XVII. Latvia

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This selection of different judgments and rulings can show not only substantial developments already made in relation to tort liability over the last 25 years in Latvia, but also highlight some potential necessary developments for the future.

1. Judgment of the Riga Regional Court, Collegium of Civil Cases, 24 February 2022, no C04406812[1] and Decision of the Senate of the Republic of Latvia, Department of Civil Cases, 26 October 2022, no SKC-646/2022 (C04406812)[2]

This case explores the duty of care that a sport's doctor, a coach and sports club have towards a minor; how joint and several liability is applicable under the Civil Law for jointly committed personal injury, as well as the duty of care of care owed by different individuals and the legal concept of 'the best interests of the child'.[3] This case is also remarkable regarding the establishment of joint and several liability for a violation committed by different actions under art 1675 of the Civil Law.

In 2012, the claimant brought an action against his coach, his hockey club and the Republic of Latvia (as the owner of the sport medical centre, which was not a separate legal entity) as jointly and severally liable for compensation for non-pecuniary loss in the amount of € 711,436 for personal injury.

The claimant was a young hockey player with potential to become a professional player. He was the most successful player of his age, and he played in the national youth team in international tournaments. During a training session in 2002, the claimant suffered clinical death and, due to immediate medical assistance, his life was saved. After long-term treat-

[1] ECLI:LV:RAT:2022:0224.C04406812.9.S (not published).

[2] ECLI:LV:AT:2022:1026.C04406812.13.L – see on the Latvian Supreme Court website: <https://www.at.gov.lv/downloadlawfile/8661>.

[3] See on this case the description and comments by *A Bitāns* in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2022 (2023) 349, nos 45–91.

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ment, the claimant was recognised as a disabled person of category 2 for the rest of his life as a result of irreparable damage to his health.

The claim was based on the following breaches; (1) the team's coach used improper training methods for the minors and instructed the claimant to wear a belt with lead weights of approx 15–20 kg during training; (2) the sports medical centre doctor did not inform the coach and/or the player's parents about the changes she discovered in the claimant's heart and did not request a reduction in the intensity of training or to suspend training temporarily; and (3) and the hockey club did not supervise the training methods used by the coach.

Since at the moment of suffering personal injury the claimant was a minor, the best interests of the child are a primary consideration in all actions concerning children, under part 1 art 3 of the United Nations Convention on the Rights of the Child, part 1 art 6 of the Law on the Protection of the Rights of the Child and also part 2 art 24 of the Charter of Fundamental Rights of the European Union.

This case is remarkable because the court provided a clear interpretation of art 1675 of the Civil Law regarding joint and several liability for a tort under art 1635 of the Civil Law. The doctrinal position was that despite the reference to a 'criminal offence' in art 1675, this legal norm is generally applicable also to torts. Article 1675 is also applicable if the persons, independently from each other, caused the same damage to the victim by their acts or omissions, or if there is no reasonable basis to attribute a certain part of the damage to only one of the liable persons. The Senate referred to clause (b) para 1 and para 3 of art 9:101 of the Principles of European Tort Law to justify joint and several liability in this civil case.

Three individuals were held liable as a result of violating their duties, namely, improper training procedures followed by a coach, lack of supervision of a medical doctor as well as a lack of control by a sports club. A person can be liable not only for personal acts but also for omissions to perform their duties when they become aware of conduct contrary to the best interests of a child.

The court further elaborated on the concept of 'due care' for a sport doctor, a coach and a sports club in relation to a minor athlete.

The 'due care' owed by a sport doctor includes not only an obligation to perform medical tests in respect of frequency and content prescribed by normative acts or logic, or a duty to properly inform a minor's parents about their child's state of health, but also an obligation to ensure that the rights of the child are respected and promoted by taking all steps that are reasonably necessary to prevent possible harm, especially when it

became known that other persons acted contrary to the best interests of the child, even parents.

For the first time, a court determined the due care owed by a sports coach in relation to minors: a coach has an obligation to use training methods specifically developed for minors and to evidence what training methods they used in the course of training sessions.

