

FINLAND

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COMPENSATION FOR PERSONAL INJURIES IN FINLAND

1 Country data

Inhabitants: 5,471,753 (as of 27.3.2015, source: www.tilastokeskus.fi)

Capital: Helsinki

Currency: EURO

Date of entry into EU: 1.1.1995

Number of European Parliament members: 13

Commissioners: Jyrki Katainen (from 2014, Vice-President, Growth, Labour, Investments and Competitiveness).

2 The sources

The right to compensation for personal injury in Finland is primarily set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms (signed on May 5, 1989 and ratified and entered into force on May 10, 1990) and in the Constitution of Finland¹, particularly in the recognition of the right of liberty, inviolability and security of the individual and protection of private life (Chapter 2 §7).

Moreover, the protection of health is at the heart of the Finnish welfare system, one of the most advanced and comprehensive in the world.

The general rules of private law in the field of the right to compensation for damages are included in the Tort Liability Act².

¹ *Suomen Perustuslaki* (abbr. "PeL") no. 731 of June 11, 1999.

² *Vahingonkorvauslaki* (abbr. "VahL") no. 412 of May 31, 1974.

Having a generally residual application, it is superseded, in principle³, by the rules on compensation for personal injury set forth in the regulations on social security and in special regulations (accidents at work and occupational diseases, use of motor vehicles, medical malpractice, etc.).

The VahL includes, however, the general principles of the system of compensation for personal injury, on which also the special laws rely upon, and, therefore the correct starting point for this overview on the Finnish system.

3 Personal injury and damage arising from death in the Law on Compensation for Damages (VaHL)

3.1 In general

The VahL sets out a liability for negligence⁴, subject to a causal connection and to the injustice of the damage, without prejudice to the obligation not to exacerbate the damage.

However, Chapter 2, §1 sets out that, without prejudice to the full compensation of the damage caused by *wilful misconduct* (subject to reduction in cases of "*particular reasons*"), the damage caused by *negligence* may be "adjusted" if the liability is deemed unreasonably onerous in view of the financial status of the person causing the damage and the circumstances at hand in general.

The VahL sets out the compensation of the so-called personal injury (economic and non-economic), from suffering (non-economic) and, only in case of crime or abuse of power or for particularly serious reasons, it sets out the compensation of the economic damage not directly connected to the personal injury or to the property damage (so-called "pure economic damage").

Personal injury includes the necessary medical and other expenses, loss of earnings, pain and suffering (either *physical* or *psychic*), other temporary injuries and permanent injury (either functional or aesthetic), the latter to be determined on the basis of medical-legal criteria (Chapter 5, §2).

Damage from suffering is related to the violation of fundamental rights (with reference to personal liberty, peace/serenity, honour and private life and the right not to be subject to discrimination, it must be a *criminal offence*; with reference to personal inviolability or other individual's values comparable to the previous ones, *wilful misconduct* or *gross negligence* are sufficient). It is an existential/moral injury, which does not need an empirical determination and must be assessed in the light of "*suffering which the detrimental conduct is, of itself, likely to cause*" (Chapters 4 and 6).

³ "In principle" because, in fact, a review of the lower courts' and of the Finnish Supreme Court's ("*Korkein Oikeus*", abbr. "*KKO*") case law shows that (a) on one hand, the VahL's principles are not always applied in cases of typical non-contractual liability and (b) on the other hand, the same principles are also applied in cases of contractual liability, when reasonable in terms of equity. Moreover, in some cases, the special laws themselves make express reference to the VahL, in whole or in part and even where such reference is not expressed, the practice nevertheless makes such a reference, either by expressly declaring the applicability of VahL -where the special law is not applicable-, or simply by applying given VahL principles without express references.

⁴ § 2:1,1: "*Any person intentionally or negligently causing a damage to another person is obliged to indemnify him/her, unless otherwise arising from what is set forth below*".

