I. Bulgaria

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1 As this is the first time for Bulgarian law to be presented in the European Tort Law series, the first part of the exposition (no. 5 ff.) presents a general review of the tort law doctrine. The historical background and the prototype of the legal regulation are set out. A comparison is made between tortious and contractual liability. The various types of tortious liability are considered. The prerequisites for it to arise are set forth. Lastly, the matters relating to indemnity for damages in tort are presented in brief.

2 The second part of the article (no. 115 ff.) presents the legislation relating to tort. The relevant subordinate legislation instruments are not considered in this part because of their huge number and also because this portion of the legislation is characterized by notorious unsteadiness and these subordinate instruments are of secondary importance only. The greatest part of this subordinate legislation represents rules for safe conduct in various fields (the so-called "sources of increased danger") and they change constantly.

3 The third part of the exposition (no. 126 ff.) presents a short review of the most important court decisions grouped by separate issues.

4 Lastly (infra D), a selective bibliography is added of Bulgarian law literature on matters of tort, which covers the period after the year 1944, the largest part being based on the Law on Obligations and Contracts (ЗЗД)[1], which took effect in 1951.

A. General Review of the Doctrine

1. Historical Development and Prototype of the Legal Regulation of Tort

5 Bulgarian legal regulation of tort follows the Roman legal tradition of Art. 1382 ff. of the French Code civil and Art. 2043 ff. of the Italian Codice civile of the year 1942. These historical rules also predetermine the structure

[1] Prom. Държавен вестник (ДВ) бр. 275/1950, latest am. ДВ бр. 43/2005.

of the general regulation of tort in Bulgarian law. This general regulation consists of one *general clause* and a number of special corpora, including those of strict liability and vicarious liability.

6 Along with the general civil regulation, special laws have been adopted in different periods, these special laws regulating tort in a particular way (note 7).

2. Tortious and Contractual Liability

7 There are numerous differences between tortious and contractual liability in Bulgarian law. Owing to these differences, the question of terming the liability as tortious or contractual is of great practical importance. In the following a comparison is made between contractual and tortious liability and the rivalry between them.

a) Comparison between the two types of liability

8 The table below presents only *the differences between* tortious and contractual liability. The common elements (e.g. the requirement for legal causality between the unauthorized act and the damage, the fault, the presumption of fault, the discharging circumstances, which are the same in both cases, etc.) are not shown.

9

	Tortious liability	**Contractual liability**
1. Corpus of facts	Infringement of a good protected by law. General clause (Art. 45 ЗЗД) and numerous special corpora (Art. 47 ff. ЗЗД, special laws).	Non-performance of an obligation which has arisen out of a legal transaction.
2. Real occurrence of damage is required	Yes.	Yes, in principle, but there are exceptions (default, deposit).
3. Is foreseeability of damage required in order for them to be indemnified?	There is no such legal requirement (Art. 51 in connection with Art. 82 ЗЗД), however, according to the prevailing opinion, the damage has to be foreseeable.	Yes. However, in the cases of intention and gross negligence foreseeability is not a necessary prerequisite (Art. 82, sentence 2 ЗЗД).
4. Possibility of reduction and exclusion of indemnity	It can only be reduced (Art. 51 ЗЗД).	It can be reduced or excluded (Art. 83, § 1 ЗЗД).
5. Effect of the legal capacity/sanity at the time of non-performance for the liability to arise	The legally incapable are not liable (Art. 47, § 1 ЗЗД). However, the parents, guardians, custodians and supervisors are liable for the acts of the legally incapable.	It makes no difference.

	Tortious liability	Contractual liability
6. Liability of legal entities for the acts of their bodies	Yes. There is no explicit rule.	Yes. It is deduced from Art. 36, § 2 ЗЗД.
7. Joint liability of a number of delinquents/persons on the part of the debtor	Yes (Art. 53 ЗЗД).	No, in principle, except for commercial contracts (Art. 304 ТЗ).
8. Liability for acts of third persons	Yes, for certain groups of persons: children and persons under interdiction (Art. 47, § 2, Art. 48, § 1 and 2 ЗЗД) and assignees of a task (Art. 49 ЗЗД and a number of special laws).	Yes, only where the performance is assigned, however, there is no explicit rule.
9. Commencement of delay	The time the damage occurs (Art. 84, § 3 ЗЗД).	After the expiry of the term, and respectively, after the invitation to perform (Art. 84, § 1 and 2 ЗЗД).
10. Commencement of prescription	The time the tortfeasor is identified (Art. 114, § 3 ЗЗД).	From the time of executability or another point of time in special cases (Art. 114, § 1, 2 and 4 ЗЗД).
11. Prescriptive term	5 years (Art. 110 ЗЗД).	6 months, 1, 3, 5 or 10 years depending on the type of the non-performed obligation.
12. Set-off against the claim for the respective damage	If the tort is intentional – only with the creditor's consent (Art. 105 ЗЗД).	In principle, it is always possible. Exceptions: Art. 103, § 2 and 3, Art. 105, sentence 1 ЗЗД.
13. Objective (strict) liability	Yes, for certain groups of persons: children, persons under interdiction, liability of the manufacturer, importer and trader under Art. 105 ЗЗП, liability of the State for damage from civil servants, liability for chattels and animals.	Liability for damage from goods, especially in the matters of consumer law and the general regulation of sale.

	Tortious liability	Contractual liability
14. Particularities of enforcement	Non-sequestrability is excluded with respect to certain objects (Art. 340, § 2, item “a” ГПК).	Non-sequestrability is excluded only for pledge or mortgage; on the other hand, there are numerous extra-judicial grounds for execution (Art. 237 ГПК).

The differences between the two types of liability set out above sufficiently prove how important it is under which of the two types the liability is subsumed. 10

a) Rivalry between tortious and contractual liability

There is no explicit legal provision regulating one of the types of liability as subsidiary to the other one. Nevertheless, according to the common rule, contractual liability excludes tortious liability.[2] 11

The subsuming of contractual non-performance under the tort rules is logically possible, as the necessary elements the contractual non-performance consists of are the same as those forming the tort – act/omission, wrongfulness, fault, damage, legal causality between the act and the damage (no. 45 ff.). 12

Regardless of this logical possibility, in principle, the contractual non-performance is never subsumed under the tort rules. This “displacement” of tortious liability by contractual liability is explained by the fact that the regulation of tort relates to the regulation of contractual non-performance as lex generalis to lex specialis. *What is special about contractual liability* is that, apart from the general prerequisites for tort – conduct, wrongfulness, fault, damage and connection between conduct and damage, contractual liability contains one more element – *the wrongfulness should ensue from the non-performance of an obligation which has arisen by virtue of a contract*. It is this contractual nature of the non-performed obligation that is construed as the differentia specifica of contractual liability. 13

The substitution of contractual liability for a tortious claim is also inadmissible for the following practical consideration. Such a substitution would mean that the claimant shall be able to choose the tort consequences (no. 9 – lines no. 4, 7–14), which are more favourable to him, and shall deprive the defendant of the remedy provided in law. 14

However, in order for the said prevalence of contractual liability over tortious liability to occur, there should be present *one and the same corpus of facts*, which can be subsumed both under the regulation of contractual non-perfor- 15

[2] See *Д. Антонов*, Непозволено увреждане (1965) 22; *В. Гоцев*, Договорна и деликтна отговорност, сравнение и конкуренция (1979) 12 ff.

mance (Art. 79 ЗЗД) and under the tort rules (Art. 45 ЗЗД). There is no rivalry – on the contrary, *contractual and tortious liability are independent and exist in parallel* in those cases where each of these two liabilities ensues from different juridical facts. Such different facts are present where damage has been caused during or in relation to the performance of a contract, e.g. where, in performing a contract of repair works the contractor damages chattels found in the home of the assignor of the task.

3. Types of Tortious Liability

16 The discriminatory criterion for this classification of tortious liability is the different corpus of facts for its occurrence. The differences are mainly at the level of the facts generating the rights; in principle, the consequences of the separate types of liability are the same (the obligation to repair in kind the damage or to provide a pecuniary indemnity for this damage, the amount of indemnity, etc.). As a result of this discriminatory criterion (corpus of facts), tortious liability can be divided into liability (1) for one's own culpable conduct, (2) strict liability, (3) vicarious liability, (4) for persons under supervision, and (5) special (untypical) corpora of tortious liability.

a) Liability for one's own culpable conduct (general clause)

17 This liability is regulated under the general and extremely abstract rule of Art. 45 ЗЗД ("Everybody is obliged to repair the damage caused in tort to somebody else"). The liability for one's own culpable conduct is a general clause. It comprises all cases which are not regulated by the special rules discussed below. The prerequisites for the liability for one's own culpable conduct are described infra no. 45 ff.

b) Strict (objective) liability

(i) Definition

18 In the cases of strict liability the fault of the person whose conduct is in a causal relation with the inflicted damage is legally indifferent. This means that in the said cases the exculpation is logically inconceivable. Even if the delinquent proves he was not to blame, that shall not release him from liability. The damage might have been caused by his conduct, or by the conduct of someone else, or might have originated from a chattel that he is in charge of.

