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IV. Bulgaria

A. Legislation

- 1 Last year the Bulgarian Parliament did not adopt any new laws directly connected with tort matters and no substantial changes were made to the existing regulations.

B. Cases

- 2 In the year 2011 no considerable changes in the judicial practice of Bulgarian courts regarding tort matters were observed. Unlike the previous years, in 2011 there were cases in which, for the first time, the court ruled upon some new hypotheses regarding tort liability.
- 3 The main focus of this report is the practice of the Supreme Court of Cassation (SCC). Due to the tendency to limit the possibility of filing an appeal in cassation as a result of the changes introduced into the Civil Procedures Code in 2008 – which resulted in fewer cases being brought before the SCC in tort matters in the last three years – attention is paid to the decisions of the courts of appeal, the latter being *de facto* the last instance in a large number of cases.
- 4 The court decisions examined hereinafter are organised as decisions concerning:
 - Immaterial damage following crime (Cases 1 and 2)
 - Liability of media, editors-in-chief and journalists for the dissemination of slander (Cases 3 and 4)
 - Liability of the assignee and the assignor of a task for the damage ensuing from it (Case 5)
 - Tort following an activity permitted by the administration (Case 6)
 - Assessment of future foreseeable damage (Case 7)
 - Waiver of a right to compensation for a future excess from tort (Case 8)
 - Immaterial damage from unfounded judicial proceedings and security imposed (Cases 9 and 10)
 - Liability of private enforcers for unlawful actions (Case 11)
 - Immaterial damage in the event of bodily injury and death (Case 12 to Case 20)
 - Joint liability issues (Case 21)

- Liability for damage from jointly owned property (Case 22)
- Compensation for discrimination and scope of persons who receive it (Case 23)

1 SCC, Decision No 147/18-03-2011 on Civil Case No 1640/2010, Civil Chamber (CC), IV Civil Decision (CD): Liability of Media, Editor-in-Chief and Journalists for Untruthful Publications and Allegations in a Programme

a) Brief Summary of the Facts

A journalist published a newspaper article which slandered the claimant. A claim 5 was brought against the journalist and the editor-in-chief of the newspaper. The matter the SCC examines is whether the editor-in-chief of a printed publication (and not the publisher thereof) is liable for damages resulting from the publishing in it of untruthful material.

b) Judgment of the Court

The court argued that the liability for such damage which arises as a result of from 6 somebody else's conduct performed in the course of or on the occasion of performing a certain task is borne by the person who has assigned the task. As a rule, the editor-in-chief of a printed issue is not the journalist's employer. He is not the assignor of their task; the latter is assigned by the person who is the publisher. Therefore, the editor-in-chief of the issue cannot be held responsible for the information disclosed by the journalist. Such responsibility is borne by the publisher. The editor-in-chief would only be liable for his own culpable and wrongful conduct, which means in this specific case that he would be liable inasmuch as it is established that the spreading of slanderous information is due to his conduct, and not to the conduct of the author of the article. Such would be the case when, against the will of the author of the article, the editor-in-chief adds information to an article that discredits certain individuals; in this case the person spreading the information (in spite of the formal authorship of the article) would be the editor-in-chief, and not the journalist. Such would also be the case when, despite being aware that the information in an article is not true, the editor-in-chief orders it to be published. However, where the material is written by another

person and is published without interference and contains slanderous information, the editor-in-chief of the issue is not liable.

- 7 However, the mere fact that a natural person is in a contractual relationship with a publisher in connection with the editing of the latter's publication does not constitute grounds for engaging that person's liability unless the person has committed a tort himself.
- 8 In view of these considerations, the SCC disallowed the claim against the editor-in-chief, assuming that he was not the person who had assigned the task from which the damage resulted.

c) Commentary

- 9 The result of this decision has a demonstrably protective function with regard to editors-in-chief. The liability is totally transferred to the publisher (usually a legal entity). Given that it is practically impossible to prove any culpable conduct on the part of the editor-in-chief, and that the publisher of the media may not be in a financial position to satisfy the claim, the said decision definitely cannot be welcomed.

2 SCC, Decision No 77/25-03-2011 on Civil Case No 1507/2010, CC, III CD: Liability of Media, Editor-in-Chief and Journalists for Untruthful Publications and Allegations in a Programme

a) Brief Summary of the Facts

- 10 The defendant made public a number of untruthful allegations concerning the two claimants; he spread untruthful facts while a participant in three different television programmes (including calling in to a live show) as well as in an article published in a newspaper. One of the claimants claimed € 20,000 and the other € 10,000 in immaterial damages for the mental suffering and inner discomfort they experienced as a result of the wrongful conduct.

b) Judgment of the Court

- 11 The court dealt with the following matters: 1) whether a tort was committed in this case; and 2) who the tortfeasor was – the person spreading the allegations or the producer of the programme or television company that broadcast the programme

or, respectively, the journalist who wrote the article or the publisher of the printed publication.

