

COMPENSATION FOR PERSONAL INJURIES IN BULGARIA

by

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I. GENERAL INFORMATION ABOUT BULGARIA

The Republic of Bulgaria is a country located in Southeast Europe, in the eastern part of the Balkan peninsula. The capital of Bulgaria is Sofia, the official language of the country is Bulgarian and the national currency thereof - the Bulgarian lev (BGN). The population of Bulgaria is approximately 7 200 000 people. The country joined the European Union on 01/01/2007, as it is currently represented by 17 Members of the European Parliament. At present the European Commissioner from Bulgaria is Mrs. Kristalina Georgieva, who is a Vice-President of the European Commission for Budget and Human Resources.

II. SOURCES OF BULGARIAN LAW

1. Classification of Sources of Bulgarian Law

1.1. European and International Sources

- Sources of the EU law, including the Treaty of Accession of the Republic of Bulgaria and the Republic of Romania signed in Luxembourg on 25/04/2005;
- International treaties.

1.2. Domestic Sources

- Constitution of the Republic of Bulgaria;
- Codes and laws;
- Subordinate legislation - decrees, regulations, ordinances, instructions;
- Other sources – judgments of the Constitutional Court by which certain legal provisions are declared anti-constitutional, legal customs, general principles of law, morals, ex aequo et bono, case-law.

2. Sources of Domestic Bulgarian Law Related to Tortious Liability

The sources falling within the present group are not exhaustively listed due to their significant number.

2.1. General Sources Governing Tortious Liability

- Obligations and Contracts Act;
- Penal Code;
- Civil Procedure Code;
- Penal Procedure Code.

2.2. Specific Sources Related to Medical Assessment of Working Capacity and Forensic Assessments

- Ordinance for Medical Assessment;
- Ordinance No. 2 of 29/06/2015 for the Registration, Qualification and Remuneration of Expert Witnesses;
- Ordinance No. 2 of 26/10/2011 for the Terms and Procedure for Conducting Forensic Medical, Forensic Psychiatric and Forensic Psychological Assessments, Including for Payment of Healthcare Institutions Costs.

2.3. Special Sources Related to Road Accidents

- Road Traffic Act;
- Regulation for Implementation of the Road Traffic Act.

III. TORTIOUS LIABILITY

3. Nature of Tortious Liability. Types of Tortious Liability.

The general regulation of tort in Bulgarian law is contained in the Obligations and Contracts Act and follows the Roman legal tradition of Art. 1382 ff. of the French Code civil and Art. 2043 ff. of the Italian Codice civile dated 1942.

In cases of tortious liability, a change in objective reality occurs, which is not desired by the victim. The interest of the latter infringed by the tort is the one of keeping the status quo, which can be determined as *”negative“*.

The infringement of negative interest is generally related to the breach of common obligation *”to not cause damages to anybody else“* (*”neminem laedere“*), from which the liability for own culpable conduct results. The said liability is governed by the general provision of Art. 45, Para. 1 of the Obligations and Contracts Act. However, Bulgarian law recognises specific cases of a tort, which are stipulated both in the Obligations and Contracts Act and in specific laws.

4. Functions of Tortious Liability

The main function of tortious liability is the **compensatory** one, by which the harmful consequences of the wrongful act are allocated in such a way so that they burden the tortfeasor.

Tortious liability has one additional function: a **preventive** one. The assignment of an obligation for compensation of damages caused affects the tortfeasor psychologically and prevents tort commitment.

Under Bulgarian law tortious liability does not have a **penal function**.

5. Elements of Tortious Liability

Tortious liability generally occurs upon the presence of the following five elements:

- 1) Conduct;
- 2) Wrongfulness of conduct;
- 3) Damage;
- 4) Causality between the wrongfulness of conduct and the damage;
- 5) Fault.

It is possible for tortious liability to occur despite the lack of some of the above elements (faultless tortious liability, etc.).

Pursuant to the definition provided for in the Road Traffic Act, a road accident is „*any event having occurred during the movement of a vehicle and having caused injury or death to persons, damage to a vehicle, road, road facility, cargo or other material damages*“. In cases of death or bodily injuries caused as a result of a road accident the following specific features of the elements of tortious liability are present: the wrongfulness of conduct represents violation of traffic rules stipulated in the Road Traffic Act and the acts for its implementation; the damages suffered result from bodily injuries or death occurred as a direct and immediate consequence of the road accident; causality between the road accident mechanism and damages exists.