(ii) Separate Hypotheses

19 Strict liability is present in the classical hypothesis of *damage originating from chattels*. No possibility of release from liability is provided. Unlike other legal systems, Bulgarian law does not make the traditional distinction between movable and immovable effects. Liability is borne for damage originating from "any effects" (Art. 50 ЗЗД).

20 In the same way, liability is borne for *damage caused by animals*. There is no possibility of release from liability in those cases where "the animal has es-

caped or got lost" (Art. 50 ЗЗД). This rule has a guarantee function which is easy to explain, and prevents the attempts of the liable person to get exculpated stating that the animal was out of his control.

Where the damage has originated from a chattel or an animal, *the liability is borne* not only by the *owner* of the chattel or the animal, but also by the *person under whose supervision* they are (Art. 50 ЗЗД). These persons bear joint liability (ibid.). The explicit regulation of the joint liability in these cases ensues from the fact that the general provision of joint liability of numerous tortfeasors (Art. 53 ЗЗД) might be inapplicable in this case – neither have the liable persons inflicted the damage through their own acts, nor is there a requirement that they should be to blame for it. 21

Another hypothesis of strict liability is regulated in consumer law. *The manufacturer, importer, distributor and trader* are liable for damage which has been caused by the defects in manufactured, distributed or sold goods (Art. 130 ff. of the Law on Protection of Consumers[3] (ЗЗП)). These persons' fault for the defect is not relevant in law, neither is it a prerequisite for their liability to arise. In the cases of liability for a defect in goods there is a possibility of release of the distributor and trader from liability by way of identifying the manufacturer or importer, and not because of an absence of fault (Art. 134, § 2 ЗЗП). E contrario follows that neither the manufacturer nor the importer may get released from liability. 22

Strict is the liability of the *employer* for the worker's death or incapacity for work caused by a job-related accident (Art. 200 of the Labour Code[4] (КТ)). The strict (objective) nature of this liability ensues from the irrelevance of the employer's fault, and the fault of other workers of his, as well as from his explicitly regulated liability even in force majeure circumstances. However, if another worker of the same employer is to blame for the accident, this liability has the nature of vicarious liability (infra no. 29). 23

It is with certain reservations that the liability of the *State* for the acts of its bodies and civil servants may also be qualified as strict. See infra no. 30 for details. 24

c) Vicarious liability

(i) Definition

In the cases of vicarious liability *the fault* is an element of the corpus of facts. However, what matters here is not the fault of the liable person, but the fault of another person (the immediate tortfeasor). This immediate tortfeasor and the person liable for his actions are different persons. If in the specific case it is proved that the immediate tortfeasor, for whose acts liability is borne, was not to 25

[3] Prom. ДВ 99/2005, effective date 1 June 2006.
[4] Prom. ДВ 26/1986, latest am. ДВ 105/2005.

blame, no liability shall arise at all. This is what differentiates vicarious liability from strict liability (supra no. 18), in which the fault does not matter at all.

26 It can be summarized that vicarious liability arises from the simultaneous existence of two independent corpora of facts. The first corpus of facts is absolutely the same as the general case of liability for one's own faulty act (infra no. 45 ff.). The effect of the second corpus of facts (regulated in special provisions) is that the said liability involves not only the immediate tortfeasor of the damage, but also another person.

27 The involvement of the other person who is liable for another person's act, has only a surety effect and not a substitution effect. It does not release the immediate tortfeasor from liability.

(ii) Separate Hypotheses

28 The main hypothesis of vicarious liability is regulated in the civil legislation – *the assignment of "any task"* to another person forms sufficient grounds for the assignor's liability to arise (Art. 49 ЗЗД). The specific way of assignment (the type of contract) is of no importance; what is necessary is only the liable person's willingness to assign.

29 The *employer* bears vicarious liability in the cases of a job-related accident caused by his worker (Art. 200 КТ). This liability has already been characterized as strict (supra no. 23); however, where the damage has been caused through a faulty act of a worker, it should not be qualified as strict, but rather as vicarious liability.

30 A special group of cases of vicarious liability is formed by the obligations of the *State* to indemnify the damage caused by its bodies and by officials it has appointed. The special regulation of these hypotheses is contained in the law on the Liability of the State for damages caused to Citizens[5] (ЗОДВПГ) and in the Civil Servant Law[6] (ЗДСл). It should be noted that, apart from vicarious liability, the liability of the State may also be characterized as strict liability, as the State is liable for the inflicted damage regardless of whether it has been caused in tort or not (no. 18).

31 A lot of the *special laws* contain particular rules which regulate vicarious liability. They have not been considered here because of their limited field of application.[7]

[5] Prom. ДВ 60/1988, latest am. ДВ 105/2005.
[6] Prom. ДВ 67/1999, latest am. ДВ 19/2005.
[7] See for instance Кодекс на търговското корабоплаване, Закон за морските пространства, вътрешните водни пътища и пристанищата в Република България, Закон за автомобилните превози, Конвенция за уеднакгяване на някои правила за международния въздушен превоз, Наредба за условията и реда за определяне на отговорността на държавата и за отстраняване на нанесените щети върху околната среда, настъпили от минали действия или бездействия, при приватизация.

d) Liability for persons under supervision

(i) Definition

In essence, this liability occupies an intermediate position between strict liability, which was considered above, and vicarious liability. 32

It *resembles strict liability* by the fact that the damage is caused by a circumstance which is external to the liable person (here it is the act of the person under supervision). However, *unlike* strict liability, *exculpation is possible* here. 33

The similarity between the liability for persons under supervision and *vicarious liability* is that in both cases the damage is caused by human conduct (in the first case it is the conduct of the person under supervision, and in the second case – the conduct of the assignee of the task). *The difference* between these two liabilities consists in the following: in the cases of vicarious liability the immediate tortfeasor should have acted in tort and his acts constitute a tort in themselves, while in the cases of liability for persons under supervision the acts of the specific tortfeasor may not constitute a tort (if the tortfeasor is insane). 34

The prerequisites for this liability to arise are: (1) the insane person's conduct which causes damage, (2) obligation of the liable person to exercise supervision, and (3) a possibility that if due diligence had been exercised, the occurrence of damage might have been prevented. 35

(ii) Separate Hypotheses

The liability for damage caused by *juveniles* is borne by their parents or guardians (Art. 48, § 1 ЗЗД). If the person is a *minor* (aged between 14 and 18), only the parents are liable as such a person may have a custodian, and not a guardian. The liability for damage caused by *persons under complete interdiction* is borne by their guardians (Art. 48, § 2 ЗЗД). The liability for *the persons under partial interdiction* and *minors* is borne by their custodians, and respectively, by their parents (argument under Art. 48, § 2 ЗЗД). The liability for the acts of those persons *who are unable to understand and govern their acts, but are not placed under interdiction*, is borne by the person who is obliged to exercise supervision (Art. 47, § 2 ЗЗД). This person might be a parent, a teacher, a tutor or an official of a specialized institution for placement of such persons. 36

If *no person is obliged to exercise supervision* (e.g. vagrant children or mentally ill persons who have not been placed under interdiction), the inflicted damage is carried by the person suffering the damage, because a person who is unable to understand and govern his acts does not bear liability (Art. 47, § 1 ЗЗД). However, if the person who has inflicted the damage is capable of tort, although he has not attained full age (e.g. a person aged between 14 and 18 whose parents are not alive and has no custodian), the said person bears liabil- 37 ity by virtue of the general clause of Art. 45, § 1 ЗЗД, as he is not covered by the protective provision of Art. 47, § 1 ЗЗД.

e) Special corpora of tortious liability

38 All the hypotheses considered below concern forms of manifestation of tortious liability. These cases have their special legal regulation, and owing thereto, they may not be subsumed under the general clause of Art. 45 ЗЗД.

(i) Pre-contractual liability

39 In Bulgarian doctrine the essence of this type of liability is disputable. Some authors think that what is concerned here is (1) *contractual liability* (an influence of the German theory of culpa in contrahendo); others maintain that the said liability is (2) *tortious* (the prevailing opinion), and a third group is of the opinion that in this case there is neither tortious, nor contractual liability, and that (3) a *special third type* (sui generis) of liability is present.[8]

40 This liability is regulated in Art. 12 ЗЗД, which contains two different hypotheses – (1) conduct of negotiations and (2) conclusion of a contract. In order for the liability to arise, both hypotheses require *bad faith* on the part of the person who conducts the negotiations or concludes the contract, as well as the *occurrence of damags* in consequence of the said bad faith. The specific forms of manifestation of bad faith in these cases are almost exhaustively described in the doctrine.[9]

(ii) Acts without authority or outside the given authority

41 In these cases the liability is borne by the representative who has acted without authority or outside the given authority. The liability of the representative is tortious.[10] These cases greatly resemble the pre-contractual relationships and, therefore, it is possible for them to be subsumed under the legal regulation thereof, which has already been considered (supra no. 39). It is assumed that the amount of indemnity in the cases of acts without authority or outside the given authority covers the so-called "negative damages", without extending beyond "the positive damages".