3.2 Damage to relatives

According to the VahL the relatives of a person who suffered a personal injury (parent, child, spouse, other persons comparable to the latter and particularly “close” to the victim, as well as persons entitled to sustenance) may be entitled, “*for particular reasons*”, to the compensation for the expenses and loss of earnings resulting from the provision of necessary assistance to the victim, as well as for any other loss necessary for the recovery and rehabilitation of the latter, until the stabilisation of the health conditions of the person injured.

The relatives are also entitled to compensation for funeral expenses and the damage suffered by the relative’s death, arising from «*wilful misconduct or gross negligence*» and provided that «*the conviction is considered reasonable taking into account (1) the close relationship between the deceased and the person claiming damages, (2) the nature of the act and (3) other circumstances*».

It should be pointed out that according to the VahL “*the right to compensation for pain and suffering and for other temporary injuries, for the permanent injury and for suffering expires, if the person injured dies before the claim for damages*” (Chapter 7, §3).

4 The recoverable damage and the *quantum debeatur* in relation to the general regulations (VahL)

Full compensation for damages is the fundamental rule: the situation of the injured person must be restored in the *status quo ante*, with prohibition of unjust enrichment. The exceptions to this rule are some “standardised” compensation, for example for loss of earnings in favour of minors under 18 years of age (Chapter 5, §2b), compensation to be paid by the State in relation to the committing of a crime⁵ and the rules on the basis of which the judge may reduce or adjust the sum to be paid by way of compensation in the particular case.

The determination of the *quantum debeatur* of the *non-economic* damage is purely equitable and subject to the judge’s discretion.

As regards the cases of liability for damages not governed by special laws, as from 2008⁶ a Finnish Judge may avail himself⁷ of the suggestions⁸ set forth by the Advisory Commission on Personal Injury (later “Commission”). The Commission was established on June 16, 2004⁹ within the Ministry of Justice with the task of monitoring the judicial practice and of elaborating and preparing (on the basis of said practice) non-binding suggestions on the determination of the *quantum debeatur* in case of intangible damage and from suffering provided for by the VahL. In the past, the “tables” drawn up in the field of damages

⁵ However, it should be pointed out that the law providing for that does not exclude that the injured person could take a legal action for the residual part according to the VahL.

⁶ Year of the first suggestions referred to in the paragraph.

⁷ Especially subsequently to the Supreme Court’s judgments which recognised them as [legal] source, although not binding and from which the Judge may depart for particular reasons, such as, for example, the savageness of the act. See KKO 2012:100 either for the “authority of the Commission’s guidelines or for a case of departure from the latter”.

⁸ See <http://oikeusministerio.fi/fi/index/ministerio/neuvottelujalautakunnat/henkilovahinkoasiainneuvottelukunta.html>.

⁹ By Law 513/2004.

from road accidents¹⁰ and from accidents at work¹¹ had been used almost on a continuous and analogue basis.

4.1 Temporary inability

Chapter I of the 2014 version¹² of the Commission's suggestions is dedicated to *temporary incapacity*, with the indication of 13 groups of injuries to psychological-physical integrity, with the relevant denomination and description and the indication of a "range" from a minimum and a maximum amount of which the liquidation in favour of the injured person is suggested. For example, a range of €0-€200 for a slight wound and a range of €12,000-€25,000 for a severe head injury are provided for.

The compensation must be liquidated according to objective criteria, amongst which the main ones are the *nature* and the *severity* of the injury.

Nature of injury means the way it shows, the *medical diagnosis* of the injury or of the disease, which is reported in relation to each Commission's suggestion with reference to the ICD-10 codification of the World Health Organization.¹³

The severity is assessed according to three criteria: the nature of the necessary treatments, the duration of the latter and the duration of the temporary incapacity.

