Institute of Comparative Law, Association for Tort Law, Judicial Academy

XXVII International Scientific Conference

CAUSATION OF DAMAGE, DAMAGE COMPENSATION AND INSURANCE

Proceedings from XXVII International Scientific Conference

Editors:
Dr. Mirjana Glintić
Prof. Dr. Dragan Obradović

Belgrade, Valjevo, 2024

CAUSATION OF DAMAGE, DAMAGE COMPENSATION AND INSURANCE
– XXVII International scientific conference –

Publisher:
Institute of Comparative Law, Terazije 41, Belgrade, Serbia

For Publisher:
Prof. Dr. Jelena Ćeranić Perišić, acting director

Editors:
Dr. Mirjana Glintić
Prof. Dr. Dragan Obradović

Reviewers:
Prof. Dr. Vladimir Đurić
Prof. Dr. Zdravko Petrović
Prof. Dr. Valerio Massimo Minale
Prof. Dr. María Etelvina de las Casas León
Prof. Dr. Dmitriy Galushko
Prof. Dr. Anna Lucia Valvo

Technical Editors:
Milena Momčilov, M. A., Institute of Comparative Law
Ana Zdravković, M. A., Institute of Comparative Law

Working Languages of the Conference:
English and German

Translator:
Miloš Baltić

Prepress:
Branimir Trošić

Printed by:
Birograf Comp d.o.o., Beograd

Circulation:
150 copies

ISBN 978-86-82582-21-2

DOI: 10.56461/ZR_24.ONS

The organization of this conference was supported by Ministry of Science, Technological Development and Innovation.

Nataša Mrvić Petrović* **DOI: 10.56461/ZR_24.ONS.05**

STATE'S LIABILITY FOR DAMAGES CAUSED BY FAILURE TO PROTECT THE PRISONER FROM BEING ILL-TREATED BY INMATES**

Summary

The topic of the research is related to the liability of state for failure of state authorities to protect the life and integrity of prisoners from violence other prisoners. The aim of research is a critical review of the normative framework in the Republic of Serbia and judicial practice.

The state liability in tort is clearly the attainment or the rule of law (Rechtstaat). The responsibility of the state for violations of basic human rights and freedoms, especially the rights of the prisoners and other persons for whom the state takes care is universally has become a universally accepted rule in the modern times. The comparative analysis shows that the common law legal system has recognized until recently the immunity of the state and strictly personal responsibility for the unlawful acts of state officials, but the concept of human rights protection has influenced changes, as shown by the examples of Great Britain and the United States of America. The tort liability of the EU Member State, for damages caused to the other EU Member State, legal entity or individual emerges as a new hybrid legal phenomenon.

The Constitution of the Republic of Serbia defines the liability of the state in case of unlawful or improper work of its organs. This guarantee is specified primarily in the Law on Contract and Torts and the Law on Enforcement of Criminal Sanctions. Examples of good

* Ph.D., Full Professor, Principal Research Fellow, Institut of Comparative Law, Belgrade, Republic of Serbia.

E-mail: *nmrvic@icl.rs*

** The scientific paper was created as a part of the scientific research work of the Institute for Comparative Law, which is financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, according to the Agreement on the Implementation and Financing of Scientific Research Work of the Scientific-Research Organizations in 2024 (reg. Number: 451-03-55/200049 dated February, 5, 2024).

judicial practice were highlighted - judgments of the Appellate Court in Belgrade (Gž 4868/15) and the Supreme Court (Rev 661/2017). The judgment of the Supreme Court insists on the non-fault (strict) liability of the state for damage if the failure of the prison administration to prevent il-treatment between prisoners. Such determination supports the practice of the European Court of Human Rights.

