.09.2008 of the CPC) against the same company for a violation of the prohibition of imitation of the logo of a competitor – Article 33 (2) of The Protection of Competition Act (published in State Gazette, 52/1998 and abrogated by the new Protection of Competition Act in 2008).
Court or tribunal Court	Findings
Cross-border character/ implications, if any No information available	The court found that the defendant while provided taxi transport, was using a distinctive sign ("OK" sign) of the another company provider of the same type of service, but at significantly higher rates. By doing so the defendant affected the decision of the average consumer to use his service and caused consumers damages (i.e. very high rates for services)
Opt-in/out Both	Outcomes
Type of funding State budget (the plaintiff is the Commission for Consumer Protection)	Settlement: No
Costs Loser pays principle applied	Remedy: Injunction:
Abusive litigation No	<ul style="list-style-type: none"> ○ Cessation of unfair (misleading) practice ○ Publishing at defendant's expense the judgment in one newspaper, two news portals and announcing in the defendant's vehicles (taxi cars) <p>Amount of damages awarded: No claim for damages</p> <p>Distribution of damages: N/A</p>

Case name Toplofikacia-Sofia	Keywords Unfair practice
Reference Civil Case № 8261/2016 City Court – Sofia	Summary of claims The plaintiff is a qualified organisation for protection of consumers' interests(Consumers Legal Aid Association – Plovdiv), which brought a

Subject area Consumer	<p>claims against so called „building installation fee“ (the fee covering the variance between the main appliance measuring the supplied heat energy to the building and individual measurement appliances in each dwelling in the same building)</p> <p>Findings</p> <p>The proceeding is pending.</p> <p>Outcomes</p> <p>Settlement: The proceeding is pending.</p> <p>Remedy: The proceeding is pending.</p> <p>Amount of damages awarded: The proceeding is pending.</p> <p>Distribution of damages: N/A</p>
Dispute resolution method Group action	
Court or tribunal Court	
Cross-border character/ implications, if any No information available	
Opt-in/out No information available	
Type of funding No information available	
Costs Loser pays principle applicable	
Abusive litigation No	

Case name Stem Cells Cryobank	<p>Keywords</p> <p>Unfair contract terms, Unfair practice, Stem Cells</p> <p>Summary of claims</p> <p>The plaintiff is a qualified organisation for protection of consumers' interests(Consumers Legal Aid Association - Plovdiv), which brought the following claims:</p> <ul style="list-style-type: none"> ○ Cessation of unfair practice and removal of unfair terms from the standard T&Cs used by defendant ○ Publishing at defendant's expense the court decision <p>Findings</p> <p>The court found that some of the terms in the standard T&Cs used by the defendant are unfair as well as that certain practices related to obtaining the consent from the defendant's clients were unfair. Cessation of unfair practice and removal of unfair terms from the standard T&Cs used by defendant were partially granted.</p> <p>The claim for publishing the court decision was dismissed as during the proceedings the defendant took voluntary actions for removal of some unfair terms i.e. the effect of collective actions for correction of defendant behaviour was achieved.</p>
Reference Commercial Case № 1497/2013 City Court – Sofia	
Subject area Consumer	
Dispute resolution method Group action	
Court or tribunal Court	
Cross-border character/ implications, if any No information available	
Opt-in/out No information available	
Type of funding	

No information available	Outcomes
Costs	Settlement: No
Loser pays principle applied	Remedy: Injunction:
Abusive litigation	<ul style="list-style-type: none"> ○ Cessation of unfair practice and removal of unfair terms from the standard T&Cs used by defendant
No	Amount of damages awarded: No claim for damages
	Distribution of damages: N/A

