



# LATVIJAS REPUBLIKAS SATVERSMES TIESAS TIESNESIS

Jura Alunāna iela 1, Rīga, LV 1010

Tālrunis: 67830735, 67210274 Fakss: 67830770  
e-mail: tiesa@satv.tiesa.gov.lv

## SEPARATE OPINION

**of Justices Aldis Laviņš and Jānis Neimanis of  
the Constitutional Court of the Republic of Latvia  
in Riga on 27 March 2020  
in Case No. 2019-11-01**

**“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”.**

1. On 12 March 2020, the Constitutional Court passed the judgement in case No. 2019-11-01 “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” (hereafter – the Judgement), by which it recognised the contested norm 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.

**We cannot uphold the interpretation of the contested norm, provided in the Judgement, as well as the conclusion regarding compliance of the contested norm with the first sentence of Article 91 and the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.**

In substantiating our opinion, we shall use abbreviations used in the Judgement.

**2.** It is noted in Para 11 of the Judgement that the second part of Section 464<sup>1</sup> of the Civil Procedure Law and the contested norm define the criteria, which the judicial collegium is entitled to apply in assessing, in each particular case, whether grounds for refusal to initiate cassation proceedings exist or, nonetheless, the cassation proceedings should be initiated. Thus, the Constitutional Court, substantially, has held that also in those instances, where in disputes of a financial nature the judgement has been appealed against in the part thereof that is below EUR 2000, the judicial collegium, in deciding at the assignments sitting on the matter of initiating cassation proceedings, must examine, whether obvious grounds to consider that the outcome of the case, included in the appealed judgement, is erroneous follow from the arguments stated in the cassation complaint. Such interpretation of the contested norm leads to unifying the grounds for refusal to initiate cassation proceedings, which are included in the second and third part of Section 464<sup>1</sup> of the Civil Procedure Law. Thus, the contested norm duplicates Section 464<sup>1</sup> (2) of the Civil Procedure Law and has become redundant in the system of the Civil Procedure Law.

**3.** To clarify the aim and meaning of the contested norm, it should be examined, first and foremost, which features make the contested norm different from Section 464<sup>1</sup> (2) of the Civil Procedure Law and in which case the judicial collegium applies each of the afore-mentioned provisions.

**3.1.** Chapter 57 of the Civil Procedure Law regulates initiation of cassation proceedings and examination of a case in cassation instance. Section 464<sup>1</sup>, included in this Chapter, defines several grounds for refusal to initiate cassation proceedings:

1) pursuant to the first part of this Section, the judicial collegium refuses initiation of cassation proceedings of the cassation complaint does not meet the requirements set in Section 450–454 of this Law. I.e., the person does not have the

right to submit a cassation complaint (*Section 450 of the Civil Procedure Law*); the cassation complaint does not comprise a reference to incorrect application of the norms of substantive law or a violation of a norm of procedural law (*Section 451–452 of the Civil Procedure Law*); the cassation complaint has not been drawn up in accordance with the requirements set out in the Civil Procedure Law (*Section 453 of the Civil Procedure Law*); the term for submitting a cassation complaint has not been complied with (*Section 454 of the Civil Procedure Law*);

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

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

- upon having assessed the arguments referred to in the cassation complaint, it has been concluded that there is no clear evidence to deem that outcome of the case included in the appealed judgement is incorrect and that the case to be examined has a significant meaning for ensuring a unified case law or further formation of law;

3) Section 464<sup>1</sup> (3) of the Civil Procedure Law provides: if a cassation complaint formally complies with the requirements referred to in Section 464<sup>1</sup> (1) of this Law and if the court has not breached the provisions of Section 452 (3) 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*).

**3.2.** It follows from Section 464<sup>1</sup> of the Civil Procedure Law that the judicial collegium must examine, first and foremost, the formal compliance of a cassation

complaint with the requirements set out in Section 464<sup>1</sup> (1) of the Civil Procedure Law. Likewise, the collegium must verify, whether the court has not violated the provisions of Section 452 (3) of the Civil Procedure Law, for example, has examined the case in unlawful composition, has not abided by the norms of procedural law regarding the language of the court proceedings.

