XVIII. Lithuania

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Lithuanian tort law has undergone a particularly profound transformation since it had to be rebuilt after a fundamentally different legal system. Under Soviet law, there was no private property in the Western sense, and personal injury was not treated as a matter of individual rights and compensation. Harm to life and health was largely considered to be a social risk, addressed through State social insurance payments, while non-pecuniary (moral) damage was not compensated at all. After the restoration of independence, Lithuania moved away from this restrictive and collectivist model towards a modern system based on individual rights, constitutional protection of human dignity, and European legal standards. The cases discussed illustrate how Lithuanian courts have developed a normative concept of causation, expanded the right to claim non-pecuniary damages (including for secondary victims and heirs), and strengthened State responsibility, including for breaches of EU law. Together, they show how personal injury law in Lithuania has been transformed into an important tool for protecting individuals and ensuring fair compensation.

1. *LB, IV and IZA v The 'Medvėgalis' Homeowners' Association and UAB 'Telšių Šilumos Tinklai'*, Supreme Court of Lithuania (LSC) 26 November 2007, no 3K-7-345/2007

This extended chamber judgment marks a decisive shift, abandoning the Soviet-era view of causation as a technical or scientific sequence and affirming that causation is a legal category determined normatively by the courts. Building on two earlier 2005 medical liability cases,[1] the Court consolidated a two-stage causation model: first, factual causation assessed through the *conditio sine qua non* test, and second, legal causation, requiring an evaluation of whether the damage is not too remote, considering foreseeability, the protective purpose of the breached norm, the nature of the infringed interest and ordinary social risk. This structure clear-

[1] LSC 30 March 2005, no 3K-3-206/2005 and LSC 9 November 2005, no 3K-3-556/2005.

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ly mirrors modern European tort law doctrine, particularly the approach reflected in the Principles of European Tort Law (PETL). This normative step marks a clear break from the mechanically factual approach that had persisted from the pre-1990 doctrinal environment. Because the case was decided by an extended chamber, its doctrinal weight is exceptional: such a panel is convened specifically to clarify and, where necessary, re-orient precedents. The Court used this opportunity to firmly anchor the normative conception of causation in Lithuanian tort law.

The dispute arose after a multi-apartment building was disconnected from the district heating and hot water network. As a result, several residents lived for years without heating or hot water; their apartments became damp and affected by mould, and they ultimately had to install individual gas-based heating and hot water systems at their own expense. Earlier litigation had already established that both the issuance of the technical conditions and the physical disconnection from the district network were unlawful.

Against this background, claims were brought against two actors: the body that had issued the technical conditions, and the group of apartment owners acting through their association, which had executed the disconnection. The extended chamber noted that this raised a fundamental question of proper defendant identification. Decisions to disconnect or modify heating installations are not legally attributable to the association as a separate legal person, but to the individual co-owners exercising their disposal rights over the common property. Accordingly, liability for the harmful decision lies with those co-owners, not with the association that merely acted as an organisational vehicle. The lower courts therefore misidentified the association as a defendant and, in addition, failed to analyse the distinct causal contribution made by each participant – namely, whether each actor's conduct was a direct or only an indirect cause of the ensuing harm. This misalignment of defendants, combined with the failure to correctly establish a causal link, resulted in an incorrect application of solidary liability.

The judgment clarified the circumstances in which multiple tortfeasors may be held liable *in solidum*. Although the Civil Code (CC) presumes solidarity where several persons contribute to the same harm (arts 6.6(3)[2] and 6.279(1)[3] CC), courts in independent Lithuania had

[2] Art 6.6(3) CC reads: The solidary liability of debtors is presumed when the obligation is related to … the compensation of damage caused by the actions of several persons.

[3] Art 6.279(1) CC reads: Persons who have jointly caused damage are solidarily liable to the injured party.

long been reluctant to apply solidary liability in practice. Influenced by criminal law reasoning, they tended to attribute responsibility only for the precise and narrowly defined consequences caused by each individual actor. The extended chamber broke with this approach and confirmed that liability for damage is solidary when the harm is produced by the combined conduct of several persons. At the same time, it emphasised that this presumption applies only when the conduct of each person is connected to the loss by the same type of causal link. If one person's conduct is a direct cause of the damage and another's contribution is merely indirect or auxiliary, liability may need to be apportioned rather than treated as solidary. This clarification is particularly significant for complex cases involving sequential or interdependent conduct. However, the judgment did not yet define what precisely constitutes a 'direct' versus an 'indirect' causal contribution, and questions concerning the boundaries of solidary liability continued to arise in later Supreme Court jurisprudence.

