

## CASE TRANSLATION: LITHUANIA

CASE CITATION:

**Ž.Š. v Lietuvos taupomasis bankas**

CASE NUMBER:

**Civil case No. 3K-3-390/2002**

NAME AND LEVEL OF COURT:

**Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania)**

DATE OF DECISION: **20 February 2002**

MEMBERS OF THE COURT:

**Česlovas Jokūbauskas (chairman of the panel), Artūras Driukas (judge rapporteur) and Egidijus Laužikas**

*ATM; electronic signature (PIN); liability of the bank*

Civil case No. 3K-3-390/2002

Case category 39.2.1; 39.2.3; 39.3; 60; 94.2

The Supreme Court of Lithuania

DECISION

In the name of the Republic of Lithuania

20 February 2002

Vilnius

The panel of judges of the civil division of the Supreme Court of Lithuania, consisting of Judges: Česlovas Jokūbauskas (chairman of the panel), Artūras Driukas (judge rapporteur) and Egidijus Laužikas,

Secretary Diana Jurgelevičiūtė

in the presence of the applicant Ž.Š.,<sup>1</sup>

the applicant's advocate Mindaugas Šimkūnas,

defendant's representatives D.B. and advocate J. E. Alimienė,

in an open court seating examined the civil case pursuant to the cassation complaint by the defendant – public limited liability company 'Lietuvos taupomasis bankas' regarding the review of the decision of the panel of judges of the civil division of Vilnius Regional

Court of 13 June 2001 in a civil case between the applicant Ž.Š. and the defendant public limited liability company 'Lietuvos taupomasis bankas' regarding compensation for damages.

The panel of judges

decided:

The applicant Ž.Š. applied to the court with the claim, in which he stated that on 20 August 1999 he and the defendant concluded a contract regarding the issuing and servicing of a Maestro payment card No. xxxx xxxx xxxx xxxx. On 26 August 1999 the applicant deposited 800 Litas in cash into the bank account connected to the payment card, and on 27 August 1999 the applicant deposited 48,200 Litas to the same account. On the basis of the bank account reports, Ž.Š. received the information that on 29 August 1999 almost all the money was withdrawn from the account connected to the payment card using various ATM machines in Poland. However, the applicant claimed that he did not perform these operations. The bank refused to restore the sums of money that had been withdrawn. That way the applicant has sustained damages. Therefore, Ž.Š. has asked the court to recover from the defendant – public limited liability company 'Lietuvos taupomasis bankas' damages in the amount of 48,423.52 Litas sustained due to the unlawful debit of the applicant's account.

By the decision of 26 March 2001, Vilnius 2nd district court dismissed the applicant's claim and ordered the recovery of 12.80 Litas from the applicant for postage expenses in favour of the state. The court dismissed the claim because it found that there was no fault, lack of care or diligence on the part of the defendant's

<sup>1</sup> Mr. Sapalas appealed the decision of the 1st instance court to the appeal court, thus he was an 'appellant' during a previous stage of the proceedings. However, at the present cassation

stage it is the bank who appeals against the decision of the 2nd instance (appellate proper) court. Thus, in the strict sense, in the cassation court the bank is the appellant. The Supreme Court

uses the original titles of the parties in its decision – Mr. Ž.Š. is the original applicant and the bank is the defendant.

employees or defendant's contracted persons in the withdrawal of 48,423.52 Litas from the applicant's account.

Having considered the applicant's appeal, by the decision of 13 June 2001 the panel of judges of the civil division of Vilnius Regional Court annulled the decision of Vilnius 2nd district court of 26 March 2001 and satisfied the applicant's claim – awarded to Ž.Š. 48,423.52 Litas in damages and 900 Litas stamp duty from the defendant public limited liability company 'Lietuvos taupomasis bankas'. The appeal instance court also awarded 2,731.77 Litas of stamp duty in favour of the state from the defendant. The panel of judges found that at the time of withdrawal of the applicant's money from the ATM of the Gdansk bank in Bialystok city, Poland, the payment card issued by the defendant was used by the applicant Ž.Š. in Lithuania. These circumstances were not refuted by the defendant, therefore the court concluded that the defendant permitted the applicant's account to be debited using a payment card other than the one issued to the applicant by the defendant. In accordance with point 4 of the agreement of 20 August 1999 concluded between the applicant and the defendant, the latter undertook to debit the applicant's account only those transactions, which were made by the appellant using the original payment card. The owner of the payment card is the bank. On the basis of the explanations of the defendant's representatives and the testimony of witness S.G., the court established that for the purposes of withdrawal of cash from a bank account via an ATM and for making payment in other places, it is mandatory to use the payment card, i.e. it is impossible to take out the money from the account by only knowing the PIN code. Thus, the court concluded that the defendant unlawfully and in violation of the agreement of 20 August 1999 has debited sums from the applicant's bank account connected to the payment card. Even though the money has been withdrawn in Poland using the PIN code, which, in the defendant's opinion, could have been known only to the applicant, the court indicated, that the defendant failed to establish that the money had been withdrawn by using the PIN code together with the payment card issued by the defendant's issued payment card, or that the applicant has affected the withdrawal of the disputed sums from the account (Article 58 of the Code of Civil Procedure of the Republic of Lithuania). The court has rejected the defendant's argument that there is no fault of the public