If such violations are not identified, the judicial collegium must verify, whether the jurisdiction of the Supreme Court has not established in the application of legal norms referred to in the cassation complaint and whether the appealed judgement complies with it.

If it is found that judicature has not established on legal issues referred to in the cassation complaint, i.e., the respective legal issues have not been examined in the Supreme Court's rulings, the judicial collegium must verify, whether two cumulative criteria have been met. The first criterion – whether, taking into account the arguments stated in the cassation complaint, the judicial collegium does not have obvious grounds for deeming that the outcome of the case, included in the appealed judgement, is erroneous. This criterion ensures that the interests of participants in the civil case are respected. The parties are interested in receiving a fair judgement in the case that would comply with legal norms. The fact that that the Supreme Court, in deciding on the issue of initiating legal proceedings, has to verify the correctness of the outcome in the case, included in the appealed judgement, is nothing unusual. Within the European legal space, it is one of the tasks of a cassation or revision instance court; however, it should be underscored that it is one of the tasks but not the primary task (*see, for example, Section 360 of the Civil Procedure Code of Italy, Section 679 and Section 692 of the Civil Procedure Code of Estonia, Para 4 of Section 398.8. (1) of the Civil Procedure Code of Poland; the case law of the Austrian and Swiss supreme courts, in turn, is revealed in the article by professor T. Domej “What is an important case? Admissibility of appeals to the Supreme Courts in the German-speaking jurisdictions, Comparative essays on appeals and other means of recourse against judicial decisions in civil Matters”, Cambridge, 2014, pp. 283–284).*

The second criterion that needs to be verified by the judicial collegium is the following: whether the case under review is significant in ensuring unified application of legal norms or in further formation of law. This criterion is directed at ensuring the public legal interest. I.e., the task of a cassation instance court is to provide principled interpretation of norms of substantive and procedural law, which could impact the rights of many persons in different legal proceedings. Analysis of the application of legal norms provided by the cassation instance court is a significant instrument in developing unified judicature and further formation of law, and exactly this is the primary task of a cassation instance court.

Thus, the legislator has envisaged that, pursuant with the rules set out in Para 2 of Section 464 <sup>1</sup> (2) of the Civil Procedure Law, cassation proceedings may be initiated both for the public legal interests and to ensure the interests of participants in the civil case. If any of the aforementioned cumulative criteria are not met, the judicial collegium does not have the grounds for refusing initiation of cassation proceedings. I.e., if the conclusion follows from the arguments stated in the cassation complaint that the appealed judgement is erroneous but the case is not significant in ensuring unified application of legal norms of further formation of law, then one of the criteria included in the norm has not been met, and it is the grounds for initiating cassation proceedings.

**3.3.** However, if the cassation complaint has been submitted with regard to a dispute of a financial nature and the disputed sum is below EUR 2000, pursuant to the contested norm, the judicial collegium, in deciding on the initiation of cassation proceedings must verify, in addition to whether the complaint complies with the formal requirements and whether the rules of Section 452 (3) of the Civil Procedure Law have been abided by, must verify one more criterion, i.e., whether the case under review is significant in ensuring unified application of legal norms and further formation of law. If the cassation complaint meets the statutory requirements and the court has not allowed certain violations then, pursuant to the contested norm, cassation proceedings in such cases are initiated only if examination of the case in the cassation instance is substantiated by the necessity to protect public legal interests, i.e., it is necessary to ensure unified application of

legal norms or further formation of law. The contested norm does not require the judicial collegium to review in all such cases the correctness of the outcome in the case, included in the appealed judgement. The contested norm, in difference to Section 464<sup>1</sup> (2) of the Civil Procedure Law, allows the judicial collegium to refuse initiation of cassation proceedings even in those cases, where the outcome of the case, included in the appealed judgement, is erroneous.

**3.4.** To reveal the aim and meaning of the contested norm, the method of historical interpretation of legal norms should also be applied to examine the development of Section 464<sup>1</sup> of the Civil Procedure Law.

