



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 26 March 2020

in Case No. 2019-15-01

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

having regard to Jānis Loze's constitutional complaint,

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 19<sup>2</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

at the court hearing of 26 February 2020 examined in written procedure the case

**“On Compliance of the Third Sentence of Section 564 (7) and Section 570 (1) of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.**

## The Facts

1. On 21 April 2005 the *Saeima* adopted the Criminal Procedure Law, which entered into force on 1 October 2005. Section 570 (1) of the Criminal Procedure Law, in its initial wording, provided: “A cassation complaint or protest shall be submitted not later than within 10 days after the day when a full

court ruling became available.” The law of 12 March 2009 “Amendments to the Criminal Procedure Law”, which entered into force on 1 July 2009 (hereafter – Amendments of 12 March 2009), added the third sentence to Section 564 (7) of the Criminal Procedure Law, worded as follows: A court may take a decision to extend a term for appeal for 10 days due to special complexity and amount of criminal proceedings.”, and to express Section 570 (1) of the Criminal Procedure Law as follows: “A cassation complaint or protest shall be submitted not later than within 10 days or, if a court has extended the term for appeal, not later than within 20 days after the day when a full court ruling became available.”

**2. The Applicant – Jānis Loze** (hereafter – the Applicant) – requests reviewing compliance of the third sentence of Section 564 (7) of the Criminal Procedure Law (hereafter also – the contested norm) with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.

The Applicant is the accused in a criminal case. On the basis of the contested norms, the appellate instance court in its summary judgement in this criminal case set the term of 20 days for appealing against the full judgement in the cassation instance. The Applicant holds that this term is obviously insufficient because the particular criminal case is complex and the full ruling of the court comprises 345 pages.

The Applicant holds that the contested norm restricts a person’s right to access to court, provided for in the first sentence of Article 92 of the *Satversme*. 20 days are said to not be due and proper term not only for reading but also for carefully considering a complex and voluminous ruling by a court, for assessing the statements made therein and analysing it in interconnection with other materials in the case, the existing legal regulation, the Latvian and international case law and findings made in the doctrine, as well as for drawing up a substantiated cassation complaint that complies with statutory requirements.

Allegedly, the contested norms restrict also the right, defined in Sub-para “b” of Para 3 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention), to have

adequate time and facilities for the preparation of the defence. Because of the short term for submitting the complaint, the Applicant had been unable to involve an additional advocate. It was impossible for the advocate, who became involved in the case after the case was adjudicated in the appellate instance court, to read and analyse the text of the full ruling by the appellate instance court within the term, defined in the contested norm, as well as to examine it in interconnection with all materials in the case, if necessary, compare the compliance of the court's substantiation with the audio recordings made during the court hearings over many years and to draw up a cassation complaint that would comply with the Criminal Procedure Law.

Allegedly, the Applicant is placed in an unequal situation *vis-à-vis* the court because the restrictions on the accused person's rights make them submit the cassation complaint within a certain term; however, the legislator has not set imposed any restrictions upon the court regarding the term for drawing up the full ruling. The summary ruling by the appellate instance court had been pronounced on 20 June 2018, whereas the full ruling by the court had become available on 5 July 2019, but the Applicant had to draw up the cassation complaint within 20 days.

The Applicant holds that there are other means for reaching the legitimate aim of the restriction on fundamental rights included in the contested norm. An alternative measure would be the court's right to extend the term for submitting the cassation complaint without the framework defined in the law, because the court, which reviews the particular case, is best placed to assess the complexity and scope of the case, as well as to define an adequate term for appeal. The court can weight the time that it and participants in the case objectively need for drawing up procedural documents in interconnection with the need to ensure adjudication of a case within a reasonable term. If it were established, in turn, that the limited term for submitting a cassation complaint deprived the Applicant of the right to fair trial and the right to appeal against a ruling, the assessment of society's benefit would be redundant because, to benefit society, a person's rights may be only restricted but not denied entirely.

Finally, the Applicant notes: although Article 579 of the Criminal Procedure Law provides for the right to submit supplements and modifications within 10 days after the term of appeal has expired, it cannot be regarded as an extension of the term for drawing up the cassation complaint because, in order to use these additional 10 days for submitting any supplements or modifications, the cassation complaint already must be drawn up and submitted in compliance with all requirements set out for a cassation complaint in the Criminal Procedure Law. Otherwise, the court may refuse initiation of cassation proceedings. Whereas in the framework of administrative proceedings and civil proceedings the cassation complaint may be submitted, respectively, within one month or 30 days from the date when the judgement is made or pronounced. Both these terms are longer than the basic term, defined in the Criminal Procedure Law, together with its possible extension. Moreover, both in the administrative and civil proceedings the court has the obligation to leave the complaint not proceeded with, setting a term for eliminating the deficiencies identified therein. The terms for submitting a cassation complaint are longer in both Lithuania and Estonia.

After familiarising himself with the case materials, the Applicant noted in addition that the Amendments of 12 March 2009 had amended Section 530 of the Criminal Procedure Law, which defined a non-extendable term of 14 days for drawing up the full judgement. Thus, the balance between the person and the court, which had been attempted by adopting the contested norms, had been distorted. Moreover, the cassation complaint cannot be drawn up before familiarising oneself with the full judgement of the court. Moreover, in the Applicant's case, the renewal of the term for submitting the cassation complaint had not been possible. The request to renew the term for submitting the cassation complaint before submitting it would entail too high a risk. If the term were not renewed, the right to submit the cassation complaint would be lost. Since the term for submitting the cassation complaint is so short, the court, most probably, would decide on renewing or not renewing the procedural term after the expiry of the term.

**3. The institution, which issued the contested act, – the *Saeima* – holds that the contested norms comply with the first sentence of Article 92 of the *Satversme*.**

In reviewing constitutionality of the contested norms, it should be verified whether the term for submitting a cassation complaint, defined therein, ensures to the accused person the right, provided for in Sub-para “b” of Para 3 of Article 6 of the Convention, to prepare proper cassation complaint needed for their defence. The time required for preparing defence is said to depend on the circumstances of the particular case: complexity of the case, stage of legal proceedings, advocate’s workload, etc.

