Tort cases in Iceland after the bank crash in 2008

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1. Introduction

In my brief comments I want to reflect a little bit on the situation in Iceland in regards to the topic we are discussing in this session, i.e. tort litigation within the financial market.

Before the bank crash in Iceland in 2008, during which all the major banks collapsed in three days, there were not many tort cases concerning the financial market.[1] After the crash there has been a boom of such cases, which are still being litigated in the courts and will be for the upcoming years. There are mainly three types of cases. Firstly, tort cases brought by individuals and companies directed at the banks that collapsed, which are in a winding-up procedure. Secondly, tort cases brought by the collapsed banks (winding-up boards) against the directors, board members and accountants of the banks. Thirdly, some cases have concerned the Icelandic state. I want to spend some time on each type of cases.

2. Tort cases against the banks that collapsed

The banks are now in a winding-up procedure and both individuals and companies have filed tort claims in the procedure, claiming damages due to alleged negligent and unlawful behavior on behalf of the banks that collapsed. These claims tend to go to court and therefore interesting precedents have been appearing in this field this year and last year. There are new judgments that clearly implicate strict liability of banks. The liability is however,

[1] Of course some cases can however be found, for example *SC (Supreme Court of Iceland) 9 December 1999 (Case No. 272/1999)* where an accountant and an accountant firm were judged to pay compensation for damage.

not as strict as in some other jurisdictions, like in Australia, which we heard about yesterday. The plaintiff has to prove negligence but the liability is strict due to the strong demands that are made on bank behavior, which makes it easier for a claimant to establish negligence than in many other fields. To some extent the strict liability also involves more lenient demands to the plaintiffs in regards to standard of proof (regarding causation and proof of damage).

To mention some examples, in *SC (Supreme Court of Iceland) 26 September 2012 (Case No. 472/2012)* a bank was found liable for not providing sufficient information in connection with an investment of a customer. Similar results can be found in *SC 17 April 2013 (Case No. 222/2013)* and *DCR (District Court of Reykjavík) 26 June 2013 (Case No. X-53/2012)*.

A somewhat peculiar aspect of this ongoing tort litigation is the fact that the time to file a claim in the winding-up procedure ran out a long time ago, in November 2009. Therefore, although some people might realize now, due to new precedents, that they could have raised a tort claim against some of the banks, they generally have no possibility to do so since only the claims that were filed in 2009 have the chance to be recognized.

It should also be pointed out that after the bank crash, or in September 2010, an article was added to the Act on Civil Procedure, that opens the possibility for a certain form of class action.[2] However, this new possibility cannot be used by claimants seeking tort liability in the winding-up procedure and it seems that it has not yet been used at all since its enactment.

3. Tort cases against the directors, board members and accountants of the old banks

All the winding-up boards of the three banks have filed tort cases against the directors, board members and accountants of the banks. Such cases have even been brought abroad, more precisely to New York,[3] but most of them are now pending before the District Court of Reykjavík. These cases are big in every respect and the claimed sums are huge. In June this year the District

[2] Article 19a of the Act on Civil Procedure No. 19/1991.

[3] The winding-up board of Glitnir filed a suit against seven Icelanders and an accounting firm in New York but the case was dismissed in December 2010. The defendants are now suing Glitnir for alleged damage caused by the New York litigation, but those cases are still pending for the District Court of Reykjavík.

Court dismissed one of the biggest cases,[4] but this fall the Supreme Court overturned the dismissal,[5] so the case is again pending before the District Court.

In connection with these cases, other cases have risen concerning the insurances that the banks bought and were supposed to cover damage caused by the board members and leading employees. In a judgment early this year the Supreme Court handed down a judgment that means that the insurance of Glitnir, one of the bank that collapsed, is to some degree inactive in the tort cases.[6]

It should be mentioned that in connection with the cases mentioned in this and the preceding chapter, questions have risen concerning the connection between these cases and criminal cases that have been brought against the directors and board members of the banks. Such criminal cases are still pending before the courts and plaintiffs in the tort cases often demand a postponement of their case until a judgment has been reached in a criminal case, since such a judgment may help them establishing culpability on behalf of the defendants. Such demands for postponement are adjudged on a case by case basis where the nexus to the relevant criminal case is the definitive factor.[7]

4. Tort cases concerning the Icelandic state

There have been some tort cases where the Icelandic state has been sued for damages due to failure to act before the bank crash and/or for the state's actions in handling the crash. The plaintiffs in these cases have not yet succeeded. For example, in *SC 16 May 2013 (Case No. 596/2012)* the Supreme Court acquitted the Icelandic state in a case where a German bank sued for damages that the bank claimed caused by a negligent and unlawful inactions and actions of the Icelandic authorities and legislature before, during and after the bank crash.[8]

4 *DCR 27 June 2013 (Case No. E-991/2012)*.
5 *SC 26 September 2013 (Case No. 491/2013)*.
6 *SC 14 February 2013 (Case No. 390/2012)*.
7 See as an example *SC 9 April 2012 (Case No. 188/2012)* and *SC 9 October 2012 (Case No. 620/2012)*.
8 Other examples where the Icelandic State has been aquitted are *SC 17 January 2013 (Case No. 169/2011)* and *SC 10 October 2013 (Case No. 70/2013)*.

Another interesting aspect of tort liability is that after the bank crash the Icelandic state took measures to prepare possible tort litigation. More precisely the Icelandic cabinet established in 2009 a working group that was supposed to investigate the state's possibility to bring suit against those individuals and legal entities which could be shown to have caused financial damage to the Icelandic state and the general public through their actions in the period leading up to and during the banks' collapse. The working group consisted of representatives of the Prime Minister's Office, the Ministry of Finance, the Ministry of Justice and the Ministry of Business Affair.[9] The group's work has not led to any lawsuits yet and it is fair to say that the state has many obstacles to overcome in order to bring such case successfully to court. But such litigation would surely raise interesting legal questions, for example concerning the state's own fault and the proof of damage.

5. Conclusion

As I have described the bank crash in Iceland in 2008 has led to many tort cases concerning the financial market, whereas such cases were rather rare before 2008. Many questions have been and are being brought to the courts and interesting judgments about tort liability in the financial market are to be expected in the near future.

[9] See http://www.ministryoffinance.is/news/nr/12432.