THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia

in Case No. 2013-08-01

9 January 2014, Riga

The Constitutional Court of the Republic of Latvia, comprised of: chairman of the court sitting Gunārs Kūtris, Justices Aija Branta, Kaspars Balodis, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to a constitutional complaint submitted by a limited liability company "VK Estate", Dzintars Abuls and Velta Lazda (hereinafter – the Applicants),

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), as well as Section 19^2 and Section 28^1 of the Constitutional Court Law,

at the court sitting of 10 December 2013 examined in written procedure the case

"On Compliance of Section 483 and Section 484 of the Civil Procedure Law with the first sentence of Article 92 of the Satversme of the Republic of Latvia".

The Facts

1. The Civil Procedure Law (hereinafter also – CPL), which the Saeima adopted on 14 October 1998, entered into force on 1 March 1999. Its Chapter 60 regulates examination of cases *de novo* in connection with significant violations of substantive and procedural legal norms.

CPL Section 483 in the wording of 14 October 1998 provided:

"A protest regarding a court adjudication that has come into effect may be submitted to the Senate by the Chief Justice of the Supreme Court, Chair of the Senate Department of Civil Cases or the Prosecutor General, provided that no more than 10 years have elapsed since the adjudication came into effect."

On 29 November 2012 the Saeima adopted the law "Amendments to the Civil Procedure Law", which entered into force on 1 January 2013. Pursuant to this law the words in CPL Section 483 "Chief Justice of the Supreme Court, Chair of the Senate Department of Civil Cases or the Prosecutor General" have been replaced by the words "Prosecutor General or the Chief Prosecutor of the Department for the Protection of the Rights of Persons and the State".

Hence, CPL Section 483 in its current valid wording provides:

"A protest regarding a court adjudication that has come into effect may be submitted to the Senate by the Prosecutor General or the Chief Prosecutor of the Department for the Protection of the Rights of Persons and the State, provided that no more than 10 years have elapsed since the adjudication came into effect."

Whereas CPL Section 484 provides that the grounds for submitting a protest regarding court adjudication are significant breaches of substantive or procedural norms of law as has been ascertained in cases, which have only been adjudicated in a first instance court, if the court adjudication has not been appealed pursuant to procedures prescribed by law due to reasons independent of the participants in the matter, or the infringement, pursuant to a court adjudication, of the rights of State or local government institutions or of such persons as were not participants in the matter."

2. The Applicants – the limited liability company "VK Estate", Dzintars Abuls and **Velta Lazda** – request the Constitutional Court to recognise CPL Section 483 and Section 484 (hereinafter – the contested norms) as being incompatible with the first sentence in Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicants hold that the contested norms are incompatible with the first sentence in Article 92 of the Satversme, since they infringe upon the Applicants right to be certain that the issues that have already been examined by a court adjudication that has entered into force (*res judicata*) will not be re-examined, and also that the enforcement of such adjudication will not be hindered. Moreover, the submitter of the protest is said to have excessively broad rights in re-examining adjudications that have entered into force.

The Applicants hold that the restriction upon fundamental rights does not have a legitimate aim, since the contested norms have been retained in the Civil Procedure Law from the previous legal system and they had the aim to ensure the principle of socialist legitimacy. It is contended that currently such institution of the civil procedure is no longer necessary.

The Applicants note that theoretically the restriction that the contested norms comprise could have the aim of protecting not the rights of society as a whole, but the rights of some persons (parties to a civil case) ensuring to them the right to fair adjudication. It is alleged that this legitimate aim could be reached by more lenient measures; moreover, without involving into the civil procedure state officials, who are not parties to the case; for example, by envisaging that the rulings by first instance court could be appealed to a court of appellate or cassations instance or cases could be examined *de novo* in connection with newly disclosed circumstances.

The Applicants refer to a number of Judgements by the European Court of Human Rights (hereinafter – ECHR) and underscore that the right to fair adjudication of case is incompatible with a legal system, where court adjudications that have entered into force are re-examined on the basis of an application or a protest submitted by a state official. Allegedly, ECHR has

repeatedly recognised that the right to a fair hearing of a case has been violated in those cases, where a court ruling that has entered into force is revoked and re-examined on the basis of an application (protest) submitted by the prosecutor general, and has noted that in such cases the right to a fair hearing of a case becomes illusory.

The Applicants hold that the restriction upon fundamental rights that the contested norms comprise is not proportional, since society in general, allegedly, does not gain anything from the fact that Applicant's right to a fair trial is restricted.