The court found that in this case it was not proved that a tort had been committed by the person who made the untruthful allegation public. The court based its decision on the following: it was not established that the television programmes broadcast were ‘initiated’ by the defendant; these programmes were products of the respective media. The defendant’s statements in the said programmes were only ‘elements of the content’ of the respective media product, which is a collection of comments of the anchor-person, a collection of interviews with other people and sequences with voice-over. As for two of the programmes, the defendant did not behave in an unlawful manner, because the programmes broadcast were prepared in advance and were not live programmes. The court argued that ‘words and phrases taken out of context’ cannot give grounds for concluding that an unlawful action is present, the latter causing the claimants moral damage. The court arrived at the conclusion that ‘the evidence gathered in the case’ (without specifying which evidence) shows that the legal presumption of the defendant’s fault is disproved.

For the reasons above, the court rejected the claim against the defendant.

c) Commentary

This is one of the most absurdly reasoned decisions that the authors have come across while reading this year’s judicial practice. According to this logic, if anybody makes slanderous comments in the media, he will be exculpated unless it is proved that he organised the media himself.

3 SCC, Decision No 215/26-05-2011 on Civil Case No 874/2010, CC, I CD: Assignee’s or Assignor’s Liability for Damages ensuing from the Assigned Task

a) Brief Summary of the Facts

The municipality is the owner of property neighbouring that of the claimant. Following an order given by the municipality, earth from the municipality’s property was piled up on the claimant’s property. The work was carried out by a company hired by the municipality for this purpose. The mound of earth prevented the claimant from using his property and, despite the requests made by the claimant, the mound was not removed in good time. A claim was brought for

compensation for the damage resulting from the presence of the mound of earth. The claim was brought against the municipality and the company that performed the excavation work.

b) Judgment of the Court

- 16 The legal matters the court considered were: 1) who is liable – the person who performed the task or the assignor of the task; and 2) which of these two persons is assumed to maintain the unlawful situation where no subsequent actions are necessary for its existence.
- 17 The court ruled that not only the owner of the neighbouring property but also any other third person who performs actions which violate an individual's ownership rights is liable. Where single actions create an unlawful situation which violates another's ownership rights over neighbouring property, the persons liable to rectify the situation are the owner of the neighbouring property in favour of whom the said action is carried out and the performer of the unfounded action.
- 18 Further, the court differentiated between two hypotheses. Where the performer of the conduct acts under an assignment contract, he will be liable only if his actions are either beyond the assigned task or inconsistent with it. In the hypothesis where the performer of the action does not act under assignment, he is liable to the owner both because of the general principle that everyone is obliged to undo the damage he has caused to another person (an obligation claim in tort) and because he has the obligation to refrain from unfounded actions which impair any ownership rights (a real claim).
- 19 On the grounds of these conclusions, the court ordered both the municipality and the person who caused the tortious interference to pay compensation.

c) Commentary

- 20 The decision can be welcomed as it shows that, even when acting by virtue of a contractual obligation, if the wrongfulness was evident to the performer of the task, he will not be released from liability.

4 SCC, Decision No 48/08-02-2011 on Civil Case No 545/2010, CC, IV CD: Tort in Activity Permitted by the Public Authorities

a) Brief Summary of the Facts

With the permission of the public authorities, an owner of real estate carried out explosive activity. The explosions caused damage to other persons' property and personal injury. 21

b) Judgment of the Court

In its reasons, the court stated that, although the activity was permitted by the public authorities, this activity constitutes wrongful conduct even where there is no departure from the instructions given. 22

A permit is required for such activity as the public authorities aim to ensure safety in the carrying out of the activity. However, when, in spite of the precautions and safety measures prescribed in the permit, damage – whether material harm to other people's property, or immaterial damage, such as negative experience and diseases – is caused, it is subject to compensation. 23

The claim for damages was upheld. 24

c) Commentary

The decision does not make it clear whether the instructions of the public authorities were comprehensive enough (eg as regards securing the area where the explosions took place) or were insufficient to ensure that damage was prevented. It is highly likely that the general permit did not contain any specific instructions. 25

In this case the court indirectly imposes strict liability on those activities which create a so-called 'source of aggravated danger'. 26

5 SCC, Decision No 153/02-06-2011 on Civil Case No 526/2010, CC, IV CD: Future Foreseeable Damages from Tort

a) Brief Summary of the Facts

- 27 A person suffered an injury to his health, and the consequences thereof will continue even after the termination of proceedings initiated by him. Apart from the injuries that occurred, the claimant also claimed compensation for those injures which are foreseeable in future. The defendant objected on the ground that what is being sought in this case is a decision on 'future litigation'.

b) Judgment of the Court

- 28 The court considered that both past and future damage should be compensated by virtue of the same obligation, which arises from the tort committed. Consequently, the case is not one of 'future litigation'. The court pointed out that any possible future change in circumstances will constitute a new fact on the grounds of which it will be possible to seek an alteration or exclusion of the periodic compensation for future damage that has already been awarded.
- 29 However, the court pointed out that, concerning the future, damage should be established instead of being presumed only. In this case it should be proved that injuries will definitely occur in the future.
- 30 The claim was upheld.

c) Commentary

- 31 This decision has to be supported. It confirms the general idea laid down in art 51, para 1 and para 3 of the Law on Obligations and Contracts. The first of these texts states that the compensation amount may be paid 'as a lump sum or periodically', while the second text deals with the compensation for incapacity to work in the future.

