



COBALT
Law Firm

Disputes Market Overview

H2 2023 to
H1 2024

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Last year, COBALT began to publish the Disputes Market Overview to reflect the most important trends and notable cases for medium-sized and larger companies. As the overview received a positive response from clients and competitors alike, we are pleased to provide this new summary for the previous year (01.07.2023 - 30.06.2024).

The number of cases remained largely unchanged: in 2023, Estonian courts of first instance received 35,107 civil cases (vs 35,089 in 2022), 51,072 summary proceedings for payment orders (vs 51,712 in 2022), 11,413 criminal proceedings (vs 12,389 in 2022), including 3,369 criminal cases (vs 3,877 in 2022), 4,875 misdemeanour proceedings (vs 5,113 in 2022) and 3,088 administrative cases (vs 2770 in 2022).¹

While the other Nordic countries see a large proportion of major disputes settled in arbitration, only a handful of disputes made it to arbitration in Estonia (11 cases in 2023, 8 cases in 2022). The trend in the number of arbitrations has remained low for years. Despite litigation funding, whereby a third party undertakes to pay all necessary legal costs in return for an ultimate performance fee, becoming more popular in Western countries, the territory in Estonia is yet to be conquered by such set-ups.

While the M&A market and related legal services are only beginning to show slight signs of recovery, the disputes market has remained stable. We continue to see increasingly complex cluster cases concerning a variety of different areas and requiring the involvement of diverse expertise (e.g. bio-contravention proceedings and related litigation in the Estonian fuel market²) and a large team to advise the client comprehensively.

Below is our more detailed overview of what was happening in the market, in particular in the areas of most interest to businesses. As litigation often lasts for years, a number of notable cases are relevant for several consecutive years and are also relevant in the context of this overview. As no comprehensive official statistics and case law analyses are available, this paper has been compiled on the basis of professional experience and publicly available data, like in the year before, and is therefore not exhaustive, so any suggestions for improvements are welcome.



1 Source: Yearbook of Estonian Courts: <https://aastaraamat.riigikohus.ee/maa-haldus-ja-ringkonnakohtute-2023-aasta-menetusstatistika-kokkuvote/>; from 2024 onwards, more detailed statistics by case type and court instance is also available on the Judicial Statistics platform: <https://app.powerbi.com/view?r=eyJoi2TlxMDE4NTQ0MjY0Ny00NTdkLTg0YTUyMzhhYzQ3ZGNhZThiliwid-C16jRmYjQ2MmUyLWE2Mzk0NGJINC1iM2U1LTM2ZW1MTg0M2M5MSIsImMOj9>

2 <https://www.cobalt.legal/news-cases/as-terminal-defends-its-rights-in-the-liquid-fuel-market-regarding-violations-committed-by-aktsiaselts-olerex/>

Civil matters

Intellectual property, IT and data protection disputes

Comments by Liina Jents, Specialist Counsel of IP, IT and data protection team

There were no major changes in intellectual property disputes. Most of the disputes in this area were heard by the Industrial Property Board of Appeal, the mandatory pre-litigation body for most patent, design and trademark disputes (except infringement disputes). In proceedings before the Board of Appeal, clients can only be represented by patent attorneys specialised in the given field. Patent attorneys work mainly in patent agencies, but also in law firms (e.g. COBALT, Ellex). The highest number of court decisions were related to copyright, followed by trademark disputes.

In the area of data protection, several high-profile data security incidents occurred (e.g. the Asper Biogene data leak, the illegal downloading of data of Apotheke loyalty card holders), indicating that the measures taken to protect the data subjects' data may have been insufficient. Such cases pose a significant risk to any data controller as they can lead to numerous disputes. Overall, the number of IP disputes remained stable, but data protection issues require increasing attention to ensure that data subjects' rights are adequately guarded.

Significant cases:

Case	Description	Main law firms involved
Bayer Healthcare's dispute with Zentiva concerning patent rights for a cancer drug	The dispute concerned an injunction prohibiting and restraining the activities infringing the rights to a cancer drug and a counterclaim for revocation of the patent. The Circuit Court clarified, inter alia, the County Court's duty to qualify and explain in the context of patent litigation, and criticised the County Court for collecting evidence at its own initiative (the County Court had collected pharmaceutical-related articles which it considered relevant).	Ellex, Sorainen
Exeltis Baltics v Bayer Pharma	The dispute is aimed at compensation for damages (loss of income) caused by interim protection in a patent dispute. The proceedings assess whether and to what extent the damage caused to the manufacturer of a generic medicinal product by denial of its generic product's access to the Estonian market due to interim protection requested by the manufacturer of the original medicinal product is compensable. The proceedings are pending and the judgment has not yet entered into force, but the case is important from the aspects of patent law and compensation for damages (loss of income).	COBALT, Ellex
HetEst v Kaido Tiivel and Evender Nordic in trade secret dispute	This was the only Supreme Court decision regarding intellectual property in 2023. The Court clarified the legal perspective of termination of the unlawful use of trade secrets as a claim for performance. The Supreme Court held that as the plaintiff filed a petition for the interim protection of claims that had no legal potential, the action did not qualify for interim protection. An action cannot be protected beyond a legal relationship.	Eversheds Sutherland, Triniti
X v Estonian Public Broadcasting (ERR)	A dispute concerning alleged copyright infringement, where the court explained that if the author agreed that the work could be used in a particular broadcast, then the author had to understand that the work could also be used in a summary of that broadcast.	EMERALDLEGAL
ITK's data protection dispute relating to a data breach	The Data Protection Inspectorate fined the East Tallinn Central Hospital (ITK) €200,000 for throwing papers containing patients' personal data into a construction waste container. This is the first fine of this magnitude in the field of data protection. ITK contested the fine. The Supreme Court decided to terminate the misdemeanour proceedings due to expiry.	Triniti

Comments by Managing Associate Kaidi Reiljan-Sihvart

Most insurance disputes continue to be settled through a conciliation body rather than in court. Compared to litigation, conciliation allows to resolve disputes quickly, inexpensively and in better alignment with the will of the parties to the dispute, as the agreement reached through successful conciliation is based on the parties' free will instead of the administration of justice. The number of insurance disputes in conciliation increased in 2023 compared to 2022 (440 vs 379 applications). In 2023, 59% of all disputes were successfully settled by mutual agreement (70% of motor insurance disputes and 49% of other disputes).³ Only a marginal number of all insurance disputes are taken further or directly to court.

