

Product Liability

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GETTING THE
DEAL THROUGH 

Bulgaria

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Civil litigation system

1 The court system

What is the structure of the civil court system?

In Bulgaria, there are three levels of courts responsible for adjudicating civil cases: first instance courts (regional courts and district courts) with proceedings heard and decided by one judge, second instance courts (courts of appeal for judgments rendered by first instance courts) with proceedings heard and decided by a three-judge panel, and the Supreme Court of Cassation.

District courts and regional courts act as first instance courts, depending on the amount in dispute and the subject of the litigation. Generally speaking, if this amount does not exceed 25,000 levs, a regional court will have jurisdiction, otherwise the matter must be brought before a district court. Class action litigation must always be brought before a district court. The latter is also competent to decide on any actions that under specific legal rules are subject to review thereby as well as on any actions, regardless of the cost thereof, that are joined in a single statement of action by an action brought before the district court, if these are subject to examination according to the procedure of the same proceedings.

If a regional court acts as a first instance court, the competent district court will decide on appeals against its decisions. Appeals against decisions of district courts acting as first instance courts are decided by an appellate court. In the third instance, the Supreme Court of Cassation has jurisdiction to decide appeals brought against second instance decisions if grounds for cassation appeal can be found. The Supreme Court of Cassation has discretion to decide whether to accept the appeal and will decide only on questions of law. The court decisions adopted in class litigation proceedings are always subject to cassation review, regardless of whether the special requirements for admissibility of cassation appeal are met or not.

2 Judges and juries

What is the role of the judge in civil proceedings and what is the role of the jury?

In Bulgarian civil litigation, no jury is involved in the proceedings.

For around the past 20 years, the Bulgarian civil litigation procedures have been gradually changing from purely inquisitorial to largely adversarial. Under the effective Civil Procedure Code, which entered into force on 1 March 2008, it is the obligation of the parties to submit relevant facts and evidence to the court, and thus each party carries the burden of proof in respect of its own claim or defence. However, the judge is not a passive recipient of information and is obliged to inquire if the statements of a party are unclear or incomplete. Also, the judge must inform the parties in advance about the facts that need to be proven, the burden of proof and the consequences of an unsuccessful evidence procedure. The court may take part in the collecting of evidence by questioning witnesses and the appointment of experts. The court may, however, only consider the claims brought before it and may not adjudicate on more or anything other than as claimed by the parties.

3 Pleadings and timing

What are the basic pleadings filed with the court to institute, prosecute and defend the product liability action and what is the sequence and timing for filing them?

Litigation commences when the plaintiff files its written statement of claim with the court. The statement of claim must satisfy certain formal requirements, and generally the plaintiff must indicate to the court and the parties the facts of the case, the amount claimed and the relief sought, as well as the evidence (documents, witnesses to be heard, experts to be appointed, etc). Documentary evidence has to be attached to the claim.

After the action is filed, the court will first consider whether it meets the formal admissibility requirements and, if it does, the court will serve the action on the defendant along with a request to submit a written response within 30 days. In its response, the defendant must indicate all its objections against the admissibility of the claim and all its objections in law and in fact on the merits of the case. If the defendant does not file a written response within 30 days, it loses the right to submit evidence and objections in court. Also, the defendant may not raise objections in court or request evidence that it has failed to raise and request with the written response unless the omission is because of special unforeseen circumstances. The 30-day time limit for filing a written response is also the deadline for the defendant to lodge a counterclaim.

Having received the written response of the defendant, the court issues a ruling on the admissibility of the case and the evidence to be collected, and schedules the first open hearing.

4 Pre-filing requirements

Are there any pre-filing requirements that must be satisfied before a formal law suit may be commenced by the product liability claimant?

There are no pre-filing requirements that must be satisfied before a formal lawsuit may be initiated by the product liability claimant. Alternative dispute resolution methods are available but are not a mandatory prerequisite for bringing an action to court. Additionally,

according to recent amendments in the law, consumer disputes cannot be settled through arbitration proceedings.

5 Summary dispositions

Are mechanisms available to the parties to seek resolution of a case before a full hearing on the merits?

Under Bulgarian legislation, if a civil litigation is pending, the court is obliged to advise and invite parties to settle the dispute before commencing the hearing on the merits. The alternatives to litigation that the parties are invited to undertake are mediation and voluntary settlement of the dispute. Only on very rare occasions, however, do parties avail themselves of these opportunities.

