

# **LITHUANIA**

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## **Minister's Liability for Damage**

- *The General Prosecutor v Minister RP*
- Supreme Administrative Court,  
13 November 2018, no A-2995-492/2018

## **Regulation – CC**

### ▪ **Article 6.280(1) CC:**

- A person who has compensated the damage caused by another person shall have the right of recourse against the person by whom the damage was caused in the amount equal to the paid compensation of damage unless a different amount is established by the laws.

## **Regulation – Special Laws**

### **▪ The Law on Public Service**

- institution has the right of recourse
- full in cases of intentional conduct
- capped at **9 months'** salary in negligence cases
- capped at **6 months'** salary in direct liability cases towards an institution

## **Regulation – Special Laws**

- **The Law on the Compensation of Damage Inflicted by Unlawful Acts of Public Institutions and Representation of the State and the Government of the Republic of Lithuania**
  - institution has the right of recourse
  - full in cases of intentional conduct
  - capped at **9 months' salary** in negligence cases

## **Status of a Minister**

- **Neither public servant, nor employee**
- **Politician**
- **The Law on Government** – silent on liability for damage issues

## **Facts of the Case**

- Claim brought by the General Prosecutor
- Defendant – the ex-Minister of Internal Affairs
- € 62,000 in damages ((i) sums paid to the wrongfully dismissed servant as compensation for the forced abstention from office, (ii) non-pecuniary damage and (iii) the compensation to the replacing officer who had to discontinue his duties)

## **Decision of the First Instance Court**

- Applied the Law on Public Service and the Labour Code by analogy
- Awarded € 16,000 (6 months' salary) (direct liability case)



## **Appeal by the Defendant**

- No ground to apply the Law on Public Service and the Labour Code by analogy
- Rules regulating the liability of the managing organs of legal persons shall be applied
- No breach of fiduciary duties in this case

## **The Supreme Administrative Court**

- The issue of Ministers' liability for damage not explicitly regulated
- Guidance from the Constitutional Court needed

- 9 months' salary cap
- Presumption of fault

## **Ruling of 8 March 2018 of the Constitutional Court**

- No breach of the Constitution
- The Law on Public Administration applies: pecuniary and non-pecuniary damage caused shall be compensated under the rules set out in the CC and other laws (Art 42).

## **Decision by the Supreme Administrative Court**

- Unlawful acts (Art 6.264(1) CC) – YES
- Fault (Art 6.248 CC) – NO; 'sufficient degree of fault' not established

## **Comments**

- The idea of the Constitutional Court that a Minister is in principle subject to the same liability rules as every other person – very welcome
- The reasoning is not persuasive