



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 23 February 2022

in Case No. 2021-22-01

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs, and Anita Rodiņa,

having regard to the constitutional complaint by “WINNER” Ltd., undergoing liquidation,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), Section 19² and Section 28¹ of the Constitutional Court Law,

at the hearing of 25 January 2022, reviewed in written procedure the case

“On Compliance of the Second Sentence of Section 444¹ (3) of the Civil Procedure Law (in the Wording that was in Force from 1 March 2018 until 19 April 2021) with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 14 October 1998, the *Saeima* adopted the Civil Procedure Law, which entered into force on 1 March 1999.

Chapter 55 of the Civil Procedure Law regulates submitting and examining ancillary complaints. By the law of 14 December 2017 “Amendments to the

Criminal Procedure Law”, which entered into force on 15 January 2018, the *Saeima* added Section 444¹ to this Chapter, worded as follows:

“(1) Upon submission of an ancillary complaint, except an ancillary complaint regarding a decision refusing to release from paying the court expenses into the state revenue, a security deposit in the amount of EUR 70 shall be paid.

(2) If the court, in full or in part, revokes or amends the appealed court decision, the security deposit shall be refunded. If the ancillary complaint is dismissed, the security deposit shall not be refunded.

(3) A security deposit need not be paid by the persons who are exempted from the State fee in accordance with law. A court or a judge, by taking into account the material status of a person, may completely or partly exempt the person from payment of the security deposit.”

By the law “Amendments to the Civil Procedure Law”, which was adopted by the *Saeima* on 25 March 2021 and which entered into force on 20 April 2021, the third part of Section 444¹ of the Civil Procedure Law was deleted from this Section. The respective legal provision, in the same wording, was included in Section 43¹ (2) of the Civil Procedure Law.

2. The applicant – “WINNER” Ltd., undergoing liquidation, (hereafter – the Applicant) – holds that the second sentence of Section 444¹ (3) of the Civil Procedure Law, in the wording that was in force from 1 March 2018 until 19 April 2021, (hereafter also – the contested norm) is incompatible with the first sentence of Article 92 of the *Satversme*.

It follows from the application that the application by a sworn bailiff regarding the approval of the statement of auction regarding the immovable property previously owned by the Applicant and corroboration of the title to property in the acquirer’s name had been approved by the decision of a first-instance court. Following that, the acquirer of the immovable property had submitted a request to the court regarding being put in the possession of the acquired property and this request had been satisfied by the decision of the first-instance court. The Applicant had submitted an ancillary complaint regarding this

decision, requesting to be exempt from paying the security deposit. This request had been substantiated by the fact that the Applicant was experiencing financial difficulties and lacked the necessary resources for paying the security deposit; moreover, its economic activities had been suspended by the State Revenue Service's decision. The court, however, dismissed the Applicant's request on the basis of the contested norm because this norm does not provide that a legal person governed by private law, which is experiencing financial difficulties, could be exempted from the duty of paying the security deposit upon submitting an ancillary complaint.

The Applicant, referring to the case law of the Constitutional Court, notes that the first sentence of Article 92 of the *Satversme* comprises the State's obligation to ensure to all persons, whose rights or lawful interests have been infringed upon, the right to the access to a court. In some cases this obligation is said to mean that the State must take measures to ensure to a person the right to the access to a court. A legal person governed by private law is said to also be the subject of this right because the right to a fair trial, as to its nature, is not such as to be attributable solely to natural persons.

Allegedly, the contested norm provides that the court or the judge (hereafter – the court), in view of a person's material status, may completely or partly exempt from payment of the security deposit only a natural person. The practice of applying this norm is said to prove that this norm is interpreted and applied in a way that does not allow exempting a legal person governed by private law, experiencing financial difficulties, from the duty of paying the security deposit upon submitting an ancillary complaint. Thus, the contested norm causes such situation, inadmissible in a democratic state governed by the rule of law, where in a situation when a legal person governed by private law does not have sufficient financial resources it, substantially, is denied the right to the access to a court. Hence, this person's right to a fair trial, included in the first sentence of Article 92 of the *Satversme*, is restricted.

The contested norm had been adopted and promulgated in the procedure set out in the *Satversme* and the Rules of Procedure of the *Saeima*, likewise, it has

been worded with sufficient clarity to allow a person to understand the content of the rights and obligations following from it and to foresee the consequences of its application. Thus, the restriction on fundamental rights, included in the contested norm, had been established by law. The requirement to pay a security deposit upon submitting an ancillary complaint had been set with the aim to limit submission of unfounded complaints so that courts would be able to adjudicate other cases faster and more effectively. However, not to make the submitting of an ancillary complaint dependent solely upon a person's financial possibilities, with the aim of ensuring the accessibility of a court, the contested norm provides for a court's right to exempt a natural person, fully or partially, from paying the security deposit. Thus, the legitimate aim of the restriction on fundamental rights, included in the contested norm, is the protection of other persons' rights.

Since a legal person governed by private law, which is experiencing financial difficulties, cannot be exempt from the obligation to pay the security deposit upon submitting an ancillary complaint, the aim, chosen by the legislator, to ensure a court's accessibility is not reached. Moreover, it is contended that there are more lenient measures that would allow reaching this aim because the procedure, set out in the contested norm, could be applied also to legal persons of private law. Namely, upon establishing that the material situation of a legal person governed by private law prevents it from paying the security deposit and the person has submitted evidence proving it, the court, upon assessing the material conditions of the legal person governed by private law, could exempt this person, fully or partially, from paying the security deposit.

3. The institution, which issued the contested act, – the *Saeima* – notes that the contested norm is compatible with the first sentence of Article 92 of the *Satversme*.

The requirement to pay a security deposit upon submitting an ancillary complaint restricts a person's right to the access to a court, included in the first sentence of Article 92 of the *Satversme*. The restriction on fundamental right had been established by a law, adopted in due procedure, and it is said to have a

legitimate aim – protection of other persons' rights. Before Section 444¹ of the Civil Procedure Law had been adopted, a person who submitted an ancillary complaint had to pay a state fee in the amount of EUR 28.46. However, this amount had not be such as to deter persons from submitting unfounded complaints. Therefore, with the aim of relieving the appellate instance court and the Supreme Court from reviewing unfounded complaints, the legislator had adopted Section 444¹ of the Civil Procedure Law and envisaged that the amount of the security deposit for submitting an ancillary complaint was EUR 70.

The amount of the security deposit, set by the legislator, i.e., EUR 70, is said to be relatively small. Namely, this amount had been set by taking as the basis the minimum salary, established in the state, which, at the time, had been EUR 380. However, in determining the amount of the security deposit, the legislator had also taken into account that a natural person might encounter difficulties in paying the security deposit and, hence, had adopted the contested norm.

The practice of applying the contested norm proves that, usually, natural persons who have been granted the status of a needy person (family) or a low-income person (family) are released from paying the security deposit in full. Regulatory enactments provide for several mechanisms for helping a legal person governed by private law that is experiencing financial difficulties. For example, the legal protection proceedings or insolvency proceedings can be applied to it. However, pursuant to Para 3 of Section 34 (1) of the Civil Procedure Law, a state fee must be paid also for an application regarding a legal person's insolvency proceedings or legal protection proceedings, submitted by a debtor. Section 62 (1) of the Insolvency Law provides that a precondition for the submission of an application for insolvency proceedings of a legal person is the payment of a deposit for insolvency proceedings of a legal person in the amount of two minimum monthly salaries into an account specially created by the Insolvency Control Service. Thus, a legal person governed by private law, which is experiencing financial difficulties, should be able to ensure means for paying the state fee and the deposit.

