XXVII. Slovenia

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1. Judgment of the Supreme Court II Ips 360/2001, 21 February 2002

The first case deals with liability for a dog bite. The defendant's dog, kept for the purpose of guarding property, had a naturally vigilant and stern disposition, though it remained within the normal behavioural limits of the shepherd breed. The dog was chained[1] in the backyard behind the defendant's house, where the defendant and her neighbour – the plaintiff's grandmother – were engaged in conversation. They stood in close proximity to the dog, with the defendant herself even within its reach. At the time of the incident, the plaintiff, then ten years old and familiar with the conditions on the defendant's property, saw his grandmother from the street. He entered through the wide-open front gate of the yard and proceeded past the house toward the backyard. When the defendant and the grandmother noticed him at a distance of about nine metres, the grandmother warned him to be careful of the dog. Despite this warning, the plaintiff continued forward and stepped into the area within the dog's reach. At that point, the dog attacked from behind, biting his left leg and causing injuries for which the plaintiff sought compensation. The court of first instance granted the claim only in part, finding the defendant liable for 40% of the damage, while attributing 60% contributory negligence to the plaintiff. On appeal, however, the court adjusted the apportionment of liability, holding the defendant responsible for 50%.[2]

The Supreme Court granted the plaintiff's request for revision of the appellate court's decision. In its view, both the trial court and the appellate court erred in apportioning liability between the parties. The Court

[1] The tethering of dogs is now prohibited under art 15 of the Animal Protection Act (Zakon o zaščiti živali) – Uradni list RS Nos 38/2013 – official consolidated text, 21/2018, 92/2020, 159/2021, 109/2023, 12/2025, 60/2025.

[2] About these questions see also *G Dugar*, Slovenia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2021 (2022) 571, nos 1–2 and *B Novak*, Slovenia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2022 (2023) 585, nos 19–22.

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ultimately held that the defendant's share of responsibility amounted to 70%. It stressed that the appellate court had failed to accord sufficient weight to the circumstances established on the defendant's side of the case. The lower courts had correctly identified but insufficiently considered several key factors: the defendant did not adequately secure access along the side of the house where the incident occurred; the event could have been prevented had she locked the wider entrance gate; she could reasonably have foreseen that the plaintiff would join his grandmother and the defendant in the backyard; the dog was sometimes kept on a longer chain and at other times on a shorter one, creating uncertainty about the extent of its reach; and in the specific situation, the defendant failed to take any action. The Supreme Court further emphasised that the issue extended beyond the defendant's failure to secure entry to the backyard and prevent visitors from coming within the chained dog's reach. Crucially, the incident occurred in the defendant's immediate presence: she herself was standing within the dog's reach, she observed the plaintiff approaching, yet she failed to intervene. The Supreme Court reiterated that an owner has a duty to maintain control over their dog. Having seen the plaintiff approach, the defendant could have anticipated the risk and prevented the attack by issuing a command or restraining the chain. In this context, the plaintiff's familiarity with the backyard and his disregard of his grandmother's warning could not be regarded as a contribution to the damage equivalent to that of the defendant. The Court further observed that ignoring the grandmother's warning was likely the product of a child's misjudgement, and that a ten-year-old cannot reasonably be held to the same standard of judgement as an adult. Accordingly, the Supreme Court allowed the plaintiff's revision in this respect and determined that the defendant's share of liability was 70%, with the plaintiff bearing responsibility for the remaining 30%.

The judgment under discussion is grounded in the principle that where an animal causes injury, its keeper is liable unless they can demonstrate that they exercised due care in safeguarding or supervising the animal (para 2 art 158 of the Code of Obligations;[3] previously applied *mutatis mutandis* under § 1320 of the Austrian Civil Code of 1812, including its subsequent amendments[4]). Relying on this rule, and reinforced by the

[3] Obligacijski zakonik, Uradni list RS Nos 97/2007, 64/2016, 20/2018.

