XXI. Norway

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Identifying watershed verdicts in Norwegian tort law is challenging, as the legal framework primarily evolves through the incremental refinement of established precedents rather than revolutionary shifts. Most judgments function as an evolution and adjustments of existing doctrines, adapting long-standing principles. Still, certain decisions distil or develop core principles with such precision and clarity that they become indispensable reference points for all subsequent judicial reasoning. I have chosen such verdicts from the first half of the period from 2001 to 2015 in order not to repeat myself from previous country reports from Norway, and because these older verdicts have proved their importance over time. The verdicts are chosen to illustrate different general conditions for liability, such as damage and causation, different bases of liability such as employers' liability and non-statutory strict liability, and lastly the extent of damages.

1. HR-2013-2640-A (*Fosterdiagnostikkdommen*)

The Supreme Court (*Høyesterett*, HR) verdict in HR-2013-2640-A concerns a hospital's liability for a mother's psychiatric injuries and economic loss within the context of a wrongful birth claim.

The claimant A, and her husband B, already had twins born prematurely with significant disabilities, as well as a third child with normal health. In 2007, A became pregnant unexpectedly and, due to the existing care burden, decided to terminate the pregnancy if diagnostic tests revealed the child had a functional disability. Although A was referred to Kvinneklinikken (the women's clinic) at Haukeland University Hospital and informed that only a prenatal diagnosis could definitively rule out chromosomal abnormalities, the hospital failed to offer this test or perform further investigations.

Consequently, daughter C was born in 2008 and was shortly thereafter diagnosed with Down's syndrome. Following the birth, the mother, A, was diagnosed with generalised anxiety disorder and recurrent periods of depression, which she attributed to the hospital's failure to provide the

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necessary diagnostic foundation for an informed choice regarding abortion. A submitted a claim for pecuniary compensation based on sec 2, first paragraph, letter (a) of the Norwegian Patient Injury Act, which provides for compensation when an injury is caused by a failure in the provision of healthcare.

However, the central legal dispute in this case was not whether a failure of care had occurred, as the parties agreed that the hospital had failed to offer the required diagnostic services, but rather whether the damage or injury in the case at hand was protected under Norwegian tort law.

The verdict in HR-2013-2640-A is important because it examines the legal definition of injury, including the connection between tort law and the evaluation of human life within Norwegian tort law. In addition, the majority in this Supreme Court verdict lays the foundation for quite extensive value-based verdicts in Norwegian tort law, as demonstrated by the later Supreme Court verdict in HR-2017-2352-A described below.

The majority in the Supreme Court in HR-2013-2640-A based their decision partly on the preparatory works of the Act,[1] which suggest that the birth of a child should generally not be classified as a compensable injury. Furthermore, the Court examined the case through the lens of international human rights, specifically arts 3 and 8 of the European Convention on Human Rights (ECHR), to determine if the denial of diagnostic testing constituted a violation of the right to private life or a form of degrading treatment.

In its reasoning, the majority of the Supreme Court also relied extensively on the precedent set by the Supreme Court verdict in *Norsk Retstidende* Rt-1999-203 (sterilisation), which held that the birth of a healthy child following a failed medical procedure did not trigger a right to compensation for the costs of raising the child.

The majority of judges in Rt-2013-2640 argued that the same value-based logic must apply in Norwegian tort law when a child is born with a disability, asserting that all human lives are equally valuable and that the existence of a person should not be subjected to economic measurement. The Court expressed concern that recognising such a claim could stigmatise the child by labelling their existence as damage, which would conflict with the fundamental legal principles of equality and dignity found in the Biotechnology Act and the Discrimination and Accessibility Act. Regarding the ECHR, the majority distinguished this case from the European Court of Human Rights' (ECtHR) ruling

[1] Specifically Norges offentlige utredninger (Official Norwegian Reports, NOU) 1992:6 and Ot prp no 31 (1998–1999).

in *RR v Poland,*[2] noting that in A's case, there were no specific clinical indications of abnormality, the risk was statistically low, and A was not subjected to the same level of degrading treatment or systematic denial of a legal abortion.

