IX. Estonia

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Over the past two decades, the development of Estonian tort law has been closely shaped by the case law of the Supreme Court, which has clarified and refined key doctrinal concepts such as unlawfulness, causation, and liability for non-pecuniary damage. Since the adoption of the Law of Obligations Act in 2002, Estonian courts have gradually moved from Soviet-era conceptions of liability toward a modern, structured tort law system influenced by German legal doctrine. This transformation has been neither instantaneous nor purely legislative; rather, it has evolved through a series of significant judicial decisions that have provided interpretation, balance, and practical coherence to the law.

The authors of this report have followed and analysed these developments for more than 20 years, documenting the gradual emergence of consistent principles and their adaptation to the Estonian legal environment. Some of the Supreme Court's judgments have had a particularly lasting impact – defining the scope of unlawfulness, introducing the notion of a general duty to maintain safety, clarifying the rules of apportionment of liability in mutual motor vehicle accidents, and elaborating the conditions for compensation of non-pecuniary damage suffered by close relatives. These cases, taken together, reflect the dynamic evolution of Estonian tort law and its increasing alignment with European private law traditions, while maintaining a distinctly domestic interpretation shaped by local courts and legal scholarship.

1. Supreme Court Judgment of 31 May 2007, in Civil Case no 3-2-1-54-07

The first Estonian Supreme Court judgment to be commented on had a significant impact on Estonian legal theory and practice, as it clarified the concept of unlawfulness. The Civil Code of the Estonian SSR,[1] which regulated, among other institutes, rules on tort law, was in force in the Republic of Estonia (re-established in 1991) until 30 June 2002. On 1 July 2002, the

[1] Eesti NSV tsiviilkoodeks (Civil Code of the Estonian SSR) of 12 June 1964.

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Law of Obligations Act (LOA)[2] came into force, containing provisions on tort law comparable to those regulated in §§ 823(1) and (2) of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB). In other words, by adapting the LOA, the three-stage general structure of tort known in German law, which distinguishes between the objective elements of the act (the act causing the damage, the infringement of the victim's legal interest, the causal link between them), unlawfulness, and the fault of the person causing the damage was introduced into the Estonian legal system.

The adoption of German tort law concepts was a fundamental change, as the Civil Code of the Estonian SSR did not contain a similar catalogue of protected interests – it only provided for provisions on general tort. According to the concept of general tort, causing damage is unlawful if the person causing the damage violated a rule arising from the law.

In this case, the plaintiff used the defendant's (shopping centre) car park. After paying for parking, the plaintiff headed toward his car. As there were no appropriate markings in the car park, the plaintiff, while walking towards his car, walked straight into a barrier placed in front of the car park's entrance, which fell on his head. The barrier caused the plaintiff to suffer a concussion and an injury to his forehead, as a result of which the plaintiff required medical assistance. The plaintiff claimed approximately € 3,200 in non-pecuniary damages from the defendant.

The county court dismissed the plaintiff's claim, noting that the sole basis for tort liability is a violation of mandatory legal provisions. The circuit court upheld the county court's decision. The Supreme Court overturned the circuit court's decision, noting that the existence of bodily injury and its causation by the defendant's actions (which may also consist of inaction) provides grounds for considering the defendant's actions unlawful under § 1045(1)2) of the LOA, which stipulates the unlawfulness of causing bodily injury or damage to health.

Therefore, the district court's position that the defendant did not commit an unlawful act by installing barriers in the car park is irrelevant. Similarly, the county court's reference to the presumption of unlawfulness (breach of a legal obligation) in § 1045(1)7) of the LOA is also irrelevant because the defendant's act is unlawful in the event of bodily injury to the plaintiff already under § 1045(1)2) of the LOA.

In the new review of the case, the circuit court had to assess whether the conditions for general tort liability were met. First, it had to assess whether the defendant's actions caused bodily injury to the plaintiff. If

[2] Võlaõigusseadus (Law of Obligations Act, LOA) of 26 September 2001 <https://www.riigiteataja.ee/en/eli/ee/527122023005/consolide/current>.

it is proven that the defendant caused bodily injury to the plaintiff, the defendant has committed an unlawful act pursuant to § 1045(1)2) of the LOA, and if the defendant does not prove any circumstances that would exclude unlawfulness, they can exonerate themselves by proving the absence of fault pursuant to § 1050 (1) of the LOA.

