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NAYDENOVA

Diversity of Enforcement Titles in Cross-border Debt Collection in the EU

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Part 1

General inquiries regarding Enforcement titles

1.1 Definitions of "enforcement title" in the Bulgarian national legal order

Most of the enforcement titles are specified in the provisions of Art. 404 of the Civil Procedure Code, but the list of enforcement titles is not exhaustive there. A number of special laws also regulate the enforcement titles. Enforcement on the basis of a document that is not regulated by law as an enforcement title is unacceptable.

Secondly, as a document, the enforcement titles have a specific formal probative force and represent the only possible form for proving the enforceable right in the procedure for issuing a writ of execution and in the enforcement process. This formal probative force is valid only in the procedure for issuing a writ of execution and before the bailiff, binding the court and the bailiff to consider that the enforceable right certified by the enforcement title really exists. Outside the proceedings for issuing a writ of execution and outside the enforcement process, the enforceable right may be rebutted by lawsuits.

Third, enforcement titles have executive power. The enforcement title outlines the subject and the parties of the future enforcement. The enforcement process is admissible only within the limits outlined in the enforcement title and only in relation to the parties specified therein.

Lastly, the enforcement title is an element of the factual composition which the PPI arises from. In the legal sphere the holder of the possessions certified by the enforcement title has the procedural right to require the bailiff to initiate an enforcement case and to apply the respective enforcement method.

The enforcement titles can be direct and indirect depending on whether the enforcement starts directly on the basis of the enforcement title or whether it is mediated by the procedure of issuing a writ of execution.

The direct enforcement titles are such enforcement titles for which the law allows enforcement to be initiated on the basis of them. According to Art. 426 (1)[1] of the Civil Procedure Code, the bailiff proceeds to execution on the basis of a presented writ of execution or another act, subject to execution. This other act is a direct enforcement title. Direct titles are an exception. When the Civil Procedure Code or another norm of a special law has provided for this, enforcement is initiated on the basis of a certain document. If it is not provided, the general procedure is applied - the bailiff can proceed to the execution only when a writ of execution is presented. Direct enforcement titles are: 1. The entered into force resolution of the bailiff for assignment of real estate to the buyer (art. 498 para 2 CPC). The law provides for a simplified procedure for the transfer of possession of real estate and movable property to the buyer at the public sale. He does not need a writ of execution if the debtor or third parties refuse to give the immovable or movable property purchased by him. Based on the entered into force resolution for assignment, the buyer may request from the bailiff to be put in possession of the property (to be given the movable property purchased through public sale respectively) and this introduction is carried out against any person found in the property. 2. The bailiff's resolution for determining the equivalence of movable property in case of substitute execution (art. 521 para 2 CPC[2]) Hypothesis: A claim process is underway, as a result of which the

[1] See Civil Procedure Code. Available at: https://www.lex.bg/laws/ldoc/2135558368 [7.11.2021]..
[2] See Art. 521, para 2 of the Civil Procedure Code (Civil Procedure Code, Collection of normative acts, last activation SG, no. 15 dated 15.02.2013, New Star Publishing house, p. 142).

creditor requests revendication of movable property. For example, a TV set that has not been returned, but during the process it has been proven to belong to the creditor. In the course of the claim process, under the conditions of eventuality, there is no claim for payment of the equivalent of the TV set. There is only a condemnation decision to return the TV set. A writ of execution is issued, the bailiff goes to the debtor's home, but the TV set is not there. In this case, the bailiff collects the equivalence of the property without having a court decision for this. Only at the discretion of the bailiff with the help of an expert the price of the TV set is determined. Based on this assessment, the bailiff directly collects the equivalent of the property that cannot be handed over. Important: Unlike the first hypothesis, in this case it is not necessary for the bailiff's resolution to have entered into force (argument art. 521 para. 3 sentence 2 CPC[3]) 3. The bailiff's order for collecting the remainder or the entire amount from the store, if the movable property is sold in deviation from the provisions of the law (art. 479 sentence 2 CPC) Hypothesis: A movable property is sold through a shop. The sale price of the property is determined by the bailiff. The item is handed over to the buyer in the store by the seller only if the price has been paid in advance. If the item is sold at a price lower than the one at which it was given by the bailiff, the responsibility for this is borne by the seller. Neither the creditor nor the bailiff needs to sue for collection of the equivalent. By its own order, the bailiff orders the price to be paid by the seller within these proceedings, without the necessity of issuing a writ of execution. There is no possibility to appeal this order. The defence is by claim order. 4. The bailiff's order for determining the costs in the enforcement process. Such an order is issued by the bailiff upon a request made by the creditor for adjudging the costs incurred by him in the enforcement proceedings (attorney's fees, fees for experts, state fees paid, etc.) and is subject to appeal according to Art. 435 para. 2[4] of the Civil Procedure Code, but the appeal does not suspend the execution. 5. The permission of the district court for taking over the movable property from the person to whom it has been handed over. (Item 2 of TR No. 2/2013 of 26.06.2015 under item No. 2/2013, OSGTK of the SCC).[5] Hypothesis: Ivanov has a writ of execution for the amount of BGN 5,000 against Petrov. He directs execution on Petrov's movable property

[3] See Art. 521, para 3, sentence 2 of the Civil Procedure Code (Civil Procedure Code, Collection of normative acts, last activation SG, no. 15 dated 15.02.2013, New Star Publishing house, p. 142).
[4] See Art. 435, para 2 of the Civil Procedure Code (Civil Procedure Code, Collection of normative acts, last activation SG, no. 15 dated 15.02.2013, New Star Publishing house, p.116).
[5] TR No. 2/2013 of 26.06.2015 under item No. 2/2013, OSGTK of the SCC. Available at: http://vks.bg/talkuvatelni-dela-osgtk/vks-osgtk-tdelo-2013-2-reshenie.pdf [7.11.2021].

(e.g. car). The bailiff has made an inventory and has handed over the car for safekeeping. The law says so - the public sale of the car is carried out by the bailiff who has described the car. That is, in this case the bailiff, whom Ivanov's case is with, should take the car out for sale. The problem: Ivanov's bailiff is inactive and he does nothing. This prevents the other creditors from satisfying the car. Draganov also has a claim against Petrov and he wants to make an inventory, assessment and sale of this same car. For this purpose, he needs a permit from the district court. He can receive one only if within a month's time Ivanov's bailiff has not registered a protocol for regular publicity of the public sale. If Draganov receives such a permission, he will be able to refer the bailiff, with whom his lawsuit has been filed, for taking the item from the guard of the first lawsuit (Ivanov's lawsuit). 6. The court decisions made in another EU Member State (Article 622a[6] of the Civil Procedure Code), which fall within the scope of Regulation (EC) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: Regulation 1215/2012).[7] 7. Extract from the register of special pledges for registered security and for commencement of enforcement (Article 35 para. 1 and Article 2 of the SPL) regarding the fulfilment of the obligation of the legislator to transfer the possession of the pledged property Note: The above list of enforcement titles is not exhaustive.

An indirect enforcement title is the one on the basis of which a writ of execution is issued according to the order of special proceedings, the subject of which is an inspection of the PPI. Here, the relation between the enforcement title and enforcement is mediated by the proceedings of issuing a writ of execution.

Foreign enforcement titles can be divided into two groups. The first group comprises foreign enforcement titles that are subject to enforcement on the territory of the Republic of Bulgaria without deliberate proceedings (Article 404, item 2 of the Civil Procedure Code). The second group covers enforcement titles, which are subject to enforcement on the territory of the Republic of Bulgaria after conducting

[6] See Art. 622a Civil Procedure Code.

[7] Regulation (EC) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1–32.

deliberate proceedings for admission of enforcement (exequatur) - Art. 404 item 3 of the Civil Procedure Code.

1. Foreign enforcement titles which are subject to execution on the territory of the Republic of Bulgaria without deliberate proceedings (Art. 404 item 2 CPC.) The scope of item 2 includes decisions, acts and court agreements of foreign courts of an EU Member State. For these there is no necessity of special exequatur proceedings to be conducted before a Bulgarian court in order to initiate enforcement on the basis of them. They are enforceable under the regulations of Community law without any deliberate proceedings being instituted. It should be inferred from this content of the provision that these are acts of courts issued by an EU Member State. Foreign enforcement titles in this group can be direct (without the need to issue a writ of execution - Article 622a CPC) or indirect (it is necessary a writ of execution to be issued – e.g., the so-called European Enforcement Grounds for undisputed claims - Article 624 CPC[8]).

2. Foreign enforcement titles, which are subject to execution on the territory of the Republic of Bulgaria after conducting deliberate proceedings for admission of execution (exequatur) - Art. 404 item 3 of the Civil Procedure Code. There is a need for a special exequatur procedure to be conducted before a Bulgarian court in order to start the enforcement on the basis of them. The foreign enforcement titles can come either from an EU Member State or from a non-EU country. This type of enforcement title is complex and consists of two elements - the foreign conviction court decision + a court decision of a Bulgarian court that has entered into force, which allows enforcement on the territory of the Republic Most of the enforcement titles are specified in the provisions of Art. 404 of the Civil Procedure Code, but the list of enforcement titles is not exhaustive there. A number of special laws also regulate the enforcement titles. Enforcement on the basis of a document that is not regulated by law as an enforcement title is unacceptable.

[8] See Art. 624 Civil Procedure Code – Proceedings under Regulation (EC) No. 861/2007 of The European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. Available at: https://www.lex.bg/laws/ldoc/2135558368 [7.11.2021].

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[9] See *Ibid.*

property to the buyer at the public sale. He does not need a writ of execution if the debtor or third parties refuse to give the immovable or movable property purchased by him. Based on the entered into force resolution for assignment, the buyer may request from the bailiff to be put in possession of the property (to be given the movable property purchased through public sale respectively) and this introduction is carried out against any person found in the property. 2. The bailiff's resolution for determining the equivalence of movable property in case of substitute execution (art. 521 para 2 CPC[10]) Hypothesis: A claim process is underway, as a result of which the creditor requests revendication of movable property. For example, a TV set that has not been returned, but during the process it has been proven to belong to the creditor. In the course of the claim process, under the conditions of eventuality, there is no claim for payment of the equivalent of the TV set. There is only a condemnation decision to return the TV set. A writ of execution is issued, the bailiff goes to the debtor's home, but the TV set is not there. In this case, the bailiff collects the equivalence of the property without having a court decision for this. Only at the discretion of the bailiff with the help of an expert the price of the TV set is determined. Based on this assessment, the bailiff directly collects the equivalent of the property that cannot be handed over. Important: Unlike the first hypothesis, in this case it is not necessary for the bailiff's resolution to have entered into force (argument art. 521 para. 3 sentence 2 CPC[11]) 3. The bailiff's order for collecting the remainder or the entire amount from the store, if the movable property is sold in deviation from the provisions of the law (art. 479 sentence 2 CPC) Hypothesis: A movable property is sold through a shop. The sale price of the property is determined by the bailiff. The item is handed over to the buyer in the store by the seller only if the price has been paid in advance. If the item is sold at a price lower than the one at which it was given by the bailiff, the responsibility for this is borne by the seller. Neither the creditor nor the bailiff needs to sue for collection of the equivalent. By its own order, the bailiff orders the price to be paid by the seller within these proceedings, without the necessity of issuing a writ of execution. There is no possibility to appeal this order. The defence is by claim order. 4. The bailiff's order for determining the costs in the enforcement process. Such an order is issued by the bailiff upon a request made by the creditor for adjudging the costs incurred by him

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[10] See Art. 521, para 2 of the Civil Procedure Code (Civil Procedure Code, Collection of normative acts, last activation SG, no. 15 dated 15.02.2013, New Star Publishing house, p. 142).

[11] See Art. 521, para 3, sentence 2 of the Civil Procedure Code (Civil Procedure Code, Collection of normative acts, last activation SG, no. 15 dated 15.02.2013, New Star Publishing house, p. 142).

in the enforcement proceedings (attorney's fees, fees for experts, state fees paid, etc.) and is subject to appeal according to Art. 435 para. 2[12] of the Civil Procedure Code, but the appeal does not suspend the execution. 5. The permission of the district court for taking over the movable property from the person to whom it has been handed over. (item 2 of TR No. 2/2013 of 26.06.2015 under item No. 2/2013, OSGTK of the SCC[13]). Hypothesis: Ivanov has a writ of execution for the amount of BGN 5,000 against Petrov. He directs execution on Petrov's movable property (e.g., car). The bailiff has made an inventory and has handed over the car for safekeeping. The law says so - the public sale of the car is carried out by the bailiff who has described the car. That is, in this case the bailiff, whom Ivanov's case is with, should take the car out for sale. The problem: Ivanov's bailiff is inactive and he does nothing. This prevents the other creditors from satisfying the car. Draganov also has a claim against Petrov and he wants to make an inventory, assessment and sale of this same car. For this purpose he needs a permit from the district court. He can receive one only if within a month's time Ivanov's bailiff has not registered a protocol for regular publicity of the public sale. If Draganov receives such a permission, he will be able to refer the bailiff, with whom his lawsuit has been filed, for taking the item from the guard of the first lawsuit (Ivanov's lawsuit). 6. The court decisions made in another EU Member State (Article 622a[14] of the Civil Procedure Code), which fall within the scope of Regulation 1215/2012. 7. Extract from the register of special pledges for registered security and for commencement of enforcement (Article 35 para. 1 and Article 2 of the SPL) regarding the fulfilment of the obligation of the legislator to transfer the possession of the pledged property Note: The above list of enforcement titles is not exhaustive.

An indirect enforcement title is the one on the basis of which a writ of execution is issued according to the order of special proceedings, the subject of which is an inspection of the PPI. Here, the relation between the enforcement title and enforcement is mediated by the proceedings of issuing a writ of execution.

[12] See Art. 435, para 2 of the Civil Procedure Code (Civil Procedure Code, Collection of normative acts, last activation SG, no. 15 dated 15.02.2013, New Star Publishing house, p.116).
[13] TR No. 2/2013 of 26.06.2015 under item No. 2/2013, OSGTK of the SCC. Available at: http://vks.bg/talkuvatelni-dela-osgtk/vks-osgtk-tdelo-2013-2-reshenie.pdf [7.11.2021].
[14] See Art. 622a Civil Procedure Code.

Foreign enforcement titles can be divided into two groups. The first group comprises foreign enforcement titles that are subject to enforcement on the territory of the Republic of Bulgaria without deliberate proceedings (Article 404, item 2 of the Civil Procedure Code). The second group covers enforcement titles, which are subject to enforcement on the territory of the Republic of Bulgaria after conducting deliberate proceedings for admission of enforcement (exequatur) - Art. 404 item 3 of the Civil Procedure Code.

1. Foreign enforcement titles which are subject to execution on the territory of the Republic of Bulgaria without deliberate proceedings (Art. 404 item 2 CPC.) The scope of item 2 includes decisions, acts and court agreements of foreign courts of an EU Member State. For these there is no necessity of special exequatur proceedings to be conducted before a Bulgarian court in order to initiate enforcement on the basis of them. They are enforceable under the regulations of Community law without any deliberate proceedings being instituted. It should be inferred from this content of the provision that these are acts of courts issued by an EU Member State. Foreign enforcement titles in this group can be direct (without the need to issue a writ of execution - Article 622a CPC) or indirect (it is necessary a writ of execution to be issued – e.g., the so-called European Enforcement Grounds for undisputed claims - Article 624 CPC[15]).

2. Foreign enforcement titles, which are subject to execution on the territory of the Republic of Bulgaria after conducting deliberate proceedings for admission of execution (exequatur) - Art. 404 item 3 of the Civil Procedure Code. There is a need for a special exequatur procedure to be conducted before a Bulgarian court in order to start the enforcement on the basis of them. The foreign enforcement titles can come either from an EU Member State or from a non-EU country. This type of enforcement title is complex and consists of two elements - the foreign conviction court decision + a court decision of a Bulgarian court that has entered into force, which allows enforcement on the territory of the Republic of Bulgaria. Here, the executive force of this enforcement title occurs only after the act of the

[15] See Art. 624 Civil Procedure Code – Proceedings under Regulation (EC) No. 861/2007 of The European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. Available at: https://www.lex.bg/laws/ldoc/2135558368 [7.11.2021].

court for admission of execution (exequatur) enters into force, which means that this type of enforcement title is indirect (there is a need of issuing a writ of execution).

1.2 Civil and commercial matters as defined in the Bulgarian national legal order

The division of the legal system into two main sections - private law and public law - has been known since ancient Rome. The criteria for division are complex and combine different criteria used over the centuries. These are: criteria of interest, legal status of the parties and complex criteria in which the above two complement each other.

Civil law is a central branch of private law. Commercial law is characterized by the special quality of the subjects that are traders. At the same time, the sole trader and the trading companies are also subjects of civil law. Civil and commercial law reveal a genetic and functional connection. Commercial law historically derives from civil law as a result of the commercialization of public relations. There is also a functional connection between the two branches, which is expressed in the fact that the rules of the Civil Procedure Code are applied in a subsidiary manner for commercial relations as long as commercial law does not contain special rules.

Civil cases resolve issues and disputes referring to relations connected with the remunerative acquisition of rights, donation and sponsorship, rental relations, loan, deposit, mandate relations, manufacturing, company, transportation, insurance, bills of exchange, tort and unjust enrichment. Cases dealing with disputes related to unsettled relations of the above category are civil cases of material nature.

Civil cases related to issues and disputes referring to relations concerning marriage, termination of marriage, origin and adoption, parental rights and obligations, inheritance and heritage and division as well as cases concerning employment relations are cases of a formal nature. These cases do not come from private law relationships but in accordance with the specific provisions are taken to the civil courts to be resolved under the rules of the Civil Procedure Code. A typical example are the cases concerning the relations for providing work force or labour relations. The regulation of individual labour relations is codified in the Labour Code /LC/,

and the regulation of collective labour relations is regulated in the Collective Labour Disputes Act /CLDA/. As far as there is no special regulation in these laws for resolving disputes, the rules of the Civil Procedure Code are applied. This category of cases is of a formal nature.

Civil cases are a broader category than commercial cases. Commercial cases are specific in terms of the legal transactions regulated by commercial law. Predominant among them are private law relations but there are also public law ones / for example the matter of entry in the trade register and insolvency proceedings/. Commercial cases are determined by the relations and the disputes they resolve and, as a rule, they are remunerative. Commercial cases consider disputes that have the following characteristics:

- simplification of the form of transactions and especially of the form of their proof;
- remuneration of transactions;
- impossibility to request a reduction of the agreed penalty in the relations between traders;
- interest is always due in the relations between traders, no matter whether it is negotiated, possibility for negotiating an anatocism;
- it is not possible to demand the cancellation of a commercial transaction in the relations between traders, made in case of extreme necessity and under obviously unfavourable conditions;
- a possibility to negotiate arbitration for resolving disputes without limiting the agreement on justice;
- fewer protective norms in the relations between traders in comparison with the relations between traders and non-traders;
- interest in the trade turnover rather than in statistics, greater private autonomy and personal responsibility.

In the Republic of Bulgaria, the norms that regulate commercial relations are codified in the Commercial Law. Part one and two regulate the legal status of all traders, part three regulates commercial transactions and part four regulates commercial insolvency proceedings.

Disputes between traders and disputes arising from commercial transactions are civil law disputes and their jurisdiction and review procedure are regulated in the Civil Procedure Code. They are included in Part Three, Chapter 32-Special claim proceedings in commercial disputes[16].

1.3 Courts and Tribunals of the Bulgarian domestic legal system

The court (judiciary) power is entrusted by the Constitution to special state authorities. These are the courts provided by the Constitution: Constitutional Court (Articles 147-152[17]), Supreme Court of Cassation, Supreme Administrative Court, appellate, district, regional and military courts. The courts provided by the Constitution are constitutionally guaranteed - they cannot be repealed by ordinary law. However, such a law may establish, along with those provided for by the Constitution, special courts (Constitutional Court, SAC and military courts) and other special courts for consideration of certain categories of cases (the so-called by Article 119, paragraph 2 of the Constitution "specialized" courts - administrative courts, specialized criminal court and appellate specialized criminal court). They are not constitutionally guaranteed and can be repealed by ordinary law.

The substantive scope of the Regulation 1215/2012 covers civil and commercial cases regardless of the nature of jurisdiction. The regulation is applicable when a civil or commercial claim will be enforced in extrajudicial, labour or criminal proceedings. Public law disputes are outside the scope of the Regulation. The following courts have been established in the Republic of Bulgaria corresponding to Art. 1 B IA:

- District courts
  - consider disputes in civil cases with a claim value of up to BGN 5,000 and claims with a claim value of up to BGN 20,000 of the combined property claims and other property rights, which have a determining significance for the property claim;

[16] Special claim proceedings in commercial disputes – Part Three, Chapter 32 of the Civil Procedure Code (Civil Procedure Code, Collection of normative acts, last activation SG, no. 15 dated 15.02.2013, New Star Publishing house, p. 93).
[17] Constitution of the Republic of Bulgaria – Art. 147-152 Chapter 8. Available at: https://www.parliament.bg/bg/const [7.11.2021]

  - consider disputes in commercial cases with a claim price of up to BGN 25,000 and these claims are not resolved under the general procedure of the Civil Procedure Code, but under the special proceedings in Chapter 32 of the Civil Procedure Code;
- District courts
  - consider disputes in civil cases with a claim price over BGN 5,000;
  - consider disputes in commercial cases with a claim price over BGN 25,000.