4.2 Permanent inability

Chapter II of the Commission's suggestions is dedicated to *permanent disabilities*, with a "dual track" system:

- About the *functional* permanent disabilities which are "*not minor*", reference is made to - along with a *tout-court* transcription of - a table containing the monetary amounts calculated using the damage classifications and calculation criteria provided for by the laws and regulations on car accidents (later "Traffic Insurance Tables") and accidents at work and occupational diseases (later "Work Accidents Criteria")¹⁴ for the year 2014, applied to individuals being 18 years old¹⁵. We shall deal with these issues later in specific paragraphs. It is however worth noting immediately that -at the time of

¹⁰ Guidelines drawn up by the Advisory Commission on the damage caused by traffic accidents, established in relation to the application of the Law on Road Traffic Insurance of June 26, 1959, no. 279.

¹¹ Guidelines on Law on Insurance against accidents at work of August 20, 1948, no. 608, as now amended.

¹² Currently the most recent.

¹³ "ICD-10" is the abbreviation of *International Statistical Classification of Diseases and Related Health Problems, 10th Revision* (Geneva 1992), which is the tenth revision of the international classification of diseases and relevant health problems, used in Finland from January 1st, 1996.

¹⁴ The reader has certainly noted the use in the text of the term "Tables" for car accidents and "Criteria" work accidents. The two laws opted for a different system for the calculation of the compensation to be - or suggested to be - awarded: the car accidents tables directly provide for a monetary amount associated with each class of damage, while the compensation for damage at work must be calculated taking into account, in addition and in relation to the same classification, a floor-amount (once he minimum annual pay) and a multiplier for each class of damage. However, both the car accidents law and the work damage and disease law just refer to the 1 to 20 damage classes without further specifications as to their content, since the subject is dealt with in another act, i.e. currently regulation nr. 768/2015 of the Council of Ministers. See para. 5.2 and 5.3..

¹⁵ In particular, for work damage and disease, of female gender.

drafting of this paper- the (monetary) suggestions of the Commission on permanent inability (2014) must be –as certainly are in the process of being- updated, since in the meantime the 2016 version of the Traffic Insurance Tables have been published and the whole Work Accidents law has been reformed along with new criteria and updated classification of damages (and diseases, previously dealt with by a separate law).

- As a result, the values of the Commission’s current document must be comparatively read as follows:
 - o Traffic Insurance Tables 2014/2016: min. €3,550/3,560, max. €106,500/106,800;
 - o Work Accidents and Diseases Criteria 2014/2015: min. €4,804/4,850, max. €250,657/253,075;¹⁶
- For “minor” aesthetic and functional permanent disabilities the suggestions refer to the analytical and “range” method used for temporary disabilities. Ranges of €0-€300 for “almost invisible” scars and of €6,000-€15,000 for “evident” scars on the face are then provided for as suggestions for liquidations for aesthetic damage, and, with reference to minor functional permanent disabilities, ranges of €300-€700 for changes of lip tissue and of €1,000-€3,000 for minor motor problems or joint pains.

Chapter III of the Commission’s suggestions refers to so-called “suffering”, the consequences in existential and moral terms arising from the violation of fundamental rights. By way of example ranges of €200-€500 for the breach of a protection order and of €10,000-€30,000 for long term sexual activities with children or even single sexual activities with “very young” children.

Finally, Chapter IV of the Commission’s suggestions regards the damage from a relative’s death: €2,000-€11,000 for a child’s death; €2,000-€15,000 for a parent’s death; €2,000-€8,000 for a brother’s death and €3,000-€11,000 for a spouse’s death (or comparable person).

The Commission’s suggestions provide in conclusion 131 pages of explanations about the method adopted for the review of the relevant case-law as well as operational indications for the application of the tables.

5 Special regulations

There are many sector laws that provide their own provisions on liability for personal injuries, which prevail against the VahL. In line with the strong welfare conception of the country, in sensitive sectors such as liability for the use of motor vehicles or medical and healthcare malpractice, the actual compensation for damages takes place (and it can only take place, given that the special legislation prevails) on an objective basis and through insurance¹⁷.

