

III. Bulgaria

Christian Takoff and Viktor Tokushev

A. Legislation

Last year the Bulgarian Parliament did not adopt any new laws directly 1
connected with tort matters. Besides that, no substantial changes have
been made to the existing regulation.

B. Cases

In the year 2010 no considerable changes in the judicial practice of 2
Bulgarian courts regarding tort matters was observed. Unlike the previous
years' reports, in 2010 there were cases in which, for the first time, the
court ruled upon some new hypotheses of tort liability.

The 2010 report is structured in the same way as that for the previous year 3
– on the basis of specific problems. It contains two main parts: the practice
in basic *corpora delicti* (concerning the application of the Law on Obligations and Contracts¹) and the practice in special *corpora delicti* (concerning the application of special laws regulating tortious liability).

The main focus of this report is the practice of the Supreme Court of 4
Cassation (SCC). Due to the tendency to limit the possibility of cassation
appeal – as a result of the changes introduced into the Civil Procedures
Code in 2008 – which diminished the SCC practice concerning tort
matters,² this year greater attention is paid to the decisions of the court
of appeal, the latter being *de facto* the last instance in a large number of
cases. By way of exception and in view of the problem this decision
concerns, the subject matter of this year's report also includes a first
instance decision of the Sofia City Court.

1 Darjaven Vestnik (State Gazette, DV) 275/1950, last amended DV 50/2008.

2 This is the first time that – statistically – the number of publicly available decisions of the SCC on tort cases is lower than the rulings disallowing cassation appeal.

- 5 The court decisions examined hereinafter are categorised as decisions concerning:
- The presence of tortious liability (Case 1 to Case 3)
 - Liability for damages in assigning a job (Case 4 to Case 6)
 - The amount of compensation in the event of slander (Cases 7 and 8)
 - Personal injury
- 6 The court decisions under special laws (outside the scope of general regulation of the Law on Obligations and Contracts) considered hereinafter are systematised as decisions concerning:
- Torts relating to employment relationships (Case 9 through Case 12).
 - Practice concerning the Labour Code.³ From a systematic point of view, this group of decisions should also include the decisions relating to the employment relationship of civil servants (under the Civil Servant Law⁴), however, last year there was no practice of the SCC in this field.
 - The State's and municipalities' liability for damage caused by an administrative or judicial or investigation body, the prosecuting magistracy or the municipal administration. Last year there were no new interesting developments in that respect, compared with the previous year. Because of this, these decisions concern claims for material damages relating to restitution claims and acts connected with urban planning. (Case 13 through Case 16).
 - Probably, it is because of the low activity, the insufficient information delivered to the ordinary consumer or the low material interest in claims for damages resulting from defective goods that in 2010 the SCC had no occasion to rule upon cases regulated in the Consumer Protection Law.⁵

1. Sofia City Court, Decision No 843/07-09-2010, Commercial Division (CD) VI-5 Chamber: Presence of Tortious Liability; Tortious or Contractual Liability

a) Brief Summary of the Facts

- 7 In February 2008 the Management Board (MB) of a public company took a decision to increase its capital tenfold – from 5,000,000 to 50,000,000 shares. The price of the new shares that were to be offered to the investors

3 DV No 26/1986, last amended DV No 18/2011.

4 DV No 67/1999, last amended DV No 18/2011.

5 DV No 99/2005, last amended DV No 18/2011.

was BGN 1,⁶ while at that time the book value of the shares of the company was approximately BGN 40 per share. During the subsequent trading sessions, the stock exchange price of the shares dropped from BGN 7 to BGN 4, that is, by almost 40 %. Later, the Bulgarian Financial Supervision Commission disapproved of the prospectus of public offer of securities through which the capital should be increased, merely because of the drastic difference between the issue price and the book value of the shares. As a result, the increase of capital did not take place but the price did not return to its former level.