6. Principles of Compensation

Bulgarian law regulates tortious liability on the basis of the principle of “*integral compensation of damages*”. All damages, which have occurred or will occur as a direct and immediate consequence of the tort, are subject to compensation (Art. 51 of the Obligations and Contracts Act). The latter may be payable as a lump sum or in regular installments.

The compensation shall be full and shall restore the situation prior to the tort. It can be *monetary* or *in kind*. Monetary compensation is generally awarded in Bulgaria.

Both *material damages* (loss suffered (*damnum emergens*) and loss of profit (*lucrum cessans*)) and *non-material damages* (ethical, emotional, mental, psychological torments of the individual, pain and sufferings) are subject to compensation. Future damages are subject to compensation in case they result from the tort and represent natural continuation of the objective process of harmful effect of the injury itself, as their occurrence shall have a high degree of certainty.

Material damages suffered by the victim are compensated in compliance with the principle of “*compensation of damages and profits*” (“*compensatio lucri cum damno*”).

If the person suffered the damages has contributed to their occurrence, the compensation may be reduced.

Each claim for compensation (differentiation shall be made not only between material and non-material damages, but also between material damages having different origin and grounds) represents a civil claim from a procedural aspect, which claim may be objectively joined with the other claims for compensation filed in the relevant proceedings. The amount of compensation for each type of damage depends on the estimation of the relevant facts of the case.

7. Conditions of Temporary Disability, Temporary Reduced Working Capacity, Permanent Disability and Permanently Reduced Working Capacity (Invalidity), Occurred as a Result of Tort

As a result of the tort the following conditions of the victim may occur: temporary disability, temporary reduced working capacity, permanent disability and permanently reduced working capacity (invalidity). The same are determined in Bulgarian social insurance legislation and shall be ascertained by the competent authorities of medical assessment of working capacity.

It shall be mentioned that in cases of invalidity the working capacity is fully or partially lost (loss of working capacity equalling 50 % and exceeding 50 %), permanently or for a continuous period of time.

8. Expert Assessments

8.1. Extrajudicial Expert Assessments

In extrajudicial relations between the victim and tortfeasor preparation of extrajudicial expert opinion is possible, including medical one, which is assigned to a specialist chosen by the relevant party.

However, extrajudicial expert assessments cannot be considered to be forms of evidence in the relevant court proceedings due to the fact that in order to be used as such, each assessment shall be conducted according to the procedure explicitly stipulated in the relevant procedural laws.

8.2. Forensic Assessments. Forensic Medical Assessments

8.2.1. General Rules for Forensic Assessments

Where special knowledge from the relevant field is necessary for the purpose of elucidating some circumstances of the case, the court *ex officio* or upon request of any of the parties shall appoint a forensic assessment.

The court decides on the necessity of forensic assessment appointment at its sole discretion as far as the hypotheses of mandatory appointment of such are not present, and according to the Penal Procedure Code these are the cases when there is doubt regarding the cause of death; the nature of bodily injury, etc. Upon making the decision on the above the court shall take into consideration the objective necessity of elucidating the relevant circumstances of the case.

The expert opinion shall not be binding upon the court, but shall be discussed together with the other evidence collected in the proceedings.

8.2.2. Expert Witnesses

The forensic assessment shall be assigned to experts in the respective field.

Lists of specialists approved for expert witnesses shall be drawn up for each judicial region of a district or administrative court, as well as for the specialised penal court. Supreme courts and prosecutor's offices, as well as the National Investigation Office, when necessary, approve separate lists for the needs of their activity.

The court shall appoint an expert witness from the list of the respective judicial region. When necessary, the expert witness may be appointed from the lists of other judicial regions or from a respective unit, department or university at which persons having the necessary qualification and specialty work.

8.2.3. Forensic Medical Assessments

8.2.3.1. General Rules for Forensic Medical Assessments

Forensic medical assessments are conducted by forensic medical expert witnesses in accordance with the relevant legal requirements.