Keywords: *Strict Liability, Tort Liability, Prisoner's Rights, Violence in Prison, Human Rights*

1. Introduction

On February 4th, prisoner S.B. (age 74) died in the prison "Padinska Skela". He was abused for days by inmates from the same room.[1] The cause of violent death of S.B. was established by autopsy on March 8th, 2024. The Prison administration of Republic of Serbia considers that there is no state responsibility, even though the abuse of S.B. was not prevented. After the supervision, the director of the prison was dismissed and disciplinary proceedings were initiated against several officers, medical officer included. From the description of the circumstances, it is clear that other prisoners tortured S.B. what led to his 'unnatural'[2] but it was not directly caused by unlawful actions of the prison officers. Three prisoners will be held accountable for murder and will be liable for damages to the relatives of the murdered S.B. However, the question of the state's liability for damage due to the death or injury of a prisoner can be raised, since the state has a duty to provide care for the prisoners and other persons deprived of their liberty (in jails, prison or psychiatric hospital, police stations, correctional institutions etc.), especially to protect their rights to life and physical and mental integrity. Moreover, state could be liable because of failure to control work of private institutions (hospitals, prisons) in which violent death or injury violence of the inmate has occurred.

[1] D. Ljutić, "Jecaji sistema – Zakon ćutanja za smrt starca u KPZ-u Padinska skela", *Direktno*, 21. 3. 2024., D. Čarnić, "Zatvorska uprava odbija optužbe da nije blagovremeno reagovala u slučaju ubistva osuđenika", *Politika*, 21. 3. 2024., M. Derikonjić, "Istražuju se propusti koji su doveli do smrti osuđenika u zatvoru", *Politika*, 26. 03. 2024.

[2] "'Unnatural' death in prisons are suicides, homicides, State-sponsored executions or 'accidental' work-related deaths" but the line between 'natural' or 'unnatural' death in prison is not always clear, and decisions as to where it is drawn are subjective (Blue, 2012 from: D. M. Doyle, S. Scott, "Criminal Liability for Deaths in Prison Custody: The Corporate Manslaughter and Corporate Homicide Act 2007", *The Howard Journal* 3/2016, 299).

The mentioned example opens the problem of tort liability of the state for damage caused by the exercise of state power, which as a border area, connects private and public law – more specifically, tort law, international public law, and constitutional law (in areas of protection of human rights), as well as administrative law. In modern times, the state's liability for damage has been modified based on the concept (from public law) of prime responsibility and duty of state to protect and implement basic human rights and fundamental freedoms in a democratic society and that is why in the paper cannot avoid referring to Art. 2 and 3 European Convention on Human Rights and Fundamental Freedoms – ECHR (human right of life and right to integrity of person) and international standards of the United Nations and Council of Europe on the rights of prisoners and the prohibition of torture, inhuman and degrading treatment, which are fully accepted in the legislation of the Republic of Serbia. However, the primary goal of the analysis is to examine the solutions of domestic legislation and practice in the field of tort law, according to the hypothesis that they are very progressive. The analysis is preceded by an explanation of doctrinal positions and basic differences in comparative law regarding the legal possibility of the state being liable for damage to citizens, including prisoners and other persons under its care.

2. Theoretical Approach

State's liability in damages is a special type of legal responsibility, which can only arise in condition of supremacy of law in democratic society (state founded on the rule of law so called *Rechtsstaat* in German). Theoretical concepts of the basis of state liability for damage caused by administrative actions to citizens in exercise to power are various and can be determined by law, ranging from principled immunity of the sovereign state to the acceptance that state responsibility (or liability).[3] Theoretical concepts have the characteristics of the time in which they were created (19th century) and tradition of the development of law systems both in common law and continental law.[4]

[3] N. Mrvić-Petrović, N. Mihailović, Z. Petrović, *Vanugovorna odgovornost države za štetu pričinjenu njenim građanima*, Institut za uporedno pravo, NIO Vojska, Beograd 2003, 60–67.

[4] The concept of state's tort liability is most fully developed in German law theory. It is most restrictively regulated in common law. Special "hybrid" the regime of liability of a member state of the European Union (EU) due to a violation of EU law appears (N. Mrvić-Petrović, N. Mihailović, Z. Petrović, 90–96; M. Bukovac Puvača, N. Žunić Kovačević, "Problem temelja odgovornosti države za štetu prouzročenu

Since the half of the 20th century, the prevailing view is that the state must be responsible for violations of human rights and basic freedoms of its citizens.