[4] Following the 1946 federal Yugoslav law, which annulled all pre-war regulations dating from before 6 April 1941 together with those enacted under occupation, Slovenia has been without a civil code – Act on the Annulment of Regulations Enacted before 6 April 1941 and during Enemy Occupation [Zakon o razveljavitvi predpisov, izdanih

judgment in question, the courts have gradually developed a consistent line of jurisprudence which has both refined the scope of dog owners' liability and concretized the otherwise open-textured legal standard of 'supervision of a dog'. The function of supervision is to ensure, in an effective manner, that the animal does not inflict harm. The extent and form of such supervision must be tailored to the specific circumstances that the owner could, or ought to, have anticipated. Consequently, liability arises, for instance, where a dog causes damage after breaking free from its chain, when it has been allowed to roam unrestrained, or even where it was kept on a chain but no visible warning sign alerted others to its presence. A central element in adapting supervision to a given situation is the dog owner's duty to be aware of the specific characteristics of the animal. Where a dog poses a danger, the owner must adjust the measures of care and control accordingly and anticipate potentially hazardous situations. This duty is particularly pressing in circumstances indicated by prior experience or earlier incidents. It is especially relevant where the dog has repeatedly exhibited aggression, has previously attacked or injured people, or has done so under comparable circumstances. The greater the danger the animal presents, the more rigorous and stringent the supervision required. Supervision must therefore be tailored to the dog's potentially dangerous traits. Appropriate measures may include shortening the chain, enclosing the yard with a sufficiently high fence, or placing the dog in a space where it cannot come into direct contact with passers-by. The use of a muzzle can also prevent harm, or at the very least mitigate its extent.[5]

Case law has also contributed to defining the legal term 'keeper of a dog'. According to judicial practice, the term 'keeper', who bears liability for damage caused by a dog to third parties, is broader than the term 'owner.' A keeper is any person to whom the dog has been entrusted for care and supervision, even if that person is not the owner. In such cases, liability for the damage attaches to the keeper,[6] and not necessarily, or even at all, to the owner. An owner who entrusts their dog to another person is, under case law, not liable if they exercised sufficient care in selecting the person to whom the dog was entrusted for safekeeping and

pred 6. aprilom 1941 in med sovražno okupacijo], Uradni list Federativne ljudske republike Jugoslavije no 86/1946. Following the annulment, the provisions of the Civil Code continued to be applied insofar as they were not otherwise regulated or were not inconsistent with the new legal order. The provisions on liability for animals, in particular, continued to be applied in this manner until the adoption of the Code of Obligations in 2007, which expressly regulated this matter in art 158.

5 Judgment of the Supreme Court II Ips 111/2021, 12 January 2022.

6 Judgment of the Supreme Court II Ips 485/2007, 26 February 2009.

supervision.[7] Such care is absent, for example, where a Rottweiler was entrusted to the owner's mother, who was unable to control the dog and clearly unfit for the task,[8] or where the dog was entrusted to a child. The keeper may also be liable to the owner if the owner suffers harm caused by a dog that is no longer under their direct care and supervision (for instance, where a daughter, as the owner, permanently entrusted the dog to her parents for safekeeping and supervision).[9] The status of keeper may also be shared by several individuals. This typically arises where the dog forms part of the community property of spouses and, therefore, their joint ownership, without its care and supervision being entrusted to one spouse alone. In such circumstances, the spouses' liability for damages is joint and several.[10] Finally, the liability of a dog's keeper may be partly excluded where the injured party contributed to the occurrence of the damage by provoking an otherwise uncontrolled dog, teasing it, or neglecting to protect themself against it.[11]

Case law generally assesses the liability of a dog's keeper according to the principles of fault-based liability (para 2 art 158 of the Code of Obligations). In exceptional circumstances, a dog may satisfy the statutory criteria for classification as a dangerous animal, in which case the keeper's liability is assessed under the rules of strict liability. Pursuant to the Animal Protection Act,[12] a dangerous dog is one that endangers its surroundings due to uncontrollability, exhibits aggressive behaviour toward humans, or has bitten a person or another animal. The Act, however, explicitly excludes certain situations from this definition. A dog is not considered dangerous, for example, where a bite results from unlawful entry into a building or fenced property clearly marked with a warning sign; where the bite occurs during handling in the course of a veterinary procedure; or where the dog, being under six months of age, bites once, provided its date of birth was entered in the central register of companion animals prior to the incident. In such cases, it is the official veterinarian who, in inspection proceedings, issues the decision designating the dog as dangerous and records this status in the central register (art 11.a of the

[7] Judgment of the Supreme Court II Ips 267/2011, 20 February 2014.

