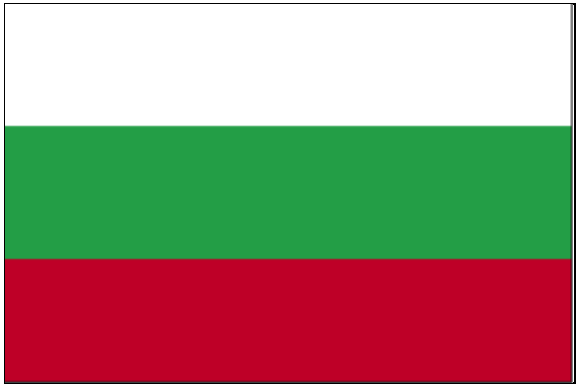
NATIONAL REPORT

- BULGARIA -



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GENERAL OVERVIEW

National Legal system	Republic of Bulgaria adopted a new Civil Procedure Code (hereafter referred to as CPC) in 2007. The Code entered into force in March, 2008. The new Code clearly made the previous court of law practice on adjectival points inapplicable to some significant extent and in other hypotheses made its applicability at least questionable. The new CPC also established proceedings that did not exist in the national system during the last 6 decades, i.e. national order for payment procedure, procedure in commercial disputes, procedure in class actions, accelerated procedure; judgment in default etc. Accordingly, the new practice on some of the points concerning the national law that are raised in the present report is controversial; it is mainly by the courts of first and second instance and is not unified by the High Court of Cassation yet. The Code on International Private Law (hereafter referred to as CIPL) is also relatively new (adopted and entered into force in May, 2005). The Code introduced a number of new adjective rules that are applicable in the course of the civil proceedings. The application of CIPL faces the same problems as the one of CPC.

SCOPE OF THE PROCEDURE

Eligible claims	There are two types of order for payment procedure – under Art. 410, sec. 1 CPC und under Art. 417 CPC. Both procedures are optional and not mandatory as between themselves and as an alternative to the classical litigation. Both procedures are not possible in cross-border cases, if the defendant is with habitual residence in other State (Art. 411, sec. 2, subsec. 3-4 and Art. 423, sec. 1, subsec. 2. CPC).
Limit regarding value of claim	The procedure under Art. 410, sec. 1 CPC is possible only for claims for recovery of sums or movables. The monetary value of the demand has to be not higher than 25 000 BG Leva (approximately 12 500 Euro). The procedure under Art. 417 CPC is also possible only for claims for recovery of sums or movables. There is however no limit on the monetary value of the demand.
Rules on representation by a lawyer	Representation by a lawyer is not mandatory.

COMPETENT COURTS

According to matter and according to territory	Competent is the district court in which region is the permanent address or the seat of the debtor. This rule that disperse the cases between the different district courts does not overload one court or agency. It is also most convenient for the defendant, which is deemed just in the context of the consequences of the actor sequitor forum rei rule, since no e-service and e-submission of documents is possible.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	The applications can be filed in standardized forms issued by the Ministry of Justice. The forms are not mandatory. They can be obtained from different governmental and private sources in Internet of from the courts. In the forms must be entered the personifications of the applicant and debtor and their representatives, a brief description of the demand, a bank account for payment, anything additional that the applicant might considerer important, and also what exactly the applicant seeks the court to order. There are guidelines included in the form. The demand and its grounds must be described insofar that there is no ambiguity about the parameters of the right sought to be enforced and executed. The party might be instructed by the court to prove certain facts for the issuance of the order such as addresses for due service of the order etc.
Rules on representation by a lawyer	Not required.
Option of electronically filing the form	No electronically forms available.

REJECTION OF THE APPLICATION

Grounds for rejecting application	The court has to examine the admissibility of the application: the grounds for its competence, the principle applicability of the procedure and also if the formal requirements of the application as provided for in Art. 411 CPC are observed. The claim is examined to the extent not to be contrary to or prohibited by the law and/or contrary to the bona fides. The description of the demand must also correspond to what the applicant seeks from the court to order. The defendant is to be served with the order only personally – no other way is admitted (Art. 423, sec. 1, subsec. 2 CPC). He will also be served with the instructions that are sufficient for filing of a correct notice of opposition: competent court, deadline, required content of the notice, consequences of omission etc.
Appeal availability (creditor)	The claimant can appeal against a rejection of the application. Both clamant and defendant might also appeal separately against the costs ordered by the court (Art. 413 CPC).

