

I. Bulgaria

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A. LEGISLATION

1. Insurance Code¹

- 1** Art 266 of the Insurance Code took effect on 11 June 2012. Until that time its operation had been postponed and replaced by the provisions of the Transitional and Final Provisions of the Code. It is through this legislative mechanism that in the period from 2006 until 2012 three stages of increasing thresholds were introduced in the minimum insurance amounts of civil liability insurance, which is compulsory for motorists.
- 2** The first and lowest thresholds were valid until 01.01.2010. From 01.01.2010 until 10.06.2012 there were higher interim thresholds, and the final and highest thresholds were reached under art 266 of the Code.
- 3** Thus, since 11.06.2012 the minimum thresholds of compulsory civil liability insurance in case of bodily injury or death are:

About² EUR 1,000,000 per each event in case of one injured person;

About EUR 5,000,000 per each event in case of two or more injured persons;

And in case of damages to property (chattels) – about EUR 1,000,000 per each event.

¹State Gazette No 103/2005 effective since 01.01.2006

²As the statutory rate of exchange EUR – BGN is 1 EUR = 1.95583 BGN, here and hereinafter an approximate exchange rate of 1:2 is used, which gives sufficient accuracy for practical purposes.

B. CASES

1. Supreme Court of Cassation (SCC), Decision No 1/27-03-2012 on civil case (c.c.) 1106/2010, IV Civil Division (CD): point in time to which the Court's assessment of immaterial damages refers, inflation, compensation through statutory interest

a) Brief Summary of the Facts

- 4 In a road accident in 1993 a person suffered permanent physical injuries on the head and the knee. The intensive treatment of the injuries took two years, the person underwent 4 operations and there is one more to be done. The second (appellate) instance awarded a compensation amount of EUR 7,000 plus the statutory interest as from the day of injury.

b) Judgment of the Court

- 5 The SCC assumes that the decision is incorrect as regards the point in time from which delay interest is due. The SCC assumes that such interest can be due from the time the compensation is awarded by the court, and not from the time the injury is inflicted. Besides, the length of the judicial proceedings is of no importance.
- 6 The argumentation of this thesis is that the compensation determined as at the time of the court's decision (and not as at the time of the injury) fairly reflects the inflation processes which take place within the period between the injury and the court's decision. The SCC points out that the court may determine the amount of compensation either 1) as at the time of the injury, or 2) at a later point in time, taking into account the newly occurred injuries, the deteriorated state of the injured person, etc. or, lastly, 3) as at the time of closure of the oral pleadings in the case. The argumentation of the SCC is that statutory interest will be due from the time of the injury only if the compensation is determined as at this point in time. And vice versa – if the compensation is determined as at a later point in time, it is this point that interest shall be due from.

c) Commentary

- 7 Although the decision seems fair, it is only halfway correct. Statutory interest does compensate (in part or in full) for the inflation processes. However, it also has the function of stimulating the debtor to give prompt performance, to compensate the creditor for the damages resulting from the delay (which may

greatly exceed the inflation devaluation of the money), to cover the risk of the creditor who has not been paid yet, to compensate for any creditor's borrowings aimed at covering the missing payment, etc. The SCC has failed to take into account all these functions of statutory interest.

- 8 Besides, in this case the SCC does not consider the fact that in tortious liability the debtor is deemed to be in delay even without an invitation, ie from the time of injury (*fur semper in mora esse videtur*) – art 84, para 3 of the Law on Obligations and Contracts.
- 9 Thus, it turns out that, deciding on the time as at which the compensation in a specific case will be determined, the court predetermines whether or not the injured person will receive the statutory interest in delay or not. This result is totally unbearable and, because of that, the decision of the SCC cannot be shared, unless drastic corrections are made thereto.
- 10 These corrections should be in the sense that where the compensation is determined as at a point in time following the time of injury, the amount of compensation should be determined (for technical purposes only) as at the time of injury as well. If such a request has been submitted, statutory interest should be awarded on the initial amount thus determined. Of course, the initially determined amount will form part of the final amount of compensation determined as at a later point in time, thus avoiding double adjudication.

2. SCC, Decision No 336/05-01-2012 on c.c. 280/2011, III CD: way of proving injury to health and sufferings

a) Brief Summary of the Facts

- 11 The claimant was unfoundedly accused of committing a crime (arbitrariness actions) by the defendant. The latter was convicted of calumny. The claimant alleged that, due to the calumny, his health deteriorated and he had to take medicines. These allegations of the claimant were proved by witness statements only, without medical documents being submitted.

b) Judgment of the Court

- 12 The appellate instance accepted the witness statements as sufficient, and credited them and awarded a compensation amount of EUR 1,000. The SCC assumes that in this case – alleged deterioration of the health status – the witness statements *per se* are not sufficient and the injury to the health has to be proved by a medical expert examination, however, no such has been sought or, respectively, assigned in the case.

