

I. Bulgaria

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A. Legislation

Last year – in spite of the abundant parliamentary activity in the first half 1
of 2009 (the end of the XL National Assembly's legislature) – there were no
new acts directly related to the regulation of tort.

B. Cases

In the year 2009, Bulgarian court practice in the matters of tort did not 2
reflect any considerable changes or solutions concerning matters that are
either new or that have not been discussed so far.

The 2009 report is structured – on the basis of specific problems – in two 3
main parts: the practice in basic *corpora delicti* (concerning the application
of the Law on Obligations and Contracts¹) and the practice in special
corpora delicti (concerning the application of special laws regulating tor-
tious liability).

The main focus of this report is the practice of the Supreme Court of 4
Cassation (SCC) and the appellate courts, inasmuch as this practice has
been the subject of cassation appeal.² The decisions of the first instance
courts have not been considered because they are numerous, diverse and
difficult to access.

General Remarks on the Practice in Basic Corpora Delicti

The court decisions examined hereinafter are systematised as decisions 5
concerning:

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

2 When analysing the adjudicated pecuniary compensations, the fixed rate of exchange
should be taken into account: € 1 = BGN 1 95583, ie 1:2 gives sufficient accuracy.

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- The presence of tortious liability (Cases 1 and 2)
- The amount of compensation when death is caused (Cases 3 to 6)
- The amount of compensation when bodily injury is caused (Cases 7 and 8)
- The amount of compensation in the event of an illegal abortion (Case 9)
- The amount of compensation in cases of vicarious liability (Cases 10 and 11)

1. Supreme Court of Cassation (SCC), Decision No 242/16-04-2009, II Civil Division (CD): Tortious or Contractual Liability

a) Brief Summary of the Facts

- 6 The claimant in the case alleges that he made his car temporarily available at no cost to the defendant, who was to repair it, drive it and treat it with the same care as if he were its owner. However, the defendant did not return the car upon the claimant's request.
- 7 When hearing the case, the first instance court qualified it as a case of tort, such being the sense of the statement of claim filed by the claimant. However, after examining the nature of the legal relationships described in the statement of claim, the appellate court arrived at the conclusion that contractual liability and not tortious liability is involved.

b) Judgment of the Court

- 8 The SCC confirmed the decision of the appellate court, pointing out that whether or not the arrangement is gratuitous or nongratuitous may condition a different conclusion regarding only the type of the contract, and not the nature of liability.

c) Commentary

- 9 The court decision is correct as it is based on the general principle that the court has to judge on the matter in dispute as outlined by the claimant in his/her statement of claim which contains the circumstances constituting the grounds for the claim. Respectively, the court has to qualify the dispute in view of the lodged claim and not in view of the qualification the claimant has given in the statement of claim. In addition, one may share the view that the gratuitousness of the relationship does not neces-

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sarily indicate the presence of tortious liability – gratuitousness could just as well exist in certain types of contracts.

2. SCC, Decision No 198/26-03-2009, III CD: Presence of Tortious Liability

a) Brief Summary of the Facts

The claimant in the case, a businessman, alleges that he suffered immaterial damage resulting from a speech made by the defendant, a deputy in the National Assembly, in the course of the parliamentary control procedure, as the speech contained evaluations and qualifications affecting the dignity and honour of the claimant as a decent and reputable citizen. **10**

When hearing the case, the first instance court qualifies it as a case of tort and adjudicates compensation for immaterial damage in the amount of BGN 3,000. However, the appellate court overrules the adjudicated compensation and decrees that the lodged claim is groundless. **11**

b) Judgment of the Court

The SCC confirms the decision of the appellate court, pointing out that no tort is present inasmuch as no wrongful and culpable conduct on the part of the defendant has been established. **12**

According to the court, inasmuch as the actions fall within the scope of the parliamentary control procedure laid down in the Constitution and form a response to the concern of voters from the claimant's constituency for actions performed in their town, these actions may not be qualified as wrongful. Moreover, they fully conform with the right to express one's opinion as set out in Art 39 of the Constitution and are within the powers vested in any deputy. **13**

The SCC decrees that no subjective attitude to the claimant can be sought, inasmuch as the deputy's interpellation is addressed to the due subject, a Cabinet Minister, and the criticism concerns the activity of the latter. The name of the claimant is mentioned only as an example of the Minister's unlawful actions. **14**

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c) Commentary

- 15** The court decision should be supported as the presence of all the elements of tortious liability as formulated in Art 45 of the Law on Obligations and Contracts (LOC) were actually not established. However, this decision may not give rise to a general conclusion regarding the absence of civil liability of deputies for what they say in the National Assembly. On the contrary, they could be liable in tort if the presence of all the elements of tortious liability are proved.

