



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia
in Riga on 28 September 2016
in Case No. 2016-01-01

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kušiņš, Uldis Ķinišs, Sanita Osipova, Daiga Rezevska, and Ineta Ziemele,

having regard to the constitutional complaint submitted by Aivars Trops,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), Section 19² and Section 28.¹ of the Constitutional Court Law,

on 13 September 2106, examined in written procedure the case

“On compliance of Section 363²⁰ (5) of the Civil Procedure Law (in the wording that was in force until 31 October 2010), insofar it denies the debtor the possibility to appeal against the decision by the court by which insolvency proceedings have been terminated without releasing the debtor from the remaining liabilities with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 14 October 1998, the *Saeima* adopted the Civil Procedure Law, which entered into force on 1 March 1999.

1.1. By the law of 1 November 2007 “Amendments to the Civil Procedure Law”, *Saeima* added to the Civil Procedure Law Chapter 46² on cases regarding insolvency

proceedings of a natural person. *Inter alia*, Section 363²⁰ was included in the said chapter. It regulated the issues that the court had to decide on after a natural person's insolvency proceedings had been announced. The fifth part of this Section provided:

“The decision of the court on the examination of the application and complaint cannot be appealed, except in the case when the court makes a decision on the approval of the real estate auction act and the deletion of the insolvency mark in the Land Register. The decision of the appellate court on the approval of the real estate auction act and the deletion of the insolvency mark in the Land Register is not subject to appeal.”

1.2. By the law, adopted by the *Saeima* on 22 May 2008, “Amendments to the Civil Procedure Law”, which entered into force on 25 June 2008, Section 363²⁰ (5) of the Civil Procedure Law was expressed in the following wording:

“The decision of the court on the examination of the application and complaint cannot be appealed, except in the case when the court makes a decision on the approval of the real estate auction act and the deletion of the insolvency mark in the Land Register. A decision rejecting an application for the approval of a real estate auction act and deleting the insolvency mark in the Land Register is also subject to appeal, as well as a decision by which the court declared the auction invalid. The decision of the appellate court in matters concerning the approval of the real estate auction act and the deletion of the insolvency mark in the Land Register is not subject to appeal.” The legal provision in this wording was in force until 31 October 2010.

1.3. On 30 September 2010 the *Saeima* adopted the law “Amendments to the Civil Procedure Law”, which entered into force on 1 November 2010. By this law, Chapter 46² of the Civil Procedure Law was expressed in new wording. Section 363²⁸, included in this Chapter, regulates the issues that a court must decide on after a natural person's insolvency proceedings have been announced. Pursuant to Section 363²⁸ (9) of the Civil Procedure Law, a court's decision on reviewing an application and a complaint is not subject to appeal.

Simultaneously with introducing the aforementioned amendment, Para 46 was added to the Transitional Provisions of the Civil Procedure Law, worded as follows:

“The wording of Chapters 46, 46¹ and 46² of this Law that was in force until 31 October 2010 and Paragraph 42 of Transitional Provisions shall be applied to legal protection proceedings, extrajudicial legal protection proceedings, insolvency proceedings of a legal person, as well as insolvency proceedings of a natural person commenced until 31 October 2010.”

2. The Applicant – Aivars Trops (hereafter – the Applicant) – holds that Section 363²⁰(5) of the Civil Procedure Law (in the wording that was in force until 31 October 2010), insofar it prohibits a debtor to appeal against a court’s decision, by which the insolvency proceedings have been terminated without relieving the debtor from the remaining liabilities, (hereafter – the contested provision) is incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) and requests recognising the contested provision as being void with respect to him since the date of its adoption.

2.1. It is noted in the application that the Applicant’s insolvency proceedings had been announced and the plan for selling the property of a natural person and satisfying the creditors’ claims had been approved by the judgement of the Riga District Court of 9 June 2009.

In reviewing the Applicant’s application regarding the completion of the bankruptcy procedure and termination of the insolvency proceedings, the Riga District Court had concluded that the Applicant had fulfilled the plan for selling property and satisfying the creditors’ claims. At the same time, the Court had recognised that the Applicant had provided to the creditors and the administrator of the insolvency proceedings (hereafter – the Administrator) false information about his real income, i.e., he had issued a loan without identifying the origin of the relevant funds and without diverting them for satisfying the creditors' claims. Therefore, by the decision of 11 June 2015, the Court had decided to complete the bankruptcy procedure and terminate the insolvency proceedings without releasing the Applicant from the remaining liabilities.

2.2. Allegedly, the contested provision prohibits the Applicant from appealing against a court’s decision by which insolvency proceedings have been terminated without releasing him from the remaining liabilities. Thus, the right to a fair trial, guaranteed to the Applicant in the first sentence of Article 92 of the *Satversme* had been violated.

The Applicant, referring to the case law of the Constitutional Court, notes that the concept of “a fair trial”, referred to in the first sentence of Article 92 of the *Satversme*, comprises also the right to appeal against a court’s rulings. It is said to ensure that the particular issues of law and actual circumstances that are disputed in the case are reviewed and assessed anew.

It is contended that, contrary to the statements made in the court’s decision, the Applicant had not provided false information to his creditors and the Administrator.

However, the contested provision prohibits the Applicant from appealing against this decision before a higher-instance court, which could examine the validity of his

arguments and review the respective facts, which are disputed in the case. Moreover, pursuant to Section 130 of the Insolvency Law, for the next three years the Applicant may not submit an application of insolvency proceedings of a natural person to free himself from the remaining liabilities. Thus, application of the contested provision has caused for the Applicant particularly adverse consequences, infringing upon his right to property, *inter alia*, the right to housing and means of subsistence to plan his own and his family's life.