With this judgment, the Supreme Court changed the doctrine of unlawfulness established during the Soviet era, according to which only causing damage by violating legal norms was unlawful. More specifically, the Supreme Court based its judgment on the theory of wrongful outcome (*Erfolgsunrecht*), according to which, in the event of damage to absolutely protected legal interests, unlawfulness arises from the harmful consequence itself.

This theory of wrongful outcome (*Erfolgsunrecht*) is expressed in Estonian law in § 1045(1) of the LOA in cases where the damage is caused by causing the death of the victim (§ 1045(1)1) LOA); causing bodily injury or damage to health (§ 1045(1)2) LOA), deprivation of liberty (§ 1045(1)3) LOA) and violation of property or similar rights or possession (§ 1045(1)5) LOA). In the case of other torts, however, the theory of wrongful act (*Handlungsunrecht*) must be applied, which means assessing the act of the person who caused the damage. This theory must be applied in cases of a violation of personal rights (§ 1045(1)4) LOA), interference with a person's economic or professional activities (§ 1045(1)6) LOA), behaviour which violates a duty arising from law (§ 1045(1)7) LOA) and causing damage by intentional behaviour contrary to good morals (§ 1045 (1)8). This basic principle has also been followed in later case law.[3]

However, it is not correct to proceed from the wrongfulness of the consequence in cases where the damage has been caused by inaction or indirect action (unintentionally). In such cases, in order to hold the person who caused the damage liable, it is necessary to identify the legal norm or general duty to maintain safety that they violated.[4] In light of the above, apparently, the Supreme Court resolved the case described above (injury caused by a barrier) incorrectly. It would have been necessary to identify a violation of an obligation by the defendant. However, this does not

[3] The 'theory of wrongful outcome' can be found in the following cases: judgments of the Civil Chamber of the Supreme Court of 9 March 2011 in civil case no 3-2-1-174-10, at 12; of 10 April 2013 in civil case no 3-2-1-21-13, at 15; of 26 October 2021, in civil case no 2-19-7379, at 19.

[4] See *T Tampuu*, Lepinguvälised võlasuhted [Non-contractual obligations] (2017) 232. See also judgment of the Civil Chamber of the Supreme Court of 17 December 2012 in civil case no 3-2-1-161-12, at 10.

change the significance of the decision in question, as subsequent case law has been based on the principles set out in this decision.

It should also be added that, in borderline cases, the determination of unlawfulness is not yet entirely clear in Estonian case law. For example, it is not clear how Estonian courts would approach a case where a careless hunter mistakenly shoots a mushroom picker in the head, causing bodily injury: would the unlawfulness of causing damage be derived from the bodily injury to the mushroom picker, or would an additional legal norm or duty to maintain safety be sought that the hunter violated?

2. Supreme Court judgment of 20 June 2013, in Civil Case no 3-2-1-73-13[5]

The second Estonian Supreme Court judgment to be discussed is important primarily because it clarifies the concept of a general duty to maintain safety. In the early 2000s, the concept of tortious liability based on a general duty to maintain safety was still unfamiliar to many Estonian lawyers, because only a short period of time had passed since the entry into force of the Law of Obligations Act, and the regulations of the Civil Code of the Estonian SSR did not require knowledge of the concept of a general duty to maintain safety. However, with the entry into force of the Law of Obligations Act on 1 July 2002, the entire approach to unlawfulness changed, which in turn made it necessary to 'adopt' the concept of a general duty to maintain safety (*allgemeine Verkehrssicherungspflichten*) originating in German law

More specifically, this means that if the victim's absolutely protected legal interest has been harmed by the inaction of the person who caused the damage, or if the violation of the victim's legal interest is a more distant/indirect consequence of the behaviour of the person who caused the damage, the obligation which has been violated must be identified in order to hold the person who caused damage liable. In these cases, unlawfulness cannot be established solely by the harmful consequence. Such an obligation may be an obligation arising from the law (§ 1045(1)7) LOA) or a general duty to maintain safety.

The Supreme Court dealt with liability based on breach of duty to maintain safety in more detail for the first time in its judgment of 20 June

[5] The judgment has been commented on by *J Lahe*/*I Kull*, Estonia, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2013 (2014) 213, nos 24–31. See also *J Lahe*, German Transplants in Estonian Tort Law: General Duties to Maintain Safety (2021) 30 Juridica International (JI) 132–139.

