Hungary

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State liability remained in focus in 2018

- Main issue in 2017: Can State liability for damages be compatible with the conceptual framework of tort law?

  - legislation or omission of the legislator is a public act but not an act in civil law

  - inconsistent court practice and diverging judgments of the Curia resulted in uncertainty

- In 2018: State liability for failure to correctly implement EU Directives in context of national regime of tort law

Facts

- Plaintiff lost working capacity temporarily but for a longer period of time in 2014

- When she went back to work, she was informed that her annual leave was to be reduced by 27 days for 2014

- This was in line with the relevant labour law regulation

- The Ombudsman of Hungary in his report established that the relevant Hungarian legislation did not comply with Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

The Claim

- Plaintiff claimed non-pecuniary damages from the Hungarian State

- She was deprived of her right to annual leave which was an interference with her right to privacy and

- this was the consequence of incorrect implementation of the relevant Directive

- She referred to the cases establishing the liability of the Member States for failure to implement EU directives (esp. *Francovich* and *Brasserie*)

The Plea

- The defendant Hungarian State pleaded that

- 1. legislative acts or omissions do not create private law relationship between the State and the citizen

- thus, legislative acts or omissions shall not establish the liability of the State in tort and

- 2. even if that were the case, there is no direct causal link between interference with the plaintiff's right to privacy and the omission of the legislator

Judgments I. Courts of First and Second Instance

- Court of first instance: rejected the claim
  - accepted the potential liability of the State in tort but
  - addressed the case as a claim for interference with right to privacy and concluded that
  - incorrect implementation of the Directive cannot be seen as interference with privacy *per se* and
  - incorrect implementation of directives cannot be qualified as interference with inherent rights of persons
- Court of second instance: upheld the judgment

Judgments II. – Judgment of the Supreme Court

- The *Curia* upheld the judgment but on different grounds:

- accepted that reduction of the plaintiff's annual leave interfered with the plaintiff's right to privacy, because it reduced the plaintiff's time to turn to recreation and to spend free time with the family but

- interpreted the liability of the State for incorrect implementation of a directive as a doctrine referring to the national law as far as assessing the preconditions of liability is concerned

- that is, preconditions of liability of the State shall be assessed according to Hungarian national law

Judgments III. – Conclusions of the Supreme Court

- In the absence of specific rules covering State liability, the rules of the Civil Code are to apply

- Tort law rules of the Civil Code assume that liability is a private law relationship

- Obligation as a private law relationship shall not be construed between the citizen and the State in the capacity of the State as legislator

- That is, there is no liability for incorrect legislation and the claim was to be rejected

Conclusions

- The case raises the question as to how far the preconditions of liability in tort that prevail in national law are to apply if State liability for failure to transpose directives is to be assessed by national courts

- In EU law, there is no (European) conceptual framework for liability in tort

- It seems to be logical that rules and doctrines of national law are to apply at the national court

- This, however, shall not result in derogation of enforcement of European law

  - See: *Courage* v *Crehan* in contract law

- Re-conceptualisation of tort law on European level is needed?