LATVIJAS REPUBLIKAS SATVERSMES TIESAS TIESNESIS

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DISSENTING OPINION

of the Justice of the Constitutional Court

Aldis Laviņš

in Case No 2019-23-01

"On the compliance of Section 464(1) of the Civil Procedure Law with the first sentence of Article 92 of the Constitution of the Republic of Latvia"

Riga, 30 July 2020

1. On 16 July 2020, the Constitutional Court pronounced a judgment in case No 2019-23-01 "On the compliance of Section 464(1) of the Civil Procedure Law with the first sentence of Article 92 of the Constitution of the Republic of Latvia" (hereinafter – the Judgment), recognising the contested provision as being compatible with the first sentence of Article 92 of the Constitution.

I cannot concur with a number of conclusions made by the Constitutional Court and am of the opinion that the contested provision, insofar as it does not provide for the right to request recusal of the Supreme Court judges who are to decide on the initiation of cassation proceedings, is incompatible with the first sentence of Article 92 of the Constitution.

In arguing for my opinion, I shall be using abbreviations used in the Judgment.

2. The Constitutional Court, in assessing whether sufficient measures to ensure neutrality of the court are provided for at the stage of initiating cassation proceedings in civil procedure, concluded the following in paragraph 14 of the Judgment: 1) the principle of a judge's independence, 2) a judge's obligation to

withdraw from the examination of a case, 3) the principle of collegiality sufficiently and effectively ensure neutrality of the court at the stage of initiating cassation proceedings in civil procedure, and the first sentence of Article 92 of the Constitution does not require that participants in a case be guaranteed the right to request recusal of judges at the stage of initiating cassation proceedings in civil procedure.

In my opinion, the said conclusion regarding the scope of the first sentence of Article 92 of the Constitution is not consistent with the findings laid down in the case law of the European Court of Human Rights regarding Article 6 of the Convention and neutrality of the court. The Convention defines a minimum standard of human rights and fundamental freedoms. Therefore, the level of protection of fundamental rights set as a result of elaborating on the substance of the right to a fair trial as enshrined in the first sentence of Article 92 of the Constitution must not be lower than that stipulated by the Convention.

3. In order to establish which, if any, safeguards for the court's neutrality of those enshrined in the first sentence of Article 92 of the Constitution are applicable to the stage of initiating cassation proceedings in civil procedure, it is first of all necessary to find out, firstly, whether participants in the particular case were entitled to appeal the decision of the appellate instance court under cassation procedure and, secondly, what is the jurisdiction of the judicial panel in the assignments hearing.

3.1. It is an axiomatic statement that neither the first sentence of Article 92 of the Constitution nor Article 6 of the Convention imposes an obligation on the State to provide for an individual's right to appeal a decision under cassation procedure in civil cases of all categories. However, if the legislature makes provision for such a right of an individual in specific categories of cases, the legislature must ensure that the appeals process meets the requirements such as the accessibility of court, fair procedure, and other requirements for a fair trial.

Section 450 of the Civil Procedure Law provides for the right of the Applicant as a participant in the case to appeal the appellate court's decision in a

civil case under cassation procedure. Therefore, both Article 92 of the Constitution and Article 6 of the Convention are applicable at the stage in legal proceedings where the question of the initiation of cassation proceedings is decided.

3.2. I concur with the conclusion made in the Judgment that the nature of a particular stage in legal proceedings has a bearing on the range of measures to be used to ensure neutrality of the court. It does not follow from Article 92 of the Constitution and Article 6 of the Convention that, for this aim to be achieved, the legislature is under an obligation to provide for the specific institution – that of recusal – at every stage of legal proceedings.

3.2.1. After the decision of an appellate court has been appealed under cassation procedure and the Supreme Court has received a cassation complaint, a judicial panel assesses its compliance with the principle of cassation in an assignments hearing.

