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. 2013-02-01

Riga, 21 October 2013

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

having regard to constitutional complaints submitted by the Latvian Book Publishing Trade Union (application No. 208/2012) and Ltd. "Arkolat" (application No. 17/2013) (hereinafter – the Applicants),

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para1 of Section 16, Para 11 of Section 17(1), as well as Section 19^2 and Section 28^1 of the Constitutional Court Law,

on 1 October 2013 examined in written procedure the case

"On the Compliance of Para 2 of Section 464^1 (2) with the First Sentence on Article 92 of the Satversme of the Republic of Latvia."

The Facts

1. On 14 October 1998 the Saeima of the Republic of Latvia (hereinafter – the Saeima) adopted the Civil Procedure Law (hereinafter– CPL), which entered into force on 1 March 1999. Its Chapter 57 regulates examination of a case in cassation court proceedings.

On 25 June 2008 the law "Amendments to the Civil Procedure Law", adopted by the Saeima on 22 Mau 2008, entered into force, it envisaged adding to the CPL Section 464^1 "Substantiation for Refusal to Initiate Cassation Court Proceedings".

Para 2 of Section CPL 464^1 (2) (hereinafter – the contested norm) regulates the rights of the collegium by the Supreme Court Senators (hereinafter – collegium of Senators) to refuse to initiate cassation court proceedings in those cases, when a cassation complaint formally complies with the requirements set for it and no doubts have arisen for the collegium of Senators regarding the legality of the contested judgement. The contested norm provides:

"(2) If a cassation complaint formally complies with the requirements referred to in Paragraph one of this Section and if appellate instance court has not allowed a violation of the provisions of Section 452, Paragraph three of this Law, the collegium of the Senate may refuse to initiate cassation court proceedings also in the following cases: [..] 2) no doubts have arisen regarding rule of law of the judgment of an appellate instance court and the matter to be examined has no meaning in establishment of jurisdiction."

2. The Applicants – the Latvian book Publishing Trade Union and Ltd. "Arkolat" – request the Constitutional Court to examine the compatibility of the contested norm with the first sentence in Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicants had been involved in a civil law dispute and in the course of legal proceedings submitted cassation complaint to the Senate of the Supreme Court (hereinafter – the Senate). The Senate, on the basis of the contested norm, had refused to initiate cassation legal proceedings.

The Applicants hold that the contested norm infringes upon the right that is guaranteed to them in the first sentence of Article 92 of the Satversme and that this is inadmissible in an independent and democratic state. It is contended that the State, in guaranteeing the right to appeal against a court's judgment, must guarantee accessibility of this right to all persons; however, the contested norm denies it. It is alleged that the contested norm establishes the right of a collegium

of Senators to refuse to initiate cassation legal proceedings without any grounds also in case, where the cassation complain meets all requirements of CPL Sections 450 – 454. Any right that has been established by law should be real and independent from subjective assessment made by officials. The right guaranteed in the law to appeal against a judgement before a cassation instance court may not be taken away on the basis of a decision by the collegium of Senators in the absence of doubts. The arbitrary narrowing or deprivation of the granted right to appeal, by denying access to the court of cassation instance, should be recognised as being a violation of Article 92 of the Satversme. The criteria used to determine, whether cassation proceedings should be initiated, should be objective, for example, like the ones established in the case law of the European Court of Human Rights (hereinafter – ECHR) and the regulation of the Constitutional Court Law with regard the right of a Constitutional Court panel to refuse initiation of a case. Moreover, the contested norm, in interconnection with other CPL norms, is said to actually allow a situation, where the decision by a collegium of Senators may provide no substantiation at all.

The Applicants, referring to the case law of the Constitutional Court and ECHR, note that restrictions upon the rights established by Article 92 of the Satversme can be placed only in cases of utmost necessity and may not be such that would, essentially, prohibit from exercising the right to a fair trial. Furthermore, such right of the Senate assignments sitting could cause a situation, where some unlawful judgements were recognised as being lawful, because they would not be heard on their merits, but examined only according to subjective criteria.

The Applicants also note that the contested norm, even though has been established by law, lacks a legitimate aim. Allegedly, the contested norm does not ensure unbiased and fair procedure at court and is aimed at restricting the rights of persons, who submit cassation complaints, in a case, where cassation legal proceedings should be initiated.

The restriction established by the contested norm is said to disproportional, i.e., the benefit to the society from possible procedural economy is said to be significantly smaller, compared to the restriction upon the procedural rights of a

person submitting a cassation complaint. It is contended that the contested norm is not aimed at protecting important public interests, since the society is interested in having a fair and objective court; moreover, less restrictive measures could be used to ensure procedural economy, the possible use of which had not been considered by the legislator.

3. The institution, which adopted the contested act, – the Saeima of the Republic of Latvia – does not uphold the opinion expressed by the Applicants and is of the opinion that the contested norm complies with Article 92 of the Satversme.