The legitimate aim of the restriction set out in the contested norms – the term for submitting a cassation complaint– is to ensure protection of other persons’ rights and democratic state order. Defining a term is said to be the most appropriate means for reaching this aim. Limiting the term for contesting the ruling by an appellate instance court leads to legal stability. The appellate instance court has been granted the right to extend the term of appeal for 10 more days in order to give sufficient time for drawing up a complaint or protest in complex cases, judging by the complexity and scope of the criminal proceedings.

The alternative proposed by the Applicant, i.e., the right of an appellate instance court to extend the term for appeal, cannot be considered as being an alternative measure. In such a case, almost any term that would be longer than the maximum statutory term for submitting a cassation complaint or the extended term, could be recognised as being an alternative measure. The alternative proposed by the Applicant should not be regarded as being effective means for ensuring legal stability because a longer term for appeal or extension of this term would create greater legal uncertainty and, thus, would make examination of criminal cases in court ineffective. In cases when the appellate instance court, pursuant to Section 241 (3) of the Criminal Procedure Law, by a convicting judgement, applies the security measure – arrest, a long term for submitting the

cassation complaint could restrict without grounds the Applicant's right to freedom, envisaged in Article 94 of the *Satversme*.

The term for submitting the cassation complaint, defined in the contested norms, should be recognised as being proportional. The majority of grounds for submitting a cassation complaint can be identified before the day when the full ruling by the appellate instance court becomes available and term for submitting the cassation complaint begins. Allegedly, if one follows the judicial proceedings, it is possible to find out whether the appellate instance court, in reviewing the case, has made a substantive violation of the Criminal Procedure Law before the day when the ruling by the appellate instance court becomes available. Upon receiving the summary judgement, it can be established whether the type and scope of punishment, envisaged in the sanction of the respective norm of the Criminal Procedure Law, has been applied to the accused. The legal qualification of the offence is indicated in the summary judgement, *inter alia*, the sections of the General and Special Part of the Criminal Procedure Law, on the basis of which the accused has been recognised as being guilty of the criminal offence.

In addition to the right defined in the contested norm, pursuant to the first and the third part of Section 579 of the Criminal Procedure Law, the submitter of a cassation complaint has the right to submit supplements and modifications to the cassation complaint within 10 days following the expiry of the term for appealing against the judgement by the appellate instance court. This means that the accused person can include in the cassation complaint the grounds for the claims stated, referring to a violation of the Criminal Law or a substantial violation of the Criminal Procedure Law, and to indicate full grounds or modify these later. This norm is said to include also the right of the submitter of the cassation complaint to indicate a violation of the Criminal Law or a substantial violation of the Criminal Procedure Law, not referred to initially. Hence, even if the appellate instance court has not extended the term for appealing against the ruling, the submitter of the cassation complaint, actually, has at their disposal 20 days for drawing up an appropriate cassation complaint, but in cases, where

the court has extended the term for appeal due to the particular complexity and scope of the criminal proceedings, – 30 days.

The term for submitting a cassation complaint, defined in the contested norms, should be recognised as being proportional, compared to the average term, in which a criminal case is reviewed in the cassation instance. The term of 30 days is approximately one-third of the average time that the cassation instance court needs to adopt the final ruling regarding the legality of the ruling by the appellate instance court, and which includes not only familiarising itself with the cassation complaint by the accused person or their representative, other cassation complaints that have been submitted, the prosecutor's complaint and explanations by the participants in the case but also drawing up of the final ruling.

The fact that the term for submitting a cassation complaint, defined in Latvia, ensures the right to access to court is proven also by the terms for submitting a cassation complaint set in other countries, e.g., Spain, Belgium, and Greece. The longer term for submitting a cassation complaint, defined in other laws, *per se* does not make the contested norms incompatible with the first sentence of Article 92 of the *Satversme* because different cases are examined in the procedures established by the Criminal Procedure Law, Civil Procedure Law, Administrative Procedure Law and the Latvian Administrative Violations Code, and the court assesses different legal relations.

Finally, the *Saeima* emphasizes that the Applicant has submitted the cassation complaint within the statutory term, moreover, it is not indicated concretely in the application in connection with which issue exactly he had lacked time to prepare the legal reasoning for his defence. Neither has the Applicant indicated why he considers that the possibility to supplement and modify the cassation complaint within 10 days after its submission as being insufficient. Moreover, the materials annexed to the application show that a term identical with the term for submitting the cassation complaint had been sufficient for submitting an appellate complaint regarding the judgement by the first instance court on 863 pages.

**4. The summoned person – the Ministry of Justice** – holds that the contested norms comply with Article 92 of the *Satversme*.

The Amendments of 12 March 2009 had been elaborated with the aim of defining a longer term for submitting the cassation complaint, at the same time ensuring that the aims of criminal proceedings are reached. Initially, this proposal had been made by the Latvian Council of Sworn Advocates. This proposal had been examined by the standing working group established by the Ministry of Justice to draft amendments to the Criminal Procedure Law. After this group had formulated this proposal it had been submitted to the *Saeima* for further progression. Thus, the Ministry of Justice and the working group established by it had agreed that longer terms for appeal had to be defined, in particular, in complex and large-scale criminal cases.

All criminal proceedings must be completed within a reasonable term. Certainty of the regulation on legal relations and reaching the aims of criminal proceedings are ensured by defining concrete procedural terms for submitting complaints. Criminal proceedings influence the life and daily routine of all persons involved therein. Since several persons may be involved in criminal proceedings, for example, several accused persons, victims or owners of the property infringed upon, the terms for appeal should be concrete and they may not be excessively long. A concrete and proportionate term for submitting a cassation complaint ensures also the right to have the criminal proceedings completed within a reasonable term, which is entirely applicable also to persons who have the right to defence. The principle of legal certainty is said to be an essential part of the principle of a state governed by the rule of law, and it comprises also a person's right to clear and predictable terms for appeal. Moreover, the victim's interests also should be respected, for example ensuring the right to receive compensation within a reasonable term.