2.3. The restriction on fundamental rights, included in the contested provision, had been established by law and has a legitimate aim. I.e., the contested provision ensures effective functioning of courts and examination of cases within a reasonable term. However, the contested provision is said to be unsuitable for reaching the legitimate aim. The legitimate aim could be reached by other measures, less restrictive upon a person's rights. The benefit that society gains by restricting the Applicant's right to a fair trial, allegedly, does not outweigh the damage inflicted upon his rights and lawful interests. Hence, the proportionality principle had not been complied with.

In adopting the contested provision, the legislator had not envisaged that a dispute might evolve between the parties as to whether the debtor had or had not provided false information to his creditors and the Administrator. Hence, the Applicant holds that the only alternative measure would be establishing a mechanism that would allow the debtor to appeal at the appellate-instance court the decision by which the insolvency proceedings have been terminated without releasing the debtor from the remaining liabilities.

2.4. The Applicant's right to be heard had not been ensured in the framework of the said legal proceedings. I.e., the court had not informed the Applicant, in accordance with Section 93 (4) of the Civil Procedure Law, about the lack of evidence and the need to submit it. Moreover, the Court's decision had not been substantiated.

The court had made the decision, by which the insolvency proceedings had been terminated without releasing the debtor from the remaining liabilities, in the composition of one judge. It follows from the system of the Civil Procedure Law in general that the ruling by a first-instance court may be made by a composition of one judge because, usually, it is subject to appeal and a court of higher instance can assess its quality, examining the case in a collegial way. Hence, the legislator should ensure the possibility to appeal against the court's decision also in this case.

The purpose of a natural person's insolvency proceedings is said to be protection of the creditors' interests and satisfying their claims, as well as releasing the debtor from the remaining liabilities after successful course of the insolvency proceedings. If the debtor is denied the possibility to appeal against the termination of insolvency

proceedings without releasing the debtor from the remaining liabilities then substantial adverse consequences are caused for him. It is said to be contrary to the purpose of insolvency proceedings. Hence, a court's decision on terminating insolvency proceedings without releasing the debtor from the remaining liabilities should be regarded as a ruling, the possibility of appealing against which the legislator should ensure.

3. The institution, which issued the contested act, – *the Saeima* – notes in its written reply that the contested provision complies with the first sentence of Article 92 of the *Satversme*.

3.1. The basic safeguards for the right to a fair trial should be ensured in minimum scope at least in one court instance. However, depending on the type of legal proceedings and the nature of the case, the need to apply some of the safeguards, included in the first sentence of Article 92 of the *Satversme*, and the standard of application thereof may differ.

Allegedly, the first sentence of Article 92 of the *Satversme* does not impose an obligation upon the State to envisage the possibility to appeal against a court's ruling before a higher- instance court in all cases. The legislator has the right to determine by law which cases fall within the jurisdiction of each court and number of instances in which cases of various categories must be reviewed. The legislator's obligation is to create such conditions for effective and fair legal proceedings that would allow resolving disputes already at the first court instance.

3.2. In the Civil Procedure Law, the legislator has envisaged such procedure for hearing cases that ensures that safeguards for the Applicant's right to a fair trial – the right to be heard and the right to a reasoned court's ruling – is respected in hearing a case of the respective category.

Cases regarding a natural person's insolvency proceedings are heard in a special form of procedure. Substantially, in the special form of procedure, a dispute between two parties is not being dealt with, rather a unilateral application of a particular person to a court is examined. Therefore, insolvency cases do not comprise parties' dispute regarding rights but the court only establishes whether any signs of the debtor's insolvency, defined in the Insolvency Law, exist.

Insolvency proceedings are said to be an exception to the general principle that all persons must meet the commitments they have undertaken. Such an exception is favourable for the debtor because they are given the possibility to free themselves from liabilities which they have assumed but, due to objective reasons, are unable to meet. At the same time, it should be taken into account that the purpose of

insolvency proceedings is to ensure also protection for the creditors' rights. Therefore the legislator has provided that a debtor may be released from liabilities only if they have fulfilled all the obligations, defined in law, *inter alia*, in good faith and responsibly, providing true information to the court, the Administrator, and creditors.

The court, in deciding on releasing or not releasing the debtor from liabilities, only establishes a legal fact – whether any of the cases referred to in Section 179 (3) of the Insolvency Law exists when it is prohibited to release the debtor from liabilities. Thus, in such a case, the court does not adjudicate the case on its merits is said to be proven by the fact that the court's conclusion on not releasing the debtor from the remaining liabilities is included in the decision and not in the judgement.

Since a court's decision by which insolvency proceedings are terminated without releasing the debtor from the remaining liabilities is made in the insolvency proceedings in the special form of procedure on the basis of a person's unilateral request and this decision does not resolve a dispute regarding rights but only establishes a separate fact; it is not a ruling of the kind the possibility to appeal against which the legislator should ensure.

3.3. The *Saeima*, contrary to the Applicant's opinion, holds that, in the present case, first of all the issue of the existence of a restriction on fundamental rights rather than its admissibility should be examined. Having assessed the nature of the respective proceedings and the content of the specific decision, the *Saeima* concludes that the contested provision does not restrict the Applicant's right to a fair trial, enshrined in the first sentence of Article 92 of the *Satversme*.

4. The summoned person – the Ministry of Justice – states that the contested provision complies with the first sentence of Article 92 of the *Satversme*.

4.1. Allegedly, the legislator is not obliged to ensure that cases of any category are reviewed in several instances. In defining the procedure for reviewing cases of different categories and of appealing against rulings adopted in them, the legislator must take into consideration the nature of the specific category of cases and ensure effective and fair conditions of legal proceedings for all participants in the case. Only if due legal proceedings cannot be ensured for the respective category of cases in one court instance, the legislator should ensure the possibility for appealing against the respective court's ruling at a higher instance.

