

## XIV. Latvia

*Agris Bitāns*

### A. LEGISLATION

#### **1. Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners (*Sauszemes transportlīdzekļu īpašnieku civiltiesiskās atbildības obligātās apdrošināšanas likums*) (Latvian Herald (*Latvijas Vēstnesis*) No. 65, 27 April 2004)**

On 7 April 2004 the Latvian parliament adopted a new Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners effective from 1 May 2004. The law includes provisions arising from the Directives 72/166/EEC, 84/5/EEC, 90/232/EEC, 92/49/EEC and 2000/26/EC. 1

This law replaces the previous law adopted on 13 March 1997. Substantial administrative changes have been made in the area of compulsory third party liability insurance for motorists. The Latvian Motor Insurers' Bureau is now responsible for the successful operation of the motor vehicle owners' compulsory third party liability insurance system<sup>1</sup>. The Bureau is no longer a state-owned entity. 2

Substantial changes have also been made in other areas. The law (sec. 15) now sets new limits on insurer's liability: 250,000 lats (approx. € 360,000) for indemnification of personal loss for each injured person and 70,000 lats (approx. € 100,000) for indemnification of property loss irrespective of the number of third persons. Previously the Cabinet of Ministers had established lower 3

<sup>1</sup> Sec. 43. Latvian Motor Insurers' Bureau

(1) The successful operation of the motor vehicle owners' compulsory third party liability insurance system in the country according to its purposes and objectives is ensured by the Latvian Motor Insurers' Bureau, which combines all insurance companies authorised to perform motor vehicle owners' compulsory third party liability insurance in Latvia.

(2) The activities of the Latvian Motor Insurers' Bureau are governed by this law, but its legal status is governed by the Societies and Foundations Act.

(3) If an insurer is excluded or withdraws from the Latvian Motor Insurers' Bureau, they will notify the Financial and Capital Market Commission.

(4) The Latvian Motor Insurers' Bureau shall perform green card office functions in Latvia.

(5) The Latvian Motor Insurers' Bureau independently makes decisions within its competence, performs assignments and is responsible for their fulfilment.

- limits: 10,000 lats (approx. € 14,500) for indemnification of personal loss and 9,000 lats (approx. € 13,000) for indemnification of property loss.
- 4 The law permits a request for compensation (indemnification) from a third person in respect of losses which are not indemnified under this law or which exceed the insurer's liability limit, i.e. by filing a civil claim under general law.
  - 5 A new progressive point in the law is the broadened definition of personal loss<sup>2</sup>. In addition to material losses caused to a person in a traffic accident, the new law permits compensation of non-material losses associated with pain and mental suffering. The law recognises non-material losses caused in a traffic accident associated with pain and mental suffering due to: 1) physical trauma to the injured person; 2) mutilation and/or disability of the injured person; 3) death of the breadwinner, dependent or spouse; 4) group I disability of the breadwinner, dependent or spouse.
  - 6 This is not the best definition or description of non-pecuniary loss. The law demonstrates that the legislator did not quite understand the system and essence of personal injury and non-pecuniary loss. It should be noted, however, that this is the first time that the legislator has officially recognised that pain and mental suffering deserves legal compensation.
  - 7 The Latvian Parliament has delegated the power to determine the scope of insurance indemnity and the procedure for indemnity calculations in respect of material and non-material personal losses to the Cabinet of Ministers. The Cabinet of Ministers has drafted a regulation setting a liability limit for pain and mental suffering at 1,000 lats (approx. € 1,430) for each injured person. There is much debate among legal professionals about the inadequacy of this liability limit.

## 2. Amendments to the Labour Code (*Darba likums*) (Latvian Herald (*Latvijas Vēstnesis*) No. 72, 7 May 2004)

- 8 New amendments to the Labour Code introduced on 22 April 2004 grant new safeguards for the employee against breach of the prohibition against differential treatment and the prohibition against causing adverse consequences.

<sup>2</sup> Sec. 19. Personal loss

(1) Material losses caused to a person in a traffic accident are losses associated with the following things of the injured person:

- 1) medical treatment;
- 2) temporary disablement;
- 3) loss of ability to work;
- 4) death.

(2) Non-material losses caused to a person in a traffic accident are losses associated with pain and mental suffering due to:

- 1) physical trauma to the injured person;
- 2) mutilation and/or disability of the injured person;
- 3) death of the breadwinner, dependent or spouse;
- 4) group I disability of the breadwinner, dependent or spouse.

