

III. Bulgaria

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A. LEGISLATION

- 1 In the year 2007 there were neither amendments nor new instruments in Bulgarian legislation concerning the essence of tort matters.

B. JUDICIAL PRACTICE

- 2 In 2007 there were not any surprising decisions or revolutionary developments in the judicial practice related to tort.
- 3 The 2007 report is structured around separate spheres of problems that the courts had the occasion of ruling upon. The practice of the Supreme Court of Cassation and the courts of second instance are dealt with. The practice of the courts of first instance is not included because it is enormous and inaccessible, and, besides, it is not unusual to encounter inconsistency in deciding similar cases.
- 4 Contrary to expectations, until now the courts of second instance and the Supreme Court of Cassation (SCC) have had no practice regarding two comparatively new and important laws – the Consumer Protection Law¹ and the Private International Law Code². These two laws are directly related to tort law. The Consumer Protection Law regulates the liability for defects in goods on sale, this liability being of a tortious nature, while the Private International Law Code regulates the law applicable to tort involving an international element.

1. Suspension of Prescription of a Claim for Tort

- 5 The prescription of a claim is suspended for the period of time in which the proceedings regarding the said claim are conducted (Art. 115, par. 1, item “g” of the Law on Obligations and Contracts). The issue considered by the court

¹ State Gazette (SG), No. 99/2005, latest amendment SG, No. 64/2007.

² SG, No. 42/2005, latest amendment SG, No. 59/2007.

is whether the prescription should also be suspended for the period of time in which the punitive proceedings related to the crime from which the damage occurred are conducted. The court has ruled that, in order for the prescription period to be suspended, the presence of punitive proceedings is not sufficient. As punitive proceedings are not proceedings which concern claims for damages, a civil claim should be brought as a separate claim originating from the crime (Decision No. 732/30 October 2007 on penal case No. 354/2007 of the 3rd Penal Division of the SCC³). The civil claim can be brought either within the punitive proceedings (Art. 83 ff. of the Penal Procedure Code) or as a separate claim before a civil court.

Probably, following the same logic, it can be presumed that the courts should assume that punitive proceedings in themselves neither suspend nor renew the prescription of a claim for damages resulting from a crime (Art. 116, item “b” of the Law on Obligations and Contracts). 6

2. Insurance Indemnity for Tort

In order for an insurance indemnity relating to tort to be sought, the tortfeasor should necessarily incur liability and should not be exempt from it on any grounds (d. No. 458/14 May 2007, t.c. No. 106/2007, 2nd t.d. SCC). 7

The decision seems to be formulated too broadly, even reaching a point of incorrectness. Only the motives can make its meaning clear – when rendering it, the SCC considered only the obligatory insurance of civil liability, for which the fault of the tortfeasor of damage is really a precondition. Of course, things would not be the same in the cases of “casco” insurance, for example. 8

3. Amount of the Indemnity Adjudged

As evidenced by the decisions mentioned below, not only the amounts of compensation for damage of a divergent nature, but also those for damage of a similar nature show wide margins of variation. This makes it clear that there are no unified criteria for determining the amount of indemnity. Neither the doctrine nor the judicial practice has exhaustively listed these criteria. They have also not been precisely formulated. Therefore, as far as these aspects are concerned, the differences in judicial practice are not surprising at all. 9

In addition, the comparatively low compensation amounts, which are sometimes humiliatingly low, are to be disapproved of. This can possibly be explained by the general standard of living in Bulgaria as well as by the court’s concern that an extremely high amount of compensation might lead to severe economic hardship for the tortfeasor. 10

³ Hereinafter the Decisions are referred to as follows: d. (decision), p.c. (penal case)/c.c. (civil case)/t.c. (trade case), p.d./c.d./t.d. (penal, civil, trade division) of the SCC/Sofia CC (Supreme Court of Cassation/Sofia City Court).

4. In Cases of Death

- 11 In a case of death resulting from a work-related accident, a woman who had co-habited with the deceased man was granted compensation for non-pecuniary damage and for being deprived of the possibility of receiving support from the deceased man. The total amount of compensation was BGN 15,000 (€ 7,500). In addition, the court took into consideration the fact that the female claimant was at an employable age and this probably led to a reduction in the amount of compensation awarded (d. No. 414/28 Sept. 2007, c.c. No. 32/2006, 3rd c.d. SCC).
- 12 According to another decision of the supreme judicial instance (d. No. 447/21 May 2007, p.c. No. 1091/2006, 1st p.d. SCC), bus drivers who negligently caused the death of twelve children riding in a bus were ordered to pay to their parents an indemnity of BGN 50,000 (€ 25,000) for each dead child.
- 13 According to a recent decision of the SCC (d. No. 70/28 February 2007, 3rd c.d. SCC), the widow of a person who died in a work-related accident was awarded the amount of BGN 500 (€ 250).
- 14 The same decision deals with the periodic indemnities to be paid by the employer to the dead employee's minor child. The amount adjudged was BGN 100 (€ 50) per month for a period of eleven years.