As a result of the situation described, all the shareholders of the company suffered damage consisting in the drop in the price of the shares they held. The largest of the minority shareholders in the public company brought a claim for damages against the members of the Management Board who adopted the decision to increase of capital. The amount of the claim was BGN 2,000,000, which is equal to the difference in the value of the shares held by them before and after the decision was made public. **8**

b) Judgment of the Court

The court disallows the claim. Having examined all the circumstances in the case, the court finds that there really was a drop in the price of shares, which is the claimant's lost profit. In addition, the court considers that the said drop is due to the fact that the decision of the Management Board was made public. And, finally, the court unambiguously states that the decision to increase the capital was unlawful. In spite of all this, the court is of the opinion that there are no grounds upon which to establish the tortious liability of the members of the Management Board because they are in a contractual relationship with the company and, therefore, with its shareholders as well, though indirectly. **9**

According to the court decision, the liability of the MB members is only contractual and is based on the management contracts they have concluded with the company. Bulgarian law has a special corpus for such cases – art 240, para 2 (*actio pro socio*) – which regulates the liability of the members of management bodies for damage inflicted on the company and not on its shareholders. In view thereof, the court comes to the conclusion that, given the operative legal regulation in Bulgaria, there is **10**

⁶ As for any pecuniary amounts in the report, the fixed rate of exchange should be taken into account: € 1 = BGN 1.95583, ie 1:2 gives sufficient accuracy.

no legal opportunity to have the MB members held liable on any grounds for damage inflicted on the shareholders.

c) Commentary

- 11 Although the said decision is a first instance one, it is of particular importance to Bulgarian law as this is the first time a judicial body has commented on the possibility of seeking the liability of MB members for damage inflicted on the shareholders of a public company. The decision is noteworthy also because no special claim for the establishment of such liability is known in Bulgarian law and, in these cases, the defence of the aggrieved person should follow the general tort clause (*neminem laedere*).
- 12 In view of all this, the court decision cannot be welcomed because it contradicts well-established principles of Bulgarian law. First, it mixes up the shareholders-company relationships with the company-management body relationships. The existence of two contractual relationships, one of the parties thereto being the same, does not give rise to contractual relationships between the other parties thereto, ie there exists no ‘mediated contractual relationship’. Unsound are the arguments brought by the court to exclude the application of the general tort clause where there is no special corpus of civil liability for damages. Thus, *de facto* the court refuses to do justice. In view thereof, it will be interesting to watch the future development of this case.

2. Supreme Court of Cassation (SCC) Decision No 666/22-02-2010, I Civil Division (CD): Presence of Tortious Liability

a) Brief Summary of the Facts

- 13 The claimants sought damages resulting from a newspaper publication of untruthful and disgraceful facts, namely: allegations that they are homosexuals and have committed sexual acts in public places.

b) Judgment of the Court

- 14 The Supreme Court overrules the decision of the lower-instance court – which adjudged compensation in favour of the claimants – pointing out that a sexual orientation that differs from the commonly accepted one is

not morally reproachful and is protected under the Law on Protection against Discrimination. The question whether the claimants are in fact so sexually-oriented is not of a nature that might discredit them in society, and it cannot and should not give rise to negative treatment. Respectively, there is no tort as no damage has been caused.

c) Commentary

The decision impresses by the court's rather 'liberal' view, according to which the disclosure of a different sexual orientation is not disgraceful or discrediting; moreover, nowhere in the case was any evidence submitted showing that the claimants had agreed to have their sexual orientation disclosed or that the claimants demonstrated their sexual orientation themselves. **15**

It seems as if the motivation of the court is mainly grounded on the fact that the published facts are truthful and the newspaper communicates people's impressions, specifying their source, and not on the fact that they are not disgraceful. **16**

3. Sofia Court of Appeal (SCA) Decision No 624/29-06-2010, CD VIII Chamber: Presence of Tortious Liability

a) Brief Summary of the Facts

The claimant, the manager of a company which was a contractor in the performance of a public procurement consisting in the recultivation of a disposal area, claims damages resulting from allegations made in a TV programme, according to which the project was reported as 'suspicious' and the recultivation price given as BGN 7,000,000, at least BGN 2,000,000 of which had been 'assimilated by the project participants'. **17**

b) Judgment of the Court

The court of appeal analyses the actions of the journalist hosting the TV programme and comes to two conclusions: on the one hand, the journalist's allegations and the opinions of the experts he interviews are unsubstantiated and, on the other hand, the name of the claimant is not mentioned in the programme, neither are any allegations made to the **18**

effect that the claimant has personally made illegal gains from the implementation of the project. On the basis of these conclusions, the court overrules the decision of the first instance court, which adjudged BGN 5,000 and reduces the amount to BGN 500.

c) Commentary

- 19** The decision of the court is rather contradictory. On the one hand, the court seems to find that no grounds exist to establish tortious liability as no damage has been caused to the claimant (neither his name nor his personal dignity nor his professional reputation have been affected) and, on the other hand, the claim is not disallowed, only the adjudged compensation is considerably reduced, ie although the court of appeal rules that the damage is an element of the tort's corpus of facts that has to be proved, the court itself presumes this element to be present to a certain degree.