(3) The scope of insurance indemnity and the procedure of its calculation for material and non-material losses to a person is determined by the Cabinet of Ministers.

- The employee is now protected not only against direct and indirect discrimination but also against personal injury, because personal injury also qualifies as discrimination within the meaning of this law under sec. 29(4). 9
- The amendments also entitle the employee to request compensation for loss and compensation for moral harm if the prohibition against differential treatment and the prohibition against causing adverse consequences is violated. 10
- The court has discretion to award compensation for moral harm in case of dispute under sec. 29(8)<sup>3</sup>. 11

<sup>3</sup> Sec. 29. Prohibition of Differential Treatment

(1) Differential treatment based on the gender of an employee is prohibited when establishing legal employment relationships, as well as during the period of existence of legal employment relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training, as well as when giving notice of termination of an employment contract.

(2) Differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition, which is reasonable for the legal purpose reached as a result, for the performance of the relevant work or for the relevant employment.

(3) If in case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for performance of the relevant work or the relevant employment.

(4) Injury to a person and instructions to discriminate against him or her shall also be deemed to be discrimination within the meaning of this Law.

(5) Direct discrimination exists if in comparable situations the treatment of a person in relation to his or her belonging to a specific gender is, was or may be less favourable than in respect of another person.

(6) Indirect discrimination exists if in comparable situations evidently neutral provisions, criteria or practice cause or may cause adverse consequences for persons belonging to one gender, except in cases where such provisions, criteria or practice is objectively substantiated with a legal purpose the achievement of which the selected means are commensurate.

(7) Injury to a person within the meaning of this Law is the subjection of a person to such actions which are unacceptable from that person's point of view, associated with his or her belonging to a specific gender, including acts of a sexual nature if the purpose or result of such acts is infringement of the person's dignity and the creation of an intimidating, hostile, humiliating, degrading or offensive environment.

(8) If the prohibition against differential treatment and the prohibition against causing adverse consequences is violated, an employee, in addition to other rights specified in this Law, has the right to request compensation for losses and compensation for moral harm. In case of dispute, a court at its own discretion shall determine the compensation for moral harm.

(9) The provisions of this Section, as well as Sec. 32, Paragraph one and Sec. 34, 48, 60 and 95 of this Law, insofar as they are not in conflict with the essence of the relevant right, shall also apply to the prohibition of differential treatment based on race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status or other circumstances of an employee.

**3. Administrative Procedure Law (*Administratīvā procesa likums*) (Latvian Herald (*Latvijas Vēstnesis*) No. 164, 14 November 2001) and Amendments to the Law (Latvian Herald (*Latvijas Vēstnesis*) No. 12, 23 January 2004)**

12 The present statute came into force on 1 February 2004. The law introduces a new era in the Latvian legal system – administrative procedure. The new law is based on principles typical for continental Europe<sup>4</sup>, and is mainly influenced by German public and administrative law<sup>5</sup>.

13 The law introduces many novelties such as a new Administrative court, the re- definition of legal principles in administrative processes, the requirements for an administrative act, the description of the obligations of subjects in administrative processes and the changing of burden of proof for institutions. The new law directly declared that any institution (state or local) is liable for losses and personal harm caused by it as a result of revocation of the administrative act (Clause 3 sec. 85)<sup>6</sup>. In addition, the mentioned law recognises a general right of private persons to claim from any institution compensation not just for financial loss but also for personal harm, including moral harm, caused by an administrative act or an actual action of an institution (sec. 92)<sup>7</sup>. This allows an award of compensation for non-pecuniary loss, which has been very limited in Latvian court practice so far.

**4. Amendment to Law on the Bar (*Advokatūras likums*) (Latvian Herald (*Latvijas Vēstnesis*) No. 65, 27 April 2004)**

14 New amendments to the Law on the Bar introduced on 27 May 2004 define more precisely when sworn advocates will be responsible for damage inflicted to the client from the legal assistance provided by an assistant sworn advocate. Besides the general obligation to compensate damage inflicted to the client by himself (sec. 110)<sup>8</sup>, a sworn advocate shall be liable for losses caused to the client which have arisen from the legal assistance provided by an assistant sworn advocate not just only in his/her first year of practice, as was previously the case, but if an assistant sworn advocate has not passed the second exam for

<sup>4</sup> K. Dišlers, *Ievads administratīvo tiesību zinātnē* (2002), 252.

<sup>5</sup> F.J. Paine, *Vācijas vispārīgas administratīvās tiesības* (2002), XXII.