(iii) Unauthorized intervention in other persons' legal relationship

42 This case is explicitly regulated in Art. 21, § 2 ЗЗД – "Third persons who hinder the performance of a contract in bad faith owe indemnity". Here again it is tortious liability that is concerned, and not contractual liability, because there is no previous contractual relationship between the third person and the

[8] See *Кр. Стойчев*, Преговори за сключване на договор и преддоговорна отговорност (2005) 48 ff.; *Гоцев* (fn. 2) 12 ff. As for the tort nature of this liability see *А. Калайджиев*, Облигационно право (3rd ed. 2005) 111 ff.

[9] See *Калайджиев* (fn. 8) 104 ff.

[10] See *Т. Йосифова*, Мнимо представителство (2005) 143 ff.; the opposite: *В. Таджер*, Гражданско право на НРБ, General Part, Section II (1st ed. 1973) 327.

parties to the contract. This text might be an argument in favour of the view according to which, as an element of the corpus of facts, wrongfulness refers not only to the infringement of absolute rights, but also to the infringement of comparative ones (infra no. 45 f.).

(iv) Cases of the so-called "negative damages" (negativer Schaden) – nullity of contract, avoidance of contract, termination of contract because of non-fulfilment

In the cases of *nullity* and *avoidance* of a contract the law explicitly regulates only the bilateral restitution obligation (Art. 34 ЗЗД). *There is no explicit regulation of the indemnity* which is due in such cases. In this respect the only exception is the regulation of nullification by mistake (Art. 28 ЗЗД). The person who has made the mistake and has nullified the contract owes indemnity to the other party if the latter has acted in good faith. However, this particular regulation does not provide grounds for concluding e contrario that no indemnity is due in the cases of nullity and the other cases of avoidance, except mistake. Of course, indemnity may be sought in all these hypotheses of invalidity of contract. The grounds for indemnity shall be the general clause of Art. 45 ЗЗД (infra no. 45 ff.). 43

In the cases of *termination of contract because of non-fulfilment* the contractual relationship between the two parties ceases to exist; owing thereto, the liability for damage originating from the non-fulfilment of the contract may not be regarded as liability of a contractual nature.[11] 44

4. Prerequisites for the tortious liability for one's own culpable conduct (general clause of Art. 45 ЗЗД)

The prerequisites described below (act, wrongfulness, fault, damage, causality) apply only to the general clause of tort. As for the special corpora of tortious liability that have already been considered (supra no. 38 ff.) the prerequisites are somewhat different and have not been considered here as it is impossible to fit them within the volume of this article. 45

a) Act/omission/conduct

What is concerned here is a human act committed under the control of consciousness. "Act" denotes both an effective act and a wrongful omission in those cases in which the specific rule imposes on the person the obligation to act. For the purposes of tortious liability, "act" also denotes conduct – the set of separate acts which bring about the occurrence of the damage only when they are taken in their entirety. 46

It is not necessary for the act to bring about a damage *directly*. The damage might be intermediated by a chattel or another person's conduct. 47

[11] See *Тр. Конов*, Основание на гражданската отговорност (2nd ed. 2002) 43 f.

b) Wrongfulness

48 The general clause of Art. 45 ЗЗД does not contain a requirement regarding the wrongfulness of the act. Nevertheless, in the doctrine it is unanimously assumed that wrongfulness is a necessary element for the tortious liability to arise.[12]

49 The views regarding the essence of wrongfulness are divided. According to one group of authors, wrongful conduct is (1) the conduct which violates the general legal canon of *neminem laedere* (Art. 45 ЗЗД).[13] According to another opinion, wrongfulness is deemed as (2) *a violation of "basic obligations forming the structure and essence of legal order*".[14] Probably, the second opinion stems from the strong German influence (compare § 823 II Bьrgerliches Gesetzbuch). The third view regards wrongfulness as (3) *a violation of another person's absolute subjective right*.[15]

50 The first view brings about the practice of identifying wrongfulness and damage, while the second one necessarily gives rise to the shortcomings of any casuistic listing of the cases relevant to tortious liability (similarly to the Roman Lex Aquilia, this view having been overcome long ago) and the third is not able to explain the situations in which the tort was committed through omission, as another person's absolute subjective right can be violated only through an act.[16]

51 According to a last view, wrongfulness means (4) *the infringement of a good which is protected by the legal order.*[17] This view has the advantage that it allows indemnification in many more cases in comparison with the third view mentioned above (about the absolute subjective rights). This view provides the court with wide discretionary power when determining the indemnity. However, because of its indefiniteness, it might bring about an impossibility to foresee the court decision.

52 As the generally accepted doctrine regards wrongfulness as a necessary element for tortious liability to arise, *its absence means that the damage shall be borne only by the person who has suffered them and shall not be allocated* to anybody else. In particular, *no wrongfulness* is present in those cases where (1) the tortious impact is lawful (for instance, an authority has acted within its

[12] See *Конов* (fn. 11) 67 ff.; *Антонов* (fn. 2) 62 ff.
[13] See *Антонов* (fn. 2) 67; *Кр. Цончев*, Принос към деликтната отговорност за чужди действия, ГСУ ЮФ, т. XL–XLI, (1944–1946) 151; *Ч. Големинов,* Основни състави на гражданската отговорност при автомобилни злополуки, ГСУ ЮФ, т. LXXVII-1 (1984) 13; *П. Голева*, Съпричиняването на вреди от пострадалия при непозволено увреждане (1989) 80.
[14] See *Ал. Кожухаров*, Коментар на Закона за задълженията и договорите (1956) 243.
[15] See *Б. Бъров*, Гражданска отговорност за вреди, причинени при автомобилни злополуки (1970) 77.
[16] As for the criticism of these views see *Конов* (fn. 11) 74 ff.
[17] See *Конов* (fn. 11) 81 ff.

powers, in accordance with the respective procedure), and also where (2) the conduct was in compliance with the specific rules on the performance of the respective type of activity (observance of the instructions concerning the specific task). Neither shall there be wrongfulness where the act has been committed under circumstances excluding the so-called "social danger" within the meaning of punitive law (analogous to unlawfulness in private law): (3) necessary defence (Art. 12 of the Penal Code[18] (НК)), (4) detention of a person who has committed a crime (Art. 12a НК), (5) extreme necessity (Art. 13 НК) and (6) justifiable business risk (Art. 14 НК).

As for the cases of necessary defence, civil legislation (Art. 46, § 1 ЗЗД) explicitly provides that no damages are due; as for the cases of extreme necessity (Art. 46, § 2 ЗЗД) it is provided that indemnity is due although the liable person is not specified (infra no. 92). Civil law has no specific rules regarding the right of detention of the tortfeasor or justifiable business risk; in these cases, due to the absence of wrongfulness, no liability should arise; the damages shall be borne by the person suffering the damage. 53

c) Fault

The fault for tortious conduct is the third element necessary for the tortious liability for one's own acts to arise. This element *is not required in strict liability* (supra no. 18 ff.). In the cases regarding liability *for persons under supervision* (supra no. 32 ff.) the fault of the person under supervision is required only if the latter is sane (over the age of 14). In the cases of vicarious liability (no. 25 ff.) fault is required as well, however, it is the fault of the immediate tortfeasor and not the fault of the liable person. In the cases of liability for persons under supervision or vicarious liability, the liable person should also be at fault – he should have been able to prevent the occurrence of damages, or should have carefully selected the assignees of the task; not only is this fault of his presumed (Art. 45, § 2 ЗЗД), but also the proof of its absence is exclusively problematic. 54

Besides, fault is required for all cases of "latent tortious liability" which are specially regulated (supra no. 38 ff.). 55

In tort law – just like in contractual law – *the fault is presumed until the contrary is proved* (Art. 45, § 2 ЗЗД). Due to its extremely broad formulation ("in all cases of unauthorized tort"), this presumption of fault should apply not only to the cases of liability for one's own culpable conduct, but also to the hypotheses of vicarious liability (supra no. 25 ff.) and liability for persons under supervision (supra no. 32 ff.). By virtue of the said presumption, in these two cases the liable persons shall be those to which the task has been assigned and the person who was obliged to exercise the supervision (Art. 47, § 2 and Art. 48, § 3 ЗЗД). 56

[18] Prom. ДВ 26/1968, latest am. ДВ 88/2005.

57 The presumption concerns only the presence of fault and not the form thereof. Owing thereto, if a person invokes a certain form of fault and is willing to draw consequences which are favourable for him (for instance, intentional fault – infra no. 63), he shall have to prove the presence thereof.

58 In the cases of strict liability (supra no. 18 ff.) this rebuttable presumption is inapplicable as fault is not required there at all.