The relevant sections of the most significant legislation are hereby highlighted.

¹⁶ Please note that the abovementioned amounts regard one-off compensations. The systems related to the use of motor vehicles and to accidents at work and occupational diseases provide for specific rules for the cases of periodical compensation and for the adjustment of the amounts in case of changes of the injured person’s health. The judge may be seized for such purposes for the cases not covered by the special laws.

¹⁷ Christian von Bar, *Non-Contractual Obligation in Nordic Countries: A European’s Perspective*, Stockholm Institute for Scandinavian Law, 1957-2010, page 16 points out that it is a *de facto* channelling of the compensation system based on insurance, which is not mandatory and which does not deny, but is alternative to, private-protection, to which an injured party may have recourse either completely or with reference to the damage not covered by the system.

5.1 Compensation by the State

Pursuant to the Act on Compensation for Crime Damage¹⁸, “the damage caused to an individual or to a hereditary administration through an offence is compensated by the state funds” (Chapter 1, § 1).

The law however provides for the following ceilings to the amount that the State undertakes to indemnify (e.g., in the event of injuries, for pain, suffering and other temporary injuries € 12,000; for suffering, for offences against sexual self-determination and generally against personal freedom € 9,400 but in case of a child victim maximum € 16,000, in addition to ceilings of daily allowances for loss of earnings, etc.).

In any case, a «general» ceiling of € 61,000 for personal injury and suffering is provided for.

Thus, no compensation from state funds for non-economic damages suffered by relatives in case of death is provided for.

The application has to be sent in writing to the State Treasury¹⁹ within 3 years from the res judicata court judgment or 10 years from commission of the offence.

5.2 The Law on Accidents at Work and on Occupational Diseases²⁰

As expected from the social security legislation of a country with accentuated welfare, the economic damage is compensated in a very broad way: compensation for all necessary and justified expenses for treatments and rehabilitation, loss of earnings, disability pensions as well as compensation for funeral expenses and pensions to the spouse and children in case of death, daily allowances, and so on, in accordance with the principle of full compensation.

With reference to non-economic damage, the compensation for *permanent inability*, which results from an accident at work or an occupational disease is provided for, *but not for temporary inability*, which, therefore, shall be compensated according to the general regulations of the Vahl.

Having expressly stated beforehand the need for a “*plausible causal connection of a medical nature*”²¹, the calculation of the amount of the compensation for permanent damage is based (a) on a classification of the injuries in classes from 1 to 20 according to their nature and gravity, currently provided for by regulation nr. 768/2015 of the Council of Ministers; (b) on the age and life expectancy of the injured party, ascertained on a statistical basis; (c) on a floor-amount specified by the law itself²² and (d) on multipliers linked to each class of damage, which are also specified by the law itself²³. The result of the calculation is published annually by the Finnish Workers' Compensation Centre²⁴ in the form of a table, which allows the identification of the amount of compensation based on the age of the injured party and on the class of damage. As mentioned, currently the average values relevant to persons being 18 years

¹⁸ *Rikosvahinkolaki* (abbr. "RikVL") of December 29, 2005, no. 1204 and subsequent amendments.

¹⁹ Which has a power of examination and evaluation of the application without any automatism.

²⁰ *Työtapaturma- ja ammattitautilaki* (abbr. "TyTAL") of April 24, 2015 no. 459, in force from January 1st, 2016.

²¹ Moreover, in continuity with the practice which, however, was not codified.

²² Before the recent law reform, said floor-amount consisted in the minimum annual pay, while after the reform it consists—at least in the literal wording of the law- in a non-income-related amount, currently 12,440 (TyTal, §86).

²³ From 1.15 for the Class 1 to 60 for the Class 20, Chapter 11 §§ 83-87.

²⁴ *Tapaturmavakuutuskeskus* (abbr. "TVL").

old cover a range from a minimum of € 4,850 for Class 1 injuries to a maximum of € 253,075 for Class 20 injuries.²⁵

5.3 The Traffic Insurance Act²⁶

The legislation provides for compensation for personal injury or material damage caused by the use of motor vehicles, objectively, except for collision between vehicles.

