

# **ESTONIA**

Janno Lahe

## **Case**

**Court ruling of the Supreme Court in case no. 3-2-1-40-16, 14 June 2016, *Prisoner v. Guard*: personal liability of an official**

## **Brief Summary of the Facts**

- the claimant was a prisoner
- one guard used physical violence and special equipment against him
- another guard and chief duty officer were watching the beating but did not intervene
- the claimant sought compensation of € 5,000 for non-pecuniary damage from all three officials

## **Legal problem**

- is a natural person who has a service relationship with a public authority (prison official) liable towards the aggrieved party under private law (i.e. above all, the law of delict) jointly with the public authority?

## Legal problem

- State Liability Act § 12 (2) provides: *any damage caused directly by a natural person performing the functions of a public authority, regardless of whether the functions are performed on the basis of a service relationship, contract, single order or on another basis, is deemed to be damage caused by the public authority. Natural persons specified in this subsection are not liable to the injured party, unless **otherwise provided by law**.*
- Is it possible that tort law is the law which *provides otherwise?*

## **The Supreme Court noted:**

- if damage is caused to a person upon performance of a public function, a respective claim must be filed against the public authority
- the filing of a claim against the official would not be in line with the spirit of the State Liability Act
- the official`s fear that he/she could be sued may seriously hamper the proper functioning of the state and local government.

## Comments

- The case was decided by 9 judges
- 2 of them had a dissenting opinion on the personal liability of an official
- **My opinion:** maybe the approach of the Court is correct because the State always has money to compensate a damage
- The fact that an official is not personally liable has no influence on the victim`s possibility to receive compensation
- an official may be liable towards the public authority by way of the right of recourse (State Liability Act § 19)