- 13** Consequently, the SCC assumes that only the immaterial damages from affecting the claimant's dignity have been proved and awards a compensation amount of EUR 200.

c) Commentary

- 14** The decision should be welcomed. The injury to health cannot actually be proved by witness statements only, except where it comes to single transitory states which are impossible to certify convincingly by way of a subsequent examination. The whole burden of proof lies with the claimant and, according to the principle of complete proof (and not only sufficient proof of the alleged fact) adopted in Bulgarian procedure law, those health injuries of a permanent nature which condition medication should be proved by medical documents.

**3. SCC, Decision No 66/19-03-2012 on c.c. 1139/2011, III CD:
proving lost profits**

a) Brief Summary of the Facts

- 15** The production activity of an industrial enterprise resulted in pollution of agricultural land. Until the time of the pollution, the land used to be cultivated (this was proved for a several years' period prior to the pollution). Actions were taken on the utilization of the land even in the year of pollution; however, they were suspended due to the pollution. Compensation is claimed as from the time of pollution for several years to come. The claimant sought an economic expert examination, which ascertained the yields from the agricultural land prior to the pollution and the market prices of these yields for the claimed period.

b) Judgment of the Court

- 16** In spite of the presence of the said proofs (the economic expert examination), the SCC assumes that there is not sufficient evidential data on the amount of the lost profits claimed. In this situation, the court applies the rule of art 162 of the Civil Procedure Code (entitled "Right to Discretion" – "Where the grounds of the claim have been ascertained, but there is not sufficient data on its amount, the court determines the amount at its own discretion or adopts the conclusion of an assessor."), upholding the claim in the amount of ½.

c) Commentary

- 17** The decision of the SCC should be supported. Actually, the claimant did not provide complete proof of the lost profits claimed. In order for the lost profit to be proved, the following facts should be evidenced:
- Sufficient probability of acquiring the profit (proved by the economic expert examination)
 - An intention of drawing the profit (proved by the preparation for land utilization in the year of pollution)
 - Proving the amount of the profit (proved by the economic expert examination)
 - Proving the claimant's expenses on the acquisition of the profit (unproved).
- 18** As the claimant has failed to prove his expenses normally required for drawing the benefit, the court is unable to measure the compensation by the gross revenues from the possible sale of the agricultural products. The said gross revenues should be reduced by the expenses required for obtaining them. These very revenues are unknown and unproved, and, owing thereto, the court has used its own discretion, namely that they amount to ½ of the probable revenues from the products.
- 19** Although, in view of the final result, we regard the decision as correct, we are criticising the absence (common in recent years) of a logical explanation of the way in which the court comes to its conclusions. The course of the court's thoughts can only be guessed and judged by indirect indications. The above prerequisites (No 17) of proving a lost profit are mentioned nowhere in the court decision. Apart from undermining the trust in justice, this vicious mode of argumentation can also serve for disguising arbitrary decisions or giving rise to a risk of corruption.

**4. SCC, Decision No 62/06-03-2012 on c.c. 1376/2011, IV CD:
immaterial damages from publications; unlawfulness of
evaluative assertions**

a) Brief Summary of the Facts

- 20** A series of newspaper articles commented on a natural person (NP) – a representative of a commercial company which trades in gas and fuels ("Company A"). The same natural person is also a representative of another company

(“Company B”), which is owned by a third company (“Company C”). The ownership of Company C is unclear. Company C also owns several dozens of other companies, 26 of which are regional gas distribution companies (“the Group of Company C”).

- 21** In society, the activity of the Group of Company C is identified with the personality of the NP.
- 22** One of the articles contains offensive words and phrases, such as “NP robs the people”.
- 23** Another article – which is reprinted from another periodical with an explicit notification of its being reprinted – is entitled “Weep, NP, sponging is over”. It uses the words “sponger”, “yokel” and “Bulgarophobe”.
- 24** Several other articles contain phrases going beyond bon ton and expressing an extremely negative attitude to the NP, however, these phrases do not constitute an offence in themselves. The phrases are “The scandalous businessman is all agog to get BGN 160m State money”, “The millionaire from Y.” and “His offices were ransacked because of jobbery in the town of U.”
- 25** Another group of articles are entitled “NP should be sued for the suspended deliveries”, “NP befools the Cabinet”, “The businessman protects foreign interests, affirmed Minister D.”, “NP stings the State”, “The great player hides behind a woman’s skirt”, “It is time for the Public Prosecutor’s Office to consider the issue on its own initiative” and “How does NP gain profits in Bulgaria”.
- 26** The latest group of articles are entitled “NP is the backstage figure of the largest supplier for Bulgaria”, “The gas flows out of a letter box”, “NP has transferred the business to his son”, “Honest blue eyes” and “Municipality officials have granted to NP the pipe by the sea”.

b) Judgment of the Court

- 27** The SCC is seized with the legal issue whether the evaluative assertions are subject to verification and, if they are based on real facts, whether the expression of these assertions is unlawful.
- 28** Along with a number of other considerations, the court points out that:
 - Allegations and evaluations can be freely circulated on condition that there is no perverse exercise of the right to freedom of opinion (art 39, para 1 of the Constitution of the Republic of Bulgaria);

