

# **ESTONIA**

Janno Lahe

## Case

- **Judgment no 2-15-4981 of the Supreme Court, 6 June 2018: loss of profit**

## **Brief Summary of the Facts**

- A mortgage over three apartments belonging to the defendant was taken out in favour of the claimant (bank).
- The defendant filed an action, asking the court to stop the compulsory enforcement to secure the action.
- The securing of the action was in force for 830 days.
- If the defendant had not applied for securing the action, the claimant would have sold the apartments and the claimant would have been able to use the money for their normal economic activity (lending). The defendant caused € 75,393 in loss of income for the claimant.

## **Judgment of the Court**

- The Court of First Instance granted the claimed damages in full. The Court of Appeal upheld the judgment of the Court of First Instance.
- The Supreme Court quashed the judgment of the Court of Appeal and dismissed the claim for damages.

## **Legal problem**

- What kind of damage is compensable under CDC § 391 (1) clause 1, according to which:
- „The party who applied for securing an action shall compensate for the damage caused to the other party and a third party by the securing of the action, if: a court decision on refusal to satisfy or hear the secured action enters into force, or if the proceeding in the matter is terminated on any other grounds except due to the approval of a compromise of the parties.“

## **The Supreme Court noted:**

- Securing of action cannot lead to increased risk for the claimant if the court secures the claim, but refuses to satisfy the claim.
- If CDC § 391 (1) clause 1 allowed the claim for any damage related to securing of an action when the court refuses to satisfy the claim, it would interfere with the person's right to defend their rights in court by securing of action too intensely.
- Thus, the claimant's **loss of profit does not fall under the protective purpose** of the obligation arising from CDC § 391 (1) clause 1.

## **Comments**

- The case was decided by the full panel of the Civil Chamber of the Supreme Court (7 judges), 3 of whom maintained a dissenting opinion.
- The rules of CDC § 391 do not indicate that damages payable only cover direct pecuniary damage.
- Damages incurred through securing of action are usually loss of profit, not direct pecuniary damage.
- Another obstacle for bank – causality.