A forensic medical expert witness may be a doctor having an approved specialty in forensic medicine or other medical specialty, a doctor without a specialty who works at a unit of the healthcare institution performing forensic medical activity, or a doctor in dental medicine.

The forensic medical assessment is generally conducted on the basis of the data obtained from the medical documents issued by competent medical authorities and presented to the expert witness, material evidence, examination of the victim, as well as on the basis of verification of the medical documentation regarding the said victim available in the relevant hospital.

8.2.3.2. Tasks Assigned to the Forensic Medical Assessment

The main tasks assigned to the expert witness conducting the forensic medical assessment in cases in which death or a bodily injury is caused as a result of torts are as follows:

A) Forensic Medical Assessment of Human Corpses or Parts of Corpses

Which the reason for death is; when the death occurred; whether there is causality between the bodily injury and the death, etc.

B) Forensic Medical Assessment of Bodily Injuries

What the type and nature of bodily injury are; what the location of bodily injury is; what the mechanism of causing the bodily injury is; what the duration of health impairment of the injured party is; what the period of recovery of the injured party is; prediction regarding or estimation of the loss of working capacity; whether the death, if any, is connected with the bodily injury, etc.

The main tasks assigned to the forensic medical assessment in cases of death or bodily injuries as a result of a road accident include: determination of the type and location of the traces and damages to clothes of the victim and the injuries caused thereto, of the mechanism of injuries causing, of the position of the victim and the vehicle, of the type and part of the vehicle having caused the damages, etc.

In the predominant number of cases of death or bodily injuries as a result of a road accident, especially when the victim is a pedestrian, a complex forensic medico-autotechnical assessment is appointed, while the tasks assigned thereto are as follows: determination of the place of hit, speed of the vehicle, dangerous zone, possibility of prevention of the hit, etc.

9. Damages. Manner of Compensation Determination.

9.1. Damages Suffered by the Victim as a Result of the Tort. Manner of Compensation Determination.

9.1.1. Material Damages

The victim may claim the following types of material damages resulting from the tort:

A) Material damages representing costs for medical treatment and overcoming of the consequences of the injury – costs for medicines, medical consumables, rehabilitation, certain alimentary regime, sanatorium and resort treatment, nurse, etc.

When the health is irreversibly harmed, compensation for the damages listed shall be due for life. In this case the costs may be determined and awarded to a periodical amount, until the conditions for lapse of grounds for payment occurs.

The amount of compensation for the above damages shall be determined on the basis of documents evidencing their actual incurrence and after ascertainment of the necessity of their incurrence and the causality between them and the tort. When necessary, forensic economic or forensic accounting assessments are appointed. Such assessments are appointed as well in cases when compensation for a future period shall be awarded, while for the purpose of determining its amount the expert witness generally draws a conclusion from the value of the relevant goods and services up to the date of preparation of the expert opinion in the pending case. The economic conditions and inflation processes shall be taken into consideration as well.

B) Material damages representing loss of incomes

- Material damages representing loss of employment incomes suffered by an employee
 - Loss of employment remuneration

In case the injured employee has suffered material damages from loss of his employment remuneration, the amount that the injured would have received if the injury had not been

caused shall be calculated. The basis for such calculation is the employment remuneration up to the tort date, including all supplementary incomes of permanent nature, while in cases of invalidity all the changes in the employment remuneration for the relevant position, occurred after the injury until the date of invalidity, shall be taken into consideration.

In compliance with the principle of “*compensation of damages and profits*”, the amount of compensation is determined as difference between the net employment remuneration and the benefit for temporary disability, respectively the invalidity pension.

When the victim is in a condition of permanently reduced working capacity that enables him to work at a position suitable for his health status, the same suffers material damages only in case the total amount of the invalidity pension and the remuneration received for the work at which he has been occupationally rehabilitated does not cover his employment remuneration from the period prior to the injury. In case the injured party has been offered but has refused to hold another position suitable therefor or he has not made efforts to begin work at such a position, the amount of remuneration which he could have received if he had worked shall be taken into consideration.

Compensation shall be due as well to a pensioner who continues working after his retirement. In this case the compensation shall equal the additional income lost.