3. SCC, Decision No 187/12-05-2009, II PD: Amount of Immaterial Damages; Ratio of Immaterial Damages in Case of Death to those in Case of Grievous Bodily Injury

a) Brief Summary of the Facts

- 16** A final decision was passed on the case of the figure-skater Maxim Staviyski, which was considered in the report in the 2008 Yearbook. A car accident caused the death of a 23-year-old man and the grievous bodily injury of his 19-year-old fiancée, who fell into a coma. The driver who caused the accident was travelling at a speed twice that of the speed limit and had consumed alcohol above the admissible quantity.

b) Judgment of the Court

- 17** At the second hearing of the case, the SCC renders the final decision adjudicating a compensation award of BGN 100,000 to each of the two parents of the deceased and a compensation award of BGN 90,000 for the grievous bodily injury.
- 18** It should be mentioned that this is the second time the SCC heard the case. At the first hearing the court overrules as insufficient the adjudicated compensation of BGN 90,000 to each of the deceased's parents and BGN 80,000 to the girl who suffered the grievous bodily injury. The subsequent decision of Burgas Appellate Court increases the amount of compensations to BGN 120,000 to each of the deceased's parents and BGN 150,000 to the injured girl.
- 19** The arguments brought forward by the SCC for decreasing the compensation amount are based on the view that the popularity of the wrongdoer and the public disappointment at the inconsistency between his media

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image and his real conduct should not be of particular importance when determining the punishment. In addition, it is pointed out that, inasmuch as compensation of immaterial damage based on equity is concerned, the equality of citizens in society is of utmost importance.

c) Commentary

The decision of the SCC is well-founded and overcomes two very serious precedents which were based on the previous decisions in the same case, which were presented in the report in the 2008 Yearbook. **20**

First, the court puts an end to the practice of the tortfeasor's personality being of particular importance when determining the amount of compensation for immaterial damage, which would bring about the ridiculous situation of adjudicating higher compensation awards for the damage caused by an affluent wrongdoer. **21**

Second, by decreasing the amount of compensation for the bodily injury, the SCC returns to the clearly established practice according to which the amount of compensation for death – as the most severe encroachment upon personality – should be higher than that for bodily injury. Moreover, the panel of judges explicitly states that if the comatose person needs more financial means for medical treatment, and, therefore, a higher compensation award is sought, it should be sought as compensation for material damage, and not for immaterial damage. **22**

4. SCC, Decision No 107/12-02-2009, III CD: Amount of Compensation for Immaterial Damage

a) Brief Summary of the Facts

In a car accident the defendant caused the death of the son of the two claimants – the mother and the father. The accident occurred as the result of the violation of the traffic rules and following the consumption of alcohol. **23**

Regarding the claims for immaterial damages resulting from the death, the appellate court confirms the first instance court's decision, which determined a compensation award of BGN 70,000 to each parent. **24**

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b) Judgment of the Court

- 25** The SCC confirms the decision, taking into account that the amount of compensation fulfils the criteria of equity and is in accordance with court practice. The motives of the SCC concern the subjective characteristics of the victim, namely his young age and the occurrence of death ten days prior to graduation, which caused the high degree of pain suffered by the parents.
- 26** As for the adjudicated compensation for immaterial damage, the court decision regarding the amount of compensation is in line with the final decision in the *Staviyski* case.
- 27** What is more, the two decisions highlight the increase in the adjudicated compensation awards for immaterial damage resulting from death, at least in the 2009 practice of the SCC. The compensation awards continue to vary (from BGN 50,000 up to BGN 100,000), but their amounts are higher.
- 28** Similar amounts of compensation for immaterial damage were either adjudicated or confirmed by the SCC in Decision 452/27-10-2009, I PD (a compensation award of BGN 60,000 to the heirs), Decision 123/17-06-2009, II PD (a compensation award of BGN 40,000 in a case of contributory infliction of damage), etc.

5. SCC, Decision No 107/12-02-2009, III CD: Differentiation of Compensation Awards for Immaterial Damage

a) Brief Summary of the Facts

- 29** The defendant in the case caused the death of the son of the two claimants – the mother and the father. The victim had a criminal background and in the period 1988–2004 he served three sentences of imprisonment.
- 30** Regarding the claims for immaterial damages resulting from the death, the appellate court adjudicates a compensation award of BGN 6,000 to each parent. The defendant appeals against the decision as there is no differentiation between the mother's and father's compensation amounts.