The majority of the Supreme Court concluded that while the mother's psychiatric suffering was real and directly linked to the hospital's failure, psychiatric injuries so closely tied to the birth of a child fall outside the scope of legally protected interests in tort law. By a 3-2 dissent, the Court ruled that the State, represented by the Patients' Injury Compensation Board, should be acquitted.

The dissenting minority in the Supreme Court argued that the claim should be viewed as compensation for the mother's specific health injury, her clinical depression and anxiety, rather than a claim based on the value of the child. Thus, compensating the mother's health injury would not undermine the respect for life, the minority stated.

The verdict in HR-2013-2640-A can be considered a landmark decision because the Court handles such a sensitive topic, and because the majority of the judges extends the considerations from the verdict in 1999 further than what follows from the basic structures of Norwegian tort law, at least considering the approach of the minority judges.

In addition, in the Supreme Court verdict HR-2017-2352-A (*Prostitusjon*), which concerns the compensation for lost income from prostitution following a robbery, the court majority referred to the verdict in HR-2013-2640-A as a precedent to define the limits of compensation in Norwegian tort law. More specifically, the majority referred to HR-2013-2640-A to reinforce the principle in Norwegian tort law that certain interests may be excluded from the scope of legal protection based on a value-driven assessment of whether the interest deserves the protection of the legal order.

In the 2013 case, the Supreme Court had ruled that a psychological injury closely tied to the birth of a child was not legally protected, and in the 2017 case, the Court argued that a similar logic applies to the income derived from prostitution. The Court asserted that the nature of the injury, whether it is a psychological trauma as in the 2013 case or a physical injury resulting in lost earnings as in the 2017 case, does not alter the necessity of this threshold test for legal protection.

Furthermore, the 2017 verdict adopts the methodology established in HR-2013-2640-A, which requires a broad overall assessment to determine the limits of legal protection of Norwegian tort law. This assessment

[2] ECtHR *Case of RR v Poland*, 26.5.2011, no 27617/04.

involves a concrete evaluation of both the interests of the injured party and the general interests of society. By following the general approach in the precedent from 2013, the court majority in 2017 concluded that even though selling sexual services is not technically illegal, the surrounding legislative framework, which criminalises the purchase of such services and regards prostitution as socially undesirable, negates the legal protection for lost income. Ultimately, the 2013 case provided the judges in the 2017 case with a precedent that makes it possible to deny a claim on the grounds of consistent values in the legal system, arguing that it is legally incoherent to award compensation for the loss of an activity that is fundamentally discouraged by the State's criminal policy.

2. Rt-2008-755 (*Hjemmehjelpdommen*)

The Supreme Court verdict in Rt-2008-755 addresses the scope of an employer's vicarious liability under the Norwegian Damages Act for intentional criminal acts committed by employees.

The litigation arose from a severe breach of trust by a home helper, identified as B, employed by the Municipality of Trondheim. The victim, A, was a 92-year-old widow who was wheelchair-bound and entirely reliant on municipal care services for her daily life. Between September 2005 and January 2006, B misappropriated A's debit card and PIN code, utilising them for unauthorised cash withdrawals and purchases totalling NOK 310,799. This criminal activity was made possible by the helper's access to the victim's private sphere. In a unanimous decision, the Supreme Court ordered the Municipality of Trondheim to pay the full amount in damages, along with interest and substantial legal costs for all three instances of the court system.

The core legal question before the Supreme Court was the scope of the employer's vicarious liability for intentional criminal acts committed by employees under the objective liability regime established by sec 2-1, no 1 of the Norwegian Damages Act (*skadeserstatningsloven*, skl). The judges focused specifically on the requirement of proximity between an employee's assigned duties and the subsequent tortious conduct. The verdict in Rt-2008-755 establishes a fundamental principle that had not been fully clarified by previous rulings: that damage caused intentionally and fraudulently by employees generally falls within the scope of employers' liability according to sec 2-1, provided there is a sufficient link to the work environment.