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- Perverse exercise of the right to freedom of opinion is present, in particular, where a person's good reputation is affected (art 39, para 2 of the Constitution);
 - No unlawful affect of good reputation is present where the person is commented on in connection with a public issue relating to his position, activity or occupation;
 - The negative evaluations of a person of a special public interest are not unlawful if they do not affect that person's dignity (ie if no offence is present);
 - The evaluative assertions are not subject to verification as they are a commentary and not a reproduction of facts;
 - The publication of untruthful and disgraceful facts engages the publisher's liability only where he has failed to conduct due diligence into verifying them in advance.
- 29** The court assumes that the above phrases concerning NP ("NP robs the people", „sponger“, „yokel“ and „Bulgarophobe“) together with a collage showing NP against a background of masked faces and bars give grounds for engaging the publisher's liability. This publication suggests that NP is a criminal and a robber.
- 30** The presence of discrepancy between the market value of the gas sold by the Group of Company C and what the consumers pay may give reasons for a commentary and may even justify the "robbery" appellation for the whole process, however, it cannot substantiate an offence caused to NP, who is obviously closely connected with the Company C.
- 31** As for the second (reprinted) article, entitled "Weep, NP, sponging is over", the court proceeds from the rule that "where facts are reproduced and later on they turn out to be untruthful, it is the first publisher who is liable, as it is him who should have checked the information in compliance with the rules of good journalistic practice, and the second publisher cannot be held liable for having relied on the first publisher's *bona fides*. However, if the reprinted article contains offences, the second publisher is liable as well."
- 32** As for the last group of articles (containing the phrases "The millionaire from Y.", "His offices were ransacked because of a jobbery in the town of U." and "There is an elaborated scheme of doing the competitors down "), the SCC assumes that, regardless of the use of extreme expressions, in this case no offence to NP is present. The court points out that, if defrauding the consumers, the scheme used by the Group of Company C can be qualified as "robbery". However, this qualification is not an offence to NP.

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- 33** As for the phrase “The scandalous businessman is all agog to get BGN 160m State money”, SCC assumes that it expresses a speculation, which can be made freely, and that no liability is engaged as regards this speculation (which is neither a fact nor an evaluation).
- 34** According to the SCC, the association of the NP’s name with four publicly known personalities who died through violence does not constitute imputing a crime or creating a suggestion that NP is connected with their murders, and the said association is only a manifestation of the public interest in NP’s social contacts.
- 35** And lastly, the SCC points out that NP is a public personality and, due to that, he is the subject of an intensive media interest, therefore he must necessarily put up with greater interference into his private life. Consequently, calling him “a scandalous businessman” and qualifying him as “a millionaire” does not constitute an offence or slander.
- 36** In the penultimate group of the said articles (No 25) NP is identified with the Group he manages – the Group of Company C – and the “sins” of the Group are imputed to him in person. In this case the SCC assumes that no offence to NP is present as “it is neither offensive, nor slanderous to identify a company with the person who manages it and is perceived as its *alter ego*”.
- 37** The articles entitles “NP is the backstage figure of the largest supplier for Bulgaria”, “The gas flows out of a letter box”, “NP has transferred the business to his son”, “Honest blue eyes” and “Municipality officials have granted to NP the pipe by the sea” (No 26) are regarded by the SCC as not containing offensive allegations or facts. The court assumes that these articles contain suggestions that there is something confusing in the business of NP, however, such a message can be given out freely once it rests on the fact of the unclear ownership of the Company C (No 20).
- 38** As a result of the foregoing circumstantial (though not always consistent) argumentation, the SCC reverses the rendered conviction of the newspaper’s publisher – who was convicted to pay to NP the amount of EUR 25,000 – and reduces the amount of compensation to EUR 5,000.

c) Commentary

- 39** In general, the decision can be welcomed, but only as a final result and not as perfectness of argumentation. As seen from the SCC’s considerations – often discordant ones – the court has strived not to restrict the freedom of speech and journalism (the latter has rather a negative reputation in Bulgaria).

- 40 In our opinion, the SCC has formulated a disputable postulate (we call it “a postulate” because no arguments are brought), according to which no unlawful affect of the good reputation is present where the person is commented on in connection with a public matter relating to his position, activity or occupation (No 28). Having such a general formulation, the postulate may serve as justification for any publication against anybody, as long as the latter holds (any) position or exercises (any) activity or occupation. It is clear that what the SCC means – without pointing it out explicitly – is a position, activity or occupation which is of social importance and attracts public attention.
- 41 There again (No 28) the SCC asserts that “The negative evaluations of a person of special public interest are not unlawful if they do not affect the dignity of the said person (ie if no offence is present)“. Such evaluations will not be unlawful as regards any person, not only one of public interest. And vice versa, even where offence is present, the negative evaluations of persons of public interest should be regarded as unlawful only where they are of excessive intensity, ie what the court asserts later, namely that public personalities should put up with greater interference on the part of society into their personal life (No 35).
- 42 The court’s opinion about the first and subsequent publishers’ liability seems extremely disputable. The SCC assumes (No 31) that the obligation to verify the facts is laid on the first publisher only, while the second publisher (reprinting an article or emitting somebody else’s broadcast) cannot be held liable for having relied on the first publisher’s *bona fides*. This view may open the door to the wide use of the figure of the formal initial publisher who has the only function of a “fuse” and whose purpose is to release from liability the subsequent publisher who “just” reprints an offensive and slanderous material.
- 43 The argumentation of the SCC has its internal contradictions and inconsistencies, which vex the attentive reader. On the one hand, the SCC assumes that the offensive qualifications of the activity of the companies belonging to the Group of Company C (“robbery“, No 32) do not constitute an offence to NP’s representative. On the other hand, and in connection with other articles (No 36), the SCC assumes that the identification of NP with the group of companies he manages “is neither offensive, nor slanderous” as “the person who manages it is perceived as its *alter ego*“.
- 44 The SCC’s view that “a speculation (which is neither a fact nor an evaluation)“ can be “made freely“ and no liability is incurred for this speculation is a strange one. In our opinion, the monstrous speculations as regards the hypothetical (!) intentions of a person can be much more offensive than the little sins which have been unlawfully imputed to him.
- 45 Obviously, the making of negative suggestions (by way of associating the name of NP with four murdered people) is regarded by the SCC as the so-