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b) Judgment of the Court

The SCC overrules the decision and decreases the father's compensation **31** from BGN 6,000 to BGN 4,000. The basic motive for the change in the compensation amount consists in the bad relationship between the father and his son, which was established in the case. According to the court, this relationship should be taken into account when determining the compensation for the loss suffered by the father.

c) Commentary

The court decision should be supported as it draws a clear distinction **32** between the relationship between the child and his mother, and the child and his father, respectively. When rendering its decision, the court is not misled by the general capacity of parent'. In this sense, the decision can be considered similar to the already mentioned Decision No 187/12-05-2009, II PD, inasmuch as in both decisions the nature of the immaterial damage suffered and the personal characteristics of the victim are the basic criteria for determining the amount of compensation. Such is also the sense of Decision No 147/08-06-2009, I PD, which awards different amounts of compensation for the immaterial damage suffered by the victim's wife and two children, who already have families of their own.

What is impressive is that both in the case under consideration and in the **33** said Decision No 147/08-06-2009, I PD, the amount of compensation for immaterial damage from death resulting from a crime is considerably lower than the amounts of compensation for damage from death caused in a car accident. The only possible explanation is that in the cases of death caused as the result of a crime, the victim put himself in a position of being injured when committing the crime – inasmuch as he had a criminal background or contributed to the occurrence of the situation which brought about his death.

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6. SCC, Decision No 153/27-04-2009, I CD: Reduction of Compensation for Immaterial Damage due to the Presence of Public Liability Insurance

a) Brief Summary of the Facts

- 34** In a car accident the defendant in the case caused the death of the testator of the two claimants. The first instance court adjudicated compensation awards of BGN 35,000 to one of them and BGN 25,000 to the other.
- 35** The appellate court decreases the amount of compensation for immaterial damage to BGN 10,000 and BGN 5,000, respectively, invoking the insurance indemnity paid to the heirs.

b) Judgment of the Court

- 36** The SCC confirms the decision of the appellate court submitting the argument that the public liability insurance contract obliges the insurer to discharge – within the limits of the insurance amount specified in the contract – the liability of the insured person for the immaterial damage he has inflicted on third persons. The compensation for immaterial damage is determined by the court on the grounds of equity, as the court is bound neither by the arrangement between the insurer and the insured person as regards the amount of the insurance indemnity nor by any arrangement between the injured person and the insurer. However, in the case under consideration, the amount paid by the insurer to the injured person decreases the amount of the damage suffered and, owing thereto, the court is right to take this into account when adjudicating the compensation for tort.

c) Commentary

- 37** The decision of the court is acceptable as it clearly recognises the nature of public liability insurance. It should be mentioned that the presence of the insurance does not limit the amount of the immaterial damage suffered, it only limits the amount of payment the tortfeasor has to make.

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7. SCC, Decision No 120/26-03-2009, II PD: Amount of Immaterial Damage

a) Brief Summary of the Facts

The defendant in the case caused grievous bodily injury to the claimant – a 38
26-year-old man – total blindness in his right eye.

The first instance court adjudicates compensation for immaterial damage 39
at the amount of BGN 25,000 which the appellate court increases to
BGN 40,000.

b) Judgment of the Court

The SCC confirms the decision, pointing out that the amount of the 40
compensation is equitable in view of the pain and suffering undergone
by a young man, whose whole future life will be affected by this bodily
injury. In addition, the court submits the argument that the adjudicated
amount complies with the well-established practice in similar cases.

c) Commentary

When considering this case, one should not fail to observe that in 2009 the 41
amount of compensation for grievous bodily injury also increased.

8. SCC, Decision No 131/24-03-2009, I PD: Amount of Immaterial Damage

a) Brief Summary of the Facts

The defendant in the case caused a car accident which resulted in the death 42
of a person and the grievous bodily injury of the claimant. The grievous
bodily injury consists in numerous injuries that resulted in a life-threaten-
ing health impairment.

b) Judgment of the Court

The SCC confirms the decision adjudicating compensation for immaterial 43
damage of BGN 50,000, this amount taking account of the fact that the

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wrongdoer left the scene of the accident without rendering aid to the injured claimant, which – in view of the injuries – might have led to the claimant's death. It is also pointed out that the injuries were so grievous that the claimant's life was saved by a miracle'.

c) Commentary

- 44** The comparison between the decision in this case and Decision No 120/26-03-2009, II PD shows a tendency to increase the amount of compensation awarded for immaterial damage resulting from bodily injury. However, it is still difficult to deduce whether this is the expression of a targeted policy of the SCC or a result of the understanding of these particular panels of judges.