Pursuant to Section 1 (2) of the Commercial Law, the purpose of commercial activity is gaining profit. Therefore a merchant should be able to plan its cash flow in the long-term, to be able to cover the costs of legal proceedings. If a merchant is unable to continue its economic activities it must either be liquidated or find a way for restoring the ability to meet its commitments and participate in the civil law circulation. Moreover, engaging in commercial activities is the person's own choice, therefore a legal person governed by private law, experiencing financial difficulties, cannot be compared to a natural person whose material circumstances prohibit them from paying the security deposit. It should be taken into account that Para 10 of Section 43 (1) of the Civil Procedure Law already now envisages exempting administrators from paying the court expenses in claims brought on behalf of those persons, with respect to which the insolvency proceedings of a legal person have been announced if this person is a participant or a victim of the respective legal transaction or prohibited activity, in relation to which the claim has been brought. Such exemption is said to apply also to the cases where an administrator, representing the insolvent legal person in the respective claims, submits an ancillary complaint.

In assessing the proportionality of the restriction on fundamental rights, included in the contested norm, it is essential that the security deposit is refunded if the ancillary complaint is valid. Since reviewing of an ancillary complaint takes less time compared to reviewing a case on its merits, in the case of a valid complaint a person may regain the paid security deposit rather quickly. This means that the person has incurred expenditure only of temporary nature. Significant resources of the State are used to review obviously unfounded complaints; moreover, judges and court staff are spending long time in examining such complaints. Imposing an obligation upon courts to assess the possibility of exempting a legal person governed by private law, which is experiencing financial difficulties, from paying a security deposit upon submitting an ancillary complaint would be disproportionate and incompatible with the principle of procedural economy.

4. The summoned person – the Ministry of Justice – upholds the statements made in the *Saeima*'s written reply and is of the opinion that the contested norm complies with the first sentence of Article 92 of the *Satversme*.

The Ministry of Justice has submitted to the Constitutional Court information about the regulation of several Member States of the European Union regarding exempting a legal person governed by private law from paying for the costs of proceedings. Allegedly, Member States take different approaches to this matter; however, predominantly, legal aid, *inter alia*, the possibility to be exempt from the obligation to cover the costs related to legal proceedings is granted to non-profit legal persons. Such regulation exists, for example, in France, Portugal, and Estonia. Moreover, in Estonia, a legal person may apply for exemption from paying for the costs of legal proceedings only in claims related to the protection of environmental or consumer rights or another area of public importance to prevent possible infringement upon interests protected by law or to protect the interests of other persons. Whereas in Germany and Czechia any legal person may apply for exemption from paying the costs of legal proceedings.

The Supreme Court has recognised in its decision of 19 November 2014 in case No. SKC-2414/2014 that any association is exempt from paying the costs of legal proceedings on the basis of Para 5 of Section 43 (1) of the Civil Procedure Law if it submits an application to a court to protect the individual rights of its member pursuant to the aims of the association. Allegedly, this decision had led to a situation where associations were established with the aim of evading payment for the costs of legal proceedings, therefore the legislator, by the law of 29 October 2015 “Amendments to the Civil Procedure Law”, specified Para 5 of Section 43 (1) of the Civil Procedure Law. However, the Ministry of Justice is of the opinion that, also following these amendments, an association may be exempt from the obligation to pay the costs of legal proceedings into the state revenue if it represents the subjects referred to in Section 43 (1) of the Civil Procedure Law. It should be taken into account that, since 2003, the Directive 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing

Directive 2009/22/EC is applicable. Abiding by the requirement, included in this Directive, regarding exemption of consumers from the costs of legal proceedings, perhaps, it should be specified in the Civil Procedure Law, exactly which associations and in what cases may be exempt from paying the costs of legal proceedings.

5. The summoned person – the Ombudsman – holds that the contested norm complies with the first sentence of Article 92 of the *Satversme*.

If a legal person governed by private law does not have sufficient financial resources for paying the security deposit then the contested norms restricts this person's right to access to a court, included in the first sentence of Article 92 of the *Satversme*. Since courts do not have to decide on exempting a legal person governed by private law from paying the security deposit upon submitting an ancillary complaint it allows economising the court's resources, decreases the number of ancillary complaints and shortens the length of legal proceedings. Thus, the restriction has been established to protect other persons' rights. It is said to be suitable for reaching the legitimate aim since, thus, the litigants are urged to consider more carefully the need to appeal against the decision made by a lower-instance court. Moreover, the fact that a legal person governed by private law, experiencing financial difficulties, cannot be exempt from the obligation to pay the security deposit upon submitting an ancillary complaint imposes an obligation upon this person to plan its commercial activities carefully in order to be able to cover the costs of legal proceedings.

The alternative measure, indicated by the Applicant, i.e., regulation that would envisage the right of a legal person governed by private law to request exemption from paying the security deposit, would require additional resources of the court and might increase the length of legal proceedings. Although the legislator may define specific categories of cases or legal persons governed by private law who may apply for exemption from the obligation to pay the security deposit, it is, nevertheless, complicated to cover all cases, in which a legal person governed by private law might encounter difficulties in paying the security deposit.

Regulation that would grant to a court the right to postpone payment of the security deposit, thus giving a legal person more time for obtaining the necessary amount of money, could be an alternative regulation. To a certain extent, this measure is being applied already now because if a court establishes that, upon submitting an ancillary complaint, the security deposit had not been paid, it decides to leave the complaint not proceeded with and sets a term for eliminating deficiencies.

The Ombudsman, referring to the case law of the European Court of Human Rights, notes that the amount of the security deposit and the stage of proceedings, in which the respective payment is required, are important in assessing the proportionality of the restriction on human rights. In the particular case, the amount of the security deposit is such that ensuring it, by attracting current assets or other persons' assets, could not be too cumbersome. Moreover, the amount of security deposit is fixed and foreseeable, thus, a legal person governed by private law can plan the financial resources needed for legal proceedings. It also should be taken into account that the paid security deposit is refunded to the person if the complaint is deemed to be valid. Allegedly, it does not follow from Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention) or from the case law of the European Court of Human Rights in the application therefore that the State is obliged, in order to ensure to a legal person governed by private law the right to access to a court, to choose one particular measure, e.g., the right of this person to request exemption from paying the security deposit.

6. The summoned person – Kristīne Līce, the Representative of Latvia before International Human Rights Organisations, – points to the judicature of the European Court of Human Rights which could be relevant in assessing the compliance of the contested norm with the first sentence of Article 92 of the *Satversme*.

Para 1 of Article 6 of the Convention requires the State to ensure to all persons the right to access to a court. However, this does not mean that the State would be obliged to ensure to all persons the right to receive legal aid free of charge

in a civil case or the right to legal proceedings free of charge in a civil case. If the law requires making a payment before submitting a claim or a complaint to a court, this means that a person's right to access to a court is restricted. However, such a restriction *per se* is not disproportionate, unless it denies, substantially, a person the right to exercise their right to a fair trial.

The legitimate aim of the restriction on fundamental rights, established in the contested norm, is to deter persons from submitting obviously unfounded complaints. Pursuant to the judicature of the European Court of Human Rights, in the particular situation, in verifying whether the restriction on fundamental rights is proportionate, there are several important criteria: the amount of requested payment, the stage of legal proceedings, the impact of the payment on the proceedings in general, substantiation for the need of the payment, a person's ability to pay the respective amount and the possibility to apply for full or partial exemption from the obligation to make this payment, as well as other considerations that depend upon the individual situation of each person.