2013.[6] It should be added that, in a sense, the Tallinn Circuit Court was the first to pave the way for the application of tortious liability based on a breach of a general duty to maintain safety, referring to the existence and significance of a general duty to maintain safety four years before the Supreme Court's aforementioned decision.[7]

According to the circumstances of the Supreme Court judgment in question, the plaintiff visited her daughter, who rented an apartment in a building belonging to the defendant. The plaintiff left the apartment late in the evening at 11:15 p.m. The plaintiff did not reach the bottom of the stairs before the lighting went out. While in the dark, the plaintiff searched for support on the stone wall to her right until she reached a place where there was an opening in the wall. The plaintiff fell through this opening from the second floor to the first floor. As a result of the fall, the plaintiff suffered health damage. The plaintiff sought compensation for non-pecuniary damage in the amount of € 5,112 from the defendant.

The Harju County Court upheld the claim, but the Tallinn Circuit Court dismissed the claim. The Supreme Court overturned the circuit court's decision and issued a new judgment, partially upholding the claim and ordering the defendant to pay the plaintiff € 4,112 in compensation for non-pecuniary damage. The Supreme Court found that in this case, the defendant could be held liable for the damage caused to the plaintiff if the defendant had violated any duty to maintain safety.

The Supreme Court noted that the general duty to maintain safety entails a person's obligation to do everything reasonably necessary to prevent other persons from being harmed as a result of their actions. The general duty to maintain safety and its violation must be established in order to hold the person who caused the damage liable on the basis of tort in cases where the damage was caused by inaction or insufficient action. The more serious the threatened damage, the greater the likelihood of damage occurring, and the lower the cost and effort required to prevent damage, the greater the likelihood that there is a duty to take measures to prevent or eliminate the danger. The Supreme Court noted that the duty to maintain safety, or the general duty to act, cannot require the impossible from a person, and that the behaviour expected of the defendant as the owner of the building must be reasonable.

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[6] Previously, however, the Supreme Court had already briefly mentioned liability based on a duty to maintain safety in its judgment of 17 December 2012 in civil case no 3-2-1-161-12, at 10 (apartment owner's duty to maintain safety).

[7] Tallinn Circuit Court decision of 16 December 2008 in civil case no 2-06-9067.

The Supreme Court found that, according to the facts established by the courts, the defendant had created a dangerous situation for the plaintiff by leaving an opening in the wall of the stairwell, from which the plaintiff and other persons could fall, and that the lighting in the stairwell was installed in such a way that it did not ensure the safe descent of persons who were on the stairwell for the first time. The Civil Chamber emphasised that the dangerousness of the situation in the present case was evident from the combined effect of two factors: the opening and the lighting. It is clear that, for example, placing a barrier in front of the opening would have easily prevented the danger in question from materialising. Thus, the defendant, as the owner of the building, violated a general duty to maintain safety.

It can be said that since this decision, the concept of tortious liability based on a breach of a general duty to maintain safety has been recognised in Estonian case law. The Supreme Court itself has referred to a breach of a general duty to maintain safety as a basis for liability in several judgments.[8]

Estonian legal literature has found that the concept of the general duty to maintain safety helps to distinguish between persons who caused damage through inaction and persons who had a duty to act with care toward the victim. If a person did not owe such a duty, their liability cannot be considered.[9] Thus, on the one hand, the concept of general duties to maintain safety is necessary in order to hold persons who have caused damage through inaction or indirectly accountable; on the other hand, it also serves as a filter that allows the circle of persons liable under tort law to be defined (narrowed).

Recognition of tortious liability based on a breach of a general duty to maintain safety also has a broader significance: 'recognition' of duties to maintain safety affects how the structure of tort law is understood, the composition of the general elements of tort, and the connections between different prerequisites for tortious liability.

Due to the scarcity of court decisions, current case law does not allow fundamental conclusions to be drawn as to whether the standard of conduct (duty to maintain safety) expected by the courts from legal subjects has become too high or too low. However, it cannot be said that the duty

[8] Judgments of the Civil Chamber of the Supreme Court of 10 June 2015 in civil case no 3-2-1-48-15, at 24 (parachute jump organiser's duty to maintain safety) and of 24 March 2021 in civil law case no 2-18-8345 (public park owner's duty to maintain safety).