With reference to the compensation for the damage, the law contains an explicit reference to the (general) legislation referred to in the VahL, but with an explicit *exclusion* of the compensation for “moderate” permanent damage and without reference to the compensation for (existential/moral) “suffering”.

As regards the economic damage, the expenses incurred for treatments, medicines and rehabilitation as well as loss of earnings are compensated.

With respect to the non-economic damage, the Traffic Accidents Board²⁷ is responsible for providing advice to the injured persons, beneficiaries, policyholders, insurers and to the Courts and to prepare suggestions on the application of the legislation and on compensation, which is what it has done by preparing guidelines and tables for the determination of the *quantum*. For *temporary incapacity* a table with 6 classes of injuries is provided: (1) “moderate”: not subject to compensation²⁸; (2) “minor”: €200-€ 1,200; (3) “more serious than minor” € 1,200-€ 3,800; (4) “serious”: € 3,800-€ 9,000; (5) “very serious”: € 9,000-€ 20,900; (6) “particularly serious”: from a minimum of € 20,900 without indication of a maximum.

Permanent incapacities, as mentioned above, follow the same system that applies to accidents at work and occupational diseases (the 20 classes of damage), but the actual determination of the *quantum* lies with the Motor Insurers’ centre (“*Liikennevakuutuskeskus*”). As anticipated, currently the average values for persons being 18 years old cover a range from a minimum of € 3,560 for Class 1 injuries to a maximum of € 106,800 for Class 20 injuries.²⁹

The current framework is the subject of a reform project that is expected to enter into force in 2017.

5.4 The Patient Injuries Act³⁰

The legislation on medical malpractice is also insurance-based.

²⁵ See footnote 8: the specified amounts are relevant to one-off compensation, without prejudice to periodic compensatory amounts and the related adjustment mechanisms.

²⁶ *Liikennevakuutuslaki* (abbr. “LiikVakL”) of June 26, 1959 no. 279 and subsequent amendments.

²⁷ “*Liikennevahinkolautakunta*”. See footnote 6.

²⁸ According to the guidelines of the Motor Insurers’ centre they refer to injuries that (a) do not require hospitalization; (b) improve over 1-2 weeks without consequences; (c) determine an inability to work not exceeding 2 weeks. Such is the descriptive system also used for the other hypotheses.

²⁹ See footnote 8: the amounts indicated refer to one-off compensation, without prejudice to periodic compensatory amounts and the related adjustment mechanisms.

³⁰ *Potilasvahinkolaki* (abbr. “PotVahL”) of July 25, 1986 no. 585 and subsequent amendments.

The reference legislation is the general one of the VahL and, as applicable, the legislation relevant to Traffic Insurance, however the causal connection is assessed in a more flexible way, given that it is sufficient that the damage is “*likely*” to be a result of the treatments³¹ and the *quantum* is determined according to the classification system used for the compensation of the damage caused by accidents at work and occupational diseases.³²

It is a liability based on negligence in events such as damages due to analyses and treatments or the omission of these latter, or to the administration of drugs (in the healthcare sector), which presuppose an error, in turn evaluated in terms of the preventability by the professional competent in his field. On the contrary, the damages due to faults of the instrumentation, infections, damages from fires and accidents fall within a framework of objective liability. Moreover, compensation for the so-called *abnormal* damage is provided for, which has occurred despite professionally correct action and which has determined severe and unpredictable injuries and permanent diseases (understood as at least classes 7-8 of the classification relating to accidents at work and occupational disease) or death.

The so-called personal (economic and non-economic damage) is exclusively compensated, with a deductible of €200. Therefore, among others, the so-called damage caused by suffering is excluded from compensation.

5.5 Other Hypotheses (Notes)

The regulation on the liability for personal injury is provided by various other laws, which, in greater or lesser extent, recall the principles described above.