It cannot be unequivocally stated that the situation, in which a legal person governed by private law has not been envisaged the right to request exemption from the obligation to make any payment before submitting a claim or a complaint to a court, complies with Article 6 of the Convention. Namely, the European Court of Human Rights has established a violation of Para 1 of Article 6 of the Convention in a situation where the national regulation did not envisage at all a possibility for a legal person governed by private law to request exemption from paying the state duty for submitting a claim to a court. However, in the respective cases, the amount of the state duty had been important in establishing an infringement, since the amount had significantly exceeded the amount of the security deposit, defined in the contested norm, as well as the fact that, as the result of applying the regulation, a legal person governed by private law had been effectively denied the right to access to a court. It also should be taken into account that, regarding the issue of a person's right to access to a court, the European Court of Human Rights has not established differential treatment of natural persons and legal persons of private law. Moreover, in its judicature, the European Court of

Human Rights has repeatedly recognized that regulation that does not allow a person to request exemption from paying the state duty or other similar payments at all *per se* is problematic in the meaning of Para 1 of Article 6 of the Convention.

7. The summoned person – docent *Dr. iur.* Daina Ose from the Faculty of Law of the University of Latvia – holds that the contested norm does not restrict the right to a fair trial, included in Article 92 of the *Satversme*, of a legal person governed by private law, experiencing financial difficulties.

By the law of 14 December 2017 “Amendments to the Civil Procedure Law”, the legislator has envisaged that, from 15 January 2018, a security deposit, instead of a state duty, must be paid upon submitting an ancillary complaint. A security deposit and a state duty are two institutions that must be differentiated between, and they have different aims. Namely, the purpose of a security deposit is to relieve courts from reviewing unfounded complaints. The security deposit is characterised by its punitive nature since the person is not refunded the security deposit if the complaint is dismissed. However, if the complaint is satisfied or satisfied in a part thereof, the person is refunded the security deposit. It should be taken into account that the submission of an ancillary complaint delays the adjudication on its merits of the civil law dispute, which is the grounds for the case, therefore appealing against a court’s decision is justified only in the case of a valid complaint. Hence, the security deposit is said to be a procedural instrument, which is used to ensure balance between the interests of society and an individual. Namely, by relieving a court from unfounded complaints, its resources can be used to adjudicate faster the civil law disputes of other persons.

The Civil Procedure Law does not provide that a legal person governed by private law, experiencing financial difficulties, could be exempt from the obligation to pay the security deposit upon submitting an ancillary complaint. However, if insolvency proceedings of a legal person have been announced then, pursuant to Para 10 of Section 43 (1) of the Civil Procedure Law, administrators in claims brought on behalf of these legal persons are exempt from the costs of legal proceedings if these persons are a participant or victim of the relevant legal

transaction of wrongful act in relation to which the claim has been brought. Thus, the legislator has assessed whether such cases are possible when a legal person governed by private law, due to its financial status, should be exempt from paying for the costs of legal proceedings.

Special regulation on the issue of exempting a person fully or partially from paying the costs of legal proceedings or a security deposit has not been established in the legal acts of the European Union, therefore this matter falls within the competence of each Member State – defining the criteria for exempting persons from such expenditure. For example, in Germany, any legal person may apply for an exemption from paying the costs of legal proceedings. However, to apply such exemption to a legal person, special circumstances must be identified. Therefore, in practice, professional organisations or public good organisations, acting in the interests of wider society, are predominantly exempt from paying the costs of legal proceedings. Moreover, it has been recognised in case law that, primarily, also such legal persons should be able to provide the necessary resources for making the payments related to legal proceedings from its membership fees.

The procedure, in which the commitments of a legal person governed by private law, experiencing financial difficulties, are met and, if possible, solvency is restored, is defined in the Insolvency Law. In a civil case, if the subject matter of the claim is not related to a request to establish the financial circumstances and solvency of a legal person governed by private law, a court has the grounds to expect that the legal person is solvent at least in the amount of minimum equity capital. If regulation were adopted that would allow exempting a legal person governed by private law, experiencing financial difficulties, from the obligation of paying the security deposit, it is not clear what the legal consequences of such a court's decision would be upon the regulation included in the Insolvency Law and the creditors' interests. Therefore, a legal person governed by private law, experiencing financial difficulties, may not be exempt from the aforementioned obligation. Whereas the fact that the legislator has envisaged in the contested norm the court's right to exempt natural persons from paying the security deposit does

not mean that similar regulation should be envisaged with respect to legal persons of private law because such persons are not comparable.

8. The summoned person – sworn advocate *Mg. iur.* Māris Melķis – holds that the contested norm complies with the first sentence of Article 92 of the *Satversme*.

In the present case, it should be taken into account that, in certain cases, the Civil Procedure Law provides for the possibility to exempt a legal person governed by private law from paying the costs of legal proceedings and the security deposit. It is in the case where the legal person's insolvency proceedings have been announced. Whereas a natural person may be exempt from paying the costs of legal proceedings and the security deposit not only on the basis of a law but also on the basis of a court's decision if its financial status prevents it from making the respective payment.

Although the legislator has provided for different procedures in the Civil Procedure Law for exempting natural persons and legal persons governed by private law from paying the costs of legal proceedings and security deposit, *per se* this does not mean that the contested norm would be incompatible with the *Satversme*. In view of the existing objective differences between these persons, the legal regulation with respect to a natural person and legal person governed by private law should not always be identical. It should be taken into account that only in the case where the insolvency proceedings of a legal person have been announced by a court's decision, it becomes insolvent and gains the reliefs defined in regulatory enactments. Until then, it is presumed that a legal person governed by private law is solvent, and this means that its board is obliged to organise the commercial activities of this person in a way that that would allow covering its costs, *inter alia*, if necessary, by attracting resources from third persons. It would be disproportionate to impose upon courts the obligation to examine the financial status of a legal person governed by private law and decide on exempting it from paying the security deposit, if such a person maintains that it is experiencing financial difficulties in paying the security deposit. It is also important that, in the

case of a valid ancillary complaint, the person is refunded the security deposit. Hence, the purpose of the security deposit is to promote integrity in exercising the procedural rights.

In the particular case, the amount of security deposit upon submitting an ancillary complaint, defined in the Civil Procedure Law, should be considered as being proportionate. However, the presumption that a legal person governed by private law is solvent until the moment when insolvency proceedings are announced by a court's ruling, is said not to be absolute. Possibly, with respect to other costs of legal proceedings, situations, in which a legal person governed by private law, experiencing financial difficulties, could be exempt from paying for the respective costs, on the basis of a court's decision, should be defined in the Civil Procedure Law.

The Findings

9. The Applicant requests the Constitutional Court to examine whether the second sentence of Section 444¹ (3) of the Civil Procedure Law, in the wording that was in force from 1 March 2018 until 19 April 2021, complies with the first sentence of Article 92 of the *Satversme*. The aforementioned norm of the Civil Procedure Law provided that a court, considering the financial status of a natural person, could exempt the person in full or partially from the obligation of paying the security deposit upon submitting an ancillary complaint, except an ancillary complaint regarding a decision refusing to release from paying the court expenses into the state revenue.

It follows from materials in the case that the Applicant is a legal person governed by private law. At the stage of enforcing a court's ruling, it submitted an ancillary complaint regarding the decision by a first-instance court by which the request of the acquirer of the immovable property regarding being put in the possession of the acquired property had been satisfied. At the same time, upon submitting this complaint, the Applicant also requested to be exempt from paying the security deposit in the amount of EUR 70 because it experienced financial

difficulties and lacked the financial resources for paying the security deposit; moreover, its commercial activities had been suspended by the State Revenue Service's decision. The court, however, dismissed this requested because the contested norm did not envisage exempting a legal person governed by private law from paying the security deposit upon submitting an ancillary complaint (*see Case Materials, Vol. 1, pp. 19–23*).

