

## **SLOVENIA**

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## **Tortious liability of the state because of unprofessional investigation of attempted murder (Judgment of the Supreme Court II Ips 281/2016, 12 January 2017)**

### ▪ *Brief Summary of the Facts*

- The plaintiff was a victim of attempted murder in 1999, when he was attacked in the courtyard of his house, beaten to unconsciousness and was then taken in his own van to an illegal dump, where a random passer-by found him.
- In 2008, the plaintiff demanded compensation of € 50,000 from the state for damages caused to him because law enforcement and criminal justice authorities did not perform their tasks in connection with the investigation and the handling of this criminal offense carefully and professionally
  - € 25,000 – this had affected his mental integrity, because he was afraid and felt powerless and uncertain about his personal safety
  - € 25,000 - financial compensation for non-pecuniary damage, which, due to the unprofessionalism of the law enforcement agencies, could not be obtained by suing the perpetrators of the harm.

- Key facts regarding the disputed police procedure and the criminal proceedings
  - The Police questioned the persons who could provide data that could possibly be important for successfully carrying out the police procedure against the perpetrators of the criminal offence after a year and eight months [for one] or nearly three years [for the other] since the assault against the plaintiff
  - The state prosecutor rejected the criminal complaint against initial suspect A., who allegedly had a motive to carry out the criminal offence, six and a half years after the assault
  - The initial suspect A. was not even examined in the police procedure.

- It was only after eight and a half years had passed since the assault against the plaintiff that the state prosecutor requested that an investigation to be initiated against B., as there allegedly existed a reasonable suspicion that he assisted in carrying out the criminal offence
- From the opinion of the court-appointed expert, which was drafted 10 years after the assault, it follows that the complainant had only sustained minor bodily injuries. The state prosecutor therefore discontinued prosecution due to the case being time-barred.
- In addition to procrastinating in carrying out the described investigative and procedural actions, there stands out the fact that certain investigative acts that would manifestly have been possible were not carried out

### *I. First instance court*

- Awarded compensation in the amount of € 10,000 due to infringement of the right to inviolability of life, body, security and freedom
- It rejected plaintiff's claim for compensation for non-pecuniary damage because he was unable to sue the perpetrators of the damage

### *II. Second instance court*

- The second instance court upheld the defendant state's appeal and amended the judgment of the first instance court such that it rejected the claim in its entirety

### ***III. Constitutional Court***

- Annulled the second instance court's decision
- It decided that this constituted an infringement of the plaintiff's rights guaranteed by the Constitution of the Republic of Slovenia
  - Article 34 (the right to personal dignity and safety)
  - Article 35 (the inviolability of the physical and mental integrity of every person, his privacy and personality rights)

### ***IV. Second instance court***

- Reduced the compensation to € 7,500 due to infringement of the right to inviolability of life, body, security and freedom
- Compensation for non-pecuniary damage - it ordered it to determine the extent of damage and to decide on the amount of compensation

## *V. Supreme Court*

- The Supreme Court ruled in the judgment only on the question of whether the compensation of € 7,500 represented appropriate compensation to the plaintiff for the alleged violations of human rights.
- The Supreme Court considered that suitable compensation due to infringement of the constitutional right to personal dignity and safety (art 34 of the Constitution) and the mental integrity that is embraced within the framework of the protection of privacy and personality rights (art 35 of the Constitution) in the present case is € 10,000.