limited liability company 'Lietuvos taupomasis bankas' was not at fault in debiting the sums from the applicant's account. It was established that by concluding the agreement, the bank undertook to perform the operation of debiting the money, therefore, the bank had to use the equipment and to take suitable steps seeking to ensure that the operation of debiting the money from the bank account could be performed only by using the payment card issued by the bank.

In its cassation complaint the defendant public limited liability company 'Lietuvos taupomasis bankas' asks to annul the decision of the panel of judges of the civil division of Vilnius Regional Court of 13 June 2001 and to transfer the case to Vilnius 2nd district court for retrial. The cassator does not agree with the decision of the appellate court due to the following reasons:

1. The court has violated the provisions of Article 231 of the Civil Code of the Republic of Lithuania of 7 July 1964 (CC) by transferring the burden of proof to the defendant. Point 8 of the agreement of 20 August 1999 concluded between the applicant and the defendant establishes that the owner of the bank account connected to the payment card must cover all expenses incurred by using the payment card and the PIN code, i.e. the personal identification code, which is used instead of the signature in the automatic devices accepting the card. In a court hearing, the applicant confirmed that he received the PIN code in a sealed envelope, which was not damaged. From the moment of receiving the envelope, all responsibility for ensuring the security of the PIN code was transferred to the applicant in accordance with Point 3 of the aforementioned agreement. The conclusion of the court that the defendant failed to prove that the money was withdrawn using the card issued by the defendant's together with the PIN code or that the applicant has affected the withdrawal of the disputed sum from his account, violates effective legal norms.
2. The court, having concluded that it is impossible to withdraw money only by using PIN code in the accepting devices, has incorrectly assessed the significance of the PIN code. The purpose of this code is to preclude people other than the owner of the bank account connected to the payment card from withdrawing money from ATMs.

3. The decision No. 5 of the Senate of the Supreme Court of Lithuania of 13 June 1997 in Point 2.2 establishes that a court decision may not be based on the assumptions about the circumstances of a case. The cassator states that the fact that the disputed sum was debited due to the expenses incurred using a card other than the one issued by the defendant may be established only within the framework of criminal proceedings after appropriate procedural steps are taken.
4. The conclusion of the court that the payment card is not sufficiently protected from fraud because the card lacks a microchip is not founded. The cards are produced using the equipment approved in all of the EU Member States and in accordance with strict EU rules on quality and security of the payment cards, such [rules] do not require using a microchip. On the other hand, the solution of the questions at hand requires specialist knowledge; therefore, these questions may be answered only upon examination by the court experts.
5. The applicant, who does not have a permanent place of residence and legal income, deposited to the account connected to the payment card a sum of 49,000 Litas, and after two days, using the PIN code known only to the applicant, in Poland, almost exactly the same sum (48,423.52 Litas) was withdrawn and no attempts to withdraw more money were made. The next day the account balance was checked, however, no questions were raised, and only after 10 days more, i.e., after the lapse of time period of retention of ATM video camera recordings, the applicant contacted the bank. These aspects of the applicant's personality and behaviour are totally incompatible with the provisions of Article 1.5 of the new Civil Code regarding the subjects of legal civil relations and their obligation to act according to the principles of justice, prudence and integrity in exercising their rights and duties. The above-mentioned criteria ought to be relied on by the appeal court.

The reply to the cassation complaint pursuant to Article 356 of the Code of Civil Procedure of the Republic of Lithuania has not been received.