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

The Saeima recognises that in accordance with the principle of legal security, *res judicata* principle also falls within the scope of the right to a fair trial. Allegedly, it provides that a binding court ruling that has entered into force is final, i.e., the re-examination of such rulings with the purpose of achieving that the case is examined *de novo* should be inadmissible. However, it is said that the right to a fair trial is not absolute and restriction of this right is admissible. ECHR has also found that in some cases departures from *res judicata* principle were admissible.

The Saeima expresses the opinion that the contested norms have been adopted in due procedure and that the case contains no dispute regarding any procedural violations committed in the course of adopting the contested norms. Hence, the restriction upon fundamental rights had been established by law. The contested norms, allegedly, have been adopted to ensure other persons' right to a fair trial and the protection of the democratic state order. The right of some officials of the prosecutor's office to submit a protest that the contested norms establish is said to be the procedural measure that in certain cases allows balancing the principle of legal stability and the principle of justice.

The Saeima holds that the right to submit a protest is an appropriate measure for reaching the legitimate aim. ECHR has also recognised the protests

submitted by officials of the judicial power as being legitimate, unless the adjudicated case is not re-examined a number of times. Only one re-examination of a case upon the request of a party at the highest court instance, on the basis of certain criteria and abiding by definite and clear term, is said to be admissible. The Saeima draws attention to the fact that the contested norms provide for clear and precise procedure that complies with the criteria proposed by ECHR.

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

The Ministry of Justice notes that submitting of a complaint cannot be equalled to the right to turn to court that has been guaranteed in the Satversme, neither can it be regarded as an appeal. Therefore lodging of a protest should not be linked to the subjective right of a private person to turn to court or to appeal against a court's ruling. The lodging of a protest is said to be such form of procedural actions that differs from the usual procedure of legal proceedings and should be considered as an exception, where *res judicata* principle could be re-examined due to certain considerations. The legitimate aim of the protest is said to be more effective exercise of the right to a fair trial, ensuring correct application of procedural and substantive legal provisions. Therefore lodging of a protest is said to be unrelated to the procedural rights of parties. It is alleged that a person acquires such rights only at the moment when cassation legal proceedings are initiated.

The Ministry of Justice holds that the restriction upon fundamental rights that the contested norms comprise is proportional. The using of a protest in a case, where significant breaches of law can be identified, is said to be justified, and the exclusion of them from CPL would violate several persons' right to a fair hearing of a case by court. Allegedly, other, alternative measures could not ensure reaching the legitimate aim in the same quality. The particular measures proposed by the Applicants, allegedly, do not protect the interests of those persons, who have not been parties to the case. Hence, the protest is said

to be the only mechanism of protection envisaged for those persons, whose interests are infringed by a court adjudication, but who have not had the possibility to exercise their rights to protect their infringed rights or interests at court.

5. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested norms comply with the first sentence in Article 92 of the Satversme.

The Ombudsman notes that the right to a fair trial is not absolute and may be restricted; however, the State, in establishing restrictions, must take into consideration that they can be established only in order to reach a legitimate aim and they must be commensurate and necessary in a democratic society.

The restriction that the contested norms comprise and which envisages the possibility to re-examine a court adjudication that has entered into force is said to have been established by law and to have a legitimate aim – protection of other persons' rights.

The Ombudsman holds that the regulation of CPL Chapter 60 achieves a proportional balance between two elements of Article 92 of the Satversme – equality in procedural rights and access to court, since the possibility to forward a case for re-examination balances the right of parties to implement the adversarial principle and to appeal against an unfair adjudication by a court. The grounds and the terms – 10 years after the adjudication has entered into force – have been clearly defined in the law, which is said to limit persons' possibilities to lodge objections and request revoking of an adjudication. Whereas the possibility to forward to the Supreme Court ineffective and inexpedient complaints regarding adjudications by first instance courts that have entered into force is said to be restricted by the initial assessment of the complaint at the Prosecutor's General Office.

The Ombudsman draws attention to the fact that the Applicants' references to rulings by ECHR that have pointed to inadmissibility of

supervisory legal proceedings are not valid. ECHR findings in the particular cases depended from the specific facts of each case.

The Findings

6. The Applicants express the opinion that the contested norms are incompatible with the first sentence in Article 92 of the Satversme, since they envisage re-examination of final and valid court adjudication, thus violating *res judicata* principle.

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

In interpreting the first sentence in Article 92 of the Satversme, the Constitutional Court has recognised that the concept it refers to – "a fair court" – comprises two aspects; i.e., "a fair court" as an independent institution of judicial power, which hears the case, and "a fair court" as due procedure appropriate for a judicial state for hearing the case.