Disputes related to the conclusion, validity, execution and non-execution of commercial transactions and all disputes arising in the field of commercial law shall be resolved by the order of the special claim proceedings Chapter 32 of the Civil Procedure Code;

- Courts of Appeal
  - act as an appellate and cassation instance;
  - Supreme Court of Cassation /Commercial Division/
  - consider cases on cassation appeal, appellate decisions of the courts mentioned above, as well as ruling on contradiction with acts of the Constitutional Court or the EU Court;

Commercial disputes in the Republic of Bulgaria may also be resolved by arbitration and the acceptability of the arbitration decision is regulated by the Law for International Commercial Arbitration.

1.4 Types of domestic decisions issued under the Bulgarian civil procedure

The court decision (in Bulgarian Решение) is a state judicial act, i.e., a unilateral authoritative statement of the court, which resolves the legal dispute, establishing the legal situation between the disputants and obliging them to comply with it. According to their consequences, the decisions are establishing, condemning and constitutive.

- Establishing decisions - those in which the court rules only on the existence or non-existence of the disputed right.
- Condemning decisions - those by which the court confirms the existence of a disputed possession and condemns the defendant to satisfy it by allowing its enforcement. These decisions are enforcement titles under Bulgarian law.
- Constitutive decisions - those by which the court confirms the existence of a disputed testamentary right and orders a change in the civil relations.

Depending on the classification in the Republic of Bulgaria, court decisions can be:

Typical - those that are pronounced after conducting statutory procedural rules and

Atypical - those that are decisions in recognition of the claim - present and those that are based on the passive behaviour of one of the parties /Art. 238 para 1 and para 2 of the Civil Procedure Code[18] - „para. 1 - If the defendant fails to submit in time a response to the claim request and does not appear at the first hearing of the case without requesting it to be heard in his absence, the claimant may request pronunciation in absentia against the defendant or withdraw the action. ' and "para. 2 - The defendant may request the dismissal of the case and the adjudging costs or a decision in absentia against the claimant if he does not appear at the first hearing of the case, he has not taken a position on the response to the claim and he has not requested a hearing of the case in his absence. This text requires one of the parties to have been duly summoned and not to have filed a request for hearing the case in his absence. The first instance cases on such disputes are considered by a panel of one judge, while the appellate and cassation cases are heard by a panel of three judges, as one of them is the chairman of the panel /Art. 20 Civil Procedure Code/.

The courts in the Republic of Bulgaria also rule with Orders (in Bulgarian Определение), which are:

- orders on which the court rules on procedural issues;
- orders on the course of the case;
- orders on appeal of actions or refusals of the bailiff;

[18] See Art. 238 para 1 and para 2 of the Civil Procedure Code.

- orders that are equated to the decisions - these are orders that are equated to the decisions in their legal consequences. Such are - the order for termination of the case due to waiver of a claim and the order for costs /Art. 248 para 3 of the Civil Procedure Code/. They are equated, because with these court acts the court rules on certain material issues /the disputed subject, claims for costs/. These orders can be enforcement titles.

In the criminal proceedings /according to art. 301 para 1 item 10 of the Criminal Procedure Code[19]/ of the Republic of Bulgaria, the criminal court rules with a judgment regarding the validity and the scope of the civil claim in this proceeding. In this civil part of the judgment, the criminal court determines the amount of the compensation for the property and non-property damages caused by the criminal act. After the judgment's entering into force on the basis of this part of it, enforcement proceedings may be initiated in accordance with the procedure provided for in the Civil Procedure Code, as it contains a condemnatory operative part.

1.5 "Judgment" and "Authentic instrument" definitions

All decisions rendered in claim proceedings, which are adversarial in all types of claims - declaratory, constitutive and condemning, in which the court acts as a judicial body and with its decision gives protection and sanction of violated rights, ruling on the essence of the dispute and terminating it. The acts of the criminal courts in the Republic of Bulgaria referred by civil claims within the scope of Regulation 1215/2012.

The acts of the administrative courts and of the administrative jurisdictions fall within the scope of the Regulation re the determination of costs.

Precautionary measure allowed by the Bulgarian court, which hears the dispute on the merits in the course of the case with the participation of the defendant under Art. 389 of the Civil Procedure Code meets the conditions of the Regulation for recognition and permission of the execution on the territory of another country.

[19] See Art. 301 para 1 item 10 of the Criminal Procedure Code of the Republic of Bulgaria. Available at: https://www.lex.bg/laws/ldoc/2135512224 [7.11.2021].

The order issued on the basis of Art. 410 of the Civil Procedure Code[20] ("(1) The applicant may request the issuance of an enforcement order: 1. for receivables for monetary amounts or substitutable items, when the claim is adjudicated in a district court; 2. for the transfer of movable property which the debtor has received with an obligation to return it or it is encumbered by a pledge or it has been transferred by the debtor with an obligation to transfer possession when the claim is brought before a district court.") falls within the scope of the Regulation as the defendant has the right to object under Art. 414 of the Civil Procedure Code. The order accompanied by an order for immediate execution does not meet the requirements of the Regulation.

The EU Court explicitly distinguishes the procedure for allowing the execution of court decisions within the meaning of Art. 32 of the Regulation 1215/2012 from that of the court agreements. The Regulation denies the legal establishing action of a court settlement due to the possibility of a judgment between the same parties and on the same subject matter.

Agreements between the parties for the settlement of legal disputes, for example through mediation which is certified or registered by a public body as an authentic document falls within the scope of the Regulation.

1.6 Questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment"

The national courts in the Republic of Bulgaria have **not** addressed questions for a preliminary ruling /Art. 263 TFEU/ to the CJEU regarding the term "Judgment".

1.7 "Power of assessment" exerted by courts when rendering default judgments in Bulgaria

The appellate procedure carried out in the Republic of Bulgaria by the District Courts and the Courts of Appeal takes into account the procedural preclusions that occurred in the first instance proceedings. The newly discovered and newly received facts, which the parties want to take into account when deciding the case are

[20] The applicant may request the issuance of an enforcement order, see Art. 410 of the Civil Procedure Code.

acceptable before the appellate courts. In its ruling, the appellate court, exercising judicial control, may annul the first-instance decision in full or partially. When the legal and factual findings differ completely from those made at the first instance, the decision is annulled in full and the appellate court issues a new decision in substance. When the legal and factual findings partially coincide, the decision is partially annulled. In this case it confirms the part in which the conclusions coincide and cancels the remaining part. The not-entered-into force appellate condemning decision is an enforcement title. Its executive power precedes the power of the adjudicated thing, as the same can be appealed in the cassation instance.

The control of the cassation instance has a control-annulling character. The Supreme Court of Cassation of the Republic of Bulgaria does not, as a rule, resolve the dispute in substance regarding the material right, but decides on the validity, admissibility and correctness of the appellate decision. The cassation appeal under the current Civil Procedure Code in the Republic of Bulgaria is selective, its scope of application is limited by the criteria for allowing the cassation appeal, i.e., judicial control is not mandatory in all cases, although there is a judicial act that is subject to cassation review. The judicial control is regulated by the norms of the Civil Procedure Code in force in the Republic of Bulgaria and they lack such giving the courts the opportunity to exercise the “right of discretion”.
discretion”.

Part 2

General aspects regarding the structure of Judgments

2.1 The elements of domestic (civil) Judgment in the Bulgarian legal order

The judgment under the Civil Procedure Code of the Republic of Bulgaria is prepared and issued in writing for validity /Art. 235 para 4 of the Civil Procedure Code/.

The judgment must contain:

1. The date and place of issue

2. Indication of the court, the names of the judges, the registrar and the prosecutor who took part in the case

3. The case number for which the judgment is rendered

4. The names, respectively the name and the address of the parties

5. What the court rules on the substance of the dispute

6. Who will incur the costs

7. Is the judgment subject to appeal, to which court and in what term. /art. 236 of the Civil Procedure Code/.

Paragraph 3 of the above text indicates that the judgment is signed by all judges who took part in its ruling. When one of the judges cannot sign it, the chairman or the senior judge shall note on the judgment the reasons for this.

The judgment, which is signed by the judge, who was chosen in another court after its ruling or there is an objective impossibility for that, is not null and void. /TR No.1 from 10.02.2012 of SCC in interpretation of Case No. 1/2011[21]/.

The judgment as a judicial act must be motivated /art. 121 of the Constitution of the Republic of Bulgaria[22] and art. 236 para 2 of the Civil Procedure Code/.

2.2 Judgments' structure in the Bulgarian legal order

Art. 236 (1) CPC[23]: The judgment must contain:

1. Date and place of its enactment:

2. Indication of the court, the names of the judges, the registrar and the prosecutor, when he took part in the case;

3. The case number in which the judgment is given;

4. The names, respectively the name and the address of the parties;

5. What the court rules on the substance of the dispute;

[21] TR No1 from 10.02.2012 of SCC in interpretation of Case No1/2011. Available at: http://www.vks.bg/talkuvatelni-dela-osgk/vks-osgk-tdelo-2011-1-reshenie.pdf [7.11.2021].
[22] Art. 121 of the Constitution of the Republic of Bulgaria. Available at: https://www.parliament.bg/bg/const [7.11.2021].;
[23] See Art. 236 (1) Civil Procedure Code.

6. Who will incur the costs;

7. Is the judgment subject to appeal, to which court and within what term;

The judgments in the Republic of Bulgaria are made IN THE NAME OF THE PEOPLE.

(2) The court shall set forth to its judgment reasons indicating the requests and objections of the parties, the assessment of the evidence, the factual findings and the legal conclusions of the court.

(3) The judgment shall be signed by all judges, who have taken part in its ruling. When one of the judges is unable to sign it, the chairman or the senior judge shall indicate in the judgment the reasons for this.

2.3 Standardisation of court judgments in Bulgaria

The form and structure are written in the Civil Procedure Code of the Republic of Bulgaria and this determines the standardisation of the court judgment.

Only in the motivational part of the court judgment there is no standardisation. The court shall state reasons for the judgment, in which it shall indicate the requests and the objections of the parties, the assessment of the evidence, the factual findings and the legal conclusions of the court.

The reasoning is not part of the judgment, although it is materialised together with it in one and the same document - a written act of the Judgment (compare Art. 235, para 4 and Art. 236, para 2[24]) The reasoning cannot be part of the judgment also because the judgment is a legal act, and the legal acts in their capacity of declarations of will are something different from the considerations. The reasoning states considerations because of which the judgment was made, but they are not part of its factual composition. Even if the judgment is not motivated, it is not null and void but revocable /Art. 281, item 3 of the Civil Procedure Code/.

[24] Compare Art. 235 para 4 and Art. 236 para 2 of the Civil Procedure Code.

2.4 Ways of separating the different elements of the Judgment separated from one another

In order to be specified as a statement of a certain court on a certain case, the Judgment must have the elements indicated in Art. 236, para. 1 of the Civil Procedure Code: date and place of its enactment; the court that ruled it; the parties between whom it is issued; the case on which the Judgment was pronounced, and most importantly: what the court ruled (establishing whether the disputed right exists or does not exist; condemnation; change of the civil legal relations between the disputing parties). In addition, the Judgment contains an order of the court regarding the incurrence of the court costs (Art. 236, para 1, item 6) and an instruction regarding the appeal of the judgment. The operative part is followed by the signatures of all judges who took part in its ruling (Article 236, paragraph 3 of the Civil Procedure Code). In order to be valid, the Judgment has to be reasoned (Article 236, paragraph 2). The reasoning is written considerations of the court, substantiating the Judgment. The reasoning is not part of the Judgment, although they are materialized together with it in the same document - the written act of the Judgment (Article 235, paragraph 4 and Article 236, paragraph 2 of the CPC). The persuasiveness, the verification and the correctness and the interpretation of the Judgment are based on the reasoning. Therefore, although short, the reasoning should be clear and complete. The court must state in the reasoning why it gives credence to some means of evidence and does not give credence to other evidence, discussing them in full and in their entirety. The outline and the content of the reasoning, as well as its structure, may be the product of case law.

2.5 Differences in the structure of judgments issued by the courts of first instance and the Courts of Appeal

The appellate appeal under the regime of the Civil Procedure Code in force since 01.03.2008 is of the type of the limited appellate appeal. One of its most striking features is the limited possibility for completing the case with new facts and evidence as an expression of the idea of accelerating the progress of the case until its conclusion with a final judicial act. Before the Court of Appeal, the parties may not point out such circumstances and evidence in the case, which they could, but knowingly or negligently failed to point out before the first instance. Typical of the limited appellate appeal are also the powers of the appellate instance after checking

the validity and the admissibility of the first instance judgment - it is obliged to consider and resolve the substantive dispute only on the basis of the grounds for incorrectness of the first instance judgment indicated in the claim (Article 269 CPC).[25]

Of course, there are similarities between the first-instance hearing of the case and the appellate appeal, which are revealed mainly in the following:

a) The subject of the appellate appeal, no matter whether it is complete or limited, is a substantive dispute. The appellate court may include new facts in the case, gather evidence and make its own factual and legal conclusions regarding the subject matter of the dispute;
b) The appellate court has the power and obligation to resolve the case on the merits, regardless of whether it confirms or revokes the first instance judgment (Article 271, paragraph 1 of the CPC[26]);

Judgments of the courts of first instance are subject to appeal. The powers of the Court of Appeal are different depending on whether the appealed judgment is null and void, inadmissible or incorrect. When it finds that the appealed judgment is null and void, the Appellate Court with a judgment declares it null and void (Article 270, paragraph 1 of the CPC[27]). The judgment of the Court of Appeal has a declaratory effect because it only finds that the invalid first instance act cannot cause legal consequences. If the decision is inadmissible, the Court of Appeal invalidates it (Article 270, paragraph 3 of the Civil Procedure Code[28]). The law uses correctly the term "invalidate" instead of annulling. The annulment presupposes an incorrectness of the judgment, and it is necessary to replace the incorrect judgment with a new correct judgment of the Court of Appeal. That approach is unacceptable when the appealed judgment is inadmissible. The inadmissibility of the judgment may be due to different defects, so the procedure cannot be the same. If it considers that the appealed judgment is valid and admissible, the Appellate Court proceeds to

[25] If it is obliged to consider and resolve the substantive dispute only on the basis of the grounds for incorrectness of the first instance judgment indicated in the claim, see Art. 269 Civil Procedure Code.

[26] Regardless of whether it confirms or revokes the first instance judgment, see Art. 271 paragraph 1 of the Civil Procedure Code.

[27] When it finds that the appealed judgment is null and void, the Appellate Court with a judgment declares it null and void, see Art. 270 paragraph 1 of the Civil Procedure Code.

[28] If the decision is inadmissible, the Court of Appeal invalidates it, see Art. 270 paragraph 3 of the Civil Procedure Code.

resolving the dispute on the merits (Article 271, paragraph 1, sentence 1 of the Civil Procedure Code). The Civil Procedure Code **does not** contain hypotheses in which the case is returned to the first instance after the annulment of the incorrect judgment. The case will be returned to the court of first instance in the rare hypotheses of the null and inadmissible judgment outlined above.

2.6 The assertion of a counterclaim and its effects on the structure of the Judgment

The assertion of a counterclaim is part of the objective joining of claims for the purpose of procedural economy and non-contradictory resolution of disputes concerning different legal relations arising from the same legal facts. The counterclaim is asserted under the rules for laying a claim under the Civil Procedure Code. The structure of the judgment does not go beyond the standard but it only expands the subject of ruling. The court judgment in case of an asserted counterclaim has the same form presented in Art. 236 of the Civil Procedure Code. The counterclaim has its independence because it must be reviewed and asserted even when the procedure of the original claim is terminated. This judgment should contain a formed will both on the initially asserted and on the objectively joined counterclaim. In the cases when the court judges not to allow the counterclaim for consideration or divides the cases by order, the latter is not subject to appeal, as it does not obstruct the defence of the defendant and his right to bring the claim in separate procedure. In its judgment upon combining the two claims, the Bulgarian court rules on the evidence of the party bearing the burden of proving the claimed fact and the evidence supporting the counterclaim aimed at invalidating the main evidence or doubting that the fact claimed by the other party was not carried out.

2.7 Time and terms in connection with the enforcement of the Judgment.

Under the Civil Procedure Code of the Republic of Bulgaria, it is possible for the court to order preliminary enforcement of the judgment when awarding alimony, remuneration, and compensation for work.

In this type of cases, the court allows with the judgment in a separate operative part preliminary enforcement when adjudging a receivable based on an official document, when adjudging a receivable recognized by the defendant and when the delay in enforcement may result in significant irreparable damages for the claimant or the enforcement itself would become unenforceable and impossible or the enforcement could be hampered. /Article.242 of the CPC/. According to the practice of the CJEU, all relations within the scope of enforcement are regulated by the law of the member states and there is no harmonization at EU law level. In this sense, once admitted to enforcement under Chapter III of the Brussels I Regulation[29], the foreign judgment is subject in our country to the rules of enforcement under the Civil Procedure Code, including also regarding to protection against enforcement.

In order for a court judgment to be enforced, which in its operative part contains a term for execution or a term for voluntary execution in the Republic of Bulgaria, it must be allowed according to Section 2 of Chapter III of the Regulation[30]. The assessment necessarily concerns the condition to be enforceable in the Member State by origin. When there is contradiction between two judgments of the Member States in the application of Art. 34 para 3 of the Regulation in the Republic of Bulgaria, the judgment of the state where recognition or enforcement is sought will always be given priority.

The court judgment according to the Bulgarian civil legislation does not contain an operative part for voluntary fulfilment by the defendant or a term within which it will not be enforced, or a term after which it is not subject to enforcement.

The voluntary enforcement of the judgment is the beginning of one of the ways for enforcement of monetary claims on the basis of an effective court judgment. The court judgment under the Bulgarian civil legislation does not include an operative part with a specific term after which it will not be enforced. The term of its enforcement is bound by the legal term for repayment by prescription.

Art. 623 and Art. 627 a-627c[31] of the Civil Procedure Code outside the procedures under the Regulation.

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[29] Chapter III Recognition and enforcement- Regulation 1215/2012.
[30] Section 2 Enforcement, Chapter III Recognition and enforcement- Regulation 1215/2012.
[31] See Art. 623 and Art. 627 a-627c of the Civil Procedure Code.

2.8 Personal information in the Judgment required to identify the Parties of the dispute

The court judgment in the Republic of Bulgaria indicates the name and surname of the parties, residence of the parties /including permanent and current address/, the unique civil number (in short UCN – it is a 10-digit number that is unique to every Bulgarian citizen or foreign permanent resident. It serves as an administrative identifier of the individuals subject to registration. The UCN is obtained at birth in a medical institution or subsequently - at the issuance of a birth certificate. The standard holder of the UCN is the Unified System for Civil Registration and Administrative Services of the Population (USCRASP) at the Civil Registration and Administrative Services General Directorate (CRAS GD).

The unique civil number was introduced in 1977 data from identity documents, birth place that identifies individuals or a unique identification code that is unique to traders and their branches. The information is given at the beginning of the judgment and it is usually not repeated.

2.9 The ways the courts determine the amount in dispute

In the court judgments the Bulgarian courts indicate the amount of the claimed price after indicating the legal basis and its characteristics at the very beginning.

After the first hearing in the case, the claimant has the legal possibility to amend the claim re its amount within the jurisdiction of the court that has been referred. By the first hearing at the latest, the defendant or the court may raise the issue of the amount of the claim /Art. 70 para. 1 second sentence[32] of the Civil Procedure Code/. The ruling of the court, which increases the amount of the claim, is subject to appeal with a private appeal /Art. 70 para 2[33] of the Civil Procedure Code/. In the part of the judgment in which the court on the basis of the established factual situation makes its legal conclusions, the merits of the claim and its amount are analysed. There is always an analysis of the evidence concerning the available complicity or

[32] The defendant or the Court may raise the issue of the amount of the claim, see Art. 70 para. 1 second sentence of the Civil Procedure Code.

[33] The ruling of the Court , which increases the amount of the claim, is subject to appeal with a private appeal, see Art. 70 para. 2 of the Civil Procedure Code.

suitability of such presented in the course of the case. On the basis of these conclusions the court in the Republic of Bulgaria in the operative part of its judgment indicates the due amount in the condemnatory part and the amount up to the claimed amount which is rejected. The amount of the costs of the proceedings and at whose expense they have been ordered shall also be indicated.

2.10 The principles by which the underlying legal relationship is indicated in enforcement proceedings

In the Republic of Bulgaria, the courts rule with a purposive court act / a term which is used in a closed session on the day of filing the application for imposition of a security on all types of claims with property interest in the Security Proceedings - Art. 389 para 2 and art. 390[34] of the Civil Procedure Code/. In this act the Bulgarian courts analyse the probable validity of the claim and there are conclusions regarding the fact that without the imposition of a security for the claimant it will be impossible or difficult to exercise his rights under the future judgment and in order to ensure the enforcement. With the act of imposing security, the Bulgarian courts indicate that the claim is supported by convincing written evidence as far as its validity is concerned. According to Art. 394[35] of the Civil Procedure Code, the court may allow security for the claim in its full amount or only in those parts that are supported by sufficient evidence. The Bulgarian court may not impose security measures on non-sequestrable items such as items for ordinary use of him and his family indicated in a list approved by the Council of Ministers of the Republic of Bulgaria and the necessary food of the debtor and his family, the necessary fuels, the debtor's home and all items provided for in another law that are not subject to enforcement /Article 444 of CPC/.