The Applicant does not object to the fact that, upon submitting an ancillary complaint, it is obliged to pay a security deposit, nor to the amount of the security deposit. The Applicant sees the incompatibility of the contested norm with the first sentence of Article 92 of the *Satversme* in that fact that the legislator has not envisaged in this norm the right to a legal person governed by private law, experiencing financial difficulties, to request the court to exempt it from paying the security deposit upon submitting an ancillary complaint. If a person like this lacks sufficient financial resources for paying the security deposit then, in the process of appealing against the decision by a lower instance court, the right, included in the first sentence of Article 92 of the *Satversme*, is not ensured to it.

It follows both from the text of the contested norm and the practice of its application that it envisages the possibility of exempting in full or partially from the payment of the security deposit only a natural person if such circumstances are established that prove that this person, due to their financial circumstances, are unable to pay the security deposit. A legal person governed by private law, however, is not a subject referred to in this norm. I.e., such a person does not have the right to request exemption from the obligation to pay the security deposit upon submitting an ancillary complaint (*see, for example, Decision by the Riga Regional Court of 10 August 2020 in Case No. CA-2127-20/29*). The *Saeima* also notes that the legal regulation does not envisage the right of a legal person governed by private law to request a court to exempt it in full or partially from the obligation to pay the security deposit. This right has been granted only to a natural person (*see Case Materials, Vol. 1, p. 64*).

Thus, the legislator has envisaged that only a natural person can be exempted in full or partially from paying the security deposit by a court's decision.

Neither the contested norm nor any other norms of the Civil Procedure Law envisage the right of a legal person governed by private law to request a court, considering, *inter alia*, the financial situation of this person, to exempt in full or partially from the obligation to pay the security deposit upon submitting an ancillary complaint. Thus, the basic question in the present case is whether a legal norm that does not provide for the right of a legal person governed by private law to request the court to exempt it in full or partially from the obligation to pay a security deposit upon submitting an ancillary complaint complies with the first sentence of Article 92 of the *Satversme*.

Hence, the Constitutional Court will examine the compliance of the contested norm with the first sentence of Article 92 of the *Satversme*, insofar it does not envisage the right of a legal person governed by private law to request the court to decide on exempting this person from the obligation to pay a security deposit upon submitting an ancillary complaint.

10. The first sentence of Article 92 of the *Satversme* provides: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

The Constitutional Court has recognised that term “fair court”, used in the first sentence of Article 92 of the *Satversme*, comprises two aspects, i.e., “a fair court” as an independent institution of the judicial power and “a fair trial” as due procedure, appropriate for a state governed by the rule of law, in which the case is adjudicated (*see, for example, Judgement by the Constitutional Court of 16 April 2015 in Case No. 2014-13-01, Para 11, and Judgement of 28 September 2016 in Case No. 2016-01-01, Para 9*). Fair outcome of legal proceedings, i.e., a just ruling, is also an indispensable part of a fair trial (*see, for example, Judgement by the Constitutional Court of 9 January 2014 in Case No. 2013-08-01, Para 6*). However, the fairness of the process of adjudication would be meaningless if accessibility of this process would not be ensured. Ensuring the accessibility of the court is the way, in which a person may realise protection of his or her rights and lawful interests and achieve justice – the supreme purpose of the system of a democratic state governed by the rule of law (*compare,*

see, Judgement by the Constitutional Court of 20 April 2012 in Case No. 2011-16-01, Para 8.1).

Although the first sentence of Article 92 of the *Satversme* does not envisage the State's obligation to grant, in all categories of cases, to a person the right to appeal against a ruling by a lower-instance court at a court of higher instance; however, if this rights is granted, the State must ensure that the appeals process complies, *inter alia*, with the requirements set regarding the accessibility of a court (*compare, see, Judgement by the Constitutional Court of 29 October 2012 in Case No. 2012-05-01, Para 7, and Judgement of 14 June 2018 in Case No. 2017-23-01, Para 12.2.*). The purpose of appeal is to verify the validity of a court's ruling, as well as to eliminate errors, committed by a lower-instance court, and, thus, ensuring justice (*compare, see, Judgement by the Constitutional Court of 15 March 2018 in Case No. 2017-16-01, Para 16.1.1.*). Moreover, the first sentence of Article 92 of the *Satversme* requires ensuring a person's right to a fair trial not only when, in the appeals procedure, the case is reviewed on its merits but also in other stages of legal proceedings (*compare, see Judgement by the Constitutional Court of 16 July 2020 in Case No. 2019-23-01, Para 10*).

Thus, if a person is entitled to appealing against a court's decision at a higher-instance court, the regulation, established by the legislator, must ensure that the person would be able to achieve the adoption of a fair decision in due procedure.

The right to a fair trial, included in the *Satversme*, must be ensured not only theoretically but also practically and effectively. Making the exercise of the right to a fair trial dependent on a person's financial possibilities would be inadmissible in a democratic state governed by the rule of law (*compare, see Judgement by the Constitutional Court of 14 March 2006 in Case No. 2005-18-01, Para 17, and Judgement of 15 March 2018 in Case No. 2017-16-01, Para 9*). Therefore, the legislator's obligation to take the necessary measures to ensure in the process of appealing against a court's decision accessibility to a court also to a person who does not have sufficient financial resources follows from the right to a fair trial, for example, by envisaging legal regulation for full or partial exemption of this

person from the obligation to make a certain payment. The fact that a person does not have the right to request a court to exempt them in full or partially from making the required payments influences a person's possibilities to exercise their right to a fair trial (*compare, see Judgement by the Constitutional Court of 14 March 2006 in Case No. 2005-18-01, Para 17, and Judgement of 20 April 2012 in Case No. 2011-16-01, Para 15*).

10.1. The Constitutional Court has repeatedly noted that the first sentence of Article 92 of the *Satversme* should be specified in conjunction with Article 6 of the Convention and the judicature of the European Court of Human Rights in the application thereof (*see, for example, Judgement by the Constitutional Court of 15 November 2106 in Case No. 2015-25-01, Para 13, and Judgement of 26 March 2020 in Case No. 2019-15-01, Para 10*). In specifying the content of a constitutional provision, a solution that would ensure harmony between the norms of the *Satversme* and the Convention should be sought (*see, for example, Judgement by Constitutional Court of 12 March 2020 in Case No. 2019-13-01, Para 14*).

The first sentence of Para 1 of Article 6 of the Convention provides that, in the determination of one's civil rights and obligations or of any criminal charge against a person, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The European Court of Human Rights has recognised that the State has the discretion to adopt provisions needed to ensure the right to a fair trial, *inter alia*, determine that a person, prior to turning to a court or submitting a complaint, has the obligation to pay fees or make other payments. However, the State also has the obligation to ensure everyone's right to access to a court. Therefore, the requirement to make various payments related to legal proceedings may not deny a person the possibility to exercise their right to a fair trial (*see, for example, Judgement by the European Court of Human Rights of 19 June 2001 in Case "Kreuz v. Poland", Application No. 28249/95, Para 59, and Judgement of 9 December 2010 in Case "Urbanek v. Austria", Application No. 35123/05, Para 48 and 51*).

