X. Finland

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The Finnish system of tort law operates on relatively clear and structured principles. The assessment begins with a determination of the type of damage sustained, after which Chapter (hereinafter: ch) 5 of the Tort Liability Act (TLA) is consulted to ascertain the conditions under which damage of that nature is compensable. Personal injuries and damage to property, for instance, are compensated on the basis of fault (negligence or intent), whereas the recovery of pure economic loss is subject to stricter requirements (see Supreme Court [*Korkein oikeus*, KKO] 2005:105 and KKO 2022:22 below). Such loss is compensable only if it has been caused by an act criminalised by law, in the exercise of public authority, or where exceptionally weighty reasons otherwise justify compensation. In addition, non-material damage in the form of mental anguish is governed by its own specific preconditions distinct from those applicable to bodily injury or property damage.

The Finnish tort law system is, when viewed in this form, relatively clear, yet it is also notably rigid and schematic in its operation. In judicial practice, this has occasionally led to outcomes regarded as disproportionate, which the legislature has subsequently sought to remedy through amendments to the TLA.

The introduction of compensation for non-material suffering payable to a close relative of a deceased person illustrates this development: the reform was adopted as a response to Supreme Court decision KKO 1991:146 (21 October 1991), which concerned a case in which a man had abducted and killed two eight-year-old girls and, after the homicides, burned the victims' bodies. The mothers' claims for compensation for the non-material suffering caused by the killings of their daughters was dismissed on the ground that such compensation lacked a statutory basis in the TLA. The mothers were not regarded as direct victims of the damage but were instead treated as third parties whose loss fell outside the scope of compensable injury. As will be shown by the Supreme Court judgment KKO 2004:3, discussed below, the preconditions for compensation still remain stringent, and the Supreme Court applies them in a strict and literal manner.

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Of the five cases selected for this book, cases KKO 2004:3, KKO 2005:105 and KKO 2022:21 exemplify a literal mode of interpretation, whereas cases KKO 2001:1 and KKO 2008:10 represent situations in which the Supreme Court has, instead of adhering to a traditional literal approach, applied the TLA by choosing – between two plausible interpretative alternatives – the option that is less strictly bound to the wording of the statute and earlier interpretative practice, and at the same time more favourable to the injured party.

1. KKO 2001:1, Supreme Court, 2 January 2001[1]

KKO 2001:1 concerned the liability of the owner of a commercial centre open to the public when a person visiting the property suffered harm.

Person A, a customer in the commercial centre owned by B Ltd, was injured when a glass pane made of tempered glass shattered and pieces of glass fell on them. The reason for the glass pane breaking was unknown. The case concerned the liability of the company which owned the property for the injuries caused to A.

The Supreme Court stated that the premises owned by the company were intended for the general use of customers and other people moving around the business centre. The company was obliged to ensure that the structures of the property did not pose a risk to the safety of people visiting the property.

The broken glass structure was made on behalf of B Ltd, which had also designed it. Even though similar glass was commonly used in these types of structures and the glass structure in question had been installed appropriately, one glass pane broke and fell. It was not established that a third party had broken it or that another external reason (such as an explosion or construction work nearby) for the breakage existed. The reason for the breakage was thus left unclear.

The Supreme Court stated that B Ltd had not shown that the breakage was caused by circumstances for which the company was not responsible. Consequently, the company was liable for the damage caused to A by the falling glass.

The case concerned the assessment of the basis of liability as well as the allocation of burden of proof. In previous case law, managers of public spaces had not been subject to strict liability. However, even prior to

[1] *J Norio-Timonen*, Finland, in: H Koziol/BC Steininger (eds), European Tort Law 2001 (2002) 176, nos 15–17.

the case in question, the required level of safety for such areas had been assessed quite strictly. The case law had placed a heightened duty of care on managers of such places. Within this framework, a stricter liability standard had been established, firstly, by setting high safety standards and, secondly, by imposing a burden of proof on managers of premises to evidence their diligent conduct. Usually, the burden of proof of negligence in these types of tort liability cases would be on the injured party.