The Supreme Court noted that skl sec 2-1, no 1, holds an employer liable for damage caused wilfully or negligently by an employee during

the performance of their work or duties. While the second sentence of this provision limits liability if the damage results from the employee going beyond what is 'reasonable to expect' considering the nature of the work, the Court had to weigh this against the literal wording of the statute. The judges analysed the legislative history, noting that while older preparatory works suggested intentional acts might be excluded, the wording of skl sec 2-1, no 1 explicitly includes both intentional and negligent acts. This signalled a shift toward protecting the victim over the employer in specific organisational contexts.

To define the limits of proximity, the Court engaged in an extensive comparative analysis of prior case law. The judges referred to Rt-1982-1349 *(Rengjøringsbyrå-dommen*), where a cleaning agency was not held liable for a cleaner's theft. In that instance, the Court had emphasised that the client had significant opportunities for control and the cleaner had no professional reason to handle the stolen items. The verdict in Rt-2008-755 distinguished itself from this precedent by highlighting the extreme vulnerability of the victim and the inherent lack of oversight in home care. Unlike a commercial office, a private home where a disabled elderly person resides offers almost no opportunity for the victim to monitor or control the movements of the employee.

In addition, the Court made comparisons to Rt-2000-211 (*DnB-dommen*), where a bank was found liable for an employee's fraud, because banking naturally involves a systemic risk that employees may exploit their position for financial gain. In contrast, in Rt-2007-1665 (*Vekterdommen*), a security company was acquitted of liability for a guard's intentional arson. In that specific case, the act was deemed extraordinary and remote, driven by a personal psychological need rather than a risk typical of the security industry. By synthesizing these cases, the Supreme Court concluded that intentional damage by the employee leads to vicarious liability if there is sufficient proximity between the employment and the act. The decisive criterion was whether the damage represents a realisation of the risk inherent in the employment itself, rather than a particular risk associated with the individual employee's specific traits.

The Court emphasised the asymmetry of the relationship between the tortfeasor and the victim. A user of municipal services cannot choose which helper is sent to their home and, due to age and infirmity, is physically unable to supervise them. Thus, the Supreme Court argued that theft in the home care sector is a known, albeit infrequent, problem that cannot be eliminated through vetting. This makes the risk an inherent component of the service model itself, the Court noted.

Furthermore, the verdict in HR-2008-937-A emphasised risk allocation and insurance: Since the alternative to home care is often institutionalisation, it is unreasonable to place the burden of service-related theft on the vulnerable individual. A municipality can absorb such losses or insure against them, whereas a private individual generally cannot obtain insurance covering theft by persons with legal access to their home.

The long-term importance of Rt-2008-755 is evidenced by a later Supreme Court verdict in HR-2015-981-A (*Advokatpartnerdommen*). In this later verdict, the Supreme Court explicitly referenced Rt-2008-755 to clarify that the historical main rule that was expressed in the preparatory works, which exempted employers from liability for intentional wrongdoing, was no longer sustainable.

Also, in applying the proximity test, referencing Rt-2008-755, the Court in HR-2015-981-A determined that a law firm was liable for a partner's fraudulent acquisition of a client's family shares. This expansion was justified by the argument that a business must answer for the risks inherent in its organisational model, especially when that model is marketed based on high ethical and professional standards, creating a high level of trust that the employee eventually exploits. This can be seen as a logical extension of the reasoning in Rt-2008-755.

3. Rt-2003-1546 (*Røykedommen*)

The Supreme Court verdict in Rt-2003-1546 addresses whether a tobacco manufacturer can be held liable for the personal injuries and subsequent death of a consumer under the non-statutory Norwegian doctrine of strict liability.

This case was the first major tobacco ruling in Norway, originating from a lawsuit filed by Robert Lund. Lund had smoked a particular brand of tobacco consistently from 1954 until his death from lung cancer in 2000. Following his passing, his widow continued the legal battle, seeking to hold the manufacturer accountable. It was undisputed between the parties that the decedent's lung cancer was directly caused by his long-term tobacco consumption, which averaged approximately 20 cigarettes per day over several decades.