This ruling is a cornerstone in the modernisation and Europeanisation of Lithuanian tort law. It firmly rejects the former technocratic causation model and aligns Lithuania with contemporary civil law doctrine. The referred cases from 2005 had already stressed that causation is a legal, not a biological or physical, concept: experts may assist with facts, but courts determine causation. The 2007 extended chamber judgment expanded that principle to general tort law and integrated it into the rules on multi-party liability. It has since served as an authoritative reference point for understanding the concept of causation in Lithuanian tort law.

2. *VP v DD and Others*, LSC 3 March 2014, no 3K-7-144/2014[4]

This extended chamber judgment marks a further step in Lithuania's shift away from a formalistic distinction between 'direct' and 'indirect' causation towards a modern, normative approach to multi-party liability. Building on the 2007 extended chamber ruling on causation, the Court redefined solidary liability in situations where several actors contribute to the same harm, including where one actor is merely the negligent keeper of a dangerous object. The judgment links the CC's presumption of solidarity (arts 6.6(3), 6.279(1) CC) with the special

[4] Commented by *S Selelionytė-Drukteinienė/L Šaltinytė*, Lithuania, in: H Koziol/BC Steininger (eds), European Tort Law (ETL) 2014 (2015) 339, nos 19–27.

regime on dangerous objects in art 6.270(3)[5] CC, confirmed as constitutional in 2013.[6]

The dispute arose out of a violent robbery. After prior surveillance and planning by EŠ, two perpetrators, GŽ and DD, broke into the claimant's apartment armed with a firearm and a gas pistol. During the robbery, DD twice shot the claimant with the gun, causing a serious and life-changing injury. A fourth accomplice, JM, hid the stolen property. The gun used in the shooting had been taken shortly before the crime by one of the robbers from a wardrobe in his aunt's home. Although the weapon was lawfully owned by her cohabiting partner VS, it had been stored improperly – not in a safe – enabling easy access. The claimant brought a civil action against all four accomplices and the gun owner.

The case reached the Supreme Court twice. The first instance court imposed liability only on the shooter; the Court of Appeal extended solidary liability to the two direct perpetrators. In 2010, the Supreme Court remitted the case, indicating that all participants, including the organiser and the gun owner, could be liable *in solidum*. On remand, the Court of Appeal awarded LTL 80,000 (approx € 23,000) in non-pecuniary damages from all five defendants. Both the claimant (regarding the questions of quantum and interest) and the gun owner (as regards his liability) lodged cassation appeals, examined by an extended mixed chamber of seven judges.

On the merits, the Supreme Court confirmed that the gun owner VS was solidarily liable under art 6.270(3) CC. Relying on the ruling of the Constitutional Court of 2013 and a research paper written by one of the co-authors of this report,[7] it emphasised that the keeper of a dangerous

[5] The keeper of a source of increased danger is not liable for the damage if he proves that he lost the ability to control the source of increased danger due to the unlawful actions of other persons. In such a case, liability for the damage lies with the person or persons who unlawfully took control of the source of increased danger. If the loss of control was also due to the keeper's fault, both the keeper and the person who unlawfully took control of the source of increased danger are liable in solidum. After compensating the damage, the keeper acquires a right of recourse to recover the amounts paid from the person who unlawfully took control of the source of increased danger.

[6] Ruling of the Constitutional Court of the Republic of Lithuania of 6 December 2013 'On the liability of the possessor of a source of increased danger'. The texts of all rulings of the Constitutional Court are available in English at <http://www.lrkt.lt>.

[7] *S Selelionytė-Drukteinienė*, Bendraskolio pareigos atlyginti žalą apimtis taikant deliktinę atsakomybę: solidarioji ar dalinė atsakomybė? [The multiple debtors' case: the extent of the tortious duty to compensate damage: solidary or proportional liability?], Jurisprudencija 2010, No 3 (121) 233–250, commented by *H Gabartas*/*L Šaltinytė*,

object owes a heightened duty to prevent others from gaining control thereof. If the object is lost through the keeper's fault and then used to cause harm, liability is solidary with the unlawful taker. Interpreting the duty to 'ensure the safekeeping of weapons and ammunition' in line with the Law on the Control of Weapons and Ammunition, the Court held that weapons must be stored and transported so that third parties cannot access them. The theft of the gun from the owner's home was sufficient to establish a breach. Although the robbers caused the injury, the negligent storage of the gun created the conditions for the crime and was therefore one of the factual causes of the harm.