Until 13 July 2016 when the Amendments to the Civil Procedure Law entered into force, expressing Para 1 and Para 2 of Section 464<sup>1</sup> (2) of the Civil Procedure Law in a new wording, as well as adding the third part to the said Section, the former valid regulation provided: “If a cassation complaint formally complies with the requirements set out in Section 464<sup>1</sup> (1) of the Civil Procedure Law and if the appellate instance court has not allowed a violation of the rules set out in Section 452 (3) of this Law, the judicial collegium may refuse initiation of the cassation proceedings also in the following cases:

- 1) jurisdiction has become established in the Supreme Court’s judgements in other similar cases regarding the application of substantive law or violations of norms of procedural law referred to in the cassation complaint, and the appellate court judgement complies with;
- 2) no doubts arise regarding the legality of the appellate court’s judgement, and the case under review is not significant for the development of jurisdiction.”

The legislator had not accorded any importance to the disputed amount. The judicial collegium, in deciding on the matter of initiating cassation proceedings, irrespectively of the disputed amount, in all cases had to verify, *inter alia*, the legality of the appealed judgement, i.e., whether the grounds included in the judgement, as well as the outcome in the case was correct, compatible with legal norms. After the law of 9 June 2016 “Amendments to the Civil Procedure Law”

entered into force, the requirements set for the judicial collegium to verify the correctness of the outcome in the case, included in the appealed judgement, was applied only to those cases, where the disputed amount was at least EUR 2000 or the complaint was submitted in a case of non-financial nature. This criterion of review is not included in the contested norm. Hence, depending on the disputed amount, the legislator has envisaged different criteria that the judicial collegium must assess before adopting the decision on refusal to initiate cassation proceedings.

**3.5.** Clarification of the legislator's grounds also helps to reveal the aim and the meaning of the contested norm.

It follows from annotation to draft law No. 551/Lp12, that the legislator's aim, in adopting the contested norm, had been to relieve the supreme instance court from reviewing cases of comparatively minor importance. As indicated in the annotation, initiation of cassation legal proceedings cannot be refused in cases with the disputed amount below EUR 2000 in instances where the court, which gave the appealed judgement, had violated the rules set out in Section 452 (3) of the Civil Procedure Law, i.e., when there are absolute grounds for cassation. Likewise, the initiation of cassation proceedings cannot be refused also in those cases where examination of the case is substantiated by the protection of public legal interests – ensuring unified application of legal norms and further formation of law (*see annotation to the draft law No. 551/Lp12 submitted to the Saeima on 13 April 2016 "Amendments to the Civil Procedure Law"*).

At the sitting of the *Saeima* Legal Committee on 13 April 2016, the representative of the Ministry of Justice explained that Section 464<sup>1</sup> (3) of the Civil Procedure Law were new grounds for refusing initiation of cassation proceedings if the part in which the judgement was appealed was below EUR 2000. The disputed sum *per se* are not absolute grounds for refusal, the judicial collegium must assess, whether the case under review is significant in ensuring unified application of legal norms and further formation of law (*see audio recording of the Saeima Legal Committee's sitting of 13 April 2016*). It follows also from the discussions that took place at the sitting of the standing working

group for drafting amendments to the Civil Procedure Law of the Ministry of Justice on 8 October 2015 that the contested norm had been intended as independent grounds for refusal to initiate cassation proceedings. The issue was foregrounded at the sitting that in the particular cases the judicial collegium would be able to refuse initiation of cassation proceedings regardless of the correctness of the outcome in the case, included in the appealed judgement (*see audio recording of the sitting of the standing working group for drafting amendments to the Civil Procedure Law of the Ministry of Justice on 8 October 2015*).

It can be concluded from the above-mentioned that with respect to disputes of a financial nature, if the part, in which the judgement has been appealed, is below EUR 2000, the legislator had wanted to provide that the case could be initiated in cassation proceedings only to protect public legal interests. Thus, even if the outcome in the case, included in the appealed judgement, is erroneous, the judicial collegium, if it considers that the case is not significant in ensuring unified application of legal norms and further formation of law, would have the right to refuse initiation of cassation proceedings. Such interpretation of the contested norm complies both with the statements made in the Supreme Court's opinion submitted to the Constitutional Court and the practice of applying the contested norm.