The concept as to its first aspect must be interpreted in interconnection with Chapter 6 of the Satversme, in the second one – it must be linked with the principle of a judicial state that follows from Article 1 of the Satversme (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Findings*). "A fair court" as a due procedure appropriate for a judicial state means the obligation of the State to establish legal safeguards for abiding by legality and the principle of justice in hearing cases. Moreover, the concept "to defend" that Article 92 of the Satversme comprises means a procedure that should be completed within reasonable term by a judgement that has entered into force (*see, for example, Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 5 of the Findings, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Para 11.1).*

Whereas the principle of judicial state, among others, follows from the Article 1 of the Satversme, which demands that cases should heard in such

procedure that would ensure fair and unbiased adjudication (*see Judgement of 11 April 2007 by the Constitutional Court in Case No. 2006-28-01, Para 12).*

Thus, the first sentence in Article 92 of the Satversme envisages the State's obligation to ensure hearing a case in such procedure, where, in abiding by the principles of a judicial state, a fair judgement would be adopted.

7. The finding that the obligation of the State to abide by the international commitments in the field of human rights follows from Article 89 of the Satversme, which provides that the State recognizes and protects fundamental human rights in accordance with the Satversme, laws and international treaties binding upon Latvia, has been embedded in the case law of the Constitutional Court (*see, for example, Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 5 of the Findings*). The interpretation of the right to a fair court, established in Article 92 of the Satversme, may be influenced by the norms of human rights included in international human rights documents. They can be of assistance in specifying the scope of particular human rights and establishing their content more accurately *(see Judgement of 3 June 2009 by the Constitutional Court in Case No. 2008-43-0106, Para 10).* International norms of human rights and the practice of applying them on the level of constitutional law serve as a means of interpretation for establishing the content and scope of fundamental rights and the principles of a judicial state, insofar this does not lead to decreasing or restricting the human rights that are included in the Satversme (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Findings*).

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) provides: "in the determination of his civil rights and obligations [..], everyone is entitled to a fair and public hearing within reasonable time by an independent and impartial tribunal established by law."

ECHR in its judgements has repeatedly noted that the right envisaged in Article 6 of the Convention to having a fair hearing of a case at court should be interpreted in interconnection with the Preamble to the Convention, which, *inter alia*, declares the principle of justice as part of the common heritage of the European states. The principle of justice requires that the principle of legal certainty is complied with, and also that the final court rulings should not be subject to appeal (*see ECHR Judgement of 28 October 1999 in case "Brumărescu v. Romania", Application No. 28342/95, Para 61).* Likewise, ECHR has noted that access to court is one of the aspects of a fair trial; i.e., the right to turn to court and defend one's interests in civil procedure. Such right would have to be recognised as being seeming (illusory) if the national legal systems of Convention member states would allow revoking of final and valid court adjudications, since the guarantees included in Article 6 of the Convention cover also the procedural rights of parties to the enforcement of a court adjudication (*see ECHR Judgement of 24 July 2003 in case "Ryabykh v. Russia", Application No. 52854/99, Para 54 – 56).*

The principle of legal security imposes the obligation upon the State to ensure stability of legal relationships, as well as to comply with the principle of legal certainty (*see Judgement of 25 October 2004 by the Constitutional Court in Case No. 2004-03-01, Para 9.2*). Thus, court adjudications that have become final after all available legal remedies have been exhausted (all possibilities of appeal have been used) or after the term for using them has expired, cannot be re-examined and *res judicata* principle should be applied to them.

Hence, the content of the principle to a fair court established in Article 92 of the Satversme comprises also *res judicata* principle.

8. The Applicants hold that the violation of *res judicata* principle occurs when a valid court adjudication is re-examined on the basis of a protest submitted by state officials (Prosecutor General or the Chief Prosecutor of the Department for the Protection of the Rights of Persons and the State); moreover, the officials referred to above are not parties to the case.

Thus, in the framework of the case under review, the Constitutional Court must examine, whether the contested norms restrict the Applicants' rights that follow from the first sentence in Article 92 of the Satversme.

Pursuant with the contested norms, a protest regarding a court adjudication that has come into effect may be submitted to the Senate by the Prosecutor General or the Chief Prosecutor of the Department for the Protection of the Rights of Persons and the State (hereinafter – the prosecutor), provided that no more than 10 years have elapsed since the adjudication came into effect. Whereas the grounds for submitting a protest regarding a court adjudication that has come into effect are significant violations of substantial and procedural legal norms that have been established in cases that have been heard only at a court of first instance if the court adjudication has not been appealed pursuant to procedures prescribed by law due to reasons independent of the parties to the case or the infringement, pursuant to a court adjudication, of the rights of State or local government institutions or of such persons as were not parties to the case.