The judgment also clarified when multiple persons are liable *in solidum*. It distinguished cases where actors act together from those where they act separately, but the harm results only from the interaction of their contributions. In such situations, the harm is indivisible because the separate causes are interdependent, and each actor's conduct is a *conditio sine qua non* of the outcome. This approach abandons vocabulary of 'direct' versus 'indirect' causation and replaces it with a two-stage model: establishing factual causation and then determining whether the damage is sufficiently connected to each contribution to justify solidarity, especially where one actor breached a statutory duty.

The Court reaffirmed that art 6.6(3) CC presumes solidarity when several persons contribute to the same damage and that art 6.279(1) CC requires persons who jointly cause harm to be held solidarily liable. It treated art 6.270(3) CC as a specific solidary liability regime for dangerous objects: where the keeper's faulty loss of control combines with the unlawful taker's intentional use, their liability is solidary. The dissenting view that the robbery would have occurred anyway because the perpetrators had a gas pistol was rejected: the claimant was in fact wounded with the stolen firearm, and the gas pistol was not comparable in effect. Consistent with art 6.247 CC and prior case law, the Court underlined that legal causation does not require the defendant's conduct to be the sole cause of damage.

Overall, this 2014 ruling is a major step in the modernisation of Lithuanian tort law. It consolidates the normative concept of causation introduced in 2007 and extends it to complex scenarios involving both intentional wrongdoing and negligent omissions. It confirms that solidary liability is appropriate where several equivalent causes combine to produce indivisible harm.

Lithuania, in: H Koziol/BC Steininger (eds), European Tort Law (ETL) 2010 (2011) 353, nos 101–104.

3. *LZ and Others v Marijampolė Hospital*, LSC 18 April 2005, no 3K-7-255/2005

This case is an undisputably landmark decision that shaped the law on compensation of personal injury damage.

It concerned the tortious liability of a hospital, which, on 30 December 2001, accepted delivery of premature twins. As they could not yet adequately regulate their own body temperature, they were placed on hot water bottles which led to sustained severe burns requiring multiple skin graft surgeries. Their survival and long-term prospects were initially uncertain.

The family claimed a record compensation of LTL 1 million (€ 290,000) for non-pecuniary damage both on behalf of their children as primary victims and themselves as secondary victims. The court of first instance granted the claim in full, but on appeal the court reduced the damages by half. It awarded LTL 200,000 (€ 58,000) to each of the twins and LTL 50,000 (€ 14,480) to each of the parents. In its cassation appeal, the hospital argued that the courts erred – first, by awarding non-pecuniary damages to the parents as secondary victims because the CC did not specify that this damage is compensable, and, second, because the award to the twins was allegedly excessive – in its view, an adequate total compensation would have been LTL 30,000 (€ 8,690). The hospital also invoked its difficult financial situation as a ground to reduce compensable damage under art 6.268 (2) of the CC. Having dismissed these grounds, the LSC affirmed the decision of the Court of Appeal.

The decision is significant because it marks a departure from the dominant legal discourse on compensation of non-pecuniary damage that affected the development of tort law from Lithuania's occupation by the Soviet Union in 1940 until restoration of its independence in 1990. During this period, compensation of such damage was perceived as 'immoral'.[8]

In 1992, the Constitution of the Republic of Lithuania enshrined the right to compensation of moral damage as a constitutional principle.[9] However, before the entry into force of the CC on 1 July 2001, general issues of tort law were regulated by the CC of 1964, which hindered the development of compensation of non-pecuniary damage. At that time,

[8] *S Cirtautienė*, Neturtinės žalos atlyginimas kaip civilinių teisių gynimo būdas [Compensation of non-pecuniary damage as a legal remedy], Justitia 2008, 46.