5. In Cases of Rape

- 15 In a case of a fourfold rape, a civil claim was brought for compensation amounting to BGN 50,000 (€ 25,000) for non-pecuniary damage. Given that the victim had to experience pain and suffering, that her bodily and sexual inviolability was infringed and that she suffered from post-traumatic stress syndrome, the court upheld the claim for damages. However, the amount awarded was BGN 15,000 (€ 7,500), which was much lower than the amount claimed (d. dated 11 April 2007, p.c. No. 1975/2006, p.d. SCC).

6. For Non-Pecuniary Damage in Cases of Wrongful Dismissal

- 16 The Supreme Court of Cassation (d. No. 259/16.03.2007, c.c. No. 3228/2005, 4th c.d. SCC) awarded BGN 2,500 (€ 1,250) for mental suffering which was caused by physical diseases. In addition, the court disallowed the amount of BGN 5,500 (€ 2,750) sought by the claimant, awarding an amount of BGN 2,500 (€ 1,250). The decision takes into consideration that the claimant had been under a lot of stress as a result of his dismissal. The stress was expressed in the claimant's social self-isolation, cessation of his private practice as a physician and suspension of his scientific career. Along with all this, the claimant suffered haemorrhaging of a gastric ulcer and sudden loss of hearing (tinnitus aurium). The court finds that a causal relationship exists between the wrongful act (dismissal), the stressful consequences and the physical disease.

In addition, the court points out that there neither is, nor can there be a unified “price-list” for the evaluation of pain and suffering, as each person has his own mental and bodily resistance. The court maintains that the basis of determining a pecuniary equivalent to pain and suffering should be “the economic development, standard of living and incomes” of the injured person as at the date of the tort. The court obviously opts for an individual approach when determining the amount of indemnity, thus neglecting both the degree of the tortfeasor’s fault and the foreseeability of the damage. 17

7. Scope of Persons Having the Right to Indemnity Where Death is Caused

Through its decision (d. No. 414/28 Sept. 2007, c.c. No. 32/2006, 3rd c.d. SCC) mentioned above, the supreme judicial instance confirms the currently valid rule (established in judicial practice) according to which, a person who has cohabited, even without formal marriage, with the individual who died has the right to indemnity. In this case it is interesting that the female claimant who had cohabited with the deceased man is awarded not only non-pecuniary damages, but also damages originating from being deprived of the possibility of receiving support from the deceased man. 18

8. Difference between Contractual, Work-Related and Tortious Liability

The same decision (d. No. 414/28 September 2007, c.c. No. 32/2006, 3rd c.d. SCC) assumes that, in cases of incidental assignment of a task to a person who is not in a labour relationship with the assignor when the said person dies in the course of performing the task, the assignor incurs liability on delictual grounds to the legal successors of the deceased person. 19

Some might find this decision just and equitable, but it is hard to share the arguments on the grounds of which the court draws its conclusions. 20

The factual situation is as follows: following orders of their superior, employers of a department store agree with a few passers-by (who have no relationships with the store) that the latter will help unload a truck carrying goods. In the course of unloading the goods, one of the persons falls down, is injured and later dies as a consequence of the injuries. 21

The court is right to assume that in this case no labour relationship is present. Nevertheless, the court finds that the requirements set forth in the Law on Healthy and Safe Working Conditions should have been fulfilled. It is doubtful whether in a case of a service contract (where the rules on manufacture apply by analogy) the said requirements should be fulfilled by the assignor. The court itself comes to this conclusion, stating that in a relationship of manufacture the process of the fulfilling is on the manufacturer’s risk and immediately afterwards the court assumes that “the liability is tortious”. Obviously, the court assumes that liability should necessarily be present, and, having found that the liability is neither contractual nor work-related, the court decides that it must 22

be tortious. Evidently, the court has been surprised at the excessiveness of its own conclusion, and has decided to mitigate it, assuming that in this case contributory negligence is present due to the fault of the person suffering the damage, and has therefore reduced the amount of the compensation awarded.

C. DOCTRINE

- 23 In the year 2007 no articles or monographs in tort law matters were published.