In March 2008, with the adoption of the effective Civil Procedure Code, new legal institutes were introduced by reference to United Kingdom and United States judicial procedures, including two types of judgment similar to summary judgments, which the courts can issue depending on the procedural motions of the parties and the considerations and determinations of the facts made by the court.

The first type of judgment is issued when the defendant admits the claim entirely and expressly. In such cases, the court may, upon request of the plaintiff, issue a judgment based on the admission of the claim without further considerations and determination of the relevant facts.

The Civil Procedure Code also introduced the default judgment in the following cases:

- (i) where the defendant has not submitted a statement of defence and has neither appeared at the first open-court hearing, nor submitted a request for the case to be heard in his or her absence; and
- (ii) where the claimant has not submitted a counter-statement on the statement of defence of the defendant, and the claimant has not appeared at the first open-court hearing and has not submitted a request for the case to be heard in his or her absence.

In order to issue a default judgment in case (i), the court has to establish, based on the evidence presented, that the claim is most likely well founded when the judgment is to be issued in favour of the claimant. In case (ii), the court has to establish, based on the evidence presented, that the claim is most likely unfounded when the judgment is to be issued in favour of the defendant.

The default judgment is not subject to appeal and is final and binding upon the parties, though there are specific remedies provided: the default judgment may be set aside if a party was unable to participate in the trial because of undue service or reasons that have been out of his or her control; and the party may claim or challenge the right resolved by the default judgment in the case of new or newly discovered circumstances or new evidence.

6 Trials

What is the basic trial structure?

Litigation before the first instance court is basically divided into two phases. The first phase includes the exchange of written briefs (namely, the statement of claim of the plaintiff and the written response of the defendant) and the ruling of the court issued at a closed session for admitting evidence and for scheduling the open-court hearing.

The second phase includes the open-court hearing, the purpose of which is for the factual statements of the parties to be finally clarified and the evidence to be collected with the active assistance of the court. For that purpose, during the open-court hearing, the judge prepares and reads a report containing instructions about the facts that need to be proven and the burden of proof that each party carries. What follows then is the collecting of evidence admitted by the court, including hearings of witnesses and experts. Witnesses are always heard before the court; a written testimony or affidavit instead of live testimony of a witness is not permissible. After the court rules that the taking of evidence is finalised, the parties are invited to present their oral pleadings. Once the oral pleadings are concluded, the court announces that it will issue its judgment within the legal term of 30 days, which is rarely met.

The above-mentioned second phase usually takes more than one court session, and court sessions are usually scheduled periodically (there are usually between three weeks and several months between the sessions, depending on the specifics and complexity of the case, the availability of parties, witnesses and experts and the volume of the evidence to be collected).

It must be noted that claims based on alleged violation of the Consumer Protection Act of 10 June 2006 (CPA) (with the exception of class action claims) are reviewed by the court under the special expedited proceedings that are a faster version of the general civil procedure specified above.

Generally, the proceedings are public.

7 Group actions

Are there class, group or other collective action mechanisms available to product liability claimants? Can such actions be brought by representative bodies?

The Civil Procedure Code introduced the first procedural law provisions regulating class action procedure in Bulgaria.

A class action lawsuit may be initiated on behalf of persons who are harmed by the same infringement, where the circle of affected persons cannot be defined precisely but is identifiable. Any person who claims that he or she has been harmed by the infringement, or any organisations responsible for the protection of injured persons, may file a complaint on behalf of all injured persons against the alleged wrongdoer, petitioning the court to proclaim the harmful act and to issue a decision for cessation of the infringement, and for

rectification of the consequences of the infringement or for compensation for the damages inflicted on the plaintiffs or both.

The statement of claim shall contain the circumstances on which the class action is founded, specify the circumstances that identify the circle of injured persons and state the form in which the publication of the opening of the procedure should be publicly announced. The court shall accept the participation in the case of any other injured persons or organisations responsible for the protection of the injured persons that have filed, within a time limit set by the court, a motion for participation in the procedure. The court shall exclude the injured persons who have declared, within the time limit set, that they will pursue a remedy in separate proceedings. Hence, the Bulgarian class action procedure is a typical 'opt-in' procedure.