6 SCC, Decision No 43/15-03-2011 on Commercial Case No 414/2010, Commercial Chamber (CC), II Commercial Division (CD): Waiver of a Right to Compensation for a Future Deterioration in Health

a) Brief Summary of the Facts

In a case of civil liability insurance, the insurer agreed to pay to the injured person 32 compensation for the direct immaterial damage that occurred following an accident. However, the agreement contained the injured person's statement that in future he would not bring any other claim for damages from the said event, including damage ensuing from a future deterioration of health resulting from the injury.

Later, the injured person suffered a deterioration in health and once again 33 claimed damages from the insurer, who refused to pay, invoking the agreement.

b) Judgment of the Court

The court found that the accrual of a right to compensation for damage from 34 excess is conditioned by the occurrence of the deterioration in health. The waiver of a right to compensation for immaterial damage for such deterioration would be valid only if made after its occurrence and the damage resulting therefrom in the legal sphere of the injured person. The preliminary waiver of compensation, made before the damage occurred, is invalid and has no effect with regard to the future right to compensation.

Due to these arguments, the court upheld the claim brought by the injured 35 person.

c) Commentary

This is an extension of the common view according to which, as a rule, the waiver 36 of a future right is invalid. The generality of this principle might be challenged. However, this specific decision should be welcomed.

7 SCC, Decision No 257/14-07-2011 on Civil Case No 1149/2009, CC, IV CD: Immaterial Damages for Unfounded Judicial Procedure and Imposition of Unfounded Security

a) Brief Summary of the Facts

- 37 Disputes arose between two partners in a commercial company. One partner's membership rights in the company was amongst the matters in dispute.
- 38 Upon the request of one of the partners, security for a future claim was allowed and security measures were imposed, namely taking an inventory of the company's goods and sealing-off the commercial outlets.
- 39 Later, the ruling allowing the security was overruled. The reason given for the overruling was that the imposed security did not ensure the exercise of the company's membership rights that were claimed, and that the imposed security measures restricted the defendant in an unfounded way. In practice, the commercial activity was negatively affected, this being the central activity of the company.
- 40 The claimant (the other partner, who is also the company's manager) alleged that the imposed security brought about immaterial damage – pain and suffering resulting from the fact that his business reputation suffered, and rumours spread around the town that the company he represented was about to go bankrupt. The claimant proved that he had become socially isolated, he experienced anxiety as regards both his financial survival and his duties to the families of the company's employees, and his health deteriorated.

b) Judgment of the Court

- 41 The first instance court and the court of appeal disallowed the claim for compensation, pointing out that no wrongfulness was present in the actions of the defendant-partner. The court found that the latter had made use of his right to file an application requesting security for a future claim and, subsequently, to file a statement of claim regarding the rights alleged by him. The fact that the proceedings on the said claim were suspended did not make his actions unlawful.
- 42 Furthermore, the court did not find any causal link between the imposed security and the claimant's harm. The court considered that the stress and the emotional suffering resulted from the conduct of the respective competent bodies – the court dealing with the security and the private enforcer – and not from the security imposed.

Regardless of the specific conclusions, in its reasoning the court assumed that, in principle, in such a situation it is possible to claim damages, including immaterial damages. However, for this purpose it should be proved that there was an abuse of right which led to the seeking of compensation or the bringing of a claim. Moreover, the court specified that bad faith (ie the abuse) is not presumed and the person who alleges it has to prove its existence. In this specific case there was no evidence of abuse. 43

Due to the foregoing considerations, the claim was disallowed. 44

c) Commentary

The decision should be supported as in *reductio ad absurdum* it would turn out that any lost case would burden the claimant with unforeseeable expenses in immaterial damages. 45

It is impossible to share the court's view that the claimant's negative experience results from the officials' actions relating to the imposition of the security and not from the request for the imposition of the security. Such conduct by the officials was a necessary consequence of the request for security, and the said request was not only a necessary but also a sufficient condition for their actions. 46

Support should be given to the view that it is not necessary to prove the 'abuse' of rights, that is the intention of the person committing the abuse. According to art 45, para 2 of the Law on Obligations and Contracts, it is only the fault that is presumed and not the intention. And as for 'abuse', it is the intention that has to be present and proved. 47

8 SCC, Decision No 758/11-02-2011 on Civil Case No 1243/2009, CC, IV CD: Immaterial Damages for Unfounded Judicial Procedures

a) Brief Summary of the Facts

Several persons filed an application with the Prosecuting Magistracy to have a person (the claimant in the case) placed under compulsory treatment. The application stated that the person abused alcohol; his mental state worsened; while apparently drunk, he threatened the defendants with violence; he spread slanderous statements and lies and had been aggressive towards minors. 48

- 49 The alleged circumstances were not proved to be true by the Prosecuting Magistracy. The court established only that the person had hit two children with a folder.

