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**Tort and Insurance Law
Yearbook**



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European Tort Law 2008



SpringerWienNewYork

XV. Latvia

Agris Būdiņš

A. LEGISLATION

1. Amendments to the Competition Law (*Grozījumi Konkurences likumā*) Latvian Herald (*Latvijas Vēstnesis*) No. 51 (3836) 2 April 2008

On 13 March 2008 the Latvian parliament adopted amendments into the Competition Law, which has been in force since 1 January 2002. The main idea is to harmonise the Competition Law to Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Art. 81 and 82 of the Treaty¹.

Besides defining more precisely terms such as “dominant position”, “significant influence” and other important issues related to competition, the present statute introduces a new regulation regarding compensation for losses incurred due to a violation of this Law.

According to art. 21, a person who has incurred losses due to a violation of this Law is entitled to seek compensation for losses from the violator directly through court. It is important to mention that the legislator now allows parties to seek compensation if the latter suffer loss from *any* breach of the Competition Act and not only under limited circumstances as was previously the case. In addition to compensation for losses, the Law provides a right to request statutory interest as defined by art. 1765² of the Civil Law.

¹ Official Journal (OJ) L 1, 4.1.2003, 1–25.

² Art. 1765: The interest rate shall be precisely stipulated in the document or transaction. If this has not been done, as well as in cases where the law requires calculation of lawful interest, that is, at six per cent per year. The lawful interest amount for the late payment of such a money debt, which is contracted for as compensation in the contract for the supply of goods, for purchase or provision of services, shall be seven percentage points above the basic interest rate (Section 173, Paragraph three) per year, but in contractual relations in a consumer participates – six per cent per year.

The basic interest rate shall be four per cent. This basic rate shall change every year on 1 January and 1 July by such percentage points in which amount since the previous interest basic rate changes has increased or decreased the latest refinancing rate, which the bank of Latvia has

- 4 The amount of compensation is to be established based on general civil law principles. The latest legal theory³ recognises three preconditions for compensation of damage (pecuniary loss): 1) unjustifiable act (conduct), which includes an evaluation relating to culpability; 2) existence of loss and 3) a causal connection between the unlawful act and pecuniary loss.
- 5 However, the statute provides a new possibility which is uncharacteristic for the establishment of compensation in civil law. The amendment gives victims the right to request that the court set the amount of compensation at its discretion. This amendment partly introduces the principle which is defined by the second sentence of art. 2:105⁴ of the Principles of European Tort Law.

2. Law on the Evangelical Lutheran Church of Latvia (Latvijas evaņģēliski luteriskās Baznīcas likums) No. 188 (3972) 3 December 2008

- 6 On 20 November 2008 the Latvian parliament adopted the Law on the Evangelical Lutheran Church of Latvia. This statute has been in force since 17 December 2008. The purpose of the statute is to facilitate the development of open, law governed and harmonic society and cultural environment as well (sec. 1 art. 2). Since the Evangelical Lutheran Church of Latvia has a long tradition in Latvia and the Church is in possession of significant national cultural and artistic property, it is important to regulate the legal relationships between the state and the Church (sec. 2 art. 2). However, the regulation also deserves attention from a tort law perspective.
- 7 The statute states that only the Church, its parishes, and institutions founded by the Church are allowed to use the name of Evangelical Lutheran Church of Latvia. The designation of other religious organisations, associations, or foundations must be clearly different from the Church designation (sec. 4 art. 3). The Law grants the Church the right to request the termination of use of its name, as well as compensation for suffered damage (pecuniary loss) (sec. 5 art. 3). This regulation is somewhat unique in that the legislator directly describes legal remedies for the illegal use of a name. However, it appears from the legal norm that the statute does not grant a right to compensation for non-pecuniary loss suffered as a result of the illegal use of a name. There is no justification for such a limitation.

specified prior to the relevant half-year date. After the 1 January and 1 July each year, the Bank of Latvia shall publish without delay in the newspaper *Latvijas Vēstnesis* a notice regarding the interest basic rate in effect in the relevant half-year.

