

Estonia

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Changes in legislation - 2017

Competition Act, amendments in force from 5 June 2017

Transposition of Directive 2014/104/EU on antitrust damages actions into the Competition Act (2001).

Main purpose – provide compensation for the loss of profit in the case of damage caused by an infringement of competition law, i.e. pure economic damage.

Case

- **Judgement in case no. 3-2-1-128-16 of the Supreme Court, 5 April 2017: liability of the kindergarten for a child's personal injury**
- A child in a municipal kindergarten hit another child during outdoor activities in the face with a stone so that the victim's central permanent incisors were damaged.
- Parent – contractual claim against the local authority for compensation of non-pecuniary damage of € 1000 and pecuniary damage of € 1293, 80.
- Alternatively – delictual claim for unlawfully caused damage

Claim

- Pecuniary and non-pecuniary damage:
 - ✓ distress suffered by the child and permanently distorted appearance
 - ✓ injuries may attract negative attention by other children, affect the child's self-confidence and cause mental suffering.

Problem: Non-pecuniary damage caused to the persons close to the deceased or the aggrieved person may also claim compensation for non-patrimonial damage if payment of such compensation is justified by exceptional circumstances.

Judgment of the Court

- The Court of First Instance dismissed the claim
- The Court of Appeal quashed the judgment of the Court of First Instance, and awarded the claimant € 480, 28 (pecuniary damage)
- The Supreme Court - full Civil Chamber; fundamental differences between the justices - *standard of liability*
- Case was sent back to the same Court of Appeal
- Court of Appeal dismissed the claim, judgment was appealed
- The Supreme Court upheld the appeal in cassation

Judgment of the Court

- Decision: contractual claim
- *Obiter dictum*: possibility to claim damages also on a *delictual ground* .
- **Claim against the local authority as contractual supervisor - § 1053(3) of the LOA**
- The child caused damage while being under supervision and that the act is unlawful (LOA § 1045(1) clause 2).
- The child under the age of 14 years does not have delictual capacity
- The liability of the contractual supervisor does not depend on fault

Judgment of the Supreme Court

- The liability of the contractual supervisor under LOA § 1053(1) and (3) calls for the **objective reproachability** (external carelessness of the child's act under the § 104(3) and § 1050(1) of the LOA) which mean that one have to ask whether the act **had been reproachable against a person having delictual capacity**.

Commentary

- **For the first time** – assessment of the standard of care of a supervisory authority upon performance of contractual duties
- bodily injury or personal injury – alternative; contractual or non-contractual basis (LOA § 1044(3))
- The contractual supervisor is liable for damage caused by a person aged 14-17 only where the supervisor proves that **it did everything that can reasonably be expected in order to prevent damage** (LOA § 1053(2)).

Commentary

- Supreme Court - additional precondition for the liability of the contractual supervisor is **the fact that the child's act is objectively, i.e. conditionally reproachable**
- Supreme Court defined objective fault based on the behavioural standard of a person having delictual capacity: **if the same act had been committed by a person having delictual capacity, whether such act would have been faulty** (negligent). If the answer is affirmative, it can be concluded that a person under the age of 14 years was objectively careless

Commentary

- **The same principle can be applied** also in other cases where the liability for damage caused by a person without delictual capacity:
 - liability of the parents and the guardian for damage caused by person under the age of 14 years
 - liability of the guardian for damage caused by a delictually incapacitated person due to an intellectual disability