4.2. Cases of a natural person's insolvency proceedings are said to be cases of such category that a court reviews in a special form of procedure. The legislator's aim, in determining that insolvency cases should be reviewed in the special form of

proceedings, had been ensuring as swift and effective review of the case as possible, and it is one of the priorities in insolvency proceedings.

In examining an application in the special form of procedure, the party's rights and obligations, defined in Section 74 of the Civil Procedure Law, are applicable to the applicant and interested person, *inter alia*, the right to submit explanations and evidence to the court, participate in a court hearing and examination of evidence, express arguments, considerations, and requests. Whereas with respect to the decisions that are made in cases that are heard in a special form of procedure, the rules of the Civil Procedure Law on a court's obligation to substantiate its decision are applicable.

Thus, the procedural order for reviewing an application regarding termination of a natural person's insolvency proceedings, also without releasing the debtor from the remaining liabilities, is said to ensure due legal proceedings in one court instance. Whereas the fact that decision on terminating a natural person's insolvency proceedings is made and also the matter on releasing or not releasing the debtor from the remaining liabilities is decided by one judge alone *per se* does not lead to doubts as to whether a person's right to fair legal proceedings had been ensured.

5. The summoned person – the Ombudsman of the Republic of Latvia (hereafter – the Ombudsman) – notes that the contested provision is incompatible with the first sentence of Article 92 of the *Satversme*.

5.1. Allegedly, the purpose of a natural person's insolvency proceedings is to satisfy, insofar possible, creditors' claims from the debtor's property and to give the possibility to a debtor, whose property and income is not sufficient to meet all liabilities, to be released from the unmet liabilities and to restore solvency.

Hence, in assessing the constitutionality of the contested provision, the fact that it is important for a debtor in financial difficulties that by the court's decision on terminating the insolvency proceedings also the matter of cancellation of the remaining liabilities is resolved should be taken into consideration.

5.2. It is alleged that the restriction on fundamental rights, included in the contested provision, has a legitimate aim. I.e., the contested provision protects the rights of other persons and, also, swift and effective legal proceedings are ensured. However, the contested provision is not suitable for reaching the legitimate aim. The prohibition for the debtor to appeal against a court's decision by which the insolvency proceedings are terminated without releasing the debtor from the remaining liabilities, established in the contested provision, does not affect the creditors' rights. However, the fact that the respective decision, by which the adjudication of the case on its merits is completed, is final and is not subject to appeal might cause significant restrictions

for the debtor. For example, the debtor may repeatedly initiate insolvency proceedings only when three years have passed since the adoption of this decision.

5.3. In a situation where a dispute might arise between the parties as to whether the debtor, in insolvency proceedings, has or has not provided false information to creditors, the Administrator or the court, the legislator should ensure the possibility to appeal against the court's ruling. There might be cases where the court's conclusions regarding evidence, submitted by the parties, are contradictory or when all documents have not been submitted to the court for assessment. The procedural order for reviewing the case, established by the legislator, does not ensure that the application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings, *inter alia*, also the matter of releasing or not releasing the debtor from the remaining liabilities, are fairly examined in one instance.

6. The summoned person – Dr. iur. Daina Ose, docent at the Faculty of Law, the University of Latvia – points out that the legislator has created such procedural order for examining an application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings that ensures its fair review in one instance. A procedure, pursuant to which the decision, adopted by the court, were subject to appeal, might jeopardize effective course of the insolvency proceedings.

6.1. A natural person's insolvency proceedings, allegedly, are directed at protecting creditors so that their claims would be satisfied to the extent possible. Therefore, the legislator has established a court's supervision over insolvency proceedings. The court has the right to decide by procedural decisions on certain matters that have arisen within the insolvency proceedings, as well as to decide on terminating a natural person's insolvency proceedings.

A decision on terminating a natural person's insolvency proceedings should be considered as being the concluding decision and only establishment of specific facts may be included in it. The court must establish, *inter alia*, whether the debtor who had been ensured access to insolvency proceedings had fulfilled, in good faith, the obligations imposed upon him, the fulfilment of which, alongside the sale of the debtor's property and implementation of the plan for satisfying the creditors' claims, is the grounds for releasing him from the remaining liabilities. In this process, pursuant to Section 10 and Section 93 of the Civil Procedure Law, the debtor has the right to submit evidence, comprising information about the actual circumstances referred to, whereas the court has the obligation, prior to making its decision, to examine the submitted evidence and clarify essential actual circumstances.

6.2. Only if the debtor has implemented, in good faith, the plan for selling his property and satisfying the creditors' claims and fulfilled the obligations set out in the Insolvency Law, the court, considering the creditors' interests, has the grounds for releasing the debtor from the remaining liabilities. Thus, the court, in adopting the decision on terminating the insolvency proceedings, must establish, whether the debtor, within the framework of the insolvency proceedings, had acted in good faith.

Allegedly, it follows from the regulation, included in the Insolvency Law, that the court, in deciding on the matter of releasing the debtor from the remaining liabilities, examines the same circumstances that had been examined by the Administrator at least once. I.e., the Insolvency Law demands the Administrator, upon creditors' request, to supervise how the debtor fulfils the obligations imposed on him. Whereas the court's decision not to release the debtor from the remaining liabilities is said to be the consequences of the debtor's own actions and is made in the case where the court, in the course of supervision, has established that the debtor hides his income or does not take the actions envisaged in the Insolvency Law, which are required to cover as large part of his commitments as possible.