[8] Judgment and decision of the Supreme Court II Ips 267/2011, 20 February 2014.

[9] Judgment of the Supreme Court II Ips 267/2011, 20 February 2014. See also *B Novak*/*G Dugar*, Slovenia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2014 (2015) 566, nos 16–19.

[10] Cf judgment and decision of the Supreme Court II Ips 504/2004, 16 June 2005.

[11] Judgment and decision of the Supreme Court II Ips 98/2006, 8 May 2008.

[12] Uradni list RS Nos 38/2013 – official consolidated text, 21/2018, 92/2020, 159/2021, 109/2023, 12/2025, 60/2025.

Animal Protection Act). The Act further requires both animal keepers and transporters to ensure the physical restraint of dangerous animals. Specifically, dangerous dogs must be secured either on a leash and with a muzzle, confined within a kennel or enclosed structure, or kept in a fenced area with a fence at least 1.8 metres high, marked at the entrance with a warning sign (art 12 of the Animal Protection Act). If injury is caused by a dangerous dog, the keeper's liability is strict. This means that liability attaches irrespective of the precautions taken, such as confining the dog in a kennel, keeping it leashed, or fitting it with a muzzle.

2. Decision of the Supreme Court II Ips 21/2024, 3 December 2024

This case concerns depression as a consequence of the failure to properly maintain a stormwater manhole. The municipality failed to remedy a defect in the infrastructure situated on its property, namely an inadequately constructed wastewater drainage system. The inspection chamber J1 on the municipal road was undersized and improperly built, while the gradient of the stormwater sewer was excessively steep. Consequently, between 1991 and August 2016, stormwater repeatedly overflowed onto the plaintiff's land, causing recurrent flooding. From 1991 onwards, the plaintiff persistently sought rectification of the problem, initially from the municipality's legal predecessors and later from the municipality itself. In August 2016, after decades without resolution, he undertook remedial works at his own expense by constructing a grit chamber (inspection chamber J2) on his property, which successfully prevented further flooding. He claimed that the municipality's prolonged inaction over a period of 25 years caused him severe stress. The stress caused the plaintiff to fall ill. He was classified as a Category III invalid and experienced headaches, memory impairment, delusions, insomnia, depression, cognitive decline, and related difficulties. Because the municipality failed to remedy the defect in its infrastructure, the plaintiff sought compensation for non-pecuniary damage, claiming mental suffering resulting from the reduction of his life activities, which in his case stemmed from depression. Relying on expert opinion, the court of first instance concluded that the plaintiff's depression had developed directly as a consequence of the stress generated by the municipality's inaction. It therefore upheld the claim in principle and awarded € 11,000 in damages, while dismissing the remainder of the claim (€ 9,000). The appellate court altered the first instance judgment and dismissed the claim in full, holding that no causal link existed between the municipality's passivity and the plaintiff's de-

pression. It reasoned that the municipality's inaction, in the absence of any enforceable order requiring corrective measures, would not, in the ordinary course of events, give rise to depression. Such a consequence was considered neither typical nor reasonably foreseeable as a legally relevant causal connection. The plaintiff's medical condition was described as exceptional. Because the consequence was not adequate in law, it was deemed legally irrelevant, and the municipality was found not liable. The Supreme Court admitted revision on the issue of whether the plaintiff's mental suffering was in a legally relevant causal connection with the municipality's conduct. It allowed the revision, annulled the appellate judgment insofar as reviewed, and remitted the case to the appellate court for further consideration.