b) Judgment of the Court

- 50 The first instance court found that the other circumstances described in the application to the Prosecuting Magistracy – those which were not proved before the court – were offensive and slanderous, and due to this, the defendants were liable for damages. The court of appeal was of the same opinion and upheld the claim.
- 51 However, the Supreme Court of Cassation pointed out that an ‘offence’ is committed when an individual says or does anything that humiliates the honour or dignity of another person in his presence, while ‘slander’ is committed when an individual circulates an untrue fact about another person. Accordingly the court concluded that the filing of a complaint is not an offence (the offended person was not present) and if the complaint is filed with the competent body, no circulation of the untrue facts contained therein is committed; they would only be circulated if a copy of the complaint had been filed with another body. The court confirmed that a citizen’s right to address the competent bodies and to set out any facts they know cannot be restricted.
- 52 The court also argued that the complainant remains *bona fide* even when the facts he states are not proved. The abuse of a right to complain will be present (this giving grounds to liability) only when the complaint is not made for the purpose of having the facts verified and taking the measures needed, and the complainant is aware that the facts are untruthful and files the complaint in order to harm somebody.

9 SCC, Decision No 184/21-09-2011 on Civil Case No 1124/2010, CC, III CD: Liability of Private Enforcers for Unlawful Actions

a) Brief Summary of the Facts

- 53 Enforcement proceedings were commenced against a debtor whose property was sold. The enforcer distributed the funds received from the sale among the creditors. However, the distribution was appealed against and the court overruled it. New distribution proceedings were ordered and carried out and the amount gained from the sale was distributed among the creditors. However, a period of

several months elapsed from the time the first distribution procedure (the repealed one) took place until the new distribution procedure was carried out, and delay interest accrued on the debts of the debtor (approx € 16,000 in total).

The debtor claimed that the enforcer should pay compensation for damage in the amount of the delay interest. The debtor alleged that the said interest resulted from illegal actions as well as omissions that brought about the accrual of interest on the debt. 54

b) Judgment of the Court

The SCC pointed out that – in its capacity as the court dealing with the tort claim – it would assess whether the proceedings were carried out in conformity with the law of the actions and omissions of the enforcer without being bound by whether or not these actions and omissions were appealed against and what the court’s decision on the appeal was. Further, the court stated that the action of the enforcer (distribution of the collected amounts), in spite of being irregular from a substantive law point of view, was correct from a procedural law point of view. The court concluded that where the cancelled action (distribution) has to be carried out anew by the enforcer, the latter is not liable for wrongful omissions in the period from the time the cancelled distribution was decreed until the time of the new distribution – which took effect – was decreed, provided that the second distribution was decreed in due time after the case was returned to the enforcer. 55

The court of appeal ruled that the delay interest on a pecuniary debt constitutes damage to the debtor. The said court found that there is a causal link between the delay in the enforcement proceedings and the damage, because if the distribution had been lawful, no interest would have accrued. 56

However, the SCC did not share the conclusions of the court of appeal. Moreover, the SCC submitted a number of strange findings, such as ‘delay interest is compensation for delay, and not damage’; as a rule, the reason why the debtor must pay such interest ‘is not directly connected with the deeds and actions of the enforcer’; when decreeing a distribution which is irregular from a substantive law point of view, the enforcer does not commit a wrongful action or omission that causes an increase in the debt of the debtor because of interest and costs. Finally, the court concluded with a sentence that is difficult to understand: ‘There is only factor-type conditioning and not causality-type conditioning in the case of cancellation of actions by an enforcer that the court has decreed must be performed anew, as a result of which – in the presence of additional circumstances – the increase in the pecuniary debt of the debtor would cease either in 57

whole or in part, either definitively or only for a certain period of the whole process of enforced collection of the receivables.’

c) Commentary

- 58 This seems to be the most confusing decision of all those under analysis. Along with the numerous logical mistakes and unclear wording, the SCC arrived at some obviously incorrect conclusions in its judgment.
- 59 The legal and political point of the decision is clear. The SCC was probably led by fear that a decision to the contrary might unlock a flood of claims against enforcers.
- 60 However, in the said judgment, the court supported a thesis – which is impossible to qualify – that the performance of actions contravening substantive law is lawful provided that procedural regularity is observed.

10 SCC, Decision No 223/12-07-2011 on Civil Case No 900/2010, CC, III CD: Problem Situations in Joint Liability

a) Brief Summary of the Facts

- 61 A tort was committed by several persons. However, a claim for compensation was brought and upheld only with respect to one of them. Later, the injured person brought a claim against the other liable persons (in this case, the parents).

b) Judgment of the Court

- 62 The court ruled that the injured person might establish – in other proceedings – that somebody else is jointly liable with the tortfeasor who has already been ordered to pay compensation. The court pointed out that in such cases the court’s decision should indicate that the person at fault owes the amount – as determined in the first proceedings – jointly with the other tortfeasors.

c) Commentary

- 63 Where a claim is brought only against one of the joint tortfeasors and later, in other proceedings, another tortfeasor is ordered to pay compensation, this might

lead to the injured person being compensated twice. Such would be the situation where the two decisions fail to specify that the tortfeasor is liable jointly with another tortfeasor (who is not involved in the proceedings).