[34] A purposive court act, Security Proceedings, see Art. 389 para 2 and Art. 390 of the Civil Procedure Code.
[35] The Court may allow security for the claim in its full amount or only in those parts that are supported by sufficient evidence, see Art. 394 of the Civil Procedure Code.

2.11 The non-sequestrable property rights in the Bulgarian enforcement process

Humanism in the Bulgarian enforcement process excludes enforcement against the person of the debtor in the collection of monetary claims.

Non-sequestrable property rights: non-sequestrable are those property rights of the debtor in respect of which the bailiff does not have the procedural power to prohibit, seize or sell them. Non-sequestration is a prohibition on enforcement on certain property rights of the debtor. The non-sequestration established by the Law is waived in relation to a number of claims: a. Non-sequestration of the home (art. 444, item 7); aa. Claims secured by a mortgage on the non- sequestrable property (respectively Pledge on non- sequestrable movables), regardless of whether it is legal, contractual or established under Art. 180 and Art. 181 of the LOC[36] (Law on Obligations and Contracts); bb. maintenance claims, regardless of whether the enforcement proceedings were instituted at the creditor's request for maintenance, or whether he joined the enforcement proceedings instituted at the request of a creditor whose claim the non-sequestration applies for (see Art. 445, para. 2, item 1 of the Civil Procedure Code); b. The non-sequestration of the labour receivable under Art. 446 is eliminated in favour of the receivable for current maintenance (Art. 446, para 3 CPC). The maintenance receivable is non- sequestrable, and the scholarship receivable is sequestrable only for satisfaction of a maintenance claim against the recipient of the scholarship (Art. 446, para. 4 CPC). According to the Family Code, every parent is obliged according to their abilities and financial situation to provide living conditions necessary for the development of the child. The law allows a specific and individual assessment of the needs of the child and of the abilities of the parent to be made according to the evidence in the case. In this sense, it should be emphasized that the right of maintenance belongs to the child, regardless of the fact that it is exercised through the parent to whom the parental rights have been granted. In case of unforeseen increase of the child's needs (e.g. need for medical care or educational needs, etc.), according to Art. 143, para. 3 of the Civil Code[37], upon receipt of a request, the court may determine a supplement

[36] See Art. 180 and Art. 181 of the LOC (Law on Obligations and Contracts).

[37] Upon receipt of a request, the Court may determine a supplement to the court-determined maintenance to cover the exceptional need of the child up to an amount to which the parent can provide it without special difficulties, as well as the term for which it is due, see Art. 143, para. 3 of the Civil Code.

to the court-determined maintenance to cover the exceptional needs of the child up to an amount to which the parent can provide it without special difficulties, as well as the term for which it is due.

Even when the maintenance is determined by an agreement between the parents in divorce proceedings by mutual consent, it is possible to initiate proceedings for changing the amount of maintenance in the event of a change in the circumstances.

2.12 Types of decisions in regular litigation proceedings

The decision of the court must reflect the legal situation between the parties to the case as it is at the time of completion of the court research. Therefore, the court is obliged also to take into account the facts that occurred after the filing of the claim, as long as they are relevant to the disputed right, either because they cause it, or because they extinguish it, or because they change it. If the facts put forward in support of the claim, of the objections, of the replicas and rejoinders are legally relevant and they need to be proved, the court, in order to determine whether the disputed right exists, it must assess whether these facts have been proved. Thus, as in the examination of the case, the evidence occupies a central place, so in the resolution of the case, the assessment of the evidence is the core of the decisive activity of the court. Because upon the assessment of the evidence the court builds its statements that certain facts have taken place, and others have not and by bringing these statements in a legal norm, it comes to the conclusion whether the disputed right exists or does not exist. The court assesses the evidence in its internal conviction.

After receiving the answer from the defendant, the court schedules the case for hearing in a closed session /dispositionally/ - without the participation of the parties.

The act by which the court rules in a closed session and schedules the case in open is a Determination. With it, it rules on the admissibility of the claims and the other counterclaims and objections of the parties and on the admission of evidence /Art. 140 of the Civil Procedure Code[38]/. In an open court hearing, the court after the

[38] The act by which the Court rules in a closed session and schedules the case in open is a Determination, see Art. 140 of the Civil Procedure Code.

report on the case rules with an order on the evidentiary requests of the parties, admitting evidence that is relevant, admissible and necessary. All acts of the court pronounced in the course of the case hearing are bound by the outcome of the proceedings and the ruling of the decision.

2.13 Ways of judgments drafting

In the Civil Procedure Code of the Republic of Bulgaria these are court acts by which the court rules but does not resolve the dispute on the merits. These acts resolve issues of procedural nature. With the determinations, with which the court rules on the admissibility without terminating the case but temporarily thwarting its movement, are subject to appeal with a private appeal and **cannot** be amended or revoked by the same court /arg. from Art. 253 of the Civil Procedure Code[39]/.

The determinations for moving of the proceedings in the direction of its resolution are not appealed on the merits. In the Republic of Bulgaria, the Bulgarian courts also rule with Orders on procedural issues which are resolved by a sole body /e.g. the chairman of the panel/. The regime of the orders is subordinated to that of the determinations.

The court's determinations on the withdrawal of the claim indicate that the claimant temporarily waives his defence and the court disseizes itself with the dispute and therefore terminates it. All consequences of the procedural actions are retroactively deleted. The right to file a new claim again is reserved. The determinations for waiver of the claim lead to termination of the proceedings and deprive the claimant of filing the same claim. The determinations amending the claim directly concern the subject of proof regarding the amount of the claim and have their own ruling in the operative part of the court decision.

[39] With the determinations, with which the Court rules on the admissibility without terminating the case but temporarily thwarting its movement, are subject to appeal with a private appeal and cannot be amended or revoked by the same Court, arg. from Art. 253 of the Civil Procedure Code.

2.13.1 Effects on the operative part and/or the reasoning

As I have indicated in 2.13, they have their own ruling in the operative part of the court's decision. The operative part remains unchanged anyway. Some ancillary issues can be commented in the grounds. Considered as a dispositive document materializing the state judicial act, the decision with the formal evidential force inherent in each document proves the judicial act and the grounds for it.

2.13.2 Decisions incorporated into the judgment

All acts of the court pronounced in the course of the case's consideration are bound by the outcome of the proceedings and the issuance of the decision. Decisions on e.g., termination of the proceedings on part of the claim, if, for example, the parties are represented by professional representatives (lawyers) and the application extending the claim for the other party has not been filed in the court within the given time limit, but has been given directly to a representative of the other party.

2.13.3 Imposition of provisional protective measures

The imposition of provisional protective measures is done by a specific court act - a determination for the admission of the security in the Precautionary Procedure regulated in the Civil Procedure Code (Chapter 34 CPC[40]).

The protective measures represent the protection and the sanction in which the security of the claim consists.

In Interpretative judgment N 1 of 21.07.2010 under Interpret. c. N 1/2010, General meeting of the civil panel /OSGKTK/ of the Supreme Court of Cassation[41] it was accepted that the precautionary process is not a separate proceeding and that in all its stages it is a two-instance proceeding, i.e. not subject to cassation control.

[40] Precautionary Procedure regulated in Civil Procedure Code (Chapter 34).
[41] Interpretative judgment No1/21.07.2010 under Interpret. C No1/2010, OSGKTK of the Supreme Court of Cassation. Available at: http://www.vks.bg/talkuvatelni-dela-osgk/vks-osgk-tdelo-2010-1-reshenie.pdf [711.2021].

Part 3
Special aspects regarding the operative part

3.1 The operative part – the declarative and the imperative side of the court decision

The operative part is an emanation of both sides of the court decision:

- legative (declarative);
- law-making (imperative);

With regard to the first party, the operative part is an act of legal knowledge, which declares on whose side the right belongs and therefore, in relation to the disputed substantive law, the operative part gives the content of the court order.

With regard to the second party, the operative part creates the binding force of the judicial establishment.

The operative part states whether the disputed right exists or does not exist and this follows from the obedience that the court owes to the law. Therefore, in its content it is a court order and a giving of binding force to the court certification.

The communication of the operative part is directly related to the legal consequences of the decision with its legal force. The operative part contains the pronouncement of the questions in a certain sequence, which aims to reach a decision with a flawless solution with minimal effort.

3.1.1 The operative part and the threat of enforcement

In the Civil Procedural Code (CPC) of the Republic of Bulgaria the content of the Decision is regulated in Art. 236 of the CPC. The law does not allow the operative part of the court's judgment to contain a threat of enforcement.

The right of enforcement is not a right of the creditor against the debtor, but a public law procedural power, under which the obligated person is the enforcement body. This procedural right is addressed to the enforcement body in the CPC enforcement proceedings, namely to the bailiff

This right can be exercised after being examined by the court. The inspection aims to see whether the right of enforcement has arisen, whether there is an enforceable ground, whether it certifies an enforceable right, in favour of whom, against whom and for what enforceable right it exists. Holder of the right of enforcement is the party with a proven title.

The operative part should contain a legal instruction for exercising the right of enforcement against a debtor with a **proven title**.

3.1.2 Declaratory relief in cases when the Claimant sought payment

The court must indicate the debtor's bank account to which the payment of the proven title will be made. In court decisions, this element of the operative part is mandatory and not only in cases where the plaintiff has requested enforcement.
The CPC of the Republic of Bulgaria regulates independent and special court proceedings aimed at creating an enforcement ground - an enforcement order, respectively order for immediate execution, for compulsory collection of undisputed and required titles (Art. 404 item 1, in conj. with Art. 410 and Art. 417 of the CPC. Ordinance court proceedings are used in cases where the title is not enforced,

although it is not disputed by the debtor. The operative part of the judicial act is characterized by an enhanced application of the written principle. A number of documents are prepared according to a model by the Minister of Justice (Art. 425, para.1 of the CPC) - the enforcement order, the application for issuance of an enforcement order and other papers in connection with the injunction proceedings (on the basis of Art. 425 para.1 of the CPC, Ordinance No. 6/2008 was adopted (in force since 01.03.2008, promulgated SG, issue 22 of 28.02.2008, amended SG, issue 52 of 10.06.2010[42])). The subject of this procedure is the receivable, which must be due, but not liquid, as its indisputability is a prerequisite for the entry into force of the enforcement order, but not for initiating proceedings. Therefore, whether a right is disputable or not in this proceeding is assessed in view of the objection filed by the debtor (Chernev S., op. cit. 56-57). In the content of this order, an invitation to the debtor to execute within two weeks from the service of the order (Art. 412 item 7 of the CPC).

3.1.3 Specification of the debtor's obligation

The CPC of the Republic of Bulgaria allows to supplement and amend the operative part in the part for the expenses by an order different from the one for supplementing the decision. This is because the claim for expenses enjoys relative independence from the subject-matter of the dispute (TR No. 6/2012 of 06.11.2013. The Supreme Court of Cassation (SCC) in interpretative case No. 6/2012, of the General Assembly of the Civil and Commercial Colleges (GACCC)[43]). The court in a closed session issues a ruling which is served on the parties and is appealed in the order in which the ruling is subject to appeal.

3.1.4 Prohibitory injunction

In the Republic of Bulgaria, courts at the district level issue rulings containing injunctions under the Domestic Violence Protection Act (DVPA).

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[42] Ordinance No 6/2008 (in force since 01.03.2008, promulgated SG, issue 22 of 28.02.2008, amended SG, issue 52 of 10.06.2010). Available at: https://www.lex.bg/laws/ldoc/2135581297 [7.11.2021].

[43] TR No 6/2012 of 06.11.2012 The Supreme Court of Cassation in interpretative case No 6/2012 of the General Assembly of the Civil and Commercial Colleges (GACCC). Available at: http://www.vks.bg/talkuvatelni-dela-osgtk/vks-osgtk-tdelo-2012-6-reshenie.pdf [7.11.2021].

The operative part of the court's judgment consists of two parts:

- A legal guidance on domestic violence against all persons;
- An order for protection and abstinence from domestic violence against the specific person /victim/ applicant in the proceedings.

The operative part includes:

- Issuing a protection order in favour of the victim, obliging:

The perpetrator of domestic violence to refrain from domestic violence and **PROHIBITS** him from certain actions included in the protection measures contained in Art. 5 of the DVPA, determining the term of effect of the prohibition order.

3.1.5 Interim judgment

In the Republic of Bulgaria, the decisions upholding the objections referred to in Art. 298 para.4 of the CPC[44], including the objection for set-off, the objection for right of retention, the objection for non-performed contract under Art. 90 of the Obligations and Contracts Act (OCA)[45] have no executive force and do not constitute grounds for execution. If the defendant wanted to achieve this, he had to file a counterclaim. Therefore, the defence of the counterclaim by objections under Art. 298 para.4 of the CPC is subjected to his defence against the claim and cannot exceed it. If these objections are upheld, then the plaintiff himself cannot benefit from the executive force of the operative part until he fulfils his obligation on the counterclaim claim of the defendant filed with an objection.

[44] The decisions upholding the objections referred to in Art. 298 para. 4 of the Civil Procedure Code.
[45] The objection for non-performed contract under Art. 90 of the Obligations and Contracts Act (OCA).

In the national judicial system of the Republic of Bulgaria there is a status of "temporary court's judgment" in the following cases:

The court in the Republic of Bulgaria issues a ruling named Order for immediate protection under Art. 18 of the DVPA[46] as its operative part includes a prohibition of conduct involving acts of domestic violence against the victim for a certain period.

In the case of a pending divorce proceedings instituted under a divorce application, either party may request interim measures concerning the spouses' residence and use of their property, the exercise of parental rights, upbringing and maintenance of the children, and the maintenance of the wife.

On the above issues, the court in the Republic of Bulgaria issues a ruling with Judgement, which enjoys executive force, but not with the force of a *res judicata* and is not subject to appeal (Art. 323 para.3 of the CPC[47]). The temporary nature consists in the fact that after the end of the divorce proceedings they are either dropped or replaced by a permanent regulation with regard to the relations on the use of the family home, the maintenance and the exercise of the parental rights.

According to the CPC of the Republic of Bulgaria, the court issues a ruling with a Judgment for securing evidence due to the danger of losing some of them or making their collection difficult. In this case, the court issues a ruling in a closed session with its act by which it upholds and allows their securing or rejects, does not uphold the request. The latter action of the court under Art. 208 para. 3 of the CPC[48] is subject to private appeal.

In the two-stage partition proceedings, the deciding court rules interim decisions in the second phase of the partition, namely on the accounts.

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[46] See Art. 18 of the Domestic Violence Protection Act (DVPA). Available at: https://www.lex.bg/laws/ldoc/2135501151 [7.11.2021].
47 See Art. 323 para. 3 of the Civil Procedure Code.
[48] The latter action of the Court under Art. 208 para. 3 of the Civil Procedure Code is subject to a private appeal.

3.1.6 Interlocutory judgment

In the Republic of Bulgaria, "non-final court decisions" are referred to in pending divorce proceedings when the court determines appropriate measures to ensure the execution of the decision, related to:

1. realization of personal relations in the presence of a certain person;
2. realization of personal relations at a certain place;
3. bearing the expenses of travel and, if necessary, of the person accompanying him;

This decision may be *ex officio* amended by the court by ordering new measures. It is inadmissible for the court to issue a ruling on matrimonial claim and claims under Art. 59 of the Civil Code in respect of illegitimate children and children from another marriage and the court to be asked to rule *ex officio*.

3.1.7 Alternative obligations

Such operative parts of court decisions are contained in the proceedings, for example, claims proceedings for ownership of movable property (Art. 108 of the Family Act[49]). The claim demands the return of ownership of the property or its equivalent. In these proceedings, enforcement in a mode of eventuality and alternativeness is admissible.

In the mode of eventuality, in the operative part the court sentences the possessing non-owner to restore the ownership of the thing or its equivalent.

In the mode of alternativeness, in the operative part the court sentences the possessing non-owner to restore the violated factual situation in only one way that it determines.

[49] See Art. 108 of the Family Act. Available at:
https://www.justice.government.bg/home/normdoc/2135637484/ [7.11.2021].

3.1.8 Wholly or partially dismissed claim

A claim is unfounded in its own right when there is no positive or there is negative procedural precondition regarding the existence of the right of claim. When the claim is unfounded in its own right, it is rejected in its entirety. In this case, the operative part looks like this:

DISMISSES in its entirety as unfounded the claim brought in favour of the plaintiff against the defendant for the claimed compensation (e.g. for compensation for non-pecuniary damages for the amount of the claim).

ORDERS the applicant to pay the costs of the proceedings.

In the hypothesis that the claim is dismissed as a result of an objection lodged by the defendant, the defendant may not restrict himself to challenging the merits of the claim unfoundedly. The defence, in essence, adapts to the plaintiff's legal argument. Therefore, we distinguish between defence against a right claimed by the plaintiff and defence against a right denied by the plaintiff.

Objections to the claim may be: right-excluding, right-nullifying, right-lapsing or right-suspending.

- Right-excluding: these objections by which the defendant claims facts thwarting the originating of the law. Such are the objections claiming nullity or relative invalidity of the act from which the plaintiff derives his right;
- Right-nullifying: these objections by which the defendant alleges facts that vitiate the law-making fact and lead to the annulment of the right derived from that fact. Such are the objections of incapacity, error, violence, fraud, etc.;
- Right-lapsing: these objections by which the defendant claims facts that lapse the right or the responsibility of the defendant for it, respectively deprive the plaintiff of his right. Such are the objections for pay-off, set-off, forgiveness of the debt, for renunciation of inheritance or for acceptance of the inheritance under inventory, for transfer of the receivable, etc.

- Right-suspending: these objections by which the defendant asserts facts which postpone the enforceability of the claim. Such are the objections to different modalities of the transaction (condition, term), for the right of retention, for an unfulfilled bilateral contract.

By objections, the defendant may also assert his rights against the plaintiff. For some rights, this is explicitly allowed by the law (Art. 31, para. 2 of the CPA[50] and Art. 44, para.3 Notaries Act (NA)). However, this is generally admissible where the defendants right require that the claim be dismissed, upheld in part, or to condition the sentencing of the defendant from satisfying his counterclaim against the plaintiff.

Here are some examples of rights, the court filing of which, does not require a claim, but an objection is sufficient: potestative rights for the annulment or cancellation of legal transactions, for reduction of the pot stative price of a defective goods, counterclaims of the defendant, based on which he sets-off or exercises a right of retention. The objection achieves protection of these rights.

3.1.9 Wholly or partially rejected claim

The court has no jurisdiction on a claim when:

- the claim is not in its subject matter jurisdiction: the court checks the subject matter jurisdiction and the jurisdiction under Art. 109, before serving a copy of the statement of claim. If the facts determining the jurisdiction are relevant to the disputed right, their change also changes the jurisdiction. It is for each court to decide whether the case before it is in its jurisdiction (Art. 118, para. 1). If the court finds that it does not have the required jurisdiction, the court must terminate the case and refer it to the competent court (Art. 118, para. 2 of the CPC), without the need for a request from the party concerned;
- the right claimed by the claim, individualized by the ground and the petitum of the claim are irrelevant to the right of lodging a claim - when the facts determining the jurisdiction are irrelevant to the right claimed by the

[50] The defendant may also assert his rights against the plaintiff. For some rights, this is explicitly allowed by the law, see Art. 31, para. 2 of the CPA. Available at: https://lex.bg/laws/ldoc/2121934337 [7.11.2021].

statement of claim, it is sufficient that they were present at the time of filing the claim;

The statement of claim contains facts and circumstances that are subject to verification and judgement by an extrajudicial (e.g. administrative) body.

In this case, the operative part would look like this:

DISMISSES THE CLAIM WITHOUT CONSIDERATION and sends it to the competent administrative authority.

When the deadline for filing a claim has expired, the claim becomes overdue, due to which the court dis-refers itself, dismissing the claim without consideration due to its delay and terminates the proceedings.

There is also a hypothesis in cases where the claimant refers to two different grounds or submits two or more petitums. For example, title for tort and contractual liability for one and the same act. Each of these legal relations has a different disputed right.

The operative part of the court's judgment on claims with pecuniary interest, which was partially rejected, has the following content:

ORDERS the debtor (individualizes the person) to pay the creditor (individualizes the person) the amount (indicates the amount of the upheld and proven pecuniary claim), representing compensation for incurred non-pecuniary damages caused by a traffic accident (indicates the date of the accident), the amount of the proven part of the caused pecuniary damages, together with the legal interest until the final payment.

DISMISSES the filed claim for payment of compensation for non-pecuniary damages in excess of the amount proved to the extent specified in the petitum of the statement of claim.

ORDERS the debtor to pay to the account of the court who had heard the case considered the dispute a state fee as well as the expenses for the proceedings in the determined amount.

The operative part of the court's judgment on claims with pecuniary interest, which is completely rejected, contains ruling, for example, on the fact that the claim has been extinguished by prescription and is not due.

3.1.10 Drafting operative part in cases where debtor invokes set-off

Unlike out-of-court set-off, for which liquidity of the active claim is required, the objection to judicial set-off is admissible and justified even when the active claim is not liquid. With the entry into force of the court's judgment, the force of res judicata also extends to the receivable filed with the objection for set-off (Art. 298, para. 4 of the CPC[51]), which leads to the conclusion that the receivable claimed with the set-off objection becomes liquid in the future, even if it was previously disputable (illiquid). Judicial set-off under Art. 104, para. 1 of the CPA repays the counter-receivables in the future, and not from the day of filing the objection for set-off, because at that moment the active receivable was not liquid and the prerequisites for set-off were not present.