The legal framework for this dispute was governed by a non-statutory rule of strict liability developed over decades of judicial practice by the Supreme Court, as the Product Liability Act of 1988 was not applicable to injuries whose causal origins predated the statute's enactment. Under this non-statutory doctrine, liability can be imposed without proof of negligence if a business or activity creates a risk that is constant, typical,

and extraordinary. The verdict in Rt-2003-1546 is particularly important because, for the first time, the Supreme Court made it clear that the traditional criteria for the non-statutory rule of strict liability must be supplemented by a broader consideration of grounds for liability. In addition, the judgment took significant account of the role of the victim in a way that had not been done before in Norwegian tort law.

In its thorough examination, the Court started with the requirement of a constant, typical, and extraordinary risk. The Court acknowledged that the health hazards associated with cigarette smoking satisfy the criteria of being a constant and persistent risk, as the danger is inherent in the product's regular use over time. Furthermore, the Court confirmed that the risk is typical because the manufacturer possessed the best available knowledge regarding the potential for serious health damage, making the resulting injury a foreseeable consequence of the production and sale of cigarettes.

However, the Court's analysis of the extraordinary risk requirement served as the primary hurdle for the plaintiff's claim. The doctrine of unwritten strict liability typically distinguishes between the inherent risks of daily life and those that are so exceptional that the victim cannot be expected to protect themselves. While the Court admitted that the severity of lung cancer exceeds the common dangers of everyday existence, it emphasised that the extraordinary nature of a risk is inextricably linked to whether that risk is unexpected or unpredictable for the consumer. In this case, because the risks of smoking were deemed to be common knowledge by 1964, the Court reasoned that the danger was no longer 'unexpected', thereby failing to meet the threshold for an extraordinary risk that necessitates legal protection through strict liability.

The Supreme Court's analysis focused heavily on the temporal development of public knowledge, identifying 1964 as a decisive turning point. The Court noted that the publication of the US Surgeon General's report and the subsequent report by the Norwegian Director of Health, provided authoritative evidence of the causal link between cigarettes and lung cancer. Consequently, the Court found that any smoking after 1964 was conducted at the smoker's own risk. Regarding the period between 1954 and 1964, the Court acknowledged that while medical certainty was still developing, it was already 'commonly known' that smoking could cause health damage, meaning the risk was not unexpected.

In the final stage of its reasoning, the Court performed a broad assessment (*helhetsvurdering*), weighing several socio-economic variables. One central variable is the principle of loss-spreading: while strict liabil-

ity is often justified by a defendant's ability to distribute costs, the Court found this inapplicable here due to the massive scale of tobacco-related illnesses, which would overwhelm traditional insurance models. The Court also considered the legal disharmony that would arise if the judiciary imposed massive financial penalties on a product that the State has explicitly accepted as legal, regulated, and heavily taxed, noting this could result in liability for other products like alcohol.

Furthermore, the Court addressed the variable of equal treatment among victims, noting that many smokers who suffered similar injuries in the past would be unable to claim compensation due to statutes of limitation, making a judgment in favour of this specific plaintiff appear arbitrary. This temporal dimension led the Court to conclude that the current social landscape has already shifted toward public health initiatives and personal responsibility.

The Supreme Court verdict in Rt-2003-1546 is referred to in the later Supreme Court verdict in HR-2009-1931-A (*Nordsjødykker*) to define the extent of non-statuary objective liability. This case concerned the health damage and neurological injuries suffered by pioneer divers in the North Sea during the early decades of the Norwegian oil drilling. In this ruling, the 2003 tobacco verdict is specifically referenced to confirm that non-statutory strict liability now rests on a dual foundation of risk considerations and balancing of interests.