9. SCC, Decision No 146/26-03-2009, III PD: Amount of Immaterial Damage

a) Brief Summary of the Facts

- 45** The defendant in the case is a medical professional who performed an illegal abortion – interruption of pregnancy in violation of the established medical rules, namely in the fifth month. The appellate court adjudicated a compensation amount of BGN 15,000 for the immaterial damage suffered by the mother. This amount is the subject matter of a cassation appeal.

b) Judgment of the Court

- 46** The SCC confirms the decision rendered, pointing out that the amount of compensation is equitable in view of the pain and suffering resulting from the serious impairment of the mother's health, on the one hand, and the negative emotions generated by the illegal abortion, on the other hand.

c) Commentary

- 47** What is essential in this decision is the understanding that the interruption of pregnancy in violation of the established medical rules in itself constitutes an infliction of damage on the mother regardless of the

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occurrence of injurious consequences for her health. It is difficult to comment on the amount of the compensation as the court practice in similar cases is insufficient.

10. SCC, Decision No 117/04-03-2009, III CD: Publisher's Liability

a) Brief Summary of the Facts

The claimant suffered immaterial damage resulting from a publication in a newspaper issued by the defendant. The publication contained false and slanderous statements about the claimant. The appellate court adjudicates compensation of BGN 3,000 for the immaterial damage suffered. **48**

The defendant raises an objection referring to the absence of standing to be sued, as he is neither the author of the article nor the assignor of the job related to the publication of the article, this resulting in the inadmissibility of the judicial act. He states that he is only a manager of the company which issues the newspaper. **49**

b) Judgment of the Court

The SCC confirms the decision, pointing out that the publisher of a printed work is liable under Art 49 of the LOC – as a person assigning to another the job of drawing up printed material – for the damage inflicted in the course of performing the job. In this sense, it is not necessary to identify the author of the article inasmuch as he would be directly liable under Art 45 of the LOC. **50**

c) Commentary

This decision is of major importance as the SCC confirms the liability of publisher, and, respectively, the owners of electronic media for the immaterial damage caused by their authors and, respectively, by the hosts of programmes/rubrics. **51**

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11. SCC, Decision No 1184/29-10-2009, II CD: Public Liability

a) Brief Summary of the Facts

- 52** The claimant suffered a bodily injury consisting in the fracture of her ankle. While getting off a public transport bus, she stepped into a pothole in the road. On the grounds of Art 49, she lodges a claim for compensation for the immaterial damage inflicted to her by the municipality which is obliged to provide continuous, safe and comfortable movement of people throughout the year. This view has been taken by the appellate court as well.
- 53** The defendant raises the objection that the bodily injury was not inflicted as a result of assigning a job, and no culpable conduct can be established.

b) Judgment of the Court

- 54** The SCC confirms the decision appealed against, finding grounds for the application of the hypothesis of Art 49 LOC, as the municipality has the legal obligation to maintain and repair the municipal roads. What is more, the persons operating the roads are obliged to immediately mark any obstacle on the road and to eliminate it as soon as possible.

c) Commentary

- 55** With this decision the SCC adheres again to the principle of identifying the assignor of the job from which the damage ensued, and not the direct performer of the job. It is an interesting fact that the assignor is a public-law subject – a municipality, and it is the assignor that owes the amount of the compensation, and not the direct performer, which is, most probably, a private law subject – a road construction company.

General Remarks on the Practice in Special Corpora Delicti

- 56** The court decisions under special laws (outside the scope of general regulation of the Law on Obligations and Contracts) considered herein-after are systematised as decisions concerning:
- The employer's liability to the employee (Cases 12 to 16)
 - The employee's liability to the employer (Case 17)

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From a systematic point of view, this group of decisions should also include the decisions relating to the employment relationship of civil servants (under the Civil Servant Law³). However, last year there was no practice of the SCC (SCC) in this field.

- The State's and municipalities' liability for damage caused by an administrative or judicial or investigation body, the prosecuting magistracy or the municipal administration. The majority of these decisions concerns claims for immaterial damages. (Cases 18 to 23)

It is probably due to the low activity, the insufficient information delivered to the ordinary consumer or the low material interest in the claims for damages resulting from defective goods that in 2009 the SCC had no occasion to rule upon cases regulated in the Consumer Protection Law⁴.