The submitting of a protest is such form of procedural actions that differs from the usual procedure of legal proceedings and must be considered as being an exception, where *res judicata* may be revised due to certain considerations (*see Judgement of 14 May 2013 by the Constitutional Court in Case No. 2012-13-01, Para 15).* This means that, nevertheless, a possibility exists, in some cases, to re-examine court adjudications that have come into effect.

Thus, the contested norms restrict the right to a fair court included in the first sentence of Article 92 of the Satversme, since they allow re-examination of a final court adjudication that has come into effect.

9. Protection of a person's fundamental rights is one of the most significant obligations of a democratic judicial State. The State must ensure effective protection to every person, whose rights or lawful interests have been infringed upon (*see Judgement of 5 December 2001 by the Constitutional*

Court in Case No. 2001-07-0103, Para 1 of the Findings). Therefore ensuring a person's right to a fair court is the means for reaching this aim (*see Judgement of 14 March 2006 by the Constitutional Court in Case No. 2005-18-01, Para 10 of the Findings*), since the protection of a person's other fundamental rights directly depends upon duly ensuring this right.

The Satversme does not provide explicitly for cases, where the right to a fair court could be restricted; however, this right cannot be regarded as being absolute (*see Judgement of 4 January 2005 by the Constitutional Court in Case No. 2004-16-01, Para 7.1).* The Constitutional Court has repeatedly noted that the right to a fair trial is one of the most important rights of person, therefore restrictions upon it can be established only in exceptional cases (*see Judgement of 14 March 2006 by the Constitutional Court in Case No. 2005-18-01, Para 10).*

The right to a fair court may restricted insofar it is not taken away as to its essence. If such a restriction, however, has been established, then it must be examined, whether it has been done by a law adopted in due procedure and whether the restriction has a legitimate aim, and whether the restriction is commensurate with the legitimate aim (*see, for example, Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 1.2 of the Findings*)

10. In the particular case, the restriction upon fundamental rights has been established by the Civil Procedure Law, which has been adopted and promulgated in procedure provided for in the Satversme and the Saeima Rules of Procedure. Neither have the Applicants pointed to circumstances proving the opposite, and the case does not contain a dispute, whether the restriction upon fundamental rights has been established by law.

Hence, the restriction upon fundamental rights that the contested norms comprise has been adopted by law that has been adopted and promulgated in due procedure.

11. All restrictions upon fundamental rights must be based upon facts and arguments regarding its necessity; i.e., the restriction is established due to important interests – a legitimate aim *(see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

The Saeima notes that the restriction to fundamental rights that the contested norms comprise has a legitimate aim. The contested norms had been adopted to ensure other persons' rights to a fair trial and protection of the democratic state order. A protest is said to be a procedural measure that in exceptional cases allows balancing the principle of legal security with the principle of justice, envisaging the possibility to re-examine a final judgement, which is not fair, since it has been adopted by substantially violating legal norms.

The result – a fair judgement – is important in the examination of all cases. A protest is a civil procedure institution that has the aim to achieve, in cases provided for in law, examination of a case *de novo* to eliminate substantial breaches in the application of legal norms that have lead to a different outcome in the case, i.e., the judgement is not fair (*see Judgement of 14 May 2013 by the Constitutional Court in Case No. 2012-13-01, Para 15.2).* Therefore the institute of protest has been introduced to civil procedure to eliminate substantial errors made by courts and to ensure justice.

ECHR has also noted in its judgements that in some cases re-examination of judgements that have come into effect is necessary. A departure from *res judicata* principle is admissible only to eliminate court mistakes, if such necessity exists in the particular case, which has been substantiated by compelling and substantial circumstances *(see ECHR Judgement of 24 July 2003 in Case "Ryabykh v. Russia", Application No. 52854/99, Para 52).*

Hence, the restriction that the contested norms comprise has a legitimate aim – ensuring justice and protection of other persons' rights.

12. Upon establishing the legitimate aim of a restriction, its compatibility with the principle of proportionality must be examined. To

establish, whether the particular restriction is proportional, the Constitutional Court in its case law has examined: firstly, whether the measures applied are appropriate for reaching the legitimate aim; secondly, whether the aim cannot be reached by other measures, less restrictive upon an individual's rights and lawful interests; and, thirdly, whether the benefit that society gains exceeds the damage inflicted upon the individual. If, in examining a legal norm, it is recognised that it is incompatible with even one of these criteria, then it does not comply with the principle of proportionality and is unlawful (*see, for example, Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001–12–01, Para 3.1 of the Findings, and Judgement of 27 June 2004 in Case No. 2003–04–01, Para 3 of the Findings).*

13. An important element in the right to a fair trial is the right of control over court adjudication; i.e., the right to appeal against a court adjudication at a court of higher instance (*see, for example, Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 2 of the Findings*). Therefore the State has the obligation to create such legal system and establish such procedure of appeal that would allow a person to defend effectively his rights and lawful interests.