According to the provision of Art. 103, para. 1 of the CPA[52], the set-off is possible when two persons owe each other money or equitype and substitutable things. In this case, each of them, if his receivable is due and liquid, may set it off against his obligation.

Pursuant to the provision of Art. 104, para. 2 of the CPA[53], the set-off has a retroactive effect, whereas the two counterclaims are considered repaid to the extent of the lesser of them from the day on which the set-off could have taken place. There may be a dispute between the parties over one or both obligations. The dispute may concern the existence of the receivable, its nullity or destroyability, its enforceability or its amount.

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[51] With the entry into force of the Court's judgment, the force of res judicata also extends to the receivable filed with the objection for set-off, see Art. 298, para. 4 of the Civil Procedure Code.

[52] The set-off is possible when two persons owe each other money or equitype and substitutable things, see Art. 103, para. 1 of the CPA.

[53] The set-off has a retroactive effect, whereas the two counterclaims are considered repaid to the extent of the lesser of them from the day on which the set-off could have taken place, see Art. 104, para. 2 of the CPA..

In the provision of Art. 104, para. 2 of the CPA, pursuant to which the two counterclaims are considered repaid to the extent of the lesser of them from the day on which the set-off could have taken place, i.e. the set-off always has retroactive effect, regardless of whether it concerns set-off with an undisputed claim or for one with a disputed claim, which is made conditional pursuant to the provision of Art. 104, para. 1, conj. 2 of the CPA.

The court's judgment establishes with the force of res judicata the existence of the receivable not only at the time of the conclusion of the oral proceedings, but also at the time when it arose. Therefore, the court's judgment is not a prerequisite for the occurrence of the prerequisites for offsetting provided for in Art. 103, para. 1 of the CPA.

An example of this is the authorization given in Decision no. 35 / 25.07.2017 on commercial case no. 3164/2015 vol. I, of the SCC[54], which gave an answer under the order of Art. 290 of the CPC, that it is possible to perform judicial set-off of the passive receivable with an active counter-receivable, which was repaid by prescription, if before the expiration of the statute of limitations for the active receivable the prerequisites for out-of-court set-off under Art. 103, para. 1 of the CPA were present. In the case of judicial set-off with illiquid counter-receivables (or one of them), the legal effect of judicial set-off occurs with the entry into force of the court's judgment and in the future, which is the answer to the question posed. The decision leads to the idea that if at the time of repayment of the active receivable it was not liquid, the provision of Art. 103, para. 2 of the CPA[55] **cannot** be applied. It is therefore applicable only to out-of-court set-off, which does not follow the purpose and letter of the law and limits the scope of application of set-off and its useful function to reduce the number of payments.

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[54] Decision No 35/25.07.2017 on commercial case No 3164/2015 vol. I of the SCC. Available at: https://ex-lege.info/%D0%92%D0%9A%D0%A1/%D1%80%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5/449142/ [7.11.2021].

[55] The decision leads to the idea that if at the time of repayment of the active receivable it was not liquid, the provision of Art. 103 of the CPA cannot be applied.

3.2 Specifications pertaining to the structure and substance of the operative part of the Judgment in the Bulgarian national legal system

The content of the decision is legally defined in Art. 236 of the CPC. The national legislation of the Republic of Bulgaria does **not** know court rules developing the structure and essence of the operative part.

3.3 Operative part - elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)

The operative part of the Bulgarian national legislation contains references from the reasons of the court's judgment in the following cases:

In case of a negative claim for ownership under Art. 109 of the Family Act, which seeks the cessation of any unjustified action that prevents the plaintiff from exercising his right. When upholding this claim, the operative part contains a clause for removing or suspending the unjustified actions. The court came to these orders in the operative part using the legal analysis and the considerations from the reasons of the same act.

In case of an objection for set-off by the defendant in the course of the initially filed claim, the court discusses its merits only in the reasons of the decision, which give it grounds to sentence the counter-defendant (the plaintiff on the main claim) to compensate him.

3.4 Wording used in the Bulgarian national legal system, mandating the debtor to perform

In the national legal system of the Republic of Bulgaria, when ruling on positive declaratory actions, the court issues a ruling with decisions with the following operative part:

Recognizes as established the existence of the receivable of the plaintiff to the defendant for the amount specified as principal under a consumer loan agreement, together with statutory interest as of the date of the arising of the obligation, the amount of collateral interest for a specified proven amount and an amount for delay.

The recognized claim of the plaintiff is the grounds the latter to be constituted as a creditor in the enforcement or ordinance court proceedings.

In the Republic of Bulgaria, "obliged to pay" is a liability which is **in any case** understood as an obligation to perform and not as a declarative relief.

3.5 Operative part in cases of reciprocal relationships where the Claimant's performance is prescribed as a condition for the debtor's performance

The courts in the Republic of Bulgaria issue rulings with such operative part of their court decisions when hearing claims under Art. 19 para. 3 of the Obligations and Contracts Act.

The operative part in these cases contains the following:

It invalidates an entered into force decision by which a preliminary contract for sale of real estate, by which the seller has sold a shop to the buyer, was declared final, provided that the buyer pays a proven amount within two weeks of the entry into force of the decision. Thus, the payment of the amount determined by the court, by the buyer is a condition for the realization of the entry into force of the decision in respect to the seller.

The legal relationship on the main claim plays the role of a positive fact, on which the existence of the legal relationship on the main claim depends.

3.6 Ways the interest rates are specified and phrased in a judgment ordering payment

The legal interest in the Republic of Bulgaria is regulated, whereas in the current legislation there is no legal judgment of this concept.

According to the legal theory, "legal interest" is the one that has not been agreed in which case it would be a penalty), but is due by virtue of a normative provision. Legal interest for late payment (moratorium interest, delay interest) is due for delayed performance of a monetary obligation. In case of non-fulfilment of a monetary debt, the creditor is always entitled to compensation in the amount of the legal interest from the day of the delay (Art. 86, para. 1, sentence one of the Obligations and Contracts Act (OCA[56]). According to the practice standardized by the SCC, the non-performance of a pecuniary obligation is always delayed and the creditor could seek moratorium compensation from the debtor, which according to the general rule of Art. 86, para. 1 of the OCA is in the amount of the legal interest from the day of the delay. When the obligation is with a fixed date, the debtor falls into delay after the expiration of the term, and when there is no fixed due date, the debtor falls into delay when invited by the creditor, in accordance with the provision of Art. 84, para. 2 of the CPA[57]. The receivable for statutory interest therefore arises from the factual composition, including the elements: principal monetary obligation, its due and its non-performance, whereas the subject of this receivable is compensation for the damages that the non-performance objectively and lawfully causes. The receivable for interest is accessory, but has a certain independence from the main one, whereas its right-generating composition includes relevant non-performance – a lack of due behaviour in relation to the main obligation.

Pursuant to Art. 86, para. 1 of the OCA, in case of non-fulfilment of a monetary obligation the debtor owes compensation in the amount of the legal interest from the day of the delay. The amount of legal interest is determined by the Council of Ministers.

Pursuant to Art. 86, para. 2 of the OCA and with a view to transposing Directive 2011/7/EU of the European Parliament and of the Council, of 16 February 2011, on combating late payment in commercial transactions (OV, L 48/1 of 23 February 2011[58]), No. 100 of 29 May 2012 for determining the amount of the legal interest on

[56] In case of non-fulfilment of a monetary debt, the creditor is always entitled to compensation in the amount of the legal interest from the day of the delay, see Art. 86, para. 1 sentence one of the Obligations and Contracts Act (OCA).

[57] When the obligation is with fixed date, the debtor falls into delay after the expiration of the term and when there is no fixed due date, the debtor falls into delay when invited by the creditor, see Art. 84, para. 2 of the CPA.

[58] This information has been obtained from Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (recast), OJ L 48, 23.2.2011, p. 1–10.

overdue liabilities in BGN and in foreign currency, effective from 01.07.2012, revoked. and Resolution No. 426 of the Council of Ministers of 18.12.2014, in force since 01.01.2015[59], for determining the amount of legal interest on overdue monetary obligations, in which the amount of legal interest is provided to be the basic interest rate of the Bulgarian National Bank for the delay period increased by 10 points. The annual amount of the legal interest on overdue monetary liabilities is in the amount of the basic interest rate of the Bulgarian National Bank, effective from January 1, respectively from July 1, of the current year plus 10 percentage points. The daily amount of the legal interest for overdue monetary obligations is equal to 1/360 part of the annual amount. The interest rate in force from 1 January of the current year is applicable for the first half of the respective year, and the interest rate in force from 1 July is applicable for the second half of the year.

The Bulgarian National Bank announces the basic interest rate for the respective period, according to a methodology determined by the Governing Council and publishes it in the State Gazette. The main interest rate, including its changes, is announced on the website of the Bulgarian National Bank[60]. The methodology for determining the basic interest rate is also available on the same website.

3.7 Ways the operative part differs when claims to impose different obligations on the debtor are joined or when the action is of a different relief sought

The court in the Republic of Bulgaria issues a ruling by partially rejecting the claim on the merits in case of objective joining of claims in the proceedings.

For example, for a situation where the debtor is ordered to pay a sum of money:

In the proceedings for consideration of the initial claim as a means of protection and of the counterclaim of the defendant, an objection for set-off was filed. Thus, the counterclaim of the defendant filed with an objection for set-off became the subject of the case. It is used by the defendant in cases where the claim of the defendant is less and he does not dispute the principal in order to file a counterclaim. As it is the

[59] This information has been obtained from Resolution No 426 of the Council of Ministers of 18.12.2014, in force since 01.01.2015. Available at: https://www.lex.bg/en/laws/ldoc/2136410384 [7.11.2021].
[60] The Bulgarian National Bank, available at: http://www.bnb.bg/ [7.11.2021].

subject of the dispute after it has been accepted by the court, no rule is required in the operative part of the court's judgment.

With the main claim, plaintiff A claims from the defendant B an amount due of BGN 10,000 lent and not repaid. In his reply to the statement of claim defendant B objected a set-off for the amount of BGN 5,000 due by plaintiff A. With its operative part the court issues a ruling as follows:

Partially upholds the initial claim for the amount of BGN 5,000 and orders the defendant to pay it to the plaintiff.

Dismisses the claim for payment of amount due over the amount of BGN 10,000 up to the amount of BGN 5,000 due to the defendant.

The operative part lacks recognition of an upheld objection to set-off, since it is discussed in the grounds of the decision.

In the case of an objectively joined main and counterclaim, the operative part of the court's judgment consists of separate operative parts with rulings on both claims. For example, for a situation where the defendant is ordered to take action:

In claim proceedings filed on a claim for ownership of real estate under Art. 109 of the Family Act:

The plaintiff claims the right of ownership over real estate from the owner without legal grounds (non-owner) claim under Art. 109 of the Family Act.

In the course of the proceedings, the defendant claims the right of retention, as there is a due receivable in respect of the plaintiff in connection with the preservation, maintenance, repair or improvement of someone else's property or damage caused by it.

The court issued a ruling with the following operative part:

Upholds the main claim and orders the defendant to hand over the real estate to the plaintiff.

Orders the counter-defendant to pay the counter-plaintiff the amount of the compensation.

Recognizes the right to of retention of the defendant to retain a due performance - transfer of the real estate, until he receives the counter-performance - payment of compensation by the plaintiff under the main claim.

In cases where actions have been taken by the plaintiff to change the subject or the parties to a pending lawsuit, with which the actions performed on the originally filed claim remain in force and with regard to the new subject and the new party there arises a situation of change of the claim. These are the cases in which the change of the claim leads to a reduction or increase of the initially filed claim through an additional petitum, or to an objective joining of claims by adding a new claim against the same defendant or to replacing the originally filed claim with another claim relating to another disputed subject or another party.

In these cases, the court, in the operative part, owes a ruling, for example, when constituting a new defendant in a subjective joinder of claims by constituting this new defendant as a mate of the original defendant.

In the last of the cases referred to above, the court, in the operative part, owes a ruling in case of replacement of the subject or the party when this is done by withdrawal or refusal from them.

3.8 Ways the operative part refers to an attachment/index

Pursuant to Art. 685 of the Commercial Act (CA[61]) in the Republic of Bulgaria creditors submit their claims in writing to the insolvency court within one month of entry in the commercial register of the decision to open insolvency proceedings as grounds, amount of the claim, privileges and the collateral and the written evidence. Within 7 days from the expiration of the term under Art. 685 para. 1 the assignee in bankruptcy shall draw up:

[61] Creditors submit their claims in writing to the insolvency Court within one month of entry in the commercial register of the decision to open insolvency proceedings as grounds, see Art. 685 of the Commercial Act (CA). Available at: https://lex.bg/laws/ldoc/-14917630 [7.11.2021].

1. A list of the presented and admitted receivables in the order of their receipt;
2. A list of the receivables under Art. 687 of the CA;
3. A list of the not admitted receivables, annual financial statements for the previous year and the last month before the date of the opening of the insolvency proceedings;

Under the order of Art. 692 para.4 and para. 5 of the CA[62], the court in the Republic of Bulgaria issues a ruling with a judgment for approval of the list and it is announced in the commercial register.

This list is an integral part of the judgement of the insolvency court, i.e. it is linked to the court's judgment and is not part of the operative part.

3.9 Legal ramifications when operative part is incomplete, undetermined, incomprehensible or inconsistent

Incomplete operative part is any discrepancy between the formed true will of the court and its external expression in the written text of the decision, i.e., by a request for change of an obvious factual error the formed will of the court cannot be replaced. These proceedings are regulated in Art. 247 of the CPC[63] and after the amendment has been ruled it becomes a whole together with the amended decision. The amended decision shall be valid with the amended content regarding the time limits for appeal from the day when it was issued, and not from the day of the amendment.

In all other cases where the decision is incomplete, incomprehensible, indefinite and inconsistent, there is a need to interpret the unclear decision. This need arises in all cases where the legal consequences of the decision must be applied, its force of res judicata must be respected or enforcement must be carried out. The interpretation concerns only the already expressed will of the court and not new facts or legal

[62] The Court of the Republic of Bulgaria issues a ruling with a judgment for approval of the list and it is announced in the commercial register, see Art. 692, para. 4 and para. 5 of the CA. Available at: https://lex.bg/laws/ldoc/-14917630 [7.11.2021].
[63] By a request for change of an obvious factual error the formed will of the Court cannot be replaced, see Art. 247 of the Civil Procedure Code.

norms. The interpretative decision becomes an integral part of the interpreted decision and applies to all as any authoritative interpretation.

Pursuant to Art. 251 para.2 of the CPC[64], the interpretation of the decision is inadmissible when it is implemented, however, when the decision is partially implemented, this **does not** block the way of the interested party from removing the ambiguity. The purpose of this action is to ensure the correct application of the decision, e.g. its implementation, and in particular its enforcement.

In cases when the decision is inconsistent or indefinite, there is a need to supplement the decision. The supplement **does not** cover the entire disputed subject but only indicates the lack of formed will, for example for part of it or a ruling on additional requests related to the main disputed subject. This procedure is regulated in Art. 248 of the CPC[65]. When supplementing the decision, the court shall not encroach on the already issued ruling. For example, in case of omission of the court upon objection of the defendant for set-off or right of retention, the court in the Republic of Bulgaria rules by a supplementing decision.

3.10 Deviation of the operative part from the application as set out by the claimant

In the Republic of Bulgaria, the court, in the operative part of its decision, may deviate from the claim, e.g., in the special proceedings in family law cases in particular in marriage proceedings.

Even if no request has been filed by any of the parties under Art. 322 para.2 of the CPC, the court in pending marriage proceedings is obliged to rule *ex officio* when there are minor children from the marriage, on the following issues: the exercise of parental rights, personal relations between parents and the use of the family home. In these proceedings on all claims related to the travel of a minor and a juvenile abroad or the granting of parental rights, the court in the Republic of Bulgaria is not bound by a request of the interested party. In the operative parts of the rulings on

[64] The interpretation of the decision is inadmissible when it is implemented, see Art. 251, para. 2 of the Civil Procedure Code.
[65] The supplement does not cover the entire disputed subject but only indicates the lack of formed will, see Art. 248 of the Civil Procedure Code.

these issues the court in the Republic of Bulgaria deviates from what is stated and alleged in the statement of claim and this freedom of the court is stipulated in the law.

Part 4
Special aspects regarding the reasoning

4.1 Law or court rules or legal practice governing the structure and content of the reasoning of the judgment

In the Republic of Bulgaria there is no legislative regulation of the structure and content of the reasons for the court's judgment. Pursuant to Art. 236 para.2 of the CPC[66]: *"In its decision, the court sets out motives in which it states the claims and objections of the parties, the assessment of the evidence, the factual findings and the legal conclusions"*. The motives shall state the reasons why the decision was taken.

The structure of the motives in the judicial acts of the courts in the Republic of Bulgaria is as follows:

- The allegations of the plaintiff - statement of the circumstances on which the claim is based (i.e. the grounds of the claim);
- The claim to the court for issuing a decision (indicates the content of the request and the price if it is assessable - the petitum of the claim);

[66] See Art. 236, para. 2 of the Civil Procedure Code.

- The objections of the respondent party related to contesting the claim on its admissibility and amount;
- The factual situation established by the court on the basis of the evidence gathered in the case;
- The legal conclusions of the court as to why it gives credence to some means of evidence and does not give credence to other evidence by discussing them in full and in their entirety in connection with the applicable law.

Therefore, although short, the motives must be clear and complete.

4.1.1 The length of reasoning

The length of the reasons depends entirely on:

- The factual allegations in the statement of claim;
- The assessment of the evidence in their entirety;
- The factual findings which the court accepts as established;
- The legal considerations and conclusions with a full analysis of the objections and requests with indication of the law applicable to the dispute.

Therefore, although brief, the motives must be clear and complete.

If the motives would have been part of the Ruling, it would have to be considered incomplete if it was not motivated, so that it could not have an effect without motives. However, the unsubstantiated decision is not void. It has its consequences and is only revocable (Art. 281, item 3 of the CPC).

4.1.2 Details of the reasoning

The content of the motives depends entirely on the circumstances indicated in item 4.1.1. but the important thing is for them to be convincing, because the correctness and interpretation of the ruling is based on them.

4.1.3 Summary of the statements of the parties in the grounds for decision

The full analysis of all evidence duly gathered, as well as the objections raised in the course of the evidentiary proceedings, the requests for the taking and admission of new evidence, and the factual and legal arguments of the parties in the oral proceedings are reflected in the operative part of the ruling as an expression of the will of the court.

The preconditions for the proper commencement of the proceedings under the national legislation of the Republic of Bulgaria concern the preparation of the case for consideration and resolution at the next court hearing. This preparation takes place in a preparatory meeting which has two functions:

- To check the admissibility of the claim;
- To exercise some procedural rights which are extinguished with the end of the preparatory session.

As a rule, the preparatory hearing is closed (Art. 140 para. 1 of the CPC[67]), but exceptionally, when necessary, it can be open (Art. 140 para.3 of the CPC[68]).

In closed hearing the court in the Republic of Bulgaria:

- Makes the legal qualification of the dispute on the basis of the allegations, requests and objections made in the statement of claim by the plaintiff and the answer of the defendant;
- Rules on evidentiary requests by admitting the relevant, admissible and necessary means of evidence;
- Drafts a report on the case within the possibilities for voluntary settlement of the dispute;
- Schedules a meeting on the merits;
- Sends summonses to the parties together with the admission of the evidence and the case draft report.

[67] As a rule, the preparatory hearing is closed, see Art. 140, para. 1 of the Civil Procedure Code.
[68] Exceptionally it can be open, see Art. 140, para. 3 of the Civil Procedure Code.

The hearing begins in the so-called "proceedings within the proceedings" (Art. 143 para.1 of the CPC[69]), which resolves the issues of admissibility and regularity of the claims filed by the plaintiff and the objections or claims made by the defendant. At this hearing the opinion of the plaintiff on the objections made by the defendant and on the claims brought by the latter are heard. When there is no dispute on the admissibility of the claims, the court accepts that the claim is admissible and puts it on trial. In this process, the court may *ex officio* raise the question of the admissibility of the claims or any of them, or file an objection of admissibility. After hearing the views of the parties in this part, the court with a final judgment issues a ruling on admissibility.

4.1.4 Distinguishment between the parties' statements and the court's assessment

The parties' statements of facts in support of the claims in the objections, the replies and rejoinders are legally relevant and need to be substantiated. In order to determine whether the disputed right exists, the court must assess whether those facts have been proved. I other words, the assessment of the evidence is the core of the court's decisive activity. It is on the basis of the assessment of the evidence that the court builds its findings and sets out its considerations in its motives. The assessment of this evidence is made by the court on the basis of "inner conviction" and the law does not predetermine with binding for the court rules the conclusions it must draw. Non-binding of the court by rules prescribing the probative value of individual pieces of evidence consists in the freedom it has at its disposal in assessing such evidence. This assessment does not mean an arbitrary formation of a judge's conviction.

The statements of the parties given in the course of the proceedings are means of evidence that are subject to assessment for their reliability, i.e. for compliance with reality. This assessment is determined by many factors:

- The normal situation of perception;

[69] The hearing begins with so-called “proceedings within the proceedings”, see Art. 143, para. 1 of the Civil Procedure Code.

- The suitability of the sensory organs of the witness, to perceive the facts correctly;
- The witness's ability to memorize exactly what was perceived;
- The ability to reproduce correctly what was memorized;
- The will of the witness to tell the truth.