The right to fair trial and reviewing the evidence of guilt or the judgement at a higher instance in criminal proceedings, guaranteed in Article 92 of the *Satversme*, Article 6 of the Convention and in Article 2 of Protocol 7 to it, are said to be entirely ensured by reviewing the criminal case on its merits in the

appellate instance. Thus, the Applicant is ensured the right, included in the first sentence of Article 92 of the *Satversme*, in full, but the term defined in the contested norms cannot be viewed as a restriction on the right to fair trial because examination of a case in two instances is to be recognised as providing sufficient access to a court. The Criminal Procedure Law ensures to persons the right to submit both an appellate and a cassation complaint, thus ensuring even a more favourable legal regulation than the minimum included in Article 6 of the Convention.

**5. The summoned person – senior researcher at the Faculty of Law of Riga Stradins University, acting associate professor *Dr. iur.* Jānis Baumanis** – holds that the contested norms comply with Article 92 of the *Satversme*.

The term for appealing against the ruling by the appellate instance court is said to ensure certainty of the criminal procedural order and to guarantee the right to having criminal proceedings completed within a reasonable term. Moreover, the legislator has envisaged the possibility to renew the term for submitting a cassation complaint in accordance with Section 570 (2) and Section 317 (1) of the Criminal Procedure Law. The Criminal Procedure Law does not limit the possibility to recognise the complexity and scope of the criminal proceedings as the cause for missing the term. Moreover, the Criminal Procedure Law does not set time limits for the right to request renewal of the missed term for appeal. If the term for submitting a cassation complaint is renewed then the order regarding enforcement of the judgement is revoked. Hence, the renewal of the term for submitting the cassation complaint renews the status of the accused person in full.

**6. The summoned person –*Mg. iur.* Māris Leja, acting head prosecutor of the Division for Investigation of Especially Serious Cases of the Criminal Justice Department, the Prosecution Office,** – notes that the term of 20 days for submitting a cassation complaint in complex and large-scale criminal cases in some exceptional cases, if it is not possible to request renewal

of the missed procedural term, could prohibit from drawing up a cassation complaint in good quality.

The term defined in the contested norms cannot be extended. However, it should be taken into account that Section 317 (1) of the Criminal Procedure Law regulates the institution for renewing the procedural term. Pursuant to the findings consolidated in the Supreme Court's judicature, such circumstances that objectively have prohibited the person from performing the respective procedural activity and had been beyond the person's will are considered to be the reason allowing to justify missing the term. In administrative proceedings or civil proceedings, until now the actions by third parties, postal error, if it can be proven, and a person's state of health have been recognised as being such circumstances.

*Mg. iur.* Māris Leja is of the opinion that, in exceptional cases, the particular scope and complexity of the criminal case and the court's ruling could be recognised as being the grounds for renewing the procedural term. However, this would be admissible only if the impossibility to draw up a cassation complaint within 20 days was obvious. However, substantiating the renewal of the term by the need to involve a new defence lawyer after the receipt of the court's full ruling would be inadmissible. The participant in the proceedings is obliged to involve a new defence lawyer in due time, to allow them to familiarise themselves with the materials of the criminal case timely.

It is not doubted that the limit to the term for submitting a cassation complaint, included in the contested norms, has been established by a law adopted in due procedure. The legitimate aim of this limitation is to ensure legal stability and completion of criminal proceedings within a reasonable term. However, the impossibility to draw up a cassation complaint of good quality in a particularly complex and large-scale criminal case within 20 days could restrict not only a person's access to court but also to place the person in an unequal situation compared to the participants in simpler cases of smaller scope. Moreover, in practice, the contested norms are said to affect not only the accused

persons but also other persons who have the right to submit a cassation complaint, e.g., the victim and their representative, as well as the prosecutor.

**7. The summoned person – head of the working group established by the Ministry of Justice for drafting the Criminal Procedure Law**  
*Mg. iur. Gunārs Kūtris* – notes that the legislator should set such procedural terms that prevent an infringement on a person’s rights, find balance between the principle of justice and the principle of legal certainty, as well as ensure effectiveness of the criminal justice.

The contested norms have been included in the Criminal Procedure Law by the Amendments of 12 March 2009. The proposal to extend the term for submitting a cassation complaint in complex and large-scale criminal cases had been made by the Latvian Council of Sworn Advocates, and it had been supported by the standing working group of the Ministry of Justice for drafting amendments to the Criminal Procedure Law. Being aware of the process, in which the contested norms were drafted, it is said to be totally clear that their aim had been to improve the way, in which the right to defence in complex criminal cases was exercised.

The legislator had chosen a proportionate term, tested in practice for a long time, to ensure that the legitimate aims were reached. It is not certain that another solution would ensure that the legitimate aim is reached in the same or higher quality. Likewise, the possibility to grant by law the right to the appellate instance court to determine itself the term for submitting a cassation complaint in particularly complex cases would cause additional problems rather than facilitate the course of criminal proceedings. For example, in such a case, the criteria for recognising a case as being complex would have to be defined, as well as guidelines regarding the length of the term would have to be elaborated, and a person’s right to appeal against such a decision by the court, if the set term would seem to be unjustified, would have to be envisaged.

In assessing whether the term, defined in the contested norms, is sufficient, it should be taken into consideration that the cassation court’s

jurisdiction comprises issues related to the correct application of substantive and procedural legal norms. A person can start preparing for drawing up the cassation complaint immediately after the summary ruling has been pronounced. A person, knowing what the court has ruled, can understand, whether the ruling is fair. Moreover, if a person has participated in the activities indicated in the charges, they should not experience excessive difficulties in establishing and contesting any information about the facts that are untrue.