[9] Art 30 (2) of the Constitution of the Republic of Lithuania provides: 'The law shall establish the procedure for compensating material and moral damage inflicted on a person'.

compensation could not exceed 500 minimal monthly salaries, which amounted to LTL 25,000–LTL 32,500 (€ 7,240–€ 9,420).[10]

Because of the systemically imposed upper limits for non-pecuniary damages, the effect of this remedy was described as more reminiscent of a *fine* rather than a *legal remedy* serving a compensatory function.[11] It became the latter only after the entry into force of the CC of 2000, which, in contrast to the earlier laws, did not provide for upper limits of compensation for non-pecuniary damage.[12] On the other hand, its art 6.250(2) provided that non-pecuniary damage is to be compensated *only* in cases provided for by laws. Thus, although under that same provision non-pecuniary damage was to be compensated in all cases where it was inflicted by a crime, health impairment or deprivation of life, and other laws, it suggested that the explicit legal expression of the duty to compensate non-pecuniary damage was an essential prerequisite, in the absence of which non-pecuniary damages would not be awarded.

In this case, this provision was tested on the point whether the parents of the twins had the right to compensation for non-pecuniary damage as secondary victims. The hospital pleaded that under art 6.285 CC, which regulates compensation awarded for damage caused to the health of a minor under the age of 14, it had a duty to compensate only the expenses connected with the health impairment of the twins and their non-pecuniary damage, but not that of the parents. The LSC rejected this argument, pointing out that, under the facts, reasons of justice dictated awarding non-pecuniary damages also to a person who suffered for the injury of their helpless newborn child.

Despite the narrow legal formulation, suggesting that this derogation from the explicit text of the CC was limited to the specific circumstances of the case, this decision led to the general recognition allowing secondary victims to claim non-pecuniary damages.[13] Already in this decision, the LSC specified that the key criterion enabling the secondary victim to be able to claim non-pecuniary damages was the proximity of the emotional relationship with the victim, which needed to be assessed under the facts, and this set the standard for the future.

The second point which makes the case a landmark decision is the record award of compensation of non-pecuniary damage. The court of first

[10] Lietuvos Respublikos sveikatos sistemos įstatymas, Valstybės žinios, 1994-08-17, no 63-1231.

[11] Ibid, 49.

[12] Ibid.

[13] See eg, *MP, LP, AP, DM, NS and GS v Akvasanitas*, LSC 5 July 2019 no 3K-3-242-421/2019.

instance awarded LTL 1 million (€ 290,000) as claimed by the family. The Court of Appeal reduced the assessment by half, awarding € 60,000 to each of the twins and € 15,000 to each of their parents, but even the reduced award stood out as exceptionally high at that time. It is important that while the LSC clarified the legal criteria for assessing non-pecuniary damage, it left the record award intact.

One of the issues raised by the hospital was that both the twins and the parents were awarded non-pecuniary damages for possible consequences that could arise in the future rather than actual inflicted damage, allegedly in breach of art 6.250 CC. The LSC dismissed this argument, clarifying that mental anxiety over uncertainty of future consequences of physical damage that has been inflicted constituted a separate ground for awarding non-pecuniary damages and that anxiety over the future prospect of removing physical consequences of damage is both real and understandable, and, consequently, compensable within the meaning of art 6.250 CC.

Decided in April of 2005 by the LSC, this case set a pattern of interpretation of art 6.250 CC, which had introduced a right to compensation of non-pecuniary damage. This case remains one of the most frequently invoked personal injury cases by Lithuanian courts both in respect of criteria assessing non-pecuniary damage and in respect of the right of secondary victims to claim damages.

4. Constitutional Court Ruling of 19 August 2006, Case no 23/04[14]

Although the earlier discussed case, decided by the LSC, had set an important precedent for compensation of non-pecuniary damage in personal injury cases, a more general impact on the understanding of compensation of non-pecuniary damage was made by the Constitutional Court in its ruling of 2006 on compliance with the Constitution of the Law on the Compensation for Damage, inflicted by unlawful conduct of interrogatory and investigative institutions, prosecutors and courts.[15] This

[14] 2006-08-19 LR Konstitucinio Teismo nutarimas 'Dėl Lietuvos Respublikos žalos, padarytos neteisėtais kvotos, tardymo, prokuratūros ir teismo veiksmais, atlyginimo įstatymo … atitikties Lietuvos Respublikos Konstitucijai' Byla Nr. 23/04 [On the compensation for damage inflicted by unlawful actions of interrogatory and investigatory bodies, the prosecutor's office, and a court, Case no 23/04]. The official English translation of the ruling is available at <https://lrkt.lt/en/court-acts/search/170/ta1337/content>.