<sup>6</sup> Sec. 85. Revocation of a Legal Administrative Act

<sup>7</sup> 3) If the administrative act is revoked in accordance with Paragraph two, Clause 3 or 4 of this Section, the relevant public law legal person shall, in accordance with Chapter 8 of this Law, compensate the addressee for losses and personal harm caused to him or her as a result of revocation of the administrative act.

<sup>8</sup> Sec. 92. Right to Compensation

Everyone is entitled to claim due compensation for financial loss or personal harm, including moral harm, which has been caused to him or her by an administrative act or an actual action of an institution.

<sup>9</sup> Sec. 110. If the sworn advocate has permitted an infringement upon the right of a client which has resulted in some kind of damage for the client, then the client shall be entitled to demand compensation from the former, depending on the extent to which the former may be held responsible for this.

this profession<sup>9</sup>. That means, that a sworn advocate shall be liable for a longer period of time for losses caused to the client which have arisen from the legal assistance provided by his/her assistant if he/she does not successfully pass the second exam of this profession during his/her first year.

## B. CASES

**1. Riga Regional Court 13 October 2004, No. C04186703 (CA-916/04)<sup>10</sup>: Mass Media is not Liable for Information Received from Official Source and Small Disagreements Concerning Facts is no Base for Liability of Mass Media**

**a) Brief Summary of the Facts**

On 5 September 2002 the national news agency distributed information that the medicine supervisory body had stated that the death of a patient was partially due to the fault of the surgeon during treatment. The surgeon was given a severe warning. On 2 October 2002 the news agency again reported on a new case, where the medicine supervisory body stated that the death of another patient was partially due to the fault of the same surgeon during treatment and the surgeon had to pay a fine of 100 lats (approx. € 150). National newspapers and national TV distributed this information to the public. The press published articles with such titles as “After patient death, doctor is severely warned”, “For partial fault for patient’s death – warning for doctor”, “Doctor is blamed for patient’s death and punished with a fine”, “A doctor will pay 100 lats for death of patient”, “Who killed the patient?” and “Price of life – 100 lats”.

The surgeon initiated civil proceedings, because he was of the opinion that false information had been published and distributed concerning 1) that he is culpable (or partly culpable) for the death of the patients; 2) that he was administratively punished for his fault (or partial fault) in the death of the patients; 3) the amount of the fine – 100 lats. The claim was based on sec. 2352<sup>a</sup> of the Civil Code<sup>11</sup>. He considered that his reputation is injured as a result of

<sup>9</sup> Sec. 111. In the cases prescribed in Art. 110 of this Law, a sworn advocate shall be liable for losses caused to the client which have arisen from the legal assistance provided by an assistant sworn advocate who has not successfully passed the second exam of sworn advocate’s assistant, as well as those losses caused as a result of a case conducted with the patron’s permission.

<sup>10</sup> Not officially published.

<sup>11</sup> Sec. 2352a. Each person has the right to bring court action for the retraction of information that injures his or her reputation and dignity, if the disseminator of the information does not prove that such information is true.

If information which injures a person’s reputation and dignity, is published in the press, then where such information is not true, it shall also be retracted in the press. If information which injures a person’s reputation and dignity is included in a document, such document shall be replaced. In other cases, a court shall determine the procedures for retraction.

If someone unlawfully injures a person’s reputation and dignity orally, in writing or by acts, he or she shall provide compensation (financial compensation). A court shall determine the amount of the compensation.

this untrue information and that the news agency is liable for damaging his reputation because all media received information from it.

- 17 He indicated that, as result of distributing false information, he lost his post as the head of department at the hospital where he was deputy. He also received a few nervous letters from his international partners regarding his ability to continue research in the S.T.I.C.H. project (Surgical Trial in Intracerebral Haemorrhage). The financial benefit he received from participating in that project was significant for him.
- 18 He demanded the retraction of the false information and 50,000 lats (approx. € 70,000) for non-pecuniary loss.
- 19 During the court procedure it was discovered that the plaintiff had been reprimanded only with a warning and that the fine was only 50 lats (approx. € 70). There were only formal breaches of medical procedure and there were no documents which stated that the surgeon was responsible for the death of the patients.
- 20 Representatives from the medicine supervisory body denied that they provided information regarding the culpability of the surgeon. The interview was not recorded. There were few breaches from a professional point of view although there had been some delays during treatment.
- 21 The news agency referred to the fact that they received information about the partial fault of the surgeon and the fact the he was punished from representatives of the medicine supervisory body. According to sec. 29<sup>12</sup> of the Law on the Press and other Mass Media, the mass media shall not be held liable for the dissemination of false information if it received such information from official authorities. The news agency pointed out that another journalist from a newspaper received similar information regarding the fault of the surgeon. Additionally they emphasized that, in point of fact, the information provided was correct containing only slight inaccuracies. The news agency also highlight the fact that they cannot be held liable for headlines, comments and reports made by the media, because they published their own interpretation of the facts.