**3.6.** The Department of Civil Cases of the Supreme Court has indicated in its opinion, submitted to the Constitutional Court, that, in applying the contested norm, the judicial collegium is not obliged to verify the correctness of the outcome in the case, included in the appealed judgement, if the disputed amount is below EUR 2000. The scope of reviewing a cassation complaint is considerably smaller compared to applying the grounds for refusing initiation of cassation proceedings referred to in Section 464<sup>1</sup> (2) of the Civil Procedure Law (*see Case Materials, Vol. 2, p. 12*).

The decision on the refusal to initiate cassation proceedings in the case materials, which was adopted in the Applicant's case, shows that the judicial collegium, in applying the contested norm, has not examined the correctness of the outcome in the case, included in the appealed judgement. I.e., it is indicated in the

decision that the grounds for refusing initiation of cassation proceedings referred to in the contested norm existed because the case under review was not significant in ensuring unified case law and further formation of law, and the part, in which the judgement was appealed, was below EUR 2000 (*see Case Materials, Vol. 1, p. 87*).

Another obvious example, which proves that two independent and different grounds for refusing initiation of cassation proceedings had been established in Section 464<sup>1</sup>(2) of the Civil Procedure Law and in the contested norm, is the decision by the assignments sitting of the Department of Civil Cases of the Supreme Court on 9 December 2019 in Case No. SKC-1651/2019. In this case, both the plaintiff and the defendant submitted a cassation complaint regarding the judgement by the appellate instance court. Having assessed the plaintiff's cassation complaint, the judicial collegium applied Section 464<sup>1</sup>(2) of the Civil Procedure Law and refused initiation of cassation proceedings because the arguments stated in the cassation complaint did not give obvious grounds to consider that the outcome in the case, included in the appealed judgement, would be erroneous and that the case under review would be significant in ensuring unified case law and further formation of law. Whereas with regard to the defendant's cassation complaint, the judicial collegium, in refusing to initiate cassation proceedings, applied the contested norm. The refusal is substantiated by the fact that the disputed sum is below EUR 2000, the court has not violated the rules of Section 452(3) of the Civil Procedure Law, and the case is not significant in ensuring unified case law and further formation of law.

Summarising Para 3 of this separate opinion, we conclude that two different and independent legal grounds for the refusal to initiate cassation proceedings are included in Section 464<sup>1</sup>(2) of the Civil Procedure Law and the contested norm. In applying the contested norm, in difference to the instances where Section 464<sup>1</sup>(2) of the Civil Procedure Law is applied, the judicial collegium is allowed to not verify the correctness of the outcome in the case, included in the appealed judgement. **Thus, the contested norm allows a judicial collegium to**

**refuse initiation of cassation proceedings even if the outcome in the case, included in the appealed judgement, is erroneous.**

4. We agree that even if there are grounds for refusing initiation of cassation proceedings in a case a judicial collegium may initiate it; however, the matter of the present case is not the actions of the Supreme Court's Judges in applying the legal norm. In the present case, as requested by the submitter of the constitutional complaint in his application, the Constitutional Court had to examine, whether the contested norm, insofar it allowed a judicial collegium to refuse initiation of a case even if the outcome in the case, included in the appealed judgement, was erroneous, complies with the first sentence of Article 91 and the first sentence of Article 92 of the *Satversme*. In the following paragraphs of this separate opinion, we shall examine, whether the contested norm complies with the *Satversme* in this part.

5. It is validly noted in Para 10 of the Judgement that the State's obligation to provide that a judgement can be appealed against in appellate and cassation proceedings in all cases does not follow from the first sentence of Article 92 of the *Satversme*. The Constitutional Court already has recognised that the legislator has the right to determine the number of instances, in which cases of different categories are to be examined (*see Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 11*). Thus, the State has the discretion to determine the procedure of appeal in cases. For example, the legislator may provide that in certain civil cases cassation instance is not envisaged. However, if the legislator has envisaged the possibility for appealing against the respective judgement in cassation proceedings, the procedure for examining the admissibility and validity of the complaint should be such that ensures the safeguards for fair legal proceedings and complies with general legal principles. Therefore, it must be examined whether:

1) the procedure, established in the contested norm for deciding on the issue of initiating cassation proceedings, ensures to a person the guarantees for the right to fair trial;

2) the procedure, established in the contested norm, complies with the equality principle, included in the first sentence of Article 91 of the *Satversme*.

