THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

On behalf of the Republic of Latvia;

Riga, 14 June 2018

Case No. 2017-23-01

The Constitutional Court is composed of: the Chair of the hearing Ineta Ziemele, Judges Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis and Artūrs Kučs,

on the constitutional complaint of Ērika Oša,

based on Article 85 of the Constitutions of the Republic of Latvia and Section 16(1), Section 17(1)(11), as well as Sections 19^2 and 28^1 of the Constitutional Court Law,

held a hearing on 15 May 2018, in written procedure

"On Compliance of Section 573(2) and Section 573(3) of the Criminal Procedure Law with the First Sentence of Article 92 of the Constitution of the Republic of Latvia".

Declaratory part

1. On 21 April 2005, the Saeima adopted the Criminal Procedure Law, which entered into force on 1 October 2005. Section 573(1) of the Criminal Procedure Law provides: " The legality of a ruling shall be examined in accordance with cassation procedures only in the case where the action expressed in the cassation complaint or protest has been justified with a violation of the Criminal Law or a substantial violation of this Law."

On 12 March 2009, the Saeima adopted the Law "Amendments to the Law on Criminal Procedure", whereby Article 573 of the Law on Criminal Procedure was supplemented with the second and third paragraphs in the following wording:

"(2) The matter of examining a ruling in accordance with cassation procedures shall be decided by a senator (rapporteur) appointed by the Chair of the Department of Criminal Cases of the Senate.

(3) The decision shall be written in the form of a resolution and shall not be subject to appeal."

These amendments came into force on 1 July 2009.

However, by the Law of 19 December 2013 "Amendments to the Law on Criminal Procedure", which entered into force on 1 January 2014, Section 573(2) of the Law on Criminal Procedure was reworded as follows: "The matter of examining a ruling in accordance with cassation procedures shall be decided by a judge designated by the Chair of the Department of Criminal Cases of the Supreme Court."

2. The Applicant – Ēriks Osis (hereinafter also – the Applicant) – holds that the second and third paragraph of Section 573 of the Criminal Procedure Law (hereinafter also – the contested norms) are incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia (hereinafter – the Constitution). The contested norms disproportionately restrict the Applicant's right to a fair trial.

The Applicant holds that contrary to the principle of collegiality of review of the appealed judgment contained in Section 464 of the Civil Procedure Law and Section 338 of the Administrative Procedure Law, which is reinforced by the imperative requirement that the decision on refusal to initiate cassation proceedings be unanimous, the contested norms establish a different procedure which does not ensure the objectivity of the review of the decision and the right to be heard in cases where the initiation of cassation proceedings is refused.

The applicant holds that the contested norms infringe not only his rights as a natural person, but also public legal interests, i.e. they do not sufficiently ensure the correct application of substantive and procedural norms, which should be supervised by the cassation instance court.

Section 573(3) of the Criminal Procedure Law disproportionately restricts the Applicant's right to a fair trial by not ensuring his right to be heard, i.e. the right to a reasoned decision. A final decision in criminal proceedings should be subject to a higher standard of protection than a final decision in civil or administrative proceedings, because of its punitive and particularly restrictive nature. The right of the Applicant to a reasoned decision of the cassation instance court follows from the first sentence of Article 92 of the Constitution, since the grounds of the decision may differ significantly from the grounds of the decisions of the court of first instance and the appellate court.

The applicant has not questioned that the contested norms have been adopted and promulgated in accordance with the procedure established by the Constitution and the Rules of Procedure of the Saeima, are sufficiently clearly formulated and publicly available, as well as that the restriction has a legitimate aim. The Applicant holds that the restriction of fundamental rights included in the contested norms has a legitimate aim, but the means chosen to achieve it are inadequate. Taking into account the nature of the restriction of the fundamental rights of a person under criminal law, it must be recognised that the simplification of the refusal to initiate cassation proceedings provided for in the contested norms to a resolution written by a single judge is not proportionate. The harm caused to a person by taking a decision alone and failing to provide a reasoned reply to a cassation appeal therefore outweighs the benefit to society as a whole.

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

The Saeima notes that the refusal to initiate cassation proceedings following the Applicant's complaint does not indicate that the Applicant's right to access to court has been restricted. In the aspect of ensuring the right of access to court, the fact that the Applicant had the possibility to lodge a cassation complaint is decisive.

The Saeima considers that the requirements regarding the submission of a cassation complaint are reasonable and enforceable by the Applicant. The fact that the judge, having examined the Applicant's cassation complaint, has not found grounds for initiating cassation proceedings does not mean that the Applicant has been denied access to the court in the cassation instance. Consequently, the contested norms do not restrict the right of access to justice.

The contested norms also do not restrict the applicant's right to an impartial examination. The Saeima believes that the mere fact that a judge decides on a matter alone does not mean that an independent and impartial court would not be able to hear the case.

Adopting the decision in the form of a resolution would reduce the workload of Supreme Court judges. This simplified form of decision saves time and other resources that would be needed to draw up a full decision. This diverts resources to dealing with more complex cases more quickly and efficiently. Therefore, the restriction is appropriate for the achievement of a legitimate aim, and the legitimate aim is to ensure faster and more efficient consideration of criminal cases by relieving the Supreme Court of the burden of considering unfounded cassation appeals. The Saeima considers that the legitimate aim cannot be achieved by other means less restrictive of the rights of a person.

The Saeima is of the opinion that the damage to the rights of the Applicant is minimal. Given that the cassation instance is the third judicial instance in which a criminal case is examined, and given that cassation proceedings are limited to the examination of issues relating to the application of substantive and procedural rules, the decisions of this instance court are not

subject to the same requirements as decisions of lower instance courts as regards the reasons for their decisions.

However, the Saeima recognises that the reasoning of a court decision, especially in written proceedings, is one of the main tools that allow a party to ensure that he has been heard. There may be cases where the arguments raised in a cassation appeal require a more in-depth analysis, even if the judge has concluded, after assessing them, that cassation proceedings should not be initiated. In such cases, the refusal to initiate cassation proceedings must be duly reasoned. The contested norms do not preclude a judge from assessing the circumstances of a particular case and, after balancing the interests of the party and the public, from preparing a decision on refusal to initiate cassation proceedings, stating in that decision the grounds for such refusal.

4. An invited person – the Ombudsman – considers that guarantees of the right to a fair trial, including the right of access to a justice, must be effective, reasonably enforceable in practice, and not theoretical.

The Ombudsman considers that the second part of Section 573 of the Criminal Procedure Law does not comply with the first sentence of Article 92 of the Constitution, insofar as it provides that a single judge shall decide on the issue of initiation or refusal to initiate cassation proceedings.

The legitimate aim of the contested norms is to ensure faster and more efficient examination of disputes by reducing the burden of the Supreme Court with the examination of issues to be decided by the courts of first instance and appeal instance. However, the Ombudsman fails to understand the political decision of the legislator, which resulted in the provision in Section 573(2) of the Criminal Procedure Law that a single judge appointed by the Chair of the Department of Criminal Cases of the Supreme Court shall decide on the issue of cassation review of a decision. In both civil and administrative proceedings, the question of initiating cassation proceedings is decided by a collegium of three judges, whereas in criminal proceedings there is no such procedure. The need for a collegial trial as a guarantee of the right to a fair trial is justified not

only by the nature of criminal proceedings, but also by the fact that a person's confidence in the decision of the court and in the judiciary as a whole must be fostered. A more favourable solution for the protection of the rights of the individual would be for the decision to be taken in the form of a collegial resolution, i.e. by a collegium of three judges. Then the person could be sure: if even one of the three judges thought that the case should be heard in cassation, the collegium of judges would decide to initiate cassation proceedings.

