

BALTIC STATES

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COMPENSATION FOR PERSONAL INJURIES IN BALTIC STATES

I. Overview

Lithuania, Latvia and Estonia are three independent countries, all together called the Baltic States.

Lithuania has an estimated population of 3 million as of the middle of 2015¹. The capital is Vilnius.

Latvia has around 2 million² inhabitants. The capital is Riga.

Estonia's has a population of 1.313 million.³ The capital is Tallinn.

Lithuania, Latvia and Estonia joined the European Union (EU) on 1 May 2004. Today all three countries have the same currency - the euro⁴.

In the European Parliament Lithuania has eleven seats, Latvia - eight and Estonia six seats⁵.

In the European Commission Mr Vytenis Povilas Andriukaitis has been appointed to serve as EU Commissioner from Lithuania and is assigned the responsibility for Health & Food Safety policy; Mr Valdis Dombrovskis (Latvia) - for Euro & Social Dialogue and Mr Andrus Ansip, the Commissioner from Estonia, is responsible for the Digital Single Market policy area.⁶

II. Sources of Law

II.1. EU General

At the European level several sources of tort law can be distinguished.

Principles of European Tort Law

The Principles of European Tort Law⁷ (the “Principles”) were drafted by the European Group on Tort Law consisting of tort law scholars in 2005. The Principles reflect accumulated practical experience and intend

¹ According to the Statistics Database of Lithuania in July of 2015 the population of Lithuania was 2.902 mln. Available at <<http://www.stat.gov.lt/>>.

² According to the Statistic Database of Latvia in July of 2015 the population in Latvia was 1.978 mln. Available at <<http://www.csb.gov.lv/en>>.

³ According to the Statistics Database of Estonia in July of 2015 the population of the Estonia was 1.313 mln. Available at <<http://www.stat.ee/en>>.

⁴ Estonia joined the Eurozone in 2011, Latvia in 2014 and Lithuania in 2015.

⁵ The European Parliament. MEPs. Available at <<http://www.europarl.europa.eu/meps/en/map.html>>.

⁶ The European Commission. Available at <http://ec.europa.eu/about/structure/index_en.htm>.

⁷ European Group on Tort Law. Presented at a public conference on May 19 and 20, 2005. Available at <<http://www.egtl.org/>> (accessed on 11 August, 2015).

to serve as a framework of singular European tort law legislation. The Principles commence with the basic norm that a person must compensate damage legally attributable to him and laid down the grounds, then provide the conditions and the main basis for delictual liability, stipulate the provisions for defence, multiple tortfeasors and remedies. While the Principles are not binding, nevertheless, they are one of the common theoretic foundations for the courts in providing harmonized rules at the European level. And, as the case law shows, the Lithuanian courts have found the Principles in its judgments⁸.

Tort Law Directives

The most well-known Directive in this area is the Product Liability Directive⁹, issued in 1985, which created a regime of strict liability for defective products. Injured persons can therefore seek compensation with regards to defective products put into circulation in the internal market. The damage subject to compensation is either damage caused by homicide or health impairment, including non-pecuniary harm, or damage caused to the aggrieved person's property.

The Motor Insurance Directive¹⁰ is specific in regards of traffic accidents. The Directive obliges all motor vehicles in the EU to be covered by compulsory third party insurance and prescribes minimum third-party liability insurance cover in EU countries, therefore it is a significant source for compensation on personal injuries.

The Baltic States have implemented the above-mentioned Directives in their national legislation.

European Civil Code

Another attempt to harmonize the European private law is the creation of a common European Code of Private Law. The resolution¹¹ of the European Parliament requesting the creation of this Code was adopted in 1989, but is still pending, while a draft exists.

The European civil code includes provisions of delicts (or torts) in which the primary focus is on drafting a unified law of contracts. The draft sets the basic principles of tortious liability, determines what is to be classified as damage, accountability of damage, causation, the grounds of defence and law remedies, and coherence of the European civil code and national law. Harmonized rules of European tort law may likely enhance the protection of an aggrieved person's rights and legal remedies in recovering damages. On the other hand, there are a lot of sceptics that maintain such a project would be unworkable¹², either because of divergences among national systems, or because legal harmony can, or must, be achieved by means other than the code¹³. Will the European Union codify tort law by European Civil Code? The question remains open. While we are waiting for it, tort law is mostly regulated by national laws.

It is to national law that we now turn.

II.2. Statutory Basis

Lithuania

The **Constitution of the Republic of Lithuania**¹⁴ provides the basic norm that compensation for material and moral damage inflicted upon a person shall be established by law (Art. 30(2)). The core tort law norms

⁸ See e.g., Lithuanian Supreme Court Rulings of: 12 April 2011, civil case No. 3K-3-177/2011; 7 February 2011, civil case No. 3K-3-33/2011; Court of Appeal of Lithuania, Ruling of 18 October 2011, civil case No. 2A-420/2011; etc.

⁹ OJ L 210, 07.08.1985. P. 0029-0033.

¹⁰ OJ L 263, 07.10.2009. P. 11-31. (codified version).

¹¹ OJ C 158/400, 26.03.1989.

¹² See e.g., HONDIUS, E., *Towards a European Civil Code: The Debate Has Started*. European Review of Private Law 455, 1997 (5).

¹³ BUSSANI, M., *Before and beyond a European Civil Code*. Towards a European Civil Code. Trier: Academy of European Law, 2002, p. 109.

¹⁴ *Valstybės Žinios*, 1992, No 33-1014.

are laid down in the **Civil Code of the Republic of Lithuania**¹⁵ (CC of Lithuania) (Art. 6.263-6.291). There are also special laws which are applied when an aggrieved person comes under social security insurance (or other compulsory insurance) schemes. For example, if the person is employed, normally they are covered by occupational accidents and diseases insurance, where insurance benefits are paid by an employer. If in an occupational accident the employee suffered harm, the pecuniary damage is calculated under the special - **Law on Social Insurance of Occupational Accidents and Occupational Diseases**¹⁶. Another special law is the **Law on State Social Pensions Insurance**¹⁷ and with regards motor accidents **Law on Compulsory Insurance against Civil Liability in Respect of the Use of Motor Vehicles**¹⁸ is relevant. (Details of the interplay between tort and social security law will be described later).