Also for the first time, a sports club's 'due care' in relation to minors was determined. It includes an obligation to ensure that athletes attend medical examinations, to ensure that only those athletes who pass a medical examination and receive approval to train participate in training sessions and competitions, and to ensure that doctors' recommendations are consistently implemented. Furthermore, a sports club, as the institution responsible for training procedures, should also pay due attention to the work of a coach with children, making sure that the methods they use in training correspond to the physiological characteristics and health status of minors.

Unfortunately, the court's awarded € 40,000 as damages for personal injury shows lack of clear methodology as to how this amount for non-pecuniary compensation for personal injury was calculated and what amount was awarded for caused mutilation. Nevertheless, the court recognised that the claimant suffered serious non-pecuniary harm in connection with the damage to his health and disfigurement.

The most controversial conclusion related to the co-liability of the claimant's parents. Although they were not heard in the case, even if the parents could potentially be co-liable for personal injury, this has not been attributed to the claimant as a victim under the *culpa mixta* concept, which could lead to a reduction of compensation under Latvian law.

Moreover, in this case, the Latvian court, for the first time, recognised the concept of loss of a chance and the possibility to claim compensation for loss of opportunity under Latvian law, although claims for such compensation had been rejected in the present case.

2. Judgment of the Senate of the Republic of Latvia, 24 April 2019, Civil Case no SKC-46/2019 (C04394710)[4]

This case centres on the issue of the determination of the moment when a company can establish losses caused by its board members and, thus, when the prescription period starts to run. The question of the pro-

[4] ECLI:LV:AT:2019:0424.C04394710.10.S – see on the Latvian Supreme Court website: <http://www.at.gov.lv/downloadlawfile/5823>.

cedure and limits of liability for losses caused by board members, even if this board member had majority voting rights while concluding economically disadvantageous transactions, is also addressed.[5]

The claimant, one of the largest commercial banks in Latvia ('the bank'), brought an action on 30 June 2010 against its former board members, A and B, for compensation of pecuniary loss in the amount of € 85,465,376, holding them jointly and severally liable under arts 1672, 1674 and 1676 of the Civil Law. The claim was based on arts 34, 169, 292, 301 and part 3 art 309 of the Commercial Law, arts 76 and 96 of the Law on Joint Stock Companies, as well as arts 1587, 1635, 1672, 1674, 1676, 1771–1773, 1775, 1779, 1784, 2289, 2295, 2301 and 2304 of the Civil Law.

The defendants were former board members of the bank and had been shareholders of the bank since 1992 with a decisive majority. Due to the 2008 banking crisis, the Republic of Latvia entered into an agreement with the defendants as shareholders of the bank and took control of the bank. Following the bank's takeover, several deposit and loan agreements which had been concluded between the defendants and their relatives were discovered and these did not conform with market conditions. Part of these loss-making contracts were concluded on 1 January 1995, and between 20 March 2002 and 19 March 2008.

The claim was related to compensation of losses the board members caused to the banks in their position as board members due to concluding economically disadvantageous contracts for the bank without prior acceptance from the management board and the Supervisory Council. For the period from 1 January 1995 to 10 December 2008, the defendants were not entitled to enter into transactions with the bank since the management board and the Supervisory Council had not provided their required approval.

This case was reviewed in third instance several times and a final judgment was handed down in 2022. The claim was satisfied, and A and B were held jointly and severally liable and ordered to compensate the claimant € 85,695,927 as damages for pecuniary loss.

First, this case is remarkable because it clarifies the determination of the starting point of the prescription period for losses suffered as a result of commercially disadvantageous contracts concluded a long time previously. Moreover, the case establishes clear principles as regards knowledge of a legal entity, which, until this decision, had not been determined in modern Latvian case law.

[5] See on this case the description and comments by *A Bitāns* in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2019 (2020) 331, nos 21–47.

Pursuant to part 9 art 100 of the Law on Joint Stock Companies, a special limitation period of three years for the filing of a claim against a member of a board or the Supervisory Council of a joint stock company begins to run on the date on which the right to the claim arises.