As regards compliance of Section 573(3) of the Criminal Procedure Law with the first sentence of Article 92(1) of the Constitution, the Ombudsman has indicated that he has already submitted his opinion to the Constitutional Court in Case No 2013-02-02, and it is as follows: although the decision of the assignments sitting does not have to be very detailed, it should contain at least a brief motivation for its adoption, otherwise it increases distrust in the decisions taken by the courts. The form of the resolution does not prevent the judge from including a concise statement of the reasons for his decision, thus making it clear why he has come to a particular conclusion. The Ombudsman considers that the form of the resolution provided for in Section 573(3) of the Criminal Procedure Law is not contrary to the first sentence of Article 92 of the Constitution.

5. An invited person – the Prosecutor General's Office – holds that the contested norms comply with Article 92 of the Constitution.

The purpose of the contested norms is not to restrict the fundamental rights of a person, but to ensure that cases are examined in cassation court in accordance with the law, as well as to reduce the number of cases pending before the Supreme Court in which cassation appeals have been submitted which are not in accordance with the law, and thus to expedite the examination of substantiated appeals. The refusal to hear a case in cassation is not in itself a restriction of rights, since the fact that the case has been heard in two instances is sufficient to ensure access to justice. Nor is there any reason to doubt the

impartiality of the decision taken merely because it was taken by a single person.

The drafting of a resolution refusing to initiate cassation proceedings is one of the factors contributing to a swift decision on whether or not to initiate cassation proceedings. In adopting a decision refusing to initiate cassation proceedings, the judge is not expressing agreement with the grounds of the decision under appeal, but merely concluding that the lower instances did not commit any significant errors in the application of procedural or substantive rules of law. Thus, the judge's decision in the form of a resolution does not restrict a person's right to a reasoned judicial decision. The decision not to initiate cassation proceedings is based on legal provisions.

6. An invited person – the Ministry of Justice – holds that the contested norms comply with the first sentence of Article 92 of the Constitution.

The Ministry of Justice points out that until 1 July 2009, Section 573 of the Criminal Procedure Law only contained the provisions of its first paragraph. Since 1 October 2005, when the Criminal Procedure Law entered into force, the Senate of the Supreme Court has already established a certain practice with regard to how the question of review of a decision in cassation is decided. The necessity of the contested norms has been justified by the fact that they clarify the procedure of application of Section 573 of the Criminal Procedure Law in accordance with the practice of the Senate.

The purpose of the contested norms is to ensure faster and more efficient examination of cases, to reduce the court's workload and to create a stable legal system. This may be recognised as a legitimate aim of the restriction of the right established in Article 92 of the Constitution. Taking into account the nature of the cassation instance and the decisive importance of public-law interests in the work of this instance court, the legislator should, as far as possible, exempt the Department of Criminal Cases of the Supreme Court from examining unfounded complaints.

The Ministry of Justice considers that it would be unreasonable to require that the Supreme Court, composed of three judges, decide on the admissibility of a cassation complaint, as this would in fact mean an initial examination of the merits of the cassation complaint. The contested norms are proportionate and help to ensure proper work of the Supreme Court. They contribute to the efficiency and procedural economy of criminal proceedings and allow the Department of Criminal Cases of the Supreme Court to use its resources to decide on important issues.

The Ministry of Justice points out that the refusal to hear a case in cassation cannot be regarded as a restriction of the right to a fair trial, since the examination of a case in two instances is considered to be sufficient to ensure access to justice. The first sentence of Article 92 of the Constitution does not preclude the determination of which cases and under what conditions are to be examined under the cassation procedure, and also includes the possibility to reserve to the Supreme Court a certain margin of discretion to assess the necessity of examining certain cases. Thus, the right of the Supreme Court to refuse to initiate cassation proceedings provided for in the contested norms cannot be assessed as a restriction of the right to a fair trial.

The procedure established by the Criminal Procedure Law, the Civil Procedure Law, the Administrative Procedure Law and the Latvian Administrative Violations Code deals with different cases and assesses different legal relations. Therefore, the legislator is entitled to regulate differently the scope of procedural rights of different parties to the proceedings.

7. An invited person – Head of the study programme of the Faculty of Law of Riga Stradiņš University *Dr. iur.* Sandra Kaija – has pointed out that the contested norms do not restrict the right of a person to submit a cassation complaint, but set certain requirements regarding the content of this complaint, and in case of non-compliance with these requirements, the complaint or protest will not be examined under the cassation procedure.

The procedure for the initial examination of cassation complaints laid down by the legislature is an appropriate means of ensuring the proper functioning of the cassation court. The fact that the refusal to review the lawfulness of a cassation decision is written in the form of a resolution is one of the factors which allow the question of initiating cassation proceedings to be decided quickly.

The contested norms contain clear criteria and do not allow a decision to be taken solely on the basis of a judge's subjective opinion. Moreover, when deciding whether to proceed with a cassation appeal, the judge does not examine the merits of the appeal, but examines whether its content complies with the criteria laid down by law. Consequently, a detailed statement of reasons is irrelevant and, accordingly, the judge does not need to give a detailed response to each argument.

Moreover, S. Kaija expressed the opinion that the refusal to initiate cassation proceedings is not an obstacle to the fact that, under the conditions provided for in the Criminal Procedure Law, a court decision that has already entered into force may be reconsidered under the procedure set out in Chapter 63 of the Criminal Procedure Law due to a material or procedural breach of the provisions of law, if the case has not been examined under the cassation procedure.

8. An invited person – an assistant to a sworn advocate *Mg. iur.* Armands Smans – holds that the restriction of the Applicant's fundamental rights has arisen as a result of incorrect application of the contested norms.

If the cassation complaint submitted by a person is based on a violation of the Criminal Law or a substantial violation of the Criminal Procedure Law, it must be examined under the cassation procedure, which is clear from Section 573(1) of the Criminal Procedure Law. The judge appointed by the Chair of the Department of Criminal Cases, when deciding whether to review a decision in cassation, must assess only whether the content of the cassation complaint complies with the competence of the Department of Criminal Cases of the

Supreme Court, i.e. whether the cassation complaint contains *quaestiones iuris*, i.e. questions concerning the correct application of substantive and procedural norms.