- Consideration is given to disputed matters that are subject to controversial court practice, as well as to matters of importance to the development of law. The selection criteria have not been the personal biases and views of the authors – the only criteria were the Rules of the SCC on the basis of which the latter admitted certain cases to cassation appeal or refused cassation regarding others.

Commentaries on these cases were made only inasmuch as necessary; therefore, in principle there are no commentaries on those decisions which are interesting mainly because of the amount of the compensation adjudicated in them.

12. SCC, Decision No 29/23-02-2009, III CD: Immaterial Damage; Amount of Compensation; Employer's Liability

a) Brief Summary of the Facts

The death of an employee occurred in a work-related accident at sea. His family lived through his death painfully because the corpse was only found after a long time – almost three months later – and his relatives found it very difficult to cope with his death. In view of the good and close relationships with the victim, the mental damage inflicted on the relatives was extremely great. 57

³ DV No 67/1999, last amended DV No 103/2009.

⁴ DV No 99/2005, last amended DV No 82/2009.

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b) Judgment of the Court

- 58** An amount of BGN 20,000 is adjudicated to each of the claimants, ie to the wife and the daughter of the victim.

13. SCC, Decision No 264/29-04-2009, II CD: Immaterial Damage; Amount of Compensation; Employer's Liability

a) Brief Summary of the Facts

- 59** A work-related accident caused grave cauterization of the face and neck of an employee and both his eyes were injured. The treatment lasted more than three months. Ugly cicatrices remained on the skin with no prospects of disappearing. The treatment of the eyes (three operations) lasted more than one year, and, in spite of this, the victim has impaired eyesight in one of his eyes and is blind in the other.

b) Judgment of the Court

- 60** The compensation for immaterial damage is BGN 25,000. Although different in nature, the separate health impairments are not grounds for separate claims and the compensation is determined in total for all the damage.

14. SCC, Decision No 141/29-04-2009, II CD: Immaterial Damage; Amount of Compensation; Employer's Exemption from Liability; Contributory Negligence; Capacity for Work 50 %

a) Brief Summary of the Facts

- 61** A work-related accident caused the traumatic amputation of the middle and ring fingers of the left hand at their middle phalanges and a deformation of the index finger, which permanently hinders any attempt at holding an object with this hand. A decrease of 30 % in the capacity for work is recognised.
- 62** Following the amendment to Art 200, para 1 of the Labour Code (LC)⁵ – if the text is read literally – the employer is strictly liable only if there is 1)

⁵ DV No 26/1986, last amended DV No 103/2009.

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temporarily reduced capacity for work; 2) complete incapacity for work, or 3) permanent incapacity for work exceeding 50 %. In this case the capacity for work is reduced by only 30 % and does not fall under the letter of the law.

Furthermore, what is special about this case is that the employee contributed to the infliction of damage by failing to observe the safety requirements and acted with gross negligence. 63

b) Judgment of the Court

A compensation of BGN 14,000 for immaterial damage is adjudicated. 64

The importance of the contributory negligence is found to be 50 %; therefore, the compensation which would otherwise be due is reduced by half and becomes BGN 7,000. 65

The employee's contribution to the damage due to gross negligence may not bring about the employer's exemption from liability. 66

The three grounds for the employer's strict liability under Art 200, para 1 LC are not listed exhaustively and, because of that, they are not limitative. 67
The inverse interpretation would contravene the European Convention on Human Rights.

c) Commentary

Fortunately, the SCC overcomes the obvious legislative imperfection of the text under consideration, attention to this imperfection being drawn even in the doctrine.⁶ This provision limits the cases in which the employer bears strict liability for the damage inflicted on the employee. This provision is evidently inconsistent with the principle of equality and non-discrimination in cases that are actually similar to this one. 68

⁶ В Мръчков/К Средкова/А Василев, Коментар на Кодекса на труда, translation: V Mrachkov/K Sredkova/A Vassilev, Commentary on the Labour Code (Sibi, 10th edn 2009) 633 ff.

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**15. SCC, Decision No 1377/12-02-2009, II CD: Immaterial Damage;
Amount of Compensation; Contributory Negligence;
Employer's Liability**

a) Brief Summary of the Facts

- 69** An employee died in a work-related accident. He was working at a height of 4 metres without any safety equipment, thus violating the safety rules on working at a height exceeding 1.5 metres.
- 70** After he died, his wife sank into depression, which lasted one year. The daughter of the deceased was also left without financial means and moral support.

b) Judgment of the Court

- 71** The court qualifies the non-observance of the safety rules as contributing to the occurrence of the damage (20 %), the employer bearing liability for the remaining 80 %.
- 72** The total claim for immaterial damages of BGN 50,000 is well-founded. In view of the percentage of contributory negligence on the part of the deceased, this amount is reduced by 1/5, and the adjudicated amount is BGN 40,000.