59 Fault is essential to *determining the limits of civil liability* for tort. In the matters of contractual non-performance (Art. 82 ЗЗД) the damage subject to indemnity is only that which was *foreseeable* at the time of non-performance (except where the debtor has acted in bad faith – there the debtor is liable for all "direct and immediate damage" without the limitation of foreseeability). No such limitation of indemnity through the foreseeability of damage is provided in tort matters (see Art. 51 ЗЗД), however, this limitation is deduced by analogy with contractual liability.[19]

(i) In principle, all forms of fault are relevant

60 Unlike punitive law, where in principle only the intentional form of fault is of importance (Art. 11, § 4 НК), in civil law – including tort law – *any form of manifestation of fault is relevant*. If the law is construed literally, the form of the fault (intention or recklessness) should not affect the amount of indemnity for the tort committed (unlike contractual liability, where the intention or the gross negligence might bring about the extension of the limits of indemnity – Art. 82 ЗЗД); however, see the explanation in infra no. 86 f.

61 Intentional and gross reckless fault (culpa lata dolo aequibaratur) might result in *greater indemnity* for non-pecuniary damage, which is indemnified "in equity" (Art. 52 ЗЗД). The intentional fault of a person who has suffered the damage of a job-related accident might bring about a *reduction or exclusion of the employer's indemnity*, the latter bearing both strict and vicarious liability (Art. 200 КТ).

62 In any event, it should be underlined that *the idea of the so-called "punitive damages" is alien* to objective Bulgarian law. In Bulgaria only isolated manifestations of this idea can be observed. Along with those corpora which have already been mentioned, the rule of Art. 105 ЗЗД in labour law can also be pointed out, this rule forbidding the set-off against a claim arising from an "*intentional* unauthorized act" without the consent of the passive creditor, as well as the general prohibition on the advance release from liability for intention or gross negligence (Art. 94 ЗЗД).

[19] See *Калайджиев* (fn. 8) 404.

(ii) Liability for grave forms of fault only

In spite of the traditional "spiritual coolness" of private law towards the form of manifestation of fault, there are a number of cases in which liability is borne *only for the gravest forms of fault* (gross negligence and intention) *and not for all forms of fault*. However, in Bulgarian law these cases, instead of being regulated for imposing a more severe punishment on the one who has acted in a more reprehensible way, have been regulated for a totally different purpose – *for protecting certain groups of persons from bearing civil liability.* What is alarming here is that the said cases mostly concern the benefiting on the part of state servants and court officials. The following typical hypotheses can be enlisted (inexhaustively) here: (1) a creditor seeking the opening of bankruptcy proceedings (Art. 631a of the Commercial Law[20] (ТЗ)), (2) Bulgarian National Bank and its employees in the course of fulfilling their supervision functions (Art. 62, § 2 of the Law on Banks[21]), (3) the questor appointed by the Financial Supervision Commission (Art. 220, § 1 of the Law on Public Offer of Securities[22]), (4) the members of the Financial Supervision Commission and the officials appointed by it (Art. 18, § 9 of the Financial Supervision Commission Law[23]), (5) civil servants for the acts committed within the scope of their competence (Art. 101, § 1 of the ЗДСл), (6) in principle, State bodies and officials appointed to civil service are not liable to the person suffering the damage; it is the State that is liable for these damage (Art. 8 ЗОДВПГ). It is another matter altogether that the State may bring in a regressive claim against the immediate tortfeasors for the amount of indemnity it has paid (Art. 9 ЗОДВПГ); however, in practice, there are almost no such cases. 63

Here the particularities of the limited pecuniary liability of workers and employees under Art. 206 ff. КТ should be pointed out. These persons bear unlimited liability only in the cases of intentional form of fault (Art. 203, § 2 КТ). As for the forms of reckless fault (incl. gross negligence) their liability is limited to their one-month or three-month labour remuneration. 64

d) Damage

The question of damage subject to indemnification has not been thoroughly studied in Bulgarian doctrine. As for now, this question has its answers only in court practice. However, the latter gives casuistic resolutions, from which general rules can hardly be drawn. The text of the law offers but a vague formulation, according to which "*indemnity is owed for all damage which is the direct and immediate consequences of tort*" (Art. 51, § 1 ЗЗД). According to the literature, direct and immediate damage is that which occurs *mainly* in consequence of an unauthorized act. Where the damage also results from other circumstances which have occurred subsequently and are not directly relat- 65

[20] Prom. ДВ 48/1991, latest am. ДВ 105/2005.
[21] Prom. ДВ 52/1997, latest am. ДВ 105/2005.
[22] Prom. ДВ 114/1999, latest am. ДВ 105/2005.
[23] Prom. ДН 8/2003, latest am. ДВ 105/2005.

ed to the initial damage, they are regarded as indirect ones (i.e., they are not subject to indemnification).[24]

66 Besides, another principle has also been explicitly set out and according to it not only the pecuniary, but also the *non-pecuniary damage is* indemnified (Art. 52 ЗЗД).

67 The texts of the laws do not contain any instructions regarding the other types of damage. In any case, it is generally accepted that both the damage suffered (damnum emergens) and the loss of profit (lucrum cessans) are indemnified. Besides, it is indisputable that indemnity is also due for future damage, however, this applies only to the cases of incapacity for work and bodily injury, and in the cases of the death of a person who is obliged to provide support, the indemnity being in favour of the beneficiary of the support.[25]

e) Legal causality between the act and the damage (conditio sine qua non)

68 Bulgarian doctrine has adopted the widespread view of *legal* causality between the act and the damage. What is meant here is legal causality exactly (only the *necessary condition*, and not the sufficient one) and not the causality within the meaning of formal logic (necessary and *sufficient* condition). However, this theory is complemented by the corrective of the theory of adequate infliction (infra no. 90). As for the discontinuance of the legal causality chain and the qualification of damage as "direct" and "indirect" see supra no. 65.

69 The issues arising from the special hypotheses of cumulative causality[26] and cascade infliction of damage have not been examined in Bulgarian doctrine.

5. Reparation of damage and indemnity

a) Particularities of the regulation of indemnity for damage in tort

(i) Reparation in kind or pecuniary indemnification?

70 The principle of *giving preference to recovery in kind rather than pecuniary indemnity* is operative in Bulgarian private law. As for contractual liability, this principle is explicitly set out in Art. 79, § 2 ЗЗД. As for tort, there is no respective rule. Nevertheless, the effect of this principle can also be justified in the matters of unauthorized damage both by analogy with Art. 79, § 2 ЗЗД, and by construing the general clause of tort (Art. 45, § 1 ЗЗД): it says "reparation", and not "indemnification" of damage. Indemnification, and not reparation, shall be arrived at where either the real recovery of the damage is impossible or the recovery of the previous factual situation is not in the best interests

[24] See *Антонов* (fn. 2) 43, and also *Калайджиев* (fn. 8) 404.
[25] See *Антонов* (fn. 2) 47 ff.
[26] Within the meaning in which this term (kumulative, doppelte, multiple Kausalitдt) is used in *K. Larenz*, Schuldrecht, Allgemeiner Teil (14th ed.) § 27 III.

of the person suffering the damage (Art. 79, § 2 in fine ЗЗД).[27] However, both in the literature and in court practice there exist certain hesitations regarding this matter.[28]

(ii) Enforceability and executability, delay interest

Fur semper in mora esse videtur. The delinquent owes reparation of damages *from the point of time they are inflicted* and falls in delay automatically, without any invitation on the part of the creditor (the person suffering the damage) being needed – Art. 84, § 3 ЗЗД. I.e., the obligation of indemnity for an unauthorized damage becomes executable at the time it arises. 71

If the damage is not subject to recovery in kind, but is subject to indemnification by way of paying an amount of money (no. *Б*. 70), interest is charged on the said amount from the time it becomes executable, which coincides with the time the damage is inflicted. The amount of the delay interest is set forth in Art. 86 ЗЗД and is equal to the base rate of interest of the Central Bank for the respective period, increased by ten points (Decree of the Council of Ministers No. 72/1994[29]). The said delay interest is the minimum limit of the indemnity. If the creditor (the person suffering the damage) has sustained greater damage in consequence of a delayed payment of the indemnity, he is entitled to claim them (Art. 86, § 1, sentence 2 ЗЗД), however, the burden of proof rests on him (Art. 127, § 1 of the Civil Procedure Code (ГПК)[30]). 72

(iii) Prescription and commencement of the prescription term

Both the right to seek recovery of a previous factual situation (real reparation) and the right to seek indemnity for damage suffered (pecuniary reparation) are rights of the type of claims. This type of rights are subject to prescription after the expiry of *a five-year period* (Art. 110 ЗЗД). However, the commencement of the prescription term in the cases of tort does not coincide with the time the claim becomes executable (the general rule of Art. 114, § 1 ЗЗД); the said term *commences at the time of "identifying the doer"* (Art. 114, § 3 ЗЗД). This is an expression based on the principle of contra non valentem agere non currit praescriptio. The suspension of prescription and its renewal are regulated by the general rules (Art. 115 and 116 ЗЗД). 73

(iv) Set-off

The set-off against a debt originating from an intentional unauthorized damage has the following particularity: no set-off against such a counter debt is possible through the active creditor's unilateral statement only; the said statement should be supplemented by the consent of the passive creditor (the per- 74

[27] See *Антонов* (fn. 2) 193.
[28] See *Б. Йосифов/Б. Балабанов*, Напозволено увреждане, Текст с коментар и синтез на съдебната практика (1989) 65.
[29] Prom. ДВ 33/1994, latest am. ДВ 15/2000.
[30] Prom. ДВ 12/1952, latest am. ДВ 17/2006.

son suffering the damage) – Art. 105 ЗЗД. It has to be underlined that the prohibition on unilateral set-off concerns *intentional* torts only; it does not apply to reckless torts.