OPPOSITION BY THE DEFENDANT

Procedural rules	There is no special appeal against the court decision on notice of opposition. Both parties will have to use the suitable general legal remedies depending on the situation, i.e. to file an appeal against the order for issuing a writ of execution or against the rejection a writ of execution to be ordered. The time limit for filling a notice of opposition is two weeks starting from the date of the communication of the order for payment. It is deemed reasonable, since the respondents will have habitual residence in the Republic in Bulgaria.

EFFECTS OF ABSENCE OF TIMELY OPPOSITION

Consequences on not filing opposition	If no notice of opposition is filed, the order enters into force automatically: it concludes the controversy on its merits with finality. In order a coercive execution to be started, the claimant has to apply for e declaration of enforceability – a writ of execution. The defendant may appeal against it, although no notice of opposition is filed or it is not filed timely (Art. 423 CPC). The grounds are limited to some procedural points such as due personal summon of the order or payment. The CPC names the procedure of appeal an "opposition before the court of second instance", however, it should be considered and dealt with as a tool for review of the order due to violation of the due and fair process requirements (similar to the defense provided for in Art. 20, sec. 1 of Order for Payment Procedure Regulation (1896/2006). This review will however do not annul the order but will lead to commencement of litigation, if successful. The defendant may also file a statement of claim that the demand did not exist as to the time he had to file its notice of opposition (Art. 424 CPC), if new evidences or evidences unavailable to him, although he proceeded with reasonable care to collect them, are discovered. The practical reasons for the establishment of this procedure are highly questionable, since there is no need the notice of opposition to be grounded. Far more in use will be a direct procedure for defense against clearly wrongful decisions of the court to issue an order for payment similar to the defense provided for in Art. 20, sec. 2 of the Order for Payment Procedure Regulation (1896/2006).

COURT FEES

No court fees.

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

Domestically and Abroad	No cases are reported concerning exequaturs of national orders for payments outside the EU law domain. Since an exequatur will depend on the terms of the particular international treaty that governs the matter or on the foreign law, the claimants prefer to avoid as much as possible the grounds for ambiguities and thus prefer to file statements of claims, if such an exequatur is expected.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

a) The first type of procedure: based purely on the claimant's contentions (Art. 410, sec. 1 CPC) is based and hence similar to the EU order for payments procedures. Some of the technical deviations are mainly considering the fact that the procedure will be applied in domestic cases and this raises no difficulties, i.e. the final order is not sent to the claimant. Principal deviation is the material scope of the procedure that is far broader then the one under Art. 2, sec. 2 of Regulation 1896/2006. However, there is a limitation on the monetary value of the demand that might be pursued.

It might be advised that the national legislation should be synchronized with the Regulation 1896/2006 on some points:
- a procedure for the completion, rectification and modification of the application (Art. 9-11 Regulation 1896/2006) to be provided;
- Direct defense against wrongful decisions of the court to issue an order for payment similar to the one provided for in Art. 20, sec. 2 of Regulation 1896/2006 is to be adopted.

b) The second type of procedure based on some type of document (Art. 417 CPC) is the same as the one under Art. 410, sec. 1 CPC with regard to the issuance of the order for payment itself and the defense against the order issued. The only deference is that there is no limit as to the monetary value of the demand.

From the viewpoint of the execution however, the procedure has a significantly different philosophy – the procedure is based on the idea that this type of order for payment is sufficiently qualified to be provisionally enforceable, irrespectively of defendant's opposition thus pressing the defendant either not to file a notice of opposition, or ensuring an early coercive collection of the debts. This raises a considerable number of problems and peculiarities, which cannot be described in the present format.

It is only to be reported that similar procedure existed under the old CPC, which declared a number of documents such as

bank accounts, or accounts of municipalities or state agencies as titles of executions. They are also included in the procedure under Art. 417 CPC. However, the opinion of the author is that such a possibility is not reconcilable with the due and fair process requirements at present, since the financial burden on the defendant is unreasonable high.

Of course, the reliability, for instance, on bank documents is high, however, banks are after all only merchant on the market with the same status of their rights and obligation as of every private law person and hence it is not clear why they should be granted with such privileges in collecting debts. The similar privileges for the state agencies and municipalities are also questionable in the light of the idea of private property having the same legal protection as the public one.