4. SCC, Decision No 503/21-07-2010, III CD: Joint Tortious Liability; Contributory Tortfeasance; Liability for Damages in Assigning a Task

a) Brief Summary of the Facts

- 20** In the course of gathering the harvest, the claimant experienced a trauma – his right leg was cut off – due to the culpable conduct of the person operating the combine harvester. The claimant brought a claim: 1) against the immediate wrongdoer; 2) against the commercial company – owner of the combine harvester and 3) against the company which assigns crop gathering.

b) Judgment of the Court

- 21** The subject matter of the examination of the cassation court is the court of appeal's decision sentencing the three defendants under the conditions of joint liability due to contributory tortfeasance (by virtue of art 53 of the Law on Obligations and Contracts, LOC). The Supreme Court of Cassation confirms the decision, however, it makes corrections to its argumentation.

According to the SCC, the court of appeal improperly applied the provision of art 53 LOC because the latter concerns only those cases of joint liability in which the damage is inflicted by several wrongdoers, ie in contributory tortfeasance. In the case under consideration there is passive joint liability, however, it is not based on contributory tortfeasance, but rather on the assignment of a task (the explicit provision of art 49 LOC is to that effect), the liability of the assignor(s) having a ‘safety-guarantee’ function. **22**

c) Commentary

The decision is essential for judicial practice as it differentiates between two close, yet independent institutes – contributory tortfeasance and joint liability. The SCC decision can be welcomed because, though confirming the decision of the lower instance court, it specifies the motives more precisely, thus creating consistent judicial practice. **23**

5. SCC, Decision No 166/10-03-2010, IV CD: Liability in Assigning a Task

a) Brief Summary of the Facts

During a raging storm, a branch of a tree in a public place broke off and struck the claimants’ legator who died of his injuries. The claimants sought compensation from the legal entity which was in charge of caring for the maintenance of the greenery in the town as the employees of the latter failed to ensure that the trees were safe. The defendant stated that he is not liable for the damage as it was caused by an event of a casual nature. **24**

b) Judgment of the Court

The SCC confirms the decision of the court of appeal which upholds the claim. In its motives, the court analyses the possibility that the casual event constitutes grounds for the defendant’s exemption from liability and points out that, for this purpose, it should be ascertained that the defendant had complied with all the requirements of the law regarding the performance of his obligations related to caring for the green areas and decorative vegetation, and the misfortune occurred only and solely because of the effect of force majeure. However, the injurious result in case **25**

of tort may not be a consequence of a casual event where the result is preceded by culpable conduct.

c) Commentary

- 26** Undoubtedly, the decision of the court has to be supported. It has bearing on the establishment of consistent practice regarding the engagement of persons assigned a task. The assignor's failure to act always constitutes grounds for engaging his liability for the damage if the failure to act consists in the non-fulfilment of obligations arising from the law or technical rules or other rules.

6. SCA, Decision No 293/01-04-2010, VIII CD, Chamber: Liability in Assigning a Task

a) Brief Summary of the Facts

- 27** The claimants, who are heirs to the deceased person, sought compensation for damage resulting from the death of the latter. According to the claimants, the death was the result of an incorrect diagnosis given by two doctors. In addition, compensation was also sought from the hospital in which the two doctors were allegedly employed. In the course of proceedings it was established – by way of an expert examination – that the diagnosis had in fact been incorrect and that one of the doctors is an employee of the Emergency Medical Aid and not an employee of the hospital. On the part of the hospital, it is maintained that the hospital cannot be held liable as one of the doctors is not an employee thereof, while the other did not act 'in the course of performing a task assigned to him or in connection with it'.

b) Judgment of the Court

- 28** Having analysed the cassation appeal of the hospital, the court of appeal confirms the decision of the first instance court, considering that, as one of the doctors was not in an employment relationship with the defendant, the latter may not be held liable on the grounds of assignment of a task. As for the other doctor, the court definitively states that, as he is an employee of the hospital who gave his opinion as a doctor working for the hospital in which the injured person was placed and subsequently died, the

culpable conduct of this doctor constitutes grounds for engaging the hospital's liability as well.