(v) Right of retention (debitum cum re junctum)

75 Where the damage has been caused by a chattel/an animal, the person suffering the damage is entitled to retain the chattel/animal for as long as his claims for indemnity are satisfied (Art. 91, § 1 ЗЗД). The prerequisites for the right of retention are: (1) the damage should be caused by this very chattel which is retained, and not by any chattel of the person who is at fault for the damage; (2) the right of retention should result either from the previous possession of the chattel or from the possibility of exercising effective disposal of the chattel on the part of the person suffering the damage (it is inadmissible for the right of retention to be exercised if the person suffering the damage takes possession of the chattel post delicti commissionem, or takes possession of the chattel or acquires possession of the chattel in an unauthorized way). As for the retained chattel (or animal) the person suffering the damage is entitled to priority satisfaction (Art. 91, § 5; Art. 136, § 1, item 4 ЗЗД, respectively Art. 722, § 1, item 2 ТЗ) before the other creditors of the delinquent.

(vi) Jurisdiction, exclusive competence and possibility of tort litigation arbitration

76 *The venue of proceedings* regarding tort litigations is an *alternative one* – at the discretion of the claimant these claims are brought in either the place in which the act was committed, or the place of residence of the defendant (actor sequitur forum rei) (Art. 85 ГПК).

77 *Special venue* can be substantiated regarding claims for negative damages (supra no. 38 ff.) where the said damages are joint with claims for termination because of non-fulfilment, avoidance or proclaiming the nullity of a real estate contract – in these cases, in view of the objective joinder of claims, the court of venue is the location of the real estate (Art. 83 ГПК). Departures from the principle of venue under Art. 85 ГПК are also possible in those cases where the defendant (the delinquent) has no residence in the territory of the Republic of Bulgaria. In this case the court of venue is the court by residence of the claimant (Art. 88 ГПК in connection with Art. 4 and Art. 18, § 1 of the Private International Law Code (КМЧП)[31]).

78 In principle, the rules regarding venue of proceedings are *dispositive ones* and may be derogated by way of a procedural contract between the parties (Art. 91 ГПК).

79 *The functional jurisdiction* (competence) of Bulgarian courts to hear tort claims is not exclusive and may be derogated (Art. 22 КМЧП). The deroga-

[31] Prom. ДВ 42/2005.

tion is performed by way of a written agreement (Art. 23, § 1 КМЧП) and vice versa – even where the foreign court is the competent one, the competence of the Bulgarian court may be substantiated by way of a written agreement (Art. 23, § 2 КМЧП) or through the defendant's participation in the proceedings and the absence of immediate objection (Art. 24 КМЧП).

In principle, in the cases of tort there is no previous relationship between the delinquent and the person suffering the damage, so it is actually quite improbable that there shall be an agreed *arbitration clause* between them, subjecting their litigation (including those regarding tort claims) to arbitration. In practice, the competence of arbitration might be arrived at where, in connection with a contractual relationship of theirs, the parties have stipulated arbitration, and moreover, in doing so they have used an arbitration clause of extremely broad formulation, this clause also substantiating the competence of the arbitration court with regard to certain tort litigation (e.g. "as well as litigation originating from an unauthorized damage inflicted in connection with this contract"). 80

In connection with a tort litigation, the competence of arbitration might also be arrived at where the defendant under a tort claim participates in the arbitration proceedings and the competence of the arbitration is not challenged (Art. 7, § 3 of the Law on International Commercial Arbitration[32]). 81

b) Amount of indemnity (limits of civil liability) and reduction of indemnity

The following factors determine whether indemnity is due at all, or the inflicted damage shall be carried by the person suffering the damage: (i) fault, (ii) legal causality, (iii) wrongfulness. 82

Only after (and if) it is established that, due to the presence of the said three factors, indemnity is owed, shall the amount of this indemnity be determined (most often towards its reduction), depending on (iv) the fault of the person suffering the damage (contributory infliction), (v) the possibility of the person suffering the damage to prevent them, (vi) whether there is compensability between damages and benefits (compensatio lucri cum damno), the presence of (vii) joint infliction, (viii) subsequent infliction of damage on the part of third persons, and (ix) on whether cascade infliction of damages is present. 83

It is clear that fault, causality and wrongfulness (the first three factors) are the conditions for the tortious liability *to arise*. However, they are not only conditions for it being present; certain particularities of theirs might bring about *the restriction of the amount of indemnity.* Along with these three conditions, which constitute restrictive factors as well, certain additional ones are also operative: the fault of the person suffering the damage, the possibility of preventing the damage, and the compensability between damage and benefits. Joint infliction, subsequent infliction of damage on the part of third persons, 84

[32] Prom. ДВ 60/1988, latest am. ДВ 102/2002.

and cascade infliction *do not affect the amount* of indemnity, they only affect *the internal distribution of the sums due* among the numerous delinquents.

(i) Fault (foreseeability)

85 As it has already been pointed out, in principle, in order for tortious liability to arise, all forms of fault are relevant (supra no. 60). However, the form of the fault could be of importance in those cases where liability is borne only for grave forms of fault (supra no. 63) – only intention and gross negligence shall be relevant there. Besides, argumentation can be provided that the grave forms of fault may bring about an increase of the amount of indemnity for non-pecuniary damages, which is carried out "in equity" (Art. 52 ЗЗД), although there are no unambiguous case law developments in that respect.

86 So, in principle the form of fault is of no importance in determining the amount of indemnity – civil law has indemnification, and not punitive functions. However, *the foreseeability* of the damage, which is by necessity connected with fault, is a necessary condition in order for the fault to be borne by the doer. Actually, Art. 51, § 1 ЗЗД does not pose such a requirement (compare with Art. 82 ЗЗД concerning contractual non-performance), but it seems as if the doctrine has adopted it.[33]

87 By analogy with Art. 82, sentence 2 ЗЗД (which regulates the consequences of contractual non-performance in the cases of bad faith) it can be assumed that if the tort is caused *intentionally or by gross negligence*, liability shall be borne not only for the damage foreseeable by the tortfeasor, but also for the unforeseeable damage.

88 In principle, fault is *excluded* in the cases of (1) *insanity* of the tortfeasor and (2) *execution of an unlawful official order*, the unlawfulness of which is not obvious to the executor (Art. 16 НК). However, the exclusion of the immediate tortfeasor's fault in these two cases does not mean unconditional exclusion of the liability as well – liability on the part of the persons who have to exercise supervision over the insane might be substantiated (Art. 47 – 49 ЗЗД), and in the cases of an unlawful official order liability on the part of the person who has issued the order (in this latter case the so-called "indirect tort feasance" may be present) might be substantiated. The fault is also excluded by the presence of (3) *an accidental event* and (4) *force majeure* (vis major, casus fortuitus).

(ii) Legal causality

89 Legal causality is one of the conditions for transferring the liability for the inflicted damage from the person suffering the damage to another person (supra no. 68). At the same time, legal causality also limits the indemnity due. Dam-

[33] In this respect see *Антонов* (fn. 2) 82 ff.

age which is not in a legal causal relationship with the unauthorized deed is not subject to indemnity.

In this connection, a question is raised – *up to where does the causal chain exist and from which point on is it discontinued*? In the field of tort no special study has dealt with this problem. Causality has been discussed mainly in connection with contractual non-performance – however, no satisfactory answer has been given.[34] Three basic theories are mentioned in the literature: (1) the theory of equal value (conditio sine qua non); (2) the theory of decisive conditions, and (3) the theory of adequate infliction (Adequanztheorie). In spite of the ambiguity of the positions taken in the literature, it seems as though the most widely spread theory is that of adequate infliction. 90

(iii) Wrongfulness

Wrongfulness is also a necessary condition for tortious liability to arise (supra no. 48 ff.). Where wrongfulness is missing, a tort is out of the question. In the following those special *grounds* which *exclude wrongfulness* according to Bulgarian law are specified. 91

There is no wrongfulness where (1) *activities regulated in law* (the so-called "sources of increased danger") are carried out and, in spite of causing damage, the conduct is in line with the prescriptions of the respective special rules. In particular, these are all the cases of lawful (although tortious) acts of State bodies. Other circumstances which exclude wrongfulness (thus excluding tortious liability as well) are (2) *extreme necessity* (Art. 13 НК and Art. 46, § 2 ЗЗД) and (3) *necessary defence* (Art. 12 НК and Art. 46, § 1 ЗЗД). While in necessary defence there is no liability at all (Art. 46, § 1 ЗЗД), in extreme necessity indemnity is due for the damage caused (Art. 46, § 2 ЗЗД). However, the law does not specify who the liable person is. The question is solved unambiguously in court practice: in this case there is the so-called "cascade liability" (i) of the person who has caused the state of extreme necessity, (ii) of the person who is in charge of the chattel or the animal that has caused the extreme necessity, and lastly – (iii) of the person whose comforts have been saved through the acts done in extreme necessity.[35] It can be deemed that (4) *the infliction of damage in the course of detaining a person who has committed a crime* (Art. 12a НК) is a specific form of manifestation of necessary defence. 92

In spite of its not having been discussed in civil law literature, damage caused in (5) *justifiable business risk* should also exclude wrongfulness (Art. 13a НК); however, under this discharge circumstance it should be borne in mind that it shall be applicable only where there exists a special management relationship between the tortfeasor and the person suffering the damage (for in- 93

[34] See *Калайджиев* (fn. 8) 401 ff.; *Антонов* (fn. 2) 30 ff.
[35] See Постановление на Пленума на Върховния съд (PPVS) No. 4/1975.

stance, between a representative of a legal entity and the legal entity itself) and where there is no contract between the parties to the said special management relationship (for instance, in the cases of surpassing the limits of authority, or acts without authority or outside the given authority). Justifiable business risk may not bring about the release from liability if the damage has been inflicted to a third person and the tortfeasor is not in the said special relationship with the latter.