Interest shall be calculated only on the principal itself. But if within the term stipulated, the interest is not paid for one year or more, pursuant to the demand of the creditor, lawful interest shall be calculated on the outstanding amount of interest from the commencement of the term referred to.

³ K. Torgāns, *Saistību tiesības. 1 daļa (Obligation Law, vol. I)* (2006) 209

⁴ Art. 2:105: Proof of damage

Damage must be proved according to normal procedural standards. The court may estimate the extent of damage where proof of the exact amount would be too difficult or too costly.

The Church has the right to store information about parishioners in accordance with procedure established by the Church, but has to comply with general principles of processing of personal data established by the Law (sec. 6 art. 3). These principles are to be found in the Personal Data Protection Law which has been in force since 20 April 2000. 8

3. Law on the Orthodox Church of Latvia (*Latvijas Pareizticīgās Baznīcas likums*) No. 188 (3972) 3 December 2008

On 20 November 2008 the Latvian parliament adopted the Law on the Orthodox Church of Latvia. This statute has been in force since 17 December 2008. The purpose of the statute is to facilitate the development of open, law governed and harmonic society and cultural environment as well (sec. 1 art. 2). Since the Orthodox Church of Latvia has a long tradition in Latvia and is in possession of significant national cultural and artistic property, it is important to regulate legal relationships between the state and the Church (sec. 2 art. 2). However the regulation also deserves attention from a tort law perspective. 9

The statute states that only the Church, its parishes, and institutions founded by the Church are allowed to use the name *Orthodox Church of Latvia*. The designation of other religious organisations, associations or foundations must be clearly different from the Church designation (sec. 5 art. 3). The Law grants the Church the right to request the termination of use of its name, as well as compensation for suffered damage (pecuniary loss) (sec. 6 art. 3). This regulation is unique in that the legislator directly describes legal remedies for the illegal use of a name. However, it appears from the legal norm that the statute does not grant a right to compensation for non-pecuniary loss suffered as a result of the illegal use of a name. There is no justification for such a limitation. 10

The Church has the right to store information about parishioners in accordance with procedure established by the Church, but has to comply with general principles of processing of personal data established by the Law (sec. 8 art. 3). These principles are to be found in the Personal Data Protection Law which has been effective since 20 April 2000. 11

B. CASES

1. Senate of the Supreme Court, 2 April 2008 No. SKC-143;² Preconditions for Compensation of Pecuniary Loss: 1) Unjustifiable Act (Conduct) 2) Loss 3) Causal Link

a) Brief Summary of the Facts

The plaintiff initiated civil proceedings against the defendant – an association of apartment owners. On 1 September 2003 the plaintiff sent a letter to the defendant requesting it issue a confirmation that the plaintiff had fully paid all his 12

² Published at <<http://www.at.gov.lv/lv/info/archive/departments/2008/>>.

heating expenses for the time period from October 2001 to April 2002. Since the plaintiff had participated in the Chernobyl clean-up efforts such a confirmation would have allowed the plaintiff to be reimbursed by a foreign NGO for the heating expenses in the above-mentioned time period. As the defendant did not provide such a confirmation, on 29 October 2003 the plaintiff initiated civil proceedings, with a request to oblige the defendant to issue a confirmation that the plaintiff did indeed pay LVL 137.83 (approx. € 200) in heating costs for the above-mentioned time period. The first instance court satisfied a claim on 29 April 2004 and the second instance court satisfied a claim on 14 November 2004. However, the defendant issued a confirmation only on 19 June 2006. On 12 January 2004 the plaintiff received a letter from the NGO "Chernobyl-86" that the plaintiff's request for compensation of LVL 137.83 (approx. € 200) had been denied due to the fact that the plaintiff had not submitted a confirmation regarding the payment of heating costs for the time period 2001/2002 within due time. Based on art. 1775 and 1779 of the Civil Code, the plaintiff once again initiated civil proceedings against the same defendant for compensation of damage equal to the amount which would have been reimbursed if a confirmation had been submitted by the defendant i.e. LVL 137.83 (approx. € 200).