When deciding on the question of reviewing the lawfulness of a decision of a appellate court in cassation proceedings in criminal proceedings, the judge assesses only the formal content of the complaint. This procedure differs significantly from the procedure laid down in the Civil Procedure Law and the Administrative Procedure Law. In particular, both the Civil Procedure Law and the Administrative Procedure Law provide that the collegium of judges, in addition to formally assessing the content of the cassation complaint, must also consider other issues, including: whether the Supreme Court case law has been established on the issues of application of legal norms raised in the complaint and whether the judgment under appeal is consistent with it; or whether there are any doubts as to the correctness and legality of the judgment under appeal; whether the case being examined is of importance for the establishment of the case law ? The requirements laid down in the Law on Criminal Procedure for the admissibility of a cassation complaint are much lower. Such differences in the rules are justified by the fact that it is in criminal proceedings that the rights and freedoms of persons are most restricted. The Criminal Procedure Law does not provide for the right to decide on the refusal to initiate cassation proceedings on the ground that the case is not relevant for the development of the case law. It is therefore proportionate to provide that the matter is to be decided by a single judge, the decision is to be written in the form of a resolution and there is no right of appeal. This is also indicated by the fact that Chapter 63 of the Criminal Procedure Law provides for the procedure under which a court decision which has entered into force and the lawfulness of which has not been reviewed in cassation proceedings, inter alia, because cassation proceedings were refused, is to be re-examined due to a material or procedural violation of the law.

9. An invited person – Mg. *iur.* Pāvels Gruziņš – holds that the contested norms comply with the first sentence of Article 92 of the Constitution, and substantiates his opinion with the established court practice.

The applicant has not been denied the right of access to justice – the cassation complaint has been lodged and its progress has been decided.

Where the merits of the case are not examined, a decision taken by a collegial body refusing cassation review cannot be given greater weight than the same decision taken by a single person. By providing that the question of refusal to review the lawfulness of a decision in cassation is to be decided on a collegial basis, the capacity of judges would be unnecessarily used, which would prolong the examination of cases and increase the number of judges.

In its judgment of 13 October 2016 in the case Talmane v Latvia, the European Court of Human Rights (hereinafter š – ECHR) recognised that the level of detail in the reasoning of a decision may vary depending on the circumstances of the particular case and the substance of the decision. It is permissible for a cassation instance court to base its decision to reject a manifestly unfounded cassation complaint on a reference to the relevant provision of law and not to provide any further reasoning.

10. An invited person – the Latvian Council of Sworn Advocates – holds that the contested norms do not comply with the first sentence of Article 92 of the Constitution.

According to the Latvian Council of Sworn Advocates (hereinafter also - the Council of Sworn Advocates), the contested norms restrict the right of persons to a fair trial established in the first sentence of Article 92 of the Constitution.

The Council of Sworn Advocates recognises that the restrictions on fundamental rights contained in the contested norms are established by law, but emphasises that the contested norms were included in the draft law only before the third reading and their justification is not found in the annotation of the draft law. Moreover, the contested norms were adopted without discussion,

which indicates that the legislator, when restricting the fundamental rights of persons, may not have considered whether the restriction is necessary and proportionate in a particular case.

The decision refusing cassation review of the lawfulness of the decision has significant procedural consequences, since it brings to an end the proceedings in the case, which could have lasted several years in two instances. In balancing the interests of society against those of the individual, it must be held that, in criminal proceedings, informing the person who has lodged a cassation complaint of the grounds on which the decision to refuse cassation review of the lawfulness of the decision was taken is proportionate to the interests of society and is consistent with the purpose of criminal proceedings, namely to achieve fair regulation of criminal legal relations.

It is in criminal proceedings that the rights and freedoms of individuals are most severely restricted, and therefore there is a greater need for additional guarantees of the rule of law in criminal proceedings. The wording of Section 338(5) of the Administrative Procedure Law and Section 464($4^{\cdot 1}$) of the Civil Procedure Law allows the court to choose either to draw up a decision in the form of a resolution or to draw up a reasoned decision, if necessary. The contested norms do not provide for such possibility.

The right to a reasoned judicial decision is closely linked to the right of appeal. Reasonable or rational grounds for the decision are necessary to ascertain whether the decision-maker has acted arbitrarily. If the court's reasoning is not known, there are doubts as to whether all the considerations have been properly weighed and whether the decision is based on subjective motives. A reasoned judicial decision also contributes to public confidence in the judiciary and strengthens the authority of the judiciary. The Council of Sworn Advocates considers that the preparation of a reasoned decision on the refusal to initiate cassation proceedings would achieve the legitimate aim in the same way, without prejudice to the right of persons to a reasoned decision.

The Council of Sworn Advocates disagrees with the argument that a collegial decision on the review of a cassation ruling would require additional

resources and increase the workload of judges. Subordinating justice to economic considerations, particularly in criminal proceedings, is not permissible.

Conclusions

11. The Applicant requests to assess the compatibility of Section 573(2) of the Criminal Procedure Law, insofar as it provides that the judge shall adopt a decision on refusal to initiate cassation proceedings alone, and the third part of the same Section, insofar as it provides that the said decision shall be adopted in the form of a resolution, with the first sentence of Article 92 of the Constitution.

The Applicant holds that, in deciding on the initiation of cassation proceedings in criminal proceedings, the right to a fair trial arising from the first sentence of Article 92 of the Constitution has not been guaranteed to him. The Applicant submits that, although the possibility of appeal is formally ensured, his right to be heard has been infringed, as well as the right to a reasoned court decision, which in the given situation is manifested by the fact that the court has not given a detailed reason for its refusal to initiate cassation proceedings.

Section 573(2) of the Criminal Procedure Law establishes the composition of the court in which the decision on cassation review of a decision in criminal proceedings is taken, namely that the decision is taken by a judge appointed by the Chair of the Department of Criminal Cases of the Supreme Court. The third paragraph of this Section lays down the form of the decision, i.e. that it shall be written in the form of a resolution, and that the decision shall not be subject to appeal.

Taking into account the essence of the case under examination, the Constitutional Court determines the most effective approach to assess whether the contested norms comply with the first sentence of Article 92 of the Constitution. Although both contested norms establish the procedural

procedure for adopting a decision on refusal to initiate cassation proceedings, the Constitutional Court considers that, taking into account the circumstances of the case under examination, each contested norm must be examined separately. Therefore, the Constitutional Court will first assess whether the first sentence of Article 92 of the Constitution is complied with by the second paragraph of Section 573 of the Criminal Procedure Law, insofar as it provides that the decision on refusal to initiate cassation proceedings in criminal proceedings is taken by the judge alone, and then will assess whether the third paragraph of Section 573 of the Criminal Procedure Law complies with the same Constitutional norm, insofar as it provides that the said decision is written in the form of a resolution.

12. The Constitutional Court will first clarify the scope of the first sentence of Article 92 of the Constitution with regard to initiating cassation proceedings in criminal proceedings.

Article 92, first sentence, of the Constitution provides: "Everyone has the right to defend his or her rights and lawful interests in a fair court." The Constitutional Court has recognized that the concept of "fair court" includes two aspects, namely "fair court" as an independent judicial authority that examines the case, and "fair court" as a proper process in accordance with the rule of law in which the case is examined. Thus, pursuant to Article 92 of the Constitution, the State is obliged to establish an appropriate system of judicial institutions and also to adopt such procedural norms, according to which the court would examine cases in a manner that would ensure their fair and impartial adjudication (*see Clause 2 of the Conclusion Part of the Judgment of the Constitutional Court in Case No 2001-10-01 of 5 March 2002 and Clause 8 of the Judgment of 9 May 2008 in Case No 2007-24-01*).