[9] *Tampuu* (fn 4) 233.

to maintain safety has come to be interpreted as a duty to 'refrain' from causing harm to another person or a duty to 'ensure' that no harm is caused to another person.

3. Judgment of the Supreme Court of 19 March 2013, in Civil Case no 3-2-1-7-13[10]

The third Supreme Court judgment to be commented on is important because it provides explanations on how to apportion liability in the event of damage caused by two motor vehicles and operational risk. Estonian law does not contain a separate legal provision on how to apportion liability in the event of damage caused by motor vehicles. However, the final amount of compensation may be adjusted in accordance with the general rule on reduction of compensation according to § 139(1) of the LOA, which stipulates that if the damage was caused in part by circumstances attributable to the injured party or as a result of a risk for which the injured party is responsible, the compensation for damage shall be reduced to the extent that these circumstances or risks contributed to the occurrence of the damage. This approach was established by the Supreme Court in its judgment of 24 September 2007 in civil case no 3-2-1-75-07.[11] However, this decision did not state any information on what circumstances should be considered when applying § 139 of the LOA.

The Supreme Court's decision is important precisely because it clarifies for the first time the new approach of apportionment of liability in cases involving damage caused by two motor vehicles. According to the facts of the case, on 3 June 2007, a car belonging to the claimant and a motorcycle were involved in a traffic accident. The accident happened when the car driver started turning left and collided with the oncoming motorcyclist. The motorcyclist did not have a licence to drive a motorcycle. The courts of lower instances held that the car driver did not give way to the motorcyclist driving on the priority road, although the car driver should have given way. The claimant filed a claim for damages against the defendant in the amount of € 16,768.

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[10] The judgment has been commented on by *Lahe*/*Kull* (fn 5) nos 2–13. See also *J Lahe/I Kull*, Motor Vehicle Operational Risk and Awarding Damages in the Event of a Traffic Accident (2014) 5 Journal of European Tort Law (JETL) 105–120.

[11] According to previous case law, the situation was somewhat different. In its judgment of 4 November 2006 in civil case no 3-2-1-118-06, the Supreme Court noted that in the event of damage caused jointly by several possessors of major sources of danger, liability must be determined on the bases of the fault of each operator of a major source of danger.

The Civil Chamber of the Estonian Supreme Court held that circumstances arising from the risk as well as circumstances characterising the behaviour of drivers can be taken into account when determining the amount of damages for the purposes of § 139 of the LOA. Upon identifying the level of involvement of the direct possessor of each motor vehicle, the sum of all causes must be assessed. Above all, the degree of a potential threat objectively arising from each vehicle involved in an accident must be considered as circumstances arising from the risk. The extent of a potential threat depends, among other things, on the mass, speed, technical condition, safety equipment, etc, of the vehicle. Additionally, the objective nature and dangerousness of each specific manoeuvre of a vehicle because of which an accident occurred (eg overtaking, a failure to give way to another vehicle) can be assessed.

On the other hand, the behaviour of the drivers of the motor vehicles involved in causing an accident, especially the failure to exercise due care and disregarding traffic regulations can also be considered.

The Supreme Court noted that damages can be reduced to the minimum or precluded altogether only by way of an exception, notably if it has been identified that the accident was caused solely by a serious mistake of one party, as a result of which the other party, who did not break the traffic rules, was reasonably (ie exercising due care) unable to prevent the damage.

The positions presented in this decision have also served as a basis for the resolution of traffic accident cases in subsequent practice. However, the positions presented in the judgment under review have since been supplemented. For example, the Supreme Court has found that if it becomes apparent that both drivers violated the safe driving requirements set out in the Road Traffic Act[12] and their involvement in the traffic accident was, considering both their behaviour and the operational risks of their vehicles, more or less equal, the court has grounds, pursuant to § 139(1) of the LOA, to reduce the compensation for property damage awarded to the victim by 50 % on a presumptive basis.[13]

The Supreme Court has also noted that compensation for damage may be reduced pursuant to § 139 of the LOA even if it cannot be proven that either party violated traffic regulations, ie, the circumstances of the traffic

[12] Liiklusseadus (Road Traffic Act) of 17 June 2010 <https://www.riigiteataja.ee/en/eli/502092025003/consolide>.

[13] Judgment of the Supreme Court of 26 November 2015 in civil case no 3-2-1-64-15, at 11.

accident remain unknown.[14] In this case, compensation will be reduced solely on the basis of the risk associated with operating the vehicles.