It should be noted that the hypothesis (provided for by the legislation or case-law) of objective liability or liability based on an “enhanced” obligation of diligence, prudence or expertise are increasing. This is occurring, for example, in the areas of rail transport, aircraft, electrical and nuclear facilities, weapons, environmental protection, management, maintenance and repair of roads and similar, as well as general services to public, organization of public events, product liability.

6 Relevant issues: Limitation, Expert Advice and Duration of the Trial.

6.1 Limitation

The right to compensation expires within 3 years from the time when the injured party knew or ought to have known (a) the damage; and (b) the person liable for it³³. Said right may not be raised of the court’s own motion.

A so-called *absolute* limitation term of 10 years is also provided for, starting from the harmful fact or act, and after which the right to compensation is extinguished even if the injury had not yet manifested.

³¹ § 2 PotVahL and see Anna Hurmerinta, *Syy-yhteys potilasvahingossa* (“Causation in the Cases of Patient Injuries”), Acta Legis Turkuensia 1/2012, pag. 38 (Edilex 2012).

³² See paragraph 5.2 above.

³³ Act on Expiration of Debt (*Laki velan vanhentumisesta*, abbr. VanhL, no. 728 August 15, 2003) entered into force on January 1st, 2004, § 7, paragraph 1, part three.

The 10-year term applies to the right to compensation for the so-called (existential/moral) sufferings³⁴, while it does not apply, for an explicit legislative provision, to the right to compensation of the so-called personal damage, *id est* - in addition to economic damages - the damage to health determinable with medical-legal instruments³⁵.

6.2 Expert Advice

The reports of party-appointed experts may be relevant during the stage prior to the trial, however, above all in cases where the insurance is mandatory, the insurer's report and the amount indicated therein may not be subject to "negotiation" and any possible mistake in the assessments concerning the class of damage and the *quantum* offered by the insurer may only be claimed by way of "internal" appeals to the competent commissions and, subsequently, to the courts and to the Supreme Court.

The parties, in turn, may freely submit before the courts their technical reports, to be considered as witness statements.

According to Chapter 17, §34 of the Code of Judicial Procedure³⁶ the judge can avail himself of an expert when this is necessary with reference to the "*rules of experience that require special knowledge and on their application to circumstances which arose within the dispute*".

In fact, a Finnish judge is in practice a *peritus peritorum* more than in Italy and has a court-appointed expert in particularly complex cases, where it commonly happens that the parties submit more than one expert report, which are in conflict with each other, but equally plausible.

Often, the judge – and the Supreme Court – appoints authorities³⁷ and institutions relevant to the sector as court-appointed experts, on which advice the courts' decisions are ultimately based.

³⁴ See KKO 2005:55 and 2005:54.

³⁵ In view of the fact that in some cases the harmful consequences may also occur several years later.

³⁶ *Oikeudenkäymiskaari* (abbr. "OK") of 1734, nr. 4. The whole Chapter 17 on taking of evidence was amended in 2015.

³⁷ In particular, *Valvira*, the National Supervisory Authority for Welfare and Health, see Anna Hurmerinta, above and Timo Saranpää, "*Whiplash-vammat vahingonkorvaus- ja todistusoikeudellisena Ongelmana*" ("The whiplash injury with regard to compensation and evidence") *Defensor Legis* 5/2006 (Edilex 2006).

6.3 Procedural Overview

The procedure for obtaining compensation for damages under the general law, the Vahl, is under the jurisdiction of the District Courts (“käräjäoikeus”) at first instance, the Court of Appeals (“hovioikeus”) at second instance and the Supreme Court as the final instance. The last mentioned has the competence regarding preliminary rulings and appeals from the Court of Appeals.

An attempt at mediation must be presided over by the judge during the so-called preparatory phase³⁸.

