

LATVIA

Agris Bitāns

New Notion of Already Arisen Losses

Judgment of the Supreme Court of the Republic of Latvia,
Department of Civil Cases, 7 June 2016, no SKC-7/2016

Short Summary of Facts (1)

- The defendant had been the chair of the management board of the Company with the rights to represent the company individually.
- The company was declared insolvent and an insolvency administrator was appointed.
- During the insolvency proceedings, it was established that the defendant had concluded numerous agreements with fictive companies to whom a considerable amount of money transfers had been made in order to avoid payment of value added tax and corporate income tax.

Short Summary of Facts (2)

- The State Revenue Service had performed a tax audit of the Company and, accordingly, an additional tax payment in the amount of € 114,761 (LVL 80,817) was calculated.
- This sum also included a fine of **€ 35,100** (LVL 24,718) and the late payment - **€ 13,490** (LVL 9,490), which formed amount of the damages claimed from the defendant.
- The defendant had not performed his duties as an honest and careful manager since he had not submitted the necessary accountancy documentation which would have proved during the tax audit that the services had been received.

Short Summary of Facts (3)

- The claim was based on Article 1779 of the Civil Law and Article 169 of the Commercial Law.
- The claim was rejected by the first instance and the second instance courts.
- The plaintiff filed a cassation complaint about the appellate court's judgment.

Main issues

1. Could an increase of liabilities such as additional tax payments, fines or penalty for delay payment be regarded by the court as material (pecuniary) loss?
2. And, if it is material (pecuniary) loss, is it compensable as a loss which has already arisen under Articles 1770, 1771 and 1772 of the Civil Law?

Judgment of the Court (1)

- The enlarged composition of the Department of Civil Cases of the Supreme Court answered in the affirmative to both questions.
- The appeal court had groundlessly narrowed the scope of the term “diminution of the present property” used in Articles 1770-1772 of the Civil Law, and had failed to view the relationship within the Insolvency Law.
- Diminution of the assets which are a part of the property must be regarded as material deprivation within the meaning of art 1770 of the Civil Law.

Judgment of the Court (2)

- A decrease of the current property occurs, not only when the value of the property decreases, but also **when the property has been encumbered with debts.**
- And the increased amount of liabilities resulting from an unlawful action **cannot be regarded as material loss** that is **anticipated** and **must not be compensated.**

Commentary

- The Department of Civil Cases of the Supreme Court **departed from the conclusions of the existing case law.**
- However, the conclusion that loss can be qualified **as anticipated** and a person can ask only for a security and not for indemnification **if there is evidence for a potential violation in the future** is disputable.