



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 12 March 2020

in Case No. 2019-11-01

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 the constitutional complaint submitted by Mihails Kondakovs (hereafter – the Applicant),

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

at the hearing of 25 February 2020 examined in written procedure the case

**“On Compliance of Section 464<sup>1</sup>(3) of the Civil Procedure Law with the First Sentence of Article 91 and the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.**

## The Facts

1. On 9 June 2016, the *Saeima* adopted amendments to the Civil Procedure Law, adding the third part to Section 464<sup>1</sup> of the Law. The amendments entered into force on 13 July 2016.

Section 464<sup>1</sup> (3) of the Civil Procedure Law (hereafter – the contested norm) provides: “If a cassation complaint formally complies with the requirements referred to in Paragraph one of this Section and if the court has not breached the provisions of Section 452, Paragraph three of this Law and the case to be examined has no significant meaning for ensuring a unified case-law or further formation of law, the judicial collegium may refuse to initiate cassation proceedings also in disputes of a financial nature, if the part thereof, in which the judgment is appealed, is less than EUR 2000.”

The contested norm, in this wording, was in force also at the time when the application was submitted.

**2. The Applicant – Mihails Kondakovs** – holds that the contested norm is incompatible with the right to fair trial, enshrined in the first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*), as well as the equality principle, included in the first sentence of Article 91 of the *Satversme*.

The Applicant holds that the contested norm restricts access to the cassation instance court to those persons who appeal in cassation procedure against a judgement by an appellate instance court in a dispute of a financial nature in the part thereof that is below EUR 2000. It is alleged that the restriction of a financial nature for initiating cassation proceedings, included in the contested norm, envisages differential treatment on the basis of a feature of a financial nature.

The Applicant acknowledges that the restriction on fundamental rights, included in the contested norm, has been established by law and that a legitimate

aim can be discerned for it; i.e., to relieve the cassation instance court from reviewing cases of comparatively minor importance, thus ensuring effective functioning of the cassation instance court and preventing it from being overloaded. However, the Applicant holds that relieving of the cassation instance court cannot be an end in itself, i.e., it is admissible only insofar it fosters swifter and more qualitative review of cases.

The Applicant holds that the contested norm is incompatible with the principle of proportionality. First, the contested norm is said to be inappropriate for reaching the legitimate aim. The cases, to which the contested norm is applied, differ from those cases, which are examined in the simplified procedure, pursuant to the provisions set out in Chapter 30<sup>3</sup> of the Civil Procedure Law. Moreover, disputes of financial nature, in the part thereof below EUR 2000, are not always of minor importance. It is alleged that also a dispute of this kind could be important because this amount is significant for a participant in the case, as well as because the issue to be decided on is significant on its merits.

The Applicant holds that alternative measures exist that would allow relieving the cassation instance court, e.g., it could be envisaged that the possibility of appealing to the cassation instance court is impossible for certain categories of cases. The Applicant also is of the opinion that the amount of security to be paid could be increased. It is important to prevent development of unequal treatment of those submitting cassations complaint only because the judgement on a dispute of a financial nature has been appealed against in the part thereof that is below EUR 2000.

The harm that is inflicted on an individual's rights and lawful interests by the application of the contested norm is said to greatly exceed the public benefit. The Applicant assumes that the number of cases, in which the contested norm is applied, is low. Hence, application of the contested norm does not result in a significant decrease in the workload of the cassation instance court, nor in swifter examination of cases, likewise, society cannot expect more qualitative judgements in cases, in which cassation proceedings are initiated. Moreover,

both the society in general and participants in civil cases, *inter alia*, the Applicant, have to suffer considerable damage because the rule of law and justice are undermined, i.e., judgements by appellate instance courts, which are wrong or incompatible with judicature, are said to enter into force, or there is no judicature on the particular matter; the cassation instance court, however, is not obliged to review the judgement.

The Applicant holds that all participants in civil cases, who submit a cassation complaint regarding the judgement by an appellate instance court, are in similar circumstances. The contested norm is said to envisage differential treatment of submitters of a cassation complaint, who have appealed against a judgement by an appellate instance court in the part of a dispute of a financial nature, which is below EUR 2000, compared to those submitters of cassation complaints, who have appealed against a judgement by an appellate instance court in the part of a dispute of a financial nature amounting at least to EUR 2000, or in a dispute, which is not of a financial nature. I.e., with respect to those submitters of cassation complaints, who have appealed against a judgement by an appellate instance court in a dispute of a financial nature in the part thereof which is not below EUR 200 or in a dispute that is not of a financial nature, the judicial collegium may refuse initiation of cassation legal proceedings if the following four criteria are met:

- 1) the Supreme Court's judicature has evolved regarding matters of applying the respective legal norms;
- 2) the appealed judgement complies with the Supreme Court's judicature;
- 3) there are no obvious grounds for believing that the outcome of the case, included in the appealed judgement, is wrong;
- 4) the present case is not of substantial importance in ensuring unified case law and further formation of law.

Whereas with respect to those submitters of cassations complaints, who have appealed against the judgement of an appellate instance court in the part of

a dispute of a financial nature, which is below EUR 2000 *euro*, only one criterion has been set, i.e., pursuant to the contested norm, the judicial collegium may refuse to initiate cassation proceedings if the case to be examined has no significant meaning for ensuring a unified case law or further formation of law.

The Applicant holds that the contested norm does not ensure reaching of the legitimate aim in the context of fundamental rights guaranteed by the first sentence of Article 91 of the *Satversme*.