Because of this, if the court becomes aware *ex officio* that the defendant is in fact liable jointly with another person, the court's decision should indicate this circumstance. However, such an indication of joint liability can only be given in the second proceedings when the court's decision in the first case has already been rendered. 64

However, it is not always possible for the court to know *ex officio* the identity of the joint tortfeasors. The court might not even suspect the existence of such tortfeasors and even if there are indications that there are several potentially jointly liable tortfeasors, the court neither has the right to check this *ex officio*, nor can it oblige new defendants to join the proceedings. 65

If the first case is still pending, it is not possible for the court which hears the second case to state in its decision that, in addition to the defendant, there is another tortfeasor. This would lead to the inadmissible sentencing of a person (the defendant in the first claim) who has not participated in the proceedings at all. 66

However, if the first proceedings are already over, the indication of joint liability in the second decision would in no way harm any of the defendants in the two cases. On the contrary – the indication of joint liability in the second decision will favour the defendant in the second proceedings (he will be able to raise objections concerning the extinction of the debt from the first proceedings). We are of the opinion that in this case, on the grounds of the data contained in the disposition of the decision in the first proceedings, the court in the second proceedings may *ex officio* declare the existence of joint liability. 67

On the other hand, the indication of joint liability will not expand the rights of the claimant in the two proceedings. If joint liability is not established, the claimant can claim damages from any defendant, even if this entails double compensation. If the joint liability is indicated in the second decision, the second defendant will possibly be able to raise objections on the grounds thereof (for instance, that the first defendant has already paid damages). 68

However, the following questions remain: 69

1. What happens if proceedings have commenced against the defendant under the first claim but the decision does not state that there are other potentially liable tortfeasors?
2. What happens if proceedings are brought against the second defendant but the decision on his case fails to indicate that he is liable jointly with the defendant in the first case (so that he is unable to raise objections on the grounds of the joint liability established by the first court)?

- 70 In such cases as described above, joint liability can be established even after the proceedings have started. However, that is possible only through a negative ascertainment claim. The subject matter of such a claim can only be the fact that compensation has already been paid by the other jointly liable tortfeasor. However, the said claim can be joined with an ascertainment claim which will establish the joint liability of the tortfeasors.

11 SCC, Decision No 355/07-10-2011 on Civil Case No 478/2010, CC, IV CD: Liability for Damages from a Jointly Owned Item of Property

a) Brief Summary of the Facts

- 71 Damage occurred as the result of a leak in a building's roof. The building (and the roof) is jointly owned by a number of persons. The person who suffered the damage is one of several joint owners (he is the owner of the flat directly below the roof).

b) Judgment of the Court

- 72 The court pointed out that it is not necessary that the person suffering the damage be a third person with respect to the owner of the property; he can also be a co-owner. Because of this, the court ruled that a co-owner also has a right to compensation for damage to his property which is jointly owned property (the common roof of the whole building).

c) Commentary

- 73 The decision examines the question of whether compensation should be reduced by the portion the person suffering the damage has in the property which was damaged. This conclusion should be drawn on the basis of the fusion of the creditor (a person suffering the damage) and the debtor (a joint owner of the item of property from which the damage occurs). However, the court arrived at this conclusion without providing supporting arguments.

12 SCC, Decision No 166/30-05-2011 on Civil Case No 455/2010, CC, IV CD: Compensation for Discrimination; Scope of Persons Entitled to Compensation

a) Brief Summary of the Facts

A pupil in a private secondary school experienced discrimination. The school refused to extend her education contract for the following year because of a critical statement made by her mother as regards the conditions in the school. 74

b) Judgment of the Court

The court decided that it has been established that, due to the said refusal, the schoolgirl suffered stress and this should be compensated with € 1,000. However, the court denied the right of the schoolgirl's parents to compensation for the stress they experienced (€ 100 per parent). 75

c) Commentary

The compensation is wrongly limited only to the person suffering the discrimination. It is probably the parents who were under greater stress as they had to find a new school for their daughter. In this case the court probably drew an analogy with bodily injuries, which are compensated only in favour of the person suffering the damage and not in favour of relatives. 76

13 SCC, Decision No 125/30.06.2011, III CD: Grounds for the Liability of the Employer

a) Brief Summary of the Facts

The claimant is a welder. On 13 August 2008, while at work, he fell into the working channel in the car repair workshop, injuring his spinal column. 77

It was found beyond doubt that the accident was an employment accident insofar as the health damage was caused during and in relation to the performed work. The worker was declared unable to work to 60 % of which 50 % was deemed the result of the accident. However, the lower instance court failed to hold the employer liable, as the accident did not lead to permanent disability 78

exceeding 50 % and, therefore, compensation according to art 200 (1) of the Labour Code (LC) was not due.