This had a particular impact on the common law system, in which is accepted that no duty in damages of the state can be imposed because the power is exercised for the benefit of the citizens generally. Thus, in Great Britain, the adoption of the Human Rights Act in 1998, which implemented ECHR, had the effect that the principles of private law must be adapted to the protection of the fundamental rights of detained persons – although the public still consider controversial court decision which is obliges the Ministry of Justice to compensate the prisoner (especially the perpetrator of the most serious crimes) who was attacked in prison by other prisoners.[5] ECHR rights have made it possible for a prisoner to refer to the provisions of Art. 2 and 3 of the ECHR even when he was harmed in an attack instructed by other prisoners, based on the positive obligations of the prison authorities in accordance with Art. 2 and 3 of the ECHR to take reasonable measures to protect prisoner's right to life, which was also accepted in court practice in UK (case *Newell v. The Department of Justice, 2021)* which Foster analyzes.[6]

A special act additionally prescribes the corporate criminal liability of prison staff to prisoners under the Corporate Manslaughter and Corporate Homicide Act of 2007.[7] In the law of the United States of America, for example in the legislation of the State of California, it may be expressly provided that the public authority shall not be liable for any injury done to a prisoner by fellow inmates, nor it would be possible to establish liability of public officer (guard), unless he had a duty to prevent such injuries – when his liability is based on the employee's negligence.[8]

In the context of the rights of prisoners and persons in custody in addition to basic human rights documents, international law is of high importance, especially rules provided by the United Nations[9] and Council of

nezakonitim i nepravilnim radom njenih tijela", *Zbornik Pravnog fakulteta u Rijeci* 1/2011, 272–280).

5 S. Fooster, "Dangerous Prisoners and Attacks on fellow prisoners", *Coventry Law Journal* 1/2021, 95.

6 S. Fooster, 93, 97.

7 D. M. Doyle, S. Scott, 295–311.

8 C. W. Sanders, "The Sovereign Should Be Liable for the Wrongful Injury of Prisoners", *McGeorge Law Review* 1/1971, 711–712.

9 Standard Minimum UN Rules for the Treatment of Prisoners, 1955. Resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, appended in 1985, reviewed by the Nelson Mandela Rules (General Assembly resolution 70/175, annex,

Europe,[10] related to the position of inmates in the penitentiary system and for the prohibition of torture, inhuman and degrading treatment.

Protection of the rights of prisoners in proceedings before the European Court of Human Rights is subsidiary realized, under special conditions,[11] so that the primary question of the state's responsibility for damage according to national law in the proceedings conducted by domestic courts.

The state's liability for damage is usually liability for another. The state is liable for the damage caused by the actions or omissions of the state authorities or generally of employed in public service, especially if such actions are resulting in harm or human rights violations. It is less often allowed to the state's liability without of the fault (willful intent), or failure, or the misconduct of the public servant (strict liability).[12] The state's strict liability is allowed exclusively for tortious damage, caused under specific conditions, even when the damage is caused when the authorities are been strictly conducted with the legal rules.[13] The law may be determined that the state is strictly liable for damage in various cases, but the most significant are the cases in which the state should take care of some persons or objects of property. The prisoners are a persons cared for by the state, so theoretically is clear that the state could and should be liable for damage under a prisoner's unnatural death or injury. The state can be liable for damage only when it is bound by a legal relationship with the person who caused the harm. If the harm was caused by the actions of the state authorities, such liability of the state would always be

adopted on 17 December 2015); The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 59/46 on 10 December 1984 entered into force on 26 June 1987.

[10] Convention for the Protection of human Rights and Fundamental Freedoms (1950) with amendments from Protocol 11 and Protocols 1, 4, 6, 7, 12 and 13; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987; Recommendation R (2006) 2 on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006 at the 952nd session at the level of deputy ministers; Recommendation R (2006) 13 on use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of minister's deputies .

[11] V. Ćorić, *Naknada štete pred evropskim nadnacionalnim*, Institut za uporedno pravo, Beograd 2017, 25–123.

[12] In european tort law so called objective (non-fault) liability, or in german law doctrine, "liability for damage without of fault" (J. Radišić, *Imovinskopravna odgovornost i njen doseg*, Beograd 1979, 42).

[13] I. Krbek, *Odgovornost države za štetu*, Zagreb 1954, 573.

absolute (strict liability) – in such case liability of state is never based on the fact that the state could foresee or intended the harmful consequence.[14] In the described case of the prisoner's death in prison "Padinska skela", the failure of the prison authorities to notice and to react to attacks on the abused prisoner by other inmates can be considered as a "failure" of state, if the disciplinary responsibility of the officers is proven. But, as Digi would say, the state's liability for damaged does not even need to be based on the concept of wrongful duty of public authority[15] - the idea was accepted decades later within the concept of the state's responsibility for a violation of human rights, which are the counterpart of former (civil) the personal rights.