Upon familiarising himself with materials in the case, the Applicant has not changed his opinion regarding the possible incompatibility of the contested norm with the first sentence of Article 91 and the first sentence of Article 92 of the *Satversme*.

**3. The institution, which issued the contested act, – the *Saeima* –** holds that, substantially, the Applicant disagrees with the decision made by the Supreme Court’s Senate on refusal to initiate cassation legal proceedings on the basis of the cassation complaint submitted by him. Hence, the restriction on fundamental rights, which, in the Applicant’s opinion, with respect to him follows from the contested norm, is created by the application of the contested norm in the particular situation and not by the contested norm *per se*.

The *Saeima* holds that the contested norm does not restrict the right to fair trial but sets out a criterion for determining which cases are to be reviewed in cassation procedure. Allegedly, the legislator’s duty to ensure that all civil cases can be appealed against in cassation instance does not follow from Article 92 of the *Satversme*. In adopting the contested norm, the legislator has exercised its discretion to determine the categories of cases and the conditions for reviewing these in the cassation instance. Appealing against the judgement of an appellate instance court in small claims cases in cassation instance is not envisaged at all. In the case set out in the contested norm, absolute prohibition to initiate cassation legal proceedings has not been established. The Senate has been granted discretion to examine each particular case, taking into account other

criteria for initiating cassation proceedings. Application of the contested norm does not mean that the particular cassation complaint is not examined at all and would be dismissed automatically solely on the basis of this norm.

The legitimate aim of the contested norm is to relieve the cassation instance court from reviewing cases of minor importance. Such a criterion of financial nature is said to exist in several other countries, e.g., Estonia and Austria.

The *Saeima* underscores that the contested norm does not apply to certain persons or groups of persons but defines neutral criteria that characterise a certain category of cases, irrespectively of who the submitters of cassation complaints are. Hence, the contested norm does not infringe upon the right to equal treatment, defined in the first sentence of Article 91 of the *Satversme*.

In view of the above, the *Saeima* holds that legal proceedings in this case should be terminated.

**4. The summoned person – the Ministry of Justice** – holds that the contested norm complies with the first sentence of Article 91 of the *Satversme*, as well as with the first sentence of Article 92.

The Ministry of Justice underscores that the legislator is not prohibited from limiting the possibilities of appealing a judgement in the cassation instance, insofar the particular restriction has a legitimate aim and is proportional. In the case of the contested norm, an individual's rights are restricted in order to reach the legitimate aim – ensuring the effectiveness of the cassation instance court and preventing its overload. The Ministry of Justice underscores that the primary task of the cassation instance court is not ensuring individual justice in all cases but caring for justice in the function of all judicial instances, by unified application of law by all of them, as well as further formation of law. I.e., the main task of the cassation instance court is to serve society's interests. The priority of society's interests should be taken into account also when considering

channelling of the cassation court's resources for the performance of particular tasks.

Allegedly, the contested norm is not contrary to the equality principle. The Ministry of Justice holds that such groups of persons, who would be in circumstances that are comparable according to a certain feature, cannot be identified in the case.

The Ministry of Justice underscores that the contested norm, as to its nature, is not imperative. It envisages the right of a judicial collegium, rather than an obligation, to refuse initiation of cassation legal proceedings. The contested norm cannot be examined in isolation from other norms of the Civil Procedure Law that regulate initiation of cassation legal proceedings. Not only the precondition that the part, in which the judgement is appealed against, is below EUR 2000, should be taken into account, but also the precondition that the case is not significant for ensuring unified case law and further formation of law. Moreover, the decision by the assignments sitting is made in the composition of three judges and it should be unanimous.

A financial threshold for submitting cassation complaints that is similar to the contested civil procedural regulation is envisaged also in other Member States of the European Union. The financial threshold has been recognised as being a legitimate and reasonable procedural criterion also by the European Court of Human Rights in its judicature.

**5. The summoned person – the Ombudsman** – holds that the contested norm does not restrict a person's right to submit a cassation complaint but adds to the enumeration of possible grounds for the refusal to initiate cassation legal proceedings. In envisaging differential treatment of persons, who submit a cassation complaint if the amount of dispute is below EUR 2000, the principle of proportionality has been complied with. Hence, the contested norm is said to comply both with the first sentence of Article 91 and the first sentence of Article 92 of the *Satversme*.

The Ombudsman holds that the procedure set out in regulatory enactments was complied with in the adoption of the contested norm. Likewise, it cannot be established that the contested norm were of poor quality or worded imprecisely. It has a legitimate aim, i.e., ensuring effective functioning of the cassation instance court and preventing its overloading. The contested norm is said to reach this aim.

Similarly to the Ministry of Justice, the Ombudsman also emphasizes that the contested norm does not establish absolute prohibition to review in cassation instance court cases regarding disputes of a financial nature below the amount of EUR 2000. The judicial collegium of the cassation instance court has the obligation to examine all circumstances related to the possible initiation of cassation proceedings. The Ombudsman underscores that regulation, which is similar to the contested norm, exists in other countries and that the procedural regulation of the European Court of Human Rights has a similar approach.

However, the Ombudsman acknowledges that currently in Latvia, where a large part of the population lives below the subsistence minimum, EUR 2000 could be regarded as a comparatively high threshold, but notes: irrespectively of how low the threshold or small amount of money would be defined by the legislator, there always will be persons who will feel subjectively that their case is significant and complies with the criteria set for the cassation legal proceedings, although it does not reach the set threshold or amount.