Notably, the number of motor insurance disputes increased sharply (34% more disputes than in 2022). This increase is likely due at least in part to the shift from police intervention in the settlement of road accidents (and the determination of the responsible party) to digital recording of road accidents (where the parties themselves determine liability). This in turn has given rise to ex-post disputes over liability. For other types of insurance, an increase in disputes over employer-provided health insurance can be observed.

In the second half of 2023 and the first half of 2024, the Supreme Court did not make any decisions developing case law in the field of insurance. One noteworthy decision was handed down by the Court's Criminal Chamber, emphasising that the presumed amounts of compensation for non-pecuniary damage provided for in the Motor Insurance Act should be regarded as minimum limits and that courts must determine the amount of non-pecuniary damage primarily in view of the circumstances of the case.

As for insurance claims, policyholders/claimants would be well advised to contribute by documenting the facts of the case and the extent of loss immediately after the event, as this often leads to the expected result or ensures a better position in the event of a dispute.

Significant cases:

Case	Description	Main law firms involved
Allianz Global Corporate & Specialty Filial Sweden v McKenzie Invest	Dispute over a recourse claim by a foreign insurer. The dispute addressed, inter alia, the presumptions and the burden of proof in relation to insurers' recovery claims. Also, whether and under what conditions can damages be reduced due to circumstances attributable to the injured party. The County Court and the Circuit Court found that the policyholder's claim had transferred to the insurer. However, the courts found that the damages must be reduced by 90% due to circumstances attributable to the injured party. The case did not reach the highest court because the parties settled before the Circuit Court's decision entered into force.	COBALT, Pohla & Hallmägi
Civil action by an injured party against J. Sirkel and Compensa Vienna Insurance Group, ADB Estonia branch	A dispute in criminal proceedings over the amount of non-pecuniary damage caused by a road accident. In its decision, the Supreme Court thoroughly explained the principles of compensation for non-pecuniary damage and the meaning of the limits for non-pecuniary damage laid down in the Motor Insurance Act. The Supreme Court held that the said amounts are minimum amounts.	Objartel and partners
Pae 25 apartment owners v ADB Gjensidige Estonia branch	A dispute over the refusal to pay an insurance benefit. After a fire in the apartment building at Pae 25, the insurer of the building refused to pay compensation, alleging breach of fire safety requirements, and cancelled the insurance contract. In the context of the refusal to pay compensation, the dispute concerns compliance with safety requirements and the effect thereof. There is also a question of under-insurance. Apartment owners whose apartments were insured under separate policies are not able to restore their apartments until the building is restored.	NOVE, WIDEN

Competition disputes

Comments by Managing Associate Rauno Ligi

Competition disputes included various civil law disputes, supervisory proceedings and misdemeanour proceedings conducted by the Competition Authority, as well as criminal proceedings led by the prosecutor's office in "cartel cases". For several years now, the legislator has been transposing the European ECN+ Directive which, from the state's point of view, would give the Competition Authority considerably freer hands and more powers in conducting supervisory proceedings, including imposing (or requesting courts to impose) fines in the millions of euros on companies and essentially obliging companies to engage in self-prosecution (the constitutionality of which is questionable). It is still unclear when the act could enter into force, as the draft has been widely criticised by businesses, the Chancellor of Justice, legal academics and the Bar Association. The act is unlikely to enter into force before 2025, while the fines imposed by EU for Estonia's failure to transpose the directive in time are increasing with every day that the adoption of the law is delayed. However, once the act enters into force, a significant increase in competition disputes can be expected, particularly in relation to the Competition Authority's supervisory procedures, including the potentially higher fines. The desire to impose higher fines is also apparent, for example, from the recent Lindström supervision/misdemeanour case, where the company had to pay €50,000. Once the new act enters into force, fines can be assumed to increase by several (dozen) times. As the Competition Authority's proceedings will then have much more impact and consequences for businesses than before, the number of more complex competition disputes can be expected to increase. It will be interesting to see how the number and quality of such proceedings will be affected by the significant structural and staffing changes made at the Competition Authority over the past year. The Competition Authority itself has stressed that the focus in 2024 will be on enhancing the effectiveness of competition enforcement, especially in the areas where conducts both regular and ad hoc market analyses. The Competition Authority's recent market analyses have covered pharmacy reform, the fuel market, the electric vehicle charging network as well as electricity and gas markets.

Significant cases:

Case	Description	Main law firms involved
Estonian Karting Union and others v Estonian Autosport Union	In this important decision, the Supreme Court clarified that different sports federations may hold a dominant position within the meaning of the Competition Act and abuse it, which may result in the annulment of a decision of the sports federation or a claim for damages against the federation.	Hedman, LEVIN
Enefit v Competition Authority	Enefit is in dispute with the Competition Authority over both the supervision fee and the pricing of the universal service. According to public information, then regarding the pricing of the universal service, a compromise was achieved whereby Enefit dropped its complaint. The dispute is still ongoing regarding the supervision fee and the resolution of this might have an impact on similar cases in the future.	Ellex
Prenton v Competition Authority	The dispute concerns the Competition Authority's supervisory proceedings and precept relating to a consortium founded by timber hauling companies for the State Forest Management Centre's public tender. The dispute is pending in the administrative court.	COBALT
Terminal v Olerex	This "cluster dispute" involves, inter alia, various competition law infringements and related claims.	COBALT, WIDEN
Water consumers v Tallinna Vesi	The dispute concerns water tariffs imposed by Tallinna Vesi in the past and an earlier decision of the Competition Authority. Several actions have been filed, with claims exceeding 10 million euros. The Supreme Court sent the case back to the court of first instance for a new review.	NOVE et al., TGS Baltic, Triniti

Comments by Managing Associates Kadri Michelson and Kaidi Reiljan-Sihvart

Over the past year, several trends have emerged in media disputes. There has been an increasing number of actions filed directly against journalists alongside media outlets (publishers), raising concerns of whether such lawsuits are muzzling free speech. The number of actions brought by legal entities has increased as well. Besides defamation lawsuits, there is also an upward trend in right-to-be-forgotten claims. People are increasingly aware that their name does not have remain indefinitely associated with unpleasant or outdated information. While media companies have begun to recognise the right to be forgotten and a number of disputes over the right to be forgotten have been settled out of court, there are also cases where the continued association of an individual with certain news reports is claimed to be in the public interest, in which case the dispute ends up in court. This trend of right-to-be-forgotten disputes is also supported by case law, both in Estonia and in the European Court of Human Rights, where the personal right to be forgotten has been strongly upheld over the past year. Separately, compensation awards for more serious offences have been on the increase. They still mostly fail to compensate for the actual damage suffered while it has also been made clear that not every violation (inappropriate value judgement or false statement of fact) has to be followed by financial compensation.