3. The Normative Framework in the Republic of Serbia

In the Republic of Serbia, the legal source of the state's tort liability for damages caused by prisoner's unnatural death or injury or by other person deprived of liberty under care of the state are accepted public international law, the Constitution of the Republic of Serbia[16] (Constitution) and general rules in the law on compensation for damages. It is prescribed in Article 18 of Constitution: "The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws". The right to life and the inviolability of physical or mental integrity are guaranteed by special provisions (art. 24 and 25) of the Constitution. In the art. 35 sec. 1 of the Constitution is guaranteed the right to rehabilitation and compensation of damage by the Republic of Serbia for any person deprived of liberty, detained or convicted for a criminal offence without grounds or unlawfully. In art. 35 sec. 2 of the Constitution is particularly prominent that "(e)veryone shall have the right to compensation of pecuniary or non-pecuniary damage inflicted on him by unlawful or irregular work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government". So, the Constitutions of the RS expressly provides for the responsibility/liability of the state for damage caused by the unlawful or irregular work of the state authorities.

[14] H. Kelzen, *Opšta teorija prava i države štetu,* Centar za publikacije Pravnog fakulteta, Beograd 1988, 124.

[15] L. Digi, *Preobražaji javnog prava*, Centar za publikacije Pravnog fakulteta, Beograd 1998, 170.

[16] *Official Gazette of the RS*, No. 98/2006 of 10 November 2006, 115/21 of 30 November 2021 and 16/22 of 9 February 2022.

The Law of Contract and Torts (Zakon o obligacionim odnosima – hereinafter ZOO) is a general law on obligations, tort liability, and compensation for damage. That law, as *lex generalis,* also regulates the liability of enterprises and other legal persons (including the state) in Subsection 4. Different legal grounds of the state's liability for damage by ZOO have been provided: liability for damage caused by an employee while working or in relation to work to a third person (based on presumed fault) and strict liability based on necessity of duty of care for dangerous objects of property or dangerous activity.

The liability of the state for the damage caused by the unnatural death or injury of a person deprived of liberty is most often linked to the actions or omissions of prison authorities (prison staff). So, usually the state is liable based on Article 172 of the ZOO:

> "(1) A legal person (corporate body) shall be liable for damage caused by its members or branches to a third person in performing or in connection to performing its functions.
> (2) Unless otherwise specified by the law for specific cases, a legal person shall be entitled to recover against a person being at fault for injury or loss inflicted wilfully or by gross negligence."

The second relevant legal source is Law of enforcement of criminal sanctions (Zakon o izvršenju krivičnih sankcija – hereinafter ZIKS).[17] The Law prescribes the right of adult detained and imprisoned persons (including persons undergoing psychiatric treatment in a prison hospital). The mentioned rights are guaranteed by Article 8. ZIKS and elaborated in chapter VI ZIKS. The priority is the right to humane treatment in detention, which implies that all persons under any form of detention shall be treated with respect for the inherent human dignity, and no one must endanger his physical and mental health (Article 76). The right to humane treatment (including right to be free from torture, inhumane or degrading treatment or punishment) is basic principle from which all other his specific prisoner's rights are derived, so, providing the measure for humane treatment to prisoner is central (political and by law prescribed) function of the Prison Service.[18] In accordance with the relevant documents of the UN and CoE (especially ECHR), the state has a positive obligation to ensure the humane treatment of detained and imprisoned prisons. It primarily

[17] *Official Gazette of the RS*, No. 55/14 of 23 May 2014 and 35/19 of 21 May 2019.

[18] Coyle's observation about Prison System in United Kingdom can be apple to the prison system of any state (A. Coyle, *Humanity in Prison – Question of definition and audit*, International Centre for Prison Studies, London 2003, 10).

concerns their safety in detained institutions including the "state's obligation to protect detainess against lethal violence and imhuman treatment by other prisoners".[19]

4. The Example from the Court Practice – The Legal Opinion of Principle

On the basis of ratified international law, the Constitution and national law, court practice in Republic of Serbia has been formerd regarding the liability of the state for damage caused to prisoners. The position of the court on State liability in case when a prisoner is injured by other inmates is illustrated by the following court case.