Special attention should be paid to the position presented in the Supreme Court judgment in civil case no 3-2-1-7-13, according to which it is possible to reduce compensation to zero on the basis of § 139 of the LOA if the accident was caused solely by the gross negligence of one party, and therefore it was no longer reasonably possible for the other party to avoid the accident. This position means that, according to the doctrine applicable in Estonia, in the case of damage caused by two motor vehicles, there cannot be one 'party at fault' and one victim (ie, one party whose damage is compensated to 100 % and the other party is left without any compensation for damage). Compensation for traffic accidents is paid through the traffic insurance system. However, in practice, traffic insurance providers take the opposite approach to that of the Supreme Court. Almost always, one party is found to be liable, and the other party is the victim, and they are awarded compensation for the entire loss. When asked why the Supreme Court's guideline is ignored, it generally seems that both the parties involved in the traffic accident and the insurers are satisfied with a simple, black-and-white picture. It is easier and, in terms of damage assessment, 'cheaper' to consider one party as the victim and the other as the guilty party.

4. Judgment of the Supreme Court of 9 April 2008, in Civil Case no 3-2-1-19-08[15]

The fourth Supreme Court ruling discussed here is significant, in the authors' opinion, because the very narrowly defined right to claim compensation for non-pecuniary damage of a close relative of the direct victim in this judgment has been gradually expanded in subsequent court practice. Compensation for non-pecuniary damage of a close relative of the direct victim is provided for in § 134(3) of the LOA. The provision stipulates that in the event of an obligation to compensate damage caused by the death of a person or by causing them serious bodily injury or damage to their health, the relatives of the deceased or injured person

[14] Judgment of the Supreme Court of 26 November 2015 in civil case no 3-2-1-64-15, at 15.

[15] The judgment has also been discussed by *J Lahe/I Kull,* Estonia, in: H Koziol/BC Steininger (eds), ETL 2008 (2009) 240, nos 17–26. See also *J Lahe*/*I Kull*, Compensation of non-pecuniary damage to persons close to the deceased or to the aggrieved person (2016) 2 International Comparative Jurisprudence 1−7.

may also claim compensation for non-pecuniary damage if exceptional circumstances justify the payment of compensation.

In the judgment in civil case no 3-2-1-19-08, the Supreme Court explained for the first time how to interpret the exceptional circumstances referred to in § 134(3) of the LOA. According to the facts of the case, the defendant's employee (a bus driver) caused a traffic accident in which the bus collided with a van driven by the plaintiff's spouse. The plaintiff's spouse died as a result of the injuries sustained. The plaintiff claimed approximately € 64,000 in compensation for non-pecuniary damage from the defendant. Both the County Court and the Circuit Court dismissed the claim. The Supreme Court left the Circuit Court's judgment unchanged and dismissed the appeal. The Supreme Court noted that the law does not define the circle of 'close relatives.' This is left to the court to determine. In the opinion of the Civil Chamber of the Supreme Court, each individual case must be assessed separately, taking into account, among other things, the kinship of the persons, family ties, previous living arrangements, and other circumstances. Close relatives generally include the spouse who lived with the deceased person.

The Supreme Court found that the causation of death or a serious bodily injury cannot serve as an 'exceptional circumstance' within the meaning of § 134(3) of the LOA, but there must be additional circumstances justifying monetary compensation. The loss of a close person in the abstract sense, mourning and the pain of loss, which inevitably occur to a lesser or greater extent upon the death of every close person, cannot serve as an exceptional circumstance. Neither can the loss of family and a decline in the quality of life, as claimed by the plaintiff, serve as such a circumstance. These circumstances often accompany the loss of a close person.

According to the Civil Chamber, a claim for compensation of damage incurred by a close person would be justified particularly by the spatial closeness of the close person to the deceased or seriously injured person at the time of the damage, eg being in the same car at the time of the accident or immediately observing the accident or its consequences (being in the same 'danger zone'), as well as subsequent suffering caused by witnessing the injury or suffering of the deceased or seriously injured close person. The Court added that a claim would be justified if there had been a deliberate desire to attack or damage persons close to the victim, as well as the special circumstances of the damage, such as the tortfeasor's intention to cause damage to the victim in combination with the subsequent suffering of the close persons.