b) Judgment of the Court

- 79 With the grant of leave to appeal, the cassation court recognised the existence of contradictory case law in the interpretation and application of art 200 (1) LC on the matter of whether the liability of the employer should be engaged when occupational disease or a work accident has resulted in a decrease of the employee's working capacity of up to 50 % or just 50 % in relation with its amendment in 2004.¹
- 80 The Supreme Court considered that the provision of art 200 LC did not reveal substantial differences in its wording until 1 August 2004 and after that date. The worker or the employer has a right to compensation for damage which is the result of occupational disease or a work accident that has caused temporary or permanent disability, independently of its percentage, and when the permanently inability to work has decreased to below 50 %.
- 81 Based on this interpretation of the law, the Supreme Court overturned the decision of the lower instance court and awarded BGN 4,000 (approx € 2,000) as compensation for the immaterial damage suffered by the worker.

c) Commentary

- 82 The discussed decision is related to one of the main problems that the SCC had to deal with in 2011 – regarding the grounds of the employer's liability for damage which has led to a decreased ability to work below 50 %. The same issue was subject to discussion by the Court in Decision No 34/04.02.2011, III CD and Decision No 64/18.02.2011, III CD, in which the Supreme Court reached the same conclusion as in the case discussed.
- 83 The decision of the SCC should be supported as it strives to create coherent and consistent case law. It should be evaluated positively in terms of social impact, as it provides enhanced protection of the interests of the worker vis-à-vis the employer.

¹ Durjaven vestnik, issue 52/2004.

14 SCC, Decision No 111/27.05.2011, IV CD: Correlation between the Liability of the Employer and the Liability of the Assigner of Work

a) Brief Summary of the Facts

The claimants are the heirs (spouse and sons) of a worker who died following a work accident. Veliko Tarnovo District Court rejected the claim for compensation brought by the heirs against the deceased relative's employer arguing that the claimants are not in an employment relationship with the defendant. For this reason it is stated in the decision that the dispute between the parties is not a labour dispute and that the claimants can seek compensation under civil law – art 49 of OCA (liability at assignment of work). 84

b) Judgment of the Court

The Supreme Court overturned the decision of the District court as incorrect. The main argument given was that, to the extent that art 200 LC provides for compensation for loss of life due to a work accident, such compensation cannot be awarded to the victim but only to his or her heirs. 85

The Supreme Court stated that the claim for compensation of damage which occurs as the result of a work accident, independently of whether the claim is brought by the worker or his or her heirs in the case of loss of life, is legally based on art 200 LC, which provides that an employer is strictly liable for damage which occurs during the performance of tasks arising from the employment relationship. In this sense it also referred to its previous practice – Interpretative Decision No 45/19.04.1990 by GMCD² of SCC. 86

c) Commentary

The decision of the SCC must be supported as far as it clearly differentiates between the liability of the employer for damage suffered by the worker as the result of a work accident and the liability of the assigner of the work for damage caused by the assignee. It should be noted again that the SCC continues its established practice and strives to reach consistent decisions. 87

² General Meeting of Civil Division.

15 SCC, Decision No 725/11-01-2011, IV CD: Insurance Payment for Work Accident

a) Brief Summary of the Facts

- 88 The claimant is a company-employer which was dissatisfied with the fact that, although compensation in the form of an insurance payment was made to the heirs of an injured worker, their claims towards the employer were also honoured in full.

b) Judgment of the Court

- 89 The Supreme Court accepts that compensation in the form of an insurance payment should be considered by the court which has to determine whether compensation should be awarded to the heirs of the worker who had a work accident.
- 90 It is also indicates that payment from an insurer as an obligation under an insurance contract can be proved with both a primary accounting document and with a private document, issued by the insurer. The content of the documents must be sufficient to establish the existence of an insurance contract, the payment made according to the contract to the rightful person(s) and the amount of that payment.

c) Commentary

- 91 The SCC decision is in full compliance with the provision of the law according to which the compensation due is decreased by the amount received in accordance with the insurance contracts concluded between employers and employees (art 200 (4) of LC). This is important for the clarification of evidence which establishes a payment by the insurer.

16 Supreme Administrative Court (SAC) Decision No 348/11-01-2011, III D: Liability of the State for Failure to Provide Medical Treatment

a) Brief Summary of the Facts

- 92 A claim was brought against the Ministry of Health based on art 1 of the Law on the Liability of the State and the Municipalities for Damages, in which compen-

sation was claimed for the immaterial damage which occurred as a result of an illegal omission of the Minister of Health to provide timely treatment with iodine 131 for the claimant, Angelina Angelova. The claimant contended that this omission and a failure to offer alternative treatment to prevent the spread of cancer cells put her life and health at risk as it could lead to a recurrence of the cancer. She claimed compensation in the amount of € 100,000.