The Supreme Court in Republic of Serbia (Vrhovni kasacioni sud – hereinafter Supreme Court) in case Rev 661/2016 in the decision of 19 January 2017 adopted a position confirming the judgment of the Court of Appeal in Belgrade Gž 4868/15 of 3 December 2015 and rejected the revision[20] of the defendant (Republic Attorney General's Office the Republic of Serbia) against the judgment of the Court of Appeal in Belgrade as unfounded. By the Judgment of the Court of Appeal in Belgrade Gž 4868/15 the state was obliged to pay the plaintiff 200000 dinars as compensation for non-pecuniary damages, of which 80000 dinars for the physical pain suffered, and 120000 dinars for the fear suffered, with interest from the moment of the first-instance judgment until payment.[21]

The claim for damage against the state was initiated by an ex-prisoner. He was convicted for drug abuse and during of sentence was been treated for drug addiction in Special Prison Hospital. In May 2009 he was beaten by other prisoners in the Special Prison Hospital. A medical expert witness established that the plaintiff has "a lesion of the auditory nerve which may be the result of trauma and the injury to the middle and inner ear", as well as that he suffered

[19] P. H. van Kampen, "Positive Obligations to Ensure the Human Rights of Prisoners Safety", in: *Prison policy and prisoners' rights. The protection of prisoners' fundamental rights in international and domestic law,* (eds. P.J.P. Tak, M. Jendly), Wolf Legal Publishers, Nijmegen 2008, 31; similarly in: N. Mrvić Petrović, *Kriza zatvora*, Vojnoizdavački zavod, Beograd 2007, 362–372.

[20] In the civil court procedure in Republic of Serbia the revision is an extraordinary legal remedy against a final judgment.

[21] About compensation on suffered physical physical, mental pain and suffered fear in the law and in court practice in the Republic of Serbia see: Z. Petrović, N. Mrvić Petrović, "Fear as a form of non-pecuniary damages", *Strani pravni život* 4/2015, 31–41; N. Mrvić Petrović, Z. Petrović, "Compensation on suffered physical pain", *Strani pravni život* 4/2016, 9–19.

severe physical pain and fear after the injury. In the first-instance court proceedings, his claim against the state was rejected, but the second-instance court (the Court of Appeal in Belgrade) ruled in favor of the plaintiff. In the judgment concluded that in the litigation was proven that there was a causal connection between the harmful action and the harm suffered by the plaintiff. Although other prisoners attacked and injured the plaintiff, by its decision, the court obliged the defendant (the Republic of Serbia) to pay monetary compensation. The court established that the cause of the damage was the failure of the prison staff to prevent the inmates from fighting and, based on Article 172 of the ZOO, obliged the defendant Republic of Serbia to compensate for the damage.

The defendant submitted the revision against the final judgment, but the Supreme Court confirm the final judgment with its decision. The court states in decision that "human dignity and the right to the health (…) are personal rights – human rights protected by Article 200 of the ZOO".[22] The Article 200 sec. 1 guarantees the right to compensation for non-pecuniary damages "for physical pains suffered, for mental anguish suffered due to reduction of life activities, for becoming disfigured, for offended reputation, honor, freedom or rights of personality, for death of a close person, as well as for fear suffered, the court shall, after finding that the circumstances of the case and particularly the intensity of pains and fear, and their duration, provide a corresponding ground thereof – award equitable damages, independently of redressing the property damage, even if the latter is not awarded". In the same way as the Court of Appeal in Belgrade says in judgment, the Supreme Court also considers that there is omission in the work of prison staff who allowed a group of prisoners to beat the plaintiff and caused him physical injury (injury to the middle ear), namely caused him the forms of non-material damage recognized by law under Art. 200 (physical pain and fear of strong and medium intensity). The omission in the work of prison staff have, in the sense of law (the Art. 172 ZOO), the significance of a failure in work (irregular work) of the prison staff and Prison Administration generally. But the Supreme Court uses a different approach and finds a different legal ground for the state's liability for damage. It is the strict liability under Art 154 sec. 3 ZOO.[23] The Supreme Court rejected as unfounded the claims of the defendant that the state is not liable for the dam-

[22] Rev 661/2016 from 19 january 2017, Decision of the Supreme Court of Cassation, https://www.vrh.sud.rs/en/decisions-supreme-court-cassation-, last visited 22. 4. 2024).