Latvia

Rights to compensation in the case of the violation of a person's rights as one of the basic human rights are protected by the **Constitution of the Republic of Latvia**¹⁹. The basic framework and the principles of the compensation for bodily injuries (including such material damages as medical treatment expenses, as well as compensation for potential loss of income and non-pecuniary damages, the amount of which is determined at the discretion of the court) are provided in the **Civil Law of the Republic Latvia**²⁰ (Art. 1635, 2347 - 2351). There are also certain fields where the compensation procedure, amounts and bodies/funds (which have an obligation to compensate on behalf of the party responsible for the injuries) are determined by specific law: such as the **Law On the Rights of Patients**²¹, **Law on Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases**²², **Law on Insurance Contracts**²³, **Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law**²⁴, **Law On State Social Insurance**²⁵ and others.

Estonia

The Constitution of the Republic of Estonia provides the basic norm that everyone is entitled to compensation for intangible as well as tangible harm that he or she has suffered because of the unlawful actions of any person (Art. 25). The core tort law norms are laid down in the Law of Obligations Act of Estonia (LOA of Estonia) (Art. 1043-1067)²⁶. The main principle for compensation of personal injuries is enacted by the Estonian LOA article 130: in the case of an obligation to compensate for damage arising from health damage or bodily injury caused to a person, the obligated person shall compensate the aggrieved person for expenses arising from such damage or injury, including expenses arising from the increased needs of the aggrieved person, and damage arising from total or partial incapacity to work, including damage arising from a decrease in income or deterioration of the future economic potential of the aggrieved person.

As in Lithuania, there are also special laws in Estonia which are applied when an aggrieved person comes under social security insurance (or other compulsory insurance) schemes. For example, if the person is employed, they are normally covered by health insurance, where insurance benefits are paid by the Estonian Health Insurance Fund, the solidarity-based health insurance is regulated by the Estonian Health Insurance Act²⁷.

¹⁵ *Valstybės Žinios*, 2000, No 74-2262.

¹⁶ *Valstybės Žinios*, 2003, No. 114-5114.

¹⁷ *Valstybės Žinios*, 2005, No. 71-2555.

¹⁸ *Valstybės Žinios*, 2007, No. 61-2340.

¹⁹ *Latvijas Vēstnesis*, 1993, No. 43.

²⁰ *Zīpotājs*, 1992, No. 4.

²¹ *Latvijas Vēstnesis*, 2009, No. 205.

²² *Latvijas Vēstnesis*, 1999, No. 48/49.

²³ *Latvijas Vēstnesis*, 1998, No. 188/189.

²⁴ *Latvijas Vēstnesis*, 2004, No. 65.

²⁵ *Latvijas Vēstnesis*, 1997, No. 274/276.

²⁶ Accessible here <<https://www.riigiteataja.ee/en/eli/ee/516062015006/consolide/current>>.

²⁷ Accessible here <<https://www.riigiteataja.ee/en/eli/530062015007/consolide>>.

Another special law is the State Pension Insurance Act. The civil liability arising from damage caused by the use of a vehicle is regulated by the Motor Insurance Act²⁸.

III. Fundamental Principles

III.1. Compensatory Damages

According to the Baltic States' laws, the obligation to pay damages is of a compensatory nature. Punitive damages do not exist as a separate type of damage²⁹. By placing a certain amount on the victim's injuries, compensatory damages seek to restore the victim financially, physically and emotionally to the same position in which he would have been if the damaging event had not occurred. The Baltic States applies the principle of full compensation (*restitutio in integrum*). The compensatory damages are divided into two categories: **pecuniary** (that compensate the aggrieved person for monetary losses) and **non-pecuniary** (that compensate the aggrieved person for immaterial harm). The aim of the law of damage is full compensation of the damage suffered both in respect of pecuniary loss and non-pecuniary loss.

However, the principle of *restitutio in integrum* cannot be objectively applied to the fullest extent possible with respect to non-pecuniary damages because such damages are incapable of being accurately measured in monetary terms. Non-pecuniary damage is a spiritual offence which can only be assessed and compensated materially on certain conditions; quite often the inflicted non-pecuniary damage, as the sustained moral offence by the person, cannot be in general replaced, because it is impossible to return back the emotional and other condition of the person, which had existed before the spiritual offence took place. The law, therefore, provides only for monetary satisfaction to ensure that the victim is compensated for moral/physical pain, etc. in the fairest way possible. Consequently, it is the function of the court to determine *fair* monetary compensation for any offence (e.g. suffering, whether moral or physical, or loss) incurred.³⁰

III.2. Assessment of Damages

Lithuania, as with Latvia and Estonia, does not have any unitary compensation for personal injuries, or alternatively, a method with different figures in the assessment of damage for the compensation of personal injuries.

The damage shall be proved³¹. The burden of proof lies with the injured party (claimant). The pecuniary losses are generally proven by bringing evidence of suffered costs for medical treatment, supplementary care, increased expense due the physical impairment, actual loss of income, loss of future increase of income and other damage. Where the amount of damages cannot be proved by the party with precision, it shall be assessed by a court "from equity and conscience" (*ex aequo et bono*), notwithstanding, the concreteness being complied with.

²⁸ Accessible here <<https://www.riigiteataja.ee/en/eli/506012015001/consolide>>

²⁹ According to the Latvian case law in cases when a violation of rights has been performed in a socially dangerous way, when determining the amount of the non-pecuniary compensation the preventive goal of compensation has to be taken into account.

³⁰ See e.g. Lithuanian Supreme Court Rulings of: 8 November 2013, civil case No. 3K-3-553/2013; 26 March 2003, civil case No. 3K-3-371/2003; Estonian Supreme Court Ruling of: 27 September 2005, civil case No. 3-2-1-81-05.

³¹ According to the Latvian law it is automatically presumed that a person has suffered the non-pecuniary damage if the unlawful act is expressed as a criminal offence against this person's life, health, morals, inviolability of gender, freedom, honour, dignity or against the family, or minors. In other cases it has to be proven.

With regards to non-pecuniary damages, theoretically these damages are made up of two elements - pain and suffering. However, in practice they are awarded as a single lump sum, not under separate headings.

In the assessment of awarded non-pecuniary damages, the courts have great discretion. The courts non-pecuniary loss assessment is in accordance with the principle of *fairness*. Relevant factors include: the extent and duration of necessary medical treatment; the extent to which the claimant will be able to come to terms with what happened, and the degree of fault of the tortfeasor.

In Estonia: the aggrieved person shall be paid a reasonable amount of money as compensation for non-pecuniary damage. The court must take into account: the nature and severity of the breach of obligation, the fault of the offender, the economic situation of the parties, the degree of fault of the aggrieved person etc.