The Supreme Court first examined whether the 'egg shell skull' theory, invoked by the appellate court, was applicable to the assessment of causation in the present case. Under this doctrine, a tortfeasor is liable even for unforeseeable or barely foreseeable consequences of their conduct, where such consequences arise from the victim's particular characteristics or vulnerable conditions. The Court therefore considered whether the plaintiff in this case displayed such particular characteristics, which might have manifested themselves in additional harm, in a different form of harm, or in an aggravated extent of harm. The key issue was whether the plaintiff's depression resulted from hypersensitivity, fragility, weakness, or pre-existing vulnerability, or whether it constituted a probable, and thus foreseeable, reaction to more than two decades of fruitless efforts to resolve the situation. The Supreme Court concluded that the 'egg shell skull' theory was not applicable. Expert evidence established that although the plaintiff, by reason of his character and personality traits, was predisposed to depression, the illness did not arise from those traits. Rather, it developed as a consequence of chronic stress caused by the repeated outflow of water onto his land and by the frustration stemming from the futility of his long-standing attempts to rectify the situation. The Court therefore held that the proper framework for analysis was the theory of adequate causation.

In contrast to the appellate court, the Supreme Court held that the plaintiff's damage did not constitute an exceptional, extraordinary, or entirely unusual causal consequence. Depression cannot be regarded as a consequence wholly beyond what life experience would consider a possible outcome of the omission in question. Life experience and logic confirm that a person is not a machine devoid of emotions, capable of enduring indefinitely, and without mental consequences, the municipality's persistent inaction in relation to a situation it had itself created by con-

structing a drainage system that caused flooding. The plaintiff's hope for remediation of the cause of the damage gradually diminished, while his stress steadily increased, eventually developing into chronic stress that triggered depression. Although depression may not be the most common consequence of prolonged and fruitless attempts to resolve an improper condition, the municipality's longstanding failure to address the harmful situation cannot be treated as a normal or ordinary circumstance, contrary to the appellate court's suggestion that disputes between municipalities and residents are not uncommon. The appellate court also failed to give due consideration to the special features of the case, namely the municipality's prior active conduct that led to flooding of the plaintiff's property, followed by its prolonged and persistent inaction. If the circumstances themselves were not ordinary, it logically follows that depression, as their consequence, cannot be considered ordinary either. Even if depression is not the most typical consequence, in the abnormal circumstances in which the plaintiff found himself, it represented a probable and therefore foreseeable reaction. The rarity or isolated nature of such omissions of duty cannot alone justify the exclusion of municipal liability. What is decisive is that the consequence was not wholly implausible. Even if unlikely, it remained foreseeable. Foreseeability, as a legal standard, encompasses more than ordinariness.

The present decision is significant as it marks the first instance in judicial practice where the important question of whether depression may arise from a failure to act where action was legally required was addressed. Its importance also lies in the fact that the Supreme Court offered substantive guidance on the application of various theories of causation. The decision is expected to exert considerable influence on the future development of case law concerning the assessment of causation and on the practical responsiveness of public authorities.

3. Judgment of the Supreme Court II Ips 50/2021, 20 April 2022

This case concerns an assessment of the plaintiff's contribution to the occurrence of damage as a result of travelling with an intoxicated driver. The plaintiff and driver Z drove to Y in the early afternoon. While driving, they bought several cans of beer and consumed them. At the border crossing, driver Z underwent an alcohol test, his licence was revoked due to excessive intoxication, and both were returned to Slovenia. Because Z no longer had a valid licence, the plaintiff – who was also intoxicated – began driving from the border crossing. After two or three kilometres,

however, he allowed Z to resume driving, despite knowing that Z was intoxicated. A traffic accident followed, in which the plaintiff was seriously injured and Z was killed. The plaintiff sought compensation from Z's insurer. The court of first instance held that the claim was justified to the extent of 35%, and that the plaintiff was responsible for the remaining 65% of the damage, which was also confirmed by the court of second instance.