Finally, it is also significant that Section 579 of the Criminal Procedure Law allows the submitter of a cassation complaint to submit supplements and modifications to the complaint within 10 days after the term for appeal has expired. The initial complaint is sufficient if it indicates important grounds for cassation.

### **The Findings**

8. The Applicant requests reviewing compliance of the third sentence of Section 564 (7) and Section 570 (1) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme*.

The third sentence of Section 564 (7) of the Criminal Procedure Law defines the right of an appellate instance court to extend the term for appealing against the ruling for 10 days due to particular complexity and scope of the criminal proceedings. Section 570 (1) of the Criminal Procedure Law defines a person's right to submit a cassation complaint within 20 days if the court has extended the term.

Both contested norms regulate the same legal issue – the term for submitting a cassation complaint in particularly complex and large-scale cases. Thus, these norms are closely interconnected and constitute united legal regulation.

**Therefore, the Constitutional Court will review the contested norms as united legal regulation.**

9. First and foremost, the Constitutional Court will clarify the scope of the first sentence of Article 92 of the *Satversme* with respect to the term for submitting a cassation complaint.

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 repeatedly underscored that the concept of “a fair court” comprises two aspects, i.e., “a fair court” as an independent institution of the judicial power, which adjudicates the case, and “a fair court” as due procedure, appropriate for a state governed by the rule of law, in which the case is examined. Thus, Article 92 of the *Satversme* imposes an obligation upon the State to establish a corresponding system of judicial institutions and adopt such procedural norms, in accordance with which a person could effectively protect their rights and lawful interests in a fair and objective court (*compare, see, for example, Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 12*).

The Constitutional Court has underscored that Article 92 of the *Satversme* does not envisage the State’s obligation to provide for a person’s right to appeal against a judgement in cassation procedure in all cases. The legislator enjoys broad discretion in adopting procedural laws and determining categories of cases, which are reviewed in the respective procedures, as well as to decide on the procedure for reviewing various categories of cases (*compare, see Judgement of 15 March 2018 by the Constitutional Court in Case No. 2017-16-01, Para 11.1*). However, if the State envisages, in a certain category of cases, a person’s right to appeal a ruling in a court of higher instance, it must ensure that the procedure of appeal complies with the requirements regarding the accessibility of court, fair procedure, and other requirements of fair trial (*compare, see Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 12.2*).

In Latvia, a three-tiered system of courts has been created for adjudicating criminal cases, which comprises also the cassation instance court, thus, the legislator is obliged to establish such procedure for accessing the cassation

instance court in criminal proceedings that ensures effective protection of a person's fundamental rights (*see Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 12.3.*).

The first and the second part of Section 569 of the Criminal Procedure Law allows appealing against a ruling by the appellate instance court, which has not entered into effect, as well as the ruling by the first instance court, which has been made in agreement proceedings and has not entered into force, in cassation procedure in the Supreme Court to achieve the revocation thereof completely or in a part thereof, or the modification thereof due to legal reasons.

A court's ruling is appealed against in cassation procedure by a cassation complaint or cassation protest. Pursuant to Section 571 of the Criminal Procedure Law, the accused and their defence counsel, among others, have the right to submit a cassation complaint. Section 572 of the Criminal Procedure Law requires including in the cassation complaint justification of the requirements expressed therein with a reference to a violation of the Criminal Law or a substantive violation of the Criminal Procedure Law. The justifications of the requirements are the accused person's defence arguments, which reveal a violation of the Criminal Law or a substantive violation of the Criminal Procedure Law.

Pursuant to Section 587 (1) of the Criminal Procedure Law, a cassation instance court may revoke the contested ruling completely or in a part thereof and send the case for examination *de novo*, terminate criminal proceedings, or modify a ruling.

Thus, by drawing up and submitting a cassation complaint, the accused may continue defending their fundamental rights. Hence, drawing up and submitting a cassation complaint is part of the accused person's defence.

**Therefore, the first sentence of Article 92 of the *Satversme* comprises the right of the accused to draw up and submit a cassation complaint to defend their rights in criminal proceedings.**

10. The Applicant holds that the contested norms do not ensure sufficient time for preparing defence, when drawing up a cassation complaint in particularly complex and large-scale criminal proceedings.

The contested norms define the term, within which a cassation complaint must be submitted to the court. Pursuant to Section 316 (1) of the Criminal Procedure Law, this term cannot be extended. Pursuant to Section 570 (2) of the Criminal Procedure Law, if the term for submitting the complaint is missed, the complaint is not accepted. Hence, the contested norms define the time for preparing defence by drawing up a cassation complaint in particularly complex and large-scale criminal proceedings.

The Constitutional Court has noted repeatedly that the first sentence of Article 92 of the *Satversme* must be specified in conjunction with Article 6 of the Convention and judicature of the European Court of Human Rights (*compare, see, for example, Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 12.1.*).

The first sentence of Para 1 of Article 6 of the Convention provides: “In the determination [...] of any criminal charge against him, everyone is entitled to a fair and public hearing within reasonable time by an independent and impartial tribunal established by law.” Whereas Sub-para “b” of Para 3 of the same Article sets out that “everyone charged with a criminal offence has the rights to have adequate times and facilities for the preparation of his defence”. The European Court of Human Rights has recognised that the right to sufficient time for preparing one’s defence, enshrined in Sub-para “b” of Para 3 of Article 6 of the Convention, is of the elements constituting the right to fair trial. To guarantee this right, the State must allow the accused sufficient time and facilities for preparing defence in criminal proceedings in order to put relevant defence arguments before the trial court and, thus, influence the outcome of the legal proceedings (*compare, see, for example, Judgement of 25 July 2019 by the European Court of Human Rights in Case “Rook v. Germany”, Application No. 1586/15, Para 56.*).

