

## J u d g m e n t

# bs-205-172-k-04 September 23, 2004 Tbilisi City

The Supreme Court Chamber of Administrative and Cases of Other Categories

Composed: Chairman N.Sxirtladze (Chairman),

N. Klarjeishvili,

I. Legashvili

Subject of the Dispute: Compensation for Damage

### D e s c r i p t i v e P a r t :

On 5 June 2002 J. Berishvili submitted an application to the Rustavi City Court against respondents: the Rustavi City Hall and LLC “Cultural and Recreational Park” and noted that on 7 June 1999 when her son turned 7 year old he went to the Cultural and Recreational Park, at the newly set lake. Around 3PM, on the patch, 20 meter away from the lake he was attacked by one and a half meter long snake (Gyurza), which bit and poisoned him. He was immediately placed at the Rustavi Central Hospital where he got anti-Gyurza serum. In view of the fact that the child was in the most severe condition, for the second day right after the first detoxication treatment he was replaced at the Child Republic Hospital, where his shin and foot was cut up with catial membranes’ opening. After he left the hospital the doctors reassured that the child would overcome the fear but they said nothing about those hardest consequences followed the Gyurza’s bite. The child is still in the list of patients in the hospital who are waiting for a treatment and he is undergoing treatment at the Psychiatric Science Institute named after M. Asatiani, in spite of this child has serious infractions and is in need for full examination and treatment abroad for the final recovery. The Rustavi City Hall paid a specified sum for the child’s operation and hospital placement, but the sum was minimal in the comparison with the expenses paid by the family although the final result has not been achieved. Because of the economic hardships J. Berishvili applied to the Rustavi City Hall and requested the reimbursement of the child treatment’s expenses but the financial support did not follow the application.

The plaintiff noted that her family incurred moral and material damage because the public officials did not fulfill their obligations.

If the public officials would have diligently fulfilled the imposed obligations on them, the reptile would not have been in a crowded place. For her son’s health it is necessary to take him abroad what she cannot afford. According to Article 37 of the Constitution of Georgia; Articles 18, 413, 1005 of the Civil Code; Article 3 of the General Administrative Code of Georgia; Article 2.2 of the Administrative Procedural statute of Georgia the plaintiff requested: to impose 50000 USD on the respondents for the reimbursement of moral and material damages; to conduct medical examination and to send the plaintiff abroad for the treatment purposes on account of the respondent.

By the Rustavi City Court's Judgment of 14 March 2003 J. Berishvili's application was refused. J. Berishvili appealed the judgment. By the Judgment of 3 March 2003 of the Appellate Chamber of the Circuit Court the appellate complaint was partly satisfied, with declaring the appealed judgment void a new judgment was delivered, J. Berishvili's application against the respondents was partly satisfied: the Rustavi City Hall and the Recreational Park were imposed jointly to pay 3000 GEL in favor of the plaintiff; in the remained part of the judgment the appellate application was not satisfied. The appellate chamber noted that during April 1999 the Rustavi City Hall made a contract with a specialist from the Zoology Institute to learn and research the Rustavi City territories, streets, homes and other units. By specialists' short report of 1 November 1999 it was confirmed that even in the report made in 1997 it was underlined that the special attention and organizational work needed to be done regarding the poisoning snake Gyurza on Rustavi territories. The research made it clear that it is easy to imagine the reproduction of this snake what is very dangerous for the population. The special attention is needed to the South-Western part which borders to the Gyurza areal – Ialguja Mountain. It is considered that the Rustavi City Hall supplied the hospital with "Anti Gyurza", what proves the state's acknowledgement of the possible fear. The Appellate Chamber relying on the report made by the reptile fighting group established that the park was not mowed down on 7 June 1999. According to the same report the ambushed landscape is the best shelter for reptiles during the specified time; some reptiles migrated to the populated places. The feeding bases are: insects, frogs and huge rodents. In spite of the measures carried out in the City areas it is still in unsanitary conditions –garbage and used construction supplies accumulated in the outskirts of the city is the best shelter for the reptiles. The Appellate Chamber indicating Article 37 and 7 of the Constitution of Georgia considered that the Rustavi City Hall as the local state institution had an obligation to take the special measures to eliminate the reptile's shelters in the city areas; to eliminate reptiles to trespass in the city areas and create safe environment for human's health in the entire city. As a result of not taking such measures the underage M. Shvelidze's was poisoned by the reptile, what conditioned the child's hard emotions and his life was in danger; in spite of the qualified medical treatment the following psychological changes occurred: neurosis conditions and phobia disturbances. The chamber considered that in the given case not all needed measures were carried out by the officials of the state institutions, whose negligence conditioned the mentioned consequences. According to Articles 1005, 413 of the Civil Code, due to reasonableness and fairness, the Appellate Chamber imposed on the respondents 3000 GEL in favor of the plaintiff.

The judgment of 3 December 2003 of the Tbilisi Circuit Court Chamber of Administrative and Tax Affairs was appealed according the cassation rules by the Rustavi City Hall and LLC "Cultural and Recreational Park". The cassation applicants were alleging that according to the organic statute on the Local Self-governance and Governance in the Rustavi City there is a full a self-governing system but the LLC "Cultural and Recreational Park" under law is a private entity, and so the note that the Rustavi City Hall is a governmental institution is groundless. In Article 1005 of Civil Code provides the damage compensation in case of public officials' purposeful and negligent duty violation and Article 4.2 of the Statute on Civil Service states: "A person, who works for State, is a state servant. A person, who works for a local self-government unit, is a local self-government servant". It is unconfirmed what the respondent's rough negligence and guilty act is, according to the files in the case the city was mobilized to avoid the accidents, because of this the City Hall

invited herpetologists. Only because of the migration it is possible that reptiles appear, that is why “Anti-Gyurzin” exists, during the spring season the City Hall always makes contracts with three herpetologists, who serve the City. Coming from the aforementioned the cassation applicants demand to void the judgment of 26 November 2003 of the Appellate Chamber and to refuse the satisfaction.