13.1. CPL provides the procedure and defines in which court instance disputes of parties should be adjudicated. It envisages hearing of cases in three-instance courts with appeal in two instances: hearing of a case at a court of first instance, at an appellate instance court and a cassation instance court. The legislator, first and foremost, has the obligation to create such circumstances (rules) of effective and fair legal proceedings, so that disputes were adjudicated already in the first instance. The errors made by the first instance court are eliminated by the appellate instance court, by re-examining a case on its merits. Whereas the cassation instance court examines only *quaestiones iuris*; i.e., issues regarding the correct application of substantial and procedural legal norms.

Upon introducing a system of appellate and cassation courts, the State may define in law also those categories of cases, for which an appeal in the particular instance is not envisaged (*see Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-03-01, Para 7 of the Findings, and the Judgement of 21 October 2013 in Case No. 2013-02-01, Para 10).* The Civil Procedure Law also envisages hearing particular categories of cases only in one instance or in two instances. Restricting the possibilities of appealing certain rulings is necessary to ensure the effectiveness of legal proceeding. The Constitutional Court has already noted that the aim of ensuring faster and more effective hearing of cases may be recognised as being legitimate in cases where the rights established by Article 92 of the Satversme are restricted (*see Judgement of 17 January 2005 by the Constitutional Court in Case No. 2004-10-01, Para 8.4).*

13.2. Usually the restriction upon the right to appeal is applied to those cases, where the particular case is not heard on its merits. CPL provides for the possibility to submit a protest for a number of such court adjudications that have been passed in cases heard only by first instance courts, are final and not subject to appeal. I.e., a protest may be submitted regarding such court adjudications that have not been reviewed in appellate or cassation procedure. Predominantly, such adjudications are linked to recovery of debts, undisputed compulsory execution of obligations, voluntary sale of real estate at an auction, and are usually adopted in cases regarding insolvency of companies and capital companies, issuing a writ of execution for enforcing a ruling by an arbitration court, extrajudicial legal protection proceedings, as well as compulsory execution of obligations in accordance with the warning procedures (*see Case Materials, Vol. 1, p. 75*).

The Constitutional Court has also noted that the contested norms establish the right to submit a protest or to ensure review of the legality of a court adjudication in those cases, where the law does not envisage the possibility for the parties to appeal against the particular court adjudication (*see Judgement of 17 January 2002 by the Constitutional Court in Case No. 2001-*

08-01, Para 4 of the Findings, and Judgement of 17 May 2010 in Case No. 2009-93-01, Para 13.2).

Lodging a protest in those cases, where the judgement by first instance court has not been appealed pursuant to procedures prescribed by law due to reasons independent of the participants in the case is the only way to ensure justice and protect persons' rights, if final judgment of first instance court that is not subject to appeal or has not been appealed has come into effect, but has been adopted by committing significant beaches of substantial and procedural legal norms.

Thus, the measure chosen by the legislator is appropriate for reaching the legitimate aim – to comply with the principle of justice and to protect other persons' rights.

14. The restriction upon rights established by the contested norms is necessary, if no other measures exist that would be as effective and would be less restrictive upon fundamental rights. In assessing, whether the legitimate aim can be reached also by other means, the Constitutional Court underscores that a more lenient measure is not just any other measure, but only such that would allow reaching the legitimate aim in at least the same quality (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings).*

The Applicants have indicated as more lenient measures appealing against adjudications by first instance court at the appellate or cassation instance or examination of the case *de novo* due to newly disclosed circumstances.

In selecting one from among several measures that are potentially appropriate for reaching the legitimate aim, the legislator enjoys the privilege to assess and to decide. Likewise, in establishing the procedure for appealing against court adjudications, the legislator has broad discretion, if the protection of persons' fundamental rights is ensured. Pursuant to Section19^2 (1) of the Constitutional Court Law, in this instance the Constitutional Court has the task

to review the compliance of the contested norms with the fundamental rights established in the Satversme, not to replace the legislator's discretion regarding law policy issues with its opinion on the possibly more rational legal regulation (*compare, see Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 13.2).*

Therefore the Constitutional Court, in assessing the compatibility of the restriction upon fundamental rights with its legitimate aim, must verify, whether the adverse consequences caused to a person by the restriction upon his fundamental rights do not exceed the benefit that society in general gains from this restriction. Moreover, in assessing the restriction referred to above, in the framework of the case under review, the institution of protest should not be examined in isolation, but in interconnection with the valid procedure of appealing adjudications in civil procedure.