[15] Ibid.

Law was adopted in 1997 and provided that the State was to compensate damage inflicted on individuals as a result of unlawful sentencing, unlawful arrest, unlawful deprivation of liberty, administrative arrest or unlawful correctional work.

The Constitutional Court was asked to assess the constitutionality of two provisions of this Law in respect of compensation of non-pecuniary damage: first, the provision specifying that this right could not be inherited, and second, that the compensation of such damage could not exceed LTL 10,000 (€ 2,900).

In this ruling, the Constitutional Court found that both referred provisions conflicted with the Constitution. The Court found that it was an imperative requirement of the Constitution that a person who has suffered damage can always claim just and fair compensation for it.

It then emphasised that the Constitution does not provide for any exceptions from the obligation to compensate moral and (or) material damage and, therefore, the legislator did not have discretion to state an exhaustive list of instances when such damage was compensable or to exclude the possibility of compensating damage inflicted by certain wrongful acts. Therefore, the Court found the imposition of an upper limit for compensation for non-pecuniary damage unconstitutional. The Court further emphasised that a person may claim compensation of damage even in the absence of any legislative provision explicitly allowing for it, whereas the courts hold constitutional powers to award damages in such cases based on the Constitution itself, as a directly applicable legal act.

Specifically, the provision at issue had imposed an absolute upper limit of possible compensation; thus even if the damage inflicted were substantially higher and such an award would not be adequate to compensate the victim's damage, the courts would still not be able to award a higher compensation amount than that defined by the law. The amount was fixed, stable and did not depend on either a standard of living or other financial and economic criteria. Accordingly, the provision was unconstitutional.

In respect of the second legislative provision which precluded the possibility to inherit claims for compensation of non-pecuniary damage, the Court considered that the Constitution did not provide for a general requirement to compensate only the direct victim or that the compensation could not be paid to anyone else on the victim's behalf. It reasoned that under the Constitution, legal regulations must ensure that the State would not escape its duty to compensate damage inflicted by its institutions and public servants, especially if the direct victim cannot personally claim such damages because the public tort contributed to their death.

Accordingly, the State cannot escape liability merely because the direct victim died before he could claim compensation of damage in person, disregarding whether he died before the conduct at issue was found wrongful or before the limitation period for filing such a claim had expired.[16] The Court concluded that an absolute prohibition from inheriting the right to compensation of damage, as provided by law, would breach both art 30(2) and art 109 of the Constitution.

This ruling shaped the underlying principles of interpretation of the notion of moral damage, or non-pecuniary damage.

Most significantly, with this ruling, the Constitutional Court de facto amended the model on compensating non-pecuniary damage of the CC pursuant to which, non-pecuniary damage was compensable only if it was specifically provided by law.

Also, the Constitutional Court encouraged awards of non-pecuniary damages by finding that even in the absence of any explicit legislative provision on compensation of non-pecuniary damage, the legal ground to compensate such damage was the Constitution applied directly. For example, already in 2007, the LSC decided that excessive duration of judicial proceedings entailed public liability, even though this went beyond the text of art 6.272 of the CC.[17] The LSC substantiated its finding on art 138 of the Constitution, which provides that international treaties ratified by the Republic of Lithuania constitute a part of its legal system. Although no legislative provision explicitly provided for a possibility to be compensated for excessive duration of judicial proceedings, as this constituted a breach of art 6 of the European Convention on Human Rights (ECHR), the resulting damage was compensable. Other examples include compensating non-pecuniary damage to an advocate for damage resulting from her unlawful exclusion from the list of practising lawyers by the Council of Advocates,[18] the relatives of freedom fighters who became victims of crimes against humanity,[19] and the owner for loss of her pet.[20]

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[16] Ibid, part 8.

[17] LSC 6 February 2007, no 3K-7-7/2007.

[18] LSC 30 January 2007, no 3K-3-26/2007.

[19] *MB v VV and MŽ*, LSC 28 February 2011, no 3K-7-70/2011, reported by *S Selelionytė-Drukteinienė/L Šaltinytė* in: European Tort Law (ETL) 2011 (2012) 386, nos 11–24, Ruling of the Constitutional Court of 29 November 2010 'On the right of the victims of genocide to demand damage compensation from the natural persons who committed this crime' summarised ibid, at no 18 f.