94 In principle, wrongfulness is also excluded in the cases of (6) *damage upon the request or with the consent of the person suffering the damage* (volenti non fit injuria). However, the literature does not offer a thorough analysis showing the limits within which the said consent of the person suffering the damage shall exclude the liability, and in which cases liability shall still arise (for instance, in the cases of consent for a tort that is inconsistent either with good morals or with imperative legal provisions).

(iv) Fault of the person suffering the damage (contributory infliction)

95 If the damage has been caused not only by the delinquent's wrongful deed, but its occurrence has also been substantiated by the acts/omissions of the person suffering the damage, *the indemnity might be reduced* (Art. 51, § 2 ЗЗД). The conduct of the person suffering the damage cannot be qualified as unlawful, as nobody has a legal obligation to take measures to protect his property. However, the consequences of disregarding the said measures which are normally taken should not be carried by the delinquent.

96 Under this rule, the law proceeds from the idea that the damage is a joint result of at least two necessary elements – the acts of the delinquent and the conduct of the person suffering the damage. Owing thereto, only reduction is admissible, and not a complete exclusion of indemnity (unlike the respective rule on contractual non-performance (Art. 83, § 1 ЗЗД), according to which it is possible for the indemnity not only to be reduced, but also to be excluded). However, where the damage results from the so-called "*exclusive fault of the person suffering the damage*", no tortious liability can arise. This is explained by the fact that "the exclusive fault of the person suffering the damage" excludes the fault of the tortfeasor.

(v) Possibility of limiting the damage on the part of the person suffering the damage

97 In the cases of contractual non-performance no liability is borne for the damage which the creditor could have prevented by exercising the care of a diligens pater familias (Art. 83, § 2 ЗЗД). This limitation of damages subject to indemnity should also be valid for tortious liability.

(vi) Compensability between damages and benefits (compensatio lucri cum damno)

In a number of cases it is possible that the inflicted damage gives rise to additional benefits regarding the property of the person suffering the damage from tort. In spite of the absence of an explicit legal rule, in these cases it is generally accepted that the damages should compensate for the benefits. The condition for such a compensation to arise is that the benefit should be a necessary and not an accidental consequence of tort. The typical groups of examples thereof are (1) those parts of the destroyed chattel which are fit for use; (2) exclusion of the necessity of paying charges on the chattel which has been destroyed, (3) receipt of extraordinary aids, (4) receipt of insurance indemnity for the destroyed property. 98

The court practice gives a different answer to each of the said groups. Thus, (1) the value of those parts of the perished chattel which are fit for use are set against the indemnity; (2) the pecuniary insurance and disability pensions are set against the indemnity, however, (3) life insurance or accident insurance do not affect the amount thereof, (4) the extraordinary aids and donations do not affect the amount of indemnity.[36] It should be noted that the court practice regarding these matters has not always been constant and there are a number of differing solutions. In the cases of infliction of tort affecting the capacity for work (5) the (lower) remuneration received in the new job is also deducted from the indemnity. 99

However, the groups considered so far only form an attempt at typification. A number of situations remain out of this grouping and cannot be brought under it (for instance, the exclusion of the obligation for providing support to a relative in case his death has been deliberately caused, the treasure trove following the demolition of a building, the prevention of damage that the destroyed chattel would have inflicted if it had not been destroyed, etc.). In Bulgarian doctrine there is no unambiguously developed system of rules providing constant and foreseeable answers to these disputable situations. 100

(vii) Joint infliction by a number of delinquents

Joint infliction in itself does not affect the amount of indemnity. It only provides the person suffering the damage with the additional benefit of *joint liability* among the numerous delinquents (Art. 53 ЗЗД). However, the indemnity to be paid should be distributed among the delinquents. The said distribution is carried out in accordance with the general rules of joint liability (Art. 127 ЗЗД), and if no special circumstances are present, it should be carried out in equal shares. However, the extent of fault and the effect of each of the delin- 101

[36] For a detailed presentation of case law developments see *Йосифов/Балабанов* (fn. 28) 74 f., and also *Л. Цачев*, Закон за задълженията и договорите, Текст, съдебна практика, литература и кратки бележки, vol. 1 (2nd ed. 1991) 201 ff.

quents' acts upon the damage might bring about deviations from the equal distribution among them.

(viii)Subsequent infliction of damage on the part of third persons and cascade infliction of damage

102 These matters have not been a subject of special studies, nor are there relevant case law developments. It should be assumed that if the first damage is within a necessary causal relation with the subsequent tort, the first and the subsequent delinquent shall bear liability as contributory tortfeasors. If the subsequent damage has its independent nature, the subsequent delinquent shall be liable only for the damages resulting from his own acts, and shall not be liable for the damage caused by the first delinquent. The opposite rule is also true – the first delinquent shall not bear liability for the additional damages that have occurred because of the conduct of a subsequent delinquent. The matters regarding the cascade infliction of damages should be resolved in a similar way.

c) Scope of persons entitled to indemnity

103 In principle indemnity is due only to *the person suffering from tort*. However, the claim for indemnity can be *inherited* and can be transferred in the cases of universal succession of legal entities.

104 According to the constant court practice, the indemnities for both pecuniary and non-pecuniary damage are inheritable. In principle, non-pecuniary damages can be claimed only by the person suffering the damage, however, if in consequence of his damage or death, his relatives have suffered non-pecuniary damage, the said relatives are regarded as being immediately damaged on separate grounds and may claim their own (and not others') damages.

105 The issue regarding the scope of persons who are entitled to indemnity is posed mainly in the cases of non-pecuniary damage of bodily injury or death of a relative, and by persons who would have the right to be supported by the person suffering the damage if he were still alive.

106 The scope of persons entitled to indemnity for non-pecuniary damage from death or damage inflicted on their relative is considerably restrained in court practice. These are *the first-degree ascendants, the first-degree descendants and the spouse* of the person suffering the damage. Biological children have an equal status to adopted children. Besides, the right to indemnity for non-pecuniary damage is also held by those persons who have been in de facto concubinage or have been actually raised by the person suffering the damage (and, respectively, the persons who have raised the person suffering the damage).[37] It can be summarized that not only the formal relationship, but also the de facto one, the content of which covers the said formal relationship, gives the respective person the right to indemnity.

[37] See PPVS No. 4/1961 and PPVS No. 5/1969, confirmed by PPVS No. 2/1984.

The grandfather, the grandmother, the grandchildren, the brothers and sisters, and other distant relatives are not acknowledged the right to indemnity for non-pecuniary damages because of the danger that the scope of those entitled to indemnity might get overly extended. However, if the said persons have been in loco parentis/infantis/conubii, they shall have their right to indemnity acknowledged. However, it shall be acknowledged because of the actual situation, and not because of a kindred or formal relationship. 107

d) Regressive claims and succeeding to the rights of an insured person

In the cases of (1) vicarious liability (supra no. 28 ff.), and in the cases of (2) joint liability (supra no. 111) the person who has paid the indemnity may bring in a regressive claim against the immediate tortfeasor (Art. 54 ЗЗД and Art. 202 КТ). A prerequisite for upholding such a claim is that the tortfeasor should be liable for his acts. 108

Owing thereto, a *regressive claim is excluded* against (1) those who are legally incapable to understand and govern their acts (Art. 47, § 1 ЗЗД), and against (2) those who bear liability only for grave forms of fault – if the damage was inflicted in petty negligence (supra no. 63), and also against (3) those who bear limited pecuniary liability due to their legal labour relationship (Art. 203 ff. КТ). 109

The *insurance* regressive claims are of major practical importance. The insurer bears liability for the damage on contractual grounds, and not on tortious grounds. If he pays, he is entitled to seek the amount of his payment from the immediate tortfeasor, and respectively, from the person bearing vicarious liability. Actually, what insurance concerns is not a regressive claim, but *succeeding to the rights of an insured person* by virtue of the law (a specific case of legal assignment – Art. 402 ТЗ). The succession to the rights of an insured person is possible only up to the amount paid by the insurer. Such a partial succession has its additional effect – if the insurance payment does not cover all damages, the person suffering the damage is entitled to seek from the delinquent those damages which have not been covered by the insurance. 110

e) Joint liability of a number of delinquents

As it has already been pointed out (supra no. 101), the joint liability of a number of delinquents in the cases of joint infliction of damage *does not affect the amount of the liability*, and is only an *additional guarantee* and a convenience for the person suffering the damage. The rules on joint liability in Bulgarian law (Art. 121 ff. ЗЗД) are in compliance with the generally accepted views in the Continental systems, and owing thereto, it is not necessary to consider them here. 111

f) False joint liability for insurance contracts and vicarious liability

In Bulgarian doctrine there is a term “false joint liability”.[38] Such false joint liability (just like the general case of joint liability) denotes the situations in 112

[38] See *Калайджиев* (fn. 8) 543 f.

which, due to the special corpus of facts, the creditor is entitled to claim the amount due from more than one person. However, he can receive it only once. The main difference of practical importance between the "real" and "false" joint liability is that, in principle, in the cases of false joint liability the rules on the internal relationships between the joint debtors do not apply.