[23] Article 154 ZOO (foundations of liability) specifies the principle *neminem laedere* and defines the fault as a basis of liability and strict liability for dangorous objects of property and dangerous activity (sec 1, 2). Sec 3 defines "Liability for injury or loss without of fault shall ensue also in other specified by law".

age because there were no unlawful or irregular work by officials, or that they were not proven and the argument that incidents in prisons occur regularly and cannot always be prevented, because the state is strict liable "for ensuring prison conditions that do not threaten the physical integrity of prisoners (who are there against their will) and for the omissions of prison staff (responsibility for another) who did not exercise control and supervision and prevent harm". So, in the decision the Supreme Court did not dwell only on the application and interpretation of the obligation law (Art 172 of the ZOO), but also referred to the constitutional provision that the state is responsible for unlawful or irregular work of the state authorities. Also, the Supreme Court insisted in explaining the decision on the importance of the principle of the humane treatment when deprived in liberty proclaimed in ZIKS. There are special legal foundations on which the state is obliged to be strictly liable for damage to prisoners.

Application of the rule on assumed subjective liability (based on the fault of public officers) from Art 172 ZOO allows the defendant to be released from liability, if the damage suffered by the injured party (prisoner) was not caused by the actions of the prison staff, but by the violent actions of other prisoners (s-c. "third parties" in sense of Art 172 ZOO). But the Supreme Court presents a legal position that "prisoners are not considered third parties whose actions caused damage that the prison administration in correctional institution not foresee and prevent, in order to be released from liability based on Article 172 of the ZOO".[24] The argument in the explanation of the decision of the Supreme Court was absent because it is clear that the prisoners are an integral part of the prison system. The states authorities (prison staff) are obliged to ensure the functioning of prison system, which includes responsibility for supervising the behaviors of all prisoners or detained person kept in prisons. In other word, managing and reducing violence in prison is a priority issue for the prison administration.

5. The Discussion and the Epilogue

The decision of the civil division of the Supreme Court of Serbia Rev 661/2017 is based on the Constitution, domestic legislation and previous practice. It also agrees with the European Court of Human Rights cases regarding state responsibility for violations of Art. 2 and Art 3 ECHR. In this time, the Supreme Court could have taken into account that since 4 April 2014, proceedings before the ECHR have been ongoing against Serbia due to

[24] The Supreme Court of Republic of Serbia, Rev. 661/2016.

ill-treatment prisoner by prison staff (case *Jevtović v. Serbia*[25]). At the same time, the Council of Europe with the European Union and the Government of the Republic of Serbia are working together to enhancing the human rights protection for detained and sentenced persons in Serbia.[26]

The described court case (Rev 2016/2017) is significant as the legal opinion of principle in judicial practice. The decision of the Supreme Court is important because strict liability of the state for damages suffered by ill-treatment one prisoner by his cellmates under the conditions of serving a prison sentence is established. So, the plaintiff is in a position to simply prove the state's liability. It is sufficient to prove that he was ill-treated or that his relative was killed in prison (the event of damage) and the causal link between the such events and the suffered non-pecuniary damage, in sense of Art 200 ZOO.

The epilogue of the death of a prisoner in prison S.B. in penal institution "Padinska Skela" is the control of the prison system and the initiation of criminal proceedings. The State Ombudsmanperson (Zaštitnik građana Republike Srbije) found in his monitoring report "that the health service acted unlawful and irregular in the specific case, because the examinations now deceased AA, which in the reports of the Security Service stated that they were carried out on 25 January 2024 and 1 February 2024 were not recorded in accordance with the regulations, that is, there is no information in the medical documentation that they were performed, and during the medical examination that was performed on February 3, 2024. No photographs were taken of the stated injuries, but were taken by a medical technician on February 4, 2024. in the bedroom where he is now deceased. AA stayed. The medical technician did not inform anyone about the new injuries, although there are visible injuries on the chin and cheeks that were not observed during the examination that was performed on February 3, 2024. represented a sign or indication that violence was used against AA. In addition to the above, it was also determined that the employees of the Security Service acted improperly, because the observed condition, i.e. the visible physical changes of AA, as well as the reasons for which the 4.02.2024. moved to another dormitory, they did not make an official note or report it further to their superiors in the prescribed manner".[27] On the death of the prisoner, the Higher Public Prose-

[25] Application no. 29896/14, judgment from 3 September 2019, https://hudoc.echr.coe.int/eng?i=001-163134.

