

Hungary

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State liability in tort

- Civil Code provides only for the vicarious liability of the State for negligence of public servants
- Court practice:
 - Supreme Court: the State cannot be held liable for failure in legislation as legislative acts or omissions do not create private law relationship
 - legislative acts fall outside the scope of civil law (EBH 1994. 14.)
- This practice has been *challenged*
 - in legal scholarship
 - by regional courts in specific cases
- **2017** – two diverging judgements by the *Supreme Court* resulted in new level of uncertainty

Facts

- Legislation in 2011 and 2012 restricting operation of slot machines
 - increased taxes
 - operation of such machines restricted to casinos, no longer permitted in other places, like e.g. in amusement arcades
- CJEU Judgement in Case C 98/14, *Berlington Hungary Tanácsadó és Szolgáltató Kft. and others v Hungarian State* established that such legislation may be contrary to the fundamental freedom to provide services

Claims

- Plaintiffs: frustrated owners deprived of the opportunity of operating such machines in amusement arcades and other places
- Claims for damages
 - compensating the value of the lost investments
 - lost profit as the result of losing the opportunity of operating such machines

Contradictory judgements by the Supreme Court

- Pfv.IV.20.211/2017
 - Reverse discrimination doctrine of EU law found relevant (esp. *Brasserie* and *Berlington* referred to)
 - Wrongful act of the legislator: banning the operation of such machines outside public casinos immediately, without allowing a transition period and without providing compensation
 - Fundamental rights (freedoms) of plaintiffs have been interfered with by the State wrongfully
 - Damages for compensating frustrated investments awarded
- Pfv.III.20.656/2017.
 - No relevance of European Union law established
 - Claims completely rejected

Conclusions

- Supreme Court divided – uncertainty increased
- The King can do wrong – but is it a „private“ wrong?
- Can State liability for damages be compatible with the conceptual frameworks of tort law?
 - legislation or omission of the legislator is a public act but not an act in civil law
- The ordinary court may not have legitimate authority to re-allocate social resources and control the legislator with awarding damages
- Specific legislation establishing the consequences of a public wrong seems to be unavoidable