6.3. The decision on terminating a natural person's insolvency proceedings without releasing the debtor from the remaining liabilities is said to be the decision that concludes the insolvency proceedings, which is adopted only after comprehensive examination of the evidence, submitted by the participants in the case, has been conducted and hearing the arguments expressed at the court hearing. Any appeal against such a decision might prolong for an indefinite period of time a person's being in the insolvency proceedings, in the framework of which the restrictions, defined in the Insolvency Law, are imposed upon them. Hence, appeal against such a decision might cause adverse consequences for the natural person and is a disproportionate restriction on their rights.

7. The summoned person – *Mg. iur.* Martins Osis, faculty member of the Faculty of Law, the University of Latvia – points out that the legislator should have provided for the possibility to appeal against the decision on terminating a natural person's insolvency proceedings, without releasing the debtor from the remaining liabilities.

7.1. The decision on terminating a natural person's insolvency proceedings without releasing the debtor from the remaining liabilities is adopted in the special form of procedure. The special form of procedure is characterized by several specific features, e.g., absence of dispute regarding rights and of opposite interests. However, this does not mean that the subjects of civil procedure also in such a case might not

hold different opinion on legally important actual circumstances of the case under review or application of legal provisions. Moreover, the legislator has directly pointed out in Section 253 (2) of the Civil Procedure Law that the parties in cases to be tried according to special forms of procedure have the procedural rights and obligations defined for the parties.

7.2. The legislator has provided that in cases of decisions that are not subject to appeal, parties may express objections against them in an appellate or cassation complaint. However, in the case where the court's decision cannot be appealed against but the legislator has not envisaged the possibility for the respective category of cases to appeal against this decision in appellate or cassation procedure, the parties in the case have not been provided any procedural safeguards, allowing them to express their objections against the decision made by the court.

Section 441 (1) of the Civil Procedure Law envisages the right to appeal against the decisions by the first-instance and appellate-instance court in cases directly provided for by the Civil Procedure Law, as well in cases where the court's decision hinders the case being proceeded with. Referring to the case law materials from Latvia's inter-war period and findings of legal science, M. Osis points out that civil procedural regulation had envisaged the right to appeal against a court's decision in a case where such a possibility had not been directly established in law but the respective decision finally resolves the question of the legal subject's rights and it is no longer possible to make the judgement in the case on its merits.

7.3. It is not doubted that the legislator is not obliged to ensure the right to appeal in all instances in civil cases. However, the decision on terminating the insolvency proceedings without releasing the debtor from the remaining liabilities is said to be final as to its nature and the person has no possibility to express objections against this decision in an appellate or cassation complaint.

In terms of legal consequences, the decision on terminating legal proceedings pertains both to the legal proceedings to be terminated and the right to resubmit an application regarding a natural person's insolvency proceedings. The legislator has envisaged the possibility of appeal with respect to other court's decisions in such cases. E.g., pursuant to Section 224 of the Civil Procedure Law, an ancillary complaint may be submitted regarding a court's decision to terminate legal proceedings because in the case where legal proceedings have been terminated repeated application to a court in a dispute between the same parties, regarding the same subject and on the same grounds is inadmissible. Whereas the contested provision prohibits the debtor from appealing against a court's ruling. Thus, the admissibility of such a restriction should be examined.

The Findings

8. Section 363²⁰ (5) of the Civil Procedure Law, in the wording that was in force until 31 October 2010, provided that a court's decision on reviewing an application and a complaint was not subject to appeal.

The same legal provision regulates also the cases where the court's decision is subject to appeal. I.e., the decision on the approval of the real estate auction act and deletion of the insolvency mark in the Land Register can be appealed against. Likewise, a decision rejecting an application regarding the approval of the real estate auction act and the deletion of the insolvency mark in the Land Register, as well as a decision by which the court has recognised the auction as being void are also subject to appeal. Whereas the decision by an appellate-instance court on the approval of the real estate auction act and deletion of the insolvency mark from the Land Register cannot be appealed against.

In the Applicant's case, the court, on the basis of a respective application, has decided to terminate a natural person's insolvency proceedings without releasing the debtor from the remaining liabilities. In such circumstances, the contested provision prohibits the applicant from appealing against the court's decision that is unfavourable to him.

Hence, in the present case, the Constitutional Court will examine whether Section 363²⁰ (5) of the Civil Procedure Law, in the wording that was in force until 31 October 2010, insofar it prohibits the debtor from appealing against a court's decision by which the insolvency proceedings have been terminated without releasing the debtor from the remaining liabilities, complies with the first sentence of Article 92 of the *Satversme*.

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

The Constitutional Court has recognised that the concept "fair court" comprises two aspects, i.e., "a fair court" as an independent institution of the judiciary that examines the case and "a fair trial" as a due procedure, compatible with a state governed by the rule of law, in which the case is heard. Article 92 of the *Satversme* provides for the State's obligation both to establish a respective system of judicial institutions and to adopt procedural provisions, pursuant to which the cases would be heard in a procedure that would ensure fair and unbiased hearing of these cases (*see, for example, Judgement by the Constitutional Court of 5 March 2002 in Case*

No. 2001-10-01, para 2 of the Findings, and Judgement of 9 May 2008 in Case No. 2007-24-01, Para 8).

A fair trial as a due procedure, compatible with the State governed by the rule of law, comprises several elements – interconnected rights, e.g., the right to access to court, the right to be heard, the right to a reasoned court’s judgement, as well as the right to appeal (*see Judgement by the Constitutional Court of 5 November 2008 in Case No. 2008-04-01, Para 8.2., and Judgement of 17 May 2010 in Case No. 2009-93-01, Para 8.3.*). Therefore, the State is obliged to establish such procedure for reviewing cases that would allow a person to defend their rights and lawful interests effectively.