c) Commentary

The decision under consideration is in compliance with the well-established practice, according to which, in order for the assignor's liability to be engaged, there must be 'an assignment' of a task between him and the direct wrongdoer, on the one hand and, on the other hand, the inflicted damage must result from the assigned task, and not from another action of the person. **29**

7. SCC, Decision No 324/08-04-2010, III CD: Slander

a) Brief Summary of the Facts

The claimant is a former employee of the Ministry of the Interior. A newspaper published information about him, according to which it was claimed that he had participated in cigarettes smuggling together with other persons and he was the person in charge of the smuggling channel through one of the checkpoints of the Bulgarian frontier. The claim was brought against the journalist and the editor-in-chief of the newspaper. **30**

b) Judgment of the Court

The SCC confirms the decision of the court of appeal, which upholds the claim. The argumentation of the decision is grounded mainly on the fact that, in the course of the proceedings, the allegations made by the newspaper were not substantiated in any way whatsoever. Furthermore, the court is of the opinion that the adjudged compensation of BGN 800 corresponds to an appropriate amount for the damage sustained. **31**

c) Commentary

What impresses in this decision is the low amount of the confirmed compensation, which cannot provide adequate compensation for the tarnished reputation. On the other hand, the low amount adjudged cannot be regarded as an exception and is in line with the amount adjudged in case 3. **32**

**8. Sofia City Court, Decision of 13-01-2011, II b Chamber:
Amount of Compensation**

a) Brief Summary of the Facts

- 33** The claimant is a politician – a former Deputy and Minister – who sought compensation for the offensive and slanderous allegations made by a TV programme’s hostess. According to her, the claimant had taken part in ‘bandit-type privatisation’, benefiting from it, and that he was no different to established criminals, etc. The hostess pointed out that the disclosed information was gathered in the course of a journalist investigation supported by documents and by the statements of guests she had interviewed.

b) Judgment of the Court

- 34** The court of appeal confirms the decision of the first instance court and sentences the hostess of the programme to pay to the claimant compensation of BGN 2,000 per each of the two programmes in which his personality was commented on. It is worth examining the court’s motives, which try to strike a balance between two well-established values – the protection of reputation, honour and dignity of each Bulgarian citizen, on the one hand, and the media’s freedom to express opinions as well as to impart information, on the other hand. In that respect, the court comes to the only possible conclusion (supported by the constant practice of the SCC) – the freedom of the media does not include the possibility of circulating false data, infringing on personal civil rights.
- 35** In this regard, the court recognises that political figures, State bodies and the government may be subject to public criticism, but that the case of the said programmes is different. They did not criticise the claimant as a politician or a public figure, they rather made allegations that were offensive qualifications about him. It is through these allegations that the hostess of the programmes ignored the prohibition – laid down in law – on doing harm to a person, and, therefore, she was ordered to pay compensation.

c) Commentary

- 36** The decision under consideration presents extremely good arguments and is a clear counterpoint to a growing social tendency, namely, to make

allegations – under cover of so-called ‘investigative journalism’ – regarding public figures without any evidence. Furthermore, the amount of the adjudged compensation, though higher than that in the previous decision, seems disproportionately low in view of the inflicted damage and can rather be regarded as moral compensation obtained by the person.

9. SCC, Decision No 14/01-03-2010, II CD: Liability of the Employer; Amount of Compensation; Employee’s Contributory Infliction of Damage; Immaterial Damages

a) Brief Summary of the Facts

The claimants’ legator had worked with the defendant. In the course of excavation works carried out on a building site, as a consequence of a landslide, the legator was injured and on 18 November 2004 he died. A work-related accident was assumed. 37

Compensation is claimed against the employer for the immaterial damage suffered by the heirs – pain and suffering caused by the legator’s death. The claim is grounded on art 200, para 1 of the Labour Code (LC). 38

It is disputed whether the defendant’s objection regarding the employee’s contribution to the injurious result is well-founded. It was alleged that the deceased had been grossly negligent, this being a reason to reduce the liability of the employer. 39