A fair trial as a proper judicial procedure in accordance with the rule of law comprises several interrelated elements, for example, the right to access to court, the principle of equality of parties and adversarial proceedings, the right to be heard, the right to a reasoned court judgment, as well as the right to

appeal (*see Paragraph 8.2 of the Constitutional Court's judgment of 5 November 2008 in Case No 2008-04-01 and Paragraph 8.3 of the judgment of 17 May 2010 in Case No 2009-93-01*). Only a judicial process that ensures the implementation of these elements can guarantee effective protection of a person's rights. It is therefore the duty of the state to establish procedures, including in criminal proceedings, that enable a person to effectively protect his or her rights and legitimate interests before a fair and impartial court.

12.1. In clarifying the content of the fundamental rights set out in the Constitution, Latvia's international human rights obligations should be taken into account. Article 89 of the Constitution provides, inter alia, that the State recognises and protects fundamental human rights in accordance with the Constitution, laws and international treaties binding on Latvia. The Constitutional legislator's aim has been to harmonise the human rights norms enshrined in the Constitution with international human rights norms (*see*: *Clause 5 of the Conclusion Part of the Constitutional Court's judgment of 30 August 2000 in Case No 2000-03-01 and Clause 11 of the judgment of 18 October 2007 in Case No 2007-03-01*). Therefore, in the case under review, the content of the first sentence of Article 92 of the Constitution is to be revealed in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also – the Convention) (*see, for example, Clause 12 of the Constitutional Court's judgment of 28 March 2013 in Case No 2012-15-01 and Clause 13 of the judgment of 15 November 2016 in Case No 2015-25-01*).

As regards Article 6 of the Convention, the ECHR case law establishes that the State has discretion to determine the instances and procedures of appeal depending on the type of case (*see paragraph 71 of the judgment of the European Court of Human Rights of 2 October 2014 in Hansen v. Norway, Application No 15319/09*).

Article 92 of the Constitution does not require the State to provide that a person may appeal against a judgment in cassation in all cases. In the case law of the Constitutional Court it has been recognised that the legislator has a wide

margin of discretion both to adopt procedural laws and to determine the categories of cases which are examined in the respective proceedings, as well as to decide on the procedure of examination of different categories of cases (*see Clause 11.1 of the Judgment of the Constitutional Court of 15 March 2018 in Case No 2017-16-01*).

According to Section 30 (1) of the Law On Judicial Power, A district (city) court is the court of first instance for civil cases, criminal cases, and administrative cases, unless otherwise provided by law. Article 36 of this Law provides that a regional court is the appellate instance for civil cases, criminal cases, and administrative cases, unless otherwise provided by law. According to the second paragraph of Section 43 of the said Law, the Supreme Court is the cassation court, unless otherwise provided by law.

Thus, Latvia has a three-tier court system, which includes a cassation court, including in criminal cases.

12.2. The Constitutional Court has recognised that if the State provides for the possibility to appeal against a ruling of a higher instance court in a certain category of cases, then the appeal procedure must comply with access to justice, fair procedure and other aspects of the right to a fair trial (*see Clause 10.2 of the Constitutional Court's judgment of 7 October 2010 in Case No 2010-01-01*). This finding is also confirmed in the case law of the ECHR (*see, for example, paragraph 25 of the judgment of the European Court of Human Rights of 17 January 1970 in Delcourt v. Belgium, Application No 2689/65, and paragraph 125 of the judgment of 22 March 2007 in Staroszczyk v. Poland, Application No 59519/00*). So, if a country has a appellate court or cassation, its proceedings must be such as to ensure a person's right to a fair trial.

The procedure for the examination of court cases are determined by the laws on civil procedure, criminal procedure and administrative procedure (*see Section 2(2) of the Law On Judicial Power*). The Criminal Procedure Law establishes the procedure for criminal cases and provides for their examination by three instances, including the cassation instance. At first instance, all the

circumstances of the case are assessed, the evidence is examined and analysed, and the merits are decided. The appellate court examines the reasonableness and legality of the decision of the court of first instance. This review involves a decision on the substance of the case and may result in the appellate court agreeing with the reasoning of the first-instance court or making a new decision. The cassation court, on the other hand, examines only *quaestiones iuris,* i.e. questions concerning the correct application of substantive and procedural legal norms.

The Constitutional Court has already recognised that the cassation instance court has a special character and this determines the peculiarities of the relevant court proceedings. A key feature of the cassation institute in Latvia is that the interests of the parties, as well as public law interests, play a role in the cassation court. Namely, the cassation court is by its nature of public importance, since the proceedings before it are aimed at the uniform interpretation and application of legal norms in the state, that is, at the uniform interpretation of laws (*see, for example, Clause 2.1 of the Conclusion of the Judgment of the Constitutional Court of 27 June 2003 in Case No 2003-04-01*). Accessible and comprehensible case law, analysis and interpretation provided by the cassation court is an important instrument for establishing uniform case law, as well as for ensuring the development of law (*see Clause 18.2 of the Judgment of the Constitutional Court of 2 June 2008 in Case No 2007-22-01*). The cassation court has an important role in interpreting and applying legal norms in a manner consistent with the Constitution (*see Clause 12 of the Constitutional Court's judgment of 6 June 2012 in Case No 2011-21-01*). Thus, the cassation court, including in criminal proceedings, provides a principled interpretation of substantive and procedural provisions of the law, which may affect the rights of many persons in various court proceedings, including the rights of the particular person who has lodged a complaint with the cassation court in a particular case.

Consequently, the cassation court, especially in criminal proceedings, plays an important role in developing the legal system,

ensuring uniformity in the application and interpretation of legal norms, as well as the protection of fundamental personal rights.

12.3 Criminal Procedure Law is the instrument used to regulate criminal law relations. Section 1 of the Criminal Procedure Law enshrines the objective of this Law, namely, to determine such procedures for the criminal proceedings that ensure effective application of the norms of the Criminal Law and fair regulation of criminal legal relations without unjustified intervention in the life of a person (*see Clause 21 of the Constitutional Court's judgment of 8 March 2017 in Case No 2016-07-01*). With regard to criminal procedure, the Constitutional Court has recognised that the task of this procedure is to detect criminal offences promptly and completely, to identify the perpetrators and to ensure the correct application of the law so that each person who has committed a criminal offence is justly punished and no innocent person is held criminally liable and convicted (*see paragraph 2 of the Conclusion of the Judgment of the Constitutional Court in Case No 2003-08-01 of 6 October 2003*).

In criminal proceedings, the trial stage is a key element of the system of procedural steps. All the steps before this stage are about preparation and creating the necessary conditions to ensure an efficient and fair trial. It is the court that assesses all procedural steps taken at the earlier stages of the criminal proceedings, inter alia, by assessing the justification of the restriction of a person's fundamental rights in the case under examination. A specific task has been set for the trial, i.e. to assess those circumstances of the case which, as a result of the investigation, have been recognised as important in order to correctly decide the fundamental issue of each criminal case, i.e. the issue of guilt of a person (*see Clause 20 of the Constitutional Court's judgment of 11 October 2004 in Case No 2004-06-01*).