This judgment demonstrates that the liability of an entity maintaining spaces open to the public is, by its nature, subject to a heightened standard of care. The judgment also indicates that uncertainty regarding the cause of the damage is to be assessed to the detriment of the person or the entity in a position of responsibility. In other words, if the reasons for the damage remain unclear, evidence of the general appropriateness of the responsible entity's conduct may not be sufficient to exempt it from liability. In order to be exempt from liability, it is required that the operator demonstrates that the damage was caused by circumstances falling outside of its sphere of responsibility and influence.

It is possible that the outcome of the decision was influenced by the fact that the injured party had suffered a personal injury since the compensation for such injuries is generally regarded as more significant than compensation for material or property damage. From a risk-allocation perspective, the owner of the business centre, as a large operator, is better able to internalise and spread the costs of the damage through insurance and rental income than an individual who could not have foreseen or prepared themselves for such an accident.

2. KKO 2004:3, Supreme Court, 15 January 2004[2]

KKO 2004:3 concerned the prerequisites for awarding compensation for anguish to a close relative of a deceased victim. The case involved an assessment of whether a five-month-old child could suffer such damage according to ch 5 sec 4a of the TLA.

In this case, a fatal act of violence was committed by an offender, who had intentionally killed the victim, and the victim's next of kin claimed compensation for the anguish caused by the death. Earlier domestic practice had been restrictive because, prior to the 1999 reform, legislation did not expressly recognise a relative's own right to be compensated for mental anguish.

[2] *S Hakalehto-Wainio*, Finland, in: H Koziol/BC Steininger (eds), European Tort Law 2004 (2005) 264, nos 12–17.

First, the Supreme Court stated that the TLA is based on the premise that liability for personal injuries, as a main rule, covers only damage suffered by the person immediately and directly injured as a result of the harmful event.[3] The compensability of damage incurred by another person rested on explicit special provisions. Such provisions were laid down in ch 5 secs 3, 4 and 4a of the TLA.

According to ch 5 sec 4a (61/1999), which was applicable in this case: 'The parents, children and spouse of a killed person and another comparable person particularly close to the killed person are entitled to damages for anguish arising from the death if the death was caused intentionally or through gross negligence and if awarding damages is deemed reasonable in view of the close relationship between the killed person and the person seeking the damages, the nature of the act, and other circumstances.'

The Supreme Court referred to a government bill[4] according to which the compensation referred to in the provision constitutes redress for the sudden loss of a close person and for anguish that is primarily comparable to grief and a sense of bereavement. The central purpose of this form of compensation was to facilitate the mourning process and to support the grieving person in coping with the unexpected alteration in life circumstances caused by the death of their loved one. The aim of the provision was therefore to enable reparation for the anguish experienced at the time of the death by an individual who was particularly close to the deceased victim. A claimant would not be required to present specific evidence demonstrating that such mental anguish had materialised. Rather, distress comparable to grief and a feeling of loss might, as a starting point, be presumed where the conditions laid down in that section for awarding compensation were fulfilled.

The issue to be assessed in the case was whether a five-month-old child could suffer such anguish as was referred to in ch 5 sec 4a of the Tort Liability Act.

The Supreme Court held that the loss of a parent due to death was capable of adversely affecting the development and emotional well-being of a young child. However, unlike in the legal systems of certain other countries, Finnish law did not proceed from the assumption that the loss

[3] HE 187/1973 vp, Hallituksen esitys Eduskunnalle vahingonkorvausta koskevaksi lainsäädännöksi [Government proposal to Parliament for legislation on damages] 13, 23.

[4] HE 116/1998 vp, Hallituksen esitys Eduskunnalle laiksi vahingonkorvauslain muuttamisesta [Government proposal to Parliament for an act amending the Tort Liability Act] 8, 10 f.

of a parent as such constitutes compensable damage. While a child is entitled to compensation for the loss of maintenance resulting from a parent's death, the detriment caused by the death to the child's emotional or psychological development had not, as such, been defined as compensable damage under Finnish law. Such harm resulting from the loss of a parent is also independent of the nature of the act by which the parent's death was caused. Accordingly, damage resulting per se from the loss of a parent was not to be compensated.

In addition, the Supreme Court stated that a five-month-old child was not capable of understanding the reasons leading to a parent's absence, nor could the adverse consequences resulting from that absence be presumed to be linked to the cause of the parent's death or to the nature of the act by which it was brought about. Where a child of such a young age experiences the loss of a parent, the resulting adverse effects were of a different nature from the anguish referred to in ch 5 sec 4a of the TLA.