In such kind of cases the courts attach importance to medical findings - an illness or disability that a medical doctor can ascertain in light of scientific knowledge, even if there is not a forensic report. In addition the courts refer to mental suffering, pain, restlessness, anxiety, grief, etc. Furthermore, the courts take into account precedents and may also take into account awards by foreign courts. The Latvian, case law, however, still has no practice to take into account awards by foreign courts.

In the case of contributory negligence, i.e. where the damage suffered partly as a result of the victim's own fault, the courts moderate the amount awarded for reparation or compensation. The damage, normally, is reduced proportionally to the contribution of the injured party to the accident or his subsequent injuries.

Specific in the assessment of awarded damage is compensation from social security schemes or, for example, the motor insurer fund. They are assessed on a statutory basis³².

In the interplay between tort and social security law, however, several rules are important. Firstly, when social security or appropriate insurers' schemes are not designed to provide full compensation, the tort law will be applicable. This means that the aggrieved person can assert a claim against the tortfeasor directly. Secondly, the law does not allow that the same damage be compensated twice. Therefore, the social security or insurer's benefits received by the aggrieved are deductible from a claim in tort³³. Thirdly, the social security agency or insurer, after paying compensation to the aggrieved person, shall have right of recourse against the tortfeasor (exceptions available³⁴).

³² For example, in Estonia, the Motor Insurance Act (Art. 32) provides that:

(1) The insurer will pay the injured party a one-off compensation for non-proprietary damage arising from damage caused to their health or from the bodily injury caused to them, depending on the severity of the health damage or bodily injury and other circumstances. If the health damage or bodily injuries of the injured party are of a different degree of severity, the compensation for non-proprietary damage will be paid on the basis of the most severe category of health damage or bodily injury.

(2) Upon compensation for non-proprietary damage arising from a bodily injury or health damage caused to a person, among other things, the degree of severity of the health damage and bodily injury, the depth of the functional disturbance and the length of treatment and loss of the capacity for work will be taken into account.

(3) In the case of a claim for non-proprietary damage arising from health damage or a bodily injury caused to a person, it is presumed that the amount of the non-proprietary damage is:

- 1) in the event of minor health damage or a minor bodily injury, 100 euros;
- 2) in the event of minor health damage or a minor bodily injury of the medium severity, 350 euros;
- 3) in the event of more serious health damage or a more serious bodily injury of the medium severity, 1500 euros;
- 4) in the event of serious health damage or a serious bodily injury, 2600 euros;
- 5) in the event of very serious health damage or a very serious bodily injury, 3000 euros;
- 6) in the event of especially serious health damage or an especially serious bodily injury, 3200 euros.

³³ Payments of voluntary insurance shall not be included into the amount of the repairable damage. (Art. 6.290(2) of the Civil Code of Lithuania).

³⁴ For example, according to article 6.290(3) in the cases where insurance premiums on behalf of the aggrieved person were paid by the same person who caused the damage, the social insurance authority which has paid insurance payments, shall not acquire the right of recourse (e.g. in occupational accidents, if the harm done to the employee, insured by a social security policy, with insurance premiums having been paid by the employer, the social security authority which compensated the damage to the employee, does not have the right of recourse against the employer).

III.3. Awarded amounts of non-pecuniary damage

Lithuania

The amounts of compensation for non-pecuniary damage awarded in Lithuania³⁵, suffered for objects of increased danger, which includes motor accidents, is about 10,000 euros. In occupational accidents this would go from about 11,000 euros. The ability to work in such cases plays a significant role. The higher the lost work ability is, the more the amount of non-pecuniary damages. In medical malpractice cases for a minor health injury to a primary victim the awarded amount is about 1,000 euros, but the average awarded amount for non-pecuniary damage in malpractice cases is around 3,000 euros. With regard to torts stemming from crimes, when there is serious harm to health, the non-pecuniary damage generally increases, and is approximately 18,000 euros. In the case of death the bracket of awarded non-pecuniary damage has to be wide and would go from 7,000 to 15,000 euros. As will be mentioned later, the main criterion considered is how strong the relations were between the relatives and the lost beloved ones. To the parents of dead children, the case law shows, the courts tend to award higher amounts than, for example, between elders.

Latvia

According to Latvian court practice, non-pecuniary damage awards related to motor accidents are about 11,000 euros.³⁶ The amount paid to the victim depends on the degree of injury, as well as on any health complications. In defamation cases, the non-pecuniary damage award ranges from 500 to 5,000 euros.³⁷ In the case of malpractice, it is not possible to identify the average non-pecuniary damage award paid to the victim due to fact that incidents and complications may significantly differ from each other. For minor injury starting from 500 euros up to 50,000 euros in the case of disability of the victim.³⁸

Estonia

In Estonia in the case of death the awarded non-pecuniary damage amount would be from 6,500 to 30,000 euros, in medical malpractice cases - from 640 to 12,800 euros. There are no special statistics about awarded amounts of non-pecuniary damage in other cases, however, according to the previously mentioned data, the awards are slightly higher than in Lithuania.

IV. The Forensic Report

The Lithuanian, Latvian and Estonian laws do not require the compulsory preparation of a forensic report both in extrajudicial affairs and in legal proceedings. Some specifics exist in the Lithuania proceedings regarding medical malpractice, because compensation for the damage caused to the patient shall firstly be dealt with in a mandatory pre-trial institution - the Commission on Evaluation of the Damage Caused to the Health of Patients (the “**Commission**”). While it is not binding on the patient to provide an expert’s conclusions for the suffered harm, the Commission, however, shall have the right to apply to health care professionals concerning conclusions which require special knowledge. Mostly the Commission applies.

³⁵ An overview of figures was taken under the Lithuanian Supreme Court, the Court of Appeal of Lithuania judgments of 2006-2015.

³⁶ Overview of non-pecuniary damage indemnification in civil proceedings under the Latvian Supreme Court. Kalvis Torgāns, Aldis Laviņš, Andrejs Stupins. 2014.

³⁷ Ibid.

³⁸ Ibid.

However, the Commission's decision is subject to appeal, therefore in litigation such conclusions would be newly assessed among other evidence.

In litigation proceedings to ask appoint examination as to get a forensic report shall have the right of either party, as well as the court can appoint by its discretion.