Case name	Keywords
Energo-Pro	Unfair practice, Electricity
Reference	Summary of claims
Commercial Case № 220/2015 District Court – Varna	The plaintiff is a qualified organisation for protection of consumers' interests (Consumers Legal Aid Association - Plovdiv), which brought the following claims:
Subject area	<ul style="list-style-type: none"> ○ For the prohibition of unfair commercial practice of the defendant, where the company for the period December 2014 – January 2015 read the electricity used outside the schedule announced in advance
Consumer	<ul style="list-style-type: none"> ○ For the prohibition of unfair the commercial practice, in which the company for the period January 2015 issues to consumers more than one invoice within the same month in violation of the provisions of the standard Terms and Conditions of the company
Dispute resolution method	<ul style="list-style-type: none"> ○ Cessation of the above unfair commercial practices.
Group action	Findings
Court or tribunal	The court found that these practices are not unfair and dismissed all three claims.
Court	Outcomes
Cross-border character/ implications, if any	Settlement: No
No information available	Remedy: No, the claims were dismissed.
Opt-in/out	Amount of damages awarded: No claim for damages
No information available	Distribution of damages: N/A
Type of funding	
No information available	
Costs	
Loser pays principle applied	
Abusive litigation	
No	

Case name	Keywords
EVN-Bulgaria Electricity(Plovdiv)	Unfair terms, Electricity
Reference	Summary of claims

Commercial Case No 1751/2013 District Court – Plovdiv	<p>The plaintiff is a qualified organisation for protection of consumers' interests(Consumers Legal Aid Association - Plovdiv), which brought the following claims:</p> <ul style="list-style-type: none"> ○ To order cessation of certain terms from the standard T&Cs used by the defendant as unfair; ○ To order to the defendant to remove these unfair term of the content of the standard T&Cs. <p>Findings</p> <p>The court sustained partially the claims (for some of the terms).</p> <p>Outcomes</p> <p>Settlement: No</p> <p>Remedy: Injunction – some unfair terms were removed from the standard T&Cs used by the defendant.</p> <p>Amount of damages awarded: No claim for damages</p> <p>Distribution of damages: N/A</p>
Subject area Consumer	
Dispute resolution method Group action Court or tribunal Court	
Cross-border character/ implications, if any No information available	
Opt-in/out Opt In	
Type of funding No information available	
Costs Loser pays principle applied	
Abusive litigation No	

Case name EVN-Bulgaria Heating (Plovdiv)	<p>Keywords</p> <p>Unfair practice, Central Heating</p> <p>Summary of claims</p> <p>The plaintiff is a qualified organisation for protection of consumers' interests(Consumers Legal Aid Association - Plovdiv), which brought the following claims:</p> <ul style="list-style-type: none"> ○ Prohibition of unfair commercial practice of the defendant, which, in infringement of the collective interests of consumers, consists in the requirement for payment of goods (heat given to the building installation) by consumers, who do not use heating services and do not want to be supplied with such heat energy in their dwellings. <p>Findings</p> <p>The proceeding is still pending.</p> <p>Outcomes</p> <p>Settlement: The proceeding is still pending.</p> <p>Remedy: The proceeding is still pending.</p> <p>Amount of damages awarded: No claim for damages</p>
Reference Civil Case No 1557/2015 District Court – Plovdiv	
Subject area Consumer	
Dispute resolution method Group action Court or tribunal Court	
Cross-border character/ implications, if any No information available	
Opt-in/out	

No information available	Distribution of damages: N/A
Type of funding No information available	
Costs Loser pays principle applicable	
Abusive litigation No	