The judgment of the court shall have effect in respect of the defendant and the person or persons who have brought the action, as well as in respect of those persons who claim that they are harmed by the established infringement and who have not declared that they wish to pursue a remedy, independently, in a separate procedure. The excluded persons may avail themselves of the judgment by which the class action has been granted.

Class actions may also be brought by registered consumer associations that are entitled to bring claims for termination of the violation of the CPA or other applicable laws directly or indirectly protecting consumer rights, and for compensation of the damages caused to the collective consumer interest as a result of such violation.

Although class action claims are not very popular and are not commonly brought, a recent trend shows that their number has started to increase. In particular, the Consumer Protection Commission has recently become more active and brought such class action claims on behalf of injured persons on various occasions (eg, protection against unfair commercial practices and unfair terms of contracts, etc). Thus, it is likely that the volume of such cases will rapidly increase in the near future.

8 Timing

How long does it typically take a product liability action to get to the trial stage and what is the duration of a trial?

There is no pretrial procedure in Bulgaria. A case is considered opened at the moment the claim is lodged with the competent first instance court, conditional on its acceptance as admissible by the court. Depending on the workload of the competent court, a first-court hearing is normally scheduled within three to four months of the claim being filed.

The duration of a trial depends on the complexity of the specific case. Normally, a civil procedure takes one to two years in the first instance court.

Evidentiary issues and damages

9 Pretrial discovery and disclosure

What is the nature and extent of pretrial preservation and disclosure of documents and other evidence? Are there any avenues for pretrial discovery?

There is no pretrial discovery and no pretrial disclosure in Bulgarian civil procedure law.

Only in specific instances, where there is danger of destruction or loss of evidence, or a risk that its collection would be hindered or prevented, may a party request the court to order certain preventive measures in order to collect such evidence prior to the filing of the statement of claim.

10 Evidence

How is evidence presented in the courtroom and how is the evidence cross-examined by the opposing party?

It is a general principle in Bulgarian civil procedure law that the judge is expected to gain a personal impression of all evidence on which he or she bases his or her decision.

Admissible means of evidence under the Bulgarian Civil Procedure Code are witnesses, experts, parties' testimony, documentary evidence and inspections by the court.

Parties and witnesses give evidence by live testimony. Witnesses are usually cross-examined by the parties. Experts are obliged to file reports in writing and then to appear at the open hearing in order to present their findings to the court and to answer the questions of the judge and the parties. Documentary evidence may be submitted by the parties as an attachment to their briefs or during the open-court hearing. An inspection of objects by the court can be conducted either in a hearing or outside the courtroom.

11 Expert evidence

May the court appoint experts? May the parties influence the appointment and may they present the evidence of experts they selected?

Experts are to be appointed by the court if the judge does not have the specific scientific or technical knowledge needed to resolve the dispute. Experts are appointed either ex officio or at the request of a party. Courts usually appoint experts who are included in already-prepared lists of experts in different fields of science, profession or practice. Such lists, however, are not exclusive and parties may propose other experts. Experts' opinions are prepared for and submitted to the court at least seven days before the court hearing. Experts are then obliged to appear at the oral hearing in order to present their findings to the court and to answer the questions of the judge and the parties.

Experts are required by law to be non-biased and their opinions are to be true and impartial. Parties may present written expert opinions prepared by their own experts, but such opinions are not considered evidence gathered under the requirements of the law.

12 Compensatory damages

What types of compensatory damages are available to product liability claimants and what limitations apply?

Compensatory damages are provided for personal injury or death caused by a defective product. Under the strict product liability system provided by the CPA, material damages are recoverable only when caused by the defective product on other items with monetary value of no less than 1,000 levs, provided that the damaged item is ordinarily intended for private use and was used by the injured person as intended. Moral damages (pain and suffering) resulting from caused death or disability, health deterioration, etc, may also be compensated on the grounds of the general tort liability principles as set out in articles 45 to 52 of the Obligations and Contracts Act of 1950.

The claim for damages caused by a defective product under the strict liability system of the CPA is limited by a three-year period, which runs from the day on which the plaintiff became aware or should have become aware of the damage, the defect and the identity of the producer. The general limitation period for tort liability under the Obligations and Contracts Act is five years.

The final limitation period for claiming damages under the strict liability system is 10 years from the date on which the producer put the product that caused the damage on the market, unless the injured person has instituted proceedings against the producer in the meantime.