In verifying whether a person's right to access to a court has been ensured, the European Court of Human Rights examines whether a person's ability to make the payment, defined by the State, related to turning to a court or submitting a complaint, has been taken into consideration. Likewise, the European Court of Human Rights takes into account also other criteria, for example, the amount of the requested payment and whether the national regulation provides for a person's right to request exemption from the obligation to make this payment, the type and state of legal proceedings, in which the payment is demanded, as well as the substantiation of the need for this payment (*see, for example, Judgement by the European Court of Human Rights of 19 June 2011 in Case "Kreuz v. Poland", Application No. 28249/95, Para 60, Judgement of 20 December 2007 in Case "Paykar Yev Haghtanak Ltd v. Armenia", Application No. 21638/03, Para 48, and Judgement of 24 September 2009 in Case "Agromodel Ood v. Bulgaria", Application No. 68334/01, Para 42–47*). The aforementioned criteria are equally applied both to natural persons and legal persons governed by private law. The European Court of Human Rights has also repeatedly drawn attention to the fact that prohibition for a person or a group of persons to request exemption from the obligation to make payment in relation with legal proceedings *per se* may be incompatible with Article 6 of the Convention (*see, for example, Judgement by the European Court of Human Rights of 9 October 2007 in Case "Clionov v. Moldova", Application No. 13229/04, Para 41, Judgement of 20 December 2007 in Case "Paykar Yev Haghtanak Ltd v. Armenia", Application No. 21638/03, Para 45 and Para 49, as well as Judgement of 24 September 2009 in Case "Agromodel Ood v. Bulgaria", Application No. 68334/01, Para 47*). The State's positive obligation to establish regulation to ensure to a person the right to access to a court also follows from the right to a fair trial, included in Article 6 of the Convention (*see, for example, Judgement by the European Court of Human Rights of 9 October 1979 in Case "Airey v. Ireland", Application No. 6289/73, Para 25 and Para 27*).

Thus, in defining an obligation to make payments related to legal proceedings, the ability of any person, also a legal person governed by private law,

to make the particular payment should be taken into account. This means that the State has to introduce the necessary measures to ensure access to a court also for a person who, due to objective reasons, is unable to make the payments related to legal proceedings.

10.2. Latvia, being aware of the supremacy of the European Union law, included in the second part of Article 68 of the *Satversme*, and in adopting and applying the national legal norms, must take into account the legal acts of the European Union that reinforce democracy and the interpretation thereof, consolidated in the judicature of the Court of Justice of the European Union (*compare, see, Judgement by the Constitutional Court of 6 March 2019 in Case No. 2018-11-01, Para 16.2.*).

Pursuant to Para 1 of Article 6 of the Treaty on European Union, the European Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union (hereafter – the Charter), and the Charter has the same legal value as the Treaty on the European Union. The Constitutional Court has recognised that, substantially, also the general legal principles of the European Union are included in the Charter (*see Judgement by the Constitutional Court of 13 November 2021 in Case No. 2018-18-01, Para 15.2.1.*).

The first and the second part of Article 47 of the Charter provide that everyone whose rights and freedoms guaranteed by the law of the Union have been violated has the right to an effective remedy, in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone has the possibility of being advised, defended and represented. Pursuant to the third part of Article 46 of the Charter, legal aid is made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Effective legal remedies in court is a general legal principle of the European Union, which is founded on the shared constitutional traditions of the Member States, as well as Article 6 and Article 13 of the Convention. The said principle

applies also to the Member States, in implementing legal acts of the European Union. Pursuant to the third part of Article 47 of the Charter, which is an element in specifying the principle of effective legal remedies, a person should be provided legal aid in cases, where the lack of such aid would deny it the possibility to exercise the right to having one's case heard in a court (*see: Explanation relating to Article 47 – Right to an effective remedy and a fair trial. Explanations relating to the Charter of Fundamental Rights of the European Union of 14 December 2007 by the Convention which drafted the European Charter of Fundamental Rights (2007/C303/02)*). It follows from the judicature of the Court of Justice of the European Union that the right to legal aid comprises also exemption from paying the costs of legal proceedings and it may be applied also to a legal person governed by private law (*see Judgement by the Court of Justice of the European Union of 22 December 2010 in Case C-279/09 “DEB Deutsche Energiehandels-und Beratungsgesellschaft mbH”, Para 59*). Thus, in the areas to which the European Union law applies, the principle of effective legal remedies, specified in the third part of Article 47 of the Charter, is applicable also to a legal person governed by private law.

10.3. The substance of the right to a fair trial requires that this right can be exercised not only by a natural person but also by a legal person governed by private law. Moreover, also a legal person governed by private law may experience financial difficulties that would affect its ability to make various payments related to the legal proceedings. Therefore, pursuant to the first sentence of Article 92 of the *Satversme*, the legislator is obliged to introduce the necessary measures, to ensure also to a person who does not have sufficient financial resources for paying the security deposit upon submitting an ancillary complaint due procedure for appealing against a court's decision and would allow adoption of a just decision. If the legislator has not introduced the measures to ensure, in the process of appealing against a court's decision, access to a court to all persons, then it has failed to duly perform the obligation, included in the first sentence of Article 92 of the *Satversme*, i.e., this obligation has not been fulfilled in compliance with the general legal principles and other provisions of the *Satversme*.

Hence, the first sentence of Article 92 of the *Satversme*, includes the legislator's obligation to ensure, in the process of appealing against a court's decision, access to a court to all persons, also to a legal person governed by private law who does not have sufficient financial resources for paying the security deposit upon submitting an ancillary complaint.

11. If the first sentence of Article 92 includes the legislator's obligation to introduce measures for realising the right to a fair trial, the Constitutional Court examines whether the legislator has fulfilled this obligation. Moreover, if this obligation requires drafting and adoption of regulation with certain content then the Constitutional Court assesses whether the legislator has fulfilled its duty duly (*compare, see Judgement by the Constitutional Court of 7 February 2014 in Case No. 2013-04-01, Para 19.2.*).

In view of the basic matter in the present case and the content of the legislator's obligation, included in the first sentence of Article 92 of the *Satversme*, the Constitutional Court must establish whether:

1) measures have been introduced, i.e., legal regulation allowing exempting a person from the obligation to pay a security deposit upon submitting an ancillary complaint, has been established;

2) these measures have been introduced duly – in compliance with general legal principles and other provisions of the *Satversme*.

12. To verify whether the legislator has introduced measures to fulfil its obligation, included in the first sentence of Article 92 of the *Satversme*, the Constitutional Court, first and foremost, must clarify what the legal regulation of civil procedure regarding the security deposit for an ancillary complaint is. Within the framework of this assessment, it must be established whether the legislator has laid down regulation on exempting a person from the obligation of making this payment.

The basic civil procedure rules are defined in the Civil Procedure Law, which includes also the provisions on the costs of legal proceedings – court

expenses, security deposit and litigation expenses (*see Section 33 and Section 43¹ of the Civil Procedure Law*).

The security deposit is a mandatory payment, laid down by the Civil Procedure Law, for adjudication in civil cases, which, pursuant to Section 441 (1) of the Civil Procedure Law, must be paid upon submitting an ancillary complaint regarding the decision by a first-instance court and a decision by the appellate-instance court. The obligation to pay the security deposit has been established with the aim of deterring persons from submitting unfounded ancillary complaints and promote integrity in exercising one's right because each submission of an ancillary complaint delays reviewing of the basic claim and delivering of the judgement (*see also: Ose D., Jonikāns V. Civilprocesa likuma 444.¹ panta komentārs. Grām.: Torgāns K., Laviņš A. (zin. red.) Civilprocesa likuma komentāri. II daļa (29.–60.¹ nodaļa). Otrais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2021, 1032. lpp.*). As recognised in the legal doctrine, a security deposit is characterised by its punitive nature (*see: Bukovskis V. Civīlprocesa mācības grāmata. Rīga: Bukovskis, 1933, 416. lpp.*). Therefore, to promote a situation where a participant in the case would submit only a well-considered and well-founded complaint, the legislator has envisaged that if the complaint is dismissed the security deposit is not refunded. Whereas if the court satisfies the complaint fully or partially then the paid security deposit is refunded in full (*see Section 43² (1) of the Civil Procedure Law*).