These positions have also been taken as a basis for the further application of § 134(3) of the LOA. Although the Supreme Court did not provide

an exhaustive list of exceptional circumstances in this decision, Estonian courts have regarded the examples provided by the Supreme Court (spatial proximity, etc) as an exhaustive list of exceptional circumstances. As a result, the possibilities for the relatives of direct victims to obtain compensation for non-pecuniary damage have remained very limited. For example, the plaintiff was not considered entitled to compensation in a case where the defendant drove a motor vehicle without having an independent right to drive (he was under 18) and caused a traffic accident in which a total of three people died, including both the plaintiff's parents. The plaintiff argued that there were exceptional circumstances in this case within the meaning of § 134(3) of the LOA as the defendant's criminal act caused the premature death of both of the plaintiff's parents. However, the Circuit Court took the view that the requirement for exceptional circumstances was not met in this case.[16] The Supreme Court did not accept the appellant's appeal for review.

Only in 2022 did the Supreme Court extend the interpretation of exceptional circumstances (in criminal case 7 October 2022 no 1-21-3082). In this case, the direct victim was a moped driver who died in a traffic accident. The claim for compensation for non-pecuniary damage was filed by the moped driver's two children and spouse.[17] The Supreme Court noted that the examples of exceptional circumstances in the above-mentioned judgment should not be taken as an exhaustive list, which mean that 'exceptionality' may also result from, among other things, the severe manner of death of the direct victim. The Criminal Chamber found that the particularly traumatic experiences of the victim's relatives can be referred to in order to conclude that the victim's death was unusually 'severe'. In the opinion of the Criminal Chamber, the circumstances of the death in this case exceeded the threshold at which it can be argued that the impact of the incident on the relatives of the deceased is more severe than usual, and therefore the claim for compensation for non-pecuniary damage is justified.

It cannot be directly stated that the Supreme Court changed its previous practice in interpreting § 134(3) of the LOA with the described judgment. However, it is possible that the explanation given by the Supreme Court may lead to changes in the future application of § 134(3) of the

[16] Decision of Tallinn District Court of 22 March 2011 in civil case no 2-10-779.

[17] In this case, the three victims each claimed € 15,000 in damages, but the court awarded € 3,000 to each of them, justifying this on the grounds of negligence, admission of guilt, sincere and heartfelt remorse, and apologies to the victims. See judgment of the Criminal Chamber of 7 October 2022 in criminal case no 1-21-3082, at 31.

LOA and courts will also assess whether the death of the direct victim occurred in a particularly severe and tragic manner. This is by no means rare in the case of traffic accidents or crimes.

5. Judgment of the Supreme Court of 26 September 2006, in Civil Case no 3-2-1-53-06

In the fifth judgment in question, the Supreme Court for the first time stated general principles for establishing a causal link and even more significant, gave its opinion on how to resolve a case when it has been established that the damage was caused alternatively by the circumstances brought about by the victim themselves or by another person's behaviour.[18] The Law of Obligations Act (§ 127(4)) establishes the *conditio sine qua non* principle, according to which, a person is liable for damages only if the circumstance on which their liability is based is related to the occurrence of the damage in such a way that the damage is a consequence of that circumstance. This principle is applied by means of the elimination and substitution method.

The elimination method is primarily used in cases of active conduct, asking whether the damage would have occurred if the breach of contract or unlawful act had not taken place.[19] If the consequences would have occurred even without the actions of the defendant, the actions would not have caused the damage. The method of substitution is applied in cases of inaction on the part of the party who caused the damage, replacing the passive behaviour of the party causing the damage with lawful behaviour.

Since the application of the *conditio sine qua non* rule alone in determining causality would result in overly broad liability for a tortfeasor, both in terms of the damage to be compensated and the circle of persons to be held liable, the causal link is also examined at the level of legal cause. The legal cause of the damage is determined through the theory of the purpose of the provision, assessing whether the purpose of the violated provision was to oblige the person who caused the damage to protect the victim and whether it was intended to apply to damage such as that which was caused in the particular case. In a situation where the claimant is unable to prove that there is a causal link between the damage

[18] The judgment is commented on by *J Lahe/I Kull*, Estonia, in: E Karner/BC Steininger (eds), ETL 2006 (2008) 178, nos 10–17.

[19] *K Sein*, § 127, comments, in: P Varul et al (eds), Võlaõigusseadus I, Kommenteeritud väljaanne [Law of Oblgations Act I, commented edition] (2017) at 4.10.

suffered and the defendant's actions, no compensation for damage will be awarded.