The damage to the product itself is recoverable, based on the contractual relationship between the seller (in most cases, the retailer) and the consumer.

13 Non-compensatory damages

Are punitive, exemplary, moral or other non-compensatory damages available to product liability claimants?

Civil liability in Bulgaria, including strict product liability, has only a compensatory function and not a punitive function. Contractual liability may include punitive damages, if so agreed by the parties, but it is not common in consumer contracts.

Litigation funding, fees and costs

14 Legal aid

Is public funding such as legal aid available? If so, may potential defendants make submissions or otherwise contest the grant of such aid?

Legal aid, financed by the state budget, is available to individuals who are in a difficult material situation, and is granted upon request. Legal aid refers to free-of-charge legal assistance for the bringing and handling of a court action. In addition, at the request of a

party, the court may waive that party's obligation to pay court fees and costs for the proceedings.

The court ruling by which legal aid is granted cannot be appealed by the other party. Defendants may request the court to deprive the party of legal aid in whole or in part, if it is established that the conditions for the grant of the said aid did not exist, or to terminate the legal aid in case of a change in the circumstances, on the grounds of which the aid has been granted.

15 Third-party litigation funding

Is third-party litigation funding permissible?

Bulgarian law does not provide for third-party funding of claims. However, there is no prohibition for such funding.

16 Contingency fees

Are contingency or conditional fee arrangements permissible?

Contingency and conditional fee arrangements between plaintiffs and their lawyers are allowed by Bulgarian law.

17 'Loser pays' rule

Can the successful party recover its legal fees and expenses from the unsuccessful party?

In principle, the losing party must bear the legal costs of the successful party, including court fees and fees paid for legal assistance and representation before the court, commensurate to the portion of the action granted.

Sources of law

18 Product liability statutes

Is there a statute that governs product liability litigation?

In Bulgaria, product liability issues are governed by the CPA, which implements several EU directives, including Product Liability Directive 85/374/EEC of 25 July 1985. The CPA covers compensation for personal injury and property damage with regard to items other than defective products, and only if the damage exceeds 1,000 levs. The CPA provides for strict liability in the case of product defects (namely, the plaintiff is only required to prove the defect and the causal link between the defect and the damage, and need not establish that the manufacturer was at fault). This liability of the manufacturer may not be limited or excluded by a contractual provision and any agreement to the contrary is void.

The CPA does not provide an exclusive legal ground for product liability claims. Because of the numerous restrictions provided by the CPA, other causes of action based on tort law and contract law remain very important for the damaged party.

19 Traditional theories of liability

What other theories of liability are available to product liability claimants?

General tort, defined by article 45 et seq of the Obligations and Contracts Act, is applicable, inter alia, to matters regarding product liability. Tort under the Obligations and Contracts Act is fault-based either on intent or negligence on the part of the wrongdoer, who, in cases of product liability, could potentially be the manufacturer, the importer or the retailer. Negligence, in the form of non-compliance with the objective test of due care, is presumed, thus shifting the burden of proof from the injured party and resulting in the procedural burden for the wrongdoer to prove that he or she indeed applied the due care and that his or her behaviour was not in breach of law. The consumer must prove:

- that the wrongdoer acted or omitted to act;
- that the act or omission was in breach of law;
- the damage suffered by the consumer; and
- a direct causal link between the unlawful behaviour of the wrongdoer and the damage.

Should a party injured by a defective product seek indemnification of non-material damages, the only existing legal solution would be to follow the general procedure by claiming damages in tort.

Contractual ground is another legal option for seeking relief for damages suffered from a defective product. Unlike the strict and tort liabilities, contractual liability may include obligation for compensation for damages arising only from the defective product itself and not for death, personal injury or damage to other property of the consumer caused by the defective product. Contractual liability can be brought only against a party to the contract, and can be based only on breach of contract.

The aforementioned legal grounds work on a concurrent basis; that is, the different forms of liability (strict, tort and contractual) do not exclude but supplement each other, so as to provide the consumer with sufficient and efficient integral indemnification.

20 Consumer legislation

Is there a consumer protection statute that provides remedies, imposes duties or otherwise affects product liability litigants?

As specified in question 18, the CPA provides for strict liability in the case of product defects. The same law also regulates the offering, selling and other marketing of consumer goods and services by businesses to consumers, the general requirements on the safety of products and measures to protect the life and health of consumers against dangerous

products, including recall of defective products.