113 False joint liability in the cases of tortious liability is present in the cases of (1) liability for persons under supervision (only if the immediate delinquent is sane and bears liability for his acts), (2) vicarious liability where a task has been assigned (Art. 49 ЗЗД and Art. 200 КТ), and in the cases of (3) insurance against the specific damage.

114 It should be underlined that there is no false joint liability in the cases of strict (objective) liability for acts of insane individuals or in the cases of liability of the State for damage, as in these hypotheses nothing can be claimed against the immediate tortfeasor (Art. 47, § 1 ЗЗД, Art. 8, § 1 ЗОДВПГ).

B. Legislation[39]

115 The exposition below shows only the basic legislation instruments of the rank of laws, which are essential to tort. Because of their large number, the subordinate legislation instruments are not specified. Those legislation instruments which provide for limited liability or liability only for grave forms of fault are not specially mentioned; as for them see supra no. 63, 64, 109 and infra no. 119.

1. Law on Obligations and Contracts

116 This law contains the basic legal provisions regarding tort (Art. 45–54). Apart from (1) *the general tortious clause* (Art. 45, § 1), the law also regulates (2) *the presumption of fault* (Art. 45, § 2), (3) the consequences in the cases of *necessary defence* and *extreme necessity* (Art. 46), (4) *strict liability* and *the liability for acts of legally incapable persons* (Art. 47 and 48), (5) *vicarious liability* (Art. 49), (6) the liability for damage from *chattels and animals* (Art. 50), (7) *the limits of civil liability* in tort, including *non-pecuniary damages* (Art. 51 and 52), (8) *joint liability* among a number of delinquents (Art. 53) and (9) *cross claims* in the cases of liability for legally incapable and vicarious liability (Art. 54).

117 However, along with this Section, ЗЗД also contains a number of other rules which have bearing on tortious liability. First, these are (10) *the special corpora delicti* in pre-contractual relationships, the unauthorized intervention in other persons' legal relationship, the termination because of mistake or false

[39] As for the promulgation data and the latest amendments to these laws see the respective footnotes above.

representation (Art. 12, 21, 28, 42). Next, it is the rules on (11) *reduction of indemnity* by what the creditor could have prevented by way of exercising due diligence (Art. 83, § 2) and (12) the general requirement regarding the *foreseeability* of damage (Art. 82). ЗЗД also regulates (13) the commencement of *delay* for tort and the delay interest (Art. 84, § 3, Art. 86), (14) the commencement of the *prescription* of a claim for tort, the duration of the said prescription, its term, as well as the suspension and renewal of the prescription terms (Art. 110, 114, § 3, Art. 115 and 116). The regulation of (15) *the set-off* also contains special rules on the claims regarding tort (Art. 105). The matters concerning non-performance lay down (16) the principle of *giving preference to the indemnity in kind rather than to pecuniary indemnity* for damages (Art. 79, § 2). This law also contains the rules on (17) *a debt relating to a chattel* (debitum cum re junctum) (Art. 91), (18) *the prohibition on advance release from liability* for intention or gross negligence (Art. 94) and (19) the whole regulation of *joint liability* (Art. 121 ff.).

2. Consumer Protection Act

In matters of liability for defects in goods sold this Act regulates the strict liability of the manufacturer, the distributor, the importer and the trader (Art. 130 ff.). It also regulates the vicarious liability of the trader and the distributor (Art. 134). 118

3. Labour Code

The Code regulates (1) the strict liability of the employer for damage caused by job-related accidents (Art. 200, § 1 and 2), (2) exclusion of the employer's liability only in the cases of intentional contributory infliction of the damage on the part of the worker suffering the damage, or reduction of the liability in case of gross negligence (Art. 201), and (3) the workers' and employees' limited liability and its amount in certain cases (Art. 203 ff.) 119

4. Law on the Liability of the State for Damage Caused to Citizens

This special law regulates the specific cases (Art. 1 and 2), the prerequisites (Art. 1, § 2), the amount (Art. 4), the reduction (Art. 5) and the possibility of inheriting (Art. 6) the indemnity, the venue of proceedings (Art. 7) regarding regressive claims (Art. 9), and the exclusiveness of the procedure for seeking damages under this Law, this procedure excluding the application of the general civil procedure (Art. 8). 120

5. Civil Procedure Code

The Code regulates (1) the rules on venue and functional jurisdiction over the litigation, including those from tort; it also contains the general rule of distributing the burden of proof (Art. 127), as well as special rules regarding the exclusion of non-sequestrability in the cases of claims from tort (Art. 320, § 2). 121

6. Private International Law Code

122 The Code regulates *the competence* of Bulgarian courts regarding (1) rights arising from tort (Art. 18), and (2) labour law litigation (Art. 17) as well as (3) consumers' rights (Art. 16). As for tortious relationships, the Code has followed the draft of the EU Regulation (Rome II) in its version which was currently valid in the year 2005. The competence regarding all these cases is not exclusive.

123 As far as tort is concerned, the general provisions of governing law apply as well (Art. 39 ff.).[40]

7. Penal Code

124 The Penal Code regulates the institutes which also apply to civil law, such as the institute of necessary defence (Art. 12), extreme necessity (Art. 13), detention of a person who has committed a crime (Art. 12a), and the forms of legally relevant fault (Art. 11, 14 ff.).

125 The separate crimes provided for in the Special Part of the Code (Art. 95 ff.) might be of importance in judging the wrongfulness of the specific culpable conduct (supra no. 48 ff.).

C. Case Law Developments

126 The lines below present a review of the court practice of the Supreme Court (SC) (until the year 1996) of the People's Republic of Bulgaria (until the year 1991)/the Republic of Bulgaria (years 1991–1996) and the Supreme Court of Cassation (SCC) (after the year 1996). Besides, because of their extremely large number, not all decisions of the Supreme Court instance have been analyzed, but *only the so-called "general effect acts"* – decrees of the Plenum of the Supreme Court (PPVS) and interpretative decisions (TR) of the SC/SCC, which are obligatory for the other courts and the administrative bodies in the Republic. The court acts considered below *do not concern all matters of tort* – they concern only those of contradictory court practice in different periods.

1. Amount of Indemnity

Relevant Acts: TR No. 45/1990, TR No. 73/1986, TR No. 74/1979, PPVS No. 7/1978, PPVS No. 4/1975, PPVS No. 4/1968, PPVS No. 17/1963, TR No. 88/1962, PPVS No. 7/1956

[40] See *Б. Мусева*, Допустима ли е автономия на волята при непозволено увреждане според българското международно частно право?, СП 6/2003, and also *Б. Мусева*, Още за трите основни критерия за определяне на приложимото право при непозволено увреждане според българското международно частно право, ТП 3/2004.

a) Reduction or Loss of the Capacity for Work

It is assumed that the amount of pecuniary damages in *job-related accidents* is equal to the difference between the remuneration received by the worker before the damage and the disability pension, or respectively – the lower remuneration received in another job taken after the damage occurred. The said difference can be claimed until the general retirement age is attained (and not only until the point of time at which the right to a pension is acquired due to sufficient length of service). 127

Where the person suffering the damage *could have taken a job in spite of his disability, but has not done so*, the indemnity is determined as the difference between the remuneration received prior to the damage and the remuneration he could have received if he had taken the new job. This resolution has had its practical importance mainly in the centrally planned economy, however, in the current labour market situation it is impossible to maintain it. 128

If the payment of the indemnity is a periodic one (Art. 51, § 1, sentence 2 ЗЗД), *the claim for it is discharged* with a special three-year prescriptive term instead of the general five-year term (Art. 111 ЗЗД). 129

In the cases of *disability* from a tort, the damage occurring after the expiry of a considerable period of time following the infliction, and resulting from the tort, are also adjudged. The change in the capacity for work (the degree of disability) in the course of time brings about a respective change in the indemnity which is paid periodically. 130

Indemnity for lost capacity for work is due not only where the person suffering the damage was in a legal labour relationship, but also where he was *self-employed* or *worked on a freelance basis*. Indemnity is also due to a pensioner who keeps working, although he receives a pension; in this latter case the indemnity is equal to the missed additional income. 131

b) Expenses for Medical Treatment and Non-Pecuniary Damages

The expenses for medical treatment and the expenses relating to overcoming the damage (including the expenses for persons attending to the person suffering the damage) are covered if 1) they have been necessary, and 2) they have really been incurred. If the person suffering the damage has been attended to free of charge by a relative of his, and, because of that, the said relative was unable to exercise his profession, the person suffering the damage is owed an amount which is normally paid for such attendance. 132

The indemnity due for *non-pecuniary damage is reduced by the hereditary pension* received by the relatives of the deceased person as a consequence of the damage (conmpensatio lucri cum damno). 133

134 *Non-pecuniary damages may originate from any circumstances* and it is impossible for these circumstances to be exhaustively enlisted.