According to the circumstances of the case, there was an accident in 2003 at the defendant's, ie, employer's, workplace that caused severe bodily harm to one of the employees, who was buried under an unsupported partition wall. The employee was hospitalised and remained in hospital for a period of one month. After being referred for home treatment, the victim died. The victim's death certificate states that the immediate cause of death was acute pulmonary heart failure and the underlying cause was pulmonary artery thromboembolism. The plaintiff, who was the victim's son, asked the employer to pay monthly compensation of € 255 for the damage caused by the death of the victim as the plaintiff's breadwinner, from the date of the victim's death until the filing of the claim in October 2008, and a one-time compensation sum of € 5,400. The court of first instance dismissed the action. The circuit court agreed, finding that the plaintiff had not provided reliable evidence that the defendant had unlawfully caused the death of the victim, as the pulmonary embolism could have been caused by reasons other than the trauma sustained in the accident at work.

The Supreme Court overturned the circuit court's decision and explained that the courts had to examine whether the victim would still have been alive if the accident had not occurred. If the pulmonary artery thromboembolism would also have developed without the injuries caused by the accident, there would be no causal link between the victim's death and the injuries caused by the accident and thus the accident itself. In a case where the cause of death alternatively is injuries caused to the victim by the defendant or an event which is not linked with the actions of the defendant (eg victim's poor health), then, according to the Supreme Court, it is not in compliance with the principal of good faith for the plaintiff to be obliged to prove that the cause of damage was something other than the defendant's actions.

Therefore, in order to hold the defendant liable under tort law for causing bodily injury to another person and for causing the death of that person, the plaintiff must prove only the defendant's act – causing bodily injury – as the possible cause of the damage. In the event of competing causes of damage, the defendant must prove that their act was not the cause of death, ie that the cause of death was one of the alternative circumstances, to be released from the obligation to compensate the damage.

The above principle, according to which the burden of proof is reversed in cases of alternative causation in causing damage to health or

death, has become a general principle that the Supreme Court has also applied in subsequent decisions.[20]

In this court ruling, the Supreme Court, for the first time in the context of compensable damage, also clarified the protective purpose of the obligation or provision. The Law of Obligations Act (§ 127(2)) stipulates that damage is not compensable to the extent that the prevention of damage was not the purpose of the obligation or provision whose breach gave rise to the obligation to compensate the damage. The Supreme Court explained that, in the case of torts where the unlawfulness of the act arises from harmful consequences (§ 1045(1)1), 2), 3) and 5) LOA), the protective purpose of the provision is generally limited, within the meaning of § 127(2) of the LOA, by the relevant provisions of Chapter 7 of the LOA, which regulate the scope of compensation claims by type of violated legal object (§§ 129–132 LOA). This means that, in general, no other additional damage is subject to compensation. The purpose of contractual liability protection is also limited in the event of damage to the legal objects specified in these provisions in accordance with § 127(2) of the LOA, and damage must be compensated to the extent specified in these provisions, unless otherwise provided by contract or law.[21]

[20] See for example judgment of the Supreme Court of 3 October 2006 in civil case no 3-2-1-78-06 (at 13). In this judgment, it was found that if the claimant's health impairment could alternatively have been caused by medical malpractice or other circumstances (eg, his own health condition) for which the doctor is not responsible, a causal link between the medical malpractice and the damage must be presumed, ie the claimant does not have to prove that the other circumstance was not the cause of the damage. If the claimant's health damage and injury were caused by both medical malpractice and other circumstances for which the doctor is not responsible, this does not release the defendant from liability, as his actions also caused the injury. Thus, the burden of proof is reversed. The position that the victim's own violations do not preclude the liability of the party in breach has also been clarified by the Supreme Court, for example in its judgment of 27 June 2025 in civil case no 2-19-14759, at 12.6.

[21] The relevant positions of the Supreme Court have been discussed, for example, in the article by *T Tampuu/J Lahe*, Võlaõigusseadus I. Kommenteeritud väljaanne [Law of Obligations I. Commented Edition.] Comments on Chapter 7 of the Law of Obligations Act (2007) 5 Juridica 315 f. See also *E Kalev*, The Possibility of Compensation for Health Damage in Cases of Uncertain causes within the Victim's Sphere (2014) 21 JI 206 ff.