In verifying, whether the time allocated for preparing defence has been sufficient, the European Court of Human Rights takes into account several circumstances, e.g., complexity of the case, procedural stage of the case, whether the person had time to familiarise themselves previously with materials in the case, whether the accused is defending themselves or has a counsel, whether the defined term and the date when the legal proceedings took place were predictable (*see, for example, Judgement of 9 June 1998 by the European Court of Human Rights in Case “Twalib v. Greece”, Application No. 24294/94, Para 40–43, Judgement of 9 June 2011 in Case “Luchaninova v. Ukraine”, Application No. 16347/02, Para 64-67, Judgement of 28 June 2011 in Case Miminoshvili v. Russia”, Application No. 20197/03, Para 141–142, and Judgement of 10 July 2012 in Case “Gregaćević v. Croatia”, Application No. 58331/09, Para 51*).

The Constitutional Court has recognised previously that setting of a term for appeal ensures proper administration of the system of courts and compliance with the principle of legal security. Legal stability is an essential part of the principle of legal security, which, *inter alia*, demands not solely regulated legal proceedings but also legally stable conclusion thereof. Therefore, also procedural activities in criminal proceedings need appropriate and certain time (*compare, see Decision of 13 February 2009 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2008-23-03, Para 11.1.*). Hence, the Constitutional Court must establish, whether the contested norms ensure to a person sufficient time for drawing up a cassation complaint in particularly complex and large-scale criminal proceedings.

**Consequently, the Constitutional Court will establish, whether the term for submitting a cassation complaint, defined in the contested norms, is sufficient for exercising the right to defence, by drawing up a cassation complaint, in particularly complex and large-scale criminal proceedings.**

11. The contested norms should be examined within the total system of regulation on the cassation instance court in criminal proceedings. The procedure, in which criminal cases are reviewed, is set out in the Criminal

Procedure Law. The law allows examination of a criminal case in three judicial instances, including cassation. All circumstances of the case are examined in the first instance, evidence is verified and analysed, and the case is adjudicated on its merits. The appellate instance court verifies the validity and legality of the ruling by the first instance court. This review included adjudicating the case on its merits and may conclude by the appellate instance court upholding the substantiation of the ruling by the first instance court or making a new ruling. Hence, until the moment when the person becomes entitled to submitting a cassation complaint the case has been examined already in two judicial instances (except the cases, in which the first instance court has approved of an agreement). Pursuant to Section 442 (3) of the Criminal Procedure Law, the legal proceedings in the cassation instance court, i.e., the Supreme Court, conclude legal proceedings in the case.

**11.1.** The Constitutional Court has repeatedly noted that the cassation court has special nature, which determines the particularities of the respective legal proceedings. In Latvia, the aim of cassation legal proceedings is to ensure both the unity of law and protection of a person's rights. First and foremost, the cassation instance court has an important role in uniform interpretation and application of legal norms in compliance with the *Satversme*, and the analysis and interpretation of issues, provided by it, is an important instrument that ensures development of law. At the same time, the cassation instance court also conducts the final review of the validity of the restriction applicable to the fundamental rights of the person who is entitled to defence in the particular criminal proceedings (*compare, see Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 18.2., and Judgement of 14 June 2018 in Case No. 2017-23-01, Para 12.2. and Para 12.3.*).

The European Court of Human Rights also has recognised that it is possible to not apply Article 6 of the Convention in the cassation instance exactly in the same way and scope as in legal proceedings in the first instance court. Application of Article 6 of the Convention in the appellate and cassation instance court depends on the procedural regulation on the respective legal proceedings

in the national legal system and the role of the cassation instance court within it (see *Judgement of 26 July 2002 by the Grand Chamber of the European Court of Human Rights in Case “Meftah and Others v. France”*, Applications No. 32911/96, No. 35237/97 and No. 34595/97, Para 41, and *Judgement of 28 March 2006 by the European Court of Human Rights in Case “Melnyk v. Ukraine”*, Application No. 23436/03, Para 24).

Pursuant to Section 573 (1) of the Criminal Procedure Law, the cassation instanced court verifies only whether the substantive legal norms have been correctly applied in drawing up the ruling and whether no substantial violations of the criminal procedural norms have been committed. Section 574 and Section 575 define what is to be understood by the particular violations of law. Section 569 (3) provides that the cassation instance court does not evaluate evidence in the case *de novo*.

The Supreme Court has concluded that the court, which adjudicates a case on its merits, has the jurisdiction to evaluate evidence. Likewise, the issue, whether evidence in the case is or is not sufficient for establishing the accused person’s guilt, is a matter of merits, which cannot be reviewed in cassation procedure. Likewise, the considerations, made by the submitters of protest and complaints, regarding different assessment of the circumstances of the case than the one made by the appellate instance court of cannot be reviewed in cassation procedure (*compare, see Decision of 17 January 2006 by the Department of Criminal Cases of the Supreme Court Senate in Case No. SKK-0008/06*).

To draw up a cassation complaint, the submitter of it has no need to analyse repeatedly all materials in the case but only, whether violations of the Criminal Law and substantial violations of the Criminal Procedure Law can be discerned in the court’s judgement.

**Consequently, in assessing, whether the time for preparing defence, by drawing up a cassation complaint, had been sufficient, *inter alia*, the special role and place of the cassation court must be taken into account.**

**11.2.** Pursuant to Paras 70–72 of the Criminal Procedure Law, the accused person has not only the right to familiarise themselves with the materials

in the case but also to participate in person in the trial of the criminal case in the first instance court and the appellate instance court. Participation of the accused in the legal proceedings in the first instance court and the appellate instance court ensures that they may follow the course of legal proceedings and prepare in timely manner for exercising their right to defence in the cassation instance. Participation in legal proceedings allows the accused to point out to the court substantial violations of the Criminal Procedure Law, made in the trial of the case, but, if their arguments are not taken into account and the violations are not eliminated, to make note of these in order to include them later in the reasoning in the cassation complaint.