The panel of judges

concludes:

Civil liability is possible only if all of the mandatory circumstances are present: unlawful actions, damages (losses), causal link between the unlawful actions and the damages (losses), and the fault of the person responsible. Unlike the criminal or administrative law, in civil law the actions of a person may be deemed unlawful not only in case of violation of a prohibition established by the law, but also in cases where a person does not fulfil or fulfils unduly an obligation established by an agreement, or even in cases where a person violates the general obligation to act carefully and diligently, which is applicable to all subjects of legal civil relationships. Since the nature of civil liability is more compensatory than punitive, the fault, as a precondition of civil liability, is evaluated according to the objective criteria – the standards of corresponding behaviour in a specific situation. The infliction of damages (losses) by unlawful actions is a sufficient foundation to conclude that the fault is established, because Article 231 of CC establishes the presumption of fault of the person breaching an obligation. Only if the debtor proves its innocence, could it be concluded that civil liability is not applicable. In deciding whether the debtor's fault is present, the criteria of the careful and diligent person's behaviour in a specific situation must be applied. The degree of care and diligence against which the debtor's conduct should be measured is determined firstly evaluating whether the debtor's actions were taken in his professional field, since more stringent requirements apply to professional activity. A person's degree of care and diligence in professional activity should be higher than in any other activity. Therefore, the questions whether the debtor has acted unlawfully, and whether the damages (losses) were inflicted due to the debtor's fault where he acted in his professional capacity must be determined not only against applicable specific provisions of law or agreement, but also against likely conduct of a careful and diligent professional in specific professional field in a corresponding situation.

Seeking to ensure the stability of the economic system based on private capital and private initiative, the business activity of banks is based upon principles of stability, credibility, efficiency and safety (Article 1(1) of the Law on Commercial Banks of the Republic of Lithuania). These principles form high standards of care and diligence for the banking business activity as a specific type of professional activity. A bank, being a

specialized financial institution, has an obligation to act carefully and diligently in its professional activity, and this obligation also covers the bank's obligation to guarantee the credibility, efficiency and safety of its business. Article 2(1) of the Law on Commercial Banks of the Republic of Lithuania establishes that banks engage in the business of accepting deposits and other repayable funds, and provision of loans assuming all the risks and responsibility related to these activities. Assuming these risks and responsibility means that the bank bears the burden of possible damages (losses) arising out of its business activity due to its insufficient credibility, efficiency and safety. Therefore, the bank's civil liability may arise not only because the bank commits an unlawful act violating a law or an agreement, but it may also arise because the bank violates a general obligation to ensure sufficient credibility, efficiency and safety of its activity in order to eliminate the possibility of damages (losses). This position, based upon the evaluation of standards of credible and safe banking, has been consistently reiterated by the Supreme Court of Lithuania while deciding on principles of civil liability of banks (See decision of the panel of judges of the Civil division of the Supreme Court of Lithuania of 13 December 2000 adopted in the case *UAB 'Vileka' v. AB bankas 'Snoras'*, case No. 3K-3-1345/2000, case category 43, and decision of 13 June 2001 adopted in the case *A.T. v. AB bankas 'Snoras'*, case No. 3K-3-645/2001, case category 58; 94.2; 103).

Taking deposits and other repayable funds into the clients' accounts opened with the bank and management of these accounts, the issuing of instruments of payment (cheques, letters of credit, bills, etc.) and carrying out transactions with them are professional activities of banks (Article 25(1) and Article 25(4) of the Law on Commercial Banks of the Republic of Lithuania). Issuing and carrying out transactions with bank payment cards as an electronic payment instruments falls within the scope of definition of the banks' professional activity. The bank, which issues payment cards and carries out transactions with them, is obliged to ensure the credible, effective and safe functioning of its payment card system. By operating and administrating insufficiently safe systems, which do not ensure protection of payment cards from fraud, systems that do not ensure protection of data required for the formation of payment orders, and systems that do not determine the personality of the person performing payments, the bank assumes the risks

arising of operation of such systems.