The Constitutional Court notes that the special legal character of the cassation instance court in criminal proceedings stems from the nature of that procedure. It is aimed at safeguarding public legal interests and may also have significant legal and social consequences for the person entitled to a defence in

the criminal proceedings in question. In particular, criminal proceedings may lead to legal consequences that significantly restrict a person's fundamental rights.

In criminal proceedings, the necessity and extent of the restriction of a person's fundamental rights is determined by applying substantive and procedural legal norms. Control the correct application of these rules is also of public importance. The special nature of the cassation court is that it carries out the final review of the validity of a restriction on a fundamental right imposed on a person in criminal proceedings. In criminal proceedings, the cassation court safeguards the public interest, including the rights and legitimate interests of the person concerned, thereby promoting confidence in a democratic state governed by the rule of law.

The Constitutional Court has recognised that access to a court is one of the elements of a fair trial. If the State provides for cassation in criminal proceedings, the availability of a cassation court must also meet the requirements of a fair trial. Given the special role of the cassation court in criminal proceedings, access to the cassation court must safeguard the public interest, including the effective protection of fundamental rights.

Consequently, the legislator is obliged to establish a procedure for access to the cassation court in criminal proceedings in such a way as to ensure effective protection of the fundamental rights of the individual.

13. The Applicant holds that, in accordance with Section 573(2) of the Criminal Procedure Law, his right to a fair trial has been restricted by deciding solely on the issue of initiating cassation proceedings in criminal proceedings, as the impartiality of the court is not ensured. This would be ensured if the question of initiating cassation proceedings were decided by a collegium of three judges, acting unanimously, as in civil and administrative proceedings.

The Ombudsman and the Council of Sworn Advocates also agree with this opinion, stressing that the need for a collegial decision on this issue as a guarantee of the right to a fair trial is justified not only by the repressive nature

of criminal proceedings, but also by the need to promote confidence in the decisions taken by the court and the judiciary as a whole (*see the case materials, Vol. 1, p.134 and p.146*). On the contrary, the Saeima and A. Smans, an invited person in the case, point out that when a judge alone examines the issue of admissibility of a cassation complaint, the examination of this issue by an impartial court in criminal proceedings is ensured to the same extent as when an analogous issue is examined collectively in civil or administrative proceedings (*see the case materials, Vol. 1, p.68 and p.154*).

Consequently, the Constitutional Court has to establish whether the right to a fair trial is ensured to a person if a judge adopts a decision on his/her own to refuse to initiate cassation proceedings in criminal proceedings.

13.1. Looking at the procedural law, it can be concluded that according to the first paragraph of Section 338 of the Law on Administrative Procedure, in administrative proceedings, a collegium of judges composed of three judges shall decide on the initiation of cassation proceedings at an assignments sitting. The second paragraph of the same Section provides that if the collegium of judges unanimously finds that the initiation of cassation proceedings is to be refused, it shall refuse to initiate cassation proceedings. A decision of an assignments sitting shall be taken with regard to the refusal to initiate cassation proceedings. A similar rule is provided for civil proceedings. In particular, pursuant to Section 464(1) of the Civil Procedure Law, the question of initiating cassation proceedings shall be decided by a judicial collegium in the composition of three judges. The third paragraph of the said Section provides: if the judicial collegium unanimously finds that the initiation of cassation proceedings is to be refused, it shall refuse by an assignments hearing decision to initiate cassation proceedings. In contrast, according to Section 573(2) of the Criminal Procedure Law, a single judge decides on the initiation of cassation proceedings, and he writes the decision in the form of a resolution. Consequently, the legislator has laid down in the contested norm a procedure for assessing the admissibility of a cassation complaint which differs from the rules on the same issue in civil and administrative cases.

The Constitutional Court has repeatedly recognised that there are objective differences between various proceedings, however, when comparing the legal regulation of various court proceedings, it is undoubtedly possible to find common features of all proceedings (*see Clause 27.2 of the Constitutional Court's judgment of 8 March 2017 in Case No 2016-07-01*). The legislator must create an effective and harmonious legal system that safeguards fundamental rights in all legal proceedings. This is particularly true of the cassation court, which in a democratic state governed by the rule of law plays a key role in ensuring the supremacy of the Constitution and the rule of law.

The different features of criminal proceedings have also been pointed out by several of the parties to the case, who emphasised that in criminal proceedings the refusal to initiate cassation proceedings does not exclude the possibility of re-examining the decisions of the appellate court which have entered into force, which is why a decision taken by a single person and its finality is also admissible *(see case materials, Vol. 1. p. 104. and p. 154, and Vol. 2, p. 5*). In particular, a court decision that has entered into force, if it has not been reviewed under the cassation procedure (inter alia, also if the review of the decision under the cassation procedure has been refused), may be reviewed anew due to a material or procedural violation of the provisions of the law in accordance with the procedure set out in Section 63 of the Criminal Procedure Law.

The protection of fundamental rights is one of the most important duties of a democratic state governed by the rule of law. The state must provide effective protection for anyone whose rights or legitimate interests are violated. Therefore, ensuring a person's right to a fair trial is a means of achieving this objective, since it is precisely on the proper ensuring of this right that the protection of other fundamental rights of a person also depends (*see Clause 9 of the Constitutional Court's judgement of 20 April 2012 in Case No 2011-16-01*).

However, when considering the legal norms contained in Chapter 63 of the Criminal Procedure Law in a systemic manner, it can be concluded that the

procedure set out in this Chapter covers only certain cases, which have been exhaustively specified by the legislator. The ECHR has also pointed out that Chapter 63 of the Criminal Procedure Law provides for a special procedure for review of decisions and a person is not obliged to use it to protect his or her violated fundamental rights before applying to the European Court of Human Rights (*see paragraph 36 of the judgment of the European Court of Human Rights of 7 January 2016 in the case "Dāvidsons and Savins v Latvia", applications No 17574/07 and No 25235/07*). Consequently, the review of decisions that have entered into force provided for in Chapter 63 of the Criminal Procedure Law is not applicable to the general procedure for appeals against decisions in criminal proceedings. Moreover, in a democratic state governed by the rule of law, the general remedies chosen by the legislator must be effective and predictable, including respect for the principle of *res judicata*, which determines the finality of a decision.

13.2. The Constitutional Court has recognised that the right to a fair trial guaranteed in the first sentence of Article 92 of the Constitution includes the requirement of independence and impartiality of the court (*see, for example, Clause 6.3 of the Constitutional Court's judgement of 15 February 2005 in Case No 2004-19-01*).

The requirement of impartiality or neutrality has two aspects – subjective and objective. First, the court must be subjectively neutral, meaning that no judge should have personal biases when deciding a case. Subjective or personal neutrality is presumed in the absence of evidence to the contrary. Second, the court must also be neutral in the objective aspect. This means that sufficient guarantees must be provided to exclude any justified doubts of the participants in the case or the public as to the impartiality of the court (*see, for example, Clause 13.2 of the Constitutional Court's judgment of 14 May 2013 in Case No 2012-13-01*).

When analysing the impartiality of a court from an objective point of view, it is necessary to identify the factors that may give rise to reasonable doubts as to its impartiality. Even an assumption can play a role in this aspect.