The Applicant points out that the contested provision is incompatible with the first sentence of Article 92 of the *Satversme* because it prohibits a debtor from appealing against a court’s decision by which insolvency proceedings have been terminated without releasing him from the remaining liabilities.

The Constitutional Court already has recognised that the legislator respecting the limits of its discretion that follow from Latvia’s legal system and international human rights standards binding upon the State may define such categories of cases, in which court’s rulings are not subject to appeal (*see Judgement by the Constitutional Court of 12 March 2015 in Case No. 2014-23-01, Para 10*).

The contested provision is included in Chapter 46² of the Civil Procedure Law, which regulates examination of the cases of a natural person’s insolvency proceedings within the framework of civil procedure. Civil procedure that ensures fair and unbiased examination of a case is an element of a fair trial and falls within the content of the first sentence of Article 92 of the *Satversme* (*see Judgement by the Constitutional Court of 30 March 2010 in Case No. 2009-85-01, Para 10*). The first sentence of Article 92 does not require that, within the civil procedure, the possibilities for appeal before a higher-instance court would be envisaged for all cases of certain categories of due legal proceedings had been ensured to a person in a lower-instance court (*see Judgement by the Constitutional Court of 5 November 2008 in Case No. 2008-04-01, Para 10.3.*).

Thus, to assess whether, pursuant to the first sentence of Article 92 of the *Satversme*, the possibility should be ensured to appeal against a decision, by which insolvency proceedings have been terminated without releasing the debtor from the remaining liabilities, it should be established:

- 1) whether fair legal proceedings have been ensured to a person before the court of that instance which adopts the respective ruling;

- 2) what is the nature of that category of cases, in the framework of which the court's ruling is adopted, and what is the legislator's aims in regulating this category of cases (*see Judgement by the Constitutional Court of 12 March 2015 in Case No. 2014-23-01, Para 11*).

10. The principle of a state governed by the rule of law requires examination of a case in a procedure that would ensure its fair and unbiased adjudication (*see Judgement by the Constitutional Court of 9 January 2014 in Case No. 2013-08-01, Para 6*). The procedure of hearing a case is fair if a person's right to be heard is ensured, as well as the possibility to exercise in full the right to submit evidence (*see Judgement by the Constitutional Court of 11 April 2007 in Case No. 2006-28-01, Para 12*).

To establish whether the Civil Procedure Law, at the time when the contested provision was in force, ensured fair legal proceedings, the Constitutional Court must examine the order, set out in the Civil Procedure Law, in which a court had to examine an application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings.

10.1. The procedure of examining the cases regarding a natural person's insolvency proceedings is defined in Chapter 46² of the Civil Procedure Law, pertaining to cases of a natural person's insolvency proceedings. Whereas Chapter 46² is included in Division Six of the Civil Procedure Law, which regulates special forms of procedure.

Pursuant to 253 (2) of the Civil Procedure Law, parties in cases to be adjudicated according to special forms of procedure have the procedural rights of parties defined in Section 74 (2) of this law. Thus, the debtor, the Administrator and other interested persons in the review of the application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings have the procedural rights, defined in the Civil Procedure Law, *inter alia*, the right to participate in a court hearing, to submit evidence, to provide oral and written explanations. Section 363²⁰ (6) of the Civil Procedure Law also provides that the debtor is summoned to the court hearing where they have the possibility to express their arguments and considerations. This legal provision sets out that the court reviews the explanation within 15 days from the day of receipt thereof. The submitter of the application or complaint, the administrator, the respective legal person and other interested persons are summoned to the court hearing.

Section 8 (2) of the Civil Procedure Law provides that the court explains to the participants in the case their rights and obligations, as well as the consequences of the

performance or non-performance of procedural actions. Thus, in examining an application regarding termination of a natural person's insolvency proceedings, the court is obliged to explain to the participants in the proceedings their rights and obligations. Thus, it is ensured that the participants in the proceedings know their rights and obligations, *inter alia*, the right, established in Section 74 of the Civil Procedure Law, to provide oral and written explanations, to submit requests and submit to court evidence in a timely manner.

Section 93 (1) of the Civil Procedure Law, in turn, imposes on both parties the obligation to prove the facts, upon which they base their claims and objections. Moreover, if any of the parties is able to substantiate that it is impossible to access important evidence in the case, Section 93 (2) of the Civil Procedure Law envisages the court's obligation to require such evidence.

In the matter of establishing the truth, a court is by no means an indifferent observer who only perceives passively what is presented by the parties. Although evidence is brought or referred to by each of the parties, the court, however, must take a critical look at it, establish its objective value and try to establish the true actual circumstances of the case, which, finally, must lead to the truth (*see: Bukovskis V. Civīlprocesa mācības grāmata. Rīga: Bukovskis, 1933, 332.–333. lpp.*). Section 93 (4) of the Civil Procedure Law grants the court the right to show initiative in those cases where it follows from the materials in the case that additional evidence must be required. I.e. pursuant to Section 93 (4) of the Civil Procedure Law, the court may inform the parties that evidence in respect of any specific fact, claim or argument has not been submitted and determine a period for submitting it. However, this right does not mean that the court conducts objective investigation, i.e., it collects independently, upon its own initiative, the evidence needed to establish the true circumstances of the case. It follows from Section 10 of the Civil Procedure Law that each party is responsible for performing its obligations and exercising their procedural rights in full and in a timely manner.

Likewise, Para 4 of Section 210 (1) of the Civil Procedure Law envisages the right of a party in the case to request the court to postpone examination of a case, giving them the opportunity to provide additional evidence. Pursuant to Section 82 (1) of the Civil Procedure Law, parties have the right to participate in legal proceedings with the assistance of such authorised representative who may be a sworn advocate. Thus, a person has been ensured the possibility to receive legal assistance, which helps them to understand and exercise in full the rights and obligations defined in the Civil Procedure Law.