In Slovenian court practice, there is no doubt that a car constitutes a dangerous thing and that the driver is strictly liable for injuries caused to a passenger (para 2 art 131 of the Code of Obligations). However, the driver may be fully released from strict liability (paras 1 and 2, art 153 of the Code of Obligations), or only partially released, if the injured party contributed to the occurrence of the injury (para 3 art 153 of the Code of Obligations).[13]

According to the established case law of the Supreme Court at the relevant time, an injured party who willingly rides with an intoxicated driver is deemed to have contributed to the occurrence of the damage to the extent of 20%.[14] The same degree of contribution was assessed irrespective of the fact that the driver and the injured party had previously been drinking together.[15]

The Supreme Court admitted the revision and modified the lower courts' judgments by awarding the plaintiff 50% of the claimed amount, holding him responsible for the remaining 50% of the damage. Beyond the fact that the plaintiff knowingly rode with an intoxicated driver, the Supreme Court emphasised that the plaintiff and the driver had been drinking together prior to the accident. This conduct, in the Supreme Court's view, justified assigning 50% of contribution of the occurrence of damage to the plaintiff. One of the main arguments of the Supreme Court was that the current practice was too unambiguous and did not distinguish between different situations. According to the Supreme Court, there is a difference between an injured party sitting next to a driver whom he suspects is mildly intoxicated and an injured party who drinks excessively with the driver and then gets into their car. Since similar cases must

[13] *Novak*/*Dugar*, ETL 2014 (fn 9) no 22.

[14] See eg, judgment of the Supreme Court II Ips 105/2002, 7 November 2002; decision of the Supreme Court II Ips 1249/2008, 12 March 2009; judgment of the Supreme Court II Ips 666/2001, 29 August 2002; judgment of the Supreme Court II Ips 334/2009, 19 December 2012; judgment of the Supreme Court II Ips 244/2011, 28 August 2014.

[15] See eg, judgment of the Supreme Court II Ips 467/2002, 27 November 2003; judgment of the Supreme Court II Ips 619/2005, 7 February 2008; judgment of the Supreme Court II Ips 74/2008, 10 March 2011.

be treated similarly, and different ones must be treated differently, it is necessary to distinguish between cases when the injured party agrees to drive with an intoxicated driver from cases when the injured party and the driver had been drinking together beforehand.

The present case is significant for the development of the assessment of injured parties' contribution to the occurrence of damage, not only in cases involving travelling with an intoxicated driver, but also in any other case of strict liability. The decision of the Supreme Court highlights that, when assessing the injured party's contribution, it is necessary to distinguish between different situations and to determine the extent of such injured party's contribution accordingly. In determining injured parties' contribution, therefore, we do not seek, nor can we seek, a contribution based on natural causation. Since the very reason for attribution in this context is normative rather than physical, it is likewise impossible to measure forces in a natural-scientific manner and then mathematically delimit the causes. The respective contribution must therefore convey a certain evaluative message. Thus, a contribution may express mere symbolic significance (eg 10%), it may indicate that the cause is of lesser evaluative importance than the primary cause (eg 25% or 30%), it may further reflect that both causes can be weighed as equivalent (50%), or that the injured party's contribution is even decisive (eg 70%).[16]

4. Judgment of the Supreme Court II Ips 22/2024, 4 September 2024

In criminal proceedings, the plaintiff's mother (the defendant) was convicted of neglect of a minor and cruel treatment for the period from 19 October 2015 to 11 April 2017, during which she gravely failed in her parental duties toward the plaintiff, then aged 11.[17] As a result of her conduct, the plaintiff suffered serious harm to his physical and psychological integrity, manifested in physical pain, fear, and a decrease in life activities. The defendant repeatedly left the plaintiff without supervision, failed to provide adequate nutrition, clothing, and basic living conditions, and allowed him to reside in an apartment without electricity, heating, or hot water. She also neglected his education by failing to ensure regular school attendance, thereby undermining his academic performance and healthy psychosocial development. The plaintiff lived in constant

[16] Judgment of the Supreme Court II Ips 50/2021, 20 April 2022.

[17] On this case see *B Novak*, Slovenia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2024 (2025) 661, nos 37–39.

fear of the continuation of these conditions, which was exacerbated by the defendant's dismissive and harsh responses to his expressions of distress. Expert psychological evidence established that the prolonged neglect and emotional deprivation prevented the plaintiff from attaining age-appropriate emotional, social, and personal maturity. He developed post-traumatic stress disorder, accompanied by persistent anxiety, sleep disturbances, and psychosomatic symptoms, including headaches and nausea. The plaintiff exhibits profound deficits in self-esteem and social functioning, experiences severe insecurity in interpersonal relationships, and remains burdened by a pervasive fear of rejection. These impairments are long-term in nature, require extensive psychotherapeutic intervention, and, in part, constitute irreparable damage to his mental health. The plaintiff demanded from the defendant compensation in the total amount of € 291,500, namely € 55,000 for physical pain, € 200,000 for mental pain due to reduced life activities and € 36,500 for fear. The first instance court granted the plaintiff's claim in the total amount of € 90,000, which was increased to the total amount of € 130,000 by the second instance court.