Significant cases:

Case	Description	Main law firms involved
Alexela and Heiti Hääl v Delfi Meedia	Delfi and Eesti Päevaleht published incorrect factual allegations and inappropriate value judgements about Alexela and Heiti Hääl, calling on motorists not to buy fuel at Alexela. The dispute is significant because the court proceedings will assess, among other things, the permissibility of boycott as a business interference, the first time this has happened in the Estonian media landscape.	COBALT, Supremia
Magnum Medical v Äripäev, Koit Brinkmann and Martin Johannes Teder	An article in Äripäev newspaper claimed that pharmaceutical wholesalers and manufacturers were colluding to manipulate the prices of medicines, making tens of millions. Magnum Medical found that the article contained false allegations and the attack against Magnum Medical was unjustified, leading it to sue Äripäev and its journalists.	Ellex
Valvo Semilarski and Artyom Suvorov v Prosecutor's Office	The complainants were deputy mayors of Tartu, both suspected of taking bribes, among other things. At a press conference, the prosecutor said the complainants were corrupt. The court explained that the presumption of innocence makes it unlawful to publicly express a negative assessment of the suspects, as the underlying fact (bribery) might not be confirmed upon verification. An innocent person does not have to endure public figurative reproaches from public authorities. This administrative dispute provided guidelines for the public disclosure of assessments of an individual during criminal proceedings.	EMERALDLEGAL, WIDEN
Viive Aasma v Rein Jõe	The plaintiff wrote on Facebook about her resignation and the defendant posted negative comments about the plaintiff. The court clarified that not all value judgments are necessarily unlawful and that not every negative opinion published on social media should be followed by an award of damages.	Eipre & Partnerid, EMERALDLEGAL
Complaint by X and Y against the Data Protection Inspectorate	The complainants lodged a complaint with the Data Protection Inspectorate regarding an article published in 1997 in the Ärileht section of Ekspress Meedia's news portal Delfi. Following the complaint, a supervisory procedure was initiated against the media outlet to assess the lawfulness of continued publication of personal data. The complainants argued that, more than 20 years later, the continued publication of their names was not legal and that their names should be replaced by initials. The court agreed and found that the complainants had the right to be forgotten and that there was no public interest in the continued publication of their full names in an article from the far past.	LINDEBERG

Bankruptcy and reorganisation disputes

Comments by Managing Associate Annika Peetsalu

Economic difficulties led to a surge in the number of bankruptcies compared to the previous year (around 18%), although the number of bankruptcies remained at almost half the level of the previous economic crisis. The hardest hit sectors were construction (30⁴ bankruptcies), industry (30) and commerce (25), with several of the industrial companies also linked to construction. As a rule, such bankruptcies have a wide impact as unsecured creditors usually fail to recover much, if anything, and pledgees do not receive full satisfaction of their claims. Some insolvencies have also been due to abuse by management and a number of criminal proceedings have been launched (e.g. Eurora Solutions). In the period under review, 11 companies were subjected to reorganisation proceedings, mostly in the industrial sector. The only company that entered into reorganisation but went bankrupt fairly quickly was also in the construction sector (EVIKON Ehitus). Given the relatively low number of reorganisation procedures as compared to bankruptcies, the changes in the Reorganisation Act have apparently not yet created sufficient confidence in the process among companies, or the situation has deteriorated so rapidly that the appropriate moment for reorganisation has passed.

Significant cases:

Case	Description	Main law firms involved
Reorganisation of Baltika	In 2020, the court approved the reorganisation plan for Estonia's largest clothing manufacturer. The reorganisation plan was successfully completed by the end of 2023, making it one of the most successfully reorganised companies on the record.	COBALT, Sorainen
Bankruptcy proceedings of CoinLoan	The court declared the crypto company CoinLoan bankrupt in proceedings initiated by a German individual. More than a year after the bankruptcy was declared, the issues surrounding the disposal of the crypto assets remain unresolved and it is not known how much or when the more than 1,000 creditors could recover.	COBALT, Glikman, Hedman, Laus & Partnerid, LEVIN, Magnusson, Njord, WIDEN
Bankruptcy proceedings of Eurora Solutions	The software, which was supposed to be the backbone of the customs services start-up that raised \$40 million in 2022, turned out to be largely worthless, leaving investors empty-handed. The European Public Prosecutor's Office is investigating the company and its associates, including founder Marko Lastik, who has been charged with benefit fraud.	Sorainen, TGS Baltic
Bankruptcy proceedings of Intus Hoiu-Laenuühistu	Another bankruptcy of a savings and loan association. According to the interim administrator's report, the Finnish owners, together with the management board, deliberately and purposefully diverted members' deposits to themselves through various legal entities. The likelihood of the mostly foreign depositors recovering anything is low.	Hedman, WIDEN
Reorganisation of TERE, bankruptcy proceedings of Oliver Kruuda and relating disputes	<p>After eight years of proceedings and repeatedly going through all three levels of court, the approval of TERE's reorganisation plan finally came into force in 2024. This length of the procedure was unprecedented and unacceptable in the context of reorganisation. It is remarkable that a company in reorganisation survived such a long procedure.</p> <p>Along with TERE, its former owner Oliver Kruuda faced difficulties as well and began actively probing the legal system for anti-liability opportunities. In the autumn of 2023, the Circuit Court convicted Kruuda of misrepresentation.</p>	COBALT, Ellex, NOVE, RASK, Supremia, TGS Baltic, Walless

Comments by Managing Associates Annika Peetsalu and Kadri Michelson

Alimony disputes accounted for the largest share of family and succession disputes. As the cost of living has risen and the population has become wealthier, the amounts claimed have increased significantly and the legal practice in this area has evolved. The period under review also includes a landmark decision in which the Supreme Court clarified that if the parent has the means, they must also support the child's studies abroad. The most complex and high-value disputes were between well-known persons in society and related mainly to the division of property, either in the context of divorce or succession. In extrajudicial work, personal asset planning continues to be a rising trend. This involves both the arrangements for one's assets in the event of death and optimal preservation and growth of the assets during one's lifetime. As most disputes concerning the private life of individuals are handled pre-trial and in non-public proceedings, and the parties aim to settle disagreements confidentially, the overview below is clearly non-comprehensive, as in the year before.