In every Baltic State there is a list of official forensic experts. The parties shall select their choice and present the candidacy to the court. However, the final decision as to which expert (or several of them) will be appointed to perform the examination is ultimately decided by the court.

According to Latvian law, an expert can be chosen by the parties by mutual agreement. If the parties are not able to agree in the time frame given by the court, the court will appoint an expert.

A forensic report is considered more reliable in terms of its objectiveness than the information contained in any other sources of evidence, however, it is not binding on the court. The court must assess the forensic report using the internal reasoning based on a comprehensive, complete and objective investigation of the evidence available in the case, which means that the forensic report should be treated in the same way as any other means of proof.³⁹

According to **Latvian** Civil Procedure law, Section 97 (1): A court shall assess the evidence in accordance with its own convictions, which shall be based on evidence that has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from everyday experience; (2) No evidence shall have a predetermined effect that would be binding upon the court; (3) A court shall set out in its judgment why it has given preference to one body of evidence in comparison to another, and has found certain facts as proven, but others as not proven.

According to the **Estonian** Code of Civil Procedure (Art. 232): The court evaluates all evidence pursuant to law from all perspectives, thoroughly and objectively and decides, according to the conscience of the court, whether or not an argument presented by a participant in a proceeding is proven considering, among others any agreements between the parties concerning the provision of evidence (sec 1). No evidence has predetermined weight for a court, unless otherwise agreed by the parties (sec 2).

V. Personal harm to be recognized (in case of personal injuries, death excluded)

V.1. Pecuniary damage in personal injuries (death excluded)

Lithuania

The main principle of tort law - full compensation applies. With regard to pecuniary loss the compensation would consist in:

- Expenses for repair of health, and
- Loss of income.⁴⁰

Both for temporary or for permanent invalidity.

The first category of damage - *expenses for the repair of health* - includes medical treatment costs, expenses incurred for additional nourishment, medication, prosthetics, care of the injured person, acquisition of specialized transport means, retraining costs and other expenses necessary for the rehabilitation of health. Damage is compensated in full as long as the aggrieved person proves their

³⁹ See e.g. Lithuanian Supreme Court Rulings of: 26 June 2013, civil case No. 3K-3-337/2013; 16 November 2009, civil case No. 3K-3-503/2009; 18 May 2010, civil case No. 3K-3-163/2010.

⁴⁰ Article 6.283 of the Civil Code of Lithuania.

existence, necessity and amount⁴¹. According to the case law, even expected treatment expenses can be awarded, provided the claimant proves the necessity and the legitimacy of the expected medical treatment and if such treatment will be performed in the short run⁴².

The second category of damage - *loss of income* - would take account of actually sustained loss of earnings and the continuing loss until a period of how long the loss will continue. Incomes are considered not only employment earnings, but incomes, for example, from business activity or copyright remuneration as well.

Talking about loss of income, it should be pointed out that under Lithuanian case law, the injured person must be compensated, irrespective of whether he/she was employed or not, or got any other incomes on the day when the harm was suffered. The essential criterion - the certainty to obtain earnings taking into account the victim's age, background, etc.⁴³ For the assessment of the damage in this case the courts usually refer to the Government statistical data such as the state's minimum wage, average earnings.

Specific - If the aggrieved person is covered by social security schemes, the assessment of pecuniary damage is calculated based on special laws. This rule applies to all Baltic States.

Compensation, by law, is granted to the aggrieved person, but not to their relatives. Therefore, the injured person should personally suffer the damage as to be compensated. However, as will be mentioned later, under the right to claim for compensation for certain pecuniary damage, it is possible to inherit or transfer. Furthermore, it should be emphasized that in this case we are talking about pecuniary damage compensation, but not non-pecuniary, for which the relatives are eligible to claim compensation from the tortfeasor.

In summary for pecuniary damage in personal injuries (excluded death), it can be said that the courts allow only true compensation of harm actually suffered by the aggrieved person. Therefore, to succeed in the claim the damage must be certain, personal and must follow from the infringement of legitimate interest.

Latvia

Pursuant to Civil Law (Art. 2347), if a person inflicts a bodily injury upon another person through an action for which he or she is at fault and which is illegal, the said person shall compensate the other person for **medical treatment expenses** and, apart therefrom and pursuant to the discretion of a court, also for **potential loss of income**.

The principle of full compensation applies, as in Lithuania. The medical treatment expense and loss of income is calculated in the same rationale as in Lithuania.

In Latvia the compensation, by law, is also granted to the aggrieved person, but not to their relatives. Therefore, the injured person should personally suffer the damage as to be compensated. However, under the right to claim for compensation for certain pecuniary damage, it is possible to inherit or transfer.

Estonia

The Estonian LOA article 130 (1) sets that in the case of an obligation to compensate for damage arising from health damage or bodily injury caused to a person, the obligated person shall compensate the aggrieved person for **expenses arising from such damage or injury**, including expenses arising from the increased needs of the aggrieved person, and **damage arising from total or partial incapacity to work**,

⁴¹ See e.g. Lithuanian Supreme Court Rulings of: 19 March 2013, civil case No. 3K-3-151/2013; 29 March 2012, civil case No. 3K-3-127/2012.

⁴² See e.g. Lithuanian Supreme Court Rulings of: 30 April 2012, civil case No. 3K-3-202/2012; 13 February 2012, civil case No. 3K-3-13/2012.

⁴³ See e.g. Lithuanian Supreme Court Rulings of: 6 April 2007, civil case No. 3K-3-87/2007; 22 September 2003, civil case No. 3K-3-889/2003.

including damage arising from a decrease in income or deterioration of the future economic potential of the aggrieved person.

The **expenses for the repair of health**, as in Lithuania, includes medical treatment costs, expenses incurred for additional nourishment, medication, prosthetics, care of the injured person, acquisition of specialized transport means, retraining costs and other expenses necessary for the rehabilitation of health. Damage is compensated in full as long as the aggrieved person proves their existence, necessity and amount.

The **loss of income** in Estonia is evaluated in the same way as in Lithuania.

Compensation, by law, is granted to the aggrieved person, but not to their relatives. Therefore, the injured person should personally suffer the damage as to be compensated.

V.2. Change of amount of pecuniary damage in personal injuries (death excluded)

In every Baltic States both the aggrieved person and a person from whom the compensation for damage was awarded shall have the right to demand a change in the amount of awarded compensation.

An aggrieved person who has partially lost his labour capacity shall have the right at any time to demand from the person liable for the damage a corresponding increase of the compensation for the damage sustained if the labour capacity has decreased thereafter in connection with the causing of impairment of health in comparison with that which remained at the time of awarding compensation⁴⁴.