- 13 The first instance court rejected the claim, but the appeal court fully satisfied the claim on 24 October 2007 based on art. 1779 of the Civil Code. The appeal court disagreed with the first instance court that there is no illegal unjustifiable conduct regarding the failure to issue a confirmation concerning paid heating expenses. This failure led to the plaintiff not being reimbursed for his heating expenses from a third party. Also, there is a clear causal link between the illegal behaviour of the defendant and the loss suffered.
- 14 The defendant submitted cassation. The defendant argued that it was not certain that the plaintiff would have had his heating expenses reimbursed under Russian law and, therefore, the court could not come to the conclusion that there is a real loss as a precondition for the awarding of compensation. In addition the defendant pointed out that the court did not apply art. 1776 of the Civil Code which states that a victim may not claim compensation if he or she could have, through the exercise of due care, prevented the loss. The plaintiff did not inform the defendant that the confirmation was necessary in order to have his heating costs reimbursed by the NGO "Chernobyl-86".
- 15 The Senate dismissed cassation and upheld the judgment of the second instance court.

b) Judgment of the Court

- 16 The Senate declared that the latest legal theory recognises three preconditions for compensation of damage (pecuniary loss): 1) unjustifiable act (conduct), which includes an assessment of culpability; 2) existence of loss and 3) a causal connection between the unlawful act and pecuniary loss. The court of appeal established that the defendant's conduct was not justified as it failed to issue a confirmation regarding payments for heating. This subsequently led to damage

in the amount of LVL 137.83 (approx. € 200) which was causally linked with the above mentioned behaviour. Therefore the court of appeal established all necessary preconditions for the satisfaction of the claim.

Additionally, the Senate took into account the fact that there was a similar judgment where the court had satisfied the similar claim of the plaintiff against the defendant for another time period, namely 2002/2003 and 2003/2004.

e) Commentary

This is the first judgment of the Senate where the court has recognised the latest conclusions of legal theory regarding the number of preconditions for compensation of damage (pecuniary loss). The Senate cited⁶ and therefore accepted Professor K. Torgāns' conclusion that only three preconditions: 1) unjustifiable act (conduct), which includes an evaluation of fault; 2) the existence of loss and 3) a causal connection between the unlawful act and pecuniary loss are necessary for compensation of damage (pecuniary loss) to be awarded. Previously court practice recognised that four preconditions: 1) unjustifiable act (conduct); 2) the existence of loss; 3) a causal connection between the unlawful act and pecuniary loss and 4) fault (culpability) are necessary to establish civil liability and for compensation of damage (pecuniary loss) to be awarded. When Professor K. Torgāns became a Senator his ideas became increasingly popular in the Senate.

It is important that the court recognised as unjustifiable the act (behaviour) of delaying the confirmation regarding payments for heating which prevented the plaintiff from receiving compensation from third persons for these expenses. This means that the court is ready to accept as unjustified behaviour which is not necessarily a breach of the law but which is wrongful for the victim. This is a positive tendency.

2. Senate of the Supreme Court, 9 January 2008 No. SKC-13:⁷ Failure to Inform Blood Donor of Hepatitis C; Right to Compensation of Suffered Loss for such Failure

a) Brief Summary of the Facts

On 21 January 1998 the plaintiff donated blood to the defendant (University Clinical Hospital). The defendant discovered that the plaintiff was suffering from hepatitis C but, contrary to art. 17 of the Epidemiological Safety Law, the plaintiff had not been informed of his illness. The plaintiff, in his job as a policeman, regularly attended health examinations and, as a result, the Clinic of the Ministry of Interior Affairs discovered the plaintiff's sickness. The plaintiff was referred to the Infection Centre of Latvia where hepatitis C was diagnosed.

⁶ Torgāns (fn. 3) 209.

⁷ Published at ><http://www.at.gov.lv/lv/info/archive/departments/2008/>.