[20] *IM v RG*, LSC 25 July 2013, no 3K-3-417/2013, reported by *S Selelionytė- Drukteinienė/L Šaltinytė* in: European Tort Law (ETL) 2013 (2014) 387, nos 31–47.

The Court's observations in respect of the right to inherit claims for compensation of non-pecuniary damage set the direction for judicial practice. Relying on this ruling, the LSC entrenched the right to claim non-pecuniary damages for indirect victims. In the first case, it affirmed that compensation was due both to the secondary victims and the primary victim, who died before he could claim damages in person. The CoA awarded the estate € 5,792 on this ground; the LSC *ex officio* added € 3,475 on the ground of excessive duration of the proceedings.[21]

In the second case the LSC affirmed the right of relatives of the primary victim to continue the claim for compensation of non-pecuniary damage initiated by the primary victim.[22]

Finally, in 2019, the LSC affirmed that the employment-related tort claims for the bereavement damage of secondary victims could also be inherited.[23]

The position of the Supreme Administrative Court of Lithuania (SACL) in respect of the right to claim damages on behalf of a deceased victim was expressed in 2020, when the SACL agreed that the State had to compensate a record € 250,000 in non-pecuniary damages to the estate of an adolescent girl who was burned alive in a car while trapped in its boot.[24] For an hour before her death, she called the European emergency number 112 ten times from her mobile phone, but the police could not trace her. The Vilnius District Administrative Court, as the court of first instance, had agreed that the State contributed to the damage and was liable for bereavement damages of the secondary victims, as it had failed to properly implement the Universal Services Directive, which required Member States to ensure that callers' location data was transferred to emergency centres. However, it rejected the claim to compensate the direct victim for her non-pecuniary damage, reasoning that art 5.1(3) CC only allowed a claim for non-pecuniary damages on behalf of a direct victim if the victim

[21] *AG and RG v the Republic of Lithuania*, represented by the Prosecution Service and the Ministry of Justice, LSC 5 February 2014, no 3K-3-4/2014, reported in ETL 2014 by *Selelionytė-Drukteinienė/Šaltinytė* (fn 4) nos 8–18.

[22] *RT and others v the Republic of Lithuania*, Represented by the General Prosecutor's Office, the Ministry of Justice and the Police Department to the Ministry of the Interior, LSC 30 September 2016, no 3K-3-399-687/2016, reported by *S Selelionytė-Drukteinienė/L Šaltinytė* in: European Tort Law (ETL) 2016 (2017) 341, nos 72–81.

[23] *MP, LP, AP, DM, NS and GS v Akvasanitas*, LSC 5 July 2019, no 3K-3-242-421/2019.

[24] *IK v the Republic of Lithuania*, represented by the Ministry of Internal Affairs, Emergency Response Centre, Communications Regulatory Authority of the Republic of Lithuania, SACL 8 June 2020, case no A-3669-756/2020, reported by *S Selelionytė-Drukteinienė/L Šaltinytė* in: European Tort Law (ETL) 2020 (2021) 379, nos 7–27.

had already expressed her willingness to pursue the claim by referring the issue to the court or if the compensation had already been assessed by a court of law.[25]

The SACL disagreed, considering that the primary issue was whether the damage would have been compensable if the victim had survived rather than whether the damage was claimed by the victim herself or someone else on her behalf. As the failure to implement the Universal Services Directive under the facts also constituted a breach of the State's obligation under the ECHR, the SACL accepted the mother's claim on behalf of her deceased daughter, because the ECHR allows family members to file claims for breaches of the right to life on behalf of the victim, regardless of whether the victim had expressed her intention to pursue a claim for damages. The SACL concluded that such claims are exceptionally allowed as far as they concern the right to life and freedom from torture.[26]

To conclude, the ruling of the Constitutional Court of 2006 has both entrenched the Constitution as a directly effective legal instrument and paved the way for the application of the CC by setting the principles of its interpretation in respect of the assessment of non-pecuniary damages. The significance of the ruling exceeds the issues of constitutionality of the law which the Court had assessed.

5. *DB v Lithuania*, SACL 20 October 2021, no eA-3411-556/2021[27]

Although *DB v Lithuania* was not the first case on State liability for breaches of EU law decided by the SACL,[28] it is the most recent one where the SACL offered a complete analysis of liability conditions.[29] This case merits discussion also because it illustrates the difficulties in

[25] *S Drukteinienė/L Šaltinytė* in: European Tort Law (ETL) 2019 (2020) 359, no 78.