The certainty of the parties' statements as evidence depends on all these factors. Therefore, in all cases when in the decision a vague will of the court is formed, in view of the legal consequences of the decision, e.g. to respect its force of res judicata, the decision needs to be interpreted.

4.2 Reasoning: the procedural prerequisites and the applications made after the filing of the claim

In their reasoning, after a claim is filed, the courts in the National Legal System issue their ruling by a judgment on the following issues:

- Requests with claims for attraction of third parties and their constitution;
- Requests for amendment of the claim, e.g. for increasing or decreasing the amount of the claim;

The courts owe rulings on these requests with the operative part within the decision and they require elaborated requests considerations in the motives to the decision.

4.3 Independent procedural rulings and the judgment

In the national law of the Republic of Bulgaria, a procedural decision of a court is the one on the admissibility of the claim.

All other procedural decisions are related to the correct and lawful course of the proceedings, such as:

- Procedural decision on admission of evidence;
- Procedural decision on increasing or decreasing the claim;

- Procedural decision related to the change of the claim from declaratory into convicting have their rulings in the proceedings and do not find a place in the operative part of the court's judgment.

4.4 Legal effects attributable to the reasoning

The motives are not part of the decision (144-68-II, Tr.1-2000-GACC, B 2000 IV 18[70]) although they are materialized together with it in the same document - the written act of the decision (comp. Art. 235 para. 4 and Art. 236 para. 2 of the CPC[71]). The separation of the motives in the national legislation of the Republic of Bulgaria is not accidental, but deliberately undertaken by law, because the rules governing the "correction of an obvious factual error", the interpretation, the issuing of an additional decision, the appeal, the extraordinary remedies and the force of res judicata apply only to the decision, but not to the motives. The motives cannot be part of the decision also because the decision is a legal act, and the legal acts in their capacity as declarations of intent are something different from the considerations / motives for which the declaration intent was undertaken.

It should be noted that the not motivated decision is not void. It has its consequences and is revocable (Art. 281 item 3 of the CPC[72]). Because the motives are not part of the court judgment, the failure of the judges to sign them does not invalidate the decision. It is enough that they to be signed by the chairman of the panel and this is a guarantee that they come from the court.

The operative part is an emanation of both sides of the court decision:

- legative (declarative);
- law-making (imperative);

[70] Decision No 1/04.01.2001 (case 1/2000 OSGK of the SCC). Available at: http://www.vks.bg/talkuvatelni-dela-osgtk/vks-osgtk-tdelo-2013-1-reshenie.pdf [9.11.2021].
[71] The motives are materialized together with the decision in the same document – the written act of the decision (see Art. 235 para. 4 and Art. 236 para. 2 of the Civil Procedure Code).
[72] Not motivated decision is not void. It has consequences and is revocable (see Art. 281 item 3 of the Civil Procedure Code).

With regard to the first party, the operative part is an act of legal knowledge, which declares on whose side the right belongs and therefore, in relation to the disputed substantive law, the operative part gives the content of the court order.

With regard to the second party, the operative part creates the binding force of the judicial establishment.

The operative part states whether the disputed right exists or does not exist and this follows from the obedience that the court owes to the law. Therefore, in its content it is a court order and a giving of binding force to the court certification.

The communication of the operative part is directly related to the legal consequences of the decision with its legal force. The operative part contains the pronouncement of the questions in a certain sequence, which aims to reach a decision with a flawless solution with minimal effort.

Part 5

Effects of judgments – the objective dimension of res judicata

5.1 The final judgment and its res judicata effect

Among the legal consequences of the decision, the force of res judicata (PRD), also called "legal power" or "substantive legal power", is central.

5.1.1 Effects of res judicata in the Bulgarian national legal order

The force of res judicata is related to and expresses the stability of that judgment. It consists of:

1. Its non-appealability before the appellate court;
2. Its non-appealability before the SCC of the Republic of Bulgaria;
3. Its irrevocability through the cancellation under the order of Art. 303 and Art. 304 of the CPC;

The stability of the court judgment does not occur at once in all its forms. The decision is stabilized sequentially.

Consequences of the PRD (the force of res judicata) of the decision:

1. There is an obligation for the parties to the state to terminate the legal dispute. None of them can challenge the correctness of the court judgment in the future. The non-challenge obligation gives the decision certainty and indisputability.

2. The legal relationship, which has acquired the quality of *res judicata* can no longer be the subject of a legally relevant dispute. A state of legal certainty and indisputability is created between the parties.

3. According to whether the court has confirmed or denied the existence of the disputed right, a right-confirming or denying action arises for the parties.

4. The established legal position, which has acquired the stamp of a *res judicata*, becomes the basis for coordinated conduct of the parties to the case. This is the regulatory consequence of the announced effective decision. According to Art. 298 para. 2 of the CPC of the Republic of Bulgaria, the entered into force decision also has effect with regard to the heirs of the parties and their successors. The regulatory action and the consequence of the force of a *res judicata* must not be confused with the executive force of the decision. The latter consists in the right to seek enforcement and is inherent only in convictions.

5. The non-redecidability of the resolved dispute, i.e., both parties lose their right to claim regarding the force of res judicata. The Court monitors *ex officio* the existence of this obstacle, as it is an absolute negative precondition for a retrial between the same parties on the same dispute.

5.1.2 Decisions and res judicata capacity

All decisions rendered by the courts of the Republic of Bulgaria, which have the quality of certainty and indisputability and give rise to obligations for the parties to the state to terminate the legal dispute.

These are the decisions that firstly enjoy unchangeability, then non-appealability before the appellate court, then non-appealability before the SCC and finally irrevocability. These qualities of the decisions have implications for their legal consequences.

For example, the court judgment is unchangeable and unappealable under the order of cassation under Art. 296 of the CPC. All decisions, when they acquire the status of irrevocability, which finally stabilizes the legal consequences, become an act a *res judicata*. The regular faultless (valid, admissible and correct) decision after it becomes unappealable is irrevocable. That is why vicious decisions are not irrevocable, even though they have become unappealable. They can be revoked by revoking the entered into force decisions under Art. 303 and Art. 304 of the CPC.

5.1.3 Judgment and res judicata in terms of time and/or requirements

The force of res judicata has as its integral part the so-called executive force of the decision. It consists in the right to seek enforcement and is inherent only in convictions, while the regulatory action is inherent in all decisions as an order of the court to adopt in the future a conduct corresponding to the judicially established legal situation. The power of enforcement consists in the right to demand enforcement of a judicially confirmed disputed right, but also in the obligation to sustain the enforcement. Therefore, like the force of *res judicata*, the executive force of a decision has both a function of protection and a sanction.

The final consequence of *res judicata* is the non- redecidability of the dispute. *Res judicata* extinguishes the right of action again between the same parties in respect of the same dispute. The court monitors the absence of this precondition *ex officio*. Non-redecidability ensures the stability of the statutory and regulatory action of *res judicata* against the danger of a contradictory decision on the same dispute between the same parties caused by a new action. In the event that two court proceedings are instituted before two different state courts, which rule on two different court decisions, the legal dispute will in fact be unresolved. The way out of such a situation is the annulment of one of the two decisions and that shall be the wrong one, i.e. the second in time, irrespective of its merits.

5.1.3.1 The right to appeal/the exercise of legal remedies

Pursuant to a provision of the Civil Procedure Code, decisions which are not subject to appeal, against which no appeal has been lodged or for which a cassation appeal has not been admitted or not upheld, enter into force, which in turn gives rise to the FORCE OF *RES JUDICATA*. The latter is an obligation of the parties, in relation to the state, to terminate the legal dispute. Neither party may in future challenge the correctness of the judgment. The obligation not to contest such decisions applies to any element of the judicially established or denied right, incl. to its legal qualification and to its amount. It cannot be challenged even by the party whose legal claim has been confirmed. It is this coordinated behaviour of the parties towards the public and the legal order that aims to achieve the force of *res judicata* through its regulatory action. Respect for *res judicata* consists in the obligation of each state authority (court or other body) to accept as its own, the established by *res judicata*, judicial findings and to proceed from it in the performance of its official activity towards the persons bound by *res judicata*. In this way, the protective function of *res judicata* is significantly expanded, going far beyond the scope of the dispute. The force of *res judicata*, manifested in criminal cases, will be taken into account whenever there is a subject of civil legal relations, determining criminal liability.

The obligation of non-contestation gives the judicially established legal position certainty and indisputability. The *res judicata* can no longer be the subject of a legally relevant dispute. According to whether the court has confirmed or denied the existence of the disputed right, the force of the *res judicata* acts as right-confirming or right-denying. Pursuant to Art. 298, para. 1 of the CPC[73], the decision enters into force only between the same parties, for the same claim and on the same grounds.

[73] The decision enters into force only between the same parties, for the same claim and on the same grounds (See Art. 298 para. 1 of the Civil Procedure Code).

5.1.3.2 The "ordinary" or "extraordinary" remedies under Bulgarian domestic law

Both the force of res judicata and the enforcement, and the precautionary measure are a surrogate for the missing due conduct. The protection and sanction in the Civil Procedure are a manifestation of state coercion. They are ruled by an act of authority, which unilaterally binds the offender. The dispositive principle –protection by the court is given only if it is requested, only as long as it is requested and only for what it is requested for. Although due, the protection-sanction in which the Civil Procedure consists may not be granted (denial of justice) or may be illegal (wrong decision; enforcement on a non-sequestrable property)[74]. Denial of defence and unlawful sanction are offenses. Protection and sanction are also needed against them. It consists in appealing against the illegal refusal or action of the defence body (private appeals, appeals against court decisions and the actions of the bailiff), as well as in the annulment of vicious decisions that have entered into force. They are also proceedings for protection-sanction, but not directly against the violation of civil rights, but against the illegal behaviour of the protection body. Therefore, the proceedings for protection-sanction against illegal refusal or illegal development of the Civil Procedure together with the proceedings for direct protection of civil rights, form a functional unity similar to the unity characteristic of each chain of sanctions. However, the peculiarity of the unity of sanctions of interest to us, is that the second link of the chain (appeals, cancellations) is entrusted to control bodies included in the same protection system (higher courts), develops with the participation of the same parties and is regulated by the same law - CPC). Therefore, the primary protection-sanction (claim, enforcement and precautionary process) and the secondary protection-sanction providing it (appeals and extraordinary remedies) together form the Civil Procedure as an institution for protection of civil rights. However, appeals and extraordinary remedies are not a necessary part of the specific process, i.e., of any civil case. The right to appeal is the exercise of a legal remedy against a vicious decision and is a form of the so-called ordinary remedies.

[74] Z. Stalev, 2012, p.322-336.

5.1.4 Res judicata and the operative part of the judgment in the Bulgarian legal system

There is a rich and contradictory case law on this issue. In its earlier case-law, the Supreme Court has held that, in addition to the operative part of judgments, into force enter also parts of the motives - those motives which are considered to be the main ones, justifying the operative part determining the decision (TR 87–1954 – GACC of the SCC). But on the question of which motives can be classified as basic, unfortunately the Supreme Court does not give an answer. In its more recent practice, the SCC (TP 1–2000 – GACC of the SCC) takes the view that only the findings on the disputed right are of such force.

However, the declaration of the motives and the operative part in one act raises the dispute whether the motives for this court decision also have the force of res judicata.

The motives shall state the factual and legal findings by which the court accepts or denies certain facts. Such findings resemble official certifications, but with a number of differences.

The findings made by the court are based on evidence collected and assessed by it, therefore this type of certification cannot have binding probative value. They may be the bearers only

of probative force, judged under the inner conviction of the judge, and in connection with all the evidence gathered in the case.

Therefore, the force of res judicata and the probative value of the motives differ significantly in subject matter, addressees and intensity. Only the decision has the force of res judicata.

The latter applies only to the disputed substantive right, subject of the case, and only between the disputing parties. It cannot be rebutted accidentally. The power of judgment applies to all (erga omnes). The parties to the case and third parties are obliged to accept the content of the judgment without examining the correspondence between the judgment and the actual legal situation.

From the above arguments it can be concluded that the motives for the court decision do not have the force of res judicata. The circumstances that the legislator gives binding force to the motives in Art. 223, para. 2 of the CPC[75], clearly shows the distinction between them and the force of res judicata. This proves that the motives do not have the force of res judicata, but have another legal compulsoriness. As is well known, a court decision may contain, in addition to the force of res judicata, other legal consequences such as executive force and constitutive action.

5.1.4.1 Courts. Prior rulings on preliminary questions of law

According to Art. 297 of the CPC[76], the effective decision is binding on the court that rendered it and, on all courts, institutions and municipalities in the Republic of Bulgaria.

According to Art. 298 para 1 of the CPC[77], the decision enters into force only between the same parties, for the same claim and on the same grounds.

According to Art. 299 of the CPC, a dispute resolved by an effective decision may not be resolved except in cases where the law provides otherwise, and the re-filed case is terminated ex officio by the court.

In the Republic of Bulgaria under the national legal framework there are different options for binding the court decision by previous court decisions.

It is possible that another proceeding, concerning certain preliminary legal issues relevant to the resolution of a specific legal dispute has already been instituted and concluded with an effective decision. In this case, according to the above, the decision that has entered into force on the same matter is binding on everyone, respectively on the parties to the case.

[75] The circumstances that the legislator gives binding force to the motives (see Art. 223, para. 2 of the Civil Procedure Code).
[76] The effective decision is binding on the Court that rendered it and, on all courts, institutions and municipalities in the Republic of Bulgaria (see Art. 297 of the Civil Procedure Code);
[77] The decision enters into force only between the same parties, for the same claim and on the same grounds (see Art. 298, para. 1 of the Civil Procedure Code).

In another case, it is possible that the two proceedings are pending without a decision. In this case the court stops on the basis of Art. 229 para 1, item 4 of the CPC the conditioned case until the conclusion of the conditional case, which is important for resolving the dispute.

As regards the European Union law, the decisions of the Member States which have entered into force in the Community shall be respected. Also, the Court may not re-decide on a matter which has already been settled by a decision of another Member State which has entered into force. All matters discussed by the courts of Member State A are not subject to re-deciding on the subject-matter of the case by Member State B.

In Bulgarian law, the court is not bound by the motives for the court decision, but it is bound by the operative part of the decision and the motives are not subject to discussion.

5.1.4.2 Bulgarian legal order and the concept of "claim preclusion"

In the legal order of the Republic of Bulgaria there is no notion of "preliminary filing of a claim".

In the first example, there is a claim for damages as a result of an accident formulated as negligence on the part of the defendant. There is an effective decision by which the court rejected the claim.

In bringing the second action for damages, the plaintiff referred to evidence indicating an intentional infringement as the cause of the damage incurred by the defendant.

If this evidence is newly discovered, i.e. the plaintiff could not obtain it with reasonable effort or could not obtain it in a timely manner in the first case, the initial decision should be revoked under the order of revocation of a decision that had come in effect - Art. 303, para 1, item 1 of the CPC.

Therefore, the second action, alleging a new form of guilt is inadmissible. The form of guilt in civil proceedings may only be relevant to the amount of compensation.

In the second example, there is a claim for compensation for non-pecuniary damage suffered by a traffic accident. The second claim is for compensation from the same traffic accident, but with a claim for pecuniary damage. The second claim is admissible and in the case law of the

Republic of Bulgaria these claims are usually considered together, as they concern one claim for impermissible damage.

5.1.4.3 Courts and determination of facts in earlier judgments

When considering the civil consequences of an act - Art. 300 of the CPC, the civil courts in the Republic of Bulgaria are bound by the motives of the entered into force sentence of the criminal court as to whether the act was committed, its illegality and the guilt of the perpetrator, as well as by the entered into force decision of the administrative court on whether the administrative act is valid and lawful - Article 302 of the CPC.

5.2 Res judicata: the part of the civil claim in civil proceedings and its effects to the remainder of the claim

In the Republic of Bulgaria, it is possible for the plaintiff to file a partial claim only for a part of the disputed right. In this case, the court in the operative part of its decision explicitly states what amount of the claim it upholds as part of the total due. Only in respect of this part does the decision have the force of a judgment. This enables the plaintiff to bring a new claim for the remainder of the amount due.

5.3 Res judicata in the case of a negative declaratory action

In the proceedings, the plaintiff may file a negative declaratory action for undueness of the claim (In the comment A files a negative declaratory action against B for EUR 1,000). In rejecting the negative declaratory action, it is not necessary for the court to note in the decision that A owes EUR 1,000, which is understood from the operative part. Decisions on declaratory actions have the force of res judicata, but have no enforceable power. What kind of claim the plaintiff will bring depends on his legal interest.

Yes, it is enforceable for the creditor, as the Decision on the negative declaratory action establishes the fact of the claim by force of res judicata. It provides the legal basis for the plaintiff to bring a separate claim for the price of the claim established in the negative declaratory action.

5.4 Interim judgment concerning the well-foundedness of a claim and its effects outside of the pending dispute

In the national legal system of the Republic of Bulgaria, courts rule on provisional decisions in the following cases:

- Ruling for imposing provisional measures regarding the care of the children, the use of the family home in the process of divorce;
- Ruling for imposition of precautionary measures e.g., for a future claim;
- These provisional decisions are enforceable, but have no significance outside the proceedings in which the dispute is pending.

5.5 Hypothetical situation

If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.

5.5.1 Bulgaria's position on the question about cases, which have been decided in another Member State

In the event of a valid decision of the seller against the buyer in one Member State, a subsequent action by the buyer against the seller for non-payment of the same amount is inadmissible, unless there are new circumstances/evidence.

5.5.2 Binding force of the motives for the court decisions in Bulgarian law

In the Bulgarian law, the motives for the court decision have **no** binding force on the court (see 5.5).

5.5.2.1 Domestic law: the cases of no extension of the res judicata effect to the elements of a court's reasoning

The motives in the civil proceedings are a constitutional requirement. Art. 236, para. 2 of the CPC reproduces the requirement of Art. 121, para. 4 of the Constitution of the Republic of Bulgaria[78] the court decision to be motivated. From this provision it can be clearly concluded that the decision of the court and the motives of the court are two different things (See answer in 5.1.4).

5.5.2.2 Extension of res judicata effect to elements of the reasoning in the Member State of origin and not in the Member State addressed

In the Bulgarian law, the motives for the judgment have **no** binding force of res judicata on the court, so **no** matter how much the scope of the *res judicata* is extended and **no** matter how many elements of the motives it covers, they will again have binding force of *res judicata*.

5.5.2.3 Res judicata effects and its extension to the elements of the reasoning in the Member State addressed/ not in the Member State of origin

The practice should be standardized. Optionally, the law of the respective Member State of origin must be proved.

If the buyer sues the seller in Member State X after the case in Member State Y has been decided by an award, the buyer's claim is inadmissible because of the binding effect of the first decision which has entered into force.

5.5.3 Limitation period problem

Under the Bulgarian law there is **no** possibility to prevent the expiration of the statute of limitations, if no claim for warranty liability is filed. A retrial may be discontinued under Article 229 of the CPC until the first case in the other Member State is closed.

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[78] See Art. 121, para. 4 of the Constitution of the Republic of Bulgaria.

Part 6
Effects of judgments - res judicata and enforceability

6.1 Res judicata and enforceability

Provisional enforceability /art. 242-245 of the Civil Procedure Code/ presupposes a non-res judica first instance decision with the attribute of enforceability. One such is the first instance condemnation judgment subject to appeal. These judgments are enforceable. Provisional enforcement is permitted by a specific act of the court of first instance, which issues it either at the same time as the judgment and then joins it, or later and then it takes the form of a separate order. Its independence from the judgment is underlined by the possibility to be appealed separately with a private appeal[79].

Pursuant to Article 242 of the Civil Procedure Code, the court rules on the provisional enforcement of the judgment when awarding alimony, remuneration and compensation for work. At the request of the claimant, the court may also grant provisional enforcement of the judgment when: (a) it orders a receivable based on an official document; (b) it orders a receivable which has been acknowledged by the defendant and also when the delay in enforcement may result in significant and

[79] See Civil Procedure Code, updated edition as of August 20, 2018, Chapter 18, Section II, p. 85-86.

irreparable damage to the claimant or the enforcement itself would become impossible or significantly impeded[80].

In case of a dispute when there is disagreement between parents for a child to travel abroad (Article 127a of the Civil Code), the court may also allow provisional enforcement of the judgment. In addition to the first-instance judgments under appeal, the following are subject to provisional enforcement:

- the convicting judgments of the appellate courts, which have not entered into force;
- Article 404, item 1 of the Civil Procedure Code;
- the judgments, acts and court-settlement protocols of the foreign courts, which are subject to enforcement on the territory of the Republic of Bulgaria without deliberate proceedings, as well as the judgments, acts and court-settlement protocols of the foreign courts, as well as the judgments of the foreign arbitration courts and their settlements on arbitration cases, for which enforcement is allowed on the territory of the Republic of Bulgaria - Article 404, item 2 and item 3 of the Civil Procedure Code.

According to art. 405, para 4 of the Civil Procedure Code, on the basis of the acts under Art. 404, items 2 and 3 of the Civil Procedure Code, a writ of execution shall be issued on the admission of the enforcement, as the writ of execution, issued on the basis of the acts under Art. 404, item 3, shall not be handed over to the creditor until the judgment on the admission of the enforcement enters into force. In the cases under Art. 404, items 2 and 3 of the Civil Procedure Code, the court also checks whether the receivable can be enforced by the means of the Bulgarian law and when this is impossible, it rules substitute enforcement, which can satisfy the creditor - Art. 406, para 2 of the Civil Procedure Code.

Court rulings that contain a conviction can also be declared provisionally enforceable.