**6. The summoned person – the Latvian Council of Sworn Advocates** (hereafter – the Council) – refers to the judicature of the European Court of Human Rights that the right to direct access to court, in particular, in appellate and cassation instance may be restricted, insofar it is not substantially denied. The Council underscores the aim of the contested norm, i.e., relieving the cassation instance court from reviewing cases of minor importance. This legitimate aim requires protection because, *inter alia*, is linked to the right to fair trial, established in Article 92 of the *Satversme*, and the right to have one's case

examined within a reasonable term is one of the elements of this right. The Council is of the opinion that the contested norm should not be excluded from regulation but that a middle way should be found to ensure a person's right to a fair outcome of the legal proceedings, which, at the same time, would ensure examination of the case in speedy and effective legal proceedings. Hence, it is important to prevent excessive overload of the court, which directly impacts both the speed and the quality of reviewing cases.

One of the ways for achieving a fair and effective outcome of legal proceedings, at the same time relieving courts' work, would be ensuring qualified legal aid in legal proceedings, including also civil procedure, with respect to the cassation instance court.

**7. The summoned person – lecturer at the University of Latvia, sworn advocate *Dr. iur. Lauris Rasnačs*** – holds that the contested norm is incompatible with the first sentence of Article 91 and the second sentence of Article 92 of the *Satversme*.

In the circumstances of the present case, comparable groups, as well as a feature that allows comparing these groups can be identified. I.e., it is alleged that the contested norm causes differential treatment of persons, who have submitted a cassation complaint regarding a judgement by the appellate instance court or a part thereof if the disputed amount does not exceed EUR 2000, compared to those persons, who have submitted a cassation complaint in those cases where the disputed sum is at least EUR 2000. Moreover, L. Rasnačs is of the opinion that the fact that the contested norm is not imperative does not change the situation, i.e., the said groups are treated differently.

The restriction on fundamental rights included in the contested norm has been established by law. L. Rasnačs acknowledges that a legitimate aim could be discerned for the contested norm; i.e., relieving the cassation instance court from reviewing cases of comparatively minor importance. A similar solution had been adopted in the civil procedural law of several other European states.

However, L. Rasnačs underscores that in assessing, whether this aim should be regarded as being legitimate, the principle of the rule of law also should be taken into account, and it defines as one of its elements the right to fair judicial proceedings. The existence of contradictory judgements by the higher court instance *per se* is said to be incompatible with this principle. Since the contested norm causes differential treatment and increases the possibility that contradictory judgements may be adopted, its compatibility with the principle of the rule of law could be contested.

L. Rasnačs holds that the contested norm is not suitable for reaching the aim set by the legislator, i.e., decreasing the workload of the cassation instance court. He underscores that appealing against judgements of an appellate instance court in small claims cases in the cassation procedure is not envisaged in the Civil Procedure Law. Therefore the contested norm, which is not applicable to these cases, is insignificant for reaching the aforementioned aim, i.e., relieving the cassation instance court from reviewing cases of minor importance. L. Rasnačs is of the opinion that the legitimate aim could be reached by other measures, less restrictive upon a person's rights and lawful interests. I.e., it would be enough to apply the criteria included in Section 464<sup>1</sup> (2) of the Civil Procedure Law because they ensure that the aim, intended by the legislator, is reached by measures that are less restrictive upon a person's rights; moreover, without causing differential treatment.

**8. The Supreme Court** informs that, in the period from 2017 to 2020, no more than ten decisions on refusal to initiate cassation legal proceedings had been adopted annually on the basis of the contested norm.

The Supreme Court draws attention to the fact that the contested norm, substantially, envisages the criterion of the disputed amount (the so-called monetary cassation filter), which the judicial collegium may apply at the assignments sitting, assessing, whether cassation legal proceedings should be

initiated in the particular case. Similar criteria are included in the civil procedural legal acts in many other European states, e.g., those of Estonia and Austria.

The contested norm is not to be applied imperatively, and the judicial collegium has been granted the right to apply it. Hence, the legislator has ensured that significant matters of law, which are important in reviewing not only the particular case, but also other cases, are examined in cassation instance also in such cases, where they have gained relevance in cases involving a comparatively small disputed amount. Hence, the contested norm is said to fully comply with the priority of protecting public legal interests.

As regards the possible incompatibility of the contested norm with the first sentence of Article 91 of the *Satversme*, the Supreme Court underscores that the legislator has not separated, according to a certain feature, a group of persons to whom the contested norm is applied but has defined the category of cases – disputes of a financial nature below EUR 2000 – in which the contested norm may be applied. Likewise, the Supreme Court underscores that the contested norm complies with the understanding by the European Court of Human Rights of the legitimate and reasonable nature of such restrictions with respect to access to the instances of appeal.

### **The Findings**

9. The institution, which issued the contested act, – the *Saeima* – requests terminating legal proceedings in the case because it holds that the contested norm does not restrict the Applicant's right to fair trial, envisaged in the first sentence of Article 92 of the *Satversme*, nor the right to equal treatment, included in Article 91 of the *Satversme*.

The Constitutional Court has recognised that issues of procedural nature regarding termination of legal proceedings usually should be examined before reviewing the constitutionality of a legal norm, insofar examination of some

aspects of the case on their merits is not necessary (*see, for example, Judgement of 6 June 2018 by the Constitutional Court in Case No. 2017-21-01, Para 9*).