The Civil Procedure Law provides for a number of grounds for a refusal to initiate cassation proceedings. According to Section 464^1(1) of the Civil Procedure Law, the judicial panel refuses to initiate cassation proceedings if the cassation complaint fails to conform with the formal requirements set out in Sections 450–454 of the same law. Thus, first of all, the panel of judges has to verify the formal compliance of the cassation complaint with the requirements of Section 464^1(1) of the Civil Procedure Law.

If the cassation complaint formally complies with the requirements set for it in the law and the court which has made the decision under appeal has not breached the procedural rules set out in Section 452(3) of the Civil Procedure Law, the panel of judges has to assess whether there are grounds for refusing to initiate cassation proceedings pursuant to Section 464^1(2)(1) of the Civil Procedure Law. Specifically, the said provision stipulates that the panel of judges may refuse to initiate cassation proceedings if it finds that there is an established case law on the legal issues concerned and concludes that the appealed decision complies with it.

Next, the panel of judges has to assess whether there are grounds to refuse to initiate cassation proceedings pursuant to paragraph 2 of part 2 of the same Section. According to the said provision, the panel of judges first examines

whether it is necessary for the sake of ensuring a uniform judicial practice or for further development of law that the Supreme Court should speak on the legal issues referred to in the cassation complaint and resolved in the decision under appeal. If the panel of judges concludes that it is not necessary, it may, in accordance with the said provision, refuse to initiate cassation proceedings, unless there is an obvious reason to consider that the outcome of the case, as contained in the appealed decision, is wrong.

Thus, the judges who decide on the initiation of cassation proceedings in civil procedure do not just verify formal compliance – they also assess the application of legal provisions in the court decision under appeal and the solution to the case, as contained in that decision, in substance. Otherwise the panel of judges would not be able to ascertain that the cassation complaint submitted complies with the principle of cassation.

It should be taken into account that relatively recently the Constitutional Court assessed the constitutionality of the provisions of the Civil Procedure Law which provide that the decision to refuse to initiate cassation proceedings in a civil case may be drawn up in the form of a resolution. In the respective case, the Constitutional Court recognised: when ascertaining, within the limits of its freedom of assessment, the existence of a case law or uniform judicial practice, or the necessity to develop law in respect of particular legal issues, the panel of judges essentially evaluates the importance of the respective legal issues in the public function performed by the cassation instance court and the need for the cassation instance court to speak on the issues in question. The judicial panel's assessment as to the compliance of the appealed decision with the case law or the correctness of the case outcome contained in that decision is essentially an assessment as to whether the arguments presented in the cassation complaint could serve as grounds for revocation of the decision under appeal, in full or at least in part (*see paragraph 16.4 of the Constitutional Court Judgment of 12 March 2020 in case No 2019-13-01)*. Furthermore, in another case, the Constitutional Court noted that a cassation complaint received is assessed by a panel of judges, which, *inter alia*, examines the contents of the cassation complaint, the decision under appeal, and

the materials in the case. The panel of judges assesses not just the formal compliance of the cassation complaint with the requirements set for it but also the substance of the complaint. This assessment can essentially be likened to reviewing a case in written procedure (*cf. paragraph 12 of the Constitutional Court Judgment of 21 October 2013 in case No 2013-02-01)*.

In the Judgment, the Constitutional Court noted that the judges who decide on the initiation of cassation proceedings in civil procedure verify compliance with the formal requirements and only assess a cassation complaint insofar as it complies with the principle of cassation (*see paragraphs 14 and 14.1 of the Judgment)*. It is my opinion that the conclusions made in the Judgment regarding the jurisdiction of the judicial panel at the stage of initiating cassation proceedings in civil procedure contradict the aforementioned case law of the Constitutional Court.

3.2.2. To get a better understanding of the jurisdiction of the judicial panel at the stage of initiating cassation proceedings in civil procedure, it is necessary to also look into the historical development of Section 464^1(1) of the Civil Procedure Law.