#### b) Judgment of the Court

- 22 The court established that the plaintiff was indeed administratively punished for breaches in medical treatment on two occasions, receiving a severe warning and having to pay a fine of 50 lats. The judge stated that there was no dis-

<sup>12</sup> Sec. 29. Release from Liability

Mass media shall not be held liable for the dissemination of false information if it contains:

- 1) official documents of the State authorities and administrative bodies, announcements by political and public organisations;
- 2) announcements by official information agencies; and
- 3) publications by officials.

cussion that publications were addressed to the breaches during medical care (treatment) of the patients, who died during treatment. The court established that the plaintiff was involved in the medical treatment of the patients who later died. The court also pointed out that the surgeon was punished for permitted breaches during treatment of the patients.

The court established that it is impossible to evaluate the headlines of the articles independently from the context of the whole article and the information should be evaluated overall. 23

The court stated that it is irrelevant either that the incorrect amount of fine – 100 lats instead 50 lats – was published or that the surgeon received a severe warning instead of a warning, because such inaccuracy cannot injure the dignity and reputation of the plaintiff. 24

The court, taking evidence into consideration, stated that the medical supervisory body established the plaintiff's partial fault for the patients' deaths. The court also established that the medical supervisory body provided information to a reporter. Inasmuch as the information is true, there is no basis for holding the news agency liable. 25

The plaintiff did not appeal against the judgment. 26

#### c) Commentary

With the present judgment the court recognises four main principles regarding the protection of personal dignity and reputation. 27

Firstly, the media shall not be held liable for information received from an official authority. There is a possibility to prove that a journalist received information from an official authority with indirect evidence. 28

Secondly, culpability (partial or total) is not only a legal term. Using such a term is permissible in a publication if the patient died as result of the medical treatment and if it is stated that the doctor committed errors during the medical treatment of the patient, especially if he/she is punished for these errors later. 29

Thirdly, it is essential to evaluate the context of a whole article and not only part of it, for example, only the headlines. 30

Fourthly, irrelevant inaccuracies, for example, inaccuracy regarding the scale of punishment, cannot injure the dignity and reputation of the plaintiff if in point of fact the information is correct. 31

**2. Senate of the Supreme Court, 25 August 2004, No. SKC-387<sup>13</sup>:  
Liability for Instructing another Person to Perform a Wrongful Act**

**a) Brief Summary of the Facts**

32 A local authority allowed a road building company to mine for sand needed for building a local road on dredged sand in 1992. The dredged sand is located on some land owned by a private individual. The local authority restored ownership of the land during the denationalisation process in December 1991. The local authority neither requested nor received the landowner's consent to use the dredged sand located on his land.

33 After mining for sand from the dredged sand there was a pit seven metres deep and 0.5 hectares in area. The landowner concluded an agreement with entrepreneurs who calculated that the filling in of the pit and the recovery of the soil would cost 6,200.16 lats (approx. € 9,000). The landowner filed a civil claim against the local authority and the road building company and demanded compensation for damage.

**b) Judgment of the Court**

34 The court of first instance dismissed the claim but the Supreme Court satisfied the claim in part by recovering the amount from the local authority only. The court established that the local authority had instructed the road building company to mine for sand from the dredged sand located on the plaintiff's land. Sec. 36 of the Land use and Survey Act permits compensation to be claimed from the person who caused the damage<sup>14</sup>.

35 The court concluded from the above that the local authority is liable for damage caused to the landowner and by reference to sec. 1779<sup>15</sup> of the Civil Code, the court decided that the claim should be satisfied in part.

36 The local authority filed a cassation appeal but the Supreme Court Senate upheld the decision of the Supreme Court in its decision of 25 August 2004 in the case SKC-387.

**c) Commentary**

37 In addition to the above-mentioned arguments, the court had the possibility of applying sec. 1781<sup>16</sup> of the Civil Code, which was directly applicable in the

<sup>13</sup> Not officially published.