It follows from the application that the basic issue in the case is the exercise of the right to fair trial in the Applicant's situation. I.e., the Applicant had submitted a cassation complaint regarding the judgement by an appellate instance court in a dispute of a financial nature in a civil case. The judicial collegium of the Department of Civil Cases of the Supreme Court (hereafter also – the judicial collegium) had refused to initiate cassation legal proceedings on the basis of the contested norm. The Applicant holds that thus he had been denied access to the cassation instance court, i.e., the case had not been examined on its merits in the cassation instance (*see Application in the Case Materials, Vol. 1, pp. 5–6*). He has compared his legal situation to the situation of other submitters of cassation complaints and has come to the conclusion that the contested norm is incompatible also with the equality principle. The *Saeima* in its written reply and summoned persons in their opinions have expressed the view that the basic matter in the question is exercising the right to fair trial in cassation instance court. The issue of complying with the equality principle, in the circumstances of the present case, is linked to the basic matter in this case.

To establish, whether legal proceedings should be continued, the Constitutional Court will examine, first and foremost, whether the contested norm falls within the scope of fundamental rights, set out in the first sentence of Article 92 of the *Satversme*, and whether it directly infringes upon the Applicant's fundamental rights, defined in the *Satversme* (*see, for example, Decision of 23 November 2016 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2016-02-01, Para 5*).

Whether the possible incompatibility of the contested norm with the first sentence of Article 91 of the *Satversme* should be reviewed in the case, depends on the solution in the basic matter in the case.

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

The concept of “a fair court” includes two aspects – the institutional and the procedural one; i.e., a fair court as an independent institution of the judicial power, which reviews the case, and a fair court as due procedure, compatible with a state governed by the rule of law, in which the case is reviewed. The right to a fair court includes also the right to access to a court (*see, for example, Judgement of 20 April 2012 by the Constitutional Court in Case No. 2011-16-01, Para 8.1.*). Hence, the State’s obligation to create such system of courts that would ensure fair and objective adjudication of a case, as well as to adopt such procedural norms, in accordance with which cases would be examined in procedure that would guarantee fair legal proceedings follows from the first sentence of Article 92 of the *Satversme* (*see, for example, Judgement of 9 May 2008 by the Constitutional Court in Case No. 2007-24-01, Para 8*).

The first sentence of Article 86 of the *Satversme* envisages the legislator’s right to adopt such legal norms that entrust the functions of administration of justice as well as to adopt procedural laws (*see, for example, Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 11*). Namely, the legislator has the right to determine both the categories of cases that fall within the jurisdiction of a certain judicial instance and the procedural norms, pursuant to which the case is to be reviewed in the respective judicial instance. The legislator’s discretion is to be exercised in accordance with the principles of justice and a democratic state governed by the rule of law, which demand reviewing each case in such legal proceedings that ensure objectivity and fairness of the outcome of the legal proceedings (*see, for example, Judgement of 6 June 2012 by the Constitutional Court in Case No. 2011-21-01, Para 7, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Par11.1.*).

In clarifying the content of fundamental rights defined in the *Satversme*, Latvia's international commitments in the area of human rights also should be taken into account. This obligation of the State follows from Article 89 of the *Satversme*, which sets out that the State recognises and protects fundamental human rights in accordance with the *Satversme*, laws, and international agreements binding upon Latvia. This article indicates that the legislator's aim had been to achieve harmony between the human rights provisions included in the *Satversme* and the international human rights provisions (*see, for example, Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 5 of the Findings, and Judgement of 18 October 2007 in Case No. 2007-03-01, Para 11*). The first sentence of Article 92 of the *Satversme* must be specified and applied in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention), and judicature of the European Court of Human Rights. Moreover, the *Satversme* may not provide for a lesser scope of human rights protection than the one envisaged by the Convention (*see, for example, Judgement of 22 December 2017 by the Constitutional Court in Case No. 2017-08-01, Para 12*).

The first sentence of Article 92 of the *Satversme* requires the State to ensure to a person the right to having the case heard in at least one judicial instance. It does not envisage the State's obligation to establish the possibility of appealing the judgement in the appellate and cassation instance in all cases (*see Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 11 and Para 18.2., and Judgement of 10 June 2014 in Case No. 2013-18-01, Para 15*). Such an obligation of the State does not follow from Article 6 of the Convention either (*see, for example, Judgement of 17 January 2002 by the Constitutional Court in Case No. 2001-08-01, Para 3 of the Findings, and Judgement of 22 March 2007 by the European Court of Human rights in Case "Staroszczyk v. Poland", Application No. 59519/00, Para 125*). The finding has been enshrined in the judicature of the European Court of Human Rights that the

State has the discretion to determine appellate instances and procedure, *inter alia*, depending on the type of cases (see *Judgement of 13 February 2001 by the European Court of Human Rights in Case “Krombach v. France”, Application No. 29731/96, Para 96, and Judgement of 2 October 2014 in Case “Hansen v. Norway”, Application No. 15319/09, Para 71*).

Hence, the State has the discretion to define the scope for exercising the right to fair trial with respect to access to courts of appellate instances; however, the State may not exercise this discretion in a way to substantially deny the right to fair trial.

If the State has established a cassation instance court then the legal proceedings therein should be such that ensure a person’s right to fair trial. However, this does not mean that the legislator would be obliged to guarantee that each case is examined on its merits in the cassation instance. This follows neither from the first sentence of Article 92 of the *Satversme* nor Article 6 of the Convention.