Until 15 January 2018, when the law of 14 December 2017 “Amendments to the Civil Procedure Law” entered into force, a state fee in the amount of EUR 28.46 had to be paid upon submitting an ancillary complaint with respect to a decision by the first and the appellate instance court. By the aforementioned amendments, the legislator not only laid down that henceforth a security deposit had to be paid for an ancillary complaint but also increased the amount of this payment to EUR 70. It follows from the preparatory materials relating to the respective amendments to the Civil Procedure Law that the amount of the security deposit was increased with the aim of relieving courts from reviewing unfounded complaints, thus finding the possibility to channel resources for hearing cases on

their merits. In view of the national economic situation, the previous amount of the payment, i.e., EUR 28.46, was deemed to be low and such that did not facilitate reaching of this aim. The security deposit in the amount of EUR 70 was defined by taking as the basis the minimum salary defined in the state at the time – EUR 380. At the same time, to avoid creating a situation where the submission of an ancillary complaint depends only upon a person's financial possibilities, it was set out in the Civil Procedure Law that, firstly, a person who, in accordance with law, is exempt from paying the state fee, was not required to pay the security deposit for an ancillary complaint, and, secondly, the contested norm was adopted (*see Proposal by the Ministry of Justice of 29 June 2017 for the Draft Law "Amendments to the Civil Procedure Law" (reg. No. 911/Lp12) prior to the Second Reading*).

The legislator has included in the norms of the Civil Procedure Law, as well as in the special legal norms of other laws several grounds for exempting, in accordance with law, participants in the case from paying the costs of legal proceedings, i.e., the state fee, and, thus, also, from paying the security deposit. Predominantly, the grounds defined in these norms are such that, substantially, are applicable only to a natural person. Para 10 of Section 43 (1) of the Civil Procedure Law envisages only one case when a legal person governed by private law is exempt from paying the security deposit, on the basis of a law. Namely, an administrator is exempt from this payment in claims brought on behalf of those persons, with respect to which the insolvency proceedings of a legal person have been announced if this person is a participant or a victim of the respective legal transaction or prohibited activity, in relation to which the claim has been brought.

Thus, the legislator has laid down legal regulation that envisages that a natural person may be exempt from the obligation to pay a security deposit upon submitting an ancillary complaint only on the basis of a law or, in the case specified in the contested norm, on the basis of a court's decision. A legal person governed by private law, however, in certain claims may be exempt from this payment only on the basis of a law after, pursuant to the Insolvency Law, insolvency proceedings of this person have been announced. If a legal person governed by private law

experiences financial difficulties but its insolvency proceedings have not been announced then the exemption, defined in Para 10 of Section 43 (1) of the Civil Procedure Law does not apply to it.

Hence, the legislator has established legal regulation for exempting a person from the obligation to pay a security deposit upon submitting an ancillary complaint.

13. To assess whether these measures have been duly implemented, i.e., in compliance with general legal principles and other provisions of the *Satversme*, the Constitutional Court must establish whether the legal regulation, laid down by the legislator, ensures in the process of appealing against a decision access to a court to all persons, also a legal person governed by private law that lacks sufficient financial resources for paying the security deposit upon submitting an ancillary complaint.

As concluded above, legal regulation laid down by the legislator envisages that a legal person governed by private law is exempt from the obligation of paying the security deposit upon submitting an ancillary complaint only in certain claims and on the basis of a law after, in accordance with the Insolvency Law, the insolvency proceedings of this person have been announced. A legal person governed by private law does not have the right to request a court, in accordance with the contested norm, to exempt it from the obligation to pay the security deposit upon submitting an ancillary complaint. This means that, irrespective of the ability of a legal person governed by private law to pay the security deposit upon submitting an ancillary complaint, when its insolvency proceedings have not been announced in accordance with the Insolvency Law, this legal person governed by private law is obliged to make this payment.

13.1. The *Saeima* points out: if, pursuant to the Insolvency Law, insolvency proceedings of a legal person have not been announced then this person should be able to plan its financial resources to cover the costs of legal proceedings, *inter alia*, pay the security deposit in the amount of EUR 70. The amount of security deposit, defined in the Civil Procedure Law, for submitting an ancillary complaint

cannot be considered as being such that would deny a legal person governed by private law the possibility of submitting an ancillary complaint regarding a decision by the first- and the appellate-instance court (*see Case Materials, Vol. 1, pp. 61–65*). Allegedly, there are no grounds for imposing the obligation upon a court to assess the ability of a legal person governed by private law to pay the security deposit upon submitting an ancillary complaint and exempt it from this payment so that the legal person governed by private law could continue the legal proceedings initiated to defend its interests (*see Case Materials, Vol. 1, p. 129*).

Thus, the fact that a legal person governed by private law cannot be exempt by a court's decision from the obligation to pay the security deposit upon submitting an ancillary complaint is based on the assumption that all legal persons governed by private law, unless their insolvency proceedings have been announced, have sufficient financial resources to make this payment.

The European Court of Human Rights, assessing the particular facts in the case where a person's fundamental rights had been violated, has noted that it is not sufficient to refer to solvency of a legal person governed by private law if the ability of the particular person to make the respective payment is not assessed. Likewise, a violation of Article 6 of the Convention has been established in a situation where a court of a Member State, refusing to examine a complaint by a legal person governed by private law because the payment, established in legal provisions, in relation to the legal proceedings had not been made, had not at all examined the ability of the respective person to pay the required amount of money because the regulatory enactments of the Member State prohibited the court from deciding on exempting a legal person governed by private law from the obligation to make the respective payment (*see Judgement by the European Court of Human Rights of 9 October 2007 in case "Clionov v. Moldova", Application No. 13229/04, Para 40 and Para 41, and Judgement of 20 December 2007 in Case "Paykar Yev Haghtanak Ltd v. Armenia", Application No. 21638/03, Para 49*).

13.1.1. Pursuant to Section 1 of the State Administration Structure Law, the Republic of Latvia is the initial legal person governed by public law, whereas the

types of legal persons governed by private law are defined in other regulatory enactments.

Pursuant to Section 135 (1) of the Commercial Law, a company, i.e., a limited liability company and a joint stock company, is granted the status of a legal person, which, pursuant to Section 1 (2) of the Commercial Law, engages in economic activities with the purpose of gaining profit. Pursuant to Section 3 of the Associations and Foundations Law, the status of a legal person is granted also to an association, which is established to achieve the goals specified in its articles of association, which does not have a profit-making nature, and to a foundation, which is aggregate property for achieving a certain goal of the founder and which, like an association, does not have a profit-making nature (*see Section 2 of the Association and Foundations Law*). Likewise, pursuant to the law On Religious Organisations, the status of a legal person is granted to a religious organisation, but, pursuant to the Law on Political Parties, it is granted to a political party. On the basis of the law “On the Individual (Family) Business and Farm of a Farmer or a Fisherman”, also such business operator as an individual (family) business, a farm of a farmer or a fisherman also are legal persons. Pursuant to the Cooperative Societies Law, a cooperative society, i.e., a voluntary association of persons the purpose of which is to promote efficient implementation of the joint economic interests of its members, is also a legal person. Likewise, in accordance with Section 383 of the Civil Law, an estate is granted the status of a legal person. The estate becomes a legal person at the moment of the estate-leaver’s death and continues existing as such until the heirs have accepted and taken an inheritance, acquiring the rights of the estate-leaver and assuming their obligations (*see Section 701 of the Civil Law*). Moreover, the right to turn to a court to defend one’s infringed or contested civil rights, is vested also in partnerships who do not have the status of a legal person. I.e., pursuant to Section 90 and Section 118 of the Commercial Law, a partnership a limited partnership may be the claimant and the defendant in a court.