It was established that the employee was working in an unfortified ditch, the depth of which exceeded that admissible under the safety requirements set by the employer for unfortified ditches. A number of requirements concerning the work in such a ditch had been disregarded by the employee who died, including the absolute prohibition on undermining and on leaving ditch-bank overhangs. 40

b) Judgment of the Court

The court assumes that the deceased’s contribution to the injurious result should be determined at 1/3 and the employer’s liability should be reduced in accordance with art 200, para 1 LC. 41

Compensation of BGN 60,000 for immaterial damage is awarded to each of the three heirs. However, this amount is reduced by the employee’s 42

contributory negligence of 1/3, ie the amount adjudged to each of the heirs was reduced to BGN 40,000.

c) Commentary

- 43 What is observed here is an increase in the amount of compensation in case of the employee's death. The assessment of the percentage of contributory negligence is absolutely groundless and is determined at 1/3 capriciously. Probably, in this way the court aims to award an amount which it regards as fair (BGN 40,000).

10. Sofia District Court, Decision No 206/04-05-2010: Liability of the Employer; Amount of Compensation; Employee's Contributory Negligence; Immaterial Damages

a) Brief Summary of the Facts

- 44 The husband of the female claimant had a work-related accident, following which he died. The wife claimed compensation of BGN 30,000 for immaterial damages and delay interest in the amount of BGN 6,000.
- 45 The defendant (employer) challenged the claim as ungrounded, raising an objection according to which the claimant's spouse had contributed to the injury through his gross negligence, and art 201, para 2 LC is to be applied.

b) Judgment of the Court

- 46 The second instance court assumes that the employer's liability should be reduced because the injured person contributed – through gross negligence – to the work-related accident. It is assumed that the employee's contributory negligence should result in a reduction of the compensation by 50 %.

c) Commentary

- 47 The assessment of the percentage of contributory negligence is groundless, again, and is determined arbitrarily, this time at 50 % (see the previous decision).

11. SCC, Decision No 140/15-02-2010, IV CD: Liability of the Employer; Amount of Compensation; Employee's Contributory Negligence; Immaterial Damages

a) Brief Summary of the Facts

The second instance court had adjudged to the two daughters of an employee – who died in a work-related accident – compensation for immaterial damage in the amounts of BGN 9,138.36 and BGN 6,888.32. 48

The employer – the defendant in the case – sought reduction of the compensation because of its excessiveness and also because it should be compensated for by an insurance. 49

b) Judgment of the Court

The court disallowed the employer's claim, considering that the insurance payment would not cover the total amount of all the immaterial damages. 50

c) Commentary

Against the background of a slow increase in the amounts of compensation for immaterial damage in case of death, the request of the employer-defendant for a reduction of the adjudged compensation – which is low even without the reduction – seems strange and the court rightly disallowed it. 51

12. SCC, Decision No 160/17-05-2010, IV CD; SCC, Decision No 33/27-01-2010, I CD; SCC, Decision No 521/23-06-2010, IV CD: Prerequisites for Employer's Liability

a) Brief Summary of the Facts

The three quoted decisions concern employee's compensation for damage in case of occupational disease which did not lead to the employee's temporary or permanent incapacity for work exceeding 50 % or the employee's death. In these cases the incapacity for work was assessed at less than 50 %. 52

b) Judgment of the Court

- 53** According to art 200, para 1 LC, an employer incurs material liability for damage which results from a work-related accident or an occupational disease which caused temporary or permanent incapacity for work exceeding 50 % or death of the employee. A contrario, where the capacity for work was reduced by less than 50 %, the employer is not liable.
- 54** However, the courts constantly assume that the said conclusion is wrong and a ‘small’ loss in the capacity for work does not exempt the employer from liability for damage resulting from an occupational disease. In itself, the latter is an impairment of health and, even where it does not affect the employee’s capacity for work, it may cause him immaterial and/or material damage.
- 55** Further, the court assumes that, as the special law (art 200 LC) does not explicitly provide for liability in such cases, by virtue of the renvoi norm of art 212 LC, the obligation to repair the damage ensues from the general rule regarding tortious liability provided for in art 51, para 1 of the Law on Obligations and Contracts – compensation is due for any damage that is a direct and immediate consequence of the impairment.

c) Commentary

- 56** In these decisions, the courts interpret correctively a provision (art 200, para 1 LC) which is commonly viewed as unfair and, actually, refuse to apply it in its literal sense. Such an approach of the court – as a corrective of the inapt actions of the legislator – should be welcomed, especially against the background of the low-quality legislative process in Bulgaria in the latest decades.