Significant cases:

Case	Description	Main law firms involved
Nikolai and Natalia Ossipenko's divorce and division of joint property	The spouses brought claims against each other in connection with the divorce, having a court dispute over the validity of gift agreements, the division of joint property and the reimbursement of legal fees paid by one spouse to the other spouse's defence in a criminal case. Following the death of one of the spouses, the proceedings have likely transformed into succession proceedings.	LEADELL Piltv, LEVIN
Dispute over Priit Piilmann's estate	Priit Piilmann's successors have differing views on the issues relating to Mr. Piilmann's estate.	COBALT, LEVIN
The Sildaru asset split dispute	Dispute between members of the Sildaru family regarding the division of the assets of the alleged partnership. In addition to other issues, the focus has now shifted to the criminal investigation of whether the use of a minor's assets constitutes misappropriation.	Concordia, DEM, Walless
X v Y	A notable decision on parental maintenance, which assessed the extent of a parent's maintenance obligation (amount of support) in a situation where an adult child started studies abroad and needed maintenance. The Supreme Court clarified that where a child goes to a foreign higher education institution in order to acquire an education suited to their abilities and aptitudes, the resulting higher maintenance costs cannot be excluded solely on the ground that higher education in an equivalent field of study can be obtained in Estonia for free or at a lower cost. If the parent is able to provide maintenance, the parent's maintenance obligation also includes the payment of the reasonable costs of foreign education corresponding to the child's abilities and aptitudes.	Viktor Turkin
X v Y	A minor child's maintenance claim against a parent and assessment of the amount of maintenance where the parents enjoy a high standard of living. The court notably concluded that the award of maintenance must take the child's basic needs into account and that his or her prior standard of living must be maintained (if the parent's income so allows).	CONCORDIA, Maria Mägi

Labour disputes

Comments by Managing Associate Kadri Michelson

Over the years, the majority of employment disputes have concerned the termination of employment contracts, and the complex economic situation has led to an increase of such cases during the past year. This is also reflected by the fact that the Labour Inspectorate has received more questions concerning terminations as well as planned and actual lay-offs. There is also an upward trend in the number of terminations by employers due to incapacity for work, showing that employees are expected to be (more) efficient in the current tight economic situation. Disputes with rental companies are also on the rise, inter alia because a number of rental companies are failing to meet their legal obligations (e.g. to pay wages). Poor and inadequate communication between the parties is an apparent cause of labour disputes as well. Feedback from employers is interpreted as excessive criticism, injustice or bullying, often culminating in equal treatment and discrimination disputes. Alongside the number of labour disputes, the claimed amounts have also been steadily increasing, likely because of rising wage levels, among their things.

Significant cases:

Case	Description	Main law firms involved
Amitec Project v Virgo Kuristi	The employer brought a contractual penalty claim against the employee for breach of the non-competition agreement. In the dispute, the Supreme Court provided guidance on how to assess whether an employment contract (or another type of contract) had been concluded, and how to assess the validity of a non-competition agreement, considering that non-competition agreements should be reasonably delimited in terms of geography, time and subject matter and must be recognisable to the employee.	Cuesta, Lillo & Lõhmus
Ü. Koemets v Republic of Estonia (via the Rescue Board)	The court explained the need for a prior warning of termination of employment in a situation where the employee has been unable to perform their duties for a long period due to health reasons (reduced capacity to work) and where the employee themselves stated that their health showed no signs of improvement. The court held that in the given circumstances, the employer's warning prior to termination of the employment contract would not have altered the employee's health or ability to work and would therefore not have led to the continuation of the employment relationship within a reasonable period after the warning.	The parties represented themselves.
X and Y v Bombay Studios	An employment dispute with former employees of a cryptocurrency casino, assessing the employer's legal options to obtain compensation for damages caused by the employees' breach of employment contract. Claims for damages by employers (at least at this magnitude) are rather rare in practice and limited under the Employment Contracts Act, so the emergence of new case law in this area is important.	COBALT, Vladimir Sadekov
X v Peaceful Tech	A dispute in which the court assesses whether conduct between co-workers at an off-the-job event constitutes harassment and a material breach of the employment contract that would justify the employer's extraordinary termination of the employment contract without warning.	COBALT, TGS Baltic
X v City of Tallinn (via Tallinn Ambulance)	Dispute over whether an employer's extraordinary termination of an employment contract without warning due to a reduction in capacity for work was lawful in a situation where the employee's reduced capacity was caused by an accident at work and it became apparent after the termination that the employee was capable of performing the duties at the time of termination. The court found that the employer's extraordinary termination breached the principle of good faith towards the worker because doubts about the employee's state of health had not yet been resolved. In terms of good faith, it is important to bear in mind that employee was on sick leave as a result of an accident at work and the employer should therefore have taken interest in the employee's state of health and attempted to give them the opportunity to remain employed.	Pallo ja Partnerid

Comments by Managing Associates Annika Peetsalu and Kaidi Reiljan-Sihvart

No major new corporate law disputes have come to public attention in the last year. Not that there have been none, but the sensitive nature of the business information involved means that disputes may be resolved in non-public proceedings, or attempts may be made to proceed without publicity. As always, disputes between shareholders are complex cluster disputes involving essentially everything that can be disputed. As a rule, whoever is able to react more swiftly and go on the offensive will have the advantage, since the success of the initial steps (e.g. gaining control of company management through interim protection) can set the scene for further disputes. As usual, disputes arising out of shareholders' agreements are more likely to be submitted to arbitration, while many other disputes that may arise between shareholders are often legally impossible to resolve elsewhere than in the regular courts. Disputes between shareholders are increasingly involving members of the management (especially those with ties to a shareholder) and reports of criminal offences are often filed in addition to civil claims. Last year's experience also shows that parties tend to reach a compromise sooner or later. This is usually prompted by a lower court's ruling in favour of one of the parties.