[26] Ibid.

[27] *DB v Lithuania*, 20 October 2021, SACL no eA-3411-556/2021. Commented by *L Šaltinytė*, Lithuania, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2021 (2022) 339, nos 108–121.

[28] See *UV v Lithuania*, represented by the Ministry of Economy, SACL 8 May 2017, no eA-990-502/2017 (claiming damages for an incorrect implementation of the Travel Packages Directive; *S Drukteinienė/L Šaltinytė* in: European Tort Law (ETL) 2017 (2018) 360, nos 35–52; *EP v Republic of Lithuania*, SACL 28 November 2017, no eA-697-662/2017 (failure to register a vehicle in breach of EU law), ETL 2017 *Drukteinienė/Šaltinytė* (supra) nos 93–99.

[29] Note that in *VR v Lithuania*, 18 May 2012, SACL A-556-105/2012, the SACL focused only on the failure to comply with EU law in registering animals as a prerequisite of State liability, which led to the claim to compensate pecuniary damage.

developing a coherent system for compensating personal injury damage and non-pecuniary damage in Lithuania and the role of EU law in this process.

The case concerned compensation for non-pecuniary damage caused by a traffic accident that occurred in 2015. Under the Motor Insurance Directive (the Directive),[30] the minimum amount of insurance coverage was € 5,000,000 for personal damage per accident, regardless of the number of victims.[31] Although the limit for insurance coverage for personal damage in Lithuania was the same, the law restricted coverage for non-pecuniary damage to € 5,000 per accident. In 2013, in *Drozdovs* the CJEU held that similar restrictions were precluded by EU law, but in Lithuania it was removed only from 1 November 2018.[32]

The accident that gave rise to the case at hand left one person dead, one slightly injured and one quadriplegic for life. The insurance company paid the quadriplegic victim € 3,800 in non-pecuniary damages, as € 1,200 had been paid out to the other two victims of the same accident. The victim then claimed € 58,000 from the State for the incorrect implementation of the Directive.

The court of first instance held that the State did not incur liability, arguing that there was no direct causal link between the failure to implement the Directive correctly and the non-pecuniary damage claimed.

The SACL disagreed, finding that Lithuania had breached an obligation to ensure the effective protection of EU law and that this protection was denied to the victim by the disproportionate restriction on her right to obtain full compensation. Relying on the CJEU's finding in *Drozdovs* that personal injuries include physical and psychological suffering, the SACL concluded that the EU law rule breached was clear, precise, and that failure to comply with it constituted a sufficiently serious breach of EU law.[33]

In contrast to the court of first instance, the SACL found that *it was not possible to deny* a direct causal link. Had the Directive been adequately implemented, the insurer would have paid out a much higher amount.[34] Consequently, the case was remitted to the court of first instance for the assessment of damages.

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[30] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability [2009] Official Journal (OJ) L 263/11.

[31] Ibid, art 3.

[32] Ibid.

[33] *DB v Lithuania*(fn 27) para 38.

[34] Ibid, para 40.

This decision concerns a long-standing problem, namely whether the notion of personal injuries in art 1(1) of the Directive 84/5 covers non-pecuniary damage.[35]

In Lithuania, the first law on compulsory insurance of civil liability of motor vehicles was adopted in 2001,[36] setting LTL 30,000 for personal damage[37] and LTL 30,000 for property as coverage limits.[38]

On 5 March 2004, an amendment allowed insurance holders to choose between limits of LTL 30,000 per person for personal damage and LTL 30,000 for property damage or € 500,000 per person for personal damage and € 100,000 for property damage.[39] On the same day, the law was restated in a new edition, setting a € 500,000 limit for personal damage, which would include a € 500 limit for non-pecuniary damage.[40]

On 17 May 2007, the law specified transitional coverage limits: € 500,000 until 10 December 2009 (including € 1,000 for non-pecuniary damage), € 2,500,000 until 10 June 2012 (including € 2,500 for non-pecuniary damage), and, starting from 11 June 2012, € 5,000,000 for personal damage (including € 5,000 for non-pecuniary damage).[41]

These amendments were confusing, as, in 2006, the Constitutional Court famously held that any limitations on compensable amounts were unconstitutional.[42]

Also, the LSC's practice regarding the extent to which insurers had to compensate non-pecuniary damage in traffic accidents was uncertain.