In HR-2019-52-A (*Spinning*), where the question before the Supreme Court was if a fitness centre should be held responsible for the personal injury caused by a broken seat bolt, the Court makes an indirect reference to Rt-2003-1546 by explicitly quoting the legal summary from the *Nordsjødykker* decision. Finally, the Supreme Court case in HR-2025-1055-A (*Stup*) also considered the 2003 verdict indirectly by adopting the summary of objective liability criteria found in the *Spinning* verdict when deciding if the municipality of Oslo was liable for the personal injury of a person diving into shallow water at a recreational area with a concrete element immediately under the surface.

4. Rt-2007-172 (*Schizofrenia*)

The Supreme Court verdict in Rt-2007-172 (*Schizofrenia*) examines the application of the proximity (adequacy) requirement in Norwegian tort law regarding a claimant's right to economic compensation for a psychiatric injury after a physical workplace accident.

The case involved an electrician, A, who fell four metres from a lifting cage, sustaining spinal fractures but no brain injury. Previously a robust

individual and a national-level dart player, his life derailed post-accident. A suffered chronic pain, lost his job, failed at academic retraining due to underlying dyslexia, and experienced the collapse of his domestic partnership. Approximately 18 months later, A was diagnosed with paranoid schizophrenia. His claim for pecuniary compensation was based on sec 11 of the Occupational Injury Insurance Act, which the Court confirmed incorporates the unwritten general principles of Norwegian tort law regarding causation and adequacy. While both parties agreed the accident was a necessary condition for the illness, the insurer contested the proximity (adequacy) between the accident and the personal injury of A.

The evolution of Norwegian tort law through the verdicts of the Norwegian Supreme Court over recent decades has provided clarifications regarding the protection afforded to psychiatric injuries, specifically where physical trauma causes mental disorders. The boundaries for pecuniary compensation in such cases have been the topic of several Supreme Court verdicts. While the threshold for establishing factual causation, the 'but-for' test (*betingelseslæren*), may be relatively low in these cases, the condition of proximity (the theory of adequacy, *adekvanslæren*) serves as a limit on liability in instances where the causal chain becomes complex, or dominated by extrinsic factors.

The judgment in Rt-1997-1 (*Rossnes*) established that for a psychiatric injury to be compensable, the psychological reaction must be a natural and foreseeable consequence of the traumatic incident, The injury must stem from the immediate trauma or shock of the event rather than a remote or attenuated chain of consequences. Liability is reserved for individuals who possess a sufficiently close and direct connection to the accident or the deceased to prevent an unmanageable expansion of tortious claims.

In Rt-2000-15 (*Thelle*), the Supreme Court refined the criteria for proximity by asserting that a loss is only compensable if it is not deemed too unpredictable and remote.

These cases also demonstrate the delicate balance between the eggshell skull rule, the principle that a tortfeasor must take the victim as they are (*sårbarhetsprinsippet*), and the necessity of imposing reasonable limits on liability through the lens of legal causation.

The Supreme Court's methodological approach in Rt-2007-172 represents an important evolution from earlier precedents. According to this verdict, the condition of proximity is not fulfilled if the injury is a so unpredictable, distant, and indirect consequence of the tortious act that it is not reasonable that the act leads to liability. This is the formulation of the rule of proximity that has since been used by the Norwegian Su-

preme Court and legal theory in all cases regarding this rule. Although the verdict in Rt-2007-172 makes a reference to the previous verdict in Rt-2007-158 (*Pseudoanfall*), it is the later verdict that adds the consideration of what can be considered reasonable, all relevant criteria considered. The verdict in Rt-2007-172 makes it clear that the overarching question when considering proximity as a condition for pecuniary compensation is whether it is reasonable to restrict the pecuniary compensation or not.

Thus, the Supreme Court verdict in Rt-2007-172, building on the verdict in Rt-2007-158, is an important precedent for the assessment of proximity in Norwegian tort law, and not only regarding compensation for psychological consequences following physical accidents. The importance of the judgment is also related to the methodological clarification of how the assessment of proximity should be carried out.