Moreover, the validity of a presumption cannot be tested solely from the point of view of a particular party to the proceedings. It is also necessary to assess whether doubts as to the neutrality of the court could be objectively justified, since in a democracy the courts must enjoy the confidence of both the parties to the proceedings and the public at large (*see, for example, paragraph 45 of the judgment of the European Court of Human Rights in Academy Trading Ltd. and Others v. Greece, Application No 30342/96, of 4 April 2000)*. In other words, public perception of the way a particular case is handled also plays a role in assessing the impartiality of a court. In order to establish a violation of impartiality, it is sufficient that there are circumstances indicating a possible threat to the court's impartiality. The existence of such circumstances may involve the application of both substantive and procedural rules and must therefore be assessed on a case-by-case basis.

Consequently, a judge's sole decision to refuse to initiate cassation proceedings in criminal proceedings may cause a person to doubt the impartiality of the court.

13.3. The Constitution does not *expressis verbis* state the principle of collegiality of the judiciary, however, it is included in Section 20 of the Law On Judicial Power as one of the fundamental principles of the functioning of the court, which guarantees the right of a person to an independent and impartial court. This section states that, in accordance with the principle of collegiality, courts shall hear cases on a collegial basis, except in cases provided for by law, where a judge may also hear a case on his or her own. Collegiality is a principle to which the legislator is entitled to make exceptions within the limits of its discretion, duly justifying its action.

The principle of collegiality aims at a comprehensive consideration of the issues of law relevant to the case, discussing them and finding an appropriate legal solution. This is achieved by collectively weighing up the options and arriving at a fair outcome. Thus, respect for the principle of collegiality strengthens the independence and impartiality of the courts, while also promoting public confidence in the judiciary.

Collegiality is thus one of the principles guaranteeing the impartiality of the court and falls within the scope of Article 92 of the Constitution.

13.4. The legislator has provided for exceptions to the principle of collegiality, taking into account the principle of procedural economy. Most of the sole jurisdiction is in the substance of cases at first instance, as well as in certain procedural matters.

Both the Constitution and the Law On Judicial Power provide guarantees of independence and impartiality of every judge. If a case is examined by a judge appointed or confirmed in accordance with the procedure established by the Constitution and the Law On Judicial Power, then it is presumed that the judge will be independent and impartial in the examination of the case and will be able to ensure the fairness of the court proceedings and the decisions adopted (*see Clause 10.3 of the Judgment of the Constitutional Court of 28 September 2016 in Case No 2016-01-01*). The right to a fair trial is therefore guaranteed even in proceedings in which a single judge examines the case at a particular stage or instance. However, this does not mean that any matter should be decided by a single judge, irrespective of the category of the case and the instance before which it is pending.

The cassation court has a decisive role in ensuring uniform and constitutional application of legal norms. The legislator is therefore obliged to provide for access to the cassation court in such a way as to enable it to perform this important function in a democratic state governed by the rule of law. In particular, in the case of decisions which conclude proceedings at last instance, in which a person may defend his or her rights at common law, derogations from the principle of collegiality are justified only on essential grounds.

13.5. Section 447(4) of the Criminal Procedure Law provides that in cassation courts criminal cases shall be tried collegially. However, the judge alone decides whether a cassation appeal is admissible.

The Saeima in its reply has pointed out that when adopting a decision on refusal to initiate cassation proceedings in the framework of criminal proceedings, the arguments contained in the cassation complaint concerning the correctness of application of procedural and substantive legal norms are not assessed on their merits. The Saeima's opinion is also shared by several persons invited to the case (*see the case materials, Vol. 1 p. 153 and Vol. 2, p. 4*). However, from the information provided by the Supreme Court in the case, inter alia, from the examples of decisions, it follows that by refusing to initiate cassation proceedings, a cassation complaint is also assessed on its merits (*see the case materials, Vol. 2, pages 8-20*).

Thus, in the circumstances of the present case, the extent to which the cassation complaint is examined by the cassation court judge when deciding whether to initiate cassation proceedings in criminal proceedings is relevant, i.e. whether the examination of the admissibility criteria of the cassation complaint is formal or whether the arguments contained in the cassation complaint are also assessed on their merits.

Section 576 of the Criminal Procedure Law provides that a cassation complaint or protest shall be submitted to the court that made the ruling, i.e. the appellate court. Cassation appeals lodged with the appellate court are examined by a judge of the appellate court before being sent to the cassation court (the Supreme Court). He checks whether the cassation appeal has been lodged within the time limit laid down by the Criminal Procedure Law and whether the cassation appeal has been lodged by a person who has the right to lodge it. The judge of the appellate court shall also check whether the content of the cassation complaint complies with the requirements of Section 572 of the Criminal Procedure Law. Section 577(3) of this Law provides: "With the termination of the term for the appeal of a ruling, the court that made the ruling shall send the case together with the cassation complaint or protest to the Supreme Court." Section 578(1) of the Criminal Procedure Law provides that the court that made the ruling shall notify the prosecutor of the submitted cassation complaint and protest, as well as notify the persons whose interests

and rights are infringed upon by such complaint or protest, as well as inform the accused who is held under arrest regarding his or her rights to request that he or she is provided with an opportunity of participating in examination of a matter, and simultaneously send a copy of the submitted complaint or protest to the prosecutor and such persons.

Section 578(2) of the Criminal Procedure Law provides: "The persons referred to in Paragraph one of this Section may submit written objections or explanations within 10 days after receipt of a copy of a complaint or protest, as well as a written request to provide them with an opportunity of participating in the trial of a case, to be sent to the Supreme Court." However, it follows from Section 579 of the Criminal Procedure Law that the cassation appeal may be supplemented or amended no later than 10 days after the expiry of the appeal period. The Supreme Court shall send copies of the amendments or additions to the persons referred to in Section 578(1) of the Criminal Procedure Law, who shall have the opportunity to submit written explanations or objections thereto within 10 days from the date of receipt of the amendments or additions to the cassation complaint.

The formal compliance of the cassation complaint with the requirements of the Criminal Procedure Law is thus examined by the judge of the appellate court.

Section 573(1) of the Criminal Procedure Law provides that the legality of a ruling shall be examined in accordance with cassation procedures only in the case where the action expressed in the cassation complaint or protest has been justified with a violation of the Criminal Law or a substantial violation of this Law. Thus, the cassation court, having received the cassation complaint sent by the appellate court instance, shall assess the criteria contained in this provision, i.e., it shall examine whether the cassation complaint is based on a violation of the Criminal Law or a substantial violation of the Criminal Procedure Law.

Thus, when deciding on the admissibility of a cassation complaint in accordance with the procedure provided for in Section 573(1) of the Criminal

Procedure Law, not only its compliance with the formal requirements is examined. When deciding whether to refuse to initiate cassation proceedings in criminal proceedings, the merits of the arguments contained in the cassation complaint are also assessed.

13.6. The Constitutional Court must establish what was the justification for the legislator's decision to provide, within its discretion, that the issue of initiating cassation proceedings was to be decided on its own in the final procedural stage of the criminal case, at which the decision adopted was not subject to appeal.