[80] Z.Stalev, 2012, p.370;

6.1.1 Suspension of the provisional enforceability when an appeal is lodged

The debtor, against whom provisional enforcement is allowed, may, except in the cases of Art. 242, para. 1 of the Civil Procedure Code, suspend the enforceability by presenting a security for the creditor according to Art. 180 and 181 of the Law on Obligations and Contracts[81] - by establishing a pledge or mortgage. Filing a complaint does not automatically lead to the suspension of enforcement.

6.1.2 The risks when the provisionally enforceable judgment is reversed or modified

Pursuant to Article 245, paragraph 2 of the Civil Procedure Code, the enforcement is also suspended when the appealed judgment is revoked. If the claim is then rejected by an effective judgment, the enforcement shall be terminated. In this case the court, which has ruled the judgment, issues a writ of execution to the debtor against the creditor for return of the amounts or things received on the basis of the admitted provisional enforcement of the revoked judgment, as well as for the fees and expenses collected by the debtor during the enforcement procedure – para 3. In case of cancellation or modification of the judgment, the risk is borne by the creditor[82].

6.1.2.1 Security of the judgment creditor and the enforcement of the judgment

The security is a precautionary measure, which indicates the amount of direct and immediate damages that the defendant will suffer in case of cancellation or invalidation of the court judgment. The security under Art. 391 para 1, item 2 of the Civil Procedure Code is by its nature securing a future claim for damages, which the defendant could file against the claimant. It is such a condition that protects the interests of the defendant in the event of cancellation or invalidation of the judgment. The court in the operative part of the judgment, which allows provisional enforcement, obliges the creditor to submit a security by setting a term for the

[81] See Art. 180 and Art. 181 of the Law on Obligations and Contracts;
[82] See Civil Procedure Code, updated edition as of August 20, 2018, Chapter 18, p. 86;

presentation in the operative part on the admission of provisional enforcement as well[83].

There is **no legal obligation** in the national legal system of the Republic of Bulgaria to provide such a guarantee. However, **it guards the defendant** in the further course of the pending proceedings.

6.1.2.2 Compensations of the creditor to the debtor for suffered damages

The creditor owes compensation for all damages from payments made and actions for the enforcement of the court judgment performed by the debtor, which he has taken against this enforcement. In case of cancellation of the given provisional enforcement of the court judgment by a higher court, the defendant has the possibility to file a claim for damages, the amount of which is determined by damages caused and the profits lost in the course of the enforcement against the creditor. If the security granted by the court **does not** cover this amount, then the amount of the defendant's claim against the creditor is the proven excess. The debtor has protection - the right to a claim the subject of which is the receivable for compensation, arising from a guilty and unlawful act - the actions of the creditor[84].

6.1.2.3 Case when the debtor voluntarily paid (performed) the claim

As the payment done voluntarily by the debtor is in order to avoid future payments related to enforcement and other subsequent actions in its course, which will further burden him. With the voluntary payment <u>the debtor avoids additional damages</u> for himself from the enforcement against him.

[83] Z. Stalev, 2012, p.1212-1213;
[84] Z. Stalev, 2012, p.1236-1239;

6.1.2.4 Compensations of the creditor to the debtor for the suffered damages in default judgment cases

The default judgment is a judgment in respect of a debtor who has been inactive - he has not taken a position on the claim within the answer term and after the initiation of the case he has not come to the court hearings. For the court, this behaviour indicates that he agrees with the statement in the claim and acknowledges the claim. The default judgment is a *consequence* of the debtor's *passive behaviour*. It shall take effect on the day on which it is declared. Provisional enforcement of such a judgment may be allowed by the court, as it has the ability of res judicata.

6.1.2.5 Scope of compensation – direct loss and/or indirect loss

Compensation includes in its content all damages - damages /direct losses/ and lost profits /indirect losses/. Therefore, in the Bulgarian national legal system, the amount of compensation covers both direct losses and indirect losses from the harmful result. Therefore, the debtor in his claim for damages caused by the creditor's behaviour on the provisional enforcement of a court judgment may include claims both for property damages and lost profits from the creditor's actions in provisional mode.

6.2 Bulgarian legal order and suspensive period of the enforcement proceedings

The Bulgarian law **does not** provide for a period (for suspension) within which the creditor cannot make an application for filing an enforcement case for enforcing the court judgment. The enforcement proceedings are not subject to an invitation for voluntary enforcement by the judgment's creditor.

Within the framework of the enforcement proceedings regulated in the Civil Procedure Code of the Republic of Bulgaria, there is a term within which no enforcement actions related to payment only can be taken. This is the term contained in the invitation for voluntary enforcement /Art. 449 para 1 of the Civil Procedure Code/. The actual enforcement actions cannot be performed within this term - enforcement is not carried out, but the actions do not stop in it, e.g., on securing the enforcement by imposing a distrain on movable property, foreclosure on real estate.

Within this period, the judgment remains enforceable, but in it the debtor is given the opportunity to make payment to the creditor and to prevent subsequent enforcement costs. In the specific case, the enforcement creditor does not take the risk of bearing enforcement costs, he receives the payment or transfers the actual power over the item, which is indicated in the invitation for voluntary enforcement /Art. 451 para 2 of the Civil Procedure Code/. The enforcement process is terminated after this period, as the claim has been satisfied.

However, the actions for securing the execution by imposing a lien on movables and foreclosure on real estate **shall not be suspended** within this term.

6.3 Incorporation of elements by the judgment akin to the French "command and order to the enforcement officer" (Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution) and its effect

In the Republic of Bulgaria, the court judgment does not incorporate elements of "command and order" to the enforcement officer. The enforcement is a surrogate of the due voluntary enforcement; therefore, its scope coincides with that of the conviction claim. Its subject is unsatisfied claims. When the subject of enforcement are real claims - on claims for protection of violated possession or claims for restoration of possession or holding the scope of enforcement coincides entirely with the operative part of the court judgment. In such a judgment the real estate or the movables are individualized, to which the enforcement will be directed later. That is why the bailiff *cannot* deviate in his actions, namely to direct enforcement to another real estate. This is an example of the binding force of the judgment, including the enforcement officer.

The court judgment under Bulgarian law **does not contain** elements of command/order of the bailiff, **as he is the master** of the enforcement proceedings.

6.4 Bulgarian legal order and the foreign enforcement titles, which involve property rights or concepts of property law unknown in the Bulgarian system

As in the cases under Art. 404, items 2 and 3 of the Civil Procedure Code, the court also checks whether the receivable can be enforced by the means of the Bulgarian law and when this is impossible, it rules a substitute enforcement, which can satisfy the creditor.

The Brussels I Regulation prohibits enforcement measures, other than security measures, against the property of the party against whom enforcement is sought, until the expiry of the time limit for filing a complaint under Art. 43 of the Regulation[85]. Pursuant to Art. 47, para. 3 of the Regulation, provisional enforcement is not allowed until the court rules according to Art. 43, para.2.

Only after the ruling on the appeal under Art. 43 the Regulation allows for provisional enforcement. The defendant may, if he has not exercised his right to appeal under Art. 44 of the Regulation, to ask the court to oblige the applicant to provide security within the meaning of Art. 46 para 3 of the Regulation.

This provisional enforcement of a judgment which has not been adjudged aims to ensure, while the dispute is pending, that the right unduly denied will be exercised or to prevent, while the dispute is pending, the right claimed unjustifiably to be enforced.

[85] Regulation 1215/2012Art. 43, Art. 44 and Art. 47.

Part 7
Effects of Judgments – Personal boundaries of res judicata

7.1 Co-litigants and third persons affected by the judgment

The subjective limits of res judicata outline the circle of persons who cannot dispute that the judicially confirmed right exists, nor claim that the judicially denied right exists, but are obliged to comply with the legal situation established by the court. To them the power of res judicata exists and they are its addressees.

As a rule, the res judicata applies only to the parties of the proceedings, as they have had the opportunity to influence the content of the judgment with their procedural efforts, and not to third parties. The judgment may be incorrect - moreover, it may be the result of a simulated proceeding. If we subject third parties to res judicata in such a judgment, we will unjustifiably discredit them and encourage the conduct of simulated proceedings.

The parties of the proceedings are the opposing subjects of the procedural legal relationship. It does not matter whether the party is the main or the supporting one. But the res judicata addressees should not be confused with the subjects of the legal relationship subject to this power - for example, the competing creditor under Art. 359 of the Civil Procedure Code does not participate in the legal relationship, which

he disputes /the receivable of the apparent creditor/, but he is the addressee of res judicata. The same applies to the parties to declaratory claims, who have an interest in establishing the existence and non-existence of foreign legal relations. Res judicata does not apply to persons who stand together on one side of the procedural legal relationship, e.g., between assisted and assisting party. The binding force of the reasoning to the judgment is valid for these persons /Art. 223 para 2 of the Civil Procedure Code/.

All persons who did not have the quality of a party to the proceedings are third persons, even though they were representatives of the party in the case (witnesses, experts). Res judicata does not apply to them. They may therefore bring an action with the right that res judicata has been recognized in favour of one of the parties. Res judicata does not even act as a rebuttable presumption of correspondence between the judicially recognized and the actual legal situation. In the present case, the answers to the questions concern cases where res judicata extends the power of an adjudicated thing to third parties as well and in particular the dependence of the legal status of third parties on the legal status of the parties bound by res judicata /succession of responsibility for damages, the creditor's right to be satisfied by properties belonging to the debtor/. In these cases, in view of the beneficial consequences of res judicata, the law extends this power also to third parties when it is justified.

7.2 Rem (*erga omnes*) binding effects

The successors of a party to a property proceeding may be affected if the property is alienated or the right is transferred or if res judicata does not extend to those rights. Therefore, the law equates the successors of the party bound by res judicata and equates them to the party itself. Otherwise, after the death of the party or after it transfers the right, the dispute could be resumed, so that the proceedings will be meaningless.

7.3 Singular and universal successors of parties affected by the judgment

The validity of *res judicata* in relation to the right successor presupposes that the succession has occurred after res judicata has arisen for the right giver in a proceeding in which he has been legitimized. If the succession has taken place in the course of a pending proceeding and the successor has replaced the right giver, he becomes bound by res judicata in that capacity and not as a successor.

Res judicata in relation to the successor presupposes that he has accepted the succession either directly or by inventory. It also presupposes an objective identity of the proceedings. For example, the successor may, on his own grounds, revendicate the same item in respect of which the revendication claim of the succession giver has been rejected.

Res judicata in relation to the private successor is valid regardless of the factual composition determining the succession /legal transaction, public sale/, as well as regardless of the type of succession /translational, constitutive or restorative/. It presupposes an objective identity between the case brought by or against the succession giver and the case brought by or against the successor. The internal relations between the succession giver and the successor are irrelevant here.

The right of enforcement may be exercised by the successors and the private successors and the persons referred to in Art. 429 para 1 of the Civil Procedure Code.

These persons may request enforcement both before the commencement of the enforcement /before the procedure for supplying a writ of execution/ and in case of continued enforcement when it was initiated by the succession giver.

The status of a successor of the right of enforcement is acquired by presenting a certificate of inheritance where his name should appear. This is a sufficient ground for succession.

The succession in claims for compensation for non-pecuniary damage **is impossible**, as the subject of the same are damages /pain and suffering/ caused only to the succession giver and their neutralization is aimed.

Part 8
Effects of Judgments - Temporal dimensions

8.1 Changes to statute/case-law and the validity of a judgment (grounds for challenge)

If new circumstances or new written evidence of essential importance for the case are discovered, which at the time of its resolution could not have been known to the party against whom the decision has been rendered, annulment of the entered into force judgment may be requested. It concerns the incompleteness of the factual or evidentiary material, which is revealed after the judgment has entered into force and is not due to a procedural violation of the court or negligence of the party. In this hypothesis, the party is defended against such an incorrectness of the judgment, which is due to an innocent /objective/ impossibility to reveal the truth during the pending case.

Therefore, these circumstances must not only be 'new', but also essential to the case, in order to lead to a change in the content of the judgment, if taken into account.

By "circumstances" the law means facts of reality which, in relation to the disputed legal relationship, have the significance of legal or evidentiary facts.

"New" facts are those that are not included in the factual material of the case while it was pending. However, they must not be newly created, i.e. they must have arisen after the end of the oral competitions, which ended with an effective judgment.

These new facts could, if they had been known, be included in the case because they existed on the day of the closing of the oral competitions and because they were not taken into account by the court, its judgment is objectively incorrect. Res judicata is an obstacle to re-resolving the case in accordance with the newly discovered facts and it is necessary - annulment.

The interpretative judgment of the Supreme Court of Cassation issued after the entry into force of the judgment is not a new circumstance, although it determines other conclusions on the disputed law. The adoption of the interpretative judgment is caused by contradictory case law and it gives the courts an obligatory interpretation in resolving a legal issue and aims to unify the practice in the future.

It is not enough for the party to claim that there are newly discovered facts. It must support its claim with written evidence, and because they relate to new facts, they will always be new. This written evidence can be: official documents or private documents issued by the opposing party /for example a receipt for payment of the receivable recognized by the judgment/. The statements of individuals published in the periodical press are no written evidence: ordinances, instructions, etc. published in the State Newspaper.

For example, in relation to a judgment rejecting a price claim on the grounds that the goods have not been handed over, the newly created evidence is the defendant's out-of-arbitration written acknowledgment that the goods were found in his warehouse.

The case law of the Supreme Court of Cassation may be considered as a newly created document after the entry into force of the judgment, which leaves the previous permanent case law of the Supreme Court of Cassation.

In the presence of the above grounds, the party does not start to attack the incorrect judgment by the order of the appeal, but by the order of the extraordinary way for annulment of an entered into force judgment.

8.2 Court judgement and amount payable by the debtor

The court judgment, which requires the debtor to pay future /periodic/ instalments, can be changed for the amount payable for each instalment **only** by a court judgment issued on a claim for change of maintenance. After the entry into force of this judgment, it is attached to the already initiated enforcement proceedings and the enforcement continues for the new fixed amount.

8.3 Facts concerning enforcement proceedings

The only fact which directly concerns the enforcement proceedings is the fact of payment by the debtor. Only this fact is important for the continuation of the enforcement and therefore the payment is an independent ground under Art. 433 para 1 item 1 of the Civil Procedure Code.

8.4 Invocation of set-off of a judicial claim by the debtor in enforcement proceedings

Within the enforcement proceedings under the Civil Procedure Code, **no set-off is made regardless of the grounds on which the debtor claims.** There is no legal regulation that excludes it, but case law has imposed this.

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Part 9

Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1 Bulgarian national legal order in terms of lis pendens

The principle aims to prevent, at a preliminary point, the rendering of contradictory court judgments in the event of suspension of the case in related claims.

The principle requires the following conditions:

– filing identical claims on the grounds and subject;
– identity of the parties to both claims;
– difference with regard to the courts before which the two claims have been filed;

The clarification of the above preconditions is aimed at avoiding competing proceedings and rendering contradictory court judgments.

By the same legal basis is meant the facts and the legal norm which the claim is based on. The identity of the subject means that the two claims are the same on their essence, i.e. they are relevant to identical legal consequences /for example: compensation for damages arising from the same illegal act or performance of the same contractual obligation/.

Both claims must pursue the same purpose (for example: whether they dispute only the interpretation of the contract or also its content). What is important **is not** how the two claims are formulated, but what would be the content of the court judgments based on them and whether upon their rendering contradictory court judgments could be reached.

In the legal system of the Republic of Bulgaria, this principle directly expresses the guiding principle in Section 9 of the Regulation [86], namely the principle of priority beginning. The aim is procedural economy and ensuring clarity and certainty in order to prevent leading two lawsuits on the same dispute. Therefore, the court referred to later ex officio suspends the case until establishing the jurisdiction of the first court referred and, if the answer to this question is affirmative, it diverts the case hearing, regardless of the nature of the arguments for the existence and conditions of jurisdiction of the court referred later. The court referred later must, in its own way, reject the claim brought before it as inadmissible due to the existence of a pending proceeding /Art. 126 of the Civil Procedure Code/. The offset to a pending proceeding is justified **only** in the presence of a complete subjective and objective identity between the cases. According to Art. 37 of the International Private Law Code - the Bulgarian court suspends the case initiated before it ex officio, if between the same parties, on the same grounds and with the same request there is an earlier filed claim before a foreign court and it is expected that it will end within a reasonable term with a final judgment, which can be recognized in the Republic of Bulgaria.

[86] Reguation 1215/2012 Section 9.

Under the Bulgarian law, a claim could be considered to be pending before the first instance - from the moment of initiating the case, until the moment when the decision of the first instance court has not entered into force or appealed within the period in which this can be done and it was sent to the court of second instance, whereby its suspension before the first instance court is terminated. Undoubtedly, the appropriate final moment for respecting an objection of identity is the conclusion of the court search.

9.1.1 The B IA concept of a "cause of action" and the similar domestic concept in the Bulgarian national legal order

The subject of the case is introduced in the proceedings through the legal statement of the claimant contained in the claim and according to the dispositive beginning is determined by the claimant. The latter forms the disputed right through the grounds and the petitum of the claim. The subject of the case is the claimed right.

A full objective identity is present when in one of the cases the establishment of a certain right is requested, and in the second case the establishing that the right exists is claimed. There is no objective identity when the subject of one of the cases is a legal relationship that is preliminary to the subject of the second case.

In its procedural actions under Art. 143 para 1 of the Civil Procedure Code /preparatory hearing/ should rule on all issues concerning the regularity and admissibility of the statements in the claim, the other claims and the objection of the defendant, including for offset for objective identity received with the answer to the claim. This is the moment in the proceeding in which the court rules on the objection of identity and in case of a positive answer with a ruling stops the case ex officio and sends it to the previously referred court. This ruling is subject to appeal with a private appeal /Art. 274 para 1 item 1 of the Civil Procedure Code/. In this case, the process is transferred to the next instance, and the claim remains pending before the first instance.

9.1.2 Negative declaratory action in the Bulgarian national legal order.

An identity between a negative declaratory action and a condemnatory action is allowed if, in essence, both actions relate to the validity of a contract or to the state of a certain receivable or a subjective right.

It asks the court to rule on the existence or non-existence of a disputed legal relationship. One and the same dispute may give rise to either a positive or a negative declaratory action. And because they are aimed at resolving the same dispute, they will be identical. It is possible in the Republic of Bulgaria to be identical negative declaratory action and condemnatory action for payment of compensation for indemnification, **only if** in their essence both actions refer to the state of a certain receivable or to a subjective right. If an effective judgment establishes that the receivable does not exist, the formal certifying force of the enforceable right shall lapse.

9.1.3 Identity of parties in the national proceedings and the B IA

The identity of the parties should be interpreted "narrowly". The Court emphasizes in its case-law **not** the name and role of the parties, **but** their interests. According to one opinion in the doctrine, the issue of the identity of the parties should be raised primarily when it is expected that there is an expansion of the subjective limits of res judicata. The identity requirement should be met for both the defendant and the claimant, which can be problematic in the case of multiple co-applicants/co-claimants.

9.1.4 “The same end in view” as expressed by the CJEU

The judgment of the European Court of Justice in the Tatri case states that, in order to achieve precise administration of justice, the concept of "related claims" must cover as widely as possible all cases where there is a risk of conflicting judgments, even when the judgments can be enforced separately and their legal consequences are not mutually exclusive. Art. 28 of the Regulation leaves it to the discretion of the court to establish the existence of a connection between the claims as well as a

certain risk of conflicting judgments, but nevertheless to decide that the claims are related within the meaning of this provision.

The practical significance of this statement: first - the respect res judicata of the foreign judgment and second - the recognition of the constitutive action of the latter in relation to its addressees in the second case. Thus, accepting the court judgment of the first case to be recognized by the court in the second case with the consequences it has on the right of the court that ruled it. The Regulation stipulates that the application of this normative act is limited to civil and commercial cases, as well as under Art. 1 par.18 the second part of the Regulation /and par.2 where it is settled in relation to which cases. The aim is to unify the principle of coordinating parallel processes in the EU.

The Bulgarian legal system follows the principle of priority in favour of the first court referred, and the second court referred at the time is the one that should suspend the case, if in this way contradictory judgments can be avoided.

The other principle is the principle of the appropriate court, according to which the courts have considerable discretion and could refuse to hear a case in which a court of another state is more appropriate to do so. Applying this principle can create the danger of long parallel processes for deciding which court is more appropriate to hear the case.

As a critique of both principles, the circumstance is pointed out that in both cases the court judges on its own without taking the position of the foreign court the question whether to hear or not.

9.2 Bulgarian legal order in terms of the notion of "related actions"

The notion of "Related actions" operates in the Bulgarian legal order, following the principle of priority in favour of the first court referred, as the second referred in time suspends the case until the entry into force of the judgment of the first court and uses its consequences – res judicata and the probative value of all evidence.

I apply the case law as follows:

Interpretative judgment No. 3 of 22.04.2019 of the Supreme Court of Cassation under item No. 3/2016, OSGTK, reported by Judges Emanuela Balevska and Emilia Vasileva[87].

1. The filing of the claim for pecuniary claim as partial and its subsequent increase by the order of Art. 214, para. 1 of the Civil Procedure Code do not result in suspension and interruption of the limitation period in respect of the undeclared part of the receivable.

2. The judgment on a valid partial claim for pecuniary claim shall be res judicata regarding the legal facts of the disputed subjective substantive right in case of a claim for protection of a claim for difference up to the full amount of the pecuniary claim arising from the same right.