The European Court of Human Rights has noted that a person, who has followed the course of their legal proceedings, should know all the most important circumstances in the case and the case materials (*compare, see, Judgement of 27 September 2016 by the European Court of Human Rights in Case “Mintken and Aydin v. Germany”, Applications No. 37963/15 and No. 40208/15, Para 31, and Judgement of 21 November 2017 in Case “Lambin v. Russia”, Application No. 12668/08, Paras 43–46*). A person’s participation in the appellate legal proceedings give them the possibility to understand in good time, whether and regarding which substantial procedural violations a cassation complaint should be submitted.

**Hence, the accused person’s participation in the trial of the case allows them to discover substantial violations of the Criminal Procedure Law and prepare for drawing up a cassation complaint.**

**11.3.** Section 564 (1) of the Criminal Procedure Law provides that a ruling of an appellate instance court consists of an introductory part, a descriptive part, a reasoned part and an operative part. The fourth part of this Section provides that the reasoned part must indicate the findings of the appellate court regarding the validity of the appellate complaint or protest, the circumstances ascertained by the appellate court, the evidence that confirms the findings of the appellate court, the motives why the appellate court rejects some pieces of evidence, and the laws on the basis of which the court conducts itself.

Section 523 (1<sup>1</sup>) of the Criminal Procedure Law provides that the court may write a summary judgement, without including in it the reasoned part.

To exercise their right to defence effectively, it is important for the accused to familiarise themselves with the reasoned part of the judgement. Therefore the accessibility of the full judgement by the court is essential for drawing up a cassation complaint, and the term for submitting a cassation complaint is counted only from the day when the full judgement by the court becomes accessible.

However, as noted by summoned person *Mg. iur.* Gunārs Kūtris, already the summary court ruling provides grounds for the person to prepare for submitting a cassation complaint.

It is possible to understand from the operative and descriptive part of the court's judgement whether the court has taken into account the arguments expressed in the appellate complaint and during the appellate legal proceedings regarding, for example, lack of constitutive elements of a criminal offence, different qualification of the criminal offence they have been charged with, etc. Hence, in the period from the date of receipt of the court's summary judgement until the date when the full judgement becomes accessible, it is possible to prepare for exercising a person's right to defence effectively. Moreover, even if later the full judgement, delivered by the appellate instance court, is voluminous, not all arguments examined in it can be applicable to the particular submitter of a cassation complaint or may indicate a violation of the Criminal Law or a substantive violation of the Criminal Procedure Law.

**Thus, the accused person's participation in the examination of the case allows them to detect a violation of the Criminal Law and prepare for drawing up a cassation complaint**

**11.4.** A person who is entitled to defence may draw up a cassation complaint themselves or entrust the drawing up of it to a counsel – advocate, for whom, in accordance with Section 79 (1) of the Criminal Procedure Law and Section 3 of the Advocacy Law of the Republic of Latvia, the requirements regarding appropriate legal knowledge and skills have been set. Involvement of

a defence counsel is mandatory only in some cases, in the majority of cases it is not mandatory. However, certain legal knowledge is objectively necessary for drawing up a cassation complaint, so that its content would comply with the admissibility criteria defined for a cassation complaint, as well as with the role of the cassation instance court in ensuring unity in the legal system and eliminating violations of law in the particular case.

The European Court of Human Rights also has repeatedly underscored that, in assessing whether the terms given to a person for drawing up a complaint are sufficient, it is important, whether an advocate is involved in drawing up a complaint and in the legal proceedings (*see Judgement of 28 June 2011 by the European Court of Human Rights in Case “Miminoshvili v. Russia”, Application No. 20197/03, Para 142, and Judgement of 27 September 2016 in Case “Mintken and Aydin v. Germany”, Applications No. 37963/15 and No. 40208/15, Para 31*).

The Constitutional Court recognises that the counsel, thanks to their professional knowledge, is able to assess the court’s ruling swifter, understand, whether any grounds for submitting a cassation complaint can be discerned in it, and substantiate the violation of law by legal reasoning. The counsel’s professional skills and experience is the grounds for assumption that they will organise their work during the legal proceedings in a way that will allow preparing in good time for submitting a cassation complaint if that were necessary.

**Hence, participation of the counsel of a person who is entitled to defence in the trial of a criminal case promotes the exercise of the right to defence, in drawing up a cassation complaint.**

**11.5.** Section 579 of the Criminal Procedure Law provides that, within 10 days after the term for appeal expires, the submitter of a cassation complaint may submit also supplements to and modifications of the cassation complaint. Only a cassation complaint that has been submitted can be supplemented and modified.

The Applicant notes that the right to submit supplements to and modifications of a cassation complaint cannot be regarded as an extension of the term for drawing up a cassation complaint.

Summoned persons *Dr. iur.* Jānis Baumanis and *Mg. iur.* Gunārs Kūtris note that, pursuant to Section 579 (2) of the Criminal Procedure Law, supplements to and modification of a cassation complaint of a person entitled to defence are not restricted either as to their content or form, or scope.

The Constitutional Court concludes: although the time allocated for modifying and supplementing a cassation complaint formally cannot be recognised as extension of the term for drawing up and submitting a cassation complaint, actually, however, it is useful for exercising the right to defence, by drawing up a cassation complaint. Modifications of and supplements to a cassation complaint can improve significantly the legal reasoning of the cassation complaint submitted initially, by elaborating, modifying and specifying it. Therefore the time allocated for supplementing and modifying a cassation complaint should be taken into account, in assessing the total term allocated for preparing defence, and the submitter of a cassation complaint in particularly complex and large-scale criminal proceedings actually has, in total, 30 days for the final presentation of the substantiation of the cassation complaint.

