

BULGARIA

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Awarding compensation for damages from unlawful penalty decrees – development

- During the last five years there was a significant development on this matter.
- SAC, Decision No 1137/23.01.2012 on a.c. 12792/2010, III Division, explicitly states that the punitive acts of the administration are not administrative in their nature, but rather judicial, respectively the damages caused by them should not be compensated under the special procedure established for state liability for unlawful acts and actions.
- Secondly, the court stated that the costs for appealing unlawful penalty decrees are not a direct consequence of the acts of the administration and therefore are not subject to compensation.

Awarding compensation for damages from unlawful penalty decrees – development

- Interpretive Ruling No 2/19.05.2015 on interpretive case 2/2014 of General assembly of Civil Chamber of Supreme Court of Cassation (SCC) and 1 and 2 Division of Supreme Administrative Court (SAC) – changes the practice of the courts on the discussed topic.
- The Ruling states that the damages from unlawful penalty decrees are subject to compensation under the State Liability Act. According to the reasoning of the Ruling, the application of the special procedure depends not on the type of the act, which caused the damage, but on the type of activity regarding which the act was issued, and this activity is administrative.
- The competent authority to hear such claims is the administrative court.

SAC, Interpretive Decision No 1/15.03.2017

- The interpretive case is initiated by the Chief Prosecutor of the Republic of Bulgaria.
- He addressed the following question to the General Assembly of the SAC: When a claim for pecuniary damages from unlawful penalty decrees is brought under the State Liability Act, could the administrative court award a compensation of the costs for lawyer's fees paid for appealing the unlawful penalty decree?
- The Chief Prosecutor considers that these costs are not eligible for compensation because they are not a direct consequence of the unlawful act and their amount is freely determined by the parties which may lead to abuses.

Judgment of the court – 1

- The Supreme Administrative Court ruled that the costs for lawyer's fees paid for appealing unlawful penalty decrees are a direct and immediate consequence of these acts and are subject to compensation.
- The arguments of the SAC for this conclusion are the following:
 - Lawyer defense, though optional in these claims, is completely natural and cannot be considered a "luxury" expense. It is the only way for a citizen to defend his/her rights.

Judgment of the court – 2

- SAC argues further:
 - The link between the penalty decree and the lawyer's defense is direct because they are in a relation of cause and consequence - the citizen would not have sought legal assistance if the administration had not issued an unlawful act adversely affecting his/her legal rights and interests.
 - The court considers that the argument of the Chief Prosecutor that, in so far as the lawyer's fee is freely negotiated, through its excessive amount it could cause damage to the state, is not relevant to the matter. The amount of the compensation cannot be a reason not to provide adequate legal protection. There are other solutions against abusive claims.

Dissenting opinion

- The dissenting opinion disagrees with the majority's conclusion, by arguing the following:
 - The payment of the lawyer's fee is not a damage – it is made for the received legal service.
 - Even if it is a damage, it cannot be considered a direct consequence because the affected person may not use lawyer's defense.
 - The costs for the claim can be awarded only if such procedure is foreseen by a special procedural law, but not under the State Liability Act.

Commentary

- The conclusion of the Supreme Court should be appreciated and supported because it recognizes the direct causal link between the unlawful penalty decree and the costs for legal defense against it.
- Usually, these costs are the most significant pecuniary damage caused to the citizens and the past court practice which denied their compensation could be regarded as restricting the right of defense.
- The arguments for initiating the interpretive case and the arguments of the dissenting opinion are formal. The addressed issues have other solutions and cannot justify the denial of compensation of costs for lawyer fees.