Thus, the Civil Procedure Law defined clearly the order, in which the debtor had to be summoned to the court hearing, as well as set out their rights and obligations, *inter alia*, the right, envisaged in Section 74, to provide explanations at a court hearing, to submit requests and submit to the court evidence in a timely manner. Hence, the order for examining an application regarding completion of the bankruptcy procedure and completion of a natural person's insolvency proceedings, established in the Civil Procedure Law, ensured to the debtor the right to be heard.

10.2. The court adopts the ruling on terminating a natural person's insolvency proceedings without releasing the debtor from the remaining liabilities in the form of a decision. Para 4 of Section 230 (1) of the Civil Procedure Law defined the court's obligation to substantiate its decision, i.e., to indicate in the reasoned part the facts, evidence established in the course of examining the case, on which the court's conclusions were based, as well as laws and regulations according to which the court had acted. Moreover, Section 97 (3) of the Civil Procedure Law imposes an obligation upon the court to substantiate its actions in assessing the evidence, i.e., to indicate why it has given preference to one body of evidence in comparison to another and has found certain facts as proven, but others as unproven.

Likewise, the Civil Procedure Law comprises regulation that must ensure that the court's decision is substantiated. The court, in passing a ruling, must abide by the rules of the Civil Procedure Law regarding the court's obligation to include in the decision appropriate reasons.

The Applicant points out in his application that the decision, adopted by the court, had not been reasoned. I.e., the court, notwithstanding the absence of evidence, had made a decision and recognised that the Applicant had not performed in good faith the obligations established in the Insolvency Law. Moreover, the court had not informed the Applicant about the lack of evidence and the need to submit it (*see Case Materials, p. 16*).

The Constitutional Court recognises that, first and foremost, each party to the case is responsible for exercising the procedural rights in full and in a timely manner. Only a court of general jurisdiction has the right to assess the actual circumstances of the particular case, as well as whether, in the particular instance, the provisions of the Civil Procedure Law regarding the obligation to submit evidence have been applied correctly. Pursuant to the jurisdiction, defined in the *Satversme* and the Constitutional Court Law, the Constitutional Court has not been granted the right to review the legality of the application of legal provisions and of the ruling by a court of general jurisdiction (*see, for example, Judgement by the Constitutional Court of 23 April 2003*

in Case No. 2002-20-0103, Para 7 of the Findings, and Judgement of 3 June 2009 in Case No. 2008-43-0106, Para 12).

10.3. It is stated in the application that the court’s decision, by which the insolvency proceedings were terminated without releasing the debtor from the remaining liabilities, pursuant to Section 12 (1) of the Civil Procedure Law, had been adopted by a court in the composition of one judge, which, allegedly, does not ensure fair legal proceedings.

Several of the summoned persons, however, agree that this fact *per se* does not lead to doubts as to whether a person’s right to fair legal proceedings had been ensured because every judge is a highly qualified and professional lawyer (*see Case Materials, pp. 111–112, p. 122, and p. 126*).

Article 83 of the *Satversme* sets out that “Judges shall be independent and subject only to law”. The independence of judges and the court, defined in this constitutional provision, is one of the basic principles of a democratic state (*see Judgement by the Constitutional Court of 18 October 2007 in Case No. 2007-03-01, Para 26*). Only democratic judicial power can ensure fair outcome of legal proceedings. Anyone, with respect to whom justice is administered, is interested in ensuring the independence of judges (*see Judgement by the Constitutional Court of 18 January 2010 in Case No. 2009-11-01, Para 7.2.*).

The principle of judges’ independence, included in Article 83 of the *Satversme*, requires the judicial system to ensure both the independence of the court in general and the independence of a judge in each particular case (*see Judgement by the Constitutional Court of 23 November 2015 in Case No. 2015-10-01, Para 17.3.*).

To ensure a fair trial and independence of judges in all legal proceedings, appropriate legal regulation has been developed that defines the principles and order of examining a case. The law “On Judicial Power” defines, *inter alia*, the basic principles for examining cases. Pursuant to Section 17 of this law, a court is obliged, when examining any case, to establish the objective truth. Objectivity is significant in due performance of a judge’s official duties. It applies not solely to the rulings but also to the procedure, in which rulings are made (*compare: Judgement by the Constitutional Court of 14 May 2013 in Case No. 2012-13-01, Para 14.2.2.*).

Thus, both the *Satversme* and the law “On Judicial Power” envisage certain guarantees for the independence and objectivity of judges. This applies also to examination of a case by a single judge at the court of first instance. If the case is examined by a judge who has been appointed or approved to the office in the procedure established in the *Satversme* and the law “On Judicial Power”, it can be presumed that the judge will be independent and objective in examining the case and

will be able to ensure the fairness of the legal proceedings and the rulings made. Hence, within the framework of the first sentence of Article 92 of the *Satvermse*, a person's right to a fair trial is ensured also if the case is examined by the court in the composition of one judge.

Thus, the legislator had established order that envisaged the debtor's right to be heard at a court hearing and ensured fair legal proceedings in the court of that instance, which examines an application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings.

11. To determine whether a court's decision, by which insolvency proceedings have been terminated without releasing the debtor from the remaining liabilities, is such a ruling, the appealing against which at a higher instance should be ensured in accordance with the first sentence of Article 92 of the *Satversme*, the Constitutional Court must establish what the legislator's aim is in regulating the particular category of cases and what the nature of the category of cases, in the framework of which the ruling was made, is.