The starting moment of the prescription period is when the creditor knew or ought to have known about the infringement of rights (if not otherwise provided by the law). This point in time is also applicable to legal entities. Knowledge of one member of the company is not sufficient and is not recognised as knowledge of the company. Instead, the will (and consequently knowledge) of the company has to be expressed by decisions of the relevant institution, for instance, the board, the Supervisory Council or shareholders meeting. Moreover, the moment of discovery of any suffered losses can be defined after all three necessary preconditions for civil liability, ie (1) unlawful behaviour; (2) the existence of losses; and (3) a causal link between the behaviour and suffered losses, are established.

Under art 1771 of the Civil Law, it is essential to find out when the loss was incurred and when the conditions for its compensation were given. Therefore, the fact that the ascertainment of the specific losses can only be obtained after a financial due diligence process and preparation of a report by external specialists means that the prescription period for the claim should start to run after the completion of the due diligence process, even though the transactions causing the losses were concluded and performed several years earlier.

Furthermore, sometimes the determination of losses can require some time after knowledge about violation of the rights or unlawful behaviour of the infringer has been gained. It is legally permissible that the prescription period for a claim for compensation starts to run two years after the takeover of a company (a victim) and even 15 years after the conclusion of disputable transactions.

Second, the principle of 'an honest and careful manager' finds no exemption in cases in which a board member is a majority or sole owner of a company. Factual power to make any decision in a company, including confirming transactions under dispute or bringing about a release from liability by the shareholders meeting, do not release board members from their duty to act as 'an honest and careful manager'.

Third, the notion of 'losses' includes lost profit as a result of concluding questionable transactions with related persons, such as relatives and other close persons. Board members are liable even if the company generally was making a profit. In order to claim damages for losses, it is not necessary to challenge the legality of the transaction under question.

Fourth, if the board members seek an exemption from civil liability from the shareholders meeting, it is important that the shareholders meeting was informed about a particular breach and losses. Without having knowledge about the particular breach and losses, the shareholders meeting cannot legally release the board member from civil liability in advance or generally.

3. Judgment of the Supreme Court of the Republic of Latvia, 7 June 2016, Civil Case No SKC-7/2016 (C39072411)[6]

This case changed existing case law regarding the determination of losses which have already arisen and elaborated on the substance of a board member's 'due care'.[7]

An insolvent company brought an action to the court against the former chair of its management board for compensation of losses in the amount of € 48,590, since the company suffered losses following a tax audit of the company. The State Revenue Service established that a considerable amount of money had been transferred to fictitious companies in order to avoid payment of value added tax and corporate income tax. Accordingly, the State Revenue Service obliged the company to pay an additional tax payment in the amount of € 114,761, which includes a fine of € 35,100 and a late payment charge of € 13,490.

The claim was based on art 1779 of the Civil Law and art 169 of the Commercial Law, because the defendant had not performed his duties as a member of the management board as an honest and careful manager.

First, the judgment of the Senate in this case marks a positive development as it deviates from the previous case law regarding the notion of 'already arisen losses'. Following this decision, additional obligations, such as tax debts, penalties and late payments calculated by the State Revenue Service, also now qualify as a decrease of the company's current property and therefore constitute already arisen (pecuniary) losses even if these amounts are not paid into the State budget. It is very important because only losses which have actually arisen are subject to a right to claim compensation, ie damages, under art 1771 of the Civil Law. In other cases, future losses legally qualify as anticipated losses and not only give rights to security but also for compensation.

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[6] See on the Latvian Supreme Court website: <https://www.at.gov.lv/downloadlawfile/164>.

[7] See my brief description and comments in *A Bitāns*, Latvia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2016 (2017) 313, nos 11–37.

Therefore, it is not necessary to pay actual money for the additional obligation in order to claim compensation, which is very important for an insolvent company because usually it does not have funds to pay additionally calculated payments before filing a claim for compensation of losses against a member of its board.