- 21 Since the plaintiff had not been informed about his sickness, he could not start treatment in due time. Thereby the treatment which the plaintiff underwent in 2003 at the Infection Centre of Latvia was unsuccessful and the only other chance of treatment would be for the plaintiff to take the medication, *Copegata* + *Ribavirin*, which costs approximately LVL 15,000 (approx. € 21,000). According to the plaintiff, he could only have been infected till 1998 in the Sea Medical Centre, where he underwent surgery on his appendix on 4 March 1991.
- 22 The plaintiff initiated civil proceedings against two defendants – the University Clinical Hospital and the Clinic of the Ministry of Interior Affairs and a third party – the Sea Medical Centre on 22 July 2004. According to art. 20 and 21 of the Medical Treatment Law, sec. 1 of art. 17 Epidemiological Safety Law, art. 1635, 1770 and 2347 of Civil Code, the plaintiff claimed compensation of LVL 15,000 (approx. € 21,000) as medical expenses and LVL 15,000 (approx. € 21,000) as lost profit.
- 23 The University Clinical Hospital rejected the plaintiff's claim and explained that personnel of the Blood Preparing Department do not provide medical treatment under sec. 1 of art. 1 of the Medical Treatment Law. Therefore, the defendant is not a medical person and the claimant is not a patient according to the Medical Treatment Law and the Epidemiological Safety Law. Accordingly, the obligation to inform patients under sec. 1 art. 14 of the Epidemiological Safety Law is not applicable to the present case. The University Clinical Hospital had only professional suspicions and until properly tested, the plaintiff had not been qualified as an ill or infected person. Additionally, the University Clinical Hospital was not obliged to inform the plaintiff about the result of the laboratory test and professional suspicions because he was not subject to mandatory medical and laboratory examination under art. 20 of the Epidemiological Safety Law.
- 24 The Clinic of the Ministry of Interior Affairs and the third party – the Sea Medical Centre – rejected the plaintiff's claim as they had not been informed about the plaintiff's disease and the law does not require a mandatory test for the diagnosis of hepatitis C.
- 25 The first instance court and court of appeal rejected the plaintiff's claim but the Senate reversed the judgment by its 2 November 2005 judgment and returned the case to the court of second instance for review. The plaintiff submitted adjustments to the claim since he was included as a result of a decision of the Council of Health Ministry in a list of persons whose medical expenses are to be partly reimbursed. Therefore the plaintiff reduced the amount of his claim to LVL 2,810 (approx. € 4,000) as compensation for medical expenses and LVL 140 (approx. € 200) as compensation for legal costs. The court of second instance rejected the claim on 24 April 2006, but the Senate again reversed the judgment by its 23 August 2006 judgment and returned the case to the second instance for review.

The appeal court, in its 26 June 2007 judgment, partly satisfied the claim and awarded LVL 2,201.56 (approx. € 3,150) as compensation for damage and LVL 440.31 (approx. € 630) as compensation for legal costs from the University Clinical Hospital but rejected the claim against the Clinic of the Ministry of Interior Affairs. The University Clinical Hospital submitted cassation. The defendant argued that the second instance court incorrectly applied art. 1779 of the Civil Code and, since the action related to tort liability, it is necessary to establish all four preconditions of civil liability under art. 1779 which must be interpreted in conjunction with art. 1773 of the Civil Code. In addition, the second instance court did not evaluate all circumstances of the case extensively and in an objective manner. The Senate dismissed cassation and upheld the judgment of the second instance court.

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b) Judgment of the Court

The Senate stated that there is no discussion that the University Clinical Hospital did not inform the plaintiff about the results of his blood test which showed him to be suffering from hepatitis C. According to art. 14 of the Epidemiological Safety Law, if health care practitioners have established that a patient has an infectious disease, or if there is cause for suspicion that a patient has become infected, health care practitioners shall have an obligation: to organise without delay the medical examination and medical treatment of the patient; to organise the necessary laboratory tests to clarify the diagnosis; to request information from the patient, which is necessary for the organisation of counter-epidemic measures, and also information regarding exposed persons and possible sources of the infectious disease; and to register the case of the infectious disease pursuant to the procedures prescribed by the Cabinet of Ministry.