Thus, within the Latvian legal system, the status of a legal person has been granted to various subjects of law – both such that have been established for the

purpose of gaining profit and such that exist for other goals, unrelated to earning profit. Moreover, it is important to note that also such legal person that has been established with the goal of gaining profit, although its insolvency proceedings have not been announced, can experience financial difficulties that affect its ability to pay the security deposit. Also in the present case, the Applicant's insolvency proceedings had not been announced in accordance with the Insolvency Law; however, it experienced financial difficulties, because of which it was unable to pay the security deposit upon submitting an ancillary complaint. It follows from the materials in the case and information available in the Court Information System that, as the result, a decision to refuse accepting the Applicant's ancillary complaint was adopted (*see Case Materials, Vol. 1, pp. 17–24*).

Hence, without assessing the ability of a legal person governed by private law to make the required payment, it cannot be asserted that it has sufficient financial resources to pay the security deposit upon submitting an ancillary complaint. Although a legal person governed by private law should be able to plan its financial resources to cover its expenditure; however, in the matter of exercising the right to a fair trial, there are no objective grounds for the assumption that every legal person governed by private law should be able to provide the resources required to pay the security deposit upon submitting an ancillary complaint. Such assumption might cause a situation, inadmissible in a democratic state governed by the rule of law, where a person does not have the possibility to exercise its right to a fair trial and achieve adoption of a just decision because it lacks the financial resources needed to make this payment.

Moreover, it should be taken into account that not always a legal person governed by private law would need judicial protection for defending its own rights and lawful interests. For example, an association has the right to turn to a court to exercise the right, defined in Section 10 (2) of the Associations and Foundations Law, to defend the rights and lawful interests of its members, *inter alia*, natural persons. Until 3 December 2015, when the law of 29 October 2015 “Amendments to the Civil Procedure Law”, entered into force, associations, on the basis of Para 5 of Section 43 (1) of the Civil Procedure Law, were exempt from

paying a security deposit. Following these amendments, Para 5 of Section 43 (1) of the Civil Procedure Law is applied in a way that an association, even if it is defending its members' rights, is not exempt from making this payment on the basis of a law (*see, for example, Decision by the Riga Regional Court of 24 April 2019 in Case No. C30677817, and the Decision by the Senate's Assignments Sitting of 31 January 2019 in Case No. SKC-480/2019*). A legal norm cannot be understood outside the legal system, in which it functions. Therefore, pursuant to the case law, in the case where such a legal person governed by private law experiences financial difficulties, it would not be able to apply for an exemption from the obligation to pay the security deposit upon submitting an ancillary complaint. This can impact the possibilities for this person to defend at a fair trial not only its own rights and lawful interests but also those of other persons, *inter alia*, natural persons.

13.1.2. The *Saeima* and persons summoned in the case – the Ombudsman, Docent of the Faculty of Law of the University of Latvia *Dr. iur.* Daina Ose and sworn advocate *Mg. iur.* Māris Melķīsis – note that, in the present case, the fact that in the case if the ancillary complaint is valid, the person is refunded the paid security deposit is important. The *Saeima* draws attention to the fact that examination of an ancillary complaint requires comparatively less time than examining a case on its merits, therefore, in the case of a valid complaint, a legal person governed by private law incurs only temporary expenditure (*see Case Materials, Vol. 1, pp. 64, 83, 122 and 129*).

As concluded above, the purpose of the security deposit is to facilitate integrity in exercising procedural rights because the submission of an ancillary complaint delays the adjudication on its merits of the civil dispute law, on which the case is based. Therefore, with the aim of promoting a situation where a participant in a case submits a well-considered and well-founded complaint, Section 43² (1) of the Civil Procedure Law provides that the security deposit is not refunded if the complaint is dismissed. Whereas the security deposit is refunded in full if the court satisfies the complaint in full or in a part thereof. However, the possibility that the security deposit could be refunded does not alter the fact that a

legal person governed by private law has to pay for submitting an ancillary complaint.

Hence, this regulation *per se* is not aimed at ensuring accessibility of a court in the process of appealing against a court's decision and at allowing to achieve a fair decision also to those legal persons of private law who lack sufficient financial resources for paying a security deposit upon submitting an ancillary complaint.

It should also be taken into account that the contested norm is related to the obligation to pay a security deposit upon submitting an ancillary complaint in various stages of legal proceedings. Namely, alongside with the ancillary complaint, the court has to decide on various previous matters and side-issues, which have arisen both before the claim was brought, as well as during the legal proceedings themselves and also after pronouncement of the judgement, in connection with its enforcement (*see: Ose D., Jonikāns V. Civilprocesa likuma 441. panta komentārs. Grām.: Torgāns K., Laviņš A. (zin. red.) Civilprocesa likuma komentāri. II daļa (29.–60.¹ nodaļa). Otrais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2021, 1023. lpp.*). A possibility cannot be excluded that a legal person governed by private law has had sufficient financial resources for paying the state fee for submitting the statement of claim; however, during the legal proceedings, its financial situation has deteriorated to the extent that it no longer has financial resources to pay the security deposit upon submitting an ancillary complaint. If, in a situation like this, the court has made the decision to refuse accepting the statement of claim, has left the claim without proceeding or terminated legal proceedings in the case, the financial situation of a legal person governed by private law may impact also this person's right to achieve hearing the case in a court on its merits. If a legal person governed by private law is unable to pay the security deposit it is denied the possibility to exercise its right to submit an ancillary complaint to achieve hearing of the dispute in a court on its merits.

13.2. The Constitutional Court already has recognised that regulation that envisages a person's obligation to pay a security deposit upon submitting a complaint ensures effective work of the court and allows channelling resources for hearing other cases (*see, for example, Judgement by the Constitutional Court of*

20 November 2008 in Case No. 2008-07-01, Para 10 and 11.1.). To this end, the legislator has the right to establish a person's obligation to pay a security deposit upon submitting an ancillary complaint. However, in establishing this obligation, the legislator has to comply with the general legal principles and other provisions of the *Satversme*, as well as international and European Union law (*compare, see Judgement by the Constitutional Court of 12 March 2020 in Case No. 2019-11-01, Para 15*). Thus, the legislator, although enjoys discretion, is obliged to establish such legal regulation that would ensure, in the process of appealing against a court's decision, access to a court to all persons, also a legal person governed by private law, which does not have sufficient financial resources to pay the security deposit upon submitting an ancillary complaint. The need to ensure effectiveness of the judicial system cannot be the grounds for permitting a situation, in which a group of persons, in the process of appealing against a court's decision, would be, substantially, denied access to a court, thus not allowing to achieve adoption of a fair decision in due procedure for appealing against a court's decision.

However, the obligation included in the first sentence of Article 92 of the *Satversme*, does not mean that the legislator should envisage such regulation, pursuant to which a legal person governed by private law, as soon as it claims having financial difficulties and, hence, inability to pay the security deposit upon submitting an ancillary complaint, should be exempt from this payment. Only duly established objective circumstances, *inter alia*, the financial circumstances of the particular person, which prevent from paying the security deposit upon submitting an ancillary complaint, may be the grounds for exempting this person, in full or partially, from this payment. For example, several criteria have been specified in the judicature of the Court of Justice of the European Union, which may be taken into account, in deciding on the need to exempt a legal person governed by private law from the costs of legal proceedings. Namely, also the subject-matter of the claim; whether the applicant has a reasonable prospect of success; the impact of the required payment upon a person's possibilities to protect their rights effectively may be taken into account. Likewise, the form of the respective legal person governed by private law and whether the goal of this legal person is or is not

making profit, as well as the financial possibilities of its members or shareholders and the possibility to receive from them the amount of money needed for paying for the costs of legal proceedings also may be taken into consideration (*see Judgement by the Court of Justice of the European Union of 22 December 2010 in Case C-279/09 “DEB Deutsche Energiehandels-und Beratungsgesellschaft mbH”, Para 61 and Para 62, as well as Order by the Court of Justice of the European Union of 13 June 2012 in Case C-156/12 “GREP GmbH”, Para 38 and Para 44*).