A person from whom the compensation of damage which caused mutilation or other impairment of the health of another is awarded shall have the right to demand a corresponding reduction of the compensation if the labour capacity of the aggrieved person has increased in comparison with the remaining labour capacity he had at the time when the compensation was awarded⁴⁵.

However, it should be pointed out that according to Lithuanian laws the above-mentioned rules do not apply in cases when the damage was awarded in the form of a definite lump sum⁴⁶.

In Estonia it is possible to change the amount of pecuniary damage in personal injuries, if the compensation is awarded in periodical payments (in exact amount in annuity). It is not possible to change the amount of pecuniary damage, if the compensation was awarded in the form of a definitive lump sum⁴⁷.

VI. Tort Liability in the Case of Death

VI.1. Right to compensation

Lithuania

The persons who are entitled to claim damage in the case of death, in Lithuania are listed in article 6.284(1) of the Civil Code of Lithuania. The list is not exhaustive. Persons entitled to assert claims are as follows:

- minors, likewise the children of the deceased born after his death,
- spouses (this also covers cohabitants),
- parents incapable of work,

⁴⁴ Article 6.286 of the Civil Code of Lithuania.

⁴⁵ Article 6.287 of the Civil Code of Lithuania.

⁴⁶ Articles 6.286 and 6.287 of the Civil Code of Lithuania.

⁴⁷ Article 459 (1), (2) of the Code of Civil Procedure of Estonia; Article 136 (4) of the Law of Obligations Act of Estonia.

- other factual dependants incapable of work.

Each of the above-listed shall have the right to a separate claim.

The above-mentioned persons are entitled to claim both pecuniary and non-pecuniary damages. However, it should be emphasized that the case law distinguishes between eligible claimants for pecuniary and non-pecuniary damage.

In the event of death the basic criterion to acquire the right to pecuniary damage is that of **financial support** from the deceased at the time of his death, not necessarily that the survivor received only monetary support from the deceased, in kind support (e.g. housekeeping) is also considered.

With regard to non-pecuniary damages, the maintenance criterion is not determinable and the most significant element in this case is the **relationship** between the deceased and the relatives (the claimant). This relationship must be *fairly close and strong*. According to the case law, to satisfy this criterion, the relationships should be permanent in character, emotionally solid, sincere and close.⁴⁸

Once satisfied, the non-pecuniary damages can be awarded even to adult children in the event of either parents death or parents for their child's death, irrespective of whether they are employable or not, or have any other incomes or not, it is important that they stood in a close relationship to the deceased.

In awarding damages in the case of death to eligible claimants, the *kinship* is not determinant, however it is assessed among all other criterions.

Latvia

According to the legislation of Latvia - Civil Law (Art. 1778) - the list of persons who are entitled to assert claims are covered the same as in Lithuania (minors, likewise the children of the deceased born after their death), spouses (this also covers cohabitants), parents incapable of work, and other factual dependants incapable of work.

Furthermore, under article 1778 of the Civil Law, compensation for losses may be claimed not only by the victim but also by the victim's heirs.

If someone is at fault for the death of a person, he or she shall compensate the heirs of the deceased for medical treatment and burial expenses.

If the deceased had a duty to maintain someone, such duty shall pass over to the person who is at fault for his or her death. The amount of such compensation shall be determined pursuant to the discretion of the court; the age of the deceased, his or her ability to earn a living at the time of death, and, finally, the needs of the person for whom compensation is to be determined. If the latter has adequate means of livelihood, the duty to provide compensation shall cease.

The duty to compensate for losses shall pass to the heirs of the person who causes the losses, unless otherwise provided for by law.

Estonia

In Estonia the persons who are entitled to claim damage in the case of death are listed in article 129 of the Estonian LOA. This list is not exhaustive.

In the case of an obligation to compensate for the damage arising from the death of a person, the obligated person shall compensate for the expenses arising from the death of the deceased person, in particular for **reasonable funeral expenses, reasonable medical expenses** relating to the health damage or bodily

⁴⁸ See e.g. Lithuanian Supreme Court Rulings of: 23 February 2010, civil case No. 3K-3-59/2010; 26 September 2007, civil case No. 3K-3-351/2007; 14 February 2005, civil case No. 3K-3-86/2005.

injury which caused the death of the person, and the **damage arising from the aggrieved person's interim incapacity for work** (Art. 129 (1) of the LOA).

Compensation for **funeral expenses** shall be paid to the person who is obligated to bear the expenses. If funeral expenses are borne by another person, compensation for the expenses shall be paid to the other person (Art. 129 (2)).

If a person whose death is caused bears, at the time of his or her death, an **obligation arising from law to maintain another person**, the person obligated to compensate for the damage shall pay the person reasonable monetary compensation corresponding to the maintenance payments which the deceased person would have paid to the person during the deceased person's presumed life-span (Art. 129 sec 3).

A person obligated to compensate for damage shall also pay compensation to a third party on the basis and to the extent specified in subsection (3) of this section if the obligation **to maintain such person would have arisen pursuant to law in the future** and during the presumed life-span of the deceased (Art. 129 (4)).

A person obligated to compensate for damage shall also bear the obligation provided for in subsections (3) and (4) of this section with regard to a person who, by the time of the death of the deceased person, had been conceived but not yet born (Art. 129 (5)).

If a person whose death is caused maintained on a continuous basis up to the death of the person another person with whom the deceased lived together as a family or whom the deceased person maintained on the basis of a moral obligation, the person obligated to compensate for the damage shall pay compensation to the person to the extent specified in subsection (3) of this section if:

- 1) the person needs maintenance, and
- 2) the person cannot receive maintenance in any other manner, and
- 3) the person whose death was caused would presumably have continued to maintain the person in the future (Art. 129 (6)).

The above-mentioned persons are entitled to claim both pecuniary and non-pecuniary damages.

In the case of an obligation to compensate for damage arising from the death of a person or a serious bodily injury or health damage caused to the person, the persons close to the deceased or the aggrieved person may also claim compensation for non-patrimonial damage **if payment of such compensation is justified by exceptional circumstances**.