It can be concluded from the materials of the case that the Supreme Court, by its letter No 10-6/1-305nos of 19 February 2008, proposed to include the contested norms in the Criminal Procedure Law *(see case materials, Vol. 1 p. 119*). The letter states that the contested norms clarify the procedure of application of Section 573 of the Criminal Procedure Law, which has been established in the practice of the Supreme Court when applying the norms of the relevant chapter. The inclusion of the contested norms in the draft law "Amendments to the Law on Criminal Procedure" for its third reading was supported both at the meeting of the Subcommittee on the Law on Criminal Procedure of the Law Commission on 12 January 2009 and at the meeting of the Law Commission on 6 February 2009 (*see case materials, Vol. 1, p. 129 and p. 131*). From the materials of the drafting of the draft law, it is evident that the legislator has not assessed alternative solutions and has not considered the importance of public legal interests in the cassation instance in criminal proceedings.

The Constitutional Court has already concluded that collegiality is one of the principles guaranteeing a fair trial. It has also been recognised that the functions of the cassation court in criminal proceedings include not only the protection of personal rights, but also the protection of public law interests. When a judge alone decides to initiate cassation proceedings in criminal proceedings, there is no dialogue on the uniform application of legal norms and the development of law, and doubts may arise in society as to the correctness of

the application of legal norms. The Constitutional Court holds that in order to ensure compliance with the principle of impartiality by the cassation instance court, the principle of collegiality contained in the first sentence of Article 92 of the Constitution must be observed at the stage of initiation of cassation proceedings in criminal proceedings. The fact that the question of initiating cassation proceedings before a cassation court in criminal proceedings is decided by a single judge does not guarantee the right to a fair trial.

Thus, the second part of Section 573 of the Criminal Procedure Law is incompatible with the first sentence of Article 92 of the Constitution.

14. The applicant considers that Section 573(3) of the Criminal Procedure Law infringes his guaranteed right to a fair trial, as it does not ensure the right to be heard. In particular, the refusal to initiate cassation proceedings in criminal proceedings is made in the form of a resolution, and the court does not provide detailed reasoning as to why cassation proceedings should not be initiated.

In their opinions, the invited persons refer to the ECHR judgment in the case *"Talmane v. Latvia"*, pointing out that the ECHR has recognised the practice of the cassation court in criminal cases in Latvia as being in conformity with the Convention. The Constitutional Court notes that in the above-mentioned case the ECHR examined the applicant's cassation complaint and indicated that "taking into account the nature of the cassation complaint submitted by the applicant, the ECHR considers it sufficiently established that the Senate was satisfied that there were no circumstances under which cassation proceedings should be initiated. In her appeal and cassation appeals, the applicant had raised a number of arguments concerning the procedure for obtaining evidence in the criminal case against her. These complaints were duly examined by the two courts with full jurisdiction, and the lower courts gave proper reasons in their rulings. It was not for the Senate to reassess the existing evidence or to obtain new evidence as requested by the applicant. Moreover, as the documents submitted to the ECHR demonstrate, the Senate

had considered the applicant's arguments, had given reasons for rejecting the cassation complaint and had explained to the applicant its competence to reassess the evidence [...] In such circumstances, the ECHR is satisfied that the Senate had properly assessed the grounds of the applicant's cassation complaint and that the cassation court was sufficient in this case" (*European Court of Human Rights, 13 October 2016, Talmane v. Latvia, Application No. 47938/07, para. 32*).

It follows from the above that the ECHR in its judgment in the case *"Talmane v. Latvia"* exercised its basic function – it provided an assessment of a possible violation of the applicant's fundamental rights in the circumstances of the particular case. The ECHR assessed the actions of the Senate of the Supreme Court after the receipt of the applicant's cassation complaint, not the legal framework for the cassation complaint.

On the contrary, the task of the Constitutional Court, in accordance with its competence, is to ensure the existence of a legal system in which, as fully and comprehensively as possible, the regulation that is incompatible with the Constitution or other legal norms (acts) of higher legal force is eliminated, as well as to give its assessment in matters of constitutional importance (*see Clause 11.2 of the Constitutional Court's judgement of 7 April 2009 in Case No 2008-35-01*). Namely, the task of the Constitutional Court is to prevent a legal regulation which, even if correctly applied, could lead to a violation of fundamental rights.

Thus, the function and tasks of the Constitutional Court are broader than those of the ECHR. If a legal regulation in force generally allows for a situation in which its application could lead to a violation of fundamental rights established in the Constitution, then the Constitutional Court must declare such a regulation unconstitutional and null and void. A proper and constitutional legal framework will always provide guarantees which, if applied correctly and systematically, will completely exclude the possibility of a violation of fundamental rights.

Article 53 of the Convention does not prevent Member States, in accordance with their constitutional traditions, from providing more extensive guarantees of fundamental rights. The Constitutional Court assesses the procedure for initiating cassation proceedings in criminal proceedings established by the contested norms in the light of the legal system of Latvia as a democratic state governed by the rule of law. It has been established in the case law of the Constitutional Court that the right to be heard is implemented in several ways - including also as the right to expect that the court decision, taking into account the views expressed by the parties, will be reasoned (*see paragraph 6.1 of the Conclusions of the Judgment of the Constitutional Court in Case No 2003-03-01 of 27 June 2003*). The ECHR's case law recognises that the level of detail which must be given in the reasons for a judicial decision depends on the nature of the decision and the circumstances of the case, which must be assessed on a case-by-case basis (*see paragraph 29 of the judgment of the European Court of Human Rights in Ruiz Torija v. Spain, Application No 18390/91, of 9 December 1994*). Moreover, the obligation to state the reasons on which a decision is based cannot be interpreted as a comprehensive requirement to give a detailed reply to each argument (*see paragraph 26 of the judgment of the Grand Chamber of the European Court of Human Rights of 21 January 1999 in Case García Ruiz v. Spain, Application No 30544/96*).

The principle of justification is one of the most important means of ensuring procedural fairness (*see Clause 14.2 of the Constitutional Court's judgment of 9 December 2016 in Case No 2016-08-01*). The procedure of examination of a case is fair if the requirement to ensure the right of a person to be heard is complied with (*see Clause 12 of the Constitutional Court's judgment of 11 April 2007 in Case No 2006-28-01*).

Thus, the statement of reasons in a judicial decision is one of the means by which a person can be sure that he has been heard and that his arguments have been considered (*see, for example, the judgment of the Grand Chamber of the European Court of Human Rights of 2 February 2004 in Case 47287/99 Perez v France, paragraph 80*). This is particularly important in criminal court

decisions, as a person's understanding of why he or she has been found guilty of a criminal offence stems first and foremost from the reasons for the decision. A reasoned decision confirms that the person has been heard and thus also contributes to the person's acceptance of the conclusions reached by the court (*see, for example, paragraph 91 of the judgment of the Grand Chamber of the European Court of Human Rights of 16 November 2010 in Taxquet v. Belgium, application No 926/05*).