When calculating pecuniary compensation for non-pecuniary damage, Slovenian court practice uses two basic principles, namely the individualisation of the level of compensation and objective conditionality of the level of compensation.[18] The first principle requires determination of fair pecuniary compensation based upon the intensity and duration of physical pain, mental suffering and fear and upon all the specific circumstances in relation to the injured party. The second requires taking into account the importance of the affected good and the purpose of the compensation as well as the fact that the compensation may not support aspirations that are incompatible with their nature and purpose. In calculating non-pecuniary loss, therefore, the court thus takes into account the objective material possibilities of society and court practice in similar cases of non-pecuniary loss.[19]

The decision in the case under consideration is significant for the development of court practice concerning the calculation of pecuniary compensation for non-pecuniary damage in cases involving catastrophic harm, especially where different forms of non-pecuniary loss are intertwined. Prior to the case under consideration, Slovenian court practice

[18] *G Dugar*, Slovenia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2023 (2024) 607, no 34.

[19] See *Novak*/*Dugar*, ETL 2014 (fn 9) no 60 ff; judgment of the Supreme Court II Ips 62/2011, 16 January 2014; judgment of the Supreme Court II Ips 117/2012, 20 March 2014; judgment of the Supreme Court II Ips 280/2013, 22 May 2014.

had not yet encountered a case involving consequences of this nature. According to art 179 of the Code of Obligations, a court awards compensation for non-pecuniary damage for physical pain suffered, for mental pain suffered due to reduced life activity, disfigurement, defamation of good name and honour or impairment of freedom or personal rights or the death of a loved one and for fear if the circumstances of the case, in particular the degree of pain and fear of the injured party and their duration, justify this. In cases such as the one under consideration, the types of damage referred to in art 179 of the Code of Obligations constitute merely individual aspects of a single, unified experience of harm. The Supreme Court therefore held that the circumstances of the case under consideration required the assessment of a uniform compensation amount, rather than its calculation according to the individual statutory categories set out in art 179 of the Code of Obligations. In the case under consideration, all the consequences affecting the claimant occurred in a closely interwoven and mutually conditioning manner across different spheres of his psychophysical integrity – namely, psychosomatic physical pain and fear, which even developed into a component of diminished life activities in the form of post-traumatic stress disorder, and mental suffering due to the reduction of life activities, which is itself partly a consequence of the severe fear endured. Separating these multi-layered and concurrent serious impairments would be inappropriate and artificial, thereby justifying the award of compensation in the form of a uniform compensation amount.[20]

In assessing the appropriateness of the uniform pecuniary compensation for non-pecuniary damage, the Supreme Court compared the harmful consequences in the case under consideration with those in other cases involving damage of comparable severity. In determining the lower threshold of uniform compensation, the Supreme Court compared the present case with cases concerning the consequences of sexual abuse. Thus, for example, in a case in which the injured party was severely emotionally affected and in which feelings of humiliation, shame, fear, and insecurity had not abated even several years after the harmful event, the Supreme Court upheld a uniform compensation award in the amount of 70 average monthly net salaries.[21] In another case, over a period of four years, a father committed numerous sexual acts and acts of sexual violence against the claimant, who was a minor at the time. As a result, the claimant developed low self-esteem, a sense of stigmatization, recurrent re-experiencing of traumatic events, pronounced distrust and insecurity in forming

[20] Judgment of the Supreme Court II Ips 22/2024, 4 September 2024.