Having regard to the content and purpose of the provision, liability for compensation could not – contrary to the approach taken by the lower courts – be based on the fact that knowledge of the father's death might, at a later stage, cause the child mental anguish. The claim for damages was therefore dismissed.

In a decision delivered on the same day, KKO 2004:2, the Supreme Court likewise dismissed a compensation claim brought on behalf of an 18-month-old child, which was based on the killing of the child's parent as excessive self-defence. Both decisions reflect an interpretation according to which the starting point is the non-compensability of damage, and any claim for compensation must always have an explicit legal basis.

These cases confirm that awarding compensation under ch 5 sec 4a of the TLA to a child requires that the child's level of development enables the experience of anguish that is temporally immediate and directly connected with the death.[5]

3. KKO 2005:105, Supreme Court, 29 September 2005

KKO 2005:105 outlined the conditions for compensating pure economic loss in the context of business competition.

[5] Other criteria concerning the compensability of mental anguish caused by the death of a close relative are discussed in *P Korpisaari*, Finland, in: E Karner/BC Steininger (eds), European Tort Law Yearbook 2023 (2024) 229, no 13 ff in connection with the Supreme Court judgment KKO 2023:85, ECLI:FI:KKO:2023:85 (ibid no 25 ff).

According to ch 5 sec 1, pure economic loss is a loss of economic value that is not connected to a personal injury or property damage. It is compensated where the damage was caused by an act punishable under the law or in the exercise of public authority, or where there are especially weighty reasons for compensation in other cases. As the mention of 'especially weighty reasons' was only included in the Tort Liability Act during the parliamentary process, no guidance on the interpretation of this phrase can be found from the preparatory works for the Act.

In the case at hand, Company R Ltd had placed a rake on the market during the spring of 1997. After the sales had commenced, industry leader F plc (public limited company, Oyj) sent a letter to the distributors of the rake imported by company R Ltd claiming that the product was in violation of design rights registered by F plc. The industry leader F plc argued that the shape and the colour of the rake's blade as well as the amount of the spikes on it were substantially similar to the protected design of the blade in the rake marketed by F plc. According to the statement in the letter, R Ltd thus sought to benefit from the good reputation which had been achieved by F plc, thereby using an unfair business practice. The company wrote that they monitor their design rights closely and warned that any violations of said rights following the receipt of the letter would be considered as intentional with the effect of greater compensation claims when compared to unintentional actions. The company forbade the distributors from continuing to market the products in question and claimed infringement of the exclusive right conferred by the Registered Designs Act[6]. The letter had been based on a report prepared by the patent office on behalf of F plc, and it had been signed by F plc's General Legal Counsel.

Sometime after this, F plc lost a design right infringement case against SRF Ltd, a distributor of rakes imported by R Ltd. The selling of the rakes was not considered to be contrary to good business practice nor otherwise inappropriate.

The recipients of the letter had decided to terminate the sales of the rake imported by R Ltd because of the contents of said letter. Thus, there was a causal link between the conduct of F plc and the decrease in sales of the rakes imported by R Ltd.

R Ltd demanded compensation for the damage it incurred in the form of the unpaid licence fees, the decline in the product sales, and the decrease in the value of their rake's trademark, arguing that the conduct of F plc constituted an unfair business practice.

[6] Mallioikeuslaki (221/1971).

The Court stated that the sending of the letters had, in principle, an acceptable purpose, as F plc had sought to defend itself against the suspected infringement of the design right. In addition, prior to sending the letters, F plc had obtained a patent attorney's statement supporting the existence of a violation.

As for the contents of the letters, the Court drew attention to the strict tone and to the fact that the statements about the sanctions threatening sellers were drastic and unconditional. However, when it was uncertain whether or not there had in fact been an infringement of a design right, there was no justification for presenting such strict prohibitions of, or warnings about, potential compensatory sanctions in the letters to the distributors. The Court stated that the tone of the letter and F plc's significant market position were also likely to give a false impression that the infringement had occurred.