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According to the Senate, the above-mentioned activities include an obligation to inform the person concerned about symptoms of an infectious disease, which is connected to a right granted by sec. 1 art. 18 of the Epidemiological Safety Law which includes: a medical examination, consultations for the making of a diagnosis of an infectious disease, and also anonymous medical and laboratory examinations if public health is not threatened by an outbreak of such infectious disease or by an epidemic; a confidential laboratory examination, medical treatment and consultations in matters of health; and the implementation of the necessary counter-epidemic measures at the dwelling-place, place of work or residence of such persons.

28

An interdependent analysis of the above-mentioned legal norms leads to the conclusion that the defendant had an obligation to inform the plaintiff about the result of his blood tests. In addition, according to sec. 1 art. 1 of the Medical Treatment Law, medical treatment consists not only of the treatment of diseases and care of patients, but also prevention and diagnosis. Therefore if health care practitioners suspect that a patient has become infected by Anti HVC + under art. 14 of the Epidemiological Safety Law, health care practitioners shall have an obligation to inform the person that he/she should take necessary steps to protect his/her health.

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- 30 Since the defendant's passive behaviour did not comply with the above-mentioned legal norms including human rights, the plaintiff's claim is therefore consistently acceptable. The Senate rejected the defendant's argument that there is no causal link between the plaintiff's sickness and the failure of the defendant to inform him of his illness. Since the plaintiff used the medicine PegasysR for medical treatment, these expenses were compensated.

c) Commentary

- 31 The present judgment is a positive development for both health care law and tort law. The court clearly recognised that, according to sec. 1 art. 1 of the Medical Treatment Law, medical treatment is wider than only the medical treatment of diseases and care of patients, but also includes the prevention and diagnosis of diseases. Accordingly, an individual becomes a patient, not when medical treatment starts, but also in the prevention and diagnosis of diseases. Therefore there is a positive obligation for health care practitioners to inform individuals about any suspicious regarding their state of health. These conclusions create a clearer border when health care practitioners could be liable for loss, even if they did not provide care of the patient.
- 32 The court declared that health is a constitutional human right which cannot be limited. The failure to inform a patient of the result of a test prevents the patient from engaging in activities to protect his health including starting appropriate medical treatment for a long period, which no doubt limits the prevention of damage to his health as well.
- 33 The court correctly established a causal link between the University Clinical Hospital's omission (inaction) and negative financial consequences for the plaintiff. The rejection of the defendant's argument, that treatment with a particular medicine could not grant recovery as assumption, could be a first step towards the recognition of the loss of chance concept in Latvian case law.

3. Senate of the Supreme Court, 9 January 2008 No. SKC-9:⁸ Damages can be Determined by Considering Level of Liability of each Person Involved in Car Accident

a) Brief Summary of the Facts

- 34 The limited liability company X as plaintiff initiated civil proceedings on 6 January 2005 against the defendant, insurance company Y, as the latter had failed to pay an insurance indemnity of LVL 1,808.16 (approx. € 2,600) following a road accident. Despite the fact that the police found the individual K.G. guilty (responsible) for the accident, the insurance company Y decided to pay out just 30% of the insurance indemnity LVL 2,583.09 (approx. € 3,600).
- 35 There was no discussion between the parties that the insurance event occurred. The insurance company referred to the statement of the expert from the Me-

⁸ Published at <<http://www.at.gov.lv/lv/info/archive/departments/2008/>>.

chanical Institute of Riga, Technical University. According to this statement, the allocation of fault between the drivers involved in the present road traffic accident is divisible whereby 70% was attributable to the plaintiff's car driver and 30% to K.G. Therefore the defendant considered that the plaintiff, as an accessory (though its driver) in the road traffic accident, is entitled to receive only 30% of the insurance indemnity for the damage.