6. Pursuant to Section 464 (1) of the Civil Procedure Law, a cassation complaint submitted to the Supreme Court is examined by a judicial collegium, which decides on the initiation of cassation proceedings. To make conclusions regarding the need to initiate cassation proceedings, the judicial collegium must review the content of the submitted cassation complaint, the appealed judgement, as well as materials in the case. Such procedure, substantially, can be equalled to the examination of a case in written procedure and should be assessed as an appropriately chosen measure for ensuring due functioning of the cassation instance (*see Judgement of 21 October 2013 by the Constitutional Court in Case No. 2013-02-01, Para 12*).

The contested norm does not prohibit a person from appealing against the judgement by an appellate instance court in cassation procedure but defines the criteria that the judicial collegium must verify, in deciding on the initiation of cassation proceedings. It follows from materials in the case that the Applicant was not denied access to the cassation instance court. He had submitted a cassation complaint regarding the judgement by the appellate instance court, and, in deciding on the initiation of cassation proceedings, this complaint was examined at the assignments sitting of the Supreme Court's judicial collegium (*see Case Materials, Vol. 1, pp. 82–87*). Thus, the contested norm does not deny a person the guarantee of fair legal proceedings – access to the cassation instance court, because it ensures that the submitted complaint is examined at the judicial collegium's assignments sitting.

6.1. The aim of the legal system of a democratic state governed by the rule of law is to ensure justice, therefore, the procedure for examining a case in all stages of legal proceedings in a civil case, also in the one, in which the decision on

initiating cassation legal proceedings is adopted, should be such that ensures a fair outcome of legal proceedings. The first sentence of Article 92 of the *Satversme* requires ensuring examination of the case in proceedings, in which a fair judgement is made, which is an integral part of fair trial (*see, for example, Judgement of 9 January 2014 by the Constitutional Court in Case No. 2013-08-01, Para 6*).

In our opinion, this is exactly the reason why the legislator has included into Section 464<sup>1</sup> (2) of the Civil Procedure Law, as an independent criterion, the requirement to assess at the judicial collegium's assignments sitting whether there are no obvious grounds to consider that the outcome of the case, included in the appealed judgement, is erroneous. In this way, judges of the cassation instance court ensure respect for the rule of law, preventing an obviously erroneous judgement by a court from entering into force.

As already concluded in Para 3.7. of this separate opinion, the contested norm allows the judicial collegium to not review the correctness of the outcome in the case, included in the appealed judgement. Such procedural order does not ensure that legal proceedings will end with a fair judgement in a civil case. Moreover, statutory regulation, which allows to not review the correctness of the outcome in a case, is incompatible with the content of the judge's oath (solemn promise), included in Section 58 of the law "On Judicial Power". It states, *inter alia*, that a judge does not betray the truth, administers justice strictly in accordance with the *Satversme*, which clearly requires ensuring justice in each case. If it obviously follows from the arguments stated in the cassation complaint that the appealed judgement is erroneous and such ruling remains in force then, substantially, untruth and unfairness are confirmed in the case.

**6.2.** The legislator should establish such an effective and harmonious legal system, which ensures a person's fundamental rights in all legal proceedings. This, in particular, applies to the cassation instance court, which plays an important role in a democratic state governed by the rule of law in ensuring the supremacy of the *Satversme* and the law (*see Judgement of 14 June 2018 by the Constitutional Court in Case No. 2017-23-01, Para 13.1.*).