The Constitutional Court has recognised that general legal principles, which fall within the scope of Article 1 of the *Satversme*, have been derived from the basic norm of a democratic state governed by the rule of law (see *Judgement of 8 March 2017 by the Constitutional Court in Case No. 2016-07-01, Para 16.2.–16.3.*). The principle of the rule of law is one of them. It requires that, in a democratic state governed by the rule of law, cases would be reviewed in such procedure that would ensure fairness of the outcome of all legal proceedings. I.e., the right to fair trial includes guarantees of fair legal proceedings in all stages thereof. Thus, if the legislator has envisaged the possibility to appeal against a ruling in a cassation instance court then the appeals procedure should comply with the accessibility of a court, fair procedure and other aspects of the right to fair trial (see *Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 12.2., and Judgement of 17 January 1970 by the European Court of Human Rights in Case “Delcourt v. Belgium”, Application No. 2689/65, Para 25*).

Thus, the legislator may determine the procedural order and preconditions for accessing the cassation instance court; however, this procedure and preconditions must comply with the principle of the rule of law, the aim of which is ensuring justice.

**11.** A three-tier court system has been established in Latvia. Pursuant to Section 44 (1) of the law “On Judicial Power”, the Supreme Court (hereafter also – the Senate) is a cassation instance court, unless law provides otherwise. The issue of initiating cassation legal proceedings is decided on at the assignments sitting by a judicial collegium, consisting of three judges and established in the procedure defined by the President of the Department. If even one of the judges is of the opinion that the case should be examined in cassation instance then the judicial collegium adopts the decision on initiating cassation legal proceedings. If the collegium recognises unanimously that the initiation of cassation legal proceedings should be refused, it refuses initiation of cassation legal proceedings by a decision of the assignments sitting (*see the first, second and third part of Section 464 of the Civil Procedure Law*).

Section 464<sup>1</sup> of the Civil Procedure Law defines the grounds for the refusal to initiate cassation proceedings. Pursuant to the first part of the Section, before adopting the decision on how to further proceed with the cassation complaint, the judicial collegium of the Senate examines, whether:

1) the cassation complaint has been submitted by a participant in a case whose right to do so has been defined in Section 450 of the Civil Procedure Law;

2) the cassation complaint comprises a reference to incorrect application of the norms of substantive law if it has led or may have led to erroneous examination of the case (Section 451 of the Civil Procedure Law);

3) the cassation complaint comprises a reference to a violation of a norm of procedural law if it has led or may have led to an erroneous examination of the case (Section 452 of the Civil Procedure Law);

4) the content of the cassation complaint complies with the requirements set out in Section 453 of the Civil Procedure Law;

5) the cassation complaint has been submitted within the terms defined in Section 454 of the Civil Procedure Law.

The judicial collegium refuses initiation of cassation proceedings if the cassation complaint does not meet the requirements referred to above.

Pursuant to Section 464<sup>1</sup> (2) of the Civil Procedure Law, if the cassation complaint complies with the requirements set out in the first part of this Section and the court, which has given the appealed judgement, has not allowed breach of the provisions of Section 452 (3) of this Law, the judicial collegium may refuse to initiate cassation proceedings in the following cases:

1) jurisdiction of the Supreme Court has established in the issues of application of legal norms indicated in the cassation complaint, and the appealed judgment complies with it;

2) upon having assessed the arguments referred to in the cassation complaint, there is no clear evidence to deem that outcome of the case included in the appealed judgment is incorrect and that the case to be examined has a significant meaning for ensuring a unified case law or further formation of law.

Whereas the contested norm provides that, in disputes of financial nature, in the part thereof, in which the judgement is appealed, is less than EUR 2000, the judicial collegium may refuse to initiate cassation proceedings if the case to be examined has no significant meaning for ensuring a unified case law or further formation of law.

Thus, the second and third part of Section 464<sup>1</sup> of the Civil Procedure Law define the criteria, which the judicial collegium is entitled to apply after verifying the criteria included in the first part of this Section, assessing in each particular case, whether grounds for a refusal to initiate cassation proceedings exist or the cassation proceedings should be initiated. Hence, the contested norm is part of the regulation that determines access to the cassation instance in civil procedure.

A restriction of a person's fundamental rights can be identified if: firstly, the person has the particular fundamental right, defined in the *Satversme*; i.e., the contested norm falls within the scope of the particular fundamental right;

secondly, the contested norm directly infringes upon a person's fundamental rights, defined in the *Satversme* (see, for example, *Decision of 23 November 2016 by the Constitutional Court to Terminate Legal Proceedings in Case No. 2016-02-01, Para 5*). It follows from the application and documents annexed to it that the decision on refusing to initiate cassation proceedings with regard to the Applicant's complaint had been adopted on the basis of the contested norm. Thus, the contested norm was applied to the Applicant. In the Applicant's situation, it restricts the right, the protection of which falls within the scope of the first sentence of Article 92 of the *Satversme*, i.e., the right to access to the cassation instance court.

**Consequently, legal proceedings in the case must be continued.**

**12.** In continuing legal proceedings, it must be assessed, whether, in the circumstances of the present case, the restriction on fundamental rights established by the contested norm is justifiable, i.e., the Constitutional Court must verify, whether the restriction has been established by law, whether it has been established for a legitimate aim, and whether it is proportional (see, for example, *Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 12*).

The Constitutional Court notes that, in a democratic state governed by the rule of law, the judicial power is characterised by independence and discretion, required for fulfilling the court's function. Hence, the regulation adopted by the legislator must ensure the court's independence and the necessary discretion, which would allow it to fulfil creatively the function of administering justice within the framework of the basic norm (compare, see: *Volcansek M. L. Judicialization of Politics or Politization of the Courts in New Democracies? In: Landfried C. (Ed.) Judicial Power. How Constitutional Courts Affect Political Transformation. Cambridge: Cambridge University, 2019, pp. 68–69*). Hence, the legislator must establish such procedure and

preconditions of legal proceedings that would comply with the nature and role of the judicial power in a democratic state governed by the rule of law.