By the law of 22 May 2008 "Amendments to the Civil Procedure Law", the Civil Procedure Law was supplemented with Section 464^1, to provide that the panel of judges is entitled to refuse to initiate cassation proceedings not only when the cassation complaint fails to comply with the formal requirements set out in law, but also in the following cases: 1) If the complainant's opinion regarding the application and interpretation of legal provisions contradicts the Supreme Court's case law, with which the appealed decision accords; 2) if no doubts arise as to the lawfulness of the appellate instance court's decision and the case in question is of no significance for the formation of case law.

The regulatory framework which was in force before the said amendments provided that all cassation complaints filed with the Supreme Court are considered at an assignments hearing to decide whether they comply with the formal requirements set out in Sections 450–454 of the same law. In accordance with Section 464 of the Civil Procedure Law, the judicial panel, in cases where it

unanimously found that the complaint did not conform with the requirements of the law, took a decision to terminate the cassation proceedings. Conversely, in cases where the complaint had been drawn up in accordance with the requirements set out in the law and specified, *inter alia*, what norms of substantive law had been misapplied or what procedural norms had been breached by the court and how that had affected correct adjudication of the case, the judicial panel had to initiate cassation proceedings (*see Sections 450–464 of the Civil Procedure Law in the wording which was in force until 30 June 2008).* To my mind, it is exactly because the judicial panel in an assignments hearing had a jurisdiction to only assess the compliance of a cassation complaint with the formal requirements set out in law that the right of participants in a case to request recusal of judges was not, for good reason, provided for in Division Ten of the Civil Procedure Law, which regulates legal proceedings in cassation instance court.

Having supplemented the Civil Procedure Law with Section 464^1 , which regulates what is known as the "cassation filters", the legislature created a legal mechanism thanks to which the judicial panel no longer merely performs a technical function in the assignments hearing, verifying the compliance of a cassation complaint with the formal requirements of the law. Commenting on the said amendments, sworn advocate Gvido Zemrību noted: while initially the task of the Supreme Court's assignments hearing was to assess, on a formal level only, the compliance of a cassation complaint as a separate procedural document with the requirements of Sections 450–454 of the Civil Procedure Law, now the assignments hearing is under an obligation to assess the lawfulness, or, in other words, legality of the appellate instance court's decision (*see: G. Zemrību. Kasācijas instances regulējums civilprocesuālajā likumdošanā un no tā izrietošās problēmas [Regulation of the cassation instance in civil procedure legislation and the problems arising from it]. Bulletin of the Supreme Court of the Republic of Latvia No 6/2013*). The fact that the jurisdiction of the judicial panel has become much wider since 2008 is also pointed to by Section 464(6) of the Civil Procedure Law, which provides that, in the Supreme Court's assignments hearing, a panel of judges may also take a decision to refer a question to the Court of Justice of the

European Union for a preliminary ruling or to file an application with the Constitutional Court regarding compliance of legal provisions with the Constitution or a provision (act) of international law.

3.2.3. Until 1 April 2012, decisions taken at the Supreme Court's assignments hearing had to be drawn up in the form of a separate procedural document and include explicit reasoning. Decisions drawn up after the 2008 amendments are indicative of the scope of the judicial panel's jurisdiction. For example, wordings such as "the panel of judges does not find a breach of Sections 5, 97, 192 of the Civil Procedure Law", "the arguments presented in the cassation complaint regarding a misapplication of Section 2042 of the Civil Procedure Law are unfounded", used in decisions made at an assignments hearing, unambiguously suggest that, in an assignments hearing, the judicial panel assesses the arguments presented in the cassation complaint in substance *(see, for example, decisions of the assignments hearing of the Department of Civil Cases of the Supreme Court of 24 January 2012 in case No SKC-347/2012 and of 28 March 2012 in case No SKC-256/2012).*

A cassation complaint containing unfounded arguments does not comply with the principle of cassation, and, therefore, to prevent unnecessary load on the cassation instance court, Section 464^1(2) of the Civil Procedure Law stipulates it as grounds for the panel of judges to refuse to initiate cassation proceedings. However, working towards an understanding of what safeguards for the court's neutrality must be guaranteed to participants in a case at the stage of initiating cassation proceedings, it is important to emphasise that the panel of judges does not limit itself to verifying compliance with the formal prerequisites, it also examines the decision under appeal, the materials in the case, and gives its assessment as to the arguments, as presented in the cassation complaint, on their merits.