Crucially, the Court in Rt-2007-172 clarified that unpredictability (low frequency) of the injury in the case at hand is not, by itself, sufficient to conclude that the condition of proximity was not fulfilled. Instead, it must be viewed in tandem with how distant and indirect the injury is in relation to the tortious act.

In Rt-2001-320 (*Nilsen*), a psychiatric paralysis with a frequency of less than 1 in 770 was deemed adequate because the development of the symptoms was immediate and uninterrupted. The verdict in Rt-2007-172 established that even if a psychiatric reaction is generally foreseeable after an accident, the specific manifestation of schizophrenia was an exceedingly rare and unexpected outcome of a fall. Thus, the outcome was not foreseeable.

Regarding the next step in the consideration of proximity, whether the injury was too remote or indirect, the Court observed that the causal chain had been broken by subsequent, intervening circumstances. It was not the trauma of the fall that directly triggered the psychosis, but the 'ripple' effects: the loss of his career as an elite athlete, professional failure, and the extrinsic factor of his relationship breakdown. Thus, the Supreme Court concluded that the illness lacked a close and immediate connection to the accident, characterising it as a distant indirect causal relationship. This distinguishes the case from Rt-2001-320 (*Nilsen*), where the symptoms manifested themselves within two days without the interference of external social factors.

Thus, the verdict in Rt-2007-172, in the same way as previous verdicts, demonstrates the limits of the eggshell skull principle: The tortfeasor bears the risk of a victim's medical or psychological fragility, but they do not necessarily bear the risk of a victim's inability to master the long-term life changes after an accident.

This reasoning was mirrored in the previously mentioned Rt-2007-158 (*Pseudoanfall*) that was referenced in HR-2007-172. There, a claimant's dissociative seizures were considered not to fulfil the proximity test because they were driven by her fixed belief, contrary to medical counsel, that her issues were physically based, a belief that was thought to be driven by her desire for compensation. The Court held that when a disease's progression is rooted in behaviour that defies clear medical advice, the claimant must bear the responsibility for that development.

Viewed together, the two cases from 2007 demonstrate that when an injury is primarily mediated through a claimant's subjective processing or social misfortunes, the proximity is severed.

5. Rt-2002-1436 *(Bråtane*)

The Supreme Court verdict in Rt-2002-1436 (*Bråtane*) clarifies the right to compensation for future care expenses related to personal injuries under sec 3-1 of the Damages Act when public welfare services are insufficient.

The case involved a claimant, A, who sustained catastrophic injuries at the age of 11 when she was struck by a truck. These injuries resulted in a complete motoric spinal cord injury at the C3/C4 level, leaving her permanently paralyzed from the shoulders down and necessitating the amputation of her left leg. Despite a medical invalidity rated at 100%, A demonstrated remarkable cognitive resilience, completing her secondary education with distinction and pursuing a degree in theology. At the time of the proceedings, she lived independently in Oslo, utilising User-Controlled Personal Assistance (a service model enabling individuals with disabilities to manage their own care, aiming for an active, independent life [BPA, *brukerstyrt personlig assistanse*]) to facilitate her studies and social life. Through this personal assistance scheme, she was able to choose the time and place herself for help related to such activities. Still, the medical experts maintained she required 24-hour continuous supervision due to the risk of life-threatening complications.

The legal framework governing this dispute is centred on the supplementary principle that compensation in tort law serves as a private supplement to the collective provisions of the welfare state. Under sec 3-1 of the Norwegian Damages Act, compensation must cover necessary and reasonable future expenses. In the Norwegian context, public health and social services are presumed to represent the baseline for such care. Consequently, the judiciary must determine the extent to which a private insurer should provide additional funds to bridge the gap between

'defensible' public care and the full compensation required to ensure a claimant's autonomy, independence, and quality of life.