VI.2. Inheritance of the right to damage

Lithuania

First of all it must be stressed that in the Lithuanian legislation there are no clear legal provisions that refer to the inheritance of the right to damages in the case of death. However, the veil was slightly revealed in 2006 following the ruling of the Constitutional Court of the Republic of Lithuania (the Court)⁴⁹, where the Court dealt with the issue of liability for damage caused by the unlawful actions of preliminary investigation officials, prosecutors, judges and the court. Among others, one question referred to the Court included whether the legislation which laid down that the right to assert the claim for damage caused by mentioned persons cannot be inherited does not contradict with constitutional regulation.

⁴⁹ The Constitutional Court of the Republic of Lithuania, Ruling of 19 August 2006, case No. 23/04.

The Court on this point held several important rules. First - *“usually the right to claim compensation for certain material damage is to be inherited or transferred in any other way”*. That is to mean that the right to claim for pecuniary damages is inheritable and the heirs may be awarded it.

The Court, indeed, in the discussed case then somehow watered down the devolution of this right by pointing out that *“also such legal situations are possible, when the right to claim for compensation for certain material damage is inseparably related only to the person who sustained that damage and it may not be related to any other person. Also the right to claim for material compensation for the moral damage inflicted upon the person in some cases may be related only to the person who sustained that damage”*.

Then the Court added that *“under the Constitution, legal situations, where this right may be transferred to certain other persons, are also possible.”* Furthermore, the Court then emphasized that *“by no means does it follow from the Constitution that compensation for material and/or moral damage inflicted upon a person must in all cases be paid (or compensated otherwise) namely to the person upon whom it was inflicted, and that corresponding compensation may not in general be paid to any other person (persons).”*

Following this judgment, the second rule derives, - that the right to assert a claim for non-pecuniary damage **may also be** inherited or transferred.

It should be mentioned, nevertheless, that Lithuanian scholars have debated the inheritance of the right, particularly for non-pecuniary damages. The position is that the only person who can claim non-pecuniary damages for personal injury is the victim himself because it is inseparably related only to the person who sustained that damage and it may not be related to any other person. Nevertheless, it is agreed that in the case of the claim for non-pecuniary damage being brought while the person is alive and dies before they are awarded, this right devolves to the relevant heirs. It is argued that the right of compensation already belongs to the victim’s estate and the victim has already manifested his/her wish to be compensated by filing a claim of damage.

Despite the heredity debates between scholars, the courts in Lithuania tend to follow the above-mentioned constitutional rationale for the possibility to inherit or transfer the right for damage in the case of death when dealt with the award of damages for personal injuries.⁵⁰

Latvia

In Latvia, in the case of a person’s death, the heirs can claim for the loss. In Latvian legislation this provision is regulated in Civil law.

According to the case law, damages may be included in heritage property and be passed on to the heirs. However, payment claims related to personal injuries, are terminated on the death of the aggrieved person, but if a person who caused the damages hasn’t paid for a period of time when the aggrieved person was alive - such payment can be transferred to the heirs.

Estonia

In the Estonian legislation there are also no clear legal provisions that refer to the inheritance of the right to damages in the case of death. There is also no relevant case law in this matter.

VI.3. Pecuniary damage in the case of death

Lithuania

In the area of pecuniary damages dependants of the deceased traditionally are compensated by:

⁵⁰ See e.g. Lithuanian Supreme Court Ruling of 5 February 2014, civil case No. 3K-3-4/2014. Court of Appeal of Lithuania Ruling of 21 May 2014, civil case No. 2A-336/2013.

- Expenses resulting from death, and
- Lost income (loss of support).

The *expenses resulting from death* typically compose funeral and burial expenses and are compensated for the amount that is proven to have been. In any case those expenses must be reasonable and grounded.⁵¹ With regards to *lost income (loss of support)* the law states that “Persons who have the right to compensation for damage caused by the death of their breadwinner shall be compensated for the part of the deceased person’s income which they received or were entitled to receive when the deceased person was alive.”⁵²

In practice the loss of support is calculated taking into account the part of the deceased person’s incomes which the survivor received or could have expected to receive (INC) and its (the deceased’s) life expectancy (LF).

Formula, e.g.:

$$\text{INC} * \text{LF} = \text{Loss of Support}$$

In the case of the death of a spouse the conventional sum of loss of support is 50% of the deceased’s net income⁵³ (multiplicand). This amount is multiplied by the victim’s life expectancy duration (multiplier). The victim’s life expectancy duration is ascertained by taking into account the statistical life expectancy at birth of the same gender and living in the same conditions as of the deceased.

There are, however, certain differences of detail. For example,

- the multiplicand (the amount of support) will be smaller (for each dependant) if the deceased supported several dependants. The multiplicand will be divided by the number of persons who were supported, saving the part of income on himself (deceased). So in the case of a surviving spouse with no children the assumed loss would be 50% of the deceased’s net income; in the case of a surviving spouse and one minor child, 75% and so on;
- in determining the deceased’s life expectancy duration other criteria may be considered, such as, for example, the capacity of work of the deceased person, state of health, lifestyle (harmful or wellness), etc.⁵⁴

It is interesting to mention the recent ruling of the Lithuanian Supreme Court issued in April of this year (2015)⁵⁵, in which the Lithuanian Supreme Court dealt with awarding damages to the spouse of the deceased, who was 66 years old on the day of death. Under the Government statistical data, life expectancy at birth of the person as deceased was 65 (i.e. one year less than the deceased). Nevertheless, the Lithuanian Supreme court *increased* the duration of life expectancy of the deceased until the age of 77 years (i.e. 12 years more as of the statistical life expectancy at birth). The court in this decision reasoned with consideration to the working capacity and stirring of the deceased (received earnings, old-age pension, driving a car). Moreover, the court emphasized that no evidence was presented by the defendant that the deceased was in poor health. Therefore, taking into consideration all those circumstances, the deceased’s life expectancy, under the court, was increased by 12 years more than the standard and the compensation for damages awarded to the surviving spouse was multiplied by the increased, not the standard, life expectancy constituent. This judgment illustrates that the courts in practice have room to create a flexible “tariff” by judicial decisions for the award of damages.

⁵¹ In the case of these expenses being compensated under the specific social security acts, they are not awarded twice, unless they are not compensated fully by the social security scheme. While the principle of full compensation is applied, however the courts guide the principle that only “fair material or/and moral damage” can be compensated.

⁵² Article 6.284 (2) of the Civil Code of Lithuania.

⁵³ Lithuanian Supreme Court rulings of: 4 April 2015, civil case No. 3K-3-205-686/2015; 7 January 2015, civil case No. 3K-3-45/2015; 1 October 2014, civil case No. 3K-3-405/2014.