[26] The Council of Europe, "HR III Serbia", 2016, https://www.coe.int/en/web/cooperation-in-police-and-deprivation-of-liberty/hf-iii-serbia-enhancing-the-human-rights-protection-for-detained-and-sentenced-persons, last visited 22. 04. 2024.

[27] The Ombudsman of the Republic of Serbia, Zaštitnik građana utvrdio brojne

cutor's Office in Belgrade investigates the criminal liability of five employees (four guards and a doctor).[28]

Possible criminal convictions are not enough satisfaction for the victims. If there is no criminal procedure against the perpetrators and public officials, relatives of the deceased, even if they receive compensation from the state in civil proceedings, will be able to initiate proceedings before the European Court of Human Rights, demanding appropriate satisfaction on the Art 41 ECHR, such in case *Gjini v. Serbia*.[29] The circumstances of the case are very similar because the applicant (Fabian Gjini) had been ill-treated by his cellmates, when he had been 16 days detained in prison "Sremska Mitrovica" on suspicion of attempting to pay a toll at a border crossing with a counterfeit ten-euro banknote. Like in the case of unnatural death of S.B. in prison, applicant Gjini was not allowed to report assaults by other inmates, and prison authorities failed to reacted to visible signs of violence on his body. During the 2013 the Court of First Instance the claim of the applicant Gjini 200000 dinars (approximately EUR 1900) in respect of non-pecuniary damage (for the 10% loss in his general vital activity associated with the events in detention). In appeal procedure Court of Appeal in Belgrade awards to the applicant additional 50000 dinars (approximately EUR 450) for the fear arising from the events during his detention.[30] The European Court of Human Rights recognized the fact that the domestic courts decided on 2350 EUR of compensation to the applicant in civil proceedings against the state, but estimates compensation amounts to EUR 25,000 for non-pecuniary damage (just satisfaction on the basis Art 41 ECHR).

6. Conclusion

Cases of state liability for the unlawful treatment, violent actions or torture from prison staff or failure to given the medical aid or prevent a prisoner's suicide in prison are not discussed here. Also, according to the laws of the Republic

propuste u radu KPZ u Beogradu – Padinskoj Skeli, report, 10 April 2024, https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/7987-z-sh-i-ni-gr-d-n-u-vrdi-br-n-pr-pus-u-r-du-pz-u-b-gr-du-p-dins-s-li, last visited 22. 4. 2024.

[28] RTS: Hronika, "Petoro zaposlenih u KPZ Padinska skela negiralo krivicu u vezi sa smrću zatvorenika, tužilaštvo tražilo pritvor, 28. 6. 2024, https://www.rts.rs/lat/vesti/hronika/5475568/padisnka-skela-saslusanje-vjt-.html , last visited 1. 7. 2024).

[29] Application 1128/16, Chamber judgment of 15. january 2019, https://hudoc.echr.coe.int/eng?i=001-189168.

[30] *Gjini v. Serbia*, Chamber Judment of 15 January 2019, paras. 38, 39.

of Serbia, the state is in any case liable for the damage caused to citizens by an escaped prisoner. The research topic is domestic normative framework and judicial practice about the State's liable for damage suffered by a convicted person through violent actions by other prisoners. A critical examination of the quality of domestic legislation from the doctrine results in the conclusion that the laws of the Republic of Serbia are fully harmonized with the standards of protection of the human rights of persons deprived of their liberty and the rules of civil law guarantee an optimum of rights regarding compensation of damages (pecuniary and non-pecuniary). Apart from so-called, liability for the acts of another person (Art 172 ZOO), the state is strict liable for damages under the Constitution and the special laws. Such an approach is supported by judicial practice. Therefore, no differences can be observed between the positions of the domestic judicial practice and the practice of the European Court of Human Rights, in which is usually State's liability stricter compared to the domestic legal system. The only differences are in the amount of compensation, which is many times lower than the satisfaction obtained in the proceedings before the European Court of Human Rights.