Case name Orlandonet Ltd	<p>Keywords</p> <p>Unfair contract terms, Services for Internet access and interactive digital TV</p> <p>Summary of claims</p> <p>The plaintiff is a qualified organisation for protection of consumers' interests(Bulgarian National Association Active Consumers), which brought the following claims:</p> <ul style="list-style-type: none"> ○ For declaration of nullity of an unfair clause (Art. 31 sentence. 2 of the General Conditions for the provision of services for Internet access and interactive digital TV "Orlandonet" Ltd.) and ○ For suspension and prohibition of applying the clause that appears in breach of the collective interests of consumers and contrary to the Chapter Six "Unfair terms in Consumer Contracts" (Article 186, para. 2, item 1 CPA) ○ Claim for damages with an amount of 5000 BGN caused to the collective interests of consumers by application of art. 31, sentence 2 of the General Conditions for the provision of services for Internet access and interactive digital TV "Orlandonet" LTD. <p>Findings</p> <p>The proceeding is pending.</p> <p>Outcomes</p> <p>Settlement: The proceeding is pending.</p> <p>Remedy: The proceeding is pending.</p> <p>Amount of damages awarded: The proceeding is pending.</p> <p>Distribution of damages: N/A</p>
Reference Commercial Case № 8441/2013 City Court – Sofia	
Subject area Consumer	
Dispute resolution method Group action	
Court or tribunal Court	
Cross-border character/ implications, if any No information available	
Opt-in/out No information available	
Type of funding No information available	
Costs Loser pays principle applicable	
Abusive litigation No	

Case name CREDIT INS Ltd	Keywords Unfair contract terms, Consumer credit
Reference	Summary of claims

Commercial Case № 8335/2014 City Court – Sofia	The plaintiff is a qualified organisation for protection of consumers' interests(Bulgarian National Association Active Consumers), which brought the following claims:
Subject area Consumer	<ul style="list-style-type: none"> ○ For declaration of nullity of an unfair clause (T.4.41, T.12.4., T.12.5., T.12.6., On the Terms and Conditions applicable to contracts for the provision of consumer credit "Credit INS" Ltd.)
Dispute resolution method Group action Court or tribunal Court	<ul style="list-style-type: none"> ○ For suspension and ban the application of the above term, which is an act in infringement of the collective interests of consumers being contrary to Chapter Six "Unfair terms in consumer contracts" (art. 186, para. 2, item 1 LCP)
Cross-border character/ implications, if any No information available	<ul style="list-style-type: none"> ○ Claim for damages with an amount of 10,000 BGN caused to the collective interests of consumers by implementing T.4.41, T.12.4., T.12.5., T.12.6., from the Terms and Conditions applicable to contracts for the provision of consumer credit "Credit INS" Ltd.
Opt-in/out No information available	Findings The proceeding was terminated by ruling #2840 / 13.10.2015 as the affected collective interest was not specified.
Type of funding No information available	Currently pending at the Court of Appeal – Sofia
Costs Loser pays principle applicable	Outcomes Settlement: The proceeding is pending at the Court of Appeal - Sofia. Remedy: The proceeding is pending at the Court of Appeal - Sofia.
Abusive litigation No	Amount of damages awarded: The proceeding is pending at the Court of Appeal - Sofia. Distribution of damages: N/A

Case name BTUR Ltd	Keywords Unfair contract terms, Package travel
Reference Civil Case № 16588/2015 City Court – Sofia	Summary of claims The plaintiff is a qualified organisation for protection of consumers' interests (Bulgarian National Association Active Consumers), which brought the claim for damages with an amount of 2.500 BGN caused to the collective interests of consumers by unfair terms from the standard T&Cs of the defendant applied to consumer contracts for package travels. These contract terms were proclaimed as unfair in the procedure under Article 186 of CPA initiated by the Commission for Consumer Protection (civil case 4247/2014 of City Court – Sofia).
Subject area Consumer	Findings The claim was dismissed (on 25.04.2017) because the plaintiff didn't succeed in proving the amount of damages.
Dispute resolution method Group action Court or tribunal Court	Outcomes Settlement: No.
Cross-border character/ implications, if any No information available	Remedy: The claim was dismissed
Opt-in/out	

No information available	Amount of damages awarded: The claim was dismissed Distribution of damages: N/A
Type of funding	
No information available	
Costs	
Loser pays principle applied	
Abusive litigation	
No	

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