Overall, the Supreme Court considered the procedure to be inappropriate, basing its position on the unreserved and threatening wording of the letters and on the fact that the letters were addressed to rake resellers. Sending similar letters to R Ltd might have been considered acceptable, since R Ltd could subsequently have independently decided on how they would respond to the demands presented in the letters. The chosen procedure, however, in a predictable way, led to the distributors being intimidated by the risk of F plc taking legal action against them and consequently they stopped selling the rakes. This in turn led to R Ltd losing its resale opportunities without being able to take a stand on how to react to F plc's claims.

In previous case law, the fact that an act is contrary to good practice has often been considered an especially weighty reason for compensating pure economic loss (see KKO 1991:79 and 1997:181). The court followed the previous practice and specified the conditions for the application of TLA ch 5 sec 1 as follows:

> 'If a person engages in intentional conduct in the course of their business that is contrary to good business practice or otherwise unfair, and thus contrary to the law, knowing that their conduct is likely to cause financial losses in the business of another, the fulfilment of the condition laid down in Chapter 5, Section 1 of the Tort Liability Act is, in principle, a question of circumstances that speak in favour of liability for damages. In these types of cases, specific counter-reasons must exist to avoid liability for damages.'

When compared to earlier case law, the statement by the Supreme Court includes a clearer ruling on the relationship between the violation

of good business practices and especially weighty reasons in accordance with TLA ch 5 sec 1. According to the judgment, these concepts are directly linked to each other, and thus compensation for pure economic loss can only be prevented on the basis of special counter-reasons if the conduct was contrary to good business practices.[7]

Private injunction claims are permissible, even if the violation is somewhat open to interpretation. However, the liability risks of the act increase if the injunction is directed against the distributors or other actors who are not the originators of the violation. It is likely that claims against the importer could be expressed in more straightforward and drastic terms compared to distributors of goods.

4. KKO 2008:10, Supreme Court, 8 February 2008

As described above, the Finnish system of tort law is clear but formalistic. Only damage mentioned by law will be compensated and only in the circumstances specified by law. In this case, there was no basis for liability in the law, but the State was nevertheless ordered to pay damages based on a violation of fundamental and human rights.

In the Finnish penal system, a person serving a fixed-term sentence of imprisonment is usually conditionally released once they have served two-thirds of their sentence.[8] This case concerned a situation in which the court sentenced A to a term of imprisonment while also ordering that he 'lose' the parole that had been granted from a previous prison sentence. However, A had already been detained in custody prior to the judgment of the court for such a long time that the amount of the prison sentence had already been served, taking into account that he would have been conditionally released after two-thirds of the sentence. However, provisions required that, since A had not been deprived of his liberty for the entire duration of his new sentence, he was required to go to prison, from where he would be immediately released on parole based on his new sentence.

A had been apprehended based on a warrant for the purpose of enforcing a prison sentence on 14 October 2004 in Helsinki. He was taken from the place of apprehension to his placement prison in another municipality

[7] See *M Hemmo*, KKO 2005:105, Perusteettomasta kieltovaatimuksesta johtuva korvausvastuu, in: P Timonen (ed), KKO:n ratkaisut kommentein II 2005 (2006), online in Alma Insights Verkkokirjahylly.

[8] According to Criminal Code ch 2C sec 5(1), 'Conditional release means the release of a prisoner sentenced to unconditional imprisonment so that they can serve the rest of their sentence in freedom.'

on 18 October 2004. There, the prison officials discovered that A had already served more than two-thirds of the prison sentence imposed on him and for this reason, the deputy prison warden released him on parole on the same day. The deprivation of his liberty had lasted for four days.

The lower courts had decided that A was entitled to damages for the anguish caused by the deprivation of his liberty under the Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person (CSADA).[9] The State of Finland appealed to the Supreme Court against the decision of the court of appeal.

The Supreme Court stated that A was not entitled to compensation based on the aforementioned Act, since he was neither imprisoned as an innocent person nor met other conditions for compensation under the said Act.

Next, the Supreme Court examined the matter on the basis of the TLA. The Court stated that case law had been reticent about compensating anguish not based on an explicit provision of the law (see eg, KKO 1998:80). Then again, the government proposal for the Tort Liability Act showed that when the law was enacted, there had been no attempt to exhaustively regulate the general principles of liability for damage. For this reason, the Court was required to assess whether the legal environment affecting the compensability of anguish caused by deprivation of liberty had changed significantly since the TLA and CSADA were enacted in the 1970s.