called ‘Kavaliersdelikt’ (trivial offence) - (No 34). Regrettably, this very practice of making negative suggestions (without specific allegation of facts that are dangerous for the publisher) is common and is used in Bulgaria for casting “multilayered” aspersions on certain persons through numerous publications. These publications have their “accumulative” effect, gradually creating a negative image of the person. They are especially dangerous because they are not subject to any specific refutation. As they constantly appear in a number of places (often within the same newspaper group), they cannot be counteracted “en block”, while refuting them separately, especially in a number of periodicals, is practically impossible. Following the same logic (No 37), the SCC assumes as acceptable the qualifications of NP’s business as “confusing”, because the ownership of the Company C is unclear. In this case – although there are sufficient earthly grounds – the SCC has neglected the rules of formal logic and has failed to take care of substantiating *lege artis* its view (the latter being probably right in other respects). In no way does the unclear ownership of a company give rise to anything “confusing” in its business. Moreover, the participation of offshore companies in the Bulgarian economy is not forbidden except for several stand-alone spheres.

- 46 In summary – in search of the golden mean between the freedom of speech and the upbringing of journalism – the SCC has followed mental paths which are strange and untraceable at times. In this case the purpose cannot justify the means.

5. SCC, Decision No 1/26-03-2012 on c.c. 299/2011, II Commercial Division (CD): limits on insurance compensation amounts as a criterion for determining immaterial damages in case of death

a) Brief Summary of the Facts

- 47 The 15 years’ old son of the claimant died as a result of a road accident. The claim for compensation is brought against the insurer. The amount claimed is EUR 50,000. The second-instance court awards a compensation amount of EUR 25,000 as an equitable cash equivalent of the immaterial damages inflicted to the father.

b) Judgment of the Court

- 48 The SCC assumes that the compensation amount awarded by the second instance is unfairly low and awards compensation which is twice greater and amounts to EUR 50,000. Besides, the SCC considers that the compensation criterion depends on the current economic situation in the country and the

public perception of compensation as equitable at each stage of the development of society. Along with it, the SCC regards the levels of insurance coverage under the motorists' civil liability compulsory insurance as an indicator of coverage increase. It is pointed out that, in the course of time, these limits have increased from EUR 12,500 up to EUR 350,000 in case of one injured person and up to EUR 500,000 in case of two or more injured persons, and since 1 January 2010 even higher amounts of insurance compensation have been determined (EUR 1,000,000 in case of one injured person and EUR 5,000,000 in case of two or more injured persons).

c) Commentary

- 49 The better part of this decision can be welcomed. In view of the current Bulgarian judicial practice of awarding offensively low compensation amounts in case of a relative's death, this decision marks progress. However, the rough criterion the SCC has adopted – the limits on insurance coverage – remains quite unclarified in the motives for the decision. It is not quite clear why a compensation amount of BGN 50,000 is awarded where the limit is EUR 350,000 (as at the time of rendering the decision). Probably, this is due to the prohibition on *plus petitum* and probably the claimant has brought a claim for EUR 50,000 and the court is unable to award anything in excess of this amount. However, it is possible that the court has regard to other liability limiting criteria as well, without mentioning anything about them.

6. SCC, Decision No 169/28-02-2012 on c.c. 762/2010, II Commercial Division (CD): material damages from non-receipt of child support from a perished legator

a) Brief Summary of the Facts

- 50 A road accident caused the death of the father of two underage children. Because of that, they do not receive from him the child support specified in the decree on the divorce between the children's father and mother. A claim is brought for the said child support. As for the road accident that caused the father's death, it is established that he was driving at a speed exceeding the limit, however, this speed is not the cause of his death, which would have occurred even if he had been driving at a speed within the limit.
- 51 The child support specified in the divorce decree is EUR 10 (!) per child a month. However, in the meantime the new Family Code has taken effect. It lays down that the minimum amount of this support is $\frac{1}{4}$ of the minimum salary in the country, ie the support is automatically increased to EUR 30 (!) per child a month.

