

# **Lithuania: Supreme Administrative Court of the Republic of Lithuania (SACL) on State Liability for Breaches of EU law**

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## State Liability for Failure to Properly Implement the Travel Packages Directive




- Consumers had purchased travel packages from a travel agency that became insolvent before their journeys took place.
- They did not receive a refund of moneys they had paid over: although the agency's insurance coverage complied with the requirements of the Tourism law, the premium (€200,000) was too low to cover all outstanding amounts (€700,000).
- They claimed pecuniary and non-pecuniary damages from the State.


1. *UV v Lithuania*, SACL 8 May 2017, no eA-990-502/2017;  
2. *LB et al v Lithuania*, SACL 12 June 2017, no. eA-872-556/2017.

## State liability for failure to properly apply EU law



 AB- 1234

Standard

 AB- 1234

Standard (1991-2004)

 AB  
1234

Square

 AB  
1234

Square (1991-2004)

 AB12

Small

 AB12

Small (1991-2004)

- The car owner turned his originally right-hand vehicle into a left hand vehicle and unsuccessfully attempted to register it in Lithuania
- He registered it as a left-hand vehicle in Latvia, but his request to re-register it in Lithuania again failed
- Failure to recognize the Latvian certificate of registration was against the EU law on free movement of goods, in particular Directive 1999/37/EC
- SACL – breach of EU law, award of € 500 as non-pecuniary damages
- *EP v Republic of Lithuania*, SACL 28 November 2017, no eA-697-662/2017

## EUCJ on art 7 of the Travel packages directive

- Art 7:
  - The organizer and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency.
- C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkoffer* – Germany completely failed to implement the directive. Breach serious, leads to State liability under EU law.
- C-140/97 *Rechberger* . Austria's implementation of art 7 was similar to the one chosen by Lithuania. The ECJ had found that it was incorrect.
- Under C-46/93 *Factortame III*, prior judicial findings of failure to comply with EU law serve as evidence of the seriousness of the State's breach.
- It was beyond doubt that Lithuania's breach was serious.

## Decisions of the Lithuanian courts

	Court of first instance	SACL
1 <sup>st</sup> case 8 May 2017	no liability	State liability for pecuniary, <b>but not non-pecuniary damages</b> , because there is <b>no direct causal link</b> between the non-pecuniary damage and failure to implement the directive.
2 <sup>nd</sup> case 12 June 2017	State liable for pecuniary, <b>but not non-pecuniary damages</b>	Affirmed.

## “Direct” causation

Lithuanian law	EU law
<p><b>6.247 CC:</b> Only that damage can be compensable which is related to actions (action or omission) giving rise to civil liability of the debtor in such a manner that the damage, taking into account its nature and that of the civil liability, can be imputed to the debtor as a result of his actions (action or omission).</p>	<p><i>Factortame/Frankovich</i>: <b>causal link needs to be direct</b> No clear ECJ guidelines on what “direct” means.</p>
<p><b>Two step concept of causation - Factual and legal.</b> Essentially follows PETL. Both direct and indirect causation – part of the factual causation. <b>Direct causation</b> – when the damage results directly from somebody’s conduct <b>Indirect causation</b> – results from omission, which contributes to the occurrence of damage. Leads to liability.</p>	<p><b>Research:</b> Durant (2010)</p> <ol style="list-style-type: none"><li>causation under EU law - two step process, involving factual causation (csqn test) and legal causation;</li><li>there is <i>no direct link</i> when consequences are too remote or unforeseeable;</li><li>liability of a MS is not precluded by the imprudent conduct of a third party or by exceptional and unforeseeable events when the MS violated an obligation of result.</li></ol>

## Critique of the SACL decision not to compensate non-pecuniary damage

- Despite the manifest nature of the EU law infringement the Government did not take adequate measures to remedy the situation even upon specific request to do so, instead directing the complainants to the courts
- Non-pecuniary damage could have been awarded *ex-officio*; A similar judicial practice exists with respect to breaches of the ECHR (eg excessive duration of judicial proceedings).
- so far the EUCJ has not considered cases with respect to the need of the MS to compensate non-pecuniary damage resulting from an incorrect implementation of the directive; a request for a preliminary ruling would have been relevant.