**Thus, also the term for submitting supplements to and modification of a cassation complaint, defined in Section 579 of the Criminal Procedure Law, facilitates preparing the defence.**

**11.6.** Additionally, the first sentence of Section 570 (2) of the Criminal Procedure Law in conjunction with Section 317 provides that a cassation complaint can be submitted also after the term has expired, requesting renewal thereof. Section 317 (1) of the Criminal Procedure Law provides that an interested person, who has missed the term set for the enforcement of rights due to a justifying reason, has the right to submit a submission for the renewal of such term. The reasons why the term was missed must be indicated in the submission, and documents that certify the justification for missing the term must be attached to it.

Thus, a person who has missed the term for the enforcement of rights due to a justifying reason, is entitled to renewal of the term: the submission regarding renewal of the term must indicate the reasons why the term had been missed and evidence proving it must be attached to it. The reasons for missing the term that could be regarded as justifying are not indicated in the Criminal Procedure Law, thus, it falls within the jurisdiction of the court which has received the submission regarding renewal of the term.

Summoned persons *Dr. iur.* Jānis Baumanis and *Mg. iur.* Māris Leja hold that a voluminous ruling by a court in particularly complex and large-scale criminal proceedings could be objective circumstance, beyond a person's will, that makes the submission of a cassation complaint within the term defined in the contested norms impossible, however, the evidence proving that, indeed, it had been impossible to submit a complaint within the defined term must be provided by the submitter of a complaint themselves.

The European Court of Human Rights also has recognised the institution of renewal of procedural term as an important legal remedy for a person when, due to objective reasons, it is impossible to submit a cassation complaint within the set term (*see Decision of 27 September 2016 by the European Court of Human Rights in Case "Mintken and Aydin v. Germany", Applications No. 37963/15 and No. 40208/15, Para 30*).

It has been noted in the Supreme Court's judicature that renewal of a missed procedural term is admissible only in exceptional cases, when compelling special circumstances exist, which had prohibited the persons involved in the proceedings from exercising their right to take procedural actions within the statutory terms. The reason that justifies missing the term should be such that objectively denied the person any possibility to take the respective procedural action and such that had been beyond this person's will (*see Judgement of 21 May 2013 by the Department of Criminal Cases of the Supreme Court Senate in Case No. SKK-344/2013*).

The Constitutional Court recognises that the renewal of missed term for submitting a cassation complaint ensures an additional possibility to submit a

cassation complaint after the expiry of the term set for exercising this right if the term has been missed due to objective circumstances beyond the person's will.

**Thus, in exceptional cases, when a person, due to objective reasons, is unable to submit a cassation complaint within the term defined in the contested norms, renewal of the term for its submission is an additional possibility for exercising the right to defence.**

12. The Applicant holds that the terms for submitting a cassation complaint set in other procedural laws should be used as a guide, in reviewing the constitutionality of the contested norms. Pursuant to Section 454 (1) of the Civil Procedure Law, a cassation complaint may be submitted within 30 days as of the date when the judgement is pronounced. Pursuant to Section 329 (1) of the Administrative Procedure Law, a cassation complaint may be submitted within one month as of the date when the judgement is made.

As the Constitutional Court has noted repeatedly, comparison of the legal regulation on various legal proceedings, undoubtedly, would allow identifying even several common features or analogous traits of all legal proceedings. However, they could not serve as the grounds for a person's claim to make all these proceedings uniform, for example, by defining identical rights to the participants in all legal proceedings with respect to appealing against a court's ruling (*see, for example, Judgement of 8 March 2017 by the Constitutional Court in Case No. 2016-07-01, Para 27.2.*). It follows from the fact that there are objective differences between legal proceedings, also such that pertain to the legal relations affected, initiation of legal proceedings, the burden of proof, specialisation of the court or application of temporary remedies (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 17.*)

Thus, the Constitutional Court must assess whether such special reasons exist in criminal proceedings that require setting a term for preparing and submitting a cassation complaint that differs from the civil procedural and administrative procedural regulation.

Section 570 (4) of the Criminal Procedure Law provides that a complaint or protest submitted in accordance with the term defined in the contested norm suspends the execution of a judgement or the entering into effect of a court's decision. Thus, a longer term for submitting a cassation complaint delays the entering into effect of a court's ruling.

The Constitutional Court already has recognised that as the result of criminal proceedings such legal consequences that significantly restrict a person's fundamental rights can set it (*compare, see, Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 12.3.*). These persons may be not only the accused but also the victim and the owner of property infringed upon in criminal proceedings, and their legal interests are not comparable.

Long criminal proceedings can have a negative effect upon the accused person's reputation (*see Judgement of 3 December 2009 by the Grand Chamber of the European Court of Human Rights in Case "Kart v. Turkey", Application No. 8917/05, Para 70*), as well as their liberty, if a security measure has been applied. Likewise, delayed entering into force of a court's ruling hinders the owner of property infringed upon in criminal proceedings from handling their property, it also affects the victim's right to elimination of infringement and to compensation. Effective solution of the consequences caused by the respective event is possible only after the ruling has entered into force.

Article 6 of the Criminal Procedure Law defines the mandatory nature of criminal proceedings, i.e., the official who is authorised to conduct criminal proceedings has the obligation to lead such proceedings to the fair regulation of criminal legal relations provided for in the Criminal Law. Section 7 (1) of the Criminal Procedure Law, in turn, provides that criminal proceedings are conducted in the interests of society regardless of the will of the person upon whom the harm was inflicted. Hence, the term for submitting a cassation complaint is influenced also by society's interest in fair regulation of criminal law relations.

To decrease the infringement on persons' rights, Article 92 of the *Satversme*, Para 1 of Article 6 of the Convention and Section 14 of the Criminal Procedure Law provide for a person's right to have the case examined within reasonable terms. The State's obligation to balance in criminal proceedings a person's right to sufficient time for preparing defence, fundamental rights of other participants in criminal proceedings and, finally, society's interest in fair regulation of criminal law relations within reasonable time follows from this principle.