Significant cases:

Case	Description	Main law firms involved
GLI Energia and GLI Holding v Marko Tiiman	Dispute regarding the expulsion of a shareholder from a company, in which the Supreme Court clarified the prerequisites and procedure for the expulsion of a minority shareholder, as well as the principles of compensation to minority shareholders. The dispute continues in the County Court.	TGS Baltic, Walless
Interchemie Eesti	Disputes between Interchemie's majority and minority shareholders. According to media reports, the multi-million euro disputes concern, inter alia, the alleged misuse of the company's assets and trade secrets by its former CEO to start a competing business.	COBALT, Concordia, Ruus ja Veso, WIDEN
Olympic Entertainment Group v small shareholders	Olympic Entertainment Group's former small shareholders, who are professional investors, are disputing the amount of compensation paid upon the takeover of their shares. After more than 5 years of proceedings, the court has not yet reached a decision.	COBALT, Walless
Traat Holding v Eesti Traat	Dispute brought by a small shareholder on a difference in the payment of dividends. Eesti Traat decided to distribute profits in proportion to the contribution of each shareholder and the profits distributed to Traat Holding were therefore not proportional to its shareholding. Traat Holding objected this as unequal treatment of shareholders. The Supreme Court explained that the shareholders have the right to provide sufficiently defined rules in the articles of association of a company for the payment of dividends which differ from the law, as well as the right to set out that the shareholders decide upon dividend payments on a case basis, without specifying any rule differing from the law in the articles of association.	DEM, TGS Baltic
Company X v Company Y	Dispute over the handling of an action filed by a deadlocked company. The deadlocked company's action was dismissed as inadmissible and it was held that the action could not be decided on the merits as the contradictory positions of the plaintiff's legal representatives made it impossible to ascertain the will (positions) of the corporate plaintiff.	COBALT, Triniti

Construction and planning disputes

Comments by Specialist Counsel Tavo Tiits

In the construction sector, disputes between developers and main contractors and between main contractors and subcontractors received the most attention last year. The disputes mostly concern the performance of obligations and financial claims under construction contracts. The main issues include the deadlines and the quality of the works. Conflicts most frequently arise from the parties' differing interpretations of the construction contract, the degree of completion and the quality of the works, and where no out-of-court settlement can be reached, the dispute ends up in court. Construction disputes are often characterised by the need for an expert opinion to identify and prove defects in the works, which, depending on the circumstances, may be costly but is nevertheless necessary to clarify the dispute for the court as well. In court proceedings, civil engineering expert assessments are still considered one of the most reliable forms of evidence.

In planning disputes, the courts have handed down a number of landmark rulings this year, annulling several detailed spatial plans for residential and commercial development on environmental grounds. This shows that local authorities and developers need to pay close attention to environmental considerations when drawing up plans and developing property.

Significant cases:

Case	Description	Main law firms involved
Fenster Alumiinium v Daniil Ignatenko	An important dispute in which the Supreme Court clarified the circumstances in which a contracting entity, who is not a party to a contract between a main contractor and a subcontractor, can bring actions directly against a subcontractor.	ALTERNA, Laus & Partnerid,
Ihaste Residents' Association v City of Tartu	A landmark dispute in which an environmental group successfully challenged a detailed spatial plan in which the local authority had failed to assess whether the implementation of the plan would result in significant environmental damage to a protected permanent habitat of a plant species.	HEED Entsik, RASK
Mapri Ehitus v LANDCAPITAL	Contractual penalty dispute relating to a breach of contract, in which the Supreme Court dealt with the exceptional situations where a party to proceedings has a right of appeal against the reasoning of a judgment only. The Supreme Court also clarified in which cases an objection of set-off raised during court proceedings is legally on par with a court decision.	Ruus&Veso, THOR
Oma Ehitaja v Pro Kapital	A dispute in which the contracting entity brought an unprecedented claim for a contractual penalty of nearly EUR 2 million and sought to enforce the builder's bank guarantee due to delays in the construction of apartment buildings. The dispute is notable because it concerns the payment of a first demand guarantee, which can be enforced by simply submitting a formally correct request to the guarantor (in this case a bank).	LEVIN, Nurmela&Co
Veiko Ulm v Viimsi Municipality	A detailed planning dispute in which the courts found that the local authority materially erred in the planning procedure by failing to identify the negative effects of the proposed commercial building and car park on the functioning of the area's green network, including fauna and avifauna. The Court decided to annul the detailed spatial plan because of these omissions.	COBALT, Walless

Criminal matters (white collar)

Comments by Partner Lembit Tedder and Managing Associate Rauno Ligi

Historic allegations of money laundering were still topical. In the case of Swedbank, the allegations proved to be unfounded and the criminal proceedings were closed in the first quarter of 2024, unlike in the criminal case against former Danske Bank employees, which was sent to court in the second quarter of 2023. Those proceedings are currently pending. Although Kajar Lember was acquitted, there is no reason to believe that the investigating authorities will pay less attention to possible corruption offences in the future, and bribery allegations against politicians and celebrities will continue to be under intense public scrutiny.

It will be interesting to see whether the conviction of former Via3L executives for breach of trust will encourage the prosecution to take other similar cases to court, or whether different civil claims will remain the main remedy in similar cases.

In several cases, we have witnessed the importance of internal audit as a tool enabling a company and its shareholders to best represent their interests in various proceedings and claims and, if necessary, to make appropriate changes to the business, internal processes and/or personnel.

There will certainly be more and different proceedings in relation to virtual currencies, licences and/or sanctions, however these are definitely areas where little case law is available so far.

Amendments to the Penal Code extending the liability of legal persons entered into force in November 2023 and these should, according to the rationale, simplify and extend the possibilities for holding companies liable in criminal and misdemeanour proceedings when an offence is committed by omission or due to a lack of organisation or supervision of the legal person. This could presumably lead to more proceedings against companies in particular.