The court, deciding on the application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings, pursuant to Para 5 of the Transitional Provisions of the Insolvency Law, applied the Insolvency Law of 1 November 2007, which became void on 1 November 2010 (hereafter – the Insolvency Law), because the Applicant's insolvency proceedings had been initiated before 31 October 2010.

Hence, in the present case, it must be established what the purpose of the Insolvency Law was and what the nature of cases on insolvency proceedings to be examined in court is.

11.1. Section 1 of the Insolvency Law states that the purpose of this law is to facilitate renewal of the solvency of the insolvency subject and protect the interests of the body of creditors in the case of the debtor's limited solvency or insolvency. Whereas Section 149 of this law stipulates that the purpose of a natural person's insolvency proceedings is, taking into consideration the creditors' interests, to provide to this person the opportunity to restore solvency or to be released from the liabilities indicated in the plan for selling one's property and satisfying the creditors' claims.

The purpose of the Insolvency Law is to facilitate restoration of the debtor's (also natural person's) solvency and protection of creditors' interests in the case of the debtor's limited solvency or insolvency, balancing the interests of a business operator in financial difficulties and those of creditors. A natural person's insolvency

proceedings as the insolvency institution of a consumer was recognised as the most effective measure for releasing persons in an insolvency situation from liabilities and returning to the civil turnover. By introducing a natural person's insolvency proceedings, honest natural persons who, due to economic or social reasons, had become insolvent were given "a second" chance to commence responsible and solvent economic activities (*see Annotation to the draft law submitted to the Saeima on 30 November 2006 No. 69/Lp9 "The Insolvency Law"*).

Thus, the purpose of a natural person's insolvency proceedings is not only releasing the debtor from liabilities but also facilitating the fulfilment of obligations of a debtor in financial difficulties and, if possible, restoring solvency. The Constitutional Court has already recognised that insolvency proceedings are mainly directed at protecting the rights of creditors and debtors (*see Decision by the Constitutional Court of 20 April 2010 on Terminating Legal Proceedings in Case No. 2009-100-03, Para 9.4.*).

Thus, a natural person's insolvency proceedings are aimed at both restoring the solvency of a natural person and at protecting the creditors' rights.

11.2. Pursuant to Para 11 of Section 251 of the Civil Procedure Law, cases of insolvency proceedings, including cases of a natural person's insolvency proceedings, are cases of such category that are examined in the special form of procedure.

Regulation of the Civil Procedure Law, which did not envisage appealing against a court's decision made in an insolvency case, already has been examined in the case law of the Constitutional Court. In assessing the compliance of the restriction on appeal with the first sentence of Article 92 of the *Satversme*, the Constitutional Court has attached special importance to the fact that the respective cases are examined in a special form of procedure (*see Judgement by the Constitutional Court of 17 January 2002 in Case No. 2001-08-01, Para 4 of the Findings, and Judgement of 12 March 2015 in Case No. 2014-23-01, Para 14*).

A case to be examined in a form of special procedure is characterised by the following: 1) there is never dispute about rights that would follow directly from Section 258 of the Civil Procedure Law in it; 2) it is initiated on the basis of a written application; 3) there is no defendant and third persons in it (there is only the applicant and there may be interested persons); 4) it is not characterised by opposite interests but by objective necessity for the court to make a decision in case that does not involve a dispute about rights (*see: Civilprocesa likuma komentāri. II daļa. Torgāns K. (zin. red.) Rīga: Tiesu namu aģentūra, 2012, 197. lpp.*). Hence, the most typical feature that distinguishes the cases to be examined in the special form of procedure is the fact that it never has a dispute regarding rights. I.e., a person turns to the court to establish the

presence of a certain legal fact or legal condition but not to resolve the dispute of parties in the case regarding infringed rights and interests that are protected by law.

The Constitutional Court already has recognised that cases regarding insolvency proceedings are specific and differ from the cases to be examined in the general civil procedural order. The essence of civil proceedings is mainly manifested in the fact that, respecting the principle of equality of parties, their disputes regarding infringed rights and interests that are protected by law are resolved. In the case of the court proceedings by way of action, the court examines and decides cases regarding disputes and provides an objective assessment of the evidence submitted by the parties. Whereas insolvency cases are examined in the special form of procedure and they do not comprise disputes regarding rights (*see Judgement by the Constitutional Court of 17 January 2002 in Case No. 2001-08-01, Para 4 of the Findings*). Thus, in the cases of natural person's insolvency, the court establishes the financial status of a person instead of resolving the parties' dispute regarding fulfilment of liabilities. It is not disputed in these cases that a person has assumed liabilities that they are unable to meet.

However, the Applicant holds that, although the cases regarding a natural person's insolvency proceedings are examined in the special form of procedure, a dispute might arise between the creditors and the debtor regarding certain facts (*see Case Materials, p. 17*). The Ombudsman also subscribes to this opinion, noting that the legislator should envisage the possibility to appeal against the court's ruling because a dispute might arise between the parties as to whether, during insolvency proceedings, the debtor has or has not provided false information to creditors, the administrator or the court (*see Case Materials, p. 116*).

It has been recognised in legal science that “there might be differences in opinion among the parties in the case regarding satisfying or rejecting the submitted application [...]. But it does not by any means signify that the cases to be examined in a special form of procedure would be characterised by disputes regarding rights. Disputes in the course of examining the case do not mean that they should be attributed to disputes regarding rights” (*see: Civilprocesa likuma komentāri. II daļa. Torgāns K. (zin. red.) Rīga: Tiesu namu aģentūra, 2012, 205. lpp.*). Thus, the fact that, during the course of examining the application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings, the parties in the case have different opinions regarding the facts does not mean that a dispute regarding the debtor's solvency would exist.