13. SCC, Decision No 327/30-04-2010, III CD: Indirect Damage Caused by Actions of the Administration; Equalisation of the Consequences of Restitution

a) Brief Summary of the Facts

- 57** In 1968 the claimant acquired a flat in Sofia from the State. The flat had become a State-owned one by virtue of the nationalisation of 1947. In the course of the 1968 acquisition, violations of a technical nature were committed due to the fault of the State administration. The acquirer could

not have known about them, and even if he had known about them, he could have neither prevented them nor repaired them subsequently.

Later, in the course of the restitution of nationalised property (from 1992 onwards), following proceedings of several instances which involved the acquirer of the flat and its previous owner, the flat was seized from the acquirer and was given back to its former owner. As the acquirer was the losing party to this lawsuit, he also had to pay the court costs. 58

The restitution law does not provide for compensating those acquirers whose fault in the acquisition of nationalised property has not been proved. 59

Regarding this case, the European Court of Human Rights established a violation of art 1 of Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CPHRFF) as the Republic of Bulgaria failed to provide the complainants with the opportunity to receive adequate compensation for their being deprived of the ownership of the flat in Sofia which they bought from the State in 1968. The European Court of Human Rights assumed that the fair balance required under art 1 of Protocol No 1 to the CPHRFF cannot be struck without such adequate compensation. 60

By virtue of the decision rendered by the European Court of Human Rights, the acquirer received a total compensation award of BGN 97,000 for the material and immaterial damage suffered. However, this compensation does not cover the court costs which the acquirer had to pay for the restitution lawsuit he lost. 61

Because of this, in spite of having obtained compensation for the flat seized from him, the acquirer seeks recovery of these costs as well. 62

b) Judgment of the Court

The court overruled the decision on the restitution case in its part adjudging the costs in the restitution lawsuit to the losing party. 63

14. SCC, Decision No 35/04-02-2010, I CD: Indirect Damage Caused by Actions of the Administration; Compensation due to Unequal Restitution; Amount of Compensation

a) Brief Summary of the Facts

- 64** In principle, in Bulgaria the restitution of property nationalised in the year 1947 and the subsequent years is possible in kind, except where the property no longer exists in its original state or when it has been properly acquired by a third person. In these cases, compensation should be paid to the former owners. However, due to the dangers it poses to the State budget, the compensation is not paid in cash but rather by way of bonds that are issued. These bonds can be used to participate in the privatisation of State-owned property. If the payment under a privatisation transaction is made in bonds, 1 bond equals BGN 1.
- 65** For a number of reasons, the market value of these bonds has always been much lower than the nominal one, varying between 10 and 30 % of the nominal value over the years.
- 66** The bonds are issued by specialised State institutions – the Privatisation Agency and certain Ministries.
- 67** In this specific case, a previous owner could not re-acquire his property and he should have received bonds, however, he was refused such bonds. He claimed the nominal value of the bonds due to him (and not the bonds themselves). Meanwhile, the privatisation was actually over and the bonds could not be used further for purchases and, therefore, they lost their value as well. The first instance court determined a compensation award in favour of the claimant in the amount of the ‘older’ market value of the bonds due to him, and not at the amount of the bonds’ nominal value (which is several times higher) that the claimant sought.

b) Judgment of the Court

- 68** The Supreme Court finds that where the unlawful actions of the State administration result in damage from the non-receipt of bonds, these damages amount to the nominal value of the unreceived bonds.

c) Commentary

The decision of the Supreme Court of Cassation is fair. It takes into account the particularity that the time the proceedings take may have a major impact on the amount of compensation. At the same time, it is assumed that, in a number of cases, restitution in kind shall not compensate the aggrieved party. 69

15. SCA, Decision No 482/27-05-2010, VII CD: Damage Caused by Actions of the Administration; Lost Profit

a) Brief Summary of the Facts

An order for demolition of a building was issued and executed. The building was demolished. Later, the order was reversed as being contrary to law and, particularly, because it was not duly communicated to the owner of the building. A claim was filed for damages resulting from the demolition of the building. 70

b) Judgment of the Court

The court assumed that, on the one hand, the damage is expressed in diminishing the property of the claimant. This damage can be compensated either by restoring the property to its original state or by paying a pecuniary equivalent of the property that was damaged or destroyed. On the other hand, the impossibility of using this property in the future entails an omission of benefiting from it in the future through its direct use or through deriving income from it. These lost profits also constitute material damage, which is subject to compensation. Their amount equals the average rental amount that the owner of the demolished building might have obtained. 71

c) Commentary

This decision is quoted for the sake of demonstrating one of the lines in compensating damage. At first sight, this decision contradicts that quoted next, in which the matter of lost profit is resolved differently. Actually, taking into account the specificity of the decision that follows, no contradictions are present. 72