4. What follows in this dissenting opinion is an examination of which safeguards for the court's neutrality of those enshrined in the first sentence of Article 92 of the Constitution are applicable to the stage in legal proceedings where

arguments presented by participants in a case are assessed by judges on their merits, that is, where judges assess whether the arguments presented in the cassation complaint may serve as grounds for revocation of the appealed decision of the appellate court and whether cassation proceedings should therefore be initiated.

What needs to be taken into account in elaborating on the first sentence of Article 92 of the Constitution is Article 6 of the Convention and the case law of the European Court of Human Rights, including the judgments of the Grand Chamber of the European Court of Human Rights: of 15 October 2009 in the case "Micallef v. Malta", of 16 October 2018 in the case "Dainelienė v. Lithuania", of 15 July 2005 in the case "Mežnarić v. Croatia". To my mind, these judgments contain conclusions that are of importance and should have been taken into account in assessing whether sufficient safeguards are provided for at a particular procedural stage to preclude any reasonable doubt on the part of society or participants in a case as to the court's neutrality.

4.1. First, let me recall the circumstances of "Micallef v. Malta". Disagreements arose between neighbours residing in a multi-storey apartment building as one of them was hanging out clothes to dry on her balcony and the water was dripping on the courtyard of the neighbour living on the ground floor. The latter, holding that his right to property was thus unreasonably interfered with, applied to court for an interim measure (injunction) to restrain the neighbour on the floor above from performing certain actions. The application was considered in the court of first instance and in the appellate court. Noteworthy is that, at the hearing before the appellate instance court, the complainant was represented by a lawyer who was the son of the presiding judge's brother. At the time of hearing of the appeal, the other party's representative did not request recusal of the presiding judge, among other things because under Article 734 of the Maltese Code of Organisation and Civil Procedure a judge might only be challenged if the advocate was the judge's spouse, mother/father, or son/daughter.

4.1.1. The European Court of Human Rights, in assessing the application regarding a violation of Article 6 of the Convention in the proceedings concerning

the injunction, first analysed, in paragraphs 74–86 of the judgment, whether Article 6 of the Convention is applicable in cases where an interim measure is at issue. The court concluded that it was necessary to develop its case law and recognise that the guarantees of Article 6 of the Convention are also applicable where the grant of an interim measure (satisfaction of a claim) in a civil case is at issue.

Considering that the question of an interim measure is basically of a procedural nature, the findings articulated in the said judgment regarding neutrality of the court are all the more applicable to the stage in legal proceedings where a panel of judges assesses in an assignments hearing whether the arguments presented in the cassation complaint may serve as grounds for revoking the appealed decision of an appellate court and whether cassation proceedings should therefore be initiated.

4.1.2. In paragraphs 93–99 of the same judgment, the European Court of Human Right reiterated that there are two aspects to the requirement of the court's impartiality, or neutrality – the subjective and the objective one. Firstly, a court must be subjectively neutral, that is, none of the judges can hold any personal prejudice in adjudicating a case. Secondly, a court must also be neutral in objective terms. In the objective test of a court's neutrality, even an assumption may be of significance. Furthermore, the validity of the assumption cannot be tested only from the standpoint of a particular actor in the court proceedings. It must also be examined whether the doubts as to the court's neutrality may be objectively justified, as, in a democratic state, it is necessary that the courts enjoy the confidence of both the participants of the case under consideration and the whole society. The existence of facts that indicate a possible threat to the objective neutrality of the court is sufficient for holding that there is a lack of objective neutrality. This means that sufficient safeguards need to be in place to preclude any reasonable doubt on the part of society or participants in a case as to the neutrality of the court.

In paragraph 99 of the same judgment, the European Court of Human Rights concluded that the institution of withdrawal (recusal) of judges is one of the most

relevant elements in the objective test as part of the assessment of the court's neutrality. Recusal is a procedural measure providing participants in a case with the possibility to eliminate concerns as to the potential partiality of the court and thus promoting the confidence in the court on the part of society and participants in a case.