The contested norms pertain to a field, where the principle of legal security and the principle of justice "clash". Therefore the legislator must ensure a balance between the fairness and stability of court adjudications. A typical example of this collision is the renewal of legal proceedings in a case that has been completed with an adjudication that has come into effect. The Civil Procedure Law also comprises a number of regulations, envisaging examination of a case *de novo*, both in connection with newly disclosed circumstances (Chapter 59) and in connection with serious violations of the substantial and procedural legal norms (Chapter 60), as well as re-examination of an adjudication in cases provided for in the legal norms of the European Union (Chapter 60^1).

The Applicants and the Saeima, as well as the summoned persons are of a similar opinion that court errors may occur, and therefore a procedure should be envisaged for eliminating the errors that have been committed. The general procedure is that court errors must be eliminated in appellate procedure by a higher instance court. However, it must be taken into consideration that there are also such court adjudications that have been adopted in cases examined

only at the first instance. Therefore, the Civil Procedure Law envisages the possibility to submit a protest regarding such adjudications.

Thus, the Constitutional Court must verify, whether, in adopting the contested norms, a balance between the principle of justice and the principle of legal security has been ensured.

15. The Applicants refer to a number of ECHR judgments and note that ECHR has recognised that a person's right to a fair trial had been violated in cases, where a court judgement favourable to the person had been revoked in supervisory procedure, by a state official re-examining the facts of the case, and, in particular, if no limiting term had been set for such actions by a state official.

In assessing the ECHR case law in cases, where violations of *res judicata* principle have been analysed, and comparing it with CPL regulation, the regulation of the particular state with regard to re-examination of valid court adjudications must be taken into consideration. Moreover, ECHR in each particular case has examined not only the legal regulation that is in force in the particular state, but also the facts of each case, *inter alia*, the actual grounds for revoking a court ruling. Therefore there are no grounds to apply directly the case law of ECHR, also the one that the Applicants refer to, to the case under review. This has been indicated also by the Saeima and the Ombudsman.

ECHR in a number of its judgement, also those that the Applicants refer to, has recognised that departure from *res judicata* principle is admissible only to eliminate court mistakes, if such necessity exists in the particular case, which has been substantiated by compelling and substantial circumstances *(see, for example, ECHR Judgement of 24 July 2003 in case "Ryabykh v. Russia", Application No. 52854/99, Para 52).*

Thus, the Applicant's opinion that Article 6 of the Convention prohibits from re-examining a court adjudication that has come into effect in connection with significant violations of legal norms and that initiation of such cases upon

a prosecutor's protest *per se* (without considering the actual circumstances of each case) would violate the right to a fair trial has no grounds.

16. The Applicants note that the contested norms, by granting to the prosecutors the right to lodge a protest to the Supreme Court, restrict the parties' right to equality and equitability. The prosecutors are said to become, essentially, advocates for the interests of a party to the case. Moreover, the term that has been allocated for the prosecutors to act, i.e., to submit a protest, - 10 years, is said to be longer than the terms defined in the Civil Procedure Law for submitting appellate and cassation complaints.

The Constitutional Court has already noted that lodging of a protest cannot be equalled to the right to turn to a court, moreover, it cannot be considered as being an appeal. Therefore, lodging of a protest should not be linked with the subjective rights of a private person to turn to court or to appeal against adjudication. Thus, only if upon submitting a protest, cassation legal proceedings are initiated, parties to the case acquire procedural rights (*see Judgement of 14 May 2013 by the Constitutional Court in Case No. 2012-13-01, Para 15).*

Thus, the Applicants view that the contested norms restrict the compliance with the principles of equality and equitability of parties in exercising their procedural rights is unsubstantiated.

17. CPL defines the pre-requisites for submitting a protest: a protest is to be submitted for an adjudication that has come into effect, it is to be submitted in connection with significant violations of procedural or substantive legal norms, and it may be submitted regarding only such adjudications that have been adopted in cases heard by a first instance court and that are not subject to appeal. All pre-requisites referred to above must be met in each case when a protest is submitted and must comprise the fundamental features of the legal grounds for submitting a protest. Moreover, a protest may be submitted only if at least one of the circumstances referred to in CPL Section 483 is present, i.e.,

at least one of the additional features of the legal grounds for submitting a protest, and they are as follows: 1) the court adjudication has not been appealed pursuant to procedures prescribed by law due to reasons independent of the participants in the matter; 2) the court adjudication infringes the rights of State or local government institutions; 3) the court adjudication infringes the rights of such persons as were not participants in the matter (*see more: Osis M. Īpašs protests civilprocesā. Jurista Vārds, 2009. gada 10. novembris, Nr. 45).*

