

FINLAND

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Supreme Court, 9.12. 2016, KKO 2016:86: Strict Liability – the Damage Caused to a Third Party – What Kind of Damage is Compensated

- 12-year-old A was vaccinated with Pandemrix vaccination against swine flu in November 2009
- As a result of vaccination, he fell seriously ill with narcolepsy and cataplexy in February 2010
- The vaccination was organised by the State of Finland
- The liability in such a case of damage is strict and there is no legislation on the matter

Father's claim

- A had been hospitalized during the years 2011 and 2012 for long periods of time, mainly due to the unpredictable and aggressive behaviour associated with the **disease**
- From autumn 2012 onwards, A was cared for at home
- Aggression caused by the illness resulted in material damage to A's home
- The causal link between the vaccination and A's conduct was not contested
- A's father B claimed that the State of Finland as the executor of vaccination had to compensate him for the property damage that was caused by A's behaviour

State's reply

- The State of Finland admitted that it is liable for personal injury on the basis of strict liability
- The liability could not extend to material damage that was caused to a third party
- There was not a sufficient causal link between the material damage caused to A's father and the act of A that caused the damage

Framing of a question

- Was the State - on the basis of strict liability – obliged to compensate B for damage to his property when the damage was a consequence of A's behaviour?
- In KKO 1995:53 concerning polio vaccination, the State as the executor of the vaccination, was liable for personal damage caused by vaccination regardless of fault
- No **practice** whether liability also covered the damage caused to a third party as a consequence of personal injury that was the primary damage

The Supreme Court: third party losses normally not compensated

- Also within the scope of strict liability, a causal link between the activity that is the basis for liability, and the damage is required
- The foreseeability of damage does not have same kind of compensation-restrictive sense that it does in compensation cases based on negligence
- Usually compensation can only be awarded for the immediate damage caused by the incident, to the damaged person himself. Third party losses are not compensated

The Supreme Court: excpetion

- According to Chap 5 of the Tort Liability Act (TLA), persons who are especially close to the injured party shall, where a special reason exists, be entitled to reasonable compensation for necessary costs and loss of income resulting from their having to take care of the injured party
- This extends to other measures resulting from the injury if these are intended to promote the recovery of the injured party

The Supreme Court: grounds for exception

- The Court applied principles laid down in TLA Chap 5
 - Nature and degree of personal injury
 - The age of the victim
 - Closeness of the relationship between the person who has suffered the injury and the one who is claiming compensation
- Compensation of measures which are likely to contribute to healing or rehabilitation
- When the state of the injured person is permanent, compensation goes to him/her as necessary medical cost or other cost, according to TLA Chap 5

Reasons for compensating the loss

- Home care supported A's development and created conditions for normal life
- His family had suffered material damage
- It had not even been argued that the damage could have been avoided or caused by some reason other than the **disease**
- Material damages were in direct connection with A's home care
- They could therefore be equated to such costs that were caused by A's medical care => compensation

Comments

- The outcome of the judgment is fair and just
 - Close connection between the injured child and his parents
 - Home care is more appropriate for the child than living in hospital
 - Allocating risks: no one knew about the risk; now the damage was shifted to taxpayers; it would be unfair if one single child and family had to bear it
 - Without such **allocation** people would not be willing to be vaccinated and diseases could spread wider