Having analysed the circumstances of the case, the court arrived at the opinion that family ties between the opposing party's advocate and the judge are a sufficient ground for doubts as to the judge's impartiality. However, the Maltese Code of Organisation and Civil Procedure had not provided for the possibility to request recusal of the judge in a situation where family relationships between the judge and the advocate were of a lesser degree, namely, the advocate was the judge's sibling or nephew/niece rather than the judge's spouse or son/daughter. The European Court of Human Rights found that it was due to the regulatory framework that no sufficient guarantees were provided to preclude reasonable fears of participants in a case as to the neutrality of the court.

4.1.3. The findings articulated in the aforementioned judgment of the European Court of Human Rights suggest that not only the judge's personal conviction about his/her neutrality and impartiality but also the reasonable doubts in that respect on the part of participants in the case and the public are of importance in the assessment of the court's neutrality.

The demanding education and professional qualification requirements, as well as the high ethics and integrity standards set for judges do indeed reinforce the neutrality of the court, also contributing to the case participants' and the whole society's confidence in the judiciary. However, in a situation where the judge who has delivered a non-appealable decision should have withdrawn from considering the case but did not do so, the individual has no procedural remedies which would allow them to protect their fundamental right to having their case considered by a neutral court.

Moreover, as it is evidenced by examples from judicial practice, a probability exists that a judge may forget about the circumstances that could give rise to doubts as to his/her impartiality and therefore not even consider withdrawal from the case.

In the ECtHR case “Dainelienė v. Lithuania”, a judge of the Supreme Court of Lithuania had decided on the question of initiation of cassation proceedings in a criminal case even though the judge’s son had been a prosecutor in the same case. The judge argued that he had overlooked that fact. Besides, the regulatory framework had not required that the prosecutor’s first and second name be indicated in the complaint.

In another case reviewed by the European Court of Human Rights – „Mežnarič v. Croatia” – a justice of the Constitutional Court of Croatia failed to notice that the constitutional complaint submitted was concerned with a civil case in which he himself had been the claimant’s representative for a certain time nine years before.

In both the above cases in point, the European Court of Human Rights found that there had been legitimate doubts as to the impartiality of one of the judges and held that the right to an impartial court had not been guaranteed in the proceedings on the case in question and, therefore, there had been a violation of Article 6 of the Convention.

It should be specially emphasised that all of the above cases had been considered by national courts on a collegiate basis. And still, the European Court of Human Rights recognised: it is sufficient if doubts as to the court’s neutrality exist only in respect of one of the judges. Hence, the Constitutional Court’s argument that the two other judges on the panel will ensure neutrality of the court is of no legal significance as it does not sufficiently dismiss the threat to the court’s neutrality as understood by Article 6 of the Convention.

The Constitutional Court noted in the Judgment that the institution of recusal is one of the measures to ensure neutrality of the court. However, in the Judgment, it did not analyse an important aspect following from the conclusions made in the above judgments of the European Court of Human Rights – the interaction between the institution of recusal and other measures for ensuring the court’s neutrality – to remove any reasonable doubts of participants in a case or of society as to the court’s neutrality. It does not depend on participants in a case whether the judge will withdraw, therefore, regulations provide for their procedural right to request,

in case of reasonable doubt, the recusal of a judge. The institution of recusal is a measure to ensure the court's neutrality in a situation where the judge has not withdrawn from examining the case even though s/he should have done so.

4.2. Considering what has been mentioned in this paragraph, I arrive at the conclusion that Article 6 of the Convention requires that the institution of recusal, too, be provided for at the stage in legal proceedings where the arguments presented by participants in the case are assessed on their merits, in order to ensure neutrality of the court. Therefore, the legislature's obligation to provide for the right of participants in a case to request recusal of the Supreme Court judges who will decide on the initiation of cassation proceedings also follows from the first sentence of Article 92 of the Constitution. It is my opinion that the Constitutional Court, in elaborating on Article 92 of the Constitution in conjunction with Article 6 of the Convention, inferred a lower level of fundamental rights protection than that stipulated by the Convention.