The first instance satisfied a claim for the full amount of insurance indemnity, and the appeal court satisfied a claim as well. The appeal instance court referred to existing case law – judgment of the Senate of the Supreme Court, 28 February 2007 No. SKC-97⁹ – which stated that only institutions authorised by law have the right to declare any person at fault in a road traffic accident, based on particular legislative acts and procedures. Since the traffic police declared the fault of the driver, K.G., and he did not appeal this decision, there is no ground to re-evaluate the fault of those involved. 36

The defendant submitted cassation. The insurance company argued that the police, as state institution, can only act within the scope provided by law. Accordingly, the police evaluating any person's fault in a road traffic accident only consider administrative offences. Therefore the police have no duty to evaluate any person's fault in a road traffic accident regarding losses suffered and the establishment of civil liability. 37

The Senate reversed the judgment of the second instance court and returned the case to second instance for review. 38

b) Judgment of the Court

The Senate indicated that the appeal court had incorrectly applied the wording of art. 31 of the Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners, which was not in force when the road accident happened. 39

The Senate specified that, according to sec. 3 art. 33 of the Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners, if losses have been caused in a road traffic accident to the property of several owners, the insurance company shall compensate the losses in proportion to the fault of each owner. Moreover the Senate indicated that it was incorrect to apply the general norms of the Law on Insurance Contracts when the Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners as special legal act is applicable. 40

The Senate indicated that, in case No. SKC-546, 2007, an extended Senate concluded that it is incorrect that the court is not obliged to evaluate the fault of drivers involved in a road traffic accident if the traffic police have already made a statement in this regard. 41

⁹ See the short description and my comments in *A. Bilde, Latvia*, in: H. Kozioł/B.C. Steininger (eds.), *European Tort Law 2007* (2008) no. 20–28.

c) Commentary

- 42 The Senate corrected the mistake which was made in the judgment of the Senate of the Supreme Court, 28 February 2007 No. SKC-97, criticised in my 2007 report¹⁰. The Senate correctly referred to Professor K. Torgāns' book¹¹ in which it is stated that it is incorrect to apply terms and definitions from administrative law in the insurance context.
- 43 The Senate provided a correct interpretation of sec. 3 art. 33 of the Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners – if losses have been caused in a road traffic accident to the property of several owners, the insurance company shall compensate the losses in proportion to the fault of each owner. This means that insurers and courts should evaluate the fault of drivers involved in a road traffic accident if the amount of pecuniary loss can alter depending on the drivers' degree of fault. This could be done even if traffic police issued a declaration for an administrative fine only to one driver involved in a traffic accident.
- 4. Senate of the Supreme Court, 14 May 2008 No. SKC-205:¹² Awarding of Damages for Pecuniary loss and Other Remedies**
- a) Brief Summary of the Facts**
- 44 The plaintiff initiated civil proceeding against three defendants – Limited Liability Company, Z, the Register of Enterprises of the Republic of Latvia and a natural person, A.O. The plaintiff was of the opinion that changes in the registration records of Company Z were based on illegal and false documents and, therefore, all these documents should be declared null and void, as should the registration of the company in the Register of Enterprises of the Republic of Latvia. The plaintiff requested that the court restore him as a shareholder of Company Z.
- 45 The plaintiff initiated criminal proceedings against the natural person, A.O. Since an expertise confirmed that the signatures on the documents of Company Z were not written by the plaintiff, the Criminal Court declared A.O. guilty of fraud.
- 46 The court of first instance satisfied the claim, but the second instance court satisfied the claim only partly – it declared null and void the documentation partly – only regarding alienated shares which belonged to the plaintiff and restored his position as a shareholder of Company Z. The Senate reversed a judgment of the second instance court and returned the case to the second instance review of the satisfied part.
- 47 The appeal court rejected the claim fully on 1 November 2007. The court provided several arguments. The plaintiff received the full amount for the disputed

¹⁰ See *Būdiņš* (fn. 9) no. 28.

¹¹ *Saistību tiesības. II daļa (Obligation Law. II part)* (2008); see report about it *infra* no. 53.

¹² Published at <<http://www.at.gov.lv/info/archive/departments/2008/>>.

shares and only later, after submitting the claim, did he return the received amount. Based on art. 1402 of the Civil Code, A.O. has to compensate the damage to the plaintiff but in his turn the plaintiff received an amount of money without bringing a proprietary action.