- 52 Meanwhile, the children receive survivor's pension which does not cover the amount of the child support claimed.

b) Judgment of the Court

- 53 The SCC assumes that in this case there is no contributory tortfeasance – on the part of the deceased parent – in the road accident in which he perished. It is on this ground only that the defendant's objection as regards contributory tortfeasance in the injury (lost profit as a result of non-receipt of child support) should be overruled as groundless.
- 54 However, the SCC goes on to point out that underage children's right to support from a parent is unconditional. Due to this unconditionality, the court comes to the conclusion that, in order for a child to be compensated for unreceived child support in case of a parent's death, it is sufficient to prove that 1) the child is under age (ie he/she has the right to child support) and that 2) the support the child would have received if his/her parent had been alive is not covered by the survivor's pension received.
- 55 The SCC points out that, when determining the amount of the lost profit, the minimum limit is the minimum of the support due by a parent to a child (art 142 of the Family Code).

c) Commentary

- 56 This decision is deeply social in its essence. However, it comes into irresolvable collision with the extreme hypothesis on which the legator's death occurs entirely through his own fault (eg committing suicide by way of throwing oneself under a motor car). In this case there is no way to assume that the right to child support is unconditional. At least, it cannot be directed at the person who, through no fault of his, has caused the death of the legator.
- 57 The same consideration also holds true *mutatis mutandis* for the legator's contributory tortfeasance in his own death. Neither the compensation for material damages nor the compensation for immaterial damages can be regarded as absolute and independent of the injured person's conduct.

7. SCC, Interpretative decision No 4/2012 dated 29 January 2013 of the General Assembly of the Civil and Commercial colleges of the SCC: compensation for immaterial damages in contractual liability

a) Brief Summary of the Facts

- 58** In a number of cases, without having sufficient contractual grounds, the power distribution companies, claiming (often erroneous) amounts in the electricity bills, use perversely their monopolistic position and discontinue the electric supply to the consumers until they pay the amounts claimed by these companies. There are cases of discontinued electric supply lasting several weeks. Once the groundlessness of the claimed amounts is proved, the consumers claim both material and immaterial damages.

b) Judgment of the Court

- 59** The court assumes that the liability of the public supplier – the power enterprise – for the unlawful discontinuance of electric supply to the consumer is of a contractual nature. Apart from material damages, this contractual nature also covers the immaterial damages suffered by the consumer from the discontinuance of electric supply.

c) Commentary

- 60** This Interpretative decision does not directly relate to tort law. However, it makes the breakthrough into judicial practice which has been expected for almost six decades.
- 61** Thus far, judicial practice – on the basis of systematic literal interpretation of legal texts – has constantly assumed that, in tort, both material and immaterial damages are subject to compensation (because of the explicit text in art 52 of the Law on Obligations and Contracts). In contractual liability it used to be assumed that (in spite of the almost unanimous and long-lived counteraction to the doctrine) it is only the material damages that are subject to compensation (because art 82 of the said Law nonexplicitly mentions immaterial damages as being subject to compensation).
- 62** This Interpretative decision does at last eliminate one of those artificial and totally unfounded differences that exist between tortious and contractual liability.

8. SCC, Decision No 499/09.01.2012 on c.c. 1577/2010, IV CD: determining the scope of persons entitled to seek compensation for immaterial damages

d) Brief Summary of the Facts

- 63** The claimants are parents of an employee who died in a work-related accident. As an appellate instance, Sofia City Court assumes that, insofar as the employee has his legal heirs, namely a wife and a child – which, under the Succession Law, excludes succession on the part of his ascendants – it is again the wife and the child who are the only people entitled to receive compensation for immaterial damages, and not the parents of the injured person.

e) Judgment of the Court

- 64** The Supreme Court of Cassation regards the parents' appeal as well-founded. The decision specifies that the appellate court has incorrectly applied the succession rules laid down in the Succession Law as regards a claim which is not grounded on rights of succession, but rather on personally suffered immaterial damages from the death of a person injured in a work-related accident. An additional argument is presented – Sofia City Court should have complied with the constant interpretative practice of the SCC, which determines the scope of persons entitled to receive compensation on such a hypothesis: children and parents, a spouse, a partner in consensual union, as well as persons whose relationships with the injured person were like those between parents and children.
- 65** Next, the SCC examines the specifics of the relationships between the deceased employee and his parents (appellants in the case) and assumes that, inasmuch as they have lived within the same household and were in close relationships, the immaterial damages suffered by the parents should be compensated for by way of a compensation amount of about EUR 12,500 per each parent.

f) Commentary

- 66** The decision of the SCC should be shared as it draws a clear distinction between the persons who succeed the deceased and those who are entitled to seek immaterial damages caused by his death. This decision shows that sometimes, even though a case seems elementary at first sight, the lower court might render an improper decision, which needs control on the part of the cassation instance.

- 67 In addition, it should be taken into account that since the Civil Procedure Code had its amendments, which were commented on in previous reports, the Supreme Court of Cassation has been ever more clearly expressing its striving for the establishment of a consistent practice and compliance with its interpretative decisions.