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[35] *R Volodko*, Draudiko pareigos kompensuoti neturtinę žalą problema esant transporto priemonės valdytojo atsakomybės draudimui [Insurer's obligation to compensate non-pecuniary damage in case a Motor Vehicle Insurance Agreement is concluded] Teisė 66(2) (2008) 112–126.

[36] Lietuvos Respublikos transporto priemonių savininkų ir valdytojų civilinės atsakomybės privalomojo draudimo įstatymas, Žin, 2001, no 56-1977.

[37] The usage of the term 'personal damage' is conditional – a possibly more accurate way to translate would be 'per person' rather than 'personal damage' because of confusion surrounding the understanding of the notion as discussed here.

[38] Lietuvos Respublikos transporto priemonių savininkų ir valdytojų civilinės atsakomybės privalomojo draudimo įstatymas, Žin, 2001, no 56-1977, art 13.

[39] Lietuvos Respublikos transporto priemonių savininkų ir valdytojų civilinės atsakomybės privalomojo draudimo įstatymo 13 straipsnio papildymo įstatymas [The law on civil liability insurance] Žin, 2004, no 39-1273.

[40] Lietuvos Respublikos transporto priemonių savininkų ir valdytojų civilinės atsakomybės privalomojo draudimo įstatymo pakeitimo įstatymas, Žin., 2004, no 46-1498, art 11(1).

[41] Lietuvos Respublikos transporto priemonių valdytojų civilinės atsakomybės privalomojo draudimo įstatymo pakeitimo įstatymas, Žin., 2007, no 61-2340.

[42] See the discussion of the Ruling of the Constitutional Court of 19 August 2005, under 4. above.

For example, in 2005, an extended panel decided that *personal damage* cannot be equated with *non-pecuniary damage*, and that, under arts 6.250 and 6.263 CC, it was the tortfeasor's, not the insurer's, duty to compensate non-pecuniary damage.[43] However, later that year, the extended panel of the LSC ruled that the insurer was obliged to compensate both pecuniary and non-pecuniary damage unless the insurance contract provided otherwise.[44]

In 2006, the Vilnius District Court sought guidance from the Constitutional Court on whether the upper limit of € 500 for non-pecuniary damage contradicted the Constitution, arguing that this restriction protected insurers rather than victims or tortfeasors who had taken out civil liability insurance. In 2009, the question was repeatedly raised by two other municipal courts.

Unexpectedly, in 2010, the Constitutional Court upheld the constitutionality of this provision, because the upper limit 'guaranteed the possibility for insurance companies to comply with their contractual obligations.' Although the Court acknowledged that the regulation was adopted to implement the Directive, it concluded that 'issues of compensation for non-pecuniary (moral) damage were not regulated by the EU directives', because EU legal regulations clearly defined only insurance coverage for damage to property and for personal injury.[45]

Accordingly, it did not even consider referring the question to the CJEU for a preliminary ruling. Apparently, the Constitutional Court was influenced by the position of the Insurance Oversight Commission officials, who argued that non-pecuniary damage was traditionally classified as a 'non-insurable risk', and it was therefore necessary to restrict it because unlimited insurer liability for such damage would increase insurance premiums and reduce the ability of insurers to assume insurance risks or even cause them to refuse to assume such risks altogether.[46]

It follows that, despite the intention of the EU legislator to protect victims of traffic accidents by simplifying their capacity to claim damages directly from compulsory insurance providers, in Lithuania up until recently this right remained elusive due to the differences between legal

[43] 26 April 2005, LSC no 3K-7-159/2005; an opposite statement made by the LSC 29 September 2004 no 3K-3-475/2004; LSC 12 July 2004 no 2K-3-367/2004; LSC no 3K-3-86/2005.

[44] LSC 11 April 2006, no 3K-7-115/2005.

[45] Ruling of the Constitutional Court of 3 February 2010 on compulsory motor insurance benefits for non-pecuniary damage, Case no 36/2006-8/2009-49/2009, para 1.5.

[46] Ibid, para V.

systems, legal errors, and failures to apply available EU legal remedies. However, it is already clear that the Directive has had a significant impact on the evolving understanding of personal injury damages in Lithuanian tort law.