13.3. The principle of state governed by the rule of law requires the outcome of all civil proceedings to be fair (*compare, see Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 12*). However, the legal regulation, established in the Civil Procedure Law, does not provide for a legal person governed by private law, which is experiencing financial difficulties and whose insolvency proceedings have not been announced, within the process of appealing against a court’s decision, any remedies for ensuring access to a court. Thus, it is not ensured that such a legal person governed by private law could achieve adoption of a fair decision in due procedure. Thus, the legislator has not duly and in compliance with general legal principles and other provisions of the *Satversme* laid down legal regulation, which, within the process of appealing against a court’s decision, would ensure to every person, also a legal person governed by private law, which lacks sufficient financial resources for paying a security deposit upon submitting an ancillary complaint, access to a court.

Hence, the contested norm, insofar it does not provide for the right of a legal person governed by private law, to request a court to decide on exempting it from the obligation to pay a security deposit upon submitting an ancillary complaint, is incompatible with the first sentence of Article 92 of the *Satversme*.

14. The contested norm was included in the second sentence of Section 444¹ (3) of the Civil Procedure Law, which was in force until 19 April 2021. Namely, by the law of 25 March 2021 “Amendments to the Civil

Procedure Law”, which entered into force on 20 April 2021, the third part of Section 441¹ was deleted from the Civil Procedure Law but Section 43¹ “Security Deposit” was added to Chapter 4 of the Civil Procedure Law “Expenses of Adjudication”. The second part of this Section provided: “Security deposit need not be paid by the persons who are exempted from the State fee in accordance with law. A court or a judge, by taking into account the material status of a person, may completely or partly exempt the person from payment of the security deposit.”

Hence, the second sentence of Section 43¹ (2) of the Civil Procedure Law continues to regulate in the same way the same legal relations, which from 1 March 2018 until 19 April 2021 were regulated by the second sentence of Section 444¹ (3) of the Civil Procedure law, contested by the Applicant. I.e., the contested norm has been included in Section 43¹ (2) of the Civil Procedure Law as its second sentence.

The Constitutional Court has recognized that it must ensure comprehensive and impartial examination of a case, as well as procedural economy and the existence of such legal system, in which regulation, which is incompatible with the *Satversme* or other legal norms of higher legal force, is eliminated as fully and comprehensively as possible (*compare, see Judgement by the Constitutional Court of 24 November 2017 in Case No. 2017-07-01, Para 12.2.*).

In view of the above, the conclusions made in this judgement regarding the legislator’s obligation to establish such legal regulation that would ensure, in the process of appealing against a court’s decision, access to a court to every person, also a legal person of private law, which lacks sufficient financial resources to pay the security deposit upon submitting an ancillary complaint, are applicable also to the second sentence of Section 43¹ (2) of the Civil Procedure Law.

Hence, also the second sentence of Section 43¹ (2) of the Civil Procedure Law, insofar it does not envisage the right of a legal person governed by private law to request a court to decide on exempting it from the obligation to pay the security deposit upon submitting an ancillary complaint, is incompatible with the first sentence of Article 92 of the *Satversme*.

15. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm that has been recognised by the Constitutional Court as being incompatible with a norm of higher legal force, is to be deemed void as of the date when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. Whereas Para 11 of Section 31 of this Law envisages the Constitutional Court's rights to indicate in its judgement the date, as of which this norm becomes void.

In exercising the rights granted to it in the aforementioned norm, in cases that have been initiated on the basis of a constitutional complaint, the Constitutional Court must, to the extent possible, eliminate the infringement upon a person's fundamental rights (*see Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103, Para 25*). Moreover, the Court must ensure that the situation, which might evolve after the contested norm becomes void, would not cause new infringements on the fundamental rights, enshrined in the *Satversme*, and would not inflict significant damage upon the interests of the State or society (*compare, see Judgement by the Constitutional Court of 19 October 2011 in Case No. 2010-71-01, Para 26, and Judgement of 16 April 2015 in Case No. 2014-13-01, Para 22*).

It follows from the materials in the case that the second sentence of Section 444¹ (3) of the Civil Procedure Law, which had been in force from 1 March 2018 until 19 April 2021, had been applied to the Applicant. The only possibility to protect the fundamental rights of this person is to recognise this legal norm as being void from the moment when the infringement on the Applicant's fundamental rights occurred. Hence, with respect to the Applicant, it is to be recognised as being void from 1 April 2021 when the appellate-instance court, on the basis of this norm, left unchanged the decision by the first-instance court, by which the Applicant's request to be exempt from the obligation to pay the security deposit upon submitting an ancillary complaint was dismissed (*see Case Materials, Vol. 1, pp. 19–24*).

With this respect to other persons, Section 444¹ (3) of the Civil Procedure Law, which had been in force from 1 March 2018 until 19 April 2021, and the

second sentence of Section 43¹ (2), insofar these norms do not envisage the right of a legal person governed by private law to request a court to decide on exempting it from the obligation to pay a security deposit upon submitting an ancillary complaint, become void as of the date when this judgment is published. In fulfilling the obligation, included in the first sentence of Article 92 of the *Satversme*, the legislator must ensure compliance of legal norms with general legal principles and other provisions of the *Satversme*, international and European Union law, as well as must align the envisaged legal norms and the legal norms already existing within the legal system in accordance with the principle of a rational legislator.

Until the date when regulation, by which the legislator has fulfilled its obligation, included in the first sentence of Article 92 of the *Satversme*, enters into force, parties applying law must ensure the right to a fair trial to those legal persons governed by private law who lack sufficient financial resources for paying the security deposit upon submitting an ancillary complaint by applying directly the first sentence of Article 92 of the *Satversme* and the findings included in this judgement. The parties applying legal norms, abiding, *inter alia*, with the criteria referred to in this judgement, must assess the ability of a legal person governed by private law to pay the security deposit upon submitting an ancillary complaint. If objective circumstances are established, *inter alia*, such financial status of the particular legal person governed by private law, which prevents it from paying the security deposit upon submitting an ancillary complaint, the party applying legal norms must exempt the respective person fully or partially from this payment.

The Substantive Part

On the basis of Section 30–32 of the Constitutional Court Law, the Constitutional Court

Held :

1. To recognise the second sentence of Section 444¹ (3) of the Civil Procedure Law (in the wording that was in force from 1 March 2018 until 19 April 2021) and the second sentence of Section 43¹ (2), insofar these norms do not provide for the right of a legal person governed by private law to request a court to decide on exempting it from the obligation to pay the security deposit upon submitting an ancillary complaint, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.

2. With respect to “WINNER”, Ltd., undergoing liquidation, to recognise the second sentence of Section 444¹ (3) of the Civil Procedure Law (in the wording that was in force from 1 March 2018 until 19 April 2021), insofar it does provide for the right of a legal person governed by private law to request a court to decide on exempting it from the obligation to pay the security deposit upon submitting an ancillary complaint, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia and void as of the date when the infringement on its fundamental rights occurred.

The judgement is final and not subject to appeal.

The judgement enters into force on the date it is published.

Chairperson of the court hearing

Aldis Laviņš