**6.2.1.** When the legislator added to Section 464<sup>1</sup> of the Civil Procedure Law the contested norm, which is new grounds for the refusal to initiate cassation proceedings, it should have taken into account that the system for ensuring a person's fundamental rights, which exists in Latvia, differs significantly from the system that exists in Central European states. I.e., after legal proceedings have ended in a court of general jurisdiction, participants in a case have the right to turn to the constitutional court to verify, whether a person's fundamental rights had not been violated by the application of legal norms in the particular case. The Latvian legal system does not envisage such rights for persons. Therefore, all the more so, the legislator should not have introduced a procedure that created the possibility to not verify the correctness of a judgement passed in a civil case. Also in cases, where the disputed amount had been significant, but the cassation complaint appealed only a part of it below EUR 2000, a person turns to the cassation instance court to protect their fundamental rights. If the correctness of the outcome in the case, included in the appealed judgment, can remain unexamined, it can undermine public trust in the judicial power as an effective instrument for protecting a person's fundamental rights. It has been recognised also in the case law of the Austrian, German and Swiss supreme courts: even if the case is not significant in ensuring unified application of legal norms but a person's fundamental rights had been violated the protection of this person's rights must be ensured (*see: Domej T. What is an important case? Admissibility of appeals to the Supreme Courts in the German-speaking jurisdictions, Comparative essays on appeals and other means of recourse against judicial decisions in civil matters, Cambridge, 2014, pp. 283–284*). Those violations of the right to fair trial, which definitely should be deemed as being such that have led to erroneous adjudication of the case and are the grounds for revoking a court's judgement, are listed in Section 452 (3) of the Civil Procedure Law. However, this Article covers only a small part of fundamental rights, the protection of which should be ensured by the system of courts in a democratic state governed by the rule of law.

**6.2.2.** In adding the contested norm to Section 464<sup>1</sup> of the Civil Procedure Law, the legislator, substantially, has not abided by the trends that the states in the

European legal space follow in creating the so-called cassation filters. Several outstanding scholars of procedural law of the European Union are involved in a project aimed at drafting the European Rules of Civil Procedure (*European Rules of Civil Procedure*) (see: <https://www.europeanlawinstitute.eu/projects-publications/current-projects-feasibility-studies-and-other-activities/current-projects/civil-procedure/>). Currently, the prepared draft European Rules of Civil Procedure are in the adoption stage. Para 172 of this draft is focusing on defining the legal grounds for allowing legal proceedings in the Supreme Court, i.e., they are admissible to: 1) to rectify the allowed violations of fundamental rights; 2) to ensure unified application of legal norms; 3) to decide on significant legal issues, important for society in general; 4) ensure further formation of law.

The European Rules of Civil Procedure, even if adopted soon, will not be binding upon the State; however, they outline guidelines to be taken into account which help to assess the compliance of the national civil procedure with the development of civil procedure law in Europe. It has to be admitted that a financial threshold has not been mentioned in the draft European Rules of Civil Procedure as a criterion that would allow to determine the scope of assessing the admissibility of a complaint at the Supreme Court. And this is valid because the financial threshold is not systemically linked either to the significance of the case for the unity of law or formation of law, or the protection of a particular person's rights. Therefore, it is provided in Para 172 of these Rules that rectifying a violation of fundamental rights is one the Supreme Court's tasks, and it *per se* excludes the possibility of not verifying the correctness of the outcome in a case.

**6.3.** The contested norm allows a judicial collegium to refuse initiation of cassation proceedings without assessing whether there are no obvious grounds for considering the outcome in the case, included in the appealed judgement, as being erroneous. Thus, the established procedural order for deciding on the matter of initiating cassation proceedings does not ensure that legal proceedings in a civil case will end with a fair judgement that complies with fundamental rights.

**Hence, the contested norm, insofar it allows to not examine the correctness of the outcome in the case, included in the appealed judgement, is incompatible with Article 92 of the *Satversme*.**

7. In assessing whether the contested norm complies with the equality principle, included in the first sentence of Article 91 of the *Satversme*, it should be established:

1) whether and which persons (groups of persons) are in similar and according to certain criteria comparable circumstances;

2) whether the contested norm envisages equal or differential treatment of these persons;

3) whether this treatment has been established by a legal norm adopted in 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 2 May 2019 by the Constitutional Court in Case No. 2018-14-01, Para 13*).

**7.1.** It is noted in Para 16 of the Judgement that the contested norm defines such a criterion of a financial nature for assessing a cassation complaint, in the application of which a judicial collegium enjoys certain discretion. Allegedly, application of the contested norm does not result in the formation of groups of persons on the basis of a personal trait. Hence, the Constitutional Court, substantially, has admitted, that there are no groups of persons that could be compared from the perspective of equality principle in the present case.