5. There is no doubt that the stage of initiating cassation proceedings in civil procedure cannot be likened to the examination of a case on its merits by a cassation instance court. However, as has been concluded in paragraph 3 of this dissenting opinion, the said procedural stage is special in that the judicial panel which decides on the initiation of cassation proceedings in civil procedure does not just verify compliance with the formal prerequisites but also assesses the appealed decision, the materials in the case, and the arguments contained in the cassation complaint on their merits. This is what makes the stage of initiating legal proceedings in cassation instance court different from the stage of initiating legal proceedings in a first instance court or appellate instance court, where a judge only verifies compliance with formal criteria to decide whether to initiate legal proceedings (*see, for example, Section 131 of the Civil Procedure Law)*.

Considering the jurisdiction of the panel of judges at the stage of initiation of cassation proceedings, as well as the fact that the judicial panel's decision to refuse to initiate cassation proceedings is the final ruling in a civil case, I am of the opinion that the measures that are now provided for in regulations are not sufficient

to ensure neutrality of the court. In a situation where the judge who has delivered such a decision should have withdrawn from reviewing the case but did not do so, the individuals have no other procedural remedies which would allow them to protect their fundamental right to having their case considered by a neutral court. In such a situation, the judge's obligation to withdraw from the case is not a sufficient safeguard for precluding all reasonable doubts of participants in the case and the whole of society as to the judge's impartiality. In its turn, the fact that a decision regarding the initiation of cassation proceedings is taken on a collegiate basis is, contrary to the conclusion made in the Judgment, of no crucial importance.

It is precisely in order to ensure the court's neutrality in its objective aspect that Article 92 of the Constitution puts the legislature under an obligation, at the respective procedural stage, to provide for the right of participants in a case to request recusal of the judges who will be deciding on the initiation of cassation proceedings. Also pointing to the fact that participants in a case should be guaranteed such a right is the practice of the Supreme Court described in the Judgment, namely, that, at the stage of initiating cassation proceedings, a panel of judges does assess the requests for recusal of judges, lodged by participants in the case, in substance (*see paragraph 15 of the Judgment*).

5.1. I cannot concur with paragraph 14 of the Judgment in that granting participants in a case the right to request recusal of a judge at the stage of initiating cassation proceedings in civil procedure would disrupt the system of the Civil Procedure Law, in which participants in a case are only entitled to request recusal at the stage of case examination and have no such right at the stage of initiating legal proceedings in a first instance court or appellate court.

As has already been concluded, the stage of initiating cassation proceedings in civil procedure is substantially different from the stage of initiating legal proceedings in a first instance court or appellate instance court. Those differences are due to the special role of the cassation instance court in a democratic rule-of-law state: in cassation instance court, both public legal interests and the interests of participants in a case are of importance and need to be mutually balanced. In other words, the cassation instance court brings to balance the interests of an

individual and those of society to ensure that the principles of justice and the rule of law are implemented in a democratic rule-of-law state (*cf. paragraph 14 of the Constitutional Court Judgment of 12 March 2020 in case No 2019-11-01)*. Considering the role of the cassation instance court in a democratic rule-of-law state, the legislature has provided for the right of the panel of judges to decide to refuse to initiate cassation proceedings if the complaint fails to comply with the principle of cassation, to thus relieve the cassation instance court from examining unfounded complaints and performing non-essential tasks (*cf. paragraph 16.1 of the Constitutional Court Judgment of 12 March 2020 in case No 2019-13-01).*

5.2. It is also noted in the Judgment that providing for an institution of recusal at the stage of initiating cassation proceedings in civil procedure would complicate the work of judicial panels, requiring an inadequate investment of work and resources. This, however, is an overstatement. As was explained at the court hearing by the representatives of the Ministry of Justice, an exception from the general procedure for requesting recusal can be implemented by placing the information about the panel of judges who will decide the question of the initiation of cassation proceedings on the website of the Supreme Court. This would provide participants in the case with the possibility to find out which judges will be assessing the cassation complaint submitted (*see the verbatim record of the court hearing of 16 June 2020)*.