<sup>14</sup> Sec. 36. Compensation of land users

Losses suffered by land users shall be fully indemnified by individuals or entities whose fault has caused such losses, including losses associated with the infringement of a land user's rights, expropriating or leasing his land and land quality deterioration.

<sup>15</sup> Sec. 1779. Everyone is liable to compensate for loss and damage he has caused by his acts or omissions.

<sup>16</sup> Sec. 1781. A person who has instructed another person to perform a wrongful act shall be liable for the action of the other person, notwithstanding that the acts of such person exceed the limits of the instructions. A person who has given another person cause for such action as results in losses to a third person, shall similarly be liable.

present case. The local authority gave wrong instructions to the road building company to mine for sand from the dredged sand.

The present judgment highlights an unacceptable practice regarding damage (loss). While sec. 1770 of the Civil Code states that a loss (damage) shall be understood to mean any deprivation which can be assessed financially, the courts usually neglect the provisions of sec. 1771, which clearly define two types of damage – already arisen and anticipated. Only arisen damage is compensable and in the case of anticipated damage only a right to security can be granted to the victim. From this we can conclude that an assessment of the necessary repairs in the future is not a sufficient ground for a court to grant compensation for damage.

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## C. LITERATURE

**1. A. Bitāns, Tiesas ieskats un svarīgi iemesli civiltiesisku strīdu izskatīšanā (Court discretion and good causes in resolving civil disputes), *Latvijas Universitātes Raksti* (Scientific Papers of University of Latvia) [2004] Law Volume 667, 107–132**

This article is mainly concerned with the meaning and frontiers of judicial discretion and good cause in civil law. The author addresses a topical issue yet to be sufficiently explored, i.e. how the court should determine an adjudication of a civil dispute if the legislator has left it at the court's discretion by means of a special section of the Civil Code (i.e. sec. 5). The topicality of this question is confirmed by the increasing number of court claims seeking pecuniary compensation for moral injuries.

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Despite the laconic style, applying sec. 5 requires the judge to have a wide knowledge of justice and general principles of law, as well as an ability to invoke these criteria as grounds in his judgment, in particular because the court has a duty to apply sec. 5 in statutory instances even if the plaintiff fails to refer to it in his claim.

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The author points out the restrictions in applying this provision of substantive law. The notion of justice is examined from both historical and legal aspects, as well as with respect to civil law.

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Sec. 5 of the Civil Code is not applicable as a general provision to all civil disputes but only in statutory instances. This provision of substantive law is not intended to create or interpret a new law or right but to protect infringed rights.

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With respect to an awareness of justice, the court should be guided by the sense of justice which exists at the time of adjudicating the dispute, even if it differs from that prevailing at the date the law was enacted. Justice is not

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something that may be described as subjective or abstract. Justice is rather an objective phenomenon that may be applied to each and every person. To pass a rightful judgment means to achieve the basic objective of civil law. The court should specify the principles of law applied in passing judgment, as well as the grounds which caused the court to hold that such judgment meets the sense of justice.

- 44 In analysing the court practice of applying sec. 5, the author points out the need to improve the quality of judgments in terms of reasonability, i.e. the courts are urged to set out in more detail the arguments of justice and principles of law serving as a basis for passing judgment. Likewise, the author urges the Senate not to be afraid of undertaking the review function.

**2.- A. Bitāns, Senāta loma CL 5.p. piemērošanā (The Senate's role in applying sec. 5 of the Civil Code), *Latvijas Vēstnesis*, vol. 117 (3065), 27 July 2004 and vol. 121 (3069), 3 August 2004**

- 45 The author addresses the topical question of how the Latvian Supreme Court Senate should control the implementation of sec. 5 of the Civil Code, which requires the court to use discretion or invoke good causes in determining a case.
- 46 The author deals with an issue yet to be sufficiently explored, i.e. the role and responsibility of the Senate as a third-tier court. The topicality of this issue is confirmed by the increasing number of controversial court decisions, especially regarding the lawfulness of lower court decisions regarding pecuniary compensation for moral injuries.
- 47 The court should specify the principles of law applied in passing the judgment, as well as the grounds which caused the court to hold that such judgment meets the sense of justice and the Senate is under an obligation to review and control the implementation of general principles.
- 48 The existing court practice of applying sec. 5 is unsatisfactory and the author points out the need to improve the quality of court judgments in terms of reasonability. The Senate should demand that the court sets out in more detail the arguments of justice and principles of law serving as a basis for passing judgment.