In assessing the proportionality of the restriction on the right to access to the cassation instance court, included in the contested norm, the Constitutional Court will verify, whether the measure established by the legislator for reaching the legitimate aim is necessary and reasonable, whether it ensures implementation of fair trial in a democratic state governed by the rule of law, respecting the court's independence and discretion.

**13.** To assess, whether the restriction on fundamental rights has been established by law, it must be verified:

1) whether the law has been adopted in compliance with the procedure set out in regulatory enactments;

2) whether the law has been promulgated and is publicly accessible in compliance with requirements set out in regulatory enactments;

3) whether the law has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations following from it and to forecast the consequences of its application (*see Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 14, and Judgement of 16 June 2016 in Case No. 2015-18-01, Para 13*).

On 9 June 2016, the *Saeima* adopted the Amendments to the Civil Procedure Law, which, *inter alia*, added the contested norm to Section 464<sup>1</sup> of the Law. The law "Amendments to the Civil Procedure Law" entered into force on 13 July of the same year. The *Saeima* examined the respective draft law in three readings. The proposal regarding the contested norm was included in the draft law already in its first reading. The adopted law was promulgated on 29 June 2016 in the official journal "Latvijas Vēstnesis" No. 123 in the procedure set out in regulatory enactments.

The participants in the case and the summoned persons agree that the contested norm had been adopted, promulgated and is publicly accessible in

compliance with the requirements set out in regulatory enactments. Neither does the Constitutional Court has any doubts that the contested norm has been adopted and promulgated in the procedure set out in the *Satversme* and the Rules of Procedure of the *Saeima* and is worded with sufficient clarity to allow a person to understand the content of this norm and forecast the consequences of its application.

**Thus, the restriction on fundamental rights, included in the contested norm, has been established by law.**

**14.** All restrictions on fundamental rights should be based on circumstances and arguments proving its necessity; i.e., the restriction has been established due to important interests – a legitimate aim. In determining a restriction on fundamental rights, in the legal proceedings before the Constitutional Court, the obligation to indicate and substantiate the legitimate aim of the restriction, first and foremost, rests with the institution, which issued the contested act (*see, for example, Judgement of 15 November 2016 by the Constitutional Court in Case No. 2015-25-01, Para 11.2.*).

The *Saeima* indicates in its written reply that the aim of the contested norm is to relieve the Senate from reviewing cases of minor importance so that only legal issues of principal importance and important for the entire legal system would be examined in the cassation instance (*see the Saeima's written reply in Case Materials, Vol. 1, pp. 104–105*). Also the Applicant and the persons summoned in the case – the Ministry of Justice, the Ombudsman, L. Rasnačš, as well as the Supreme Court acknowledge this being the aim.

The Constitutional Court has recognised that the jurisdiction of the Senate as the cassation instance in civil procedure differs from the jurisdiction of the first and appellate instance court. The dispute of the parties is examined on its merits in the first two instances. Whereas the Senate's jurisdiction does not include verification and review of the actual circumstances of the case, only the issues related to correct applications of material and procedural norms are

examined (*see Judgement of 21 October 2013 by the Constitutional Court in Case No. 2013-02-01, Para 10.1.*). Namely, the cassation instance court provides principled interpretation of the substantive and procedural legal provisions, which could impact the rights of numerous persons in various legal proceedings. Analysis of legal norms provided by it is an important instrument for developing unified judicature. The cassation instance proceedings are aimed at unified interpretation of legal norms and further formation of law (*see Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 2.2.*). Thus, the main purpose of the cassation instance court is to ensure the public legal interest – implementation of the rule of law principle. It is one of the foundations of a democratic state governed by the rule of law. This interest is aligned with the right of every person to protect their rights and lawful interests in the framework of a particular legal dispute, especially, with respect to eliminating possible violations of a person’s fundamental rights. Thus, the cassation instance performs an important task – it balances the interests of an individual and society to ensure that the principles of the rule of law and justice are implemented in a democratic state governed by the rule of law. The Constitutional Court has recognised that the main purpose of the legal system of a democratic state governed by the rule of law is to ensure justice (*compare, see Judgement of 11 April 2007 by the Constitutional Court in Case No. 2006-28-01, Para 20.1.*).

To allow the cassation instance court to decide on principal issues regarding application of substantive and material norms, the legislator, to the extent possible, should relieve it from examining such complaints that are incompatible with the cassation principle (*compare, see Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 2.1. of the Findings, and Judgement of 14 March 2006 in Case No. 2005-18-01, Para 13.1.*). Thus, the legislator must create such legal regulation that ensures that the aims of the cassation instance court are implemented, taking into account that, in a democratic state governed by the rule of law, courts are independent

and, in order to fulfil the function of administering justice, they need certain discretion.

**Hence, the restriction has a legitimate aim – protecting the order of a democratic state governed by the rule of law.**

15. In assessing, whether the measure chosen by the legislator for reaching the legitimate aim is necessary and reasonable, it must be taken into account that the Constitutional Court already has reviewed the legislator's choice, made when it determined the procedure of appeal in the cassation instance court in civil cases. The Constitutional Court already has recognised that granting certain discretion or discretionary power to the court, in deciding on initiation of cassation proceedings, in general, is an appropriately chosen measure for ensuring functioning of the cassation court. Granting of certain discretion in this issue to the court is reasonable and necessary (*see, for example, Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 11, 18.2.–18.3.*).

The Applicant holds that the contested norm is inappropriate for reaching the legitimate aim due to several reasons.