**9. SCC, Decision No 355/10.01.2012 on c.c. 1230/2010, IV
CD: amount of compensation in a work-related accident or
an occupational disease**

g) Brief Summary of the Facts

- 68 The claimant had a work-related accident, which led to her disablement and, respectively, to her incapacity for work. The Ruse District Court assessed her compensation as a difference between the disablement pension she receives and the salary she would receive if she continued holding her position. According to the court, this difference should be calculated on the basis of the net amount which would be received after subtracting the obligatory insurance contributions and taxes from her labour remuneration, as this is the salary she would actually receive, and it is this net amount that should be compared with the pension. The claimant maintains that, in order for her compensation to be determined, it is the difference between her pension and her gross salary that should be established.

h) Judgment of the Court

- 69 The Supreme Court of Cassation finds that the appeal should be upheld. The court brings the argument that, according to the labour legislation requirements, the employer owes to the employee gross remuneration and it is the loss of this very remuneration that is subject to compensation. Of course, the said compensation should also take into account the disablement pension received by the claimant, as the court has rightly decided.

i) Commentary

- 70 The decision of the SCC should be shared. It is motivated both by social arguments allowing the provision of fuller compensation to the employee who had a work-related accident and by the analysis of labour legislation concerning the remuneration due by the employer.

10. SCC, Decision No 79/27.02.2012 on c.c. 673/2011, IV CD: an injured person's gross negligence as grounds for lower compensation for immaterial damages

j) Brief Summary of the Facts

- 71** The claimant is the mother of an employee who died in a work-related accident. The employee worked in an auto repair centre and was in charge of testing the quality of repair of the vehicles serviced. In the course of such a test drive, the employee lost control of the vehicle and caused a road accident in which he died. By virtue of a decision which has taken effect, the accident was recognized as a work-related one. The investigation of the accident showed that it occurred entirely through the fault of the employee, who was driving the vehicle at an inconsiderate speed.
- 72** Considering these data, the appellate court assumes that there are grounds for engaging the employer's strict liability for the claimant's immaterial damages from her son's death resulting from the work-related accident. The court regards as ungrounded the employer's objection according to which the injured person has contributed to the work-related accident through his gross negligence, inasmuch as it has not been established that an understanding had been formed in the injured person that a violation of the job organisation rules may lead to the injurious result. Dissatisfied with this decision, the employer files a cassation appeal.

k) Judgment of the Court

- 73** The Supreme Court of Cassation is of the opinion that the employer's appeal should be upheld. The appellate court rightly assumes that – due to his failure to comply with the requirements regarding labour safety – the employer is liable for what happened, the work-related nature of the accident being identified in accordance with the prescribed administrative procedure.
- 74** However, the appellate court's conclusion that the accident is caused only and solely through the employer's fault is wrong. The evidence in the case shows that the road accident that led to the death of the claimant's son occurred through his exclusive fault as he was driving the motor vehicle at an inconsiderate speed. In view of these data, it should be assumed that, apart from the absence of employer's sufficient control over the possibility of testing the repaired vehicles in real road conditions, there is also a causal relationship between the work-related accident and the damages suffered by the claimant (as mother of the deceased), on the one hand, and the employee's act of gross negligence, on the other hand. Because of that, the SCC considers that the amount of compensation due by the employer for the damages from the work-

related accident should be reduced by 60%, this being the percentage of the injured person's contribution into the injurious result.

l) Commentary

- 75** The decision of the SCC is well-founded. It deserves attention because of the complex nature of the damage suffered and the alignment with the labour safety requirements which have to be identified and controlled by the employer. The court's decision is predetermined by the fact that the accident is undoubtedly qualified as a work-related one, which implies its linkage to the conduct of the injured person – a manifestation of gross negligence.
- 76** Owing to the fact that the injured person has contributed to the injury, his behaviour should be taken into account when determining the compensation due, because – as the Supreme Court assumes – the more a person has contributed to the infliction of the damage, the more his contribution to the compensation for it should be.
- 77** Such an interpretation of the institute of “gross negligence” is a constant one in the practice of the Court and is confirmed in other decisions as well, eg SCC, Decision No 18/08.02.2012 on c.c. 434/2011, III CD and SCC, Decision No 79/27.02.2012. on c.c. 673/2011, IV CD.

11. SCC, Decision No 136/01.03.2012 on c.c. 414/2010, III CD: amount of immaterial damages suffered as a result of a work-related accident

m) Brief Summary of the Facts

- 78** The claimant had a work-related accident consisting in his falling from a great height. The accident led to severe traumas of the head, brain injuries, internal haemorrhage, etc. In consequence of the accident, the claimant was recognised as a person of 100% incapacity for work. It is established that he is unable to take care of himself and his capability to do physical or mental work is totally lost. In this factual situation, the Varna District Court upholds the claim for compensation for immaterial damages up to the amount of EUR 7,500 EUR out of a total of EUR 25,000 claimed.

n) Judgment of the Court

- 79** The Supreme Court of Cassation finds that the appeal should be upheld and adjudicates compensation at the full amount of the claim, ie EUR 25,000. The decision substantiates the concept that – inasmuch as the immaterial damages are compensated for through equity – “equity” is not an abstract term. It is

conditioned on a number of specific, objectively existing circumstances, such as the nature and degree of the injury, the way and the circumstances in which it was inflicted, the physical and psychological injuries ensuing from it, the duration and intensity thereof, the injured person's age, his social and public status, etc.