16. SCC, Decision No 899/14-01-2010, III CD: Damage Caused by Actions of the Administration; Lost Profit

a) Brief Summary of the Facts

- 73 The situation is similar to that described in the previous decision. However, what is concerned here is not an order for demolition, but a refusal to grant permission for the construction of additional storeys to an existing building. The claimants allege that, as a result of the said refusal, they are unable to draw income consisting in the rental amount they would have received in future from the additional storeys built onto their residential building.

b) Judgment of the Court

- 74 The claim is disallowed.
- 75 In this case the court found that the lost profits can be adjudged only if they are certain and are in a direct causal relation with the unlawful action of the administration (a refusal to grant permission for the construction of additional storeys to a building).
- 76 The court considers that, in order for such compensation to be adjudged, the claiming party has to establish – by complete and convincing proof – the existence of a causal relation between the lost profits and the refusal to grant a permit.
- 77 The court has taken into account that there is no evidence showing that the lost profits (rental amounts) are certain, ie that damage has really been suffered. In this case there was no data available regarding the term within which the additional storeys would be erected, nor was there any data showing that they would in fact be erected and would be let out for rent.

c) Commentary

- 78 The decision can be shared in its part ascertaining the absence of proof as to whether the claimed profits would have actually been drawn. However, the decision is disputable as regards the requirement for ‘complete proof’ of these profits. There is no way of proving ‘completely’ a future fact. What can be proved is only the probability that it will happen.

This way of thinking might actually bring about a total denial of lost profit as part of the compensation amount. 79

The motives do not make it clear whether the court regards as unproved the causal relation between the refusal to grant permission for the construction and the non-realisation thereof. This relation seems to be obvious and it is not necessary to prove it (the construction cannot be legally realised without permission to do so). 80

17. Personal Injury

The publicly available practice of the Supreme Court for the year 2010 does not contain decisions which are directly related to tortious liability for bodily injury. Most probably, the reason for this consists in the considerably limited possibility of cassation appeal in such cases. In view thereof, two decisions of the Sofia Court of Appeal will be discussed below. 81

In its decision 493/26.05.2010, CD, I chamber, the court of appeal increases the amount of the awarded compensation for a grievous bodily injury from BGN 7,000 to BGN 30,000, the latter being equal to the full amount of the claim. The claimant had a serious trauma of the head resulting from a blow dealt with a metal pipe. The court took into account the nature of the injury, which seriously threatened the life of the victim, as well as the brain operation he had to undergo and the subsequent long-term recovery with no expectation of complete restoration to health, the young age of the victim, and rules that the compensation adjudged by the first instance court is insufficient and does not 'match' the damage suffered. Therefore, the court renders a decision upholding the claim in its full amount. 82

In its decision 505/03.06.2010, CD, VIII chamber, the court of appeal confirms the decision of the first instance court awarding compensation of BGN 15,000 per victim for immaterial damage resulting from bodily injuries of medium gravity. The claimants were the victims of an assault committed by the defendants, as a result of which one of the victims broke several ribs and his lung was injured, while the other claimant's ankle and leg were broken. As the assault was committed by ten individuals in front of the house of the victims, which evidences absolute contempt of public peace and order, and in view of the long-term medical treatment, the court disallows the defendants' appeal for a reduction of the compensation amount and confirms the decision of the first instance court. 83

- 84** Without constituting grounds for a general conclusion, the two decisions evidence a gradual increase of the amount of compensation adjudged by Bulgarian courts in cases of bodily injury. Furthermore, it should be taken into account that the court continues to adhere to the principle of the differentiated treatment of various types of bodily injury, there being a considerable difference between the compensation for grievous bodily injury and that for bodily injury of medium gravity.

C. Literature

- 85** In 2010 there were no books, monographs or articles dealing with tort matters.