Although we can be satisfied with the legal rules on state responsibility and the way they are implemented in practice, much more needs to be done to improve the protection of life and integrity of prisoners. But the basic question arises whether S.P. should have been in prison at all due to the unpaid the fine (similar to Mr. Gjini was detained on suspicion of giving counterfeit 10 euros). The given examples are confirmed the conclusion that "when the courts send to prison people whom prisons can only hold inappropriately then they are contributing to inhumane treatment".[31]

* * *

ODGOVORNOST DRŽAVE ZA ŠTETU ZBOG PROPUSTA ZAŠTITE ZATVORENIKA OD ZLOSTAVLJANJA DRUGIH ZATVORENIKA

Apstrakt

Predmet istraživanja jeste odgovornost države za štetu zbog propusta državnih organa da zaštite život i integritet osuđenika koga zlostavljaju drugi zatvorenici. Cilj istraživanja je kritičko sagledavanje normativnog okvira u Republici Srbiji i stavova sudske prakse.

[31] A. Coyle, 15.

Vanugovorna (deliktna) odgovornost države za štetu koja je pričinjena građanima aktima vlasti je očigledno dostignuće vladavine prava (Rechtstaat). U savremeno doba postalo je opšteprihvaćeno pravilo da država može da bude odgovorna, na nacionalnom i nadnacionalnom nivou, za kršenja osnovnih ljudskih prava i sloboda, posebno prava zatvorenika i drugih lica o kojima preuzima brigu. Uporedna analiza pokazuje da je donedavno u *common law* sistemu dosledno poštovan imunitet države, dok je za štetu isključivo mogao da snosi odgovornost državni službenik koji nezakonito vrši vlast ili javnu službu. Koncept zaštite ljudskih prava podstakao je promene, kao što pokazuju primeri iz zakonodavstava Velike Britanije i Sjedinjenih Američkih Država. Pored toga, kao noviji pravni fenomen „hibridnog" karaktera pojavljuje se deliktna odgovornost države članice Evropske unije za štetu pričinjenu drugoj državi članici, pravnom ili fizičkom licu.

Ustav Republike Srbije izričito propisuje odgovornost države u slučaju nezakonitog ili nepravilnog rada njenih organa. Ustavna garantija konkretizovana je u Zakonu o obligacionim odnosima, koji se, kao opšti pravni akt, odnosi na sve slučajeve prouzrokovanja štete. Drugi izvor prava jeste Zakon o izvršenju krivičnih sankcija, koji predviđa zaštitu prava osuđenih lica, a naročito njihovog života, telesnog i duhovnog integriteta. U radu su istaknuti primeri dobre sudske prakse – presuda Apelacionog suda u Beogradu (Gž 4868/15) i Vrhovnog kasacionog suda Republike Srbije (Rev 661/2017). Vrhovni sud u presudi kojom odbacuje reviziju tužene države insistira na objektivnoj odgovornosti države za štetu po osnovu čl. 154 st. 3 Zakona o obligacionim odnosima u slučaju kada postoji propust zatvorskih službenika da spreče tuču zatvorenika u kojoj je tužilac povređen. Ovakav stav Vrhovnog suda u svemu se naslanja na važeću praksu Evropskog suda za ljudska prava.

Ključne reči: objektivna odgovornost, deliktna odgovornost, prava zatvorenika, nasilje u zatvoru, ljudska prava.

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

347.426(082)
368(082)
347.51(082)

МЕЂУНАРОДНА научна конференција Prouzrokovanje štete, naknada štete i osiguranje (27 ; 2024 ; Valjevo)

Causation of damage, damage compensation and insurance : proceedings from XXVII International Scientific Conference, Belgrade, Valjevo, 2024 / [organized by] Institute of Comparative Law, Association for Tort Law, Judicial Academy ; editors Mirjana Glintić, Dragan Obradović. - Belgrade : Institute of comparative law, 2024 (Beograd : Birograf comp). - 451 str. : ilustr. ; 21 cm

Тираж 150. - Napomene i bibliografske reference uz tekst. - Apstrakti.

ISBN 978-86-82582-21-2

а) Накнада штете -- Зборници б) Одговорност за штету -- Зборници в) Осигурање -- Зборници

COBISS.SR-ID 151825161