The Saeima notes that the contested norm had been adopted on the basis of proposals made by the Supreme Court on possible improvements of CPL and making the work of the cassation instance court more efficient. Moreover, the contested norm had been drawn up analogous to Section 338^{1} of the Administrative Procedure Law (hereinafter – APL)

The Saeima holds that the interpretation of the first sentence in Article 92 of the Satversme provided by the Applicants is obviously incompatible with the case law of the Constitutional Court on this issue until now. Allegedly, the concept "fair trial" neither in the understanding of international documents, nor of Article 92 of the Satversme guarantees the right to appeal in each civil case in the appellate and in the cassation instance. It is said that only the State's obligation to provide for fair procedure of hearing a case follows from the right to a fair trial, but not the obligation to ensure the possibility of appeal in several instances. The legislator has the right to define, which cases fall within the jurisdiction of each court instance and in how many instances the cases of various categories should be heard. Thus, the Applicants had been ensured the right that follows from the first sentence in Article 92 of the Satversme in full. A refusal to initiate a case in cassation procedure could not be assessed as a restriction upon the right to a fair trial, since the hearing of a case in two instances should be recognised as sufficient for ensuring access to court. Whereas CPL, which ensures to the Applicants the right to submit an appellate

and a cassation complaint, is said to envisage even more favourable regulation than the first sentence in Article 92 of the Satversme.

The aim of the contested norm is said to be ensuring faster and more efficient hearing of disputes, decreasing the workload of court and using judicature to develop a stable system of law. This could be recognised as being the legitimate aim for restricting the rights established in Article 92 of the Satversme. In view of the nature of the cassation instance and the decisive significance of public legal interests in its work, the legislator should, to the extent possible, release the Senate Department of Civil Cases from examining unfounded complaints, so that it would be able to perform its work properly. The contested norm is said to envisage a reasonable, well-considered and proportional mechanism for implementation of this aim and only expands the functions of the Senate assignments sitting with the possibility, in cases provided for in law, to refuse initiation of cassation legal proceedings.

It is contended that the contested norm does not restrict a person's right to submit a cassation complaint, since all cassation complaints that have been submitted are examined by a collegium of Senators. The Saeima draws attention to the fact that the contested norm comprises the word "may", which means that the cassation legal proceeding also may be initiated. Moreover, the contested norm envisages concrete pre-requisites that allow refusing to initiate cassation legal proceedings, and the collegium of Senators should verify, whether these have been met. The Saeima also underscores that the cassation legal proceedings may not be refused, if the judgement in the case is unclear, contestable and the collegium of Senators is not convinced of its legality.

In view of the above, the Saeima holds that legal proceedings in this case should be terminated. If, nevertheless, the compatibility of the contested norm will be examined, the Saeima requests recognising it as being compatible with the first sentence in Article 92 of the Satversme.

4. The summoned person – the Supreme Court of the Republic of Latvia – points to the continuously growing number of pending cases at the Department of Civil Cases and expresses the opinion that the contested norm is a

reasonable, proportional, logical and consistent step that allows ensuring proper work by the Department of Civil Cases. Both from the vantage point of the Court and the parties to the proceedings, it should be admitted that the contested norm promotes the efficiency and procedural economy of civil proceedings. The contested norm is said to allow the Senate to use the available resources for dealing with those problems that require in-depth analysis. Moreover, the Supreme Court notes that the Constitutional Court in Case No. 2007-22-01 had expressed, in subjunctive mood, a proposal on introducing the contested norm.

The Supreme Court underscores that in deciding on the issue of referring a case for being heard in cassation procedure, all materials of the case must be scrutinized, therefore, the process in which the collegium of Senators adopts the decision should be likened to hearing a case in written procedure. It is said to be of relevance that the collegium of Senators, which examines the application at an assignments sitting, is comprised of Senators – the same judges, who hear cases at a cassation instance court hearing. Moreover, the initiation of cassation legal proceedings may not be refused, if the judgement in the case is unclear, contestable and the collegium of Senators is not convinced of its legality.

The Supreme Court upholds the arguments of the Saeima with regard to the interpretation of the concept "fair trial", and also draws the attention of the Constitutional Court to the fact that Article 92 of the Satversme does not guarantee the right to an appeal in several instances. Moreover, the contested norm is said not to restrict the right to submit a cassation complaint, but only to specify and expand the functions of the Senate assignments sitting in examining complaints.

5. The summoned person – the Ministry of Justice – holds that the contested norm complies with the first sentence in Article 92 of the Satversme and upholds the interpretation of the first sentence in Article 92 of the Satversme provided by the Saeima. The certitude of the collegium of Senators with regard to the legality of the judgement by an appellate instance court is said to mean that none of the Senators has any doubts as to whether the norms of substantial law have been applied correctly, whether the norms of procedural law have not been

breached, whether the interpretation of the particular legal norms in practice is clear and whether the appealed court judgement complies with it. The objectivity of the Senate assignments sitting is said to be ensured by the opinions of three Senators, which are based upon clear judicature and assessment of the legality of the judgement. The Ministry of Justice, taking into consideration the fact that judges are independent and subject only to law, holds that the decisions by the Senate assignment sitting are objective, moreover, that such mechanism for examining cassation complaints ensures commensurate protection of a person's rights established by law.