3. There is no procedural obstacle within the meaning of Art. 126 of the Civil Procedure Code for admissibility of the subsequent partial claim, when a partial claim has been filed between the same parties, on the same grounds and for the same claim, on which the previously filed case is pending, if the filed partial claims relate to different parts of the claim.

In this case the proceedings on the subsequent partial claim should be suspended on the grounds of Art. 229, para. 1, item 4 of the Civil Procedure Code or the two cases to be joined for their consideration in one proceeding and rendering of a joint judgment on them on the grounds of Art. 213 of the Civil Procedure Code.

If the by the subsequent partial claim the same part of the receivable is claimed, which is the subject of the initial partial claim, on which the previously filed case is pending, there is a procedural obstacle within the meaning of Art. 126 of the Civil Procedure Code and the proceedings on the subsequent partial claim should be terminated.

[87] Judgment No3 of 22.04.2019 of the Supreme Court of Cassation under item No 3/2016 OSGTK, reported by Judges Emanuela Balevska and Emilia Vasileva.

Judgment No. 215 of 12.06.2015 of the Supreme Court of Cassation on the case file No. 3368/2014, IV year o., GC, reporter Judge Svetla Boyadzhieva[88].

Only defects which lead to impossibility to deduce the actual will of the court which ruled it may be the subject of interpretation.

Judgment No. 619 of 30.09.2010 of the Supreme Court of Cassation on case file No. 370/2010, IV year o., GC, reporter Judge Nadezhda Zekova[89].

The provision of Art. 126 of the Civil Procedure Code provides for termination of the later filed case, in the presence of two pending cases with identical subject between the same parties. It is irrelevant whether one of the cases has been decided and whether it has entered into force.

9.3 Bulgaria and the cross-border cases involving related actions within the meaning of the B IA

It is possible to point out case No. 1160/2016 under the application of Article 52 of Regulation 1215/2011[90] where the Bulgarian court takes a definite decision to prohibit the rehearing of the foreign judgment on the merits and recognizes it with its consequences for enforcement.

In the legal system of the Republic of Bulgaria the practice is also accepted that the termination of the second case under Art. 28 para. 2 of the Regulation aims to enable the interested party to bring a new claim before the court in the first case /identical to that in the second case/ in order to join these claims before the court of the first case, therefore the proposal is: the court suspends the proceedings in the second case and gives the interested party a term to file a new claim before the court where the first case is pending, identical to the one in the second case. After proof is provided for its presentation, the second case shall be terminated on the grounds of Art. 28 para 2 of the Regulation.

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[88] Judgment No215 of 12.06.2015 of the Supreme Court of Cassation on the case file No3368/2014, IV civil department, GC, reported by Judge Svetla Boyadzhieva.
[89] Judgment No 619 of 30.09.2010 of the Supreme Court of Cassation on case file No 370/2010, IV civil department, GC, reported by Judge Nadezhda Zekova.
[90] Regulation 1215/2012, Art. 52.

9.3.1 Definition of irreconcilability for the purpose of related actions of the Bulgarian courts

In the Republic of Bulgaria according to art. 126 of the Civil Procedure Code, a prohibition has been established for the simultaneous hearing by the court of two cases that have identical parties and a disputable subject within which identical judicial protection is sought. The purpose of the prohibition is to prevent the issuance of contradictory court judgments containing divergent rulings on the same disputed legal relationship.

If the prerequisites of Art. 126 of the Civil Procedure Code are established only before the appellate instance, the termination is a power of the appellate court, which annuls as inadmissible the judgment of the first instance.

The offset under Art. 126 of the Civil Procedure Code is justified *only* in the presence of full subjective and objective identity between the cases. The prohibition applied by the Bulgarian courts to initiate the second case - anticipates the offset for an adjudgment.

Therefore, even in cases where there is a pending case before the District Court it is *an absolute negative prerequisite and is an obstacle* to re-exercise the right to sue in a legal dispute. The purpose of the prohibition for hearing the second case in the same claim is to save court time and effort, as it is assumed that the first case is at a more advanced stage of development.

9.3.2 Exercising the discretion to stay proceedings

The courts in the Republic of Bulgaria apply in all cases the provision of Art. 229 para 1 item 4 of the Civil Procedure Code - suspension of the conditioned case regardless of whether it was filed later by the conditional one.

There is also a possibility for suspension assessment as an example:

The judgment on a valid claim for pecuniary claim shall be res judicata regarding the legal facts of the disputed right in case of a partial claim for protection of the receivable for the difference up to the full amount arising from this right.

In the above case there is no procedural obstacle within the meaning of Art. 126 of the Civil Procedure Code for admissibility of the subsequent partial claim when between the same parties, on the same grounds, a claim has been filed on which the previously filed case is pending, if the filed partial claim relates to different parts of the receivable. In this case the proceedings on the subsequent claim should be suspended under Art. 229 para 1 item 4 of the Civil Procedure Code or the two cases should be joined for hearing in one proceeding for issuance of a joint judgment.

Part 10
Court settlements

10.1 Prerequisites for conclusion of a court settlement

The court settlement is a contract confirmed by the court between the parties of a pending case, by which they settle with power the legal dispute in whole or in part by mutual concessions, deseizing the court and ending the case within the framework of the court settlement achieved.

The subject of the settlement contract is an existing or possible dispute. What motivates the parties to conclude a settlement contract is their willingness to overcome the differences in their statements and to avoid future or to resolve a current legal dispute. "The settlement contract is a contract for settlement of a legal dispute" (Decision of 29.10.1997 on SAR No. 175/2000[91]). A dispute is a situation in which there is a discrepancy in the statements and in the positions of two or more persons, and legal is any dispute over rights (i.e., a situation in which there is a discrepancy in the statements of the disputing persons regarding their rights and obligations). Due to the "necessity" of a legal dispute, a settlement can only be concluded between persons who are already in a certain legal relationship with each other. Thus, the settlement contract presupposes existing others (including a

[91] Decision of 29.10.1997 on SAR case No 175/2000.

previous agreement), most often contractual relations between the parties in connection with which the legal dispute arises.

The court settlement is a mixed institution both in terms of its factual composition and in terms of its legal consequences, as it is regulated by both civil and procedural law.

10.1.1 Description of the necessary elements a court settlement must contain

The clear definition of the subject of the dispute is one of the main and extremely important elements in view of the provision of Article 365, paragraph 2 of the Law on Obligations and Contracts. According to it, the settlement contract may create, amend or repay legal relations that have not been the subject of the dispute, but in this case the transfer of these rights is carried out in compliance with the form prescribed by law. From the detailed examination of the case law it can be concluded that Article 365 para. 2 of the LAW ON OBLIGATIONS AND CONTRACTS should find application only in the court settlement. Only in the case of a court settlement the existing dispute is clearly declared and declared before the court, and only then can the distinction be made between the disputed legal relationship-subject of the litigation and the disputed or undisputed legal relationship, which is not subject to court consideration.

But if the court settlement encompasses the elements inherent in the out-of-court settlement, then it does not mean that there is an identity between the two types of settlement. In the case of the court settlement, to the factual composition and legal consequences of the out-of-court settlement significant new elements are added, in which the difference between it and the out-of-court settlement consists.

10.1.2 Formal requirements

In order there to be a court settlement, it is necessary the settlement contract to be concluded before the court hearing the case and to be certified in the court record, which must be signed also by the parties and not only by the chairman and the court secretary (Art. 234, para 1 of the Civil Procedure Code). This means that the court

settlement can only be concluded in a court hearing. The written settlement contract that the agreed parties submit to the court is not a court settlement. The form prescribed in Art. 234, para. 1 is a condition for validity of the court settlement.

The formal certification of the court settlement does not exhaust its factual composition. The court settlement needs to be confirmed by the court (Article 234, paragraph 1 of the Civil Procedure Code).

When the prosecutor participates as a party in the case, the court confirms the court settlement, after taking his opinion as well (Article 234, paragraph 2 of the Civil Procedure Code).

Confirmation of the settlement is made by court determination. The settlement shall be entered in the minutes of the meeting at which it was reached.

10.1.3 Identification of the parties

There are no specific provisions on how the parties to the settlement should be identified. In practice, they are most often identified by their three names, in the case of physical persons and by names (manager or owner of the capital with which it is entered in the Trade Register of the Republic of Bulgaria) in case of legal entities, as well as organizational units without legal personality. In addition, in order to avoid doubts, depending on the type of the party, there has to be indicated the Unified Civil Number (UCN) and permanent address on the territory of the Republic of Bulgaria, in the case of a physical person and the Unified Identification Code (UIC) and address (entered in the Trade Register), in the case of a legal entity.

10.1.4 Legal relationships that can be settled in a court settlement

The law seeks a settlement between the parties, but only if it resolves a genuine litigation. This raises the question of the semblance of the court settlement.

Thus, Decision No. 1059/1970, I g.o[92]. describes a case in which the parties to the proceedings intended to make a donation of the entire property, but because they did not have the means to pay state fees, notarized only the donation of a small part of the property with the intention to subsequently liquidate co-ownership through division. In the proceedings case, there was no dispute over the liquidation of the co-ownership, and the aim of the parties was to complete the donation started with the notary deed for the transfer of an ideal part of the property. They conducted a simulated trial, thus violating the requirement of Article 3 of the Civil Procedure Code for the conscientious exercise of the right of defence. Therefore, the court settlement reached in this simulation process actually conceals a donation and should not be approved by the court.

In Decision No. 2566/1970, I g.o93. The Supreme Court is even more categorical: "it is not allowed to use the court proceedings for the formation of transactions, which should be carried out in another order."

In addition to the court settlement regulated in Article 125 of the Civil Procedure Code, there are also some special types of court settlements. A court settlement is most often mentioned in the practice of the courts in connection with the division proceedings of co-owned property. This type of court settlement has no explicit regulation and is subject to the general rules of division and co-ownership.

In contrast, the settlements under the Civil Code in connection with the dissolution of a marriage in case of divorce have a special regulation. According to Article 99 para. 3 of the Civil Code, in case of divorce due to marital disorder, the court does not rule on the guilt if the spouses state this and set out their agreement on the exercising of parental rights, personal relations and child maintenance, as well as on the property relations, the use of the family home, the maintenance between them and the surname. Despite the necessary analogy with the court settlement, the agreements under Art. 99 para. 3 and Art. 101 of the Civil Code do not constitute types of court settlements. This conclusion follows from the fact that the agreement

[92] Decision No.1059 of 1970, on I civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria from 1970.
93 Decision No.2566 of 1970 on I civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria from 1970.

between the parties on the exercise of parental rights (Decision 1901/1970, II g.o.[94]), on the joint use of the family home after the divorce (Decision No. 1123/1976, II year[95]), concerning maintenance between the former spouses (Decision No. 2265/1976, II year[96]) has only the meaning of an instruction for the court, which separately and independently decides this issue in order to ensure the fullest protection of the interests of the children.

Another contract, which already has all the characteristics of the court settlement and is recognized as such by the case law is the recovery plan under Article 696 and seq. of the Trade Law.

According to Decision No. 652/1999[97] of the Supreme Court of Cassation, V g.o. "the recovery plan is a special type of court settlement, a kind of settlement aimed at recovering the company to avoid the consequences of declaring the debtor bankrupt."
Another such special type of court settlement is the settlement reached in the framework of criminal proceedings in cases of crimes of a private nature (Article 21, paragraph 4, item 3 of the Criminal Procedure Code) and in cases of crimes of a general nature (under the preconditions of Article 414G and fol. the Criminal Procedure Code).

10.2 Requirements and time to enforce court settlement

Reaching a court settlement is the preferred way for the legislator to end a court dispute. Through it, the parties adopt the most appropriate balance between their interests and agree on the implementation of the settlement thus reached to resolve the dispute between them. In the presence of a court settlement, a voluntary enforcement can be expected, saving not only money and time of the parties, but also public resources related to the involvement of public authorities in connection with the enforcement of an effective court decision.

[94] Decision No.1901 of 1970 on II civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria from 1970.
[95] Decision No.1123 of 1976 on II civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria from 1976.
[96] Decision No.2265 of 1976 on II civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria from 1976.
[97] Decision No.652 of 1959 on V civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria from 1959.

That is why Article 109 of the Civil Procedure Code obliges the judges in the first hearing of the case, after hearing the opinion of the parties and before they present their evidence, to assist them in reaching an agreement. The court should invite the parties, without expressing his opinion on the merits of the parties' claims (Decree No.5 / 1975, Plenum of the Supreme Court[98]), but he must state the grounds and possibilities for terminating the dispute by settlement. The fulfilment of this obligation of the court should not be formal, as the termination of the dispute by settlement is "the fastest and most efficient way to restore the normal relations between the disputing parties and this is in the interest of both them and of the public".

The judge should actively (Decision No. 6048/2002, of the Supreme Court of Cassation, I year[99]) to promote the convergence of the positions held by the parties, not to neglect the emphasis on "moral considerations derived from the specific relationship between the parties."

In Resolution No.6 / 1968. of the Plenum of the Supreme Court[100], it is placed under a certain condition - "if the circumstances of the dispute show that the settlement is possible and enforceable." In the later decree No.58/1975 of the Plenum of the Supreme Court[101] for the amendment and supplementation of the instructions given to the courts by decree No.6 / 1968. the obligation of the courts to assist the parties in reaching a court settlement is considered as unconditional. <u>Any litigation dispute can also be resolved voluntarily, and referral to court does not mean that the parties are unable to resolve their dispute on their own.</u> Therefore, regardless of the circumstances of the dispute, a court settlement is always possible and enforceable, especially if the court has not so far called for one.

[98] Resolution No. 5 of 1975 of the Plenum of the Supreme Court of the People's Republic of Bulgaria, Collection of case law of the Supreme Court of the People's Republic of Bulgaria of the Civil College 1953 – 1987.
[99] Decision No. 6048 of 2002 on I year o. of the Supreme Court of Cassation, Proceedings of the Civil Chamber of the Supreme Court of Cassation 2002.
[100] Resolution No 6/1968 of the Plenum of the Supreme Court.
[101] Decree No. 58 of 1975 of the Plenum of the Supreme Court.

10.3 Singular and universal successors: the way they are affected by the judgment

Some examples of settlement:

1 / Several persons are owners of one property, acquired by inheritance. A dispute arises between them over the use of the property or one of them manages the inherited property and uses all the fruits of it. There is a dispute that can be resolved out of court or to be taken to court. The successors must specify the manner of use of the property, as a result of which a protocol for its use is drawn up - so the dispute is resolved out of court. However, if it is referred to the court, it will be decided according to the rules of succession.

2 / Several persons are co-successors of certain things. They want to divide the inheritance. If they do not settle on the division, one of them can file a lawsuit before the court, which will terminate the co-ownership with a court decision. The court decision has the force of an adjudicated thing. Out-of-court this dispute can be resolved through settlement. Nothing prevents the dispute to be terminated in the course of the case by signing a court settlement. In general, any property dispute can be resolved through settlement.

More often, successors accept an inventory burdened with debts. Their purpose is to protect their personal property from forced collection of inherited obligations, because according to Article 429, paragraph 2 of the Civil Procedure Code /CPC/ the writ of execution issued against the succession-giver may be executed on the property of his successors, unless they find that they have renounced the succession or that they have accepted it by inventory.

The successor who accepted the succession, either directly or by inventory, is always responsible for the succession obligations. Acceptance by inventory limits the liability of the successor. The restriction is regulated in Art. 60, para 2 of the Succession Law - only up to the amount of the received succession. The text of the law is from 1949 and does not make it clear whether the successor is responsible for the succeeded debt with all his property or only with that part which he succeeded.

Two opinions have been formed in the case law. According to one, upon acceptance of the inheritance according to the inventory, the succeeded and personal property of the successor who accepted the succession merge. The successor is responsible for the succession obligations with all his property /indivisible set of personal and succeeded property/ and should bear enforcement both against his personal belongings and the succeeded ones. In other words, the enforcement can be directed against the personal property of the successor and his liability is limited only by the amount of the succession, understood as a monetary valuation of the asset of the same (pro viribus hereditatis). It is assumed that for the collecting of the succession debts creditors may resort to enforcement on any property of the successor, whether succeeded or personal, but when selling it the creditor will be satisfied only in an amount determined by the value of the succession received by inventory. For example: The value of the succession accepted according to the inventory is BGN 2,000, and the succeeded debt is BGN 30,000. Enforcement can be directed to the car of the successor, but from the received price of 10 thousand BGN the creditor will receive only 2 thousand BGN, as much as the described succession is estimated.

According to the other understanding, when accepting the succession according to the inventory, there is no merging of the succeeded and the personal property of the successor who accepted the succession. The successor is responsible for the succession obligations with the estate. The bailiff may direct enforcement only to objects in this volume. For example, a car appears in the described successory property. The bailiff can describe and sell only the described car, but not a car owned by the successor.

In most court decisions that I have read, the first opinion is expressed, but there are also judges who accept that in order to collect a debt from a succession accepted according to an inventory, enforcement should be directed only at objects from the estate. This opinion is based on an argument from Article 429, paragraph 2 of the Civil Procedure Code that enforcement cannot be directed at the property of the debtor's successors if they have renounced the succession or have accepted it by inventory. /Decision No. of 21.12.2015 on gr.d No. 16699/2015 of the Sofia District Court, 31 panel[102]/.

[102] Decision No. of 21.12.2015 on civil case No. 16699/2015 of the Sofia District Court, 31 panel.

10.4 The amendment of the legal relationship

As can be seen, in the case of a court settlement, three acts are successively superimposed: the settlement contract, the determination by which it is approved and the determination by which the case is terminated. The nature of these acts is different and therefore the ways to attack them in case of viciousness are different.

Although confirmed by the court, the court settlement retains its status as a contract and does not become a judicial act. Therefore, it cannot be appealed (Art. 234, para. 3 CPC) and cannot be attacked by extraordinary means for annulment of entered into force decisions, nor can it be interpreted by the order of Art. 251 of the Civil Procedure Code.

If the court settlement contract is defective, transparency should be disclosed by lawsuit, both when the court settlement is void and when it is null and void. In case of non-fulfilment of obligations under it, the court settlement may be annulled. Simultaneously with the declaration of nullity, annulment or termination of the court settlement, the viciousness of the confirmed judicial act, resp. it will expire retroactively due to spoilage.

10.5 Circumstances making the court settlement unenforceable

A settlement reached through mediation is an out-of-court way of settling the dispute voluntarily. The valid settlement has a substantive effect only between the parties to the dispute and does not bind third parties who have not participated in a mediation procedure. The settlement does not give rise to procedural consequences - it does not have the force of an adjudicated thing and does not have the character of a judicial enforcement ground such as a court settlement.

The debtor may deny the content of the enforcement law in the form of a court settlement (as well as an agreement before an arbitral tribunal, a notarial act and another writ of execution whose content is not protected by res judicata). The adverse action may cover a number of allegations, in particular as regards the lack of legal capacity or the lack of a power of attorney of a person who has made a declaration of intent on behalf of the debtor.

10.6 Options for remedy of errors in court settlement and the recourses available against a notarial act

The purpose of the settlement contract is to reach a peaceful and consistent settlement of the legal dispute with both parties. Therefore, in addition to the general guarantees for the free expression of the will of the parties in the negotiation (grounds for destruction by mistake, violence, threat, fraud and extreme necessity), the legislator provides another additional guarantee in a court settlement contract - the provision of Art. 367 Law on Obligations and Contracts. According to it, a settlement concluded on the basis of documents which were later recognized as false (forged) by a court decision, with an effective decision, is null and void. The person whose will is flawed due to his misconception about the existence of a document with a certain content relevant to his positions in the legal dispute is given the right to request the termination of the settlement and the resumption of the dispute. If the settlement is judicial, the annulment of the order by which it was approved should not be requested, but the annulment of the settlement itself should be requested (Decision No. 1687/1971, I year[103]).

The court settlement may be revoked before the court terminates the proceedings. The settlement can be challenged by an appeal. After the final termination of the proceedings, it is possible to avoid the significant consequences of the concluded court settlement due to defects of the declaration of will, which can be brought in a separate process. An application for interpretation or supplementation of a court settlement is inadmissible in the same way as in the case of a court decision, as the content of the settlement is determined by the parties.

Only if it covers the content of a settlement or other contract, drawn up in a notarial act or in writing with notarized signatures, the concluded settlement can justify a request for issuance of an enforcement order regarding the obligations contained therein for payment of sums of money or other substitutable items, as well as obligations for delivery of certain items (Article 417, item 3 of the Civil Procedure Code).

[103] Decision No. 1687/1971, I civil department from 1971 of the Supreme Court of the People's Republic of Bulgaria, Collection of court decisions of the Civil Chamber of the Supreme Court of the People's Republic of Bulgaria from 1971.