**16. SCC, Decision No 1373/23-02-2009, II CD: Immaterial Damage;
Amount of Compensation**

a) Brief Summary of the Facts

- 73** A work-related accident caused a fracture of an employee's coccyx and a cerebral concussion, which necessitated intensive treatment for almost two months. In the course of six months the employee endured pain and suffering, which was intensive at the very beginning (the initial two months). The employee's health is almost completely restored.

b) Judgment of the Court

- 74** The amount of the compensation is BGN 5,000.

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17. SCC, Decision No 328/19-05-2009, IV CD: Employee's Unlimited Material Liability in case of a Crime; Establishing a Criminal Circumstance

a) Brief Summary of the Facts

While driving abroad, a driver caused a car accident and the damage 75 resulting from it was paid for by his employer. In view of the way in which the accident occurred, the driver had committed a crime. However, no charges were brought against him.

b) Judgment of the Court

In principle, the fact of the crime (as grounds for unlimited material 76 liability of the employee) is established only through a competent court's sentence that has taken effect. A crime may not be established incidentally by a civil court. Therefore, the employee is liable only under the conditions of limited material liability under Art 206 LC.

c) Commentary

The amount of the employee's liability depends on whether the damage 77 was caused inadvertently or deliberately (Art 203, paras 1 and 2 LC). If only inadvertently, the employee is liable up to the amount of one or three monthly salaries, as the case may be. Where the damage is caused as a result of a crime, liability is always incurred in full.

18. SCC, Decision No 67/02-02-2009, I CD: Immaterial Damage; Discrimination; Non-Admission to Education

a) Brief Summary of the Facts

A girl applying for admission to a University as a student was not allowed 78 to study the specified course as she suffers from a disease which, according to the University Rules, is an obstacle to the training in this speciality.

The University Rules are challenged before the Supreme Administrative 79 Court and the latter abolished them as unlawful.

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- 80** Due to the non-admission to training, the girl has experienced mental suffering.

b) Judgment of the Court

- 81** The amount of the compensation is BGN 5,000.

c) Commentary

- 82** The first instance court upholds the claim in its full amount (BGN 5,000). The appellate court overrules the decision and dismisses the claim. Actually, the SCC confirms the decision of the first instance court.
- 83** The Rules of many universities still contain restrictions on the admission to certain courses because of candidates' diseases. The arguments submitted for these restrictions are that even if they are admitted to training in the speciality, after graduation these people will not be able to work as graduates from this course because of their disease.
- 84** Fortunately, this paternalistic view is gradually disappearing.
- 85** In this case the liability is borne by the State as the sentenced university is a State university and not a private one.

19. SCC, Decision No 392/29-04-2009, III CD: Immaterial Damage; Standing to be Sued

a) Brief Summary of the Facts

- 86** In the course of his detention, the claimant was maltreated by the police. A claim was lodged against the respective police department.

b) Judgment of the Court

- 87** The court dismisses the claim against the police department submitting the argument (though not explicitly) that the latter has no standing to be sued. When detaining the claimant, the policemen acted by order of the judiciary (the prosecuting magistracy) and, therefore, the claim should have been addressed to the prosecuting magistrate as the detention was carried out on its initiative.

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c) Commentary

This decision is an expression of extremely dangerous formalism and 88
literal interpretation of the law. In the Law on State's and Municipalities'
Liability for Damage (LSMLD)⁷ the liability of the administration (Art 1) is
differentiated from the liability of judicial bodies (Art 2) as far as the
grounds for liability are concerned.

However, the prosecuting magistrate's assignment of an action to the 89
police does not exempt the police completely from liability for the police-
men's wrongful actions (maltreatment of the detainee). Actually, such an
approach exculpates the guilty officials (policemen) and may encourage
them to act in a similar manner in the future.

**20. SCC, Decision No 1402/06-03-2009, II CD: Immaterial Damage;
Illegal Detention; Irregular Criminal Proceedings**

a) Brief Summary of the Facts

The claimant was detained for 48 hours and was subsequently released. 90
Upon detention he was charged of shameful crimes (raping a juvenile and
coercing her into prostitution). The detention and the reasons for it were
made public in the mass media.