The Ministry of Health stated that no causal relationship exists between the damage claimed by the claimant and the omission of the administrative body. The Supreme Administrative Court awarded € 50,000. Both parties appealed the decision. 93

b) Judgment of the Court

The Supreme Court rejected both appeals and upheld the decision of the Sofia Administrative Court. In that decision, it was established beyond doubt that 1) the Minister of Health has an obligation to ensure funds for the treatment of the disease suffered by the individual in this case; 2) the funds made available were not sufficient for the treatment of all patients and 3) because of this, the patient was forced to purchase the medicine herself. As a result of this, the SCC considered that there were sufficient grounds in this case to justify an award of compensation. 94

On other hand, the Supreme Administrative Court found that the amount of the compensation was correctly and equitably determined and, as currently there is no established court practice concerning the appropriate amount of compensation in the case of such a tort, the decision should not be corrected. 95

c) Commentary

The decision of the Supreme Administrative Court is one of its first in a case in which the state has not ensured treatment of its citizens – an increasingly common problem in practice in recent years. The decision should be supported. The ruling in this case gives an indication that future cases of a similar nature will be settled in the same way. This decision is of special significance for case law due to the explicit indication that a claim brought against the state can be based on the non-performance of an obligation assigned by a regulation deed. 96

17 SAC, Decision No 929/19-01-2011, III D: Liability of the State for Failure to Provide Medical Treatment

a) Brief Summary of the Facts

- 97 The plaintiffs were the parents of a child who died due to a lack of life-saving medicine. They brought a claim against the Minister of Health and Directorate ‘National Health Policy’ at the Ministry of Health because they believed that these bodies were responsible for not ensuring that the medicine was included in the list of medicines for the treatment of rare diseases.
- 98 Each plaintiff claimed € 25,000 and the Sofia Administrative Court awarded this amount. The decision was appealed by the defendants.

b) Judgment of the Court

- 99 After analysing the facts of the case, the Supreme Administrative Court reached the conclusion that the failure to provide the medicine was due to the lack of any legal obligation for such medicine to be made available in hospitals in Bulgaria. The court also held that, according to the practice already reviewed, in the case of an omission by the state, one can speak only of the non-performance of a legally regulated obligation. However, in this case, there was a lack of legislation. The creation of legislation, however, does not constitute ‘factual action’ under the law but ‘legal action’ undertaken pursuant to constitutional and legal obligations, and the legislature does not regulate liability for damage caused by such omission. In view of this, the SAC annulled the decision of the court of first instance.
- 100 This was a majority decision and the dissenting judges supported the decision of the court of first instance. It was pointed out that the majority had incorrectly determined the nature of the omission, that is the case did not deal with the issue of lack of regulation but rather with the issue of non-performance of particular legal obligations by the Minister of Health. On the facts, the omission was related to a lack of research as to how common this particular form of cancer is among the population, with what and how it should be treated and why there is no treatment with the only possible life-saving medicine – it is known that it cannot be delivered in timely manner under the cited regulations, bearing in mind the speed with which the treatment should be given.

c) Commentary

The decision of the majority of judges cannot be supported. It is an expression of the formal application of the law and gives an indication of the limited possibility to establish liability of state bodies in such a sensitive area as public health. Even if it is claimed that the decision is ‘economically’ justified insofar as it makes sense to argue that the state cannot be held responsible for the lack of regulation in every possible sphere, it is incorrect due to insufficient legal justification for the conclusion that it involved an omission. 101

Viewed in comparison with the previous decision, it is apparent that court practice is not clear when cases concern a failure to comply with statutory requirements by a state authority. 102

18 Personal Injury and Death

a) Immaterial Damage in the Event of Bodily Injury

The decisions summarised below show a considerable increase (of up to several times) in the amount of compensation awarded for immaterial damage in comparison with the amounts awarded in recent years. Minor bodily injuries are now measured predominantly in five-digit amounts. This puts an end to the courts’ long-standing practice – which is difficult to explain – of awarding compensation for immaterial damage that is extremely low. The same trend is also evident in respect of the death of a relative (see no 112 f below). 103

Court of Appeal – Sofia, Decision No 1021/27-06-2011 on Civil Case No 482/2011, CC, II Panel. A thigh bone was broken. The treatment took 10 months. The amount of compensation determined by the court was € 23,000. 104

Court of Appeal – Sofia, Decision No 1053/30-06-2011 on Civil Case No 1365/2011, VII Panel. A number of bodily injuries of medium gravity were caused (contused wounds of the arm, fracture of two fingers causing impaired mobility for 3 to 4 months following the day of the accident, crushing of the left foot, fracture and dislocation of two toes on the same foot resulting in impaired mobility in the leg for 6 to 7 months following the day of the accident). The SCC affirmed the decision of the court of appeal, awarding compensation for immaterial damage in the amount of € 15,000 and rejecting the remainder of the claim, the total amount of which was € 24,000. 105

Court of Appeal – Sofia, Decision No 1143/06-07-2011 on Civil Case No 492/2011, CD, IV Panel. In a road accident, the claimant fractured his upper and lower jaws and his right hip-bone, and suffered *contusio cerebri* and trauma- 106

tic encephalopathy with a psycho-organic syndrome. The claimant underwent surgery and was subsequently declared fully incapable of work for a period of two years. The injured person claimed compensation for immaterial damage in the amount of € 100,000. The court of appeal made a compensation award of € 25,000. The SCC increased the compensation amount to € 35,000.