A specific law³⁹ provides for an autonomous “judicial” mediation or a “judicial” mediation upon the request of the judge at the preparatory phase (and not beyond this phase) as well as for the regulation of the enforcement of external mediation.

According to information from the Ministry of Justice regarding the year 2014⁴⁰, the average duration of first instance proceedings, not interim or interlocutory proceedings nor non-contentious civil proceedings was between 10 and 12 months, the duration of appeal proceedings was about 6 months and in the Supreme Court about 5 months for a decision on the admissibility of an appeal and about 21 months for a decision on the grant of an appeal.

In cases falling within the scope of special regulations on motor vehicle accidents and medical malpractice, the injured party who is dissatisfied with the examination and assessment of the case by the insurer may apply - and generally applies - to specific board of appeals⁴¹, prior to bringing an action before the ordinary judicial authorities⁴². The Boards are provided for by law and they are composed of judges, professors, legal experts in general, doctors and experts in the related disciplines. The proceedings have a duration of about 6 months.

Individuals discontent with the assessment regarding accidents at work and occupational diseases *must* be presented to a board of appeals⁴³, which in 2014 provided its own indications over a period of time from 6 to 12 months. Such indications may be challenged before the Insurance Court, *Vakuutus-oikeus* (average duration in 2014, 13.1 months)⁴⁴ and the procedure is that provided for administrative disputes, with the last instance proceedings before the Supreme Administrative Court, the *korkein hallinto-oikeus* (average duration in 2014, 11.3 months)⁴⁵.

Milan, 30th April 2016

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³⁸ In broad terms, the ordinary Finnish civil proceedings are structured in a so-called preparatory phase (“*valmistelu*”), carried out by a judge, and in a so-called “primary discussion” (“*pääkäsittely*”), carried out by a three-judge panel. As expressly provided for by the law on trials (Chapter 5, § 17 of the *Oikeudenkäymiskaari*, abbrev. “OK”), the “preparation” should allow the Panel to discuss the dispute in a single hearing.

³⁹ Laki riita-asioiden sovittelusta ja sovinnon vahvistamisesta yleisissä tuomioistuimissa 29.4.2011/394 (Act on mediation in civil matters and confirmation of settlements in general courts, April 29, 2011, no. 394).

⁴⁰ *Tuomioistuinten työtilastoja vuodelta 2014 (Data on the work of the courts for the year 2014)*, Oikeusministeriö (Ministry of Justice).

⁴¹ For traffic accidents, the Traffic Accidents Board (“*Liikennevahinkolautakunta*”), for medical malpractice, the Patient Injury Board (“*Potilasvahinkolautakunta*”).

⁴² The recourse to the judge is against the decision of the insurer, not of the Board, which has a mere recommendatory nature.

⁴³ *Tapaturma-asioiden muutoksenhakulautakunta* (the Accident Appeal Board).

⁴⁴ See footnote 36.

⁴⁵ See footnote 36.

APPENDIX 1

FINLAND: COMPENSATION FOR SUFFERING IN CASE OF DEATH

In Finnish law, the death of a person may entitle to damages for *suffering*, on condition that:

- (a) death occurs as a consequence of wilful or grossly negligent misconduct; and
- (b) the award is considered reasonable, taking into account:
 - a. the relationship between the victim and who seeks relief;
 - b. the nature of the act or omission;
 - c. other relevant circumstances.

No evidence is required nor forensic elements and the determination of the monetary amount is left to the Judge, who, in principle, is not bound by precedents or tables, provided his/her determinations are motivated.

I have specified "in principle", since Finnish Judges in fact make reference to certain suggestions and tables, at least as a (non-binding, s.c. "soft law") "starting point".