14.1. The Constitutional Court has already recognised that a legal norm cannot be understood outside the practice of its application and the legal system in which it functions (*see Clause 12.1 of the Judgment of 28 June 2013 in Case No 2012-26-03*). The Saeima, in its reply, as well as the Ombudsman and the Ministry of Justice, point out that Section 573(3) of the Criminal Procedure Law provides that the decision on refusal to initiate cassation proceedings in criminal proceedings shall be written in the form of a resolution, but does not prohibit the judge from setting out in this decision the reasons for which the initiation of cassation proceedings was refused (*see the case materials, Vol. 1, p. 72., p. 147 and p. 148*).

The legal provisions of Chapter 19 of the Criminal Procedure Law determine the types, structure, accessibility and entry into force of decisions (decisions and judgments). The form and content of the resolution is determined by Section 320(6) of the Criminal Procedure Law, i.e: "In the cases provided for in this Law, the written decision of the person directing the proceedings may be written in the form of a resolution. In such cases the ruling made, the Section of the Law according to which it was made, the official who took the decision, and the date of taking of the decision shall be indicated."

It can be concluded that a resolution within the meaning of the Criminal Procedure Law is an inscription on a document which decides on the matter referred to therein and which contains the following mandatory requisites: the decision adopted, the article of law on the basis of which it was adopted, the official who adopted the decision and the date on which the decision was adopted. The form of the resolution does not require it to contain a reasoned

part. Therefore, Section 573(3) of the Criminal Procedure Law, in the event that cassation proceedings are refused, obliges the judge to write such a resolution on the cassation complaint: 1) refusal to initiate cassation proceedings; 2) on the basis of Section 573(1) of the Criminal Procedure Law; 3) judge – name, surname; 4) date.

From 1 October 2005, when the Criminal Procedure Law entered into force, until 1 July 2009, when the contested norms entered into force, Article 573 of the Criminal Procedure Law provided that the legality of a decision shall be reviewed in cassation only if the claim in the cassation complaint is based on an infringement of the Criminal Law or a material breach of the Criminal Procedure Law. The Law on Criminal Procedure did not regulate at that time how the admissibility of a cassation complaint was to be examined, who was to carry out the examination and how the decision was to be formulated.

From the information provided by the Supreme Court, it appears that from 1 October 2005 to 1 July 2009, the question of reviewing the legality of a ruling in cassation was decided by a senator appointed by the Chair of the Department of Criminal Cases of the Senate of the Supreme Court; decisions on refusal to review the legality of a ruling were written in the form of a resolution and a stamp in the appropriate form was drawn up.

However, from nine decisions adopted in various criminal cases, which the Supreme Court submitted to the Constitutional Court, it can be confirmed that after the contested norms entered into force on 1 July 2009, the decision on refusal to initiate cassation proceedings is also drawn up in the form of a separate procedural document and in some cases, it also includes a motivation part (*see case materials. Vol. 2, pages 12-20*). It follows from the information provided by the Supreme Court that the choice to state specific grounds for refusal to initiate cassation proceedings in a criminal case and the scope of the grounds depends on the individual discretion of the judge.

The Constitutional Court notes that the existence of such cases, however, does not mean that situations where the refusal to initiate cassation

proceedings would be written only in the form of a resolution, without reflecting the reasons for it, would be eliminated. In particular, the contested norm does not provide for disclosure of the grounds for the decision, even to the minimum extent, in respect of each cassation complaint, the admissibility of which has been assessed by a cassation court judge in the criminal proceedings. The Constitutional Court notes that the existing different practice at the stage of initiation of cassation proceedings in criminal proceedings is not desirable for a democratic state governed by the rule of law, as it does not create confidence in the impartiality of the court.

14.2. The Constitutional Court has already recognised the special role of the cassation court in criminal proceedings, which covers both the stage of initiating proceedings and the stage of examining the cassation complaint and ensures the public legal interests of society, including the individual's right to a fair trial. The first sentence of Article 92 of the Constitution implies the court's obligation to state the reasons why the legal arguments provided in the cassation complaint on the necessity to initiate cassation proceedings in criminal proceedings should be rejected. Thus, both the applicant of the particular cassation complaint and the public in general would be able to understand the motives of the court underlying the particular ruling, as well as to be assured that the arguments presented by the person have been duly assessed and that the substantive arguments on violations of the Criminal Law and the Criminal Procedure Law have been answered. A decision not to initiate cassation proceedings, without stating the reasons for that decision, does not provide the person with the court's assessment of the merits of the arguments contained in the cassation complaint.

The Constitutional Court holds that compliance with the principle of a democratic state governed by the rule of law is ensured only in the case when the person is informed of the court's reasoning with regard to the grounds indicated in the cassation complaint. The Constitutional Court emphasises that the level of detail of the reasoning part of the ruling depends on the substantive arguments raised in the case under review, however, the stated reasons should

be sufficient to enable a person to understand why cassation proceedings were not initiated after consideration of the arguments raised in the complaint.

Taking into account the role of the cassation court in criminal proceedings in a democratic state governed by the rule of law, as well as its role in ensuring the unity and development of the legal system and the fundamental rights of the individual, it must be recognised that the contested norm does not provide sufficient guarantees for the implementation of the right to a fair trial.

Therefore, Section 573(3) of the Criminal Procedure Law, insofar as it does not provide that the decision on refusal to initiate cassation proceedings shall state the reasons for such refusal, is incompatible with the first sentence of Article 92 of the Constitution.

15. Section 32(3) of the Constitutional Court Law provides that legal norm (act) that the Constitutional Court has declared as not conforming to the norm of a higher legal force shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, unless the Constitutional Court has determined otherwise. In turn, pursuant to Section 31(11) of the Constitutional Court Law, the court may indicate in the judgment in relation to the contested legal norm (act) in force – the moment with which it shall be revoked if the Constitutional Court has judged that this norm (act) does not conform to the norm of a higher legal force. Consequently, the Constitutional Court has to consider from which moment the contested norms, which have been declared incompatible with the first sentence of Article 92 of the Constitution, are to be recognised as invalid.

The Constitutional Court indicates that the declaration of the contested norms as null and void as of the date of publication of the judgment cannot create adverse legal consequences for persons, which would require that the unconstitutional norms remain in force until the normative regulation has been improved in accordance with the requirements of the Constitution. Thus, until the legislator has perfected the legal regulation, the right of persons to a fair

trial shall be ensured by direct application of Article 92 of the Constitution and the findings of this judgment.

In turn, in order to ensure the Applicant's right to a fair trial, the contested norms should be declared null and void from the moment of the infringement of his fundamental rights.

Decisions part

Pursuant to Sections 30-32 of the Administrative Procedure Law, the Constitutional Court:

resolved as follows:

1. To declare Section 573(2) and (3) of the Criminal Procedure Law, insofar it does not provide that the decision on refusal to initiate cassation proceedings shall state the grounds for such refusal, as incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia.

2. In relation to the applicant of the constitutional complaint Ēriks Osis, to declare the second and third paragraph of Section 573 of the Criminal Procedure Law, insofar as it does not provide that the decision on refusal to initiate cassation proceedings shall state the reasons for such refusal, as incompatible with the first sentence of Article 92 of the Constitution of the Republic of Latvia and invalid from the moment of the infringement of his fundamental rights.

The judgment is final and non-appealable.

The judgment enters into force on the day of its publication.

Chair of the hearing I. Ziemele