⁵⁴ See e.g. Lithuanian Supreme Court Rulings of: 7 January 2015, civil case No. 3K-3-45/2015; 7 November 2014, civil case No. 3K-3-477/2014; 1 October 2014, civil case No. 3K-3-405/2014.

⁵⁵ Lithuanian Supreme Court Ruling of 4 April 2015, civil case No. 3K-3-205-686/2015.

Another important rule, that in the case of death the awarded amount of damages **cannot be** changed, except in cases when a child is born after the death of the breadwinner⁵⁶.

Furthermore, in compensation for damages in the case of death compensations covered by social security schemes shall be taken into account.⁵⁷ The general principle is - if a person who has the right for compensation of damages for the death is covered by social security schemes, the damage is calculated under the rules set in special social security laws⁵⁸. Notwithstanding, for example, *lost income (loss of support)* are calculated on the same rationale as mentioned above.

Latvia

Article 2350 of Civil Law states that if someone is at fault for the death of a person, he or she shall compensate the heirs of the deceased for **medical treatment and burial expenses**.

The *expenses resulting from death* typically compose funeral and burial expenses and are compensated for the amount that is proven to have been.

If the deceased had a duty to maintain someone, such duty shall pass over to the person who is at fault for his or her death. The amount of such compensation shall be determined pursuant to the discretion of the courts; the age of the deceased, his or her ability to earn a living at the time of death, and, finally, the needs of the person for whom compensation is to be determined. If the latter has adequate means of livelihood, the duty to provide compensation shall cease.

According to Civil Law (Art. 1635) the amount of *compensation of loss of support* of the deceased is set by the court at its discretion and by taking into account the severity of consequences.

Pursuant to Civil Procedure Law (Art. 594 (1)(2)), in recovering support, compensating for losses arising from personal injuries which have resulted in mutilation or other injury to health or in the death of a person, or compensating for losses which have been occasioned through the committing of a crime

- 50 per cent of the liable person's salary, but not more than 50 per cent of minimum monthly wage.

Estonia

With regards to pecuniary damage in the case of death, in Estonia the regulation basically corresponds to Lithuania, provided the above-mentioned article 129 of Estonian LOA (see section VI.1. (Right to compensation)).

If a person whose death is caused bears, at the time of his or her death, an obligation arising from law to maintain another person, the person obligated to compensate for the damage shall pay the person reasonable monetary compensation corresponding to the maintenance payments which the deceased person would have paid to the person during the deceased person's presumed life-span (LOA article 129(3)).

According to the Estonian Family Law Act article 97, the following persons are entitled to receive maintenance:

1) a child;

2) a child who continues to acquire basic or secondary education in basic school, upper secondary school or vocational school as an adult but not more than until he or she attains 21 years of age;

⁵⁶ Article 6.284(3) of the Civil Code of Lithuania.

⁵⁷ For example, in occupational accidents when the deceased was covered by a social security scheme, the economic damage covered: (a) periodic insurance benefit (an insurance benefit, equivalent to the periodic compensation for lost capacity for work, divided by the number of persons statutory eligible to this benefit increased by one person) and (b) lump-sum insurance benefit (equivalent to 100 insured income of the current year, valid on the month of death of the insured as a result of the occupational accident). (Articles 26 and 27 of the Law on Social Insurance of Occupational Accidents and Occupational Diseases of the Republic of Lithuania).

⁵⁸ Article 6.284(4) of the Civil Code of Lithuania.

3) other descendant or ascendant who needs assistance and is unable to maintain himself or herself.

The formula in Estonia would be, e.g.:

$$\text{INC} * \text{statutory duration of maintenance} = \text{Loss of support}$$

The pecuniary damage must be compensated with periodical payments until the end of the maintenance obligation, but not longer than the deceased's life expectancy. The deceased's life expectancy duration is ascertained by taking into account the statistical life expectancy at birth of the same gender at the same age.

Estonian legislation does not have limitations that in the case of death the awarded amount of damages **cannot be** changed, except in cases when a child is born after the death of the breadwinner, as it is in Lithuania.

If a person who has the right for compensation of damages for the death is covered by social security schemes, the damage is calculated under the rules set in special social security laws.

VII. Limitation of Actions

Lithuania

As a general rule considered is full compensation (*restitutio in integrum*), there are no caps or thresholds in tort law. In the alternative compensation systems (e.g. social security, motor insurance), however, there are. For example, social security schemes do not cover non-pecuniary damage, therefore, the injured person indemnified for pecuniary loss from social security funds is eligible to assert a claim for non-pecuniary damage by bringing a claim in tort against the tortfeasor directly. The sum insured under compulsory insurance against civil liability in respect of the use of motor vehicles in a single road accident in the Republic of Lithuania, whatever the number of injured third parties shall be 5 million euros for personal injury, including 5 thousand euros for non-pecuniary damages and 1 million euros for damage to property.⁵⁹ Notwithstanding, as mentioned early, the insurer shall have the right of recourse against the tortfeasor (with some exceptions).

In terms of time limits, in Lithuania the general time limit of prescription in tort law is three years. However, with regards the payment of the compensation for damage the law laid down special provision. The law states that "Where the persons who have the right to compensation for damage apply for such compensation after a lapse of three years from the day when the damage was sustained, the compensation shall be paid from the day it was applied for."⁶⁰ In implementing this rule the Lithuanian Supreme Court has directed that in the case when the aggrieved person does not demand compensation of damage straight after suffering the harm, the obligation to compensate does not expire. Where the aggrieved person asserts a claim after three years from the day when the damage was sustained, the compensation shall be paid from the day it was applied for. The fact itself that the person claimed after three year does not preclude the grounds to expect the debtor for defence on the grounds of time limit of prescription.⁶¹ Thus, the time of limit does not prevent asserting a claim for damages. On the other hand, procrastination is not advantageous for the claimant, provided that the burden of proof lies with him. The longer the time period, the more difficult it can be to present reasonable and legitimate evidence to the court, therefore the claim might be not be successful.

⁵⁹ Article 11(1)(3) of the Law on Compulsory Insurance Against Civil Liability in Respect of the Use of Motor Vehicles.

⁶⁰ Article 6.288(2) of the Civil Code of Lithuania.

⁶¹ See e.g. Lithuanian Supreme Court Rulings of: 9 October 2013, civil case No. 3K-3-473/2013; 16 October 2006, civil case No. 3K-3-512/2006.