Significant cases:

Case	Description	Main law firms involved
Criminal money laundering case against former Danske employees	The head of the non-resident division of Danske Bank's Estonian branch and client relationship managers were put on trial in connection with alleged large-scale money laundering. According to the indictment, the bank's former staff laundered around €1.6 billion. The initial number of suspects was smaller, but increased to 19 during the investigation. In the end, 15 suspects remained. Six of them have now been charged and are being tried in the County Court.	Attela, Cuesta, Indela, Lillo & Partnerid, L & P, Simson Straus, Walless
The corruption case of Hillar Teder, Centre Party and Mihhail Korb	An influence peddling case in which the Prosecutor's Office is demanding real imprisonment for a businessman.	LEADELL Pilv, LEVIN, WALLESS
Extradition of Ivan Turõgin and Sergei Potapenko to the U.S.	The case involves a number of parallel disputes, including the men's arrest, the seizure of \$145 million worth of assets and the lawfulness of extradition. A court order extraditing the men to the U.S. entered into force in May 2024.	COBALT, LEVIN
Oliver Kruuda's tax crime	Oliver Kruuda was convicted of a tax crime for misrepresentation in a dairy's VAT returns. Although the prosecution asked for a sentence of three years and four months imprisonment, including two months of real imprisonment (as shock incarceration), the Circuit Court decided that two years and four months suspended imprisonment was the appropriate sentence.	Namm, Supremia, Walless
Swedbank's money laundering suspicions	According to media reports, the company, its former board members and two employees were suspected of money laundering in the amount of more than €100 million. The criminal proceedings were terminated in the first quarter of 2024 due to the absence of a criminal offence, following termination requests by the defence.	COBALT, Ellex, LEVIN, RASK, WALLESS

The corruption case of the former directors of the Port of Tallinn	The former directors of the Port of Tallinn are accused of accepting large bribes and laundering money. A number of individuals accused of bribery and/or aiding and abetting bribery are also on trial. The case has attracted a lot of attention, including because of the huge delay in the hearing of the case and trouble with lay judges. The County Court found in its recent judgement that has not come into force yet, that the alleged crimes were expired and found the defendants not guilty.	LEADELL Piiv, LEVIN, RASK, TGS Baltic, WALLESS et al.
Money laundering charges against Tiiu Järviste, Andrii Danchak and Aleksei Dremov	According to the indictment, Tiiu Järviste, Andrii Danchak and Aleksei Dremov jointly and conspiratorially committed large-scale money laundering at GFC Good Finance Company AS, a business they controlled and managed. Järviste is also accused of conspiring with an accomplice to embezzle large amounts of money belonging to GFC Good Finance Company's customers but entrusted to the payment institution and held in accounts belonging to the latter, to which Järviste had access. In 2024, the Supreme Court acquitted Järviste on attempted embezzlement charges, but sent the criminal case back to the Circuit Court for a new trial on money laundering charges.	Tehver & Partnerid, Valdma & Partners, WIDEN
Abuse of trust by former Via3L managers	The company's former directors were accused of abusing trust by creating a new competing business from the resources, employees and trade secrets of their previous employer. Former directors Elmer Maas and Lauri Latt were finally convicted in 2023.	COBALT, Indela, WIDEN
Alleged largest cartel agreement in Estonia	The Prosecutor's Office suspected the sellers of grain dryers of a cartel agreement. According to the Competition Authority, it was one of the largest such agreements ever. The criminal proceedings were terminated on the basis of the principle of opportunity. The traders, who paid a total of €300,000 to the state under the terms of a settlement with the Prosecutor's Office, denied any illegal activities.	COBALT, Ellex, WALLESS et al.
Criminal case against Wendre's former managers	Peter Hunt, the owner of textile manufacturer Wendre, is demanding nearly €3 million from the company's former managers, who allegedly stole sensitive material from the company and used it for their new business. The allegations under criminal law mostly concern the unauthorised disclosure of trade secrets and their use for setting up a competing business.	Ellex, WIDEN

Public law matters

Administrative disputes

Comments by Managing Associate Kaidi Reiljan-Sihvart

The number of administrative cases was up about 10% in 2023, showing that people are not afraid to stand up against public authorities to defend their rights. A wide variety of legal interests were on dispute in administrative court proceedings. In many disputes, the courts had to deal with "the basics", such as the obligation of public authorities to stay true to their word. Another issue was the obligation to take the principles of public service delegation into account in relations with private service providers by not putting all the economic risk on the private provider alone.

After several years of proceedings, disputes over the lawfulness of the restrictions imposed in the wake of the corona pandemic, which had a significant economic impact on businesses, are now coming to an end.

Among the administrative disputes, a number of important and widely publicised ones concerned the right to education. For example, parents opposing the closure of schools challenged the closure of Lõpe and Metsküla schools, the conversion of Virtsu school into a 4-grade school and the closure of the gymnasium section at Toila school. The course of such disputes and the future of the disputed schools will largely depend on the application of interim relief, in regard of which the lower and higher courts have made conflicting rulings. Schools in Lääneranna Municipality were left without interim protection against closure because the Circuit Court found that the public interest in reorganising the school network outweighed the complainants' interests. There were some other landmark rulings concerning education, including on the question of whether the state must provide basic education in a foreign language. After constitutionality review, the state was deemed to have no such obligation.

Case	Description	Main law firms involved
Atko Bussiliinid v Jõgeva County Public Transport Centre	Complaint by a bus service provider against a public transport operator. The subject of dispute was whether and on what basis a transport operator may unilaterally reduce the cost per line kilometre on public bus services. The Supreme Court ruled that the cost per line kilometre cannot be unilaterally reduced to a level where it no longer covers the actual costs incurred by the carrier. The Supreme Court stressed that such cases require adherence to the principles of public service delegation, according to which it is not justifiable to put the entire (economic) risk associated with a service solely on the carrier.	Laarmaa, TGS Baltic
Parents of Metsküla primary students v Lääneranna Municipality	A dispute over the lawfulness of the closure of a small school. Parents of the small school's students challenged the decision to close the school, both on the grounds of a breach of subjective rights and on the grounds that the closure would not yield financial savings in the organisation of the school network. The substantive dispute has not been resolved, but the interim protection against the closure was withdrawn.	RASK, TGS Baltic
Mustamäe Elamus Spa v Republic of Estonia	A dispute over the constitutionality of corona restrictions. Since the spring of 2020, spas in Estonia were alternately either completely closed or subject to a 50 percent occupancy rule. Mustamäe Elamus Spa challenged the restrictions in court in 2021 and the dispute has now reached the Supreme Court, which will rule on the lawfulness of the restrictions imposed on spas by the government's general orders. The main issue in the dispute is how thoroughly the government has to justify such restrictions.	Sorainen
Terminal et al. v Republic of Estonia	Terminal and a number of other fuel traders requested the Environment Agency and the Tax and Customs Board to issue an injunction against Olerex for non-compliance with the biofuel obligation so as to require Olerex to meet the biofuel obligation retroactively, to the extent that Olerex had failed to do so. Alternatively, the initiation of a procedure for recovery of state aid was requested on the grounds that Olerex has received unlawful state aid through non-enforcement of the biofuel obligation retroactively. The Environment Agency and the Tax and Customs Board did not issue an injunction to Olerex to comply with the obligation retroactively, nor did they initiate state aid recovery, which is why the dispute is still pending before the courts.	COBALT
Communications service provider v Consumer Protection and Technical Regulatory Authority	Court dispute on the legality of the the Authority's injunction to stop the rebroadcasting of Russian TV channels. The dispute further evolved into a constitutionality dispute. In the proceedings, the Administrative Court found that disseminating information which may justify crimes against humanity and peace under the guise of journalism and freedom of expression endangers public order and the national security of Estonia. The judicial proceedings continue.	