The essence of a payment with a payment card, which is unmediated and does not use the internet or other distance payment methods, is that the bank performs the payment only when the original card issued by the bank is presented as an electronic payment instrument, and a specific payment order – to pay the recipient a certain amount of money – is submitted to the bank. Additional measures ensuring credibility and security of payments by payment cards may be used for the purposes of confirmation of the payment order (essential properties of the payment order) – a requirement for the person, who forms the payment order, to present the card holder's identity document, a requirement for the card holder to confirm the payment order with his signature on a written document or with an electronic signature – by entering a specific sequence of data, which should normally be known only to the card holder, into the payment terminal or an ATM (PIN). However, these properties of payment by a payment card do not eliminate the need to present the payment card issued by a bank during the formation of a payment order, because the payment card is the main and necessary means of unmediated payment. The bank must ensure the protection of payment cards against fraud. The bank bears the risk that the payment will be made with a fraudulent card or a substitute of the original card. Therefore, in the case where the bank carries out a payment order upon presentation of a fraudulent card where the payment order had to be carried out upon presentation of the original payment card issued to the card holder, and if due to that bank's action the card holder sustains a loss, the burden of this loss has to be born by the bank and not by the card holder. The bank can completely or partially eliminate its liability towards the card holder if it proves that it duly fulfilled the general obligation to guarantee the reliable protection of payment cards against counterfeiting in accordance with the law, bank statutes, or agreement, or if the bank proves that the damages (losses) were wholly or partly caused by the fault of the card holder or due to force majeure.

The fact that the payment was made in compliance with other necessary properties of a payment order – the instruments ensuring the reliability and security of payment (the use of personal data or personal identification document of a person having the right to form a payment order, the signature on a written document of a person having the right of signature, the use of a proper electronic signature, etc.) may influence

the decision whether there are circumstances that wholly or partially eliminate the bank's liability towards the card holder. However, the mere fact that the payment met the necessary properties of a payment card does not remove the bank's liability by itself.

First, in accordance with the law, not the client, the bank bears the risk of damages (losses), related to the bank's activities of issuing payment cards into circulation and carrying out transactions with them.

Second, the assumption of risk presupposes the bank's obligation to ensure the reliability, efficiency and security of the bank's payment cards system and an obligation to be alert while carrying out operations with payment cards; it forms the basis for the bank's liability not only for the lack of security of the payment cards themselves, but also for the lack of reliability and security of the bank's payment card system, and for establishing insufficiently reliable and secure necessary payment properties, and for the control of use of measures ensuring the reliability and security of the bank's payment card system, and for the security of the measures implemented by the bank.

Third, the burden of proof (*onus probandi*) in civil procedures is distributed, taking into consideration the general presumption of good faith of both parties of the civil transaction, and evaluating which party is in a better position to prove its claims. The bank administrates and controls the payment card system and is responsible for the security of this system; the bank is obliged to act prudently and carefully. In the meantime, bank's customers are not capable of affecting or influencing the reliability and security of the bank's payment card system. In administrating and controlling the system of settlement by payment cards, and implementing the security measures, the bank has a greater opportunity to prove that the security measures of the payment card are breached and all the necessary properties of the payment order are used due to the customer's fault; whereas the card holder has lesser opportunity to prove the lack of fault on his part. In order to prove that all of the necessary properties of a payment card payment order were provided in order to initiate payment, and the security measures were neutralized with the customer's knowledge or due to the customer's lack of care or diligence, the bank must prove the specific actions of the card holder. The burden of proof that the payment card security measures were breached not because of the card holder's fault, only shifts to the card holder where it is established that the

security measures could only be neutralized with the card holder's knowledge or due to the card holder's negligence. Should the bank prove the card holder's fault as regards the breach of the security measures of the payment card, and should the burden of proof of innocence, therefore, lie with the card holder, if the latter is unable to prove his innocence, the bank may be wholly or partially exempted from liability, taking into consideration the card holder's degree of fault (Article 233 of CC).