The increase of liabilities caused by the unlawful action of a member of a management board, especially in a situation when the company has become insolvent (which makes it impossible to cover these liabilities due to a lack of assets), should be regarded as material deprivation within the meaning of art 1770 of the Civil Law. However, there is a risk that the interpretation of 'already arisen losses' in fact may be interpreted too broadly as a future violation.

Second, the court elaborated on the concept of a board member's 'due care'. A board member's 'due care' includes obligations to ensure the legitimacy of the operation of the company. Failure to observe the requirements of art 2 of the Law on Accountancy must be qualified as a breach of their duties as an honest and careful manager (part 1 of art 169 of the Commercial Law).

4. Judgment of the European Court of Justice, 10 December 2020, Case C-735/19[8]

This case deals with State Liability for an infringement of a rule of EU law. The judgment of the Court of Justice of the European Union (CJEU) affected not only Latvia but also other EU Member States because not only Latvia incorrectly transposed art 5 of Directive 2004/25/EC[9] of the European Parliament and of the Council of 21 April 2004 on takeover bids. Also, this judgment provides an explanation about rights that the State has to limit its liability for a violation of this Directive.

In this case, a company submitted a claim before the Administrative Court against the Financial and Capital Market Commission (FCMC) of Latvia, with a request to compensate damage caused as a result of executing a mandatory bid, because the FCMC chose an inappropriate method to calculate the value of shares when determining the equitable price for a compulsory takeover bid. The share price was calculated too

[8] *Euromin Holdings (Cyprus) Limited*, ECLI:EU:C:2020:1014 (Request for a preliminary ruling from the Augstākā tiesa [Senāts]).

[9] Directive 2004/25/EC of the European Parliament and of the Council of 21 April on takeover bids [2004] Official Journal (OJ) L 142/12.

high and consequently, the company suffered losses, amounting to € 7.2 million.[10]

There are two main issues in this case: (1) whether the FCMC correctly calculated the price for the mandatory buyback; and (2) whether the Republic of Latvia has the right to limit its liability for an incorrectly determined price for a mandatory buyback under part 3 art 13 of the Law on Indemnification of Losses Caused by State Administration Institutions.

The Senate sent a request for a preliminary ruling to the CJEU and asked five questions, two of which were connected with liability issues.

The CJEU ruling is important because there the court stated that art 5(4) subpara 2 of Directive 2004/25 must be interpreted as precluding national legislation which provides that, for the purposes of a takeover bid, the share value is obtained by dividing the net assets of the target company, including non-controlling minority interests, by the number of shares issued unless that method of determining the share price is based on an objective valuation criterion that is generally used in financial analysis and may be regarded as 'clearly determined', within the meaning of that provision, which is a matter for the referring court to verify.

Also, the CJEU ruling provided clear guidelines regarding State civil liability. It is clear that the offeror may claim compensation from the State for a violation of Directive 2004/25. Thus, the State is to be held liable for application of the incorrect determination of price for a takeover bid.

EU law precludes a Member State from limiting their liability for pecuniary losses caused by an administrative authority of the State, because it is not legally permitted to limit State liability for caused damage as a result of the incorrect application of EU law. Therefore, this ruling will be a clear guideline to legislators to remove existing civil liability limits for State and public institutions under several laws[11] and encourage national courts in Latvia, including the Constitutional Court, to challenge the legality of prescribed limits of awardable damages for violations committed by the State or public institutions.

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[10] See the brief description and comments by *A Bitāns* in: E Karner /BC Steininger (eds), European Tort Law (ETL) 2020 (2021) 349, nos 33–41.

[11] See the brief description and my comments in *A Bitāns*, Lavia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2017 (2018) 330, nos 16–19 and *id* in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2018 (2019) 344, no 27 f.

5. Judgment of the Constitutional Court, 27 June 2025, No 2024-07-01[12]

In this case on just and proportionate compensation for the death of a person, the Court held that part 1 art 7 and part 4 art 7^1 of the Law on State Compensation to Victims, insofar as they determine the maximum amount of State compensation to be granted in the event of the death of a person, providing for its distribution in proportion to the number of victims and thus failing to ensure fair and proportionate compensation, do not comply with the third sentence of art 92 of the Constitution of the Republic of Latvia. Therefore, the Constitutional Court held that the contested provisions were incompatible with the third sentence of art 92 of the Constitution and invalid as of 1 January 2026.