- 80 When rendering the decision, all these circumstances must be assessed by the court in their entirety, however, this has not been done by the lower court. In the case under consideration, in view of the claimant's severe traumatic injuries, the treatment given and the duration thereof, the pains and sufferings, the permanent negative consequences of the trauma – severe impairment of the memory and intellect, which hinders his self-attendance, his contacts within the family, his social contacts and his professional realisation – as well as the unfavourable prognosis and his young age, the SCC finds that it is fair to award compensation at the full amount of the claim.

o) Commentary

- 81 The decision of the SCC deserves attention and support. It is important insofar as it confirms that the general principles of tortious law apply – to their fullest extent, at that – to damages suffered in or in connection with the performance of labour duties. At the same time, the decision is also indicative in view of the general tendency – which has already been commented on – to increasing the amount of compensation awarded on such hypotheses.

**12. SAC, Decision No 1137/23.01.2012 on a.c. 12792/2010, III
Division: the State's liability for damages from overruled
penalty decrees**

p) Brief Summary of the Facts

- 82 The claim was brought by a commercial company against the Consumer Protection Commission and amounts to EUR 2,700 which is the claimant's costs in the proceedings of appeal against penalty decrees. They were repealed through a decision which has taken effect, and the costs are the attorney's fees for procedural representation in connection with the appeal against the decrees. However, the Sofia Administrative Court disallows the claim because an administrative penalty decree does not constitute an administrative act and, respectively, no State's liability can be established regardless of whether or not damages have been suffered from it. The claimant is dissatisfied with the decision and appeals against it to the Supreme Administrative Court.

q) Judgment of the Court

- 83** The Supreme Administrative Court finds that the appeal should not be upheld. The first argument brought is that the attorney's fee paid in the administrative penalty proceedings connected with challenging the lawfulness of penalty decrees constitutes neither a property damage nor a direct and immediate consequence of an injury suffered. The ground for it is the constant practice of the court, according to which no such costs should be awarded in proceedings of appeal against penalty decrees (eg Interpretative decision No 2/03.06.2009 on c.c. 7/2008).
- 84** Second, the Supreme Administrative Court conducts a thorough analysis of the administrative penalty proceedings and the acts issued in connection therewith, and comes to the conclusion that the administrative penalty body acts like a judicial authority, like a special administrative penalty jurisdiction. Therefore, the costs in administrative penalty proceedings do not have the nature of damages within the meaning of art 1 of the Law on the State's and Municipalities' Liability for Damages (damages from unlawful acts, actions or omissions on the part of State bodies and officials in or in connection with performing administrative activity). Respectively, the compensation for these damages cannot be sought in accordance with this procedure.
- 85** However, the Supreme Administrative Court rules that the said damages do not fall within the field of application of art 2 of the said Law, either (damages caused by the investigation bodies, the prosecuting magistracy or the court in connection with criminal law prosecution of persons), ie the court totally excludes the seeking of these damages in accordance with the procedure of the special Law on the State's liability for damages inflicted on citizens. Subsequently, the court identifies the only possibility for an injured person to establish liability for such damages in accordance with the general procedure – as damages ensuing from tort, ie on the grounds of the legal institute which regulates the consequences of doing harm to personal or material wealth in violation of the general legal prohibition on doing harm to others.

r) Commentary

- 86** The decision of the SAC cannot be shared. In spite of the detailed motivation, the arguments the court has presented are formal and practically constitute denial of justice. Moreover, the said decision is an expression of the constant practice of the III Division of the SAC, this practice – with much fewer arguments – being embodied in a considerable number of decisions, eg: Decision No 6115/02.05.2012 on a.c. 10780/2011, Decision No 13346/25.10.2012 on a.c. 2554/2012, Decision No 13983/07.11.2012 on a.c. 1784/2012, Decision No 15013/27.11.2012 on a.c. 2783/2012.

- 87** Actually, the procedure of issuing administrative penalty decrees differs from the classical procedure of issuing an administrative act. In addition, it should be taken into account that the former is regulated in a separate Law – the Law on Administrative Violations and Penalties and not in the Administrative Procedure Code. Except for these differences, it is beyond doubt that the actions of the State body in imposing an administrative penalty definitely fall within the scope of the special Law as “damages from unlawful acts, actions or omissions on the part of State bodies and officials in or in connection with performing administrative activity”. The very fact of using the general term “administrative activity” is an argument that the question is not only about the issue of administrative acts under the Administrative Procedure Code, but also about everything that can be defined as administrative activity, including the imposing of an administrative penalty.
- 88** Next, the practice adopted by the Supreme Administrative Court constitutes denial of justice because it is impossible to receive compensation for the inflicted damages on the basis of the general clause, which regulates tortious liability. At the least, it is not clear against whom such a claim should be brought – against the administrative body which has ascertained the violation or against the one who has imposed the administrative penalty or against the court which has not overruled the said penalty.
- 89** As long as there is no interpretative decision on the question posed, it remains open for various solutions, and any change in the practice will be reviewed in the reports to come.