At the Cassation Chamber hearing the cassation representatives supported the cassation complaint and noted that the City Hall took all the necessary measures to avoid the accident, the City Hall reimbursed the primary medical treatment expenses for the child, besides of this reimbursement the City Hall offered to J. Berishvili a specified sum of money and she refused it. J. Berishvili did not recognize the basis of the cassation application and demanded the judgment of the Appellate Chamber to remain unchanged. The parties were given time to come to an agreement. The agreement was not reached: the representative of the Rustavi City Hall noted that the City Hall agreed to give J. Berishvili 1200 GEL, J. Berishvili refused the offered sum.

#### M o t i v a t i o n P a r t :

The Cassation Chamber notes that according to Article 1005 of the Civil Code, which determines the state’s liability, by a state institution is meant the state institution as determined by the Constitution of Georgia, especially legislative, executive and judicial branches, also local self-governing (governing) representative and executive institutions. According to Article 23 of the Organic Statute on Local Self-Government and Government the City Hall has an obligation to take measures to protect and safeguard the environment. It is established in the case that the Rustavi City and its locality are situated at the reptiles intensive settlement; since 1997 every spring the Rustavi City Hall invited specialists – herpetologists, whom they contacted about reptiles, they learned and researched the Rustavi City territories, streets, homes and other units. April 1999 the Head of the Social Programs Bureau of the Rustavi City Hall made a contract with a specialist of the Zoology Institute of the Science Academy to learn and research the Rustavi City territories, streets, homes and other units. According to the contract made on 6 March 1999 between the director of the Park and a citizen J. Tediashvili the latter took an obligation in spring to conduct mow down works at the park’s territories and to feed J. Tediashvili owned cattle. Prior to the day, when M. Shvelidze was poisoned, the Rustavi City Hall supplied hospital with “Anti-Gyurzin” and reimbursed the medical treatment expenses rendered to the patient. The affidavit given by the chief doctor confirms that M. Shvelidze was provided with qualified medical care, the patient had sufficient medical remedies. As envisioned by Article 37 of Constitution of Georgia a duty to care to create a healthy environment is confirmed by the report of the herpetologists, the affidavit given by V. Pickhelaury confirmed that appropriate prophylactic measures were conducted in the city; at the park area there is no Gyurza settlement, the snake, which poisoned the child, accidentally appeared in the park area, neither the City Hall nor the Park Administration is guilty in the accident happened. J.S.C. Psychiatric Science Institute named after M. Asatiani issued the document on 5 August 2002 #198, which confirms that on 30 July 1999 it was detected that M. Shvelidze suffered from a post traumatic neurosis, currently the condition is satisfactory. Coming from the aforementioned the Appellate Chamber’s opinion that the respondent’s, state institutions officials’, gross negligence conditioned the given result is unfounded, besides the Cultural and Recreational Park is not a state institution but a private structure – LLC,

with 100% share owned by the Rustavi Local Government. So the opinion of the Appellate Chamber that the given result caused by the City Halls predominated or gross negligence act as envisioned by article 1005 of Civil Code is unfounded. The factor that the bodily harm caused non-pecuniary damages and that M. Shvelidze has a post traumatic neurosis does not represent the basis for a pecuniary reimbursement as provided by Article 413 of the Civil Code as the mentioned provision does not envisage the liability without fault. The Cassation Court considers that the respondents – the Rustavi City Hall and LLC “Cultural and Recreational Park” administrations were not able to avoid the harm caused by this accident where the respondents does not have the fault. According to Article 6 of the Statute on Animals’ World the state, which in this case is the owner of wild animals, cannot be liable for a damage caused by an animal act in a free natural stance. In this case the state does not deal with the specified usage of the object accordingly the state’s liability is excluded also as provided by Article 1003 of the Civil Code (Compensation of Harm Caused by an Animal).

The Cassation Court takes into account the facts mentioned below and it considers that the Rustavi City Hall during the first instance hearing reflected the willingness to support the child and his family to continue the treatment. During the case hearing the cassation representatives agreed to pay 1200 GEL for the child’s treatment and the parties were given time to reach an agreement. The opposite party denied the given sum and requested the judgment to be unchanged. Coming from the aforementioned and taking into account that the circumstances of the case are established without a breach of the procedural norms and do not require additional examination of the evidences the Cassation Chamber considers the ability to change the judgment by delivering the one: partly satisfying J. Berishvili’s application to impose jointly 1200 GEL on the Rustavi City Hall and LLC “Cultural and Recreational Park” in favor of J. Berishvili. The remained part of the application should not be satisfied. According to the remained part of the not satisfied application J. Berishvili should be free not to pay the state fee in favor of the state’s budget as provided by Articles 10 paragraph 1 and 47 of Civil Procedural Code of Georgia.

#### Resolution Part:

The Cassation Court guided by Article 1 paragraph 2 of the Civil Procedural Code of Georgia and Articles 410, 411 of the Civil Code

#### Held:

1. The Cassation complaint of the Rustavi City Hall and LLC “Cultural and Recreational Park” is partly satisfied. The judgment of the Tbilisi Circuit Court Administrative and Tax Affairs Appellate Chamber is to be changed, the new judgment is to be delivered;
2. J. Berishvili’s application is partly satisfied, respondents: the Rustavi City Hall and LLC “Cultural and Recreational Park” should to pay jointly 1200 GEL in favor of the applicant – J. Berishvili;
3. The remained part the judgment is to be left unchanged;

4. The Judgment of the Supreme Court of Georgia is final and cannot be appealed.