Thus, if the pre-requisites provided for by law have not been met, a protest cannot be submitted. I.e., the institution of protest has been created as the final instrument of rights protection – and additional guarantee in the absence of other legal remedies. Hence, the grounds for submitting a protest can be only such circumstances that could have led to incorrect adjudication of a case on its merits or incorrect decision regarding a particular procedural issue (*see more: Civilprocesa likuma komentāri. II daļa. Autoru kolektīvs prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2012, 892. – 893. lpp.).*

17.1. The contested CPL Section 483 grants the right to submit a protest to the prosecutors. However, the Constitutional Court has already noted before that in practice the lodging of a protest is predominantly linked with such violations of rights that are not detected by the officials referred to in the Civil Procedure Law, but by those persons, whose interests are infringed upon by the court adjudication that has come into effect (*see Judgement of 14 May 2013 by the Constitutional Court in Case No. 2012-13-01, Para 15.1).* If such a person detects an infringement upon his rights, he has the right to submit a reasoned application to the prosecutor and request him to submit a protest against particular court adjudication. The legal grounds for submitting a protest are, first of all, examined by the prosecutors. The assessment of the basic features and additional features that constitute the legal grounds for submitting a protest falls within the competence of these officials. The prosecutors have the obligation to conduct comprehensive examination of the compliance of the facts of the particular case with the criteria defined in the Civil Procedure Law,

and only if valid doubts arise regarding significant violation of the substantial or procedural legal norms, they submit a protest. Thus, the initial examination of a complaint at the Prosecutor's General Office prevents the possibility of forwarding to the Supreme Court an unfounded complaint regarding court adjudication by a first instance court that has come into effect and restricts re-examination of final adjudications.

17.2. At the same time it must be taken into account that lodging of a complaint *per se* does not mean that in the particular case there are legal grounds for satisfying the protest. Pursuant to CPL Section 464, the admissibility of cassation proceedings is examined by a Panel of three Senators – Judges of the Supreme Court – at an assignments sitting. The Constitutional Court has already noted that the Panel of Senators can draw conclusions regarding the need to initiate cassation legal proceedings only after comprehensive scrutiny of all materials in the case (*see Judgement of 21 October 2013 by the Constitutional Court in Case No. 2013-02-01, Para 12).* Thus, also in this stage of examining a protest, it is verified, whether a final court adjudication that has come into effect has been adopted by committing significant violations of substantial or procedural legal norms, which could have led to an unfair outcome in the case, and whether such adjudication should be examined in cassation legal proceedings.

17.3. If the Panel of Senators has decided to initiate a case on the basis of the submitted protest, then the protest is examined on its merits. The Senate of the Supreme Court examines the submitted protest in accordance with the CPL regulation, which has been established for examining cases on the basis of cassation complaints. Moreover, CPL Section 464(4) provides that, upon a unanimous decision by the Panel of Senators, a case may be transferred for examination in cassation procedure by an expanded composition of the Senate.

Whereas in examining a protest on its merits, it is the obligation of the Senate to ensure that persons' right to a fair court are complied with, to abide by Article 6 of the Convention and the findings by ECHR provided in its interpretation. The Senate carries the burden of duty to balance, in each

particular case that has been initiated on the basis of a protest, the principle of legal stability and the principle of justice. Pursuant to *res judicata* principle nobody has the right to request re-examination of final adjudication that has come into effect with the aim to achieve repeated adjudication of case, The only grounds for revoking adjudication could be a serious court error, which has led to incorrect adjudication of a case on its merits, if this has resulted in significant violations of human rights, violations of the rights and lawful interests of several persons or other public interests protected by law. Solely divergent opinions of various courts regarding the outcome of adjudication cannot be the grounds for revoking the judgement (*to compare see ECHR Judgement of 24 July 2003 in case "Ryabykh v. Russia", Application No. 52854/99, Para 52*).

The assessment provided by the Senate is the final conclusion with regard to the validity of the protest and on restricting *res judicata* principle in each particular case. Thus, only if significant violations are detected, the judgement is revoked and transferred for repeated examination by a first instance court. Thus, the legislator, in adopting the contested norms, has created a mechanism that allows in a number of stages to weigh the principle of justice and the principle of legal stability in their interconnection.

Thus, the contested norms ensure the right to a fair trial and comply with the first sentence in Article 92 of the Satversme.