On 18 May 2006, the Latvian Parliament adopted a Law on State Compensation to Victims in order to transpose into Latvian Law Council Directive 2004/80/EC[13]. The aim of the Law was to guarantee natural persons, who are declared victims within a criminal procedure, rights to receive compensation for moral harm, physical pain and material damage caused by an intentional offence if the crime was committed against the life and health of a person and it caused death or grievous or medium bodily harm, or the offence was a sexual offence (violent intentional crime).[14]

Part 1 art 7 of this Law determines the maximum amount of State compensation to be awarded to a victim of a criminal offence, ie an amount equivalent to five minimum monthly wages determined in the Republic of Latvia at the time when the person was recognised as a victim. Part 4 art 7^1 of this Law determines that if in the case of the death of a person as a result of a criminal offence several persons have been recognised as victims in criminal proceedings, the State compensation shall be disbursed to such persons dividing it in proportion to the number of victims.

Five natural persons, including one minor child, had been declared as victims in criminal proceedings and they sought compensation from the State. As a result of regulations provided by the Law, each of the five persons received € 620 as compensation. These five natural persons initiated

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[12] See on the Constitutional Court website: <https://www.satv.tiesa.gov.lv/wp-content/uploads/2024/04/2024-07-01_spriedums.pdf#search=2024-07-01>.

[13] Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15.

[14] See the brief description and comments by *A Bitāns* in: H Koziol /BC Steininger (eds), European Tort Law (ETL) 2006 (2008) 311, nos 11–20.

administrative proceedings in order to seek a more favourable administrative act – in this case, to receive a higher compensation amount.

The case was initiated before the Constitutional Court on the basis of the application submitted by the Administrative District Court, because it considers that the amount of compensation to be paid by the State under this Law in the case of the death of a person is not fair and proportionate for each victim if its maximum amount is distributed proportionally among several victims.

The Constitutional Court stressed that the amount of State compensation for several victims in the case of the death of a person may be merely symbolic and manifestly insufficient, therefore failing to achieve the purpose of the Law on State Compensation to Victims and contrary to human dignity.

The Constitutional Court concluded that although the proportional distribution of compensation according to the number of victims was consistent with the provisions of the Directive, in the case under examination, the compensation granted to each victim – € 620 – for the death of a person resulting from a criminal offence could not be regarded as fair and proportionate.

Moreover, the Constitutional Court concluded that the proportional distribution of compensation according to the number of victims may not always be just and proportionate. In order for compensation to be just and proportionate, importance shall be given to its maximum amount, its distribution among the victims, as well as other circumstances. The legislator must decide on the most suitable solution for determining the amount of just and proportionate compensation in cases where several victims have sought compensation in connection with the death of a person.

The current practice would be even more unfair and disproportionate in cases where the number of victims is even higher. Compensation in such cases will inevitably be symbolic and clearly insufficient. Such compensation is contrary to human dignity. Thus, the contested provisions, insofar as they determine the amount of State compensation to be paid by the State in the event of the death of a person, providing for its distribution in proportion to the number of victims, do not always ensure fair and proportionate compensation.

In his separate opinion, judge J Neimais rightly pointed out that payment of compensation by the State to victims under this Law does not create a compensation mechanism for the violation of rights in the sense of the third sentence of art 92 of the Constitution. By providing such a compensation mechanism, the State does not become liable for violations of fundamental rights committed by private individuals.

However, this judgment could make a positive contribution in the field of tort liability, because the conclusion of the Constitutional Court that the proportional distribution of the amount of compensation between family members is not always fair could provide grounds to revise the unreasonably established practice in Latvian courts that compensation for the loss of a family member is determined as an overall amount for the family as a whole, without assessing the damage caused to each specific family member.