In spite of the acquittal, after his release the claimant felt ashamed when 91
with his relatives. In the course of detention the claimant had to remain
standing for a long time which exacerbated his disease.

b) Judgment of the Court

The final amount of the compensation is BGN 800. 92

⁷ DV No 60/1988, last amended DV No 17/2009.

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21. SCC, Decision No 1301/22-01-2009, I CD: Immaterial Damages; Discrimination

a) Brief Summary of the Facts

- 93** The claimant is a disabled woman. The existing urban architectural environment does not allow her free movement in public places. In spite of its legal obligation to provide accessible environment – within fixed time limits – the municipality has not taken the necessary actions. Consequently, the claimant is doomed to social isolation and feels humiliated.

b) Judgment of the Court

- 94** The court adjudicates compensation of BGN 10,500, without specifying the period it covers.

c) Commentary

- 95** The court decision is praiseworthy in view of the protection of disabled persons' rights. However, we would welcome a decision which specifies repeated compensation amounts for separate periods of time, as this would be very efficient.
- 96** What is interesting here is that exactly the same amount of compensation (BGN 10,500) was adjudicated in a case of a similar subject matter (Decision No 1239/11-02-2009, I CD).

22. SCC, Decision No 1066/04-03-2009, VI CD: Immaterial Damages; Serving a Criminal Sentence; Failure to Exercise Control

a) Brief Summary of the Facts

- 97** While working in a production enterprise, a prisoner was attacked by another prisoner, who inserted a pressurized air hose into his anus, thus causing grave internal ruptures that needed lengthy and painful treatment. The injured prisoner's health has not been completely restored and he suffers pain and discomfort in his everyday life.

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While working, the prisoners were not supervised by the prison's administration. The latter had not checked whether the enterprise they work in had provided security guards. 98

b) Judgment of the Court

The first instance court (the district one) and the second instance court (the appellate one) dismiss the claim. The SCC overrules the decision of the second instance court and refers the case back for a new hearing, without passing judgment on the amount of compensation. 99

23. SCC, Decision No 77/16-02-2009, III CD: Immaterial Damage; Illegal Detention; Irregular Criminal Proceedings

a) Brief Summary of the Facts

The criminal prosecution (from the investigation to the bringing of the charge and up to the final acquittal) of the claimant lasted about two years. The claimant was detained for a short time, and then a restraining order was imposed on her and she was released on bail. The claimant suffered only mental anxiety, no health impairments are present. 100

b) Judgment of the Court

As the claimant has suffered only 'mental anxiety without any health impairments, the court dismisses the claim for BGN 15,000 and adjudicates BGN 5,000. 101

c) Commentary

With this decision the court obviously continues the unacceptable practice of underestimating mental suffering. 102

Apart from being unacceptable, this practice is inconsistent in the determination of compensation. For instance, Decision No 506/29-05-2009, I CD specifies an adjudicated amount of BGN 7,000 for a one-year criminal proceeding, Decision No 189/12-03-2009, III CD – BGN 1,500 for a two-year criminal proceeding, Decision No 145/14-04-2009, II CD – BGN 1,500 for a two-and-a-half year criminal proceeding, and Decision No 158/09-03-2009, III CD – BGN 3,000 for a four-year criminal proceeding. 103

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- 104** It seems as if the peak has been hit with Decision No 5/09-01-2009, Pazardjik DC, in which the amount of BGN 1,000 (!) is adjudicated for a nine-year proceeding (!).
- 105** At the same time, the adjudicated compensation amounts for mental suffering resulting from an unreasonable charge and proceedings lasting from one to three years are as follows: under Decision No 26/04-03-2009, III CD – BGN 15,000, under Decision No 239/22-04-2009, II CD – BGN 16,000, and under Decision No 23/03-02-2009, II CD – BGN 15,000. Probably, in the first case the court was guided by the fact that the defendant was a highly educated person (a doctor) and the charge caused him excessive suffering, he discontinued his practice and became addicted to anti-depressants. In the second case the person who was unreasonably charged was a juvenile and the charge prevented her from finishing her higher education abroad. In the third decision the court took into consideration that the criminal prosecution was announced in the press and the defendant was dishonoured.
- 106** In this group of decisions it is also worth mentioning Decision No 1402/06-03-2009, II CD, in which BGN 800 were adjudicated for two days' detention (this amount seems disproportionately high against the general background).
- 107** Undoubtedly, Decision No 186/23-02-2009, I CD can be deemed equitable as well – the adjudicated compensation is BGN 30,000 (the highest among all those under consideration) for a fourteen-year (!) criminal proceeding.
- 108** Thus, the court takes account of circumstances the relevance of which is beyond doubt (social status, particular features and age of the injured person), while obviously neglecting them in other cases. This may give the feeling of an absence of justice.