Firstly, it is alleged that it does not relieve the cassation instance court because it is rarely applied. Moreover, the judicial collegium, nevertheless, has to examine each cassation complaint that is submitted and, thus, its workload is not decreased. The Applicant has expressed the opinion that the legislator's decision to, for example, not envisage access to the cassation court for certain categories of cases at all or to increase the security to be paid, could be more appropriate for reaching the legitimate aim (*see Application in Case Materials, Vol. 1, pp. 9–10*).

The Supreme Court has expressed the opinion that the contested norm's impact in the context of relieving the workload of the cassations instance court cannot be examined in isolation from the regulation that defines the grounds for refusal to initiate cassation proceedings, i.e., from other provisions of

Section 464<sup>1</sup> of the Civil Procedure Law. Pursuant to information provided by the Supreme Court, in 2017, four decisions on refusal to initiate cassation proceedings had been adopted solely on the basis of the contested norm, whereas in five cases the contested norm had been one of the grounds for the refusal to initiate cassation proceedings. In 2018, six decisions on the refusal to initiate cassation proceedings had been adopted solely on the basis of the contested norms, and in one case the contested norm had been one of the grounds for refusal. In 2019, in turn, four decisions on the refusal to initiate cassation proceedings had been adopted solely on the basis of the contested norms, but in six cases the contested norm had been one of the grounds for the refusal to initiate cassation proceedings. The Supreme Court has underscored that relieving the workload in the cassation instance is ensured by the application of the whole Section 464<sup>1</sup> of the Civil Procedure Law. The contested norm has been envisaged as one of the measures for relieving the cassation instance court, i.e., if it is applied, the cassation proceedings are not initiated and a full judgement is not drawn up. The obligation to draw up a full judgement in all cases would increase the general workload of the cassation instance court and the term for examining concrete cases would be longer. The fact that the contested norm is applied comparatively rarely *per se* is said to not be the reason for recognising it as being inappropriate for reaching the legitimate aim. However, each instance when the contested norm is applied ensures certain economy of resources ( *see the Supreme Court's Opinion in Case Materials, Vol. 2, p. 12*). Moreover, the restriction chosen by the legislator is said to be the most lenient. The contested norm must not be applied imperatively and, thus, it allows initiation of cassation proceedings also if the part, in which the judgement is appealed against in the cassation instance, is less than EUR 2000.

The *Saeima*, the Ministry of Justice and the Supreme Court point to the experience of other countries in determining the procedure of cassation proceedings, *inter alia*, using criteria of a financial nature, thus restricting access to the cassation instance court, and underscore that such approach is used, for

example, in Estonia, Czechia, Croatia, Bulgaria, and Austria (*see the Saeima's Written Reply in Case Materials, Vol. 1, p. 107., the Supreme Court's Opinion in Case Materials, Vol. 2, p. 11, and the Opinion by the Ministry of Justice in Case Materials, Vol. 2., p. 4*).

The Constitutional Court points out that the Applicant's arguments cannot be deemed to be alternative solutions in the particular situation because, in this legal situation, he had been ensured access to the cassation instance court, i.e., he had the possibility to submit a cassation complaint, it was examined and a decision had been adopted with respect to it. The Constitutional Court notes that, in the particular legal situation, solutions that would entirely deny access to the cassation instance court, cannot be regarded as being an alternative measure.

Secondly, the Applicant holds that a comparatively minor dispute of a financial nature could be significant for the participants in the case both because for them even an amount below EUR 2000 could be important and also because the disputed issue could be of principal importance for the participants in the case on its merits (*see the Application in the Case Materials, Vol. 1, p. 9*). The Constitutional Court recognises as valid the view held by the *Saeima* and the Supreme Court that the Applicant's opinion regarding giving the priority to the subjective interests is unfounded. Primarily, the cassation instance court is not intended for resolving a particular legal dispute on its merits. A fair solution to the particular legal dispute must be achieved by reviewing the respective case in the first instance court and the appellate instance court. The fact that the judgement made in the courts of the two first instances is unfavourable for the person *per se* does not constitute sufficient grounds to expect that cassation proceedings will be initiated in all cases. The contested norm ensures that the court considers both the interests of each participant in the case and assesses the public interest in meaningful and effective use of the resources of the cassation instance court.

The fact that the contested norm is not imperative as to its nature is also significant. In deciding on the issue of initiating the cassation proceedings, the

judicial collegium, in all cases, first and foremost reviews the criteria included in Section 464<sup>1</sup> (1) of the Civil Procedure Law, afterwards being able to apply the second and third part of this Section. Hence, the legislator has envisaged certain discretion for the judicial collegium also in applying the criterion of a financial nature, included in the contested norm. Namely, if the part, in which the judgement has been appealed against in the cassation instance court, is below EUR 2000, but the judicial collegium discerns important public interests or interests in protecting a person's rights, a decision on initiating cassation proceedings may be adopted.

The Constitutional Court points out that granting certain discretion to the cassation instance court is necessary and reasonable. Otherwise, the principle of the court's discretion would have a casuistic approach, where the legislator would enumerate all legal issues, which in each particular case would have to be recognised as the grounds for initiating cassation proceedings. In a democratic state governed by the rule of law, in which the principle of separation of powers is important, the judicial power, in fulfilling its function of administering justice, has the right and the obligation to exercise its jurisdiction within the framework of discretion granted to it in compliance with the general legal principles and other norms of the *Satversme*. The Constitutional Court already has recognised that the judicial power in its entirety must ensure justice as one of the basic values of a democratic state governed by the rule of law (*see, for example, Judgement of 12 November 2015 by the Constitutional Court in Case No. 2015-06-01, Para 11.1*). Hence, the effectiveness of the mechanism for protecting the right to fair trial depends on the functioning of the entire system of courts (*see, for example, Judgement of 10 February 2017 by the Constitutional Court in Case No. 2016-06-01, Para 31.2*). The cassation instance court, in deciding on the issue of initiating cassation proceedings, assesses the public benefit *vis-à-vis* the individual's legal interest in the particular case if this case were initiated in the cassation instance and a full judgement would be drawn up. The nature of the contested norm allows the judicial collegium to conduct this assessment to

balance, in each particular case, the public legal interests with the legal interests of an individual.