By setting a term for submitting a cassation complaint, which still allows the submitter thereof to exercise their rights, it is possible to attain legal certainty sooner, accordingly, impacting also the legal situation of other persons to a lesser extent.

**Thus, in setting the term for submitting a cassation complaint required for defence, not only the interests of a person entitled to defence but also the fundamental rights of other participants in criminal proceedings and society's interest in fair regulation of criminal law relations within reasonable time must be respected.**

13. The Applicant notes that due to the term for submitting a cassation complaint defined in the contested norm he had not had the possibility to involve additional advocate because the advocate, who joined the case after its adjudication in the appellate instance court, had been unable to draw up a cassation complaint within the term defined in the contested norm. Thus, the Applicant had been denied the right to choose his counsel freely, which is said to be a significant infringement upon an element of the right to fair trial.

Although the present case has been initiated with respect to compliance of the contested norms with the first sentence of Article 92 of the *Satversme*, the Constitutional Court must take into account also the rights guaranteed in other norms of the *Satversme*, *inter alia*, the right of every person to a counsel, included in the fourth sentence of Article 92 of the *Satversme* (*compare, see Judgement of 11 October 2018 by the Constitutional Court in Case No. 2017-*

30-01, Para 11.1.). To defend their rights and lawful interests in court, the accused person has certain rights to receive the needed legal aid from a person who has acquired respective knowledge and skills. The accused person may choose a counsel themselves, and they have the right to a counsel's (advocate's) assistance from the moment when charges are brought. However, the accused person's right to an unlimited number of counsels, i.e., additional advocates, does not follow from it, and, thus, the fourth sentence of Article 92 of the *Satversme* does not provide for a person's right to several counsels (advocates).

Additionally, the Constitutional Court notes that the term for drawing up and submitting a cassation complaint follows from law and is also individually defined in the summary judgement accessible to a person. Hence, persons entitled to defence can take into consideration the potential need to involve one or several counsels in good time. Moreover, the counsel previously involved in the proceedings, making use of their professional knowledge and experience, should be able to assess the situation reasonably and encourage in good time the person entitled to defence to involve several counsels, if necessary.

**Thus, the contested norms do not prohibit from choosing the counsel freely.**

14. The Applicant holds that the contested norm places him in an unfavourable situation *vis-à-vis* the court, which has been granted unlimited time for preparing a long judgement. The Applicant is of the opinion that the equality of parties would be ensured if, instead of the contested norms, the appellate instance court were granted the right to extend the term for submitting a cassation complaint, without a statutory framework.

The principle of equality of parties is an important principle of criminal procedure, which is included, *inter alia*, in Article 92 of the *Satversme* and Para 1 of Article 6 of the Convention. The European Court of Human Rights has recognised that the right to defence, the guarantees for which are included also in Sub-para "b" of Para 3 of Article 6 of the Convention, has been provided for to ensure procedural equality (*see Judgement of 20 January 2205 by the*

*European Court of Human Rights in Case “Mayzit v. Russia”, Application No. 63378/00, Para 79*). The principle of equality of parties requires ensuring to each party a meaningful possibility to state their position in such circumstances that do not place them in a less favourable situation compared to the opponent (*see, for example, Judgement of 18 March 1997 by the European Court of Human Rights in Case “Foucher v. France”, Application No. 22209/93, Para 34, and Judgement of 19 September 2017 by the Grand Chamber of the European Court of Human Rights in Case “Regner v. the Czech Republic”, Application No. 35289/11, Para 146*). However, this principles applies to a certain circle of persons, mainly to the prosecutor and the person who provides defence (*compare, see Judgement of 17 May 2016 by the European Court of Human Rights in Case “Nekrasov v. Russia”, Application No. 8049/07, Para 112*). Thus, the purpose of Sub-para “b” of Para 3 of Article 6 of the Convention is to ensure the equality between the prosecution and defence, granting to them equal and comparable scope of rights.

The term defined in the contested norm applies to all persons to whom the Criminal Procedure Law grants the right to submit a cassation complaint or protest, *inter alia*, a person entitled to defence, the victim, the owner of property infringed upon in criminal proceedings, and the prosecutor. Thus, the procedural fairness is ensured.

The Court, however, is one of the three branches of State power. The court’s task is to assess the arguments provided by all participants in the legal proceedings, to verify evidence and, on the basis of it, adopt a lawful and fair ruling. Although a judge, in their work, interacts with participants in legal proceedings, their status cannot be equalled to that of participants. The court’s judgement must comprise arguments provided by all persons involved in the proceedings, both individually and in their interconnection, therefore, writing of the judgement, both content-wise or systemically, or in terms of scope is incomparable with the drawing up of a cassation complaint against it. Moreover, the cassation instance court, *inter alia*, also in criminal proceedings, provides principled interpretation of the substantive and procedural legal norms, which

may affect not only the rights of the particular person, who has appealed to the cassation instance court in the particular case, but also the rights of many persons in various legal proceedings (*see Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 12.2.*).

The cases where a court prolongs disproportionately the term for preparing the full ruling could be examined by verifying, whether a person's right to have criminal proceedings completed within a reasonable term has been respected. However, a participant in the proceedings cannot use it as the grounds for requiring such term for submitting a cassation complaint that would be equal to terms set for a court.

**Thus, the time that the appellate instance court spends for drawing up the judgement cannot be compared to the term for preparing defence, defined in the contested norms.**

15. In view of the special place and role of the cassation instance court in criminal proceedings, statutory limitations to the content of a cassation complaint, additional guarantees provided for in the framework of criminal procedure, as well as the principle of balancing the rights and lawful interests of persons, the Constitutional Court recognises that the contested norms define a sufficient term for drawing up and submitting a cassation complaint and comply with the right to defence.

**Hence, the contested norms comply with the first sentence of Article 92 of the *Satversme*.**

### **The Substantive Part**

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

**held:**

**to recognise the third sentence of Section 564 and Section 570 (1) of the Criminal Procedure Law as being compatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.**

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

I. Ziemele