We cannot uphold this conclusion made by the Constitutional Court. First of all, as concluded above, the contested norm is independent grounds for the refusal to initiate cassation legal proceedings. To decide on the initiation of cassation proceedings in disputes of a financial nature, if the part in which the judgement is appealed is below EUR 2000, the judicial collegium is not required to apply the criterion included in Section 464<sup>1</sup> (2) of the Civil Procedure Law. Secondly, one must agree that the contested norm defines only the criteria, which the judicial

collegium must verify, in deciding on initiation of cassation criteria, rather than a criterion to be imperatively applied to a person or groups of persons. However, a cassation complaint regarding a judgement by an appellate instance court is submitted by a person and the contested norm is not neutral towards this person – it has an impact on whether cassation proceedings will be initiated on the basis of the complaint submitted by the person. Persons, who appeal against a judgement by an appellate instance court in cassation proceedings, are comparable from the perspective of equality principle. They are:

1) persons who submit a cassation complaint regarding a judgment by an appellate instance court in the part of a dispute of a financial nature, the amount of which is below EUR 2000;

2) persons who submit a cassation complaint regarding a judgment by an appellate instance court in the part of a dispute of a financial nature, the amount of which is at least EUR 2000;

3) persons who submit a cassation complaint regarding a judgement by an appellate instance court in a dispute which is not of a financial nature

All these persons are united by the following traits: 1) they have submitted a cassation complaint regarding a judgement by a lower-instance court; 2) the submitted cassation complaints comply with the requirements set out in Sections 450–454 of the Civil Procedure Law; 3) the lower-instance court has not violated the rules of Section 452 (3) of the Civil Procedure Law; 4) initiation of legal proceedings due to public interests is not necessary, i.e., in order to ensure unified application of legal norms or further formation of law. We consider that all the persons mentioned above are in similar and according to certain criteria comparable circumstances.

**7.2.** If a person has submitted a cassation complaint regarding a judgement by an appellate instance court in a part of dispute of financial nature the amount of which is less than EUR 2000 then, irrespectively of the fact that the outcome in the case, included in the appealed judgement, is erroneous, the judicial collegium, pursuant to the contested norm, may refuse initiation of cassation proceedings. However, if a person has submitted a cassation complaint regarding a judgment by

an appellate instance court in the part of a dispute of a financial nature, the amount of which is at least EUR 2000, or in a dispute, which is not of a financial nature, according to Section 464<sup>1</sup> (2) of the Civil Procedure Law, the judges' opinion that the outcome in the case, included in the appealed judgement, is not correct, it is mandatory grounds for initiating cassation proceedings. I.e., to ensure protection of a person's rights or lawful interests, cassation proceedings must be initiated in such cases. Hence, differential treatment of persons who have submitted a cassation complaint regarding a judgement by an appellate instance court in a part of dispute of financial nature, the amount of which is less than EUR 2000, is established by the contested norm because only these persons may be refused initiation of cassation proceedings even if the outcome in the case, included in the appealed judgement, is erroneous. Thus, the contested norm envisages differential treatment of persons who are in similar and according to certain criteria comparable circumstances.

**7.3.** It is not doubted that the differential treatment, included in the contested norm, has been established by law and has a legitimate aim – protection of other persons' rights. The Constitutional Court already has recognised that the aim to ensure more effective review of cases, by decreasing the workload of courts and, thus, ensuring effective functioning of courts, may be recognised as being legitimate (*compare, see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 12.2.*). Thus, the differential treatment has been established with a legitimate aim – to protect other persons' rights.

**7.4.** However, differential treatment of those persons, who submit a cassation complaint regarding a judgement by an appellate instance court in a part of dispute of financial nature, the amount of which is less than EUR 2000, is not proportional because the benefit that society gains from the differential treatment does not outweigh the harm inflicted upon a person's rights and lawful interests.