Public procurement disputes

Comments by Managing Associate Kaidi Reiljan-Sihvart

Public procurement disputes are subject to a mandatory pre-litigation procedure, i.e. disputes are settled in the first instance by the Public Procurement Review Committee (VAKO). In 2023, 209 requests for review were submitted to the Committee, or 22.22% more than in 2022. Large-scale public procurement contracts are challenged more frequently. As for the basic tender documentation, technical specifications were the most contested. The most common reason for dismissing requests for review was that the contracting authority had corrected the infringement alleged by the challenger or had annulled the decision or cancelled the procurement entirely. Of the contracting authorities' decisions, declaring tenders successful was contested most frequently.

A decision of the Review Committee was appealed to the Administrative Court in 32 cases and 29 of these administrative cases have reached a final decision as of 18.03.2024. There has been a notable increase in disputes over repayment claims against aid beneficiaries, in cases concerning the State Shared Service Centre (RTK) or the Ministry of Finance.⁵

Significant cases:

Case	Description	Main law firms involved
G4S Eesti v Tallinn Airport and Forus Security	Dispute over the procurement of aviation security services for Tallinn Airport. G4S filed requests for review to the Public Procurement Review Committee regarding the second part of the procurement, alleging that awarding the contract to Forus would not be lawful. During the review procedure, Tallinn Airport applied for an authorisation to award the contract, and the dispute grew into a dispute over the authorisation, involving assessment of the contracting entity's exceptional need, the contracting entity's diligence in the conduct of the procurement, etc.	COBALT, ELLEX, Sorainen
MDSC Systems and Maru Metall v Centre for Defence Investment	Joint procurement with Lithuania for mobile field hospitals and dressing stations. The applicants requested the Ministry of Finance to perform supervision with regard to the modification of tender conditions after the established deadline and discriminatory terms of qualification. The Ministry of Finance decided to terminate the supervisory procedure as it found that although there were shortcomings in the procurement process, it would be disproportionate to annul the procurement.	NOVE
N.R. Energy's appeal against Tapa Municipality Council's decision	A dispute over whether the Tapa Municipality Council had the right to designate Tapa Vesi, a municipal company, as the network operator for the Tapa town heating district. The Administrative Court and the Circuit Court held that the case did not qualify as an internal transaction within the meaning of the Public Procurement Act, as the control criterion for an admissible internal transaction was not fulfilled. The Supreme Court, however, further clarified the prerequisites for an internal transaction, including the control criterion, and found, contrary to the lower courts, that the control criterion had to be considered fulfilled, i.e. the internal transaction with a company fully owned by the municipality was allowed.	Tammer & Tammer, WALLESS
Oma Ehitaja v Eesti Pank and Tarrest LT	The tenderer who came second in the tender for the reconstruction of the bank's 2nd floor hall contested the decisions to qualify the successful tenderer and not to exclude it from the tender, arguing that the documents submitted by the winner were incomplete. The decisive questions in the dispute were highly detailed and concerned the various requirements applicable when seeking to qualify a tender through the use of subcontractors.	NOVE, TGS Baltic
City of Rakvere v State Shared Service Centre	Dispute over a financial correction decision of the State Shared Service Centre (RTK). RTK requested Rakvere to repay €200,000 of grant due to alteration of the construction contract for the work and technology centre of Rakvere primary schools. The court found that the contracting entity's amendments to the contract were justified. This decision showed that the beneficiaries of grants have a primary responsibility towards the project - to complete a school, kindergarten or other building of public interest.	Sorainen

5 Requests and reviews in 2023 (statistics) - available on the Ministry of Finance website at <https://fin.ee/riigihanked-riigijabi-osalused/riigihanked/vaidlustusmenetlus#vaidlustuskomisjoni>

Comments by Managing Associate Rauno Ligi

The environment and related issues have an increasing impact on all areas of business. This is especially evident in global efforts to reduce climate impacts, in which the EU (including Estonia) has taken a leading role. As a result of these trends, the Estonian Ministry of the Environment has become the Ministry of Climate, and one of its major tasks in recent times has been to draft the so-called climate act and present it to stakeholders. As an interesting tendency, both the activities of the Ministry of Climate and the climate act itself have come under widespread criticism from a variety of interest groups. The Environment Agency (as well as e.g. the State Forest Management Centre) are in a similar situation, with neither businesses nor conservationists satisfied with their activities, and courts have also noted shortcomings in their actions. Unfortunately, such dissatisfaction and divergence of opinions, including the NIMBY attitude which remains strong in Estonia, are leading to an increasing number of environmental disputes and a greater demand for legal experts of the field.

At the same time, a situation where the Estonian economy has been in decline for the last 9 quarters, various development projects are delayed or cancelled altogether, factories move to Latvia or elsewhere, is not sustainable for the country and a functioning society in the long term. While the reduction of environmental impacts will certainly be a central concern for all of us in the near future, it is important to strike a balance between different interests, including social, economic and (energy) security interests, in the context of reducing the environmental footprint. A “great” example of this is the state’s desire to close down the oil shale industry in Estonia, in a timeframe and at a pace that does not account for the socio-economic impacts on the state and specific regions, nor the legal (and constitutional) rights of specific operators. Such steps and decisions to close down an industry or even specific companies obviously create controversy and uncertainty for other undertakings and potential investments into Estonia and its economy. A more sensible attitude on the part of politicians and officials could certainly prevent and avoid many disputes, while potentially increasing the (environmental) wealth of the country. There is no reason to believe that poor countries can protect their environment more and better than rich and innovative ones.