2. Personal Injury

- 90** In 2012 a tendency that has existed for about a decade is observed again – the tendency to an increase in the amounts of compensation awarded for immaterial damages in tort against the person.
- 91** Thus, Decision No 24/22-02-2012 on c.c. 285/2011, IV CD confirms the compensation awarded by the second-instance court regarding harassment, threats, interference in family life, unsolicited telephone calls, yellow press articles, offences in a radio broadcast, distribution of disgraceful materials in the neighbours’ letter boxes and writing letters containing numerous offensive qualifications. The first instance upholds the compensation claim up to the amount of EUR 250 only, while the appellate court increases the amount of compensation up to EUR 5,200.
- 92** In its Decision No 33/04-04-2012 on c.c. 172/2011, II Commercial Division of the SCC finds the following factual situation: a road accident in which con-

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siderable pains and sufferings lasting about 30 days were caused, followed by moderate pains and sufferings for the next 5 months and slight ones in the subsequent period, accompanied by some face deformations in combination with incomplete restoration of neural functions. The injured person is a joint tortfeasor in the road accident, the share of her contributory tortfeasance being appraised at 1/3 by the first and 1/5 by the second instance. The total compensation amount of EUR 7,500 adjudicated by the first instance (reduced by 1/3 because of the contributory tortfeasance) is estimated as being low. The SCC determines the compensation amount at EUR 12,500 which is reduced by the share of contributory tortfeasance, thus adjudicating EUR 10,000.

- 93** In 2012 – just like before – there are a lot of cases under the Law on the State's and Municipalities' Liability for Damages. These are mainly cases against the Public Prosecutor's Office of the Republic of Bulgaria and they are grounded on unlawful detention or unjustifiably long pre-trial or trial which ends in acquittal. As these are cases of a similar type, we take the liberty of presenting them in a summary table.

Duration of proceedings / detention / another measure (in months)	Particularities	Adjudged compensation / initially claimed amount	Decision No / case on c.c. No / year
17 / 3 / 14	The charge concerns production of drugs	EUR 3,000 / EUR 12,500	No 391 – III CD – 13-01-2012 on c.c. 201/2011
144 / ¼ / 1	The charges concern three crimes (of arbitrariness and duress). Proceedings in regard to one of the charges were discontinued. The person was acquitted of the other two charges	EUR 7,500 / EUR 17,500	No 115 – IV CD – 05-04-2012 on c.c. 593/2011
108 / 1 / -	The charge concerns a service crime of a commercial compa-	EUR 15,000 / EUR 50,000	No 3 – III CD – 13-02-2012 on c.c. 637/2011

	ny's manager		
- / - / 1 ½	The charge concerns perjury	EUR 1,000 / EUR 5,000	No 59 – IV CD – 15-03-2012 on c.c. 499/2010
50 / - / -	The charge concerns an abuse of office and misappropriation	EUR 2,000 / EUR 5,000	No 335 – III CD – 10-01-2012 on c.c. 296/2011
65 / - / -	The charge is against managers of a bank and concerns abuse of office – receipt of unlawful benefit and infliction of damages on the bank	EUR 500 / EUR 6,500	No 9 – III CD – 07-02-2012 on c.c. 733/2011
160 / 12 / -	The charge concerns qualified robbery, larceny and bodily injury of medium gravity. The first charge is dropped as the statute of limitations expired during proceedings. The person is acquitted of the second charge due to insignificance, and the third charge is dropped for lack of proof. The doer is also accused of another crime for which he was sentenced to imprisonment.	EUR 250 / EUR 1,000	No 62 – III CD – 27-02-2012 on c.c. 1065/2011

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	The 12 months' period of detention pending the trial is subtracted from the term of this follow-up sentence. After the subtraction, it turns out that the unjustified detention is 6 days only.		
24 / - / -	The charge concerns death in a road accident caused by imprudence. The claimant is injured in the accident. It is on the grounds of this injury that he seeks immaterial damages (along with moral sufferings from proceedings). The claimant is acquitted at the first instance and the acquittal is confirmed by the next instance.	EUR 2,000 / EUR 30,000	No 70 – III CD – 27-04-2012 on c.c. 748/2011
53 / - / -	The charges are two – a service crime and a document crime. The person is acquitted of the first charge and is sentenced on the second charge (to 8 months' imprisonment with pro-	EUR 7,500 / EUR 2,500	No 395 – III CD – 18-01-2012 on c.c. 159/2011

	bation). As the two proceedings have taken place concurrently, the damages cannot be due to the groundless charge only.		
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C. LITERATURE

1. Rachev, Nikola, Assignment of a task under art 49 of the Law on Obligations and Contracts, Society & Law Journal, vol. 5/2012, p. 12

- 94** The article is based on a decision of the Supreme Court of Cassation of the year 2010 which assumes that the publisher of a print media is liable for the readers' letters published in it, just like an assignor, who is liable for the assigned task – a hypothesis regulated in art 49 of the Law on Obligations and Contracts.
- 95** The article analyses the term “assignment” and its forms of manifestation and makes a distinction between the cases in which it is present and those in which it is not present. The author's final conclusion is that, in order for an assignment to exist, there should be two counter statements of intention and no actual relationships between the parties.