Latvia

In Latvia as well, as a general rule in terms of full compensation (*restitutio in integrum*), there are no caps or thresholds in tort law.

According to the Compulsory Civil Liability Insurance of the owners of motor vehicles law, the sum insured under compulsory insurance is:

- 1) Compensation for losses to a person - up to 5,000,000 euros, regardless of the number of victims;
- 2) The damage caused to property - up to 1,000,000 euros, regardless of the number of third parties.

The insurer shall have the right of recourse against the tortfeasor (with some exceptions).

Article 1895 of Civil Law states that all obligation rights which have not been expressly exempted from the impact of prescription and the use of which is not by law subject to shorter terms, shall terminate if the party entitled to them does not use them within a ten year time period.

Estonia

In terms of time limits, in Estonia the general time limit in tort law is three years as of the present time when the entitled person became or should have become aware of the damage and of the person obligated to compensate for the damage (the Estonian General Part of the Civil Code Act art. 150 (1)).

Regardless of the aforementioned provision, a claim arising from unlawfully caused damage expires not later than ten years after performance of the act or occurrence of the event which caused the damage (the Estonian General Part of the Civil Code Act article 150 (3)).

However, there is a special expiry provision for claims arising from causing death, a bodily injury or damage to health enacted in the Estonian General Part of the Civil Code Act (EGPCCA). According to the EGPCCA article 153(1) the limitation period for a claim arising from causing death, a bodily injury or damage to health shall be 3 years as of the moment when the entitled person became or should have become aware of the damage and of the person obligated to compensate for the damage, regardless of the legal basis of the claim.

It must also be noted that the previously mentioned claims expire not later than 30 years as of performance of the act or occurrence of the event which caused the damage (EGPCCA article 153 (2)).

As in Lithuania, the longer the time period, the more difficult it can be to present reasonable and legitimate evidence to the court, therefore the claim might not be successful.

VIII. Litigation, Alternative Dispute Resolution (ADR)

VIII.1. Duration

In **Lithuania** the average length of litigation in first instance is ten months, in appeal - six and in the cassation instance - three month. However, talking for personal injuries cases, where the involvement of the experts often requires both in assessment of harm done and recoverable damage prolongs proceedings. The litigation, therefore, in the first instance frequently lasts one and a half years (18 months). Appeals can take half the time (approx. 6 months), because as a general rule proceedings are in written form, disputes are resolved within one setting and the length mostly depends on the size of the court's docket. Unlike an appeal, a cassation is an extraordinary process, which is only open with reference to certain judgments with questions of law; it does not deal with the facts of the case, nor does it retry. It takes around six month.

In **Latvia** the average length of litigation in the first instance is eight months, in appeal approximately 3.3 months and in cassation instance - seventeen months, which is significantly more time consuming compared to neighbouring countries.

In **Estonia** the average length of litigation in first instance is five months, in appeal - six months and in the cassation (Supreme Court) - four months. There is no specific data of litigation on personal injuries cases.

VIII.2. Litigation Fees

Lithuania

Litigation costs generally consist of lawyer's fees, because in personal injuries cases for pecuniary and non-pecuniary damage claims the claimants are exempted from state duty⁶². Attorney's fees are freely agreed between the lawyer and the client. In practice the amount for trial in the first instance is from four to five thousand euros, at appeal about two to three thousand euros and estimated cassation - up to three thousand euros. According to the Lithuanian Civil Procedure Code, litigation fees are recovered from a losing party. The court has discretion to reduce the requested award for lawyer's fees, in doing so the courts are guided by the recommendations issued by the Bar Association and Ministry of Justice.

Latvia

For the claimant litigation costs in Latvia consists of lawyer's fee, due to fact that he is exempted from the state fee.

Lawyer's fees can vary depending on the case and the attorney's experience, starting from 1,000 euros up to higher sums for the first instance cases.

As in other Baltic States, in Latvia litigation fees are recovered from the losing party and the court shall have its own discretion to reduce the requested award for lawyer's fees.

Estonia

In Estonia litigation costs generally consist of lawyer's fees. The claimants are exempted from state duty in the case of non-pecuniary claims and when there is no significant public interest (State Legal Aid Act article 7 (1)(6)).

Attorneys' fees are freely agreed between the lawyer and the client. In practice the amount for trial in the first instance is from two to five thousand euros, at appeal about two to three thousand euros and estimated cassation - up to three thousand euros.

Litigation fees are recovered from the losing party. The court has discretion to reduce the requested award for lawyer's fees.

VIII. 3. Arbitration

Lithuania

According to Lithuanian legislation the dispute for compensation for personal injuries can be arbitrated, but only if both parties have agreed to it. The law prohibited the submission to arbitration disputes arising from employment and consumption agreements, except when the arbitration agreement has been reached after the dispute arises⁶³. In reality it means that the arbitration from the mentioned relationships cannot be concluded in advance. Furthermore, arbitration cannot take place if a party to which is the state or

⁶² Article 83 (1)(3) of the Civil Procedure Code of Lithuania. Standard stamp duty is 3% of the claim amount.

⁶³ Article 12(2) of the Law on Commercial Arbitration of Lithuania.

municipal enterprise, as well as the state or municipal institution or organization, except for the Central Bank of Lithuania unless advance consent to such agreement has been given by the founder of such enterprise, institution or organization⁶⁴.

Latvia

In Latvia it is possible to settle any dispute concerning civil matter by arbitration, if the parties have agreed on it. However, the law prohibits the submission if one of the parties is the state or a regional authority; disputes between employer and employee, if a dispute arises in conclusion, amending, terminating or performing an employment agreement.

Furthermore, arbitration cannot take place if a party to which is the state or municipal enterprise, as well as the state or municipal institution or organization.

Estonia

As in Lithuania, the dispute for compensation for personal injuries can be arbitrated, but only if both parties have agreed to it.

According to the Estonian CCP article 718 (2): an arbitral agreement shall be null and void if its object is:

- 1) a dispute concerning the validity or cancellation of a residential lease contract, and vacating a dwelling located in Estonia;
- 2) a dispute concerning the termination of an employment contract;
- 3) a dispute arising from a consumer credit contract.

In Estonia a proprietary claim in public law may be the object of an arbitral agreement if the parties are able to enter into a contract under public law concerning the object of dispute (Estonian CCP article 718(3)).

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⁶⁴ Article 12(3) of the Law on Commercial Arbitration of Lithuania.