21 Criminal law

Can criminal sanctions be imposed for the sale or distribution of defective products?

Articles 228 and 231 of the Criminal Code of 1968 provide for criminal liability for physical persons who, as managers of enterprises or as controllers (members of control bodies), order or allow the production of low-quality, substandard or incomplete sets of industrial goods or articles that do not meet the requirements established for them with respect to quality, type or features. Criminal liability is provided for persons who release for sale such industrial goods in considerable quantities or of considerable value without expressly declaring their defects.

It should be noted that, in order to engage the criminal liability of the perpetrators, it must be proven that they have acted with intent to commit the respective crime.

22 Novel theories

Are any novel theories available or emerging for product liability claimants?

There are no such novel theories available.

23 Product defect

What breaches of duties or other theories can be used to establish product defect?

Pursuant to the definition of article 132 of the CPA, a product is defective when it does not provide the safety that is generally expected, taking all circumstances into account, including the presentation of the product in terms of quality, quantity, name, type, contents, origin, specific features, customary and possible use of the product, the advertising of the product and the provision of information about the product; and the time the product was put into circulation.

A product may not be considered defective for the sole reason that a better product is subsequently put into circulation.

24 Defect standard and burden of proof

By what standards may a product be deemed defective and who bears the burden of proof? May that burden be shifted to the opposing party? What is the standard of proof?

A product is defective when it does not provide the safety that is generally expected. Therefore, the standard by which the defect of a product is determined is the legitimate expectation of the average consumer in the safety of the product. It requires an overall assessment to decide whether or not a product is defective, and this assessment is

independent and therefore irrespective of any standardisation requirements. The manufacturer is responsible for the defect even if the product has been manufactured in compliance with the existing standards and good practices or even if the product has been put into circulation following the issuance of a licence by a state authority.

The injured party bears the burden of proof, meaning that the injured party has to prove the defect, the damage and the causation between defect and damage. If these are proven, the liability of the manufacturer shall be established.

25 Possible respondents

Who may be found liable for injuries and damages caused by defective products?

Under the strict liability regime, the liability for the defect, and respectively for the damages incurred, is borne by the manufacturer. ‘Manufacturer’, according to the CPA, is any person who manufactures finished products, raw materials or component parts included in the manufacturing of other products and any person who, by putting his or her name, trademark or other distinguishing sign on the product, presents him or herself as its manufacturer. Without prejudice to the liability of the manufacturer, any person who imports into the European Union products for sale, hire, lease or any form of distribution in the course of his or her business shall be deemed to be a manufacturer within the meaning of the CPA and shall be responsible as a manufacturer.

If neither the manufacturer nor the person who has imported the products into the European Union can be identified, then the supplier should be held liable. According to the CPA, ‘supplier’ (distributor or trader) is ‘any person other than the manufacturer who puts the product into circulation’. The supplier shall not be held liable if he or she informs the injured person, within a term of 14 days, of the identity of the manufacturer, the importer or the person who supplied him or her with the product. The supplier, however, may not direct the injured person to any person outside Bulgaria.

Provided that several persons qualify as liable manufacturers, importers or suppliers, they bear joint liability and may eventually seek within their internal relations distribution of the liability engaged. Where damage has been caused by a defective product that is a component part of another product, the manufacturer of the said component part and the person who installed it shall be jointly liable.

In the case of tort, only the person at fault (manufacturer, importer or supplier) can be held liable. If an injury was caused by the act, or the omission to act, of several wrongdoers, they would bear joint liability.

In cases of contractual breach, the liability is borne by the defaulting contractor.

26 Causation

What is the standard by which causation between defect and injury or damages must be established? Who bears the burden and may it be shifted to the opposing party?

In order to identify the relevant damages, two tests are usually applied, corresponding to two different causation theories. The first test is related to the condition sine qua non theory of causation, proving that there is factual causation between the defect, existing at the time of the passing of the risk to the consumer, and the damages suffered. (The defect is viewed as one of several preconditions that led to the damage to the consumer.) If the question of whether the damage would still have occurred if the defect of the product were hypothetically removed provides a negative answer, this establishes a factual causal relationship.