The plaintiff submitted cassation. His attorney-at-law argued that the appeal instance court incorrectly interpreted art. 1402 of the Civil Code, because this norm does not aim to award the victim only damages (compensation for damage) without the restoration of previous status (restitution of *status quo*). The Senate reversed the judgment of the second instance court and returned the case to the second instance for review. 48

b) Judgment of the Court

The Senate stated that the legal relationship between the plaintiff and A.O. emerged from a tort which, according to art. 1402 of the Civil Code, is one basis for establishing obligations. Further the Senate indicated that the main goal of compensation is to eliminate the results of an infringement of a person's rights. 49

Since the claim was not for compensation of pecuniary loss regarding 50 shares in the Company Z, but to declare null and void all transactions regarding the alienation of disputable shares which belonged to plaintiff, there is no ground for rejecting the claim if the previous *status quo* is not restored. 50

c) Commentary

This is a significant judgment passed by the Senate where the court recognised that civil remedies for tort are not limited only to compensation of pecuniary loss. Compensation is merely one of the remedies which aim to restore the *status quo* which existed before the wrong was committed, i.e., eliminating the negative results of an infringement of a person's rights. 51

The Senate arrived at the important conclusion that it would be unjust if the negative result of an infringement of one's rights were not eliminated because one party achieved a desirable result by compensating incurring losses to another party. 52

C. LITERATURE

1. K. Torgāns, *Saistību tiesības, II daļa (Obligation Law, vol. II)* (Rīga, Tiesu nama agentūra 2008)

The present book is the second volume of a textbook for legal studies on Obligation Law, where Professor K. Torgāns provides a general overview of obligations which arise from tort law. In addition to a brief historical introduction, he provides a comparative summary of tort law in different countries including common law systems. Unfortunately he does not provide a definition of tort, which is a very complicated issue. 53

- 54 The author describes liability for personal injury (including non-pecuniary loss) and pecuniary loss. He reviews personal injury from abnormally dangerous objects, breach of honour and reputation, and privacy. In particular he devotes his attention to liability for loss caused by state institutions, especially investigators, prosecutors or judges.
- 55 In addition to tort, Professor K. Torgāns provides a general overview of obligations which arise from *quasi torts*.
- 56 Separately he addresses unjustified enrichment as an additional ground for civil obligation.
- 2. G. Slaņķe, Morālā kaitējuma institūta iztulkošana civiltieslībās (Interpretation of Concept of Moral Injury in Civil Law) Likums un tiesības 11/2008, 322–333**
- 57 The article is dedicated to the understanding of the concept of moral injury (non-pecuniary loss) in Latvian legislative acts. The author provides a comprehensive summary of all legislative acts where the terms “moral loss” or “non-pecuniary loss” are mentioned.
- 58 The author provides an interpretation of art. 1635 of the Civil Code of the Republic of Latvia and her main conclusion is that the above-mentioned norm leads to anti-constitutional consequences when it is interpreted literally. However, it should be interpreted widely thus leading to the solution where the above norm could be stated as a concretization of art. 92 of Constitution of the Republic of Latvia and the respective human rights granted by other normative acts.
- 59 Logically the author provides a suggestion as to how the text of art. 1635, should be improved which eliminates the requirement to prove non-pecuniary loss on some occasions, but unfortunately does not solve all problems regarding the definition and understanding of non-pecuniary loss.
- 3. M. Papešle, Zaudējumu atbildības noteikšana intelektuālā īpašuma tiesību aizskārums gadījumos (Estimation of Damages Caused by Infringement of Intellectual Property Rights) Likums un tiesības 12/2008, 354–360**
- 60 In the article the author analyses the methodological aspects of the estimation of the amount of damages for an infringement of intellectual property rights. For the most part the author focuses on different forms of remedies for infringements of intellectual property rights, including, compensation for actual damage, unjustified enrichment and licence royalty.
- 61 The author refers to foreign case law and legal doctrine. Despite the fact that the author arrives at the conclusion that the intellectual property right-holder, depending on the available evidence and expectations of the court proceedings, may choose any of the three methods of calculation of the damages, and the in-

intellectual property right-holder may change the method at any stage of the proceedings, at least it is a disputable conclusion that the implementation of more than one method at a time is not permitted, as this would lead to contradictions with the restoration element of compensation for loss.