In a narrow 3-2 split, the Supreme Court majority awarded A an annual supplementary amount of NOK 175,000. The majority's reasoning was based on an assessment of future public provision, arguing that regardless of where A chose to reside, the municipality would be legally obligated to fulfil its duty to provide a defensible level of care. The Court concluded that while purely medical and nursing needs are primarily a public responsibility, the private supplement was necessary to enable the BPA model, which granted A the flexibility and self-determination required for a socially active life. The dissenting minority argued for a higher annual sum of NOK 250,000, contending that A's extreme physical dependency and the inherent risk of medical emergencies meant the standard public baseline could not be safely assumed to meet her unique requirements.

The verdict in Rt-2002-1436 is a refinement of the trilogy of verdicts consisting of Rt-1993-1547 (*Skoland*), Rt-1996-958 (*Stokstad*), and Rt-1999-1967 (*Rott*). While Rt-1993-1547 established that public care services generally represent the starting point for reasonable expenses, the later cases, including Rt-2002-1436, are distinguished by the fact that the claimants resided in a private home rather than an institution. Furthermore, while Rt-1993-1547 introduced the distinction between medical nursing (public) and quality-of-life enhancements (private), Rt-2002-1436 applied this logic to a young claimant with a significantly higher degree of physical impairment compared to the young claimant in Rt-1996-958, as emphasised by the Supreme Court itself. In addition, the significance of the verdict in Rt-2002-1436 lies in is its explicit recognition of the BPA model as a compensable form of aid, confirming that such individually-oriented services must be included in the assessment of full compensation for high-functioning young adults even when they have a very high degree of physical impairment. This makes it possible for such claimants to live independently of their family in their own apartment and have an active social life.

Subsequent jurisprudence, such as the verdict in Rt-2003-1358 (*Psykolog*) and Rt-2009-425 (*Hjernesvulst II*), has continued to utilise the precedent in Rt-2002-1436 to define the boundaries of the supplementary principle. While Rt-2002-1436 solidified the supplementary principle, these later verdicts refined its application by introducing nuanced distinctions between acute therapeutic needs and long-term care, as well as emphasising the claimant's individual capacity to utilise the awarded aid.

In Rt-2003-1358, the Supreme Court addressed the compensability of private therapeutic costs for victims of sexual abuse by a therapist.

The Court explicitly relied on the *Bråtane* precedent to establish a jurisdictional boundary for compensation. While the Court allowed for the full recovery of private psychological fees because public alternatives were unavailable, it distinguished these 'acute' medical costs from the 'long-term future expenses for care, nursing, and supervision' discussed in Rt-2002-1436. Citing this previous Supreme Court verdict, the Court reaffirmed that for long-term care needs, the ordinary public healthcare services must, as a starting point, form the limit for what is considered a reasonable compensable expense. Still, the Court argued, there must be room for compensation for specialised medical treatment where the welfare state's capacity is demonstrably insufficient.

In Rt-2009-425, the Supreme Court offers a more detailed analysis of the utilisation principle than in Rt-2002-1436. In this case, the Court was tasked with determining the care supplement for a young man who suffered brain damage due to misdiagnosis. The Court cited Rt-2002-1436 to justify that a private supplement is particularly relevant when it aims to provide autonomy and quality of life beyond purely medical nursing. However, the court also referenced Rt-2002-1436 to argue that the extent of such a supplement must be measured against the claimant's actual ability to benefit from it. While the victim in Rt-2002-1436 was described as having an extraordinary ability to utilise aid to live an active life, the Court in Rt-2009-425 noted that the claimant's cognitive and psychological state limited his ability to utilise similar levels of assistance. Consequently, the Court used the framework in Rt-2002-1436 to justify a lower annual award, proving that the precedent functions as a double-edged sword: it justifies the supplement but also mandates a strict, individualised assessment of its restorative effect.

Furthermore, Rt-2009-425 applied the reasoning in Rt-2002-1436 to address the role of informal care provided by family members. By leaning on the necessary and reasonable standard from the verdict in 2002, the Court in 2009 concluded that parental efforts should be treated as part of a total discretionary assessment rather than a calculable hourly loss.

Together, these two subsequent Supreme Court cases demonstrate that the verdict in Rt-2009-425 has become a standard when assessing damages in tort law for personal injuries in the Norwegian Supreme Court.