However, it has to be pointed out that not all factual damages are recoverable under Bulgarian law; the legally relevant, direct damages are the limit of the civil liability. That is why, in order to identify the direct damages, the factual damages are put to a second test using the adequate causation theory. This test isolates those damages that are a typical, normally occurring and necessary result, a consequence of the contractor's default or unlawful behaviour, and that are characteristic and would occur again under the same conditions.

In view of the aforesaid, it is not sufficient to prove exposure to increased risk that might have led to, or is usually associated with, bodily injury or damages to the property of the injured person, provided that the consumer cannot prove that the specific injury would not have arisen without such particular exposure.

The plaintiff seeking relief has to prove the causal link between product defect and damage. The burden of proof cannot be shifted to the defendant.

27 Post-sale duties

What post-sale duties may be imposed on potentially responsible parties and how might liability be imposed upon their breach?

If manufacturers or distributors know, or ought to know, on the basis of the information in their possession, that their products placed on the market pose a risk to the health and safety of consumers, they must immediately inform the control authorities of this and must provide them with details of the risks of such products, as well as with information about the tracking of the products and action taken to prevent and terminate risks to the health and safety of consumers. In such case, the control authorities may impose mandatory measures, including:

- ordering the manufacturers or distributors to inform consumers of the risk in good time and in an appropriate form;
- temporarily banning the marketing of the product;
- ordering or organising the product's actual and immediate withdrawal; and
- as a last resort, coordinating or organising, together with the manufacturers and the distributors, the recall from consumers of the dangerous product already supplied to them, and ordering the dangerous product's destruction.

For failure to fulfil the mandatory measures imposed by the control authorities, the manufacturers or distributors may be sanctioned with monetary penalties on the grounds of the CPA.

Limitations and defences

28 Limitation periods

What are the applicable limitation periods?

As a general remark, the lapse of the time limit specified in the law only precludes the right to file a claim, but does not extinguish the substantive right to compensation for the damages suffered – any payment made by the manufacturer to the injured person after the lapse of the time limit is considered duly made, and shall not be subject to reimbursement.

In the case of strict liability, the claim for compensation has to be filed with the court within three years from the date on which the injured person became or should have become aware of the damage, the defect and the identity of the manufacturer, but in all cases not later than 10 years from the date on which the defective product was put on the market.

In the case of tort, the claim for compensation has to be filed with the court within five years of the date the wrongdoer is discovered (eg, the manufacturer of the defective product has become known to the injured person).

In the case of contract, the time limit for the filing of a claim for compensation for damages caused by non-performance of a contract is set at three years from the date on which the receivable amount has become due and payable.

29 State-of-the-art and development risk defence

Is it a defence to a product liability action that the product defect was not discoverable within the limitations of science and technology at the time of distribution? If so, who bears the burden and what is the standard of proof?

The state-of-the-art and development risk defence is provided in article 137 (paragraph 1, item 5) of the CPA, pursuant to which the manufacturer may be exempted from liability if it is able to prove that the state of scientific and technical knowledge at the time it put the product into circulation was not such as to enable the existence of the defect to be discovered.

The manufacturer bears the burden of proof with respect to this defence. This is an objective test.

30 Compliance with standards or requirements

Is it a defence that the product complied with mandatory (or voluntary) standards or requirements with respect to the alleged defect?

Under article 137 (paragraph 1, item 4) of the CPA, the manufacturer must prove that ‘the defect is because of compliance of the product with compulsory requirements issued by state authorities’. However, the observance of the applicable minimum statutory standards and quality and safety requirements will not be sufficient per se to exclude the liability of the manufacturer, unless it can prove that compulsory instructions of a state authority had been issued and complied with.

31 Other defences

What other defences may be available to a product liability defendant?

In the case of strict product liability, there are six grounds under the CPA for exclusion of manufacturer’s liability:

- the manufacturer did not put the product into circulation;
- having regard to the circumstances, it is probable that the defect that caused the damage did not exist at the time the product was put into circulation by the manufacturer or that this defect came into being afterwards;
- the product was neither manufactured by the manufacturer for sale or any form of distribution for economic purpose, nor manufactured or distributed by it in the course of its business;
- the defect is because of compliance of the product with mandatory regulations issued by the public authorities;
- the state of scientific and technical knowledge at the time the manufacturer put the product into circulation was not such as to enable the existence of the defect to be discovered; or
- in the case of a manufacturer of a component, the defect is attributable to the design of the product that the component has been fitted in or to the instructions for the product given by its manufacturer.