In the case-study at issue, reference may and must be made to:

- (1) §§ 4a and 6 of Section 5 of the Law on Compensation of Damages 31.05.1974 n. 412 ("Vahingonkorvauslaki"), which provides for the right of certain subjects to claim compensation for *suffering* in case of death of a close person. Under law 412/1974, entitled to seek damages for death are the parents, children, spouses or the like (also just partners *more uxorio*) and other subjects which may prove to have been particularly close to the victim;
- (2) § 3 of Section 7 of Law 412/1974, according to which the right to compensation for pain, suffering and other temporary damage as well as for permanent (non-economic) damage and suffering extinguishes if the damaged person dies before a claim for those has been made. The heirs may continue the action brought by the damaged person before dying;
- (3) the suggestions and tables provided for by the Committee on Personal Damages of the Ministry of Justice, set up by Law 513/2004. This Committee, since 2008 has developed and issued and continues to develop and issue suggestions and tables regarding, *inter alia*, damages in death cases.

The basis for the suggestions is Finnish court's case law. Therefore, the monetary amounts provided for by the Committee may well be regarded as "*the amount generally awarded*" in cases of death, as required by your query. At the same time, it may be said that the Committee's suggestions and tables, at least the first issues, are somewhat based on equity (in its meaning of "*justice in the concrete case*"), since, until 2007, no statute or suggestion or table provided even a "starting point" to Finnish Judges.

It is worth underlining that Finnish Courts may and actually do use certain suggestions and tables specifically dedicated to road accidents, but these do not provide anything as to non-economic

compensation of damages consequential to death. Neither specific tables are provided for in relation to medical malpractice.

This writing does not take into account what is provided for by the laws on accidents in the workplace and relevant insurance, which do provide compensation for the death of the worker, in the form of pensions both in favour of the spouse or partners and the children.

Referring to the query:

- (1) ***“death of a 15-years old son (due both to road accident and medical malpractice): award for NON-economic damage to the parents and to the 17-years old sisters still living in house”***.

The Committee’s tables suggest a compensation for suffering as follows:

- (a) **€ 2.000 to € 11.000** should be awarded to the **parents** for the death of a son/daughter;
- (b) **€ 2.000 to € 8.000** should be awarded to **siblings**.

Case: Supreme Court 2002:124 – violence was used to a person who, consequently, fell into water and disappeared. The father was awarded € 3.000, sister was awarded € 5.000, brother was not awarded anything due to the “distance”, not only physical.

- (2) ***“death of 40-years old father (due both to road accident and medical malpractice): award for NON-economic damage to the wife same age, to the 15-years old son and 17-years old daughter”***.

Wife: € 3.000 to € 11.000;

Daughter / Son: € 2.000 to e 15.000.

Case: Supreme Court 2002:83 - vehicle driven by a drunk man crashes into a bicycle and the man driving the latter dies: underage children were awarded € 12.000 and 8.300 and wife was awarded € 3.300.

- (3) ***“death of 70-years old grandmother (due both to road accident and medical malpractice): award for NON-economic damage to the husband same age, to one son not living in house but with family, and to one daughter living on her own”***.

Husband: € 3.000 to € 11.000;

Son / Daughter: € 2.000 to € 15.000;

Please note that particular attention has been put in the Supreme Court reasoning to the capacity of the underage subject to perceive suffering due to the death of a father/mother. In some cases, nothing has been awarded to children which were, in the opinion of the Court, too young to have perception of a suffering such as that for the death of a close person. The reasoning has raised more than one critic, because the same reasoning should be made for, e.g., elders suffering of dementia or the like.

(4) Is the award you indicate calculated using tables, equity, or court decisions (“*stare decisis*”)?

As above mentioned, the tables and suggestions of the Committee on Personal Damage are themselves based on case-law, which, in turn, at least until 2007, may be said to have applied sort of an equity-based decision system.

(5) Are the damages at the heirs, in case of death, in different cases than road accidents or medical malpractice, awarded using tables or equity?

The Committee’s suggestions and tables expressly refer to the “general” statute on damages, *i.e.* Law 412/1974. Moreover, the suggestions and tables expressly refer to the suggestions and tables provided for road accidents and working accidents.

Edited by Carlo Ilmari Cremonesi

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