One of the properties of the payment by a payment card, which at the same time may be a measure ensuring reliability and security of the payment, is the electronic signature (PIN code). In cases where the electronic signature (PIN code) is used during the payment transaction, the distribution of the burden of proof is distributed taking into consideration the level of security of such an electronic signature. In accordance with the provisions of Article 8(1) of the Law on Electronic Signature of the Republic of Lithuania, an electronic signature has the same legal force in respect of the electronic data as a manuscript signature for paper documents, and is admissible as evidence in court only when the electronic signature is the secure electronic signature created with secure signature creation equipment and based on a valid qualified certificate, in accordance with the requirements of Articles 2(5), 2(11), 2(15), 3(2), 4 and the third section of the Law on Electronic Signature. In the light of the attributes of the concepts of the secure electronic signature, secure electronic signature creation equipment, and qualified certificate and its compiler, it must be concluded that the mere fact of use of an original electronic signature may constitute sufficient proof of use of the electronic signature with the card holder's knowledge or negligence only when it is in principle impossible to reproduce such an electronic signature without the card holder's knowledge or negligence, taking into consideration the current state of the art and the requirements regarding the creation and use of such a signature. Therefore, in the event of a dispute between the bank and the card holder concerning the use of PIN code (electronic signature), the bank must provide the probative evidence regarding the particular actions or inaction of the card holder that would prove the use of the PIN code (electronic signature) with the card holder's knowledge or due to his negligence or lack of care. The bank also bears the obligation to prove that the original PIN code (electronic

signature) was used, i.e. the electronic signature, which identifies the specific person - the bank's client. The sufficient basis of transfer of burden of proof to the card holder may be established only in those cases where the original PIN code is used, and in accordance with the present level of equipment and in accordance with the requirements as to the formation and usage of such a signature, this signature could not have been reproduced without the holder's knowledge or negligence.

By establishing in Points 3 and 8 of the agreement concluded between the parties to the dispute regarding the issuing and servicing of the bank payment card, that transactions confirmed by the PIN code are considered appropriately authenticated and the customer is always responsible for the consequences of such transactions, the PIN code is granted higher importance than the payment card itself. These provisions establish the presumption that every transaction confirmed by the PIN code is lawful and these provisions establish the presumption of the bank's innocence regarding the possible losses of the customer caused by such transactions. It should be noted that the agreement is prepared on the bank's standard form and is concluded by the means of adhesion of the customer (consumer) to it. This way the transfer of risk of possible damages, which may be incurred due to the use of the payment card, as well as the transfer of the burden of proof in determining the lawfulness of payment orders successfully effected, and the transfer of the bank's statutory liability to the customer (consumer) by the means of standard contractual clauses, is groundless. The agreement regarding the issuing and servicing of the payment card unfairly negates the presumption of the bank's professional liability and unlawfully limits and abolishes bank's civil liability for possible damages to the customer's (consumer's) property, which may be incurred in the course of the activities of the bank. Therefore, there is no reason to follow those provisions of the agreement regarding the issuing and servicing of the payment card concluded by the parties, which are contrary to the above mentioned statutory principles of banks' civil liability and the rules of distribution of the burden of proof in cases where the dispute concerns the bank's civil liability for the damages (losses) inflicted by the bank to its customers in the course of its professional activity. Both courts – the first instance court and the appellate court have reached their conclusions in this case without fully examining all the relevant circumstances of the case; the courts failed to

observe the above mentioned rules on the distribution of the burden of proof in cases of such nature.

The appellate court pointed out that on 29 August 1999 in Poland the money was withdrawn using a fraudulent payment card. However, in this case there is no evidence that would warrant a court to make such a conclusion. The court did not establish whether it is possible to identify the payment card used for the disputed transaction on the basis of data recorded by the Polish bank whose ATM was accessed, or the private limited liability company 'Mokėjimo kortelių sistemas', the defendant or other involved persons; whether on the basis of such data and other data present in the case the experts could establish this circumstance; whether it was possible to defraud the Maestro payment card issued by the defendant to the applicant taking into consideration the technical tools available in 1999; whether it was possible to defraud the said payment card without the knowledge of the payment card holder (e.g. by using the payment card in the usual manner in an ATM or making a payment for goods or services). Furthermore, the applicant claims that he holds the original payment card, however he has not presented the card to the court and does not include it in the case documents.

The courts hearing the case established that the PIN code, used in the course of applicant's disputed payments made on 29 August 1999 at an ATM of Gdansk bank in Bialystok, was the one issued to the applicant as to the payment card holder. The proper determination of this circumstance, as well as the proper evaluation of its evidentiary value could have determined the distribution of proof and correct solution of the case. Yet, neither the first instance court nor the appellate court checked whether the evidence submitted by the bank – the technical documentation – indeed proves the claims of the bank's representatives that the original PIN code was used and that it was entered correctly on the first attempt. The security level of the PIN code has not been evaluated, notwithstanding the fact that evaluation of this level has material significance to the determination of the evidentiary value of the use of the PIN code in determining the correct distribution of the burden of proof between the parties to the dispute.