It should be noted that such a procedure for requesting recusal at the stage of assessing the admissibility of a cassation complaint is in place both in Lithuania and in Estonia. In the neighbouring countries, the work of the supreme courts is neither complicated nor paralysed, even though participants in a case have the right to request recusal of the judges who are to decide on the initiation of cassation proceedings. The example of the neighbouring countries attests to the fact that, by revising the principles of work organisation at the Supreme Court and by introducing into it the possibilities offered by modern technologies, it is possible to ensure, without much effort, both the successful work of judicial panels and the possibility for participants in a case to find out which judges are to decide on the

initiation of cassation proceedings to be able to exercise their right to request recusal of a judge if there is reasonable doubt as to that judge's impartiality.

In paragraph 15 of the Judgment, the Constitutional Court noted that if after receiving a decision on refusal to initiate cassation proceedings a participant in the case finds that the decision was made by a judge whose impartiality s/he doubts, the participant's objections in respect of the particular judge are decided in examining the case in connection with newly discovered circumstances. To my mind, it is this procedure that both complicates the court's work and results in extra costs for participants in a case. The court, following an established procedure, considers as a new case an application regarding the examination of a case in connection with newly discovered circumstances. This requires considerable resources from the court and interferes with the *res judicata* principle without legal grounds directly provided for in law. The applicant, in their turn, has to pay a considerable security deposit – EUR 300 – as stipulated in Section 478(7) of the Civil Procedure Law. It would obviously be a better procedural economy if, instead, participants in a case were given the right to request recusal, and the court – the right to decide on it and resolve a possible threat to the objective neutrality of the court in the case. Furthermore, to prevent the possibility of the right to request recusal of a judge being abused, targeted procedural sanctions could be provided for in the Civil Procedure Law.

Considering all the above, I am of the opinion that the contested provision, insofar as it does not provide for the right to request recusal of the Supreme Court judges who are to decide on the initiation of cassation proceedings, is incompatible with the first sentence of Article 92 of the Constitution.

6. In light of the considerations presented in this dissenting opinion, I particularly want to commend the practice of the Department of Civil Cases of the Supreme Court in regard to whether a judicial panel must examine the substance of a request for the recusal of a judge lodged by a participant in the case.

Contrary to the conclusions made in the Judgment of the Constitutional Court, I am of the opinion that the principle of judges' independence, as enshrined

in Article 83 of the Constitution, cannot determine which of the procedural documents submitted by participants in a case the Supreme Court will consider. That is determined by procedural laws. By applying the basic provisions of the Civil Procedure Law which regulate the institutions of recusal and withdrawal of a judge, the Supreme Court's judges ensure that the right to having the case examined by a neutral court, as following from the first sentence of Article 92 of the Constitution and Article 6 of the Convention, is guaranteed to participants in a case in legal proceedings under civil procedure in the cassation instance court.

After the Judgment of the Constitutional Court, which recognises that the Civil Procedure Law does not provide for the procedural right of participants in a case to request recusal of judges, the Supreme Court judges are supposed to leave applications for recusal of judges without consideration. However, such practice may pose a risk of the Latvian State being held liable for a violation of Article 6 of the Convention – in a situation where reasonable doubts exist about the impartiality of at least one of the judges participating in the assignments hearing. I therefore urge the legislature to weigh up whether it is not necessary to supplement the Civil Procedure Law with a procedure, appropriate to cassation legal proceedings, for requesting and considering a recusal of the judges who are to decide, in an assignments hearing, the question of the initiation of cassation proceedings in civil cases. Furthermore, I reiterate that relatively recently the legislature already amended the Civil Procedure Law, providing for a special procedure for requesting recusal of the judges who consider, in an assignments hearing, the question of the initiation of cassation proceedings in criminal cases.

Justice of the Constitutional Court A. Laviņš