- Loss of other incomes of permanent nature

When the injured party, except for his employment remuneration, has had other incomes of permanent nature, he may seek compensation therefor following the general procedure.

➤ Material damages representing loss of expected incomes from liberal professions and/or a skilled crafts not practised as a result of the tort

When the grounds of such incomes have been ascertained, but this does not relate to their amount, the court shall determine the compensation on the basis of a longer period of time during which, prior to the tort, the injured party has received them constantly. These are remunerations which are not generally received on a monthly basis and on the other hand, they do not have a permanent nature. The court shall use as a basis for compensation determination an average monthly amount for a period of time of a year or more prior to the tort /with a view to the specific facts of the case/.

C) Aggravated material damages

In case the health condition of the injured party aggravates in comparison with the condition upon which the compensation has been awarded /aggravation/, the said party

shall be entitled to a new claim for compensation resulting from the new condition in case causality between the latter and the tort is present. Upon the initial compensation awarding the aggravation of health condition shall not have been predicted or taken into consideration by the court.

In case the working capacity of the injured party gets better, the tortfeasor may request reduction of the compensation due thereby.

9.1.2. Non-Material Damages

The amount of compensation for non-material damages shall be determined *ex aequo et bono*. The term “*ex aequo et bono*” within the meaning of Art. 52 of the Obligations and Contracts Act, however, is not abstract. It is related to the estimation of several objectively existing circumstances that shall be taken into consideration by the court upon the compensation determination for each specific case, while the compensation awarded shall not be a source of victim’s enrichment. Such objective circumstances may be the nature of injury, the manner of its causing, the circumstances under which it has been caused, the additional aggravation of health condition, the moral sufferings caused, mutilation, uglyfication, etc.

As far as the amount of compensation for non-material damages is a question of particular estimation of the facts of the case, unification in its determination is impossible. For this reason the legislator does not use techniques for determination of just monetary compensation of pains and sufferings caused, for example fixed amounts, minimum and maximum amounts, percents, etc.

In cases of aggravation the compensation for non-material damages shall be determined *ex aequo et bono* for the pains and sufferings resulting from the aggravation only.

9.2. Damages Suffered by Victim’s Relatives as a Result of the Tort. Manner of Compensation Determination.

In case of victim’s death, the right of compensation for material damages shall be inherited. When there is a pending lawsuit, the heirs of victim, by virtue of succession, intervene the proceedings and substitute the deceased person regarding all claims for compensation for damages filed thereby, including for non-material damages, for the period until the estate opening. The right of compensation for non-material damages is a question of victim’s own discretion and in case it has not been claimed in court proceedings when the person has been alive, the said victim cannot be substituted by his heirs.

The scope of persons who can claim compensation for material and non-material damages from a tort as regards a relative of theirs, on personal grounds, is determined in the case-

law. Pursuant to the latter, as a rule the above persons shall be entitled to compensation only in cases of victim's death, but not of a bodily injury thereof. However, some exceptions in this regard exist. As far as the claims of relatives entitled to compensation are concerned, no estimation is made on whether they are heirs of the deceased person, respectively what their shares of the estate and degree of kinship are, but to what extent and amount the material and non-material damages suffered thereby are, with a view to all circumstances related to the necessity of maintenance, their capacity respectively as parents, children, spouses or persons being in relations similar to the above, of factual nature, with the deceased person, etc.

In case there is causality between the death of the person and the tort, but the death has occurred later, the right of victim's relatives to claim material and non-material damages occurs as of the date of death.

The begotten but still not born child is considered to suffer material and non-material damages from the death of his parent resulting from a tort, on personal grounds, while his claim therefor arises as of the moment of birth.

9.2.1. Material Damages

A) Material damages representing deprivation of the incomes of deceased person in case with a view to the legal provisions, the latter has been obliged to provide his relatives with maintenance or has actually provided them with such.

The damages in this case equal the funds necessary for the maintenance of the respective persons – children, parents, siblings and other relatives of the victim, if they are not compensated by the survivor pension to which they are entitled. In such cases the amount which the beneficiary of maintenance shall have received on a monthly basis, if the tort had not been committed, needs to be calculated.