135 Where *the person suffering the damage has not contributed to the tort, the amount of the indemnity for non-pecuniary damage might be greater*, i.e. the special reprehensibility may condition higher indemnity.

c) Pecuniary Damages

136 The insurance indemnity is deducted from the indemnity due to the person suffering the damage by the delinquent. However, if the insurance indemnity does not cover all pecuniary damages, the person suffering the damage may claim from the delinquent the part which has not been covered.

137 The damages caused by the death of a person obliged to provide support are of a pecuniary nature and may be claimed by the person entitled to receive the support. Along with the indemnity for pecuniary damage, indemnity for the non-pecuniary damage from the death of the person providing support may also be sought (see below).

d) Reduction of Indemnity

138 In the cases of contributory infliction of damage by the person suffering the damage, the fault of the person suffering the damage is of no importance; only the causal relationship between his conduct and the damage is relevant. Owing thereto, the indemnity may be reduced where an insane person has contributed to the damage he has suffered.

2. Scope of Persons Entitled to Indemnity for Non-Pecuniary Damage in the Case of Death of the Person Suffering the Damage

Relevant acts: PPVS No. 2/1984, PPVS No. 5/1969, PPVS No. 4/1961

139 The three PPVS mentioned above introduce *the restriction criteria* for determining the persons entitled to indemnity – these are only the closest relatives of the person suffering the damage in the case of his death: *the children, parents and spouse* i.e., neither the brothers or sisters, nor the grandfather or grandmother, nor the grandchildren of the deceased person are entitled to indemnity.

140 However, along with the said formal criterion (a specified degree of relationship or marriage), another benchmark is also applied, which is grounded on equity. Accordingly, indemnity may also be claimed by *those persons whose relationships with the person suffering the damage were similar to the relationships with the persons under the formal criterion* (e.g. a foster child who has not been adopted yet, as well as the concubinage of two persons of different sexes).

The said acts of the SC do not contain an explicit view on all possible hypotheses – e.g. a child raised by his grandparents or another relative without the intention of adoption. The only unambiguous rule that can be deduced e contrario is that in the cases of concubinage of two persons of the same sex no damages may be claimed. 141

3. Vicarious Liability

Relevant acts: PPVS No. 9/1966, PPVS No. 17/1963, PPVS No. 7/1958

According to these acts, the following principles are operative in the cases of liability for damage inflicted by an assignee of a task: 142

In order for vicarious liability to arise in assigning a task, apart from the general prerequisites for tort, the following conditions should also be present: 1) the act of the person causing the damage should be an act in tort; 2) the task should have been assigned to the delinquent by the person who shall be liable for the damage caused by the delinquent; 3) the damage should be caused either *during* or *on the occasion of* the performance of the task. 143

However, if the delinquent has been given certain chattels (tools), with which he has caused the damage, but the damage was caused neither *during* nor *on the occasion of* the performance of the task, no vicarious liability arises. 144

Liability *is also excluded* where the damage results *solely from personal relations between the tortfeasor and the person suffering the damage*, although the said personal relations might have started *during* or *on the occasion of* the performance of the task (e.g. a quarrel between workers). 145

However, liability *is not excluded* in those cases where the tortfeasor *has violated the instructions or the respective rules* given by the assignor for the performance of the assigned task. 146

The fault of the assignor (culpa in eligendo) is legally indifferent and the assignor may not be exculpated on his own grounds. He may be discharged from liability only if he disproves any of the general prerequisites for tort under Art. 45 ЗЗД (no. 45 ff.), or any of the special prerequisites under Art. 49 ЗЗД (no. 142). 147

When a task has been assigned by one enterprise to another and damage has ensued from the task, the responsibility for the acts of the specific delinquents depends on which of the enterprises has assumed the specific organization and supervision of the task. Where two or more persons, whose assignors are different, perform a task jointly, the distribution of the liability among the assignors is determined by the specific circumstances of contributory tort feasance; however, if the person suffering the damage is a third person, the assignors are jointly liable to him. 148

4. Some Special Corpora Delicti

Relevant acts: PPVS No. 4/1975, TR No. 32/1969, PPVS No. 17/1963

149 In the cases of *extreme necessity* reparation of damage is due in the following cascade consecutiveness: 1) by the one who caused the situation which has brought about the acts of extreme necessity; 2) by the owner or the person in charge of the chattel or animal that has caused the situation, or 3) by the one whose valuable comforts have been saved through the acts of extreme necessity acts.

150 *Culpable conduct* or *violation of prescriptions for operation with chattels* excludes objective liability for damage from chattels (Art. 50 ЗЗД); in these cases the general clause of one's own faulty acts (Art. 45 ЗЗД) or the liability of the assignor of the task (Art. 49 ЗЗД) is applied.

151 Indemnity for the failure to *honour a promise of marriage* may be sought only by the woman. No concubinage is necessary for such indemnity. However, it is necessary for the intention of concluding the marriage to be manifested in public. No indemnity is due where the promise of marriage is not honoured because of reasonable causes.

152 The issue of *an unlawful administrative act* forms grounds for the procedure of seeking general tortious liability from the tortfeasor under Art. 45 ЗЗД (this view was maintained prior to the adoption of ЗОДВПГ and should be considered overcome by it).

5. Liability of the State for its Bodies

Relevant acts: TR No. 3/2005

153 According to ЗОДВПГ, indemnities may be claimed only by individuals, and not by legal entities.

154 The liability of an official who is the direct tortfeasor of the damage is borne only by way of regressive liability, and no claim may be filed against him by the person suffering the damage.

155 In the cases of unlawful administrative acts the commencement of delay, and respectively, the enforceability of the legal interest on indemnity, and the commencement of the limitation on bringing the claim is the effective date of the decision through which the voidable administrative acts are repealed; for the void acts this is the point of time of their issue, and for unlawful acts or omissions of administrative bodies this is the point of time of their cessation. As for the unlawful acts of judicial authorities, this point of time depends on the specific particularities and the type of the respective act.

Passively legitimized under the claims grounded on ЗОДВПГ is the state body-legal entity with which the respective official-direct tortfeasor of the damage has either labour or official relations. 156

The judicial authority also bears liability in those cases where the punitive proceedings have been cancelled due to unproved charge. 157

The indemnity for non-pecuniary damage also includes indemnity for damage from the unlawfully imposed restraint measure of "deterrent detention". 158

6. Regressive Claims

Relevant acts: PPVS No. 17/1963

Regressive claims exist only in the cases of vicarious liability, assignment of a task and contributory infliction of damage (Art. 47, 48, 49 and 53 ЗЗД), and not in the cases of damage caused by chattels or animals (Art. 50 ЗЗД). 159

In the cases of joint infliction of damages all delinquents bear joint liability to the third person suffering the damage. However, among themselves they bear liability as several debtors, and not as joint debtors. 160

7. Procedural Particularities

Relevant acts: PPVS No. 7/1978, TR No. 59/1974, PPVS No. 17/1963

In the cases of tortious damage covered by an insurance contract, the claims of the person suffering the damage from the tort should be subjectively and possibly joint to be considered in the same trial. The basic claim should be the one against the insurer, and the possible claim should be the one against the delinquent or against the person who bears vicarious liability under Art. 47–49 ЗЗД. This practice of the BC probably ensues for reasons of convenience for the insurer when filing his regressive claims against the delinquent. There are no data showing this view is maintained after private insurance has developed. 161

Where the unauthorized damage also represents corpus delicti, the claim for damages may not be considered separately from the prosecution; civil proceedings have to be suspended and the sentence of the penal court should be awaited (Art. 182 ГПК). 162

The regressive claim originating from vicarious liability may be brought as a separate claim only if the indemnity claim has been brought only against it, and not against the specific delinquent. If the liable person and the delinquent have been sentenced in the same trial, no regressive claim is admissible because the payer has the remedy of Art. 326, § 1 ГПК as a joint debtor. (Since 1963 this practice is improper because the vicarious liability under Art. 47–49 ЗЗД is not a joint one – see supra no. 113). 163

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