The following material circumstances have not been established: which data were stored in electronic form on the applicants' Maestro payment card; whether the account balance was stored on the payment card; whether the data stored on the payment card change in

the course of the payment transactions, and in which way precisely; whether during the withdrawal of money from the Maestro payment card issued by the defendant in 1999 in Poland, the corresponding amount was firstly reserved and the actual the debit of money from the card holder's account was carried out at a later date; whether these operations were carried out in real time; whether the fact, that having checked his account balance on 30 August 1999 with the payment card in the defendant's branch in Vilnius the applicant knew that a significant amount was debited from his account, proves that in Poland the original card issued by the defendant was used, whether the level of technology in 1999 allowed the reproduction of the PIN code used in Maestro payment systems without the knowledge or negligence of the card holder; whether the data regarding incorrectly entered PIN codes were recorded; whether it is possible to establish that the PIN code has been entered correctly on the first attempt; whether on the basis of the available case materials it could be definitely concluded that there were no attempts to withdraw money in excess of the applicant's account balance in Poland; whether all possible technical data, capable of affecting the outcome of the previous question have been provided and whether these are sufficient; whether the applicant has addressed the defendant immediately after checking the account balance and receiving the information that the balance has decreased significantly; whether at the time of the withdrawal transaction in Poland the ATMs used were equipped with video cameras; whether the cameras were operational at the time of the withdrawal, and if they were, what the Gdansk bank's retention period of the video records is, which could have recorded the persons who performed the transactions disputed by the applicant; when the account report was prepared on 1 September 1999, who actually prepared it – the defendant or private limited liability company 'Mokėjimo kortelių sistemos', when the report was sent and when it was actually received by the applicant; why the account report of 1 September 1999 does not contain information about the transactions performed on 29 August 1999 in ATMs of the Gdansk bank; what is the usual time within which the defendant in 1999 reported to its customers the transactions performed in Gdansk Bank ATMs in Bialystok, Poland with the Maestro payment cards it issued.

Having established that the evidence on which the parties base their claims and rebuttals is insufficient in

order to clarify the essential facts of the case, the courts should have explained to the parties their right to submit additional evidence, as well as the consequences of failure to provide the evidence required. (Article 15, Article 58(2) of the Code of Civil Procedure of the Republic of Lithuania). However, the courts did not perform these actions and decided the case in violation of rules on evidence and on the distribution of the burden of proof, therefore, the case could have been decided incorrectly. Therefore, it is impossible to deem these decisions of both courts as lawful and founded; they should be annulled pursuant to the cassation procedure (Article 3542(2) of the Code of Civil Procedure of the Republic of Lithuania).

The court that will be deciding the case anew must establish all the material circumstances of the case, consider the evidence presented by the parties properly, in accordance with the rules on evidence and the distribution of burden of proof. It must be noted that many of the issues of the case related to the parameters of Maestro payment cards system effective in 1999, Maestro payment cards themselves, ATMs and terminals, software, data transfer and storage equipment, and other aspects of security of the system are of technical nature and require special knowledge. With a view of deciding these questions properly, the question of appointment of the panel of experts must be considered (Article 87 of the Code of Civil Procedure of the Republic of Lithuania).

The panel of judges, in accordance with Article 368(1) point 5 and Article 370 of the Code of Civil Procedure of the Republic of Lithuania,

decides:

To annul the decision of the panel of judges of the civil division of Vilnius Regional Court of 13 June 2001 and the decision of Vilnius 2nd district court of 26 March 2001 and to transfer the case for retrial to Vilnius 2nd district court.

This decision of the Supreme Court of Lithuania is final, not subject to appeal and effective from the date of adoption.

Judges: Česlovas Jokūbauskas, Artūras Driukas and Egidijus Laušikas

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## CASE TRANSLATION: LITHUANIA

The ruling of the Supreme Court clarifies the main issues of the evidentiary value that a PIN code and a payment card entails, as well as the distribution of burden of proof in case of a dispute between the issuing bank and the customer. In the long term, this judgment might mean that the banks will consider the application of measures that will strengthen the security of their payment systems.

*Sergejs Trofimovs, LLB, LL.M., is an associate at law firm Foresta, and practices in ICT and IP law, competition and EU law. His extensive experience developed when advising the leading international and local IT and telecom companies while working for a number of years in each of the Baltic capitals.*

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