Overall, there is a noticeable trend in the market towards an increase of environmental disputes. These concern environmental inspections or criminal proceedings initiated by the Environment Agency, problems with the construction of projects, developments and plants, or disputes between competitors regarding different levels of compliance with environmental requirements. Meanwhile, it is vital for businesses to defend their own interests to the maximum possible extent in such disputes, creating the necessary case law and hope for the future, so that Estonia will continue to be able to develop its economy and implement a variety of projects. Giving up (to the state or the alleged “cheats”) without a fight leaves no hope that Estonia’s economic and competitive environment will improve in the future.

Significant cases:

Case	Description	Main law firms involved
Birdlife Estonia v Estonian Environment Agency	In its decision, the Supreme Court stressed that when granting an environmental permit, the objectives set out in environmental-protection development plans must be taken into account as well. Also, the harms and benefits of mining must be weighed and compared in the wider context of national interests. When considering the impact on rare species and habitat types, the countrywide trends must also be taken into account. All companies requiring environmental permits in the future should take the Court’s guidance into account when planning their activities.	COBALT, Heringson GLO
Citizen v Environment Agency	A precedent-setting decision of the Supreme Court in a case where the Environment Agency imposed a misdemeanour fine on an employee for alleged failure to comply with the company’s obligation. According to prior case law, an employee (or a company) could not be penalised for failure to act if the law did not impose a corresponding duty to act on a specific natural person. The Supreme Court held that, at least in environmental matters, such a duty to act can be derived from the General Part of the Environmental Code Act. Although the Court annulled the Environment Agency’s decision in this particular case, the ruling has created a legal solution whereby a board member, a manager (employee) or a competent representative who fails to act could also be penalised in environmental cases, e.g. for a misdemeanour.	COBALT
Jägala Fishways v Ministry of Culture	In its decision, the Supreme Court stressed that the Minister of Culture has a wide margin of discretion in extending heritage protection to various objects, and that the court can annul such decisions only in cases of manifest error. This renders the successfully challenging of such decisions in court rather difficult.	Barrister, HansaLaw, Nove, Wallless,

Kiviõli Keemiatööstus
v Environment Agency
and the State

A widely-covered dispute in which where the state and notably the Environment Agency have set requirements that could lead to the closure of Kiviõli Keemiatööstus (KKT), an energy company. KKT finds these requirements and the obligations imposed to be unlawful, which is why KKT has challenged them.

COBALT

Loodusvõlu v Narva-
Jõesuu Town

The Supreme Court stressed in its decision that in the case of plants with a major impact on the climate, the climate impact of their operation must be taken into account already in the planning and building permit procedure. The Court further stressed that if climate objectives are at stake, the state may also restrict the activities of companies that are members of the EU greenhouse gas trading scheme.

Ellex, Advokaadibüroo
Küllike Namm



Comments by Specialist Counsel in Tax Disputes and Tax Advisory Karli Kütt

Disputes over the tax liability of the legal representative of a company continued to be an issue in the courts. The tax authority is increasingly issuing liability rulings, and the courts have had to clarify time and again the limits of the tax liability of a director and the conditions for the recovery of a tax debt.

Due to the specific nature of tax proceedings, the possibility to submit additional evidence is often disputed in court, and higher courts have repeatedly instructed the courts to accept evidence that was not collected in the tax proceedings.

In VAT matters, confusion arose over the definition of “intermediation” in the Value-Added Tax Act, which does not make a good distinction between acting on behalf of oneself and acting on behalf of a client. Courts have clarified how to distinguish between intermediation services and normal resale on the basis of principles familiar from civil law. Regarding income tax, disputes arising from the audit of non-monetary contributions and the conformity of accounting records with tax law continued to be subjects of dispute.

In the second half of 2023, the Supreme Court essentially settled only three tax disputes, and no tax disputes have yet been decided in 2024. Circuit Courts have also resolved relatively few tax cases in the past year, with the majority of tax disputes relating to liability decisions.

Meanwhile, the implementation of a number of exemptions is currently under the tax authority's close scrutiny, and the tax authority has started exploring ways to raise additional tax revenue for the treasury within the existing legal framework. Over the past year, the tax authority has attempted to tax e.g. debt push-down transactions and to limit the use of VAT exemptions (especially the use of the health care exemption and the taxation of contractual penalties with VAT). The pricing of transactions between related parties is also being increasingly analysed.

Significant cases:

Case	Description	Main law firms involved
Gas Energy v Tax and Customs Board	The Supreme Court clarified that under the current law, the tax authority can invoke the incorrect valuation of non-monetary contributions only if the declared equity contribution allows for a tax-free distribution. If the non-monetary contribution is assessed at a higher value than the market value, the difference cannot be taxed under transfer pricing provisions.	Wallless
MELLEKS v Tax and Customs Board	The court stressed that even where there is a relationship of trust between companies, transactions must be documented in a way that enables to verify their economic substance and that the transactions actually occurred between the companies shown in the invoices. Otherwise, the mere absence of a proper accounting document would justify the imposition of tax.	Represented by the company's statutory representative.
Valdor Holding v Tax and Customs Board	The court clarified that if a (non-market value) transaction taxed under transfer pricing provisions is reversed, the tax authority must revoke the tax decision due to an event with retroactive effect. In prior case law, the courts had denied such a possibility in the case of dividend taxation.	COBALT
Vana Projekt v Tax and Customs Board	The court clarified that bonuses paid to employees for loyalty and confidentiality must be taxed as remuneration, regardless of whether the income arises from the active or passive activities of the employee.	Accounting consultant
X v Tax and Customs Board	The Supreme Court agreed with the appellant that a person cannot be required to incur expenses to recover a hopeless claim in order to avoid tax liability. If a loan is objectively irrecoverable, the waiver of recovery measures cannot be considered a gift if the loan agreement was genuine and the lender expected the loan to be repaid.	Supremia

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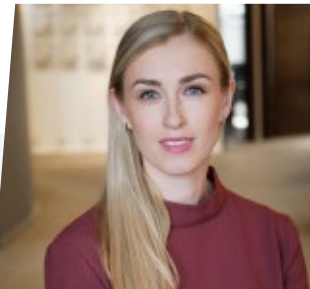
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Chambers Global, 2024

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