

Liability of the State for Criminal Acts of Dangerous Individuals

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In cases where an evidently dangerous individual commits a violent crime, damage claims against the state based on liability for failing to protect the victims are not uncommon. The Supreme Court of the Republic of Slovenia has, in its judgement from 26 February 2012, held the State liable for a murder, committed by an ill-reputed criminal, Silvo Plut. According to the Court, the State was not diligent enough in persecuting him for a previous murder that was committed in another country; had he been in preventive custody, the (second) murder would not have taken place. The judgement is problematic, especially regarding to the duties of the State and their breaches (wrongfulness) and the causation with regard to omission. The article, based upon analysis of the judgement, explores the duties of the State to protect individuals from the criminal acts of other (dangerous) individuals. The Court interprets the duties of the State much too broadly, and the judgement implies that the State guarantees to reimburse losses caused by a dangerous individual. The State can deal with dangerous individuals by prosecuting them for the crimes committed, and the persecution may end with a conviction, followed by imprisonment or other security measure. Another possibility is detention in a psychiatric hospital which is supervised by a civil court. However, if there is not enough evidence or if other substantive and procedural conditions are not met, the individual is free.

The State cannot be deemed responsible for neutralizing dangerous individuals or to be liable for the harm they cause - the state's duty to protect is not absolute. It applies only if the state is aware that a particular (or identifiable) person is concretely threatened. The state is liable for the actions of its agencies and officials only if they had the knowledge that a specific individual is threatened, and had not taken any reasonable measures to avert the threat; it may be said that the state has caused or contributed to the harm.

Keywords: liability of the state, criminal acts, wrongfulness, causality with regard to omissions

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