[21] Judgment of the Supreme Court II Ips 8/96, 28 May 1997.

interpersonal relationships, and poor adaptation to new environments. The Supreme Court held that, in view of these consequences, an award of compensation in the amount of 77 average monthly net salaries was appropriate.[22] In identifying the upper threshold of the unified compensation amount in the case under consideration, the Supreme Court relied on cases involving compensation awarded for injuries sustained in traffic accidents with predominantly catastrophic consequences affecting both the physical and mental spheres. This included, for example, an award of uniform compensation in the amount of 155 average monthly net salaries for injuries to a minor claimant whose intellectual abilities were permanently diminished as a result of the injury, who became excessively anxious, emotionally hypersensitive, irritable, and aggressive, and who will not attain maturity even in adulthood.[23] According to the mentioned lower and upper limits of uniform compensation amounts in comparable cases, the Supreme Court concluded that, in the case under consideration, a uniform compensation award in the amount of 100 average monthly net salaries constitutes appropriate pecuniary compensation for non-pecuniary damage.[24]

5. Judgment of the Supreme Court II Ips 284/2016, 30 August 2018

This case deals with the tortious liability of the operators of a sports park for mountain biking. On 21 September 2012, the plaintiff suffered a permanent spinal cord injury resulting in paraplegia while riding a bicycle in the bike park. He was using the easiest (blue) trail, which was properly maintained, clearly marked, and separated from the surrounding terrain. The plaintiff did not leave the trail due to perceived danger and was not riding at high speed. Nevertheless, he deviated approximately four metres from the trail, entered an unmarked drainage ditch, and fell. The bend he cut was not technically demanding, and the drainage ditch did not constitute an obstacle for riders who remained on the trail. The park's rules, which prohibited leaving marked trails, were publicly displayed at the ticket counter.

The plaintiff demanded compensation from the operators of the bike park and the insurance company, with which one of the defendants had its liability insured. The first and second instance courts dismissed the plain-

[22] Judgment of the Supreme Court II Ips 366/2011, 19 December 2013.
[23] Judgment of the Supreme Court II Ips 32/2001, 6 September 2001.
[24] Judgment of the Supreme Court II Ips 22/2024, 4 September 2024.

tiff's claim for compensation with the argument that the injury occurred due to the plaintiff's negligent conduct. The Supreme Court partially granted the plaintiff's revision, holding that the plaintiff's substantive claim was well founded to the extent of 50%, because the operators of the bike park should have expected cyclists to cut the corner and because the drainage channels should have been marked or, at least, the grass around them should have been mown in order to make them visible. Consequently, the Supreme Court returned the case to the court of first instance for a determination of the amount of compensation and the costs of the proceedings.

The decision in the case under consideration is important for the development of court practice concerning the delineation between strict and culpable tortious liability. The Supreme Court emphasised that, under the rules of the Code of Obligations governing strict liability for damage arising from a dangerous activity (art 149 ff), liability is borne by the person engaged in such activity, irrespective of whether that person acts with due care. Liability is imposed by reason of the inherent risk itself. This form of tort liability was developed because technological and scientific progress has led to the emergence of new forms of energy and machinery which, even when all safety regulations are observed, pose such a significant risk of injury that it would be unjust for the injured party to bear the consequences of an accident solely because it did not result from fault.[25] For this reason, the rule was established that the risk should be borne by the person who carries out the dangerous activity and derives a benefit from it.

The Supreme Court emphasised that, in certain sports, injuries are both frequent and severe (such as boxing, car or motorcycle racing, and climbing). Downhill mountain biking on steep terrain also falls within this category. However, an individual who voluntarily participates in a sporting activity consents to the risks inherently associated with that sport. In many cases, the sport is chosen precisely because of the excitement generated by those risks. For this reason, the application of the rules on strict liability is excluded in such cases. The organiser of a sporting activity may still incur liability in damages, but only for damage resulting from a lack of due care, and not for damage arising from risks inherent in the sport itself. From the perspective of the preventive function of tort law, the application of fault-based liability rules encourages organisers to ensure professional standards and safety, while at the same time prompt-

[25] *S Cigoj*, Komentar obligacijskih razmerij [Commentary of law of obligations], vol I, Časopisni zavod Uradni list SRS, Ljubljana 1984, at 644.

ing participants to make more considered decisions about engaging in dangerous sports and to be aware of the importance of personal responsibility for their own safety.