When compensation for damages of the above type is claimed by minors, according to the case-law, the eventual incomes of deceased parent of the plaintiffs, when he has been alive, shall be taken into consideration for the purpose of determination of its amount, upon the observance of the rule of Art. 142, Para. 2 of the Family Code, stating as follow: "*The minimum maintenance of a child shall be equal to one quarter of the amount of the minimum salary*." The contribution of alive parent to the maintenance of children shall be also compared to the one of deceased parent.

B) Material damages representing costs for transportation of remains of the deceased person, funeral services, construction of tombs, etc.

The amount of compensation for material damages in this case shall be determined on the basis of documents for their actual incurrence and ascertainment of the causality thereof with the tort.

9.2.2. Non-Material Damages

According to the case-law, the persons entitled to compensation for non-material damages as a result of the tort having affected their relative are the parents, children and spouse of the victim. Adopted and born children are treated equivalently. Persons being in cohabitation without having entered into marriage, if this cohabitation does not have the elements of a crime and does not contradict the rules of morals, as well as the persons who have been actually brought up by the victim (the child taken for bringing up and adoption, but not adopted yet), respectively the persons having brought up the victim, including in cases of step-children and their step-mother/father, are also entitled to claim such compensation.

The compensation for non-material damages shall be determined on the basis of estimation of the particular facts of the case *ex aequo et bono*. In this case the age of deceased person, his social status, the relations thereof with the person seeking compensation, etc., are taken into consideration.

10. Prescription

Claims arising out of a tort shall be extinguished by the expiry of a 5-year prescription period considered from the detection of tortfeasor.

11. Alternative Tort Disputes Resolution

11.1. Arbitration

Arbitration is a manner for out-of-court dispute resolution in which the parties to a certain property dispute may agree that the said dispute be settled by an arbitration court – a third independent party.

A tort dispute may be subject to the jurisdiction of an arbitration court in the following cases:

- In case of an arbitration clause agreed by the tortfeasor and the victim regarding their contractual relation leading to jurisdiction of the arbitration court in relation to certain tort disputes. Due to the fact that in cases of torts generally there is no pre-existing relation between the tortfeasor and the victim, an arbitration clause of the above type is hardly likely

to be agreed. In addition, such a hypothesis cannot occur in cases of a road accident.

- In case of participation of the defendant in the relevant arbitration proceedings initiated regarding a tort dispute, without challenging the jurisdiction of arbitration.

Arbitration proceedings are rapider than court ones, to which their one-instance nature contributes (in comparison with the 3-instance court proceedings). The examination of a dispute and the rendering of an award happen in an approximately short period of time.

The arbitration fee is lower when the value of the claim is higher. Most of the arbitration courts adopt tariffs with fees lower than the court ones.

The duration of arbitration proceedings, as well as the arbitration fees, may vary depending on the respective arbitration institution to which the dispute is referred to settlement.

11.2. Mediation

Mediation (*“mediatio”*) is a voluntary and confidential procedure for out-of-court dispute resolution, whereby a third party – mediator, assists the disputants in reaching a settlement.

Within a mediation process all issues shall be resolved upon mutual consent between the parties, while the type of mediation applied in Bulgaria is the facilitative one.

The mediation procedure shall commence on the initiative of the parties to the dispute, while each of the said parties is entitled to propose resolution of the dispute through mediation. Such a proposal may furthermore be made by the court or another competent authority whereto the dispute has been referred for settlement.

The mediator shall commence the mediation procedure after the parties have accepted the conditions for payment of his remuneration. An hourly rate is generally applied, but the parties may agree another manner of payment as well. The mediator cannot determine the amount of his remuneration under condition or depending on the outcome of the dispute resolution. The costs for mediator’s remuneration are usually equally borne by the parties, but it is also possible for one of the parties to bear these costs in full.

During the mediation procedure one or several meetings between the parties are held.

The main advantages of mediation are connected predominantly with its speed. From a period of one to three weeks, by way of meetings of one to three hours, a dispute can be resolved, which dispute may be examined by the court for years. Furthermore, the mediation procedure is more cost and time-effective than both the court and arbitration

ones.

Nowadays, arbitration and mediation are not frequently used for tort dispute resolution in Bulgaria. The parties to such disputes still prefer court proceedings for this purpose.

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