- 107 **SCC, Decision No 170/06-04-2011 on Commercial Case No 143/2010, CC, I CD.** An injury led to a dysfunction of the pelvic cavities and the impossibility to deliver a child naturally. A number of other injuries were also suffered although they were qualified as minor bodily injuries. The claim was upheld in the amount of € 17,000 while the remainder of € 13,000 was disallowed.
- 108 **SCC, Decision No 111/01-07-2011 on Commercial Case No 676/2010, CC, II CD.** Grievous bodily injuries were caused, the treatment of which extended over a period of one year, being intensive in the first 6 months. As a result of the injuries, the individual was unable to look after himself. Immaterial damages of € 30,000 were awarded.
- 109 **SCC, Decision No 125/30-06-2011 on Civil Case No 1028/2010, CC, III CD.** A vertebra was fractured which led to the claimant experiencing pain and suffering for several months and a need for treatment for about a year. An amount of € 28,000 was awarded.
- 110 **SCC, Decision No 34/04-02-2011 on Civil Case No 668/2010, CC, III CD.** An occupational disease brought about numbness and oedema of the fingers of both hands, which made it impossible for the claimant to perform household work or to find employment. As a result the claimant suffered a nervous breakdown for one and a half years. The compensation awarded for this period was € 4,000.
- 111 **SCC, Decision No 93/23-06-2011 on Commercial Case No 566/2010, CC, II CD.** When crossing the road at a pedestrian crossing, a 16-year-old person was knocked down by a car and suffered an injury to his arm, which required treatment for six months. A cosmetic defect was caused – a so-called ‘raptor hand’ – and the claimant’s ability to grip was restricted. In determining the fair amount of compensation, the SCC took into consideration a number of factors, such as: 1) the injured person was prevented from participating in social activities and events that are typical for those of his age, 2) he was ashamed of his cosmetic defect, 3) in view of his young age, the requirements characteristic thereof regarding physical perfection have undoubtedly caused him additional emotional suffering and 4) multitudinous additional traumatic injuries were caused. In this decision, the court also took into consideration the way in which the injury was inflicted, the need for two subsequent operations the success of which was unclear, as well as the psychological consequences resulting from the very young age of the injured person. Finally, the court concluded that the total amount of fair compensation for immaterial damage was € 33,000. An underlying idea that

is alien to the Bulgarian legal system can be detected in the judgment (though it was not decisive to its outcome) – the idea of punishing the morally reprehensible conduct of the tortfeasor by awarding a greater amount of compensation (punitive/exemplary damages).

b) Immaterial Damage in the Event of a Relative's Death

Two years ago, the SCC went beyond the 'psychological limit' of € 50,000 as compensation – per claimant – for the death of a relative. The compensation amounts awarded in similar circumstances have closely approached this limit already, as the following case demonstrates. 112

Court of Appeal – Sofia, Decision No 1022/27-06-2011 on Civil Case No 166/2011, CC, IV Panel. The father of two children died in a road accident. Each child claimed compensation for immaterial damage in the amount of € 50,000. The SCC affirmed the decision of the court of appeal awarding € 35,000 to each child. 113

c) Immaterial Damage following Crime (Fear and Anxiety)

SCC, Ruling No 1027/22-07-2011 on Civil Case No 60/2011, CC, IV CD. The court of appeal affirmed a decision in which the tortfeasor was sentenced to pay to the injured person a compensation award of € 2,500 in immaterial damages following the crime of coercion, through which € 10,000 was forcibly obtained from the injured person. The tortfeasor threatened the latter with murder and other wrongful actions which would have had grave consequences for the injured person and his relatives. He further threatened to cause harm to the injured person's business. It was established that the injured person experienced considerable mental suffering and he feared for both his own life and that of his relatives. What is more, at the time his wife was pregnant. The court of appeal affirmed the decision of the first instance, the latter determining compensation for immaterial damage in the amount of € 2,500. The SCC disallowed an appeal, thus affirming the decision of the court of appeal and the first instance court. 114

d) Immaterial Damage following Crime (Insult)

SCC, Decision No 57/14-02-2011 on Civil Case No 527/2010, CC, IV CD. A detained person addressed the policemen who had arrested him by calling him 115

‘copper’. The policeman took offence and filed a claim for compensation. The first instance court awarded compensation of € 500 and the court of second instance affirmed that amount. The SCC regarded the amount of compensation as inflated. For this reason, and due to the lack of proof of the policeman’s mental suffering, the court reduced the amount of compensation to € 50.

C. Literature

1 *P Gaydarov, Limits of Tort and Contractual Liability (Ciela Soft and Publishing, Sofia 2011) 252 pp*

- 116 The monograph discusses civil liability, its development, legal regulation and premises in its two forms – contractual and tortious. The author examines and analyses the scope of the ‘limits of tort liability’, which, according to Bulgarian law, includes all damage which is the direct or immediate consequence of an injury, material or immaterial. Of interest is the fourth chapter in which the author makes a comparison between the limits of the tortious and contractual liability.