



### **Atelier 1 - Une justice équitable et efficace : le développement économique mondial équitable, un droit pour tous les justiciables**

Panel 2 - Le développement économique récent et son impact sur l'organisation et le fonctionnement de l'exécution

### **Workshop 1 – Fair and Efficient Justice: an Equitable Global Economic Development, a Right for Every Justiciable**

Panel 2 – Recent Economic Development and its Impact on the Organisation and Functioning of Enforcement

## **Bulgaria: Legal Reform in Enforcement**

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On 10 May 2005 with the support of all parliamentary groups, the National Assembly adopted the Private Enforcement Agents Act (PEAA). Its enforcement as of 1 September 2005 created a legal opportunity the enforcement of judgements in Bulgaria to be performed by independent professionals. For a state coming a long way from a system of total state control over the economy and the society as a whole, that was a truly revolutionary concession of power.

Bulgaria is a member of the European Union since January 2007. EU legislation in formal terms is transposed into the national legislation of the state. It is a constitutional principle that in case of contradiction the EU legislation is predominant over the national legislation.

Bulgarian law in terms of constitution and general legal principles is largely civil, as opposed to a common law system. The law is predominantly codified (or otherwise enacted as separate specialized laws and regulations), therefore legal precedent and the law of equity (as long as it is not specifically referred to in formal legislation) are not considered a source of law. Bulgarian legal system is based on epitomes and principles in the French and German systems.

By the new Civil Procedure Code (promulgated in 2007, effective as of 1 March 2008) the powers of both types of enforcement agents EA became similar with respect to the dispositive beginning in civil law. According to Art. 427 Par. 4 of CPC, the creditor may request from the EA to study the property status of the debtor, to make references and request transcripts of documents. The possibility, as specified in Art. 18 PEAA, to choose the method of enforcement execution (among the options envisaged in the CPC) is prerogative of the PEA.

The new CPC also established the limits of the appeals against the activities of the EA (Art. 435 CPC) which aims at ensuring faster completion of the enforcement proceedings. The lawmaker radically changed his concept. During the validity of the former CPC, all actions of EA were subject to appeal. Now the actions subject to appeal are limited in number. To warrant the lawful conduct of the



proceedings, Art. 441 CPC envisages property liability of the EA which is realized by means of claims. This liability was also applicable under the former CPC, on the grounds of Art. 45 of the Obligations and Contracts Act and for the state enforcement officers Art. 49 of the Obligations and Contracts Act.

On 26 November 2005 the Chamber of Private Enforcement Agents (CPEA) was established. According to the PEAA and its Statute, the CPEA works for the public benefit. The Chamber and its members value the supremacy of the law and work conscientiously, transparently and professionally. The Ministry of Justice and CPEA conduct independently from each other a strict policy of control and supervision over the activity of PEA and oversee the implementation of the ethical standards and norms for professional behaviour.

The dualistic system of enforcement – coexistence of both state and private enforcement agents, is typical of and specific for Bulgaria only. Both types of enforcement agents conduct the enforcement proceedings according to one and the same procedural rules – the ones envisaged in the Civil Procedure Code. A private enforcement agent can also be assigned the collection of public receivables. PEAs are interested in the fast completion of the proceedings since their remuneration depends on the final result. There is a difference in the local competence of the enforcement agent. While the competence of the state enforcement agent (SEA) falls within the region of the relevant regional court, the competence of the PEA is within the framework of the relevant provincial court.

By constitution the state power in Bulgaria is divided into Legislative branch - National Assembly, Executive branch – cabinet of ministers, Judicial branch - Supreme Court of Cassation; Supreme Administrative Court; district courts; provincial courts; administrative courts; courts of appeal. The judicial enforcement officers are not part of the judicial system in strict legal terms. State enforcement officers are appointed by the Minister of justice and are paid by the state budget for the judicial branch. Private enforcement officers are guild organized liberal profession, members of the Bulgarian Chamber of Private Enforcement Officers. PEA are self-employed professionals subject to certain background standards – Master’s degree in Law and no less than 3 years of practice prior to application. In order to enter the profession, a Bulgarian Private Enforcement officers must pass a formal 2-stage test administered by the Ministry of Justice and be licensed by the Justice Minister. The enforcement prerogatives of PEA in terms of territory follow the territorial structure of the provincial courts – 28 regions of jurisdiction.

Professional competence of PEA in Bulgaria:

- Collection of private debts
- Collection of public dues
- Enforcement of special pledges
- Enforcement of adjudicated actions or conduct
- Process service

“Judicial” enforcement – in strict legal terms “judicial enforcement” is the enforcement of judgment (court decree which is the final act of a civil action, one being enforceable either being uncontested or because of an accomplished the appeal procedure. In accordance with the EU legislation, in 2007 the new CPC introduced the small claim procedure (CPC art. 410) as well as certain amount of non-judicial instruments (CPC art. 417), based on which the courts would issue a court order and fieri facias. Based on the latter an enforcement case could be initiated. The general principle of these procedures is to discern and separate contested from non-contested cases and in such manner avoid complicated and costly trial procedure. Common feature of the procedures is that the debtor is given the legal opportunity to file an objection that the debt is paid entirely or in part. A debtor may do so



within 14 days after service of the summons and writ. Judicial enforcement could be classified on the basis of its title of execution as:

Enforcement of judgments (court decrees) CPC art. 404, 405, writ of execution (fieri facias)

Enforcement of judicial orders (order for execution)

- small claims (up to €12 550) & transfer of movables under pledge or lien CPC art. 410;
- non-judicial instruments (acts) under art. 417 CPC:
  - administrative writs (under strict legislative delegation);
  - accounting excerpts denoting payables to state institutions; municipalities and banks;
  - notary deeds & notarized contractual obligations;
  - excerpts from the Special Pledges Registry certifying obligation to transfer property under lien;
  - mortgage & lien contracts;
  - bills of exchange; promissory notes and equal legal instruments;
- writs for public dues for municipal taxes and fees (under the Municipal Taxation Act).

The presented table and charts demonstrates the development and the economic impact of the judicial enforcement of PEA of last five years. The PEA system has proven its undoubted effectiveness against the State maintained system of state EA, which includes 222 SEA with corresponding administrative staff. For a period from 2007 to 2013 the amount collected by SEA is BGN 369 mln. (approx. €185 ) against the cost of BGN 42 mln. (approx. €21 mln. ) for the taxpayer supporting the state system. For the same period of time the amount collected by PEA is BGN 4 bln. 525 mln. (approx. €2 bln.262 mln.) for no cost for the general taxpayer, but the statutory fees deducted by the debtors' payments.

There the two major electronic database projects of BCPEA are presented: The Central Debtors' Registry and the Central Registry of Auctioned property. Both are nationwide databases with multiple functionalities to inquire and investigate debtors and a variety of auctioned properties.