Hence, the discretion granted by the legislator to the judicial collegium of the Department of Civil Cases of the Supreme Court to decide, by taking into account the circumstances of the particular case and the conditions included in the contested norm, on compliance of the cassation complaint with the cassation principle is necessary and reasonable in a democratic state governed by the rule of law.

**Thus, the contested norm complies with the first sentence of Article 92 of the *Satversme*.**

16. Since the Constitutional Court already has recognised that the contested norm is compatible with the right to fair trial it must continue reviewing, verifying the possible incompatibility of the contested norm with the second provision of the *Satversme*, indicated by the Applicant. The Applicant holds that the contested norm is incompatible also with the equality principle, included in the first sentence of Article 91 of the *Satversme* (*see the Application in Case Materials, Vol. 1, p. 6*).

The first sentence of Article 91 of the *Satversme* provides: “All human beings in Latvia shall be equal before the law and the courts.” The equality principle, included in it, prohibits state institutions from issuing such norms, which, without reasonable grounds, allow differential treatment of persons who are in similar and according to certain criteria comparable circumstances. This principle allows and even demands differential treatment of persons, who are in different circumstances, as well as allows differential treatment of persons who are in similar circumstances, if there are objective and reasonable grounds for it (*see, for example, Judgement of 11 October 2017 by the Constitutional Court in Case No. 2017-10-01, Para 18*). Differential treatment lacks objective and reasonable grounds if it has no legitimate aim or if the relation between the

chosen measures and set aims is not proportional (*see, for example, Judgement of 29 June 2018 by the Constitutional Court in Case No. 2017-25-01, Para 25*).

To verify whether the equality principle is complied with in the particular legal situation, it must be established:

- 1) whether and which persons (groups of persons) are in similar and in accordance with certain criteria comparable circumstances;
- 2) whether the contested norm envisages similar or differential treatment of these persons;
- 3) whether this treatment has been established by a legal norm adopted in the procedure set out in regulatory enactments;
- 4) whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the proportionality principle has been complied with (*see, for example, Judgement of 29 June 2018 by the Constitutional Court in Case No. 2017-28-0306, Para 11*).

Hence, first and foremost, it must be established, which persons (groups of persons) are in similar and in accordance with certain criteria comparable circumstances.

The Applicant holds that it is possible to compare persons, who appeal in cassation procedure against a judgement by an appellate instance court in the part of a dispute of a financial nature, which is below EUR 2000, and persons, who appeal in cassation procedure against a judgement by an appellate instance court in the part of a dispute of a financial nature, which is at least EUR 2000, or in a dispute of nonfinancial nature. Both groups are said to be in similar and comparable circumstances. The feature that allows comparing these groups of persons is the fact that all participants in such civil cases have been envisaged the right to submit a cassation complaint.

The *Saeima*, however, holds that groups of persons who could be substantially comparable cannot be identified in the case because Section 464<sup>1</sup> of the Civil Procedure Law in general and the contested norm, included in it, apply

to all cassation complaints that are submitted to the cassation instance court and it is applied by the judicial collegium, deciding on the issue of initiating cassation proceedings. The Ombudsman, a summoned person, also is of the opinion that the contested norm defines the assessment criteria to be applied to cassation complaints of the same category, which the judicial collegium takes into account, in deciding on the issue of refusing to initiate the cassation proceedings.

The Constitutional Court holds the considerations presented by the *Saeima* and the Ombudsman as being valid. The contested norm defines one of the grounds for refusal to initiate cassation proceeding. I.e., the judicial collegium, in exercising its discretion, applies the contested norm to disputes of a financial nature of a certain amount, examining, in each particular case, whether the case under review is significant in ensuring unified case law or further formation of law, but always striving to achieve justice, which is the ultimate aim of the legal system of a democratic state governed by the rule of law. It has been recognised in the judicature of the European Court of Human Rights that differential treatment is prohibited if the grounds or reason for it is a personal trait, which differentiates a person or a group of persons from others, i.e., in situations where the differential treatment has been established on the grounds of a personal trait, e.g., gender, race, language, religion, financial status, position (*see, for example, Judgement of 23 May 2002 by the European Court of Human Rights in Case "Halis v. Turkey", Application No. 30007/96, Para 4*). The norm contested in the present case establishes a criterion of a financial nature for assessing cassation complaints, in the application of which the judicial collegium of the Department of Civil Cases of the Supreme Court enjoys certain discretion. Its application does not result in the formation of groups of persons on the basis of a personal trait. Hence, the groups of persons, identified by the Applicant, are incomparable from the perspective of equality.

**Consequently, the contested norm is compatible also with the first sentence of Article 91 of the *Satversme*.**

### **The Substantive Part**

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

**held:**

**to recognise Section 464<sup>1</sup> (3) of the Civil Procedure Law as being compatible with the first sentence of Article 91 and 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 day it is published.

Chairperson of the court hearing

I. Ziemele