Part 11

Enforceable notarial acts

11.1 Notarial competence in civil and commercial matters in Bulgaria

Notarial is this body, which has the competence outlined in Art. 569 of the CPC of the Republic of Bulgaria. This is the notarial competence or the power to officially certify the circumstances specified in Art. 569 of the CPC of the Republic of Bulgaria. Among them with the widest notarial competence are the notaries. Their status is governed by the Law on the Notaries and Notarial Activity (LNNA) (see Chapter II, Sections 1-3[104]). They have the competence to certify each of the circumstances, specified in Art. 569 of the CPC of the Republic of Bulgaria (but according to Art. 569, item 5, they may make "entries, markings and their deletion" only "in cases provided by law"). Assistant notaries also have notarial competence. They may perform actions within the competence of the notary on the instructions of the notary, under the conditions and restrictions provided by law (see Chapter II, Section 4 of the LNNA[105]). When the notary is absent or unable to perform his/her functions, he/she may be replaced by an assistant notary under the special conditions and procedure of Art. 46 of the LNNA. The notary may be replaced by another notary from the same region, according to Art. 47 LNNA. According to the general rule of Art. 81 LNNA other persons who are not notaries may perform

[104] See the Law on the Notaries and Notarial Activity (LNNA) Chapter II, Sections 1-3. Available at: https://justice.government.bg/home/normdoc/2133897733 [9.11.2021].
[105] *Ibid.,* Chapter II, Sections 4.

notarial functions only insofar as this is provided by law. Bodies with **limited** notarial competence can be:

- Mayors of settlements that are not a municipal centre, and where they are such a centre - the mayors, their deputies and the secretaries of municipalities, as well as the deputy mayors (Art. 83 LNNA);
- Bulgarian diplomatic or consular representatives abroad (Article 84 LNNA);
- Captains of ships (Article 91, paragraphs 3 and 4).

They may certify the signatures of private documents, which are unilateral acts and are not subject to entry, the signature and the content of a power of attorney under Art. 37 of the CPA, as well as the accuracy of transcripts and extracts from documents and papers.

11.2 A notarial act and its enforcement title in Bulgaria

Foreign enforcement order can be divided into two groups. The first group are foreign enforcement order which are subject to execution on the territory of the Republic of Bulgaria without deliberate proceedings (Art. 404 item 2 CPC.). The second group covers enforcement order, which are subject to enforcement on the territory of the Republic of Bulgaria after conducting deliberate proceedings for admission of enforcement (exequatur) - Art. 404 item 3 CPC.

Foreign enforcement order which are subject to execution on the territory of the Republic of Bulgaria without deliberate proceedings (Art. 404 item 2 CPC) The scope of item 2 includes decisions, acts and court agreements of foreign courts from an EU Member State. With them there is no need a special exequatur procedure to be conducted before a Bulgarian court, in order to initiate enforcement on their basis. They shall be enforceable under the provisions of Community law without any deliberate proceedings being instituted. It should be inferred from this content of the provision that these are acts of courts issued by an EU Member State. Foreign enforcement order in this group can be direct (without the need a writ of execution to be issued - Article 622a of the CPC) or indirect (it is necessary to issue writ of execution – e.g., the so-called European Enforcement Order for undisputed claims - Article 624 CPC).

Foreign enforcement order, which are subject to enforcement on the territory of the Republic of Bulgaria after conducting deliberate proceedings for admission of enforcement (exequatur), Art. 404, item 3 of the CPC. With them there is a need for special exequatur proceedings to be conducted before the Bulgarian court in order to initiate enforcement on their basis. Foreign enforcement order may come from both an EU Member State and non-EU countries. Enforcement order of this type are complex and consist of two elements: the foreign conviction + a court ruling of a Bulgarian court that has entered into force, which allows enforcement on the territory of the Republic of Bulgaria. Here, the enforcement effect of this enforcement order occurs only after the act of the court on the admission of enforcement (exequatur) enters into force, which means that this type of enforcement order is indirect (there is a need a writ of execution to be issued).

An order for immediate execution and a writ of execution shall be issued in the presence of the cumulatively required prerequisites, referred to in Art. 418, para. 2 and 3 of the Civil Procedure Code, namely the executive ground to be one of the exhaustively listed in Art. 417 of the CPC documents, to be regular on the outside, the enforcement order to certify a fit for enforcement title in favour of the applicant against the person against whom the issuance of an order for immediate execution and a writ of execution is requested. Issuance of an order for immediate execution and a writ of execution, on the grounds of art. 417, item 3 of the CPC, on the basis of a notary deed for a contractual mortgage on real estate on the basis of a Bank Loan Agreement and a contract for transfer of a receivable (cession) is possible when the monetary receivable is subject to enforcement on the grounds of Art. 173, para. 3 of the CPA, which refers to Art. 418 of the CPC and arises from the entry of the notarial deed for a contractual mortgage on a real estate. According to this regulation, if the claim is for a certain amount of money, the creditor may, on the basis of the act of registration of the mortgage, request the issuance of an order for immediate execution under Article 418 of the CPC.

11.3 Requirements for the notarial acts to be considered enforcement title in the Bulgarian national order

In the Bulgarian national legal system, the Notary deed **is not an enforceable ground**, unless there is a clause in it binding the transfer of possession of the property with a term for payment of the price.

If this does not happen after the expiration of this term, then the transferee uses this clause as a basis for issuing an order for immediate execution and providing of a writ of execution (Art. 417 item 3 of the CPC). Prior to the amendments to the CPC (2008), the notary deed was an out-of-court enforcement order. The amendment of the CPC (2008) introduced the regime of order proceedings and made it possible to initiate enforcement proceedings under this order.

In the Republic of Bulgaria, the legal order introduces the possibility (but not the obligation) for the existence of a clause in the notary deed, which is bound by the transfer of possession of the sold property (in case of non-pecuniary receivables) and stipulation of term for payment of the transaction amount (in the case of pecuniary receivables). If after the expiration of this term the action has not been performed, the acquirer or the creditor may use this clause as a ground for issuing an order for immediate execution.

11.3.1 Clauses that constitute the notarial deed an enforcement title

For example: In item 3 of the notarial deed it is said: The seller is obliged to transfer the possession of the property to the buyer by 30.11.2020. If upon the expiration of this term the action, which has been agreed in view of the consequences, has not occurred in this part, the notarial deed shall serve as a ground for the buyer for the issuance of an order for immediate execution. This is an example when the payment is to be made in full.

Cash receivables

For example: In item 3 of the notary deed, it is said: The Buyer undertakes to pay the balance of the purchase price to a specified bank account of the seller within 3 days from the entry of the notary deed in the Registry Office until its final payment. In item 4 of the notary deed, it is said: The seller undertakes to hand over the possession to the buyer immediately after the payment.

This is an example when the payment is made in part on the day of shrift of the transaction.

11.3.2 Debtor’s consent to direct enforceability

The debtor's consent for direct applicability is **NOT** considered part of the notarial deed.

11.4 Structure of a notarial act in the Bulgarian domestic legal order

The notarial deed is a certification of transactions, i.e., a civil declaration of intent, regardless of their content, consequences and parties. The transactions that are certified can be both bilateral (contracts) and unilateral (will). The certification is requested by the applicant and is due only to him as a condition for the validity of the legal transaction (Art. 18 of the COA) and as a means of proving it. In practice, the notarial deed is mainly used to certify transactions transferring, establishing or amending real rights over real estate.

The notary deed for a transaction is issued at the request of the person whose transaction is to be certified. Along with the application, a draft notarial deed must be submitted in two or more copies according to template - form, type and paper, determined by the Minister of Justice (Art. 578 para. 1 of the CPC). This draft becomes a notarial deed issued only after the procedure for its compiling has been observed. The draft notarial deed is a protocol of the notary, certifying the transaction performed before him and the actions of the notary on its certification (Art. 580 of the CPC).

In order for the draft to become a notarial deed, the persons whose statements must be certified by the notary must appear before him/her **in person**, otherwise the issued notarial deed is null and void.

First of all, the notary checks whether the transaction is lawful and whether there are grounds for it to be removed from the certification. When he/she finds that the obstacles referred to in Art. 574 and Art. 575 of the CPC are not present, the notary proceeds with the verification of another set of requirements.

They refer to the identity of the persons, their legal capacity and their representative power with a view to certification. He/she should also check the identity of the appearing persons indicated in the draft notarial deed.

Then he/she checks whether the submitted project has the minimum necessary content of a notary deed (Art. 580 CPC), because if it does not contain the data specified in this text, it is null and void and therefore the notary shall refuse to compile it.

After he/she is convinced that all the requirements for drawing up the notarial deed are present, he/she proceeds to the actual actions: reading, approving and signing the notarial deed. By signing the notarial deed, the persons whose statements it certifies confirm their will to conclude the certified transaction.

All the above actions are included in the form of a notary deed.

11.5 Personal information that must be specified in the notarial act for the purposes of identifying the Parties

The identification of the persons who appeared before the notary includes:

1. Verification of their identity: full name and unique civil number, number, date, place and body of issuance of the relevant identity document and verification of identity between the person who appeared and the one indicated in the draft notarial deed.

2. Verification of legal capacity - from the specified identity document the notary checks whether the person is an adult. If the declarations of intent arise from persons capable of acting with representative authority, then he/she checks the power of attorney or other document certifying the legal representative authority (Art. 578, para, 4 of the CPC).

11.6 Requirements for the signing of a notarial act in order to be valid

Pursuant to the CPC of the Republic of Bulgaria, the parties shall put their signatures as a last act, with which the issuance of the notarial deed is completed. The refusal of any of them to sign thwarts the issuance of the notarial deed, and also the transaction in respect of which the notarial deed is a condition for validity. Therefore, Art. 579, para. 1 of the CPC requires in addition to the signature of the participants the spelling of their full names. If the deed has already been signed,

applicants full name is written before the notary and confirms his/her signature. The signature of the notary must be affixed during the proceedings. Late signing is not allowed. This signature validates the day of drawing up the notarial deed.

11.7 Consequences in case of failure of the parties to meet the formal requirements for a valid notarial act

The consequences if the parties fail to meet the formal requirements for a valid notarial act are as follow:

1. Non-observance of the requirement for reading the draft of the notarial deed by the notary in the presence of the parties makes the notarial deed null and void.

2. Failure to comply with the requirement for approval of the read text containing the statements of the parties leads to the nullity of the notarial deed. The statement of any of the parties that it does not approve the read text or part of it leads to the notary refusing to issue the notarial deed.
3. Failure to sign the notarial deed by any of the parties excludes the expressed will in the transaction of that party and prevents the issuance of the notarial deed.

4. The non-signing of the notarial deed by the notary makes it null and void. A signing by the notary on a later date attacks the security regarding the day when the notarial deed was drawn up and is inadmissible.

11.8 Substantive and other legally valid obligations according to the Bulgarian domestic legal order

The following material obligations may be directly enforceable under the legal order of the Republic of Bulgaria:

First hypothesis: A material obligation arising from a contract for the establishment of a mortgage in favour of a bank. The debtor secures this obligation with his/her own property. In case of non-compliance, the bank has two options: either to file a claim for a monetary receivable or to obtain an order for immediate enforcement;

Second hypothesis: Material obligation arising from a contract for the establishment of a mortgage in favour of a bank whereas the security of the obligation is the property of a third party (e.g., parent). Under this contract, the debtor is a principal debtor and a third party is a mortgage debtor. In case of default, the bank has the following options:

- To file a claim against the main debtor for non-performance of the contract;
- To be provided with an order for immediate execution and a writ of execution against the main debtor and in the course of the enforcement proceedings the creditor may direct the execution to the property of the mortgage debtor to satisfy its claim.

Counter-hypothesis: In cases where the property owner has incurred costs for improvements to the property without knowing the existence of the beneficial owner and there is a condemnatory operative part against the non-owner for the transfer of possession of the property, in the course of the case the court rules on the objection of upholding the right of retention by the owner until the costs of the improvements are paid. If the court upholds this objection, it shall order the issuance of a writs of execution in favour of the creditor to be made after payment of the improvements. Therefore, his/her objection to the defendant's improvements is subject to his/her defence against the claim and falls within the scope of that defence. In this case, the plaintiff may receive a writ of execution, the enforcement force cannot be manifested until he/she fulfils his obligation under the counter-claim the defendant.

11.9 Enforcement of the conditional claims, contained in a notary act

Contingent claims are claims that make the occurrence of an obligation conditional on the fulfilment of a condition. In order to have executive force, the demandability of the claim must be certified with an additional document (arg. Art. 418 para. 3 of the CPC). The condition for enforceability must be reflected in the decision itself. In order for a writ of execution to be issued, the condition on which the enforcement force depends must be established in proceedings for the issuance of a writs of execution with the evidence provided for in the said norm.

For example, with a hypothesis: The conclusion of a preliminary contract for the sale of property with a condition of up to one month of concluding a final contract. The obligation to transfer possession is placed under the condition expiration of a certain period. Also, the example given in the reverse hypothesis of 11.9 with a valid objection to the right of retention.

11.10 Obligations as part of enforceable notary deed

The obligations contained in a notarial deed in the national legal system of the Republic of Bulgaria ***are not directly enforceable and the notarial deed is not an enforceable ground***. The obligations become enforceable by an order for immediate execution in an order procedure. The text of the notary deed contains their dueness by the party, which is grounds for the creditor to ask the court to issue an order for immediate execution. The obligation materialized in the notarial deed includes a court assessment of its performance. The specific answer is negative.

11.11 Contract between the parties and its notarization

It is possible with notarization of the date and content of the private document.

The notary shall certify with binding probative force the facts covered by the notarial statement of the notary for the transaction by the persons participating in the deed and shall give the contract the quality of a private document regarding the statements of the persons. The contract between the parties may be presented to the notary in this capacity in order to certify its content. This notarization proves what the content of the private document was on the day of the notarization and aims to protect the document from falsification of the content.

11.12 Notarial act and its enforceability

The notarial deed under the legal order in the Republic of Bulgaria includes a judicial assessment of the execution. If the court finds that the term to which the obligation is due has not expired, it refuses to issue an order for immediate execution. This is the case when the creditor has lost track of the term. The court may find that within this period the debtor has become insolvent and again issue a refusal.

11.13 Special restrictions regarding recognition and enforcement of foreign notarial acts

The foreign notarial deed as an enforceable order **is not applicable** in the Republic of Bulgaria. In the Republic of Bulgaria, the notarial deed **is not a direct enforcement order** and is executed only after a court decision. Therefore, the obligation under the foreign notary deed becomes unenforceable without a court decision.

11.14 Grounds of objection in enforcement proceeding

Legitimate to appeal the actions of the enforcement body are:

- the creditor who can appeal;
- the refusal of the bailiff to perform the requested enforcement action (Art. 435 para. 1 of the CPC) including the refusal to initiate an enforcement case;
- The decree of the bailiff for suspension of the enforcement proceedings;
- The decree of the bailiff for termination of the enforcement proceedings;
- Pursuant to Art. 435 para. 3 of the CPC the creditor may appeal the decree for assignment of real estate, if a bidder has participated, without the need to have paid a deposit. The valuation of the property cannot be appealed;
- The debtor may appeal only the actions of the bailiff explicitly indicated by law;
- The debtor may appeal against the decision for a fine, for non-fulfilment of an obligation with regard to the person and non-fulfilment of an obligation for inaction;
- He/she may appeal against the direction of the execution to property which is considered non-sequestrable. The current system of appeal as a right of defence of the debtor should be amended by specifying which act is subject to appeal, from which moment the period for appeal begins to run, what the court should rule if it upholds the appeal. The term "directing the enforcement" creates a precondition for contradictory case law.

In the legal order of the Republic of Bulgaria **it is not admissible** for the debtor to raise objections against the receivable contained in the notarial deed in the enforcement proceedings, not before the enforcement body, as the proceedings are instituted with an order for immediate enforcement issued by a court and on the grounds of a writ of execution issued on its basis.

11.15 Ways to enforce a foreign enforceable notarial act

Only and only after a judicial assessment of the execution with the recognition of this foreign executive notarial deed **under a court order** the judgment is directly enforceable under Regulation 1215/2012.

11.16 Enforcement titles in the Bulgarian legal order

The Bulgarian legislator *renounced the non-judicial enforcement order* that existed in the old CPC (am. 2008). It provided for a "public document", an enforceable "authentic document", which is formally drawn up or registered as public, as a basis for issuing an enforcement order (Art. 417 of the CPC), but by virtue of Regulation 1215/2012 Brussels, Regulation (EC) No 2201/2003 Brussels II A[106], on the recognition and enforcement of judgments by bodies of EU Member States in family and parental care matters, Regulation (EC) No 805/2004 of the European Parliament and of the Council for the introduction of European Enforcement Order, Regulation No. 1986 / 2006 of the European Parliament and of the Council of 12 December 2006[107] establishing a European order for payment procedure and due to their direct effect in the Republic of Bulgaria <u>the executive force of non-judicial enforcement order is recognized, the so called "authentic" documents when they exist in the other country</u>.

[106] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003, p. 1–29.

[107] Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates, OJ L 381, 28.12.2006, p. 1–3 .

Literature and sources

Angelov N., *2010. [Writ of execution in Bulgaria and EU]*. Sofia: Ciela publishing house.

Collection of case law of the Supreme Court, Civil Chamber 1953-2009, decrees and Interpretative Decisions of the Supreme Court of Cassation in Civil Cases, 1953-2009.

Decision No. 1059 of 1970, on I civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria, 1970.

Decision No. 2566 of 1970, on I civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria, 1970.

Decision No. 1901 of 1970 on II civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria, 1970.

Decision No. 1123 of 1976 on II civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria, 1976.

28. Decision No. 2265 of 1976 on II civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria, 1976.

Decision No. 652 of 1959 on V civil department of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria, 1959.

Decision No. 6048 of 2002 on I year o. of the Supreme Court of Cassation, Proceedings of the Civil Chamber of the Supreme Court of Cassation, 2002.

Decision of 21.12.2015 on gr.d No. 16699/2015 of the Sofia District Court.

Decision No. 1687 of 1971 of the Supreme Court, Collection of court decisions of the Civil Collegium of the Supreme Court of the People's Republic of Bulgaria, 1971.

Grigorov G., 2017, *[Insolvency]*. Sofia: Sibi publishing house.

Hristov N., 1970, *[Legal force of the reasons for the court decisions]*, PM, book 4.

Ivanova R., et al., 2009. [*Collection in memory of prof. Zh. Stalev*g, under the scientific editorship of Ruzha Ivanova ed., Sofia.

Ivanova R., et al., 2008. *[Commentary on the new Civil procedure Code]*, 'Law and Labour' publishing house.

Interpretative judgment No. 3 of 22.04.2019 of the Supreme Court of Cassation

Judgment No. 215 of 12.06.2015 of the Supreme Court of Cassation on the case file No. 3368/2014, IV civil department, GC.

Judgment No. 619 of 30.09.2010 of the Supreme Court of Cassation on case file No. 370/2010, IV civil department, GC.

Museva B. et al., 2012. *[Brussels I-comment]*, Sofia: Ciela publishing house.

Museva B., 2010. *[Coordination of parallel proceedings before the courts of the Member States of the European Union]*, 'Legal world' journal.

Mutafchiev G., 1999. *[The appellate and cassation appeal of the court decisions]*. Sofia: Sofi-R publishing.

Oretenova M. and Miteva D., 2008. *[Executive procedure, introduction and compilation]*, Sofia: Ciela publishing house.

Resolution No. 5 of 1975 of the Plenum of the Supreme Court of the People's Republic of Bulgaria, Collection of case law of the Supreme Court of the People's Republic of Bulgaria of the Civil College, 1953 – 1987.

Resolution No. 6/1968 of the Plenum of the Supreme Court.

Rozannis S., 1992. *[Issues of civil proceedings],* Sofia..

Silyanovski D., 1961. *[Clarification of the factual side of the dispute]*, Sofia: 'Science and art' state publishing house.

Stalev Zh., et al., 2012. *[Bulgarian civil procedure law]*, 9th revised and supplemented ed. Sofia: Ciela publishing house.

Stalev Zh., 2007. *[Power of judgment]*, Sofia: Ciela publishing house.

Stalev Zh., 1979. *[Binding force of the sentence in civil proceedings]*,. SP, book 3 and 4.,.

Stalev Zh., 1969. *[Protection of third parties against the force of the decision]*, PM, book 3.

Stalev Zh., 1998. *[The appellate and cassation proceedings after the reform of the Civil Procedure Code]*, SP, book 2.

[Topics for state exam in civil law sciences], Third part. Atanas Atanasov ed.. 2014. Low Store publisher.

Tsankova Ts., et al., 2009. *[Commentary on the new Family Code]*, 'Law and Labour' publishing house.

Tsolova K., 2001. *[Binding force of the grounds of a court decision]*, S, No. 3, 88102.

Vlahov K., 2009. [*Current issues under the new Civil Procedure Code*]. Sofia: Sibi publishing house.

Yanovski B., 1986. *[On the entry into force of a decision and on the objections for improvements and set-offs]*,. SP, book 6

Zhelyazkov T., 1993. *[Precautionary proceedings],* PP, book 3.

DIVERSITY OF ENFORCEMENT TITLES IN CROSS-BORDER DEBT COLLECTION IN THE EU: NATIONAL REPORT: BULGARIA

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Abstract The "National Report: Republic of Bulgaria" systematically and comprehensively addresses the main features of the enforcement of debt collection in the Bulgarian legal system, focusing in particular on the analysis of legal remedies in the enforcement procedure. The growth of economic integration causes a greater presence of international element, which is why the cross-border enforcement of claims on the grounds of enforcement titles is also increasing. Taking into account all of the above, the research will contribute to a better understanding of differences in structure, content and effects of judgements in Republic of Bulgaria. The research will further focus on the differentiation of dogmatic and empirical concepts of different enforcement titles in the framework of recognition and enforcement. Likewise, an important part of the research will be the analysis of possibilities for overcoming obstacles to cross-border enforcement resulting from a technological progress. The report was created as part of a study conducted under the auspices of the EU project EU-En4s – JUST-AG-2018/JUST-JCOO-AG-2018 under the coordination of the Faculty of Law University of Maribor.

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