In examining an application regarding termination of the bankruptcy procedure and a natural person's insolvency proceedings, the court decides whether there are

grounds for releasing the natural person from the remaining liabilities. Pursuant to Section 177 (1) of the Insolvency Law, a natural person is released from the remaining liabilities if they have implemented the plan for selling their property and satisfying the creditor's claims and the obligations defined in the Insolvency Law, as well as, in the course of the bankruptcy procedure, has covered in full all costs of the insolvency proceedings. However, if the court establishes that the natural person, in the course of insolvency proceedings, has provided false information to the court, the Administrator or a creditor, the court, pursuant to Para 1 of Section 179 (3) of the Insolvency Law, decides on terminating the insolvency proceedings without releasing the debtor from the remaining liabilities.

The court, in deciding on whether to release the debtor from the remaining liabilities, does not resolve the dispute between the parties in the case regarding the debtor's obligation to meet the commitments but establishes, by examining evidence in the case, whether the grounds, defined in the Insolvency Law, for releasing the debtor from the remaining liabilities exist. In view of the fact that the purpose of a natural person's insolvency proceedings is to facilitate restoration of a natural person's solvency and, at the same time, to satisfy, insofar as possible, the creditors' claims from the debtor's property, the debtor may be released from the remaining liabilities only if they have in good faith fulfilled the obligations defined in the Insolvency Law. Restoration of a natural person's solvency by releasing them from the remaining liabilities is an exception to the general principle that liabilities must be met.

In assessing the compliance of the contested provision with the first sentence of Article 92 of the *Satversme*, it should be taken into consideration that the restriction, which prohibits from appealing against the decision on terminating insolvency proceedings without releasing the debtor from the remaining liabilities instead of infringing upon the creditors' rights ensures their right to have their claims satisfied as fully as possible. Moreover, to reach the purpose defined in the Insolvency Law, pursuant to Section 159 of this law, it is the Administrator who has the obligation, after a natural person's insolvency proceedings have been declared, to supervise whether the natural person is fulfilling the obligations defined for them in the Insolvency Law. Hence the court, in deciding on releasing the debtor from the remaining liabilities, re-examines the same circumstances that have already been assessed by the administrator. The court, assessing the evidence and hearing explanations provided by the administrator, the debtor and other stakeholders at the court hearing, must ensure fair legal proceedings and must make an appropriate decision.

Hence, cases regarding a natural person's insolvency proceedings are a special category of cases, in the framework of which, in court, disputes between the parties in the case regarding rights are not resolved on their merits.

12. It is stated in the application that the decision on terminating insolvency proceedings without releasing the debtor from the remaining liabilities should be subject to appeal because the legislator has envisaged appealing against other court rulings that are unfavourable for the debtor (*see Case Materials, p. 12*).

By the law, adopted by the Saeima on 12 February 2105, "Amendments to the Civil Procedure Law", 363²⁷ (4) of the Civil Procedure Law was expressed in the following wording: "A court judgment may not be appealed in insolvency proceedings of a natural person, except for a judgement on rejection of the application for insolvency proceedings of a natural person. A judgment on the rejection of the application for insolvency proceedings of a natural person may be appealed in accordance with appeal procedures, if any of the grounds for initiation of appeal proceedings laid down in Section 440² of this Law exists." Thus, following the amendments, it is clearly stated in the Civil Procedure Law that a court's judgement on rejecting an application regarding a natural person's insolvency proceedings may be appealed in accordance with appeal procedures.

Both the judgment on rejecting an application regarding a natural person's insolvency proceedings and the decision on terminating insolvency proceedings without releasing the debtor from the remaining liabilities cause unfavourable legal consequences for the person. I.e., the judgment on rejecting an application regarding a natural person's insolvency proceedings prohibits the person from commencing insolvency proceedings and, thus, if possible, to restore solvency. Whereas the decision on terminating insolvency proceedings without releasing the debtor from the remaining liabilities only restricts a person's right to announce their insolvency within a certain term. Pursuant to Para 1 of Section 130 of the Insolvency Law of 26 July 2010, a natural person's insolvency proceedings is not applicable to or is to be discontinued with respect to a person who, during the last three years before announcing a natural person's insolvency proceedings, has intentionally provided false information to their creditors.

However, the fact *per se* that the legislator, within the framework of its discretion, has envisaged the right to appeal against the judgement rejecting the application regarding a natural person's insolvency proceedings does not mean that the possibility of appeal should be envisaged also with respect to a decision on terminating insolvency proceedings without releasing the debtor from the remaining liabilities.

The contested provision did not envisage the debtor's right to appeal against a court's decision by which his, as a natural person's, insolvency proceedings were terminated without releasing him from the remaining liabilities. However, fair legal proceedings were ensured to the debtor in the court of that instance, which examined the application regarding completion of the bankruptcy procedure and termination of a natural person's insolvency proceedings. Cases regarding a natural person's insolvency proceedings belong to a special category of cases. The court, upon establishing that the debtor has not fulfilled in good faith the obligations defined in the Insolvency Law, did not release him from the remaining liabilities. Such a decision by the court may facilitate reaching the purpose of the Insolvency Law.

Hence, a decision on terminating a natural person's insolvency proceedings without releasing the debtor from the remaining liabilities is not a decision, the possibility to appeal against which the legislator would be obliged to ensure, and the contested provision complies with the first sentence of Article 92 of the *Satversme*.

The Substantive Part

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

held:

to recognise Section 363²⁰ (5) of the Civil Procedure Law (in the wording that was in force until 31 October 2010), insofar it denies the debtor the possibility to appeal against the decision by the court by which insolvency proceedings have been terminated without releasing the debtor from the remaining liabilities, as being compatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement enters into force on the date it is published.

Chairperson of the court hearing

A. Laviņš