Rules on Admission of Cassation Appeal

- 109** These Rules are discussed inasmuch as they show what the SCC regards as being a subject of controversial decisions in the court practice. These Rules also show the matters the SCC considers essential for the development of law. Because of their large number, the Rules are not considered separately, and only a summary of the results of their analysis is given.
- 110** There is controversial practice of the courts (including the SCC itself) as regards whether Art 200, para 1 LC leads to the employer's strict liability in those cases where – due to a work-related accident or an occupational disease – the employee's capacity for work has decreased by less than 50 %

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(see case 14 above – SCC, Decision No 141/29-04-2009, II CD). In that respect, the representative Rules of the SCC are the following: Rule No 927/29-07-2009, IV CD, Rule No 1136/19-08-2009, IV CD, Rule No 834/14-07-2009, III CD, Rule No 637/29-06-2009, IV CD.

There is controversy in the practice regarding whether or not the received insurance indemnity should be offset against the compensation due, thus reducing the amount the court should adjudicate. Such is the sense of Rule No 1204/26-08-2009, IV CD. **111**

The position of the SCC in the above-mentioned Rule No 637/29-06-2009, IV CD is difficult to understand. In this Rule the court points out that the cassator has not proved his allegation, according to which controversial court practice on similar cases can be found. In the view of the court, the decisions submitted by the cassator do not evidence such practice. **112**

Thus – though indirectly – the SCC states that either the SCC itself is not familiar with its own practice or refuses to check it, leaving this task to the parties. Taking into account that complete and official collections of the SCC practice are still unavailable, in our opinion this position of the SCC is extremely dangerous to people's rights and actually limits the access to justice. However, one positive aspect is that the said Rule is an isolated one. In the remainder of its Rules the SCC obviously does not expect the parties to prove its own practice. **113**

Procedural Peculiarity of the Law on The Liability of the State and Municipalities for Damage

The 2006 amendment to the LSMLD laid down different jurisdictions for cases against administrative bodies (under Art 1 LSMLD) and those against the judiciary (under Art 2 LSMLD). The first group of cases is heard under the procedure of the Administrative Procedure Code, while the second group is heard under the general procedure of the Civil Procedure Code. **114**

The problem this solution poses is as follows: in certain cases of injury, the liability is borne not only by administrative and judicial bodies, but also by private persons performing activities under public procurements – sometimes it is as a result of this activity under the public procurement that the damage occurs. If it turns out that, upon assigning the public procurement, the administration has acted unlawfully, joint liability shall be borne by the State and the private law subject performing the activity. **115**

However, in order for the joint liability to be realised in full, there must be a possibility of joinder of all defendants – they should appear in one and **116**

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the same proceeding in the same court. In the case that this is impossible because of the different jurisdictions -for the claim against the administrative body, the competent court will be an administrative one, and for the claim against the private person, the competent court will be a civil one. As a result of this separate hearing of the cases, the two courts will inevitably render their decisions at different times and the decision of the court which was the first to render its decision on the case will influence the decision of the other court, which renders its decision later.

- 117** Thus far, this problem has arisen only in two interrelated cases and has no final solution yet.

C. Literature

1. Simeon Tassev, Tort Liability (Ciela, 2009)

- 118** In view of Bulgarian standards, the monograph is a structurally exhaustive study of tort. It deals with:
- General characteristics of tort liability;
 - Its prerequisites;
 - Special *corpora delicti* of tort liability;
 - Subjects, limits, circumstances excluding tort liability, prescription, procedural peculiarities;
 - Comparative law study of the EU regulation of tort; the attempts at unification within the EU; private international law issues; proposals *de lege ferenda* are put forward.
- 119** The author has conscientiously summarised the Bulgarian doctrine and court practice in the field of tort. One could wish a better understanding as regards the presentation of the unification of tort matters within the EU; the book does not even mention the projects of the European Centre of Tort and Insurance Law or the unification proposals contained in the Draft Common Frame of Reference.
- 120** As for matters of private international law, obviously the author is familiar only with the domestic sources of law. The book does not even mention Regulation No 44/2001 (Brussels I) and Regulation No 593/2008 (Rome II), which are applicable to Bulgaria.

2. Articles

- 121** In 2009 there were no articles dealing with tort.