18. In examining a case on the basis of a person's constitutional complaint, the Constitutional Court has the obligation to assess the compliance of such legal norm, which, in fact, has infringed upon a person's fundamental rights, with legal norms of higher legal force. Thus, in examining a case that has been initiated regarding a constitutional complaint, the actual circumstances of the case, under which the contested norm has violated the applicant's fundamental rights, should be seen as relevant (*see Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 12).*

The Constitutional Court, in reviewing legal norms on the basis of a constitutional complaint, is bound by the facts of the case and the argumentation (legal grounds) provided in the application. Moreover, a mandatory pre-requisite for hearing the case is the Court's obligation to hear the institution, which has adopted the contested norm (act). I.e., this institution has the right to submit to the Constitutional Court a written answer on the facts of the case and the legal substantiation (*see Decision of 3 February 2009 by the Constitutional Court on terminating legal proceedings in Case No. 2008-46-0306, Para 4).*

18.1. Pursuant to the contested CPL Section 483, a protest may be submitted within 10 years from the moment when the adjudication has come into effect.

The Applicants have construed the term of 10 years set for submitting a protest and its incompatibility with the first sentence of Article 92 of the Satversme as a restriction upon the procedural rights of parties to a case. In Para 16 of this Judgement the Constitutional Court recognised that lodging of a protest should not be considered as being a restriction upon procedural rights, therefore the Applicants' constitutional complaint is to be recognised as unfounded in this part. Moreover, one of the facts of the case is that the protest in the Applicants' civil case was submitted within three months from the date when the final adjudication entered into force.

The Saeima, likewise, in its written reply, in accordance with the facts of the case and the legal grounds provided in the constitutional complaint, has rejected the limits of the claim of the constitutional complaint and denied validity of the constitutional complaint. I.e., the Saeima has noted in its written reply: "Even though the Applicants have contested the particular norms of the Civil Procedure Law, it follows from the submitted constitutional complaint that the Applicants contest compliance of the right that has been granted by the contested norms to the Prosecutor General and the Chief Prosecutor of the Department for the Protection of the Rights of Persons and the State, i.e., the

right to submit a protest, with the first sentence in Article 92 of the Satversme" (*see Case Materials, Vol. 1, p. 64*).

Thus, in the case under review there are no grounds for examining the issue of the admissible term for submitting a protest (CPL Section 483).

18.2. The obligation of the State to abide by the principles of a judicial state in its actions follows from the concept of a democratic republic enshrined in Article 1 of the Satversme (*see, Judgement of 19 June 2010 by the Constitutional Court in Case No. 2010-02-01, Para 4*). First of all this means that the legislator has the obligation to consider regularly, whether the legal regulation continues to be effective, appropriate and necessary, and whether it should not be improved in any way (*see, for example, Judgement of 11 November 2005 by the Constitutional Court in Case No. 2005-08-01, Para 9.5, Judgement of 15 June 2006 in Case No. 2005-13-0106, Para 17.3 and Para 18.8, Judgement of 8 June 2007 in Case No. 2007-01-01, Para 26, and Judgement of 2 June 2008 in Case No. 2007-22-01, Para 18.3).*

Moreover, the principle of judicial state requires the Constitutional Court, pursuant to its jurisdiction, to ensure the existence of such legal system, in which, as comprehensively as possible, such legal regulation that were incompatible with the Satversme or other legal norms of higher legal force, were eliminated.

The Constitutional Court draws the attention of the Saeima to the fact that ECHR, in examining cases regarding the compatibility of the institution of protest with *res judicata* principle, has noted: those States, where the respective system exists, must ensure that the hearing of cases, initiated on the basis of a protest, should not be lengthy or even interminable. An excessively long term for submitting a protest leads to the uncertainty of valid adjudications and is incompatible with the principle of legal stability, which is an integral part of a judicial state and the right to a fair trial [*see, for example, ECHR Judgement of 21 September 2006 in case "Borshchevskiy v Russia", Application No. 14853/03, Para 47 – 50, as well as the Council of Europe, Committee of Ministers Resolution of 8 February 2006 ResDH (2006)1,*

https://wcd.coe.int/ViewDoc.jsp?Ref=ResDH%282006%291&Sector=secCM&Language=lanEnglish, accessed on 14 December 2013].

Thus, the Saeima *de lege ferenda* has the obligation to consider the terms for submitting a protest defined in CPL Section 483.

The Substantive Part

On the basis of Para 3 and Para 6 of Section 29(1) and Section 30-32 of the Constitutional Court Law, the Constitutional Court

held :

to recognise Section 483 and Section 484 of the Civil Procedure Law as being compatible with the first sentence in Article 92 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

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

Chairman of the court sitting G. Kūtris