**7.4.1.** Already now, Section 464<sup>1</sup> (2) of the Civil Procedure Law includes criteria, which ensure both the protection of public interests and also due protection of the rights and lawful interests of the participants in a civil case. These criteria

allow a judicial collegium to examine not only whether the case is significant in ensuring unified application of legal norms and further formation of law but also whether the outcome in the case, included in the appealed judgement, is not obviously erroneous. They allow differentiating between cassation complaints, which have been submitted with respect to such judgements by lower-instance court where the assessment of substantive and procedural norms, included in them, could be disputable, from such complaints, which, most probably, will be deemed to be unfounded. We underscore that, pursuant to Section 464<sup>1</sup> (2) of the Civil Procedure Law, cassation proceedings are to be initiated only if, in assessing the arguments stated in the cassation complaint, there are grounds to consider the outcome in the case, included in the appealed judgement, erroneous, i.e., minor errors in the reasoned part of the judgement will not be the grounds for initiating cassation proceedings either in the cases, in which the disputed amount exceeds EUR 2000, or in cases, in which the disputed sum is below EUR 2000.

**7.4.2.** One can subscribe to the opinion expressed in legal literature that the disputed amount should not be the criterion for determining, whether the case should be reviewed in the cassation instance court. The legislator may provide that a ruling in cases, involving a dispute up to a certain amount, cannot be appealed against in a cassation instance court at all. Within the Latvian legal system, this applies, for example, to cases examined in simplified procedure, in which the judgement of an appellate instance court is not subject to appeal. However, if appealing against the ruling in a cassation instance court is admissible then there are no grounds for establishing differential treatment, based on the disputed amount, of persons submitting a complaint and for introducing different standards for assessing the admissibility of a cassation complaint (*compare, see: Prof. Dr. Peter L. Murray, Prof. Dr. Rolf Stürner. German Civil Justice. Carolina Academic Press, 2004, p. 389; Domej T. What is an important case? Admissibility of appeals to the Supreme courts in the German-speaking jurisdictions, Comparative essays on appeals and other means of recourse against judicial decisions in civil matters, Cambridge, 2014, pp. 278–279*). The European Court of Human Rights also has recognised that it can be provided in the national procedural law that in cases, with

the disputed amount up to a certain sum, the judgement cannot be appealed against in a higher-instance court at all; however, the procedural order that regulates access to a court may not be excessively formal, to put it otherwise, such that prohibits from exercising the rule of law (*see: Judgement of 5 April 2018 by the European Court of Human Rights in Case “Zubac v. Croatia”, Application No. 40160/12 80., Para 96-99*). Hence, if the legislator has allowed the possibility of appealing against a ruling in the cassation instance court, introduction of different standards in assessing the admissibility of a cassation complaint is to be deemed as being excessive formalism, which prevents from exercising the rule of law.

**7.4.3.** Finally, we do not think that the workload of the Supreme Court would significantly increase if Section 464<sup>1</sup> (3) of the Civil Procedure Law were revoked. It should be taken into account that, in any case, a judicial collegium, in deciding on initiation of cassation proceedings, must examine the arguments included in the cassation complaint, familiarize itself with the court’s judgement and materials in the case. Upon establishing that there are no grounds for initiation of a cassation complaint, the decision of the assignments sitting can be drawn up in the form of a resolution, and it is an important instrument, which helps effectively to ensure a balance between the incoming and disposed cases in the cassation instance court, without creating differential treatment of submitters of a complaint.

Moreover, the number of those cases, in which initiation of cassation proceedings had been refused by applying the contested norm, is comparatively low. For example, in 2018, the Supreme Court had 1336 incoming civil cases. The Supreme Court has indicated in its opinion submitted to the Constitutional Court that, in the period from 2017 to 30 October 2019, the contested norm had been applied in 23 cases in total (*see Case Materials, Vol. 2, p. 10*). The number of cases, in which the contested norm would be applicable, may both increase and decrease; however, in the current circumstances, it is obviously disproportional to maintain, for less than ten cases annually, such procedural order, pursuant to which it is allowed to not examine the correctness of a judgement and its fairness, ensuring of which is the main aim of legal proceedings.

**Thus, the contested norm, insofar it allows to not examine the correctness of the outcome in a case, included in the appealed judgement, is incompatible with the equality principle, included in the first sentence of Article 91 of the *Satversme*.**

Justice of the Constitutional Court A. Laviņš

Justice of the Constitutional Court J. Neimanis