The Supreme Court concluded that the anguish caused by deprivation of liberty could not be compensated based directly on the provisions of the TLA on the compensation of damage for anguish arising from a violation because the conditions laid down in the Act were not met. The Supreme Court then assessed the matter from the point of view of personal liberty and freedom guaranteed as a fundamental and human right. In this regard, the Court pointed out that even though the officials had acted in accordance with instructions and orders, compliance with them had led to A having been unjustifiably deprived of his liberty for four days.

The Supreme Court held that A had been deprived of his liberty due to negligence in the exercise of public authority in a way that could be considered a violation of his fundamental right to personal freedom. He was, therefore, entitled to a legal remedy allowing him compensation for the infringement. Thus, the Court found that A was entitled to compensation for the anguish caused by the deprivation of his liberty.

[9] Laki syyttömästi vangitulle tai tuomitulle valtion varoista vapauden menetyksen johdosta maksettavasta korvauksesta (422/1974).

The ambiguity of the case is illustrated by the fact that two of the five judges would have rejected the claim, and one would have awarded compensation on the basis of the TLA.

The legal principle emerging from the case was that the anguish caused by the unjustified deprivation of liberty had to be compensated from State funds, even though the procedure was formally in accordance with regulations and instructions. The Supreme Court reached the decision by relying on fundamental and human rights.[10]

5. KKO 2022:21, Supreme Court, 1 April 2022

Public authorities are subject to an elevated duty of care regarding the accuracy of the advice they provide. Where advice is sufficiently precise, it may amount to the exercise of public power, in which case pure economic loss is compensable under ch 5 sec 1 of the TLA. This principle was clarified and reinforced in KKO 2022:21, which illustrates the far-reaching nature of public liability for negligent advice.[11]

In this case, a municipality had provided – in line with the Disability Services Act12 – a severely disabled person with written guidance concerning the employment of a personal assistant. The instructions stated that an employee's group life insurance was voluntary. A collective agreement making such insurance mandatory entered into force later during the employment relationship. The municipality failed to update its guidance or inform the employer of the change. After the assistant's death, her heir claimed compensation corresponding to the unpaid insurance benefit.

The claim was based on ch 3 sec 2 of the TLA, pursuant to which a public authority is liable for damage caused by an error or negligence in the exercise of public power where the requirements reasonably set for the performance of the activity or task, taking into account its nature and purpose, have not been met. The Supreme Court first held that the municipality had breached its statutory duty to advise under the Disability Services Act by failing to provide correct and up-to-date information on the applicable collective agreement.

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[10] See also *S Hakalehto-Wainio*, Finland, in: H Koziol/ BC Steininger (eds), European Tort Law 2008 (2009) 256, no 17 ff.

[11] See also *P Korpisaari*, Finland, in: E Karner/BC Steininger (eds), European Tort Law 2022 (2023) 201, nos 28–42 (in connection with the Supreme Court judgment KKO 2022:21, ECLI:FI:KKO:2021:21).

[12] Vammaispalvelulaki (380/1987).

The Court further held that the duty to advise was closely connected to the municipality's obligation to organise personal assistance and therefore constituted the exercise of public power within the meaning of ch 3 sec 2(1) of the TLA. As the damage consisted of pure economic loss, liability depended on whether the negligence occurred in the exercise of public power, a question which the Court answered in the affirmative. The municipality had not complied with the standards reasonably required under ch 3 sec 2(2) of the TLA as it had failed to revise its guidance following a significant legal change.

With regard to causation, the Court found it plausible that the employer would have taken out group life insurance had correct advice been provided. Given that the personal assistance was free of charge for the disabled person and that employment costs were ultimately borne by the municipality, it was foreseeable that incorrect guidance could result in the absence of insurance coverage and consequent financial loss to the employee's relatives. The municipality's negligence was, therefore, causally linked to the damage suffered.

The Supreme Court held the municipality liable for the claimed loss under ch 5 sec 1 of the TLA, with liability shared with the employer in the parallel decision KKO 2022:22. The judgment strengthens the protection of legitimate expectations by confirming that individuals are entitled to rely on the correctness of legal advice provided by authorities within their own field of competence, and that high standards of accuracy may justifiably be imposed on public authorities when advisory functions are closely linked to statutory duties.