In the case of contract, there are four grounds for exclusion of manufacturer’s liability:

- there is no breach of contractual obligations;
- the breach of contract or non-conformity is not attributable to the manufacturer and could not have been foreseen (namely, it is because of force majeure);
- there is no causal link between the particular damage and the breach of contract; or
- the defect or damage is not covered by the terms and conditions of the applicable contractual warranty (eg, it is time-barred).

In the case of tort, it has to be proved that there is no fault (negligence) on the part of the manufacturer or supplier (namely, the burden of proof rests with the manufacturer to demonstrate that it did not breach its general duty of care).

In all cases, the liability of the manufacturer may be fully excluded or reduced proportionally where the consumer has solely caused, or has contributed to, by his or her own act or omission, the occurrence of the damages.

32 Appeals

What appeals are available to the unsuccessful party in the trial court?

The decision on the merits issued by the court of first instance may be appealed before the appellate court. The appeal may be grounded both on issues of law and fact. The decision of the appellate court may be challenged before the Supreme Court of Cassation if grounds for cassation appeal can be found or in the case of probable nullity or inadmissibility, as well as in the case of obvious inaccuracies of the decision. The Supreme Court of Cassation is competent to decide whether the cassation appeal is admissible, and, in finding so, to rule on it dealing only with questions of law. In class action proceedings, however, there are certain specific rules and exceptions, according to which the decision is always subject to cassation appellate review regardless of the prerequisites for cassation appealability. Furthermore, a final decision on a class action having the force of *res judicata* may not be revoked by extraordinary means for cancelling final court judgments.

Jurisdiction analysis

33 Status of product liability law and development

Can you characterise the maturity of product liability law in terms of its legal development and utilisation to redress perceived wrongs?

Bulgarian product liability law is harmonised with the relevant EU legislation, and in particular the following directives have been implemented:

- Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council;
- Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety;
- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;
- Directive 1999/44/EC of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees;
- Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products;

- Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests;
- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market; and
- Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC.

Product liability law in Bulgaria mainly focuses on administrative surveillance conducted by the Consumer Protection Commission with respect to product safety and compliance with consumer protection legislation. Court practice in this field is rapidly developing.

Since the adoption of the procedural rules on collective actions (in March 2008), there has been a tendency for growth in the number of such civil actions initiated by consumers and organisations for the protection of consumers' rights.

34 Product liability litigation milestones and trends

Have there been any recent noteworthy events or cases that have particularly shaped product liability law? Has there been any change in the frequency or nature of product liability cases launched in the past 12 months?

After the introduction of the class (collective) action procedure in 2008, the number of class actions alleging infringement of consumer protection rules has increased. Class actions have been brought against electricity companies, a water and waste water company, banks, a mobile operator, a food supply chain retailer, a hotel operator and even state bodies. The development of the proceedings indicates that there is still a lot of uncertainty in the application of this legal feature, especially in the case of a class action brought against a state body, where other options for the realisation of the liability of the state are also available within special administrative proceedings.

35 Climate for litigation

Describe the level of 'consumerism' in your country and consumers' knowledge of, and propensity to use, product liability litigation to redress perceived wrongs.

At present, the level of consumerism in Bulgaria is low. Over the past few years, we have observed that the level of awareness of Bulgarian consumers is increasing, and there are growing numbers of organisations for consumer protection. However, probably because of the slow decision-making process in Bulgarian courts, the number of product liability claims brought by consumers is not large, and if an action based on a defective product is brought, it is usually as a warranty or guarantee claim.

At present, consumer protection is actively carried out by the competent state authority, namely the Consumer Protection Commission. The Commission conducts regular inspections and often imposes administrative sanctions to manufacturers or distributors of

defective products. The product liability case law in Bulgaria is predominantly related to court review of appeals against administrative sanctions imposed by the state authorities.

36 Efforts to expand product liability or ease claimants' burdens

Describe any developments regarding 'access to justice' that would make product liability more claimant-friendly.

There are no significant developments in the area of product liability as far as access to justice is concerned. As a rule, Bulgarian consumers are still not very aware of their rights, and they avoid bringing lawsuits against manufacturers or distributors mainly because of the slow decision-making process in Bulgarian courts.

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