The legislator has the right to establish by law, which cases fall within the jurisdiction of each judicial institution and in how many instances the cases of various categories should be heard. In this particular case a person has the right to submit a cassation complaint, whereas the law clearly defines the cases, in which the initiation of cassation legal proceedings may be refused.

The Ministry of Justice also draws the attention of the Constitutional Court to the statistics regarding the work of the Department of Civil Cases of the Senate and expresses the opinion that the rights granted to the Senate assignments sitting is an appropriate measure for ensuring proper activities of the cassation instance and that the efficiency of court activities is a legitimate aim. Moreover, the Ministry of Justice holds that the restriction established by the contested norm is legitimate, since it does not essentially deny the right to a fair trial.

6. The summoned person – the Council for the Judiciary – supports the contested norm, by which a collegium of Senators has been granted the right to refuse initiation of cassation legal proceedings, if no doubts arise as to the legality of the contested judgement and new judicature is not evolving.

7. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) **–** notes that the contested norm essentially is identic to Para 2 in APL Section 338^{1} (2), and also refers to the findings made in

the Constitutional Court in Case No. 2007-22-01, i.e., that such regulation was needed in the Civil Procedure Law.

The contested norm, allegedly, does not restrict a person's right to submit a cassation complaint, but only supplements the list of grounds for refusing the initiation of possible cassation legal proceedings. The Ombudsman, upholding the opinion provided in the written reply by the Saeima, expresses the opinion that the initial examination of cassation complaints and protests at the Senate assignments sitting, as established by the legislator, is an appropriate measure for ensuring proper work of the cassation instance.

The Ombudsman draws the attention of the Constitutional Court to the fact that, pursuant to CPL Section 464 (3), the Senate may refuse to initiate cassation legal proceedings at an assignments sitting only if the Senators unanimously recognise that the initiation of cassation legal proceedings should be rejected.

In view of the above, the Ombudsman holds that the contested norm *per se* is not incompatible with Article 92 of the Satversme; however, an infringement could occur in applying the contested norm in interconnection with CPL Section 464 (4^1), which envisages the possibility of adopting the particular decision in the form of a resolution, without providing substantiation in the decision. The Ombudsman, by pointing to the case law of the Constitutional Court, expresses the opinion that the decision by the Senate assignments sitting should not be extensive; however, it should comprise at least brief substantiation, otherwise the public trust in the decisions adopted by the court could decrease.

8. The summoned person – PhD student at the Faculty of Law, University of Latvia, Martins Osis – analyses the contested norm in interconnection with the pre-requisites for its application set out in the law and, essentially, upholds the opinion of the Saeima. Allegedly, the contested norm itself comprises a sufficiently detailed mechanism that to a large extent limits its application; moreover, the contested norm is not imperative. Chapter 57 of CPL is said to comprise a solution that is favourable to the submitter of a cassation complaint, which significantly differs from the system of judges' voting, consistently provided for in this law, since the decision on initiating cassation

legal proceedings can be taken only unanimously. Moreover, all three Senators, the participants of the Senate assignments sitting, have at their disposal the opinions of the parties to the case regarding the initiation of cassation legal proceedings.

In assessing the background of the norm, M. Osis concludes that before Section 464^1 was included in the Civil Procedure Code, the Senate assignments sitting, essentially, duplicated the function of the appellate instance court, but the inclusion of the contested norm in the Civil Procedure Code had strengthened the mechanism for performing the basic task of the Senate; i.e., the Senate assignments sitting now fulfils not only a formal function, but exactly the one for the performance of which it was established.

The Applicants' arguments that the examination of a complaint is formal and subjective could not be upheld. The contested norm imposes an obligation upon the Senators to assess both the possibility of developing new judicature, as well as whether there could be grounds for contesting the legality of a judgment delivered by a lower instance court. The contested norm could not be recognised as being illogical in the meaning indicated by the Applicants, since CPL envisages a number of cases, when a court, without examining a case on its merits, adopts a ruling of significant importance; moreover, sometimes the court has solely the plaintiff's opinion at its disposal. M.Osis notes that the requirements set for a candidate for the office of a Supreme Court Judge, set in the law "On Judicial Power", allow concluding that a Senator of the Supreme Court is a person with the highest qualification and rich experience. CPL was said to limit subjectivity in the process of adopting decisions significantly; however, it could not be completely excluded.

Having assessed the consequences that would occur, if the contested norm were recognised as being anti-constitutional, M.Osis holds that it would mean that a norm that is necessary for the CPL and the whole legal system of Latvia and ensures that the functions of the Senate are performed would become invalid. Moreover, this would give grounds for analysing the constitutionality of Para 1 in CPL Section 464^1 (2), since it comprises regulation that is similar to the contested norm.

The Findings

9. 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."

The Constitutional Court, in interpreting the first sentence in Article 92 of the Satversme, has recognised that the concept of "a fair court" that it refers to, comprises two aspects, i.e., a fair court as an independent institution of the judicial power, and a fair court as a procedure for examining the case that is appropriate for a judicial state (*see, Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Findings, and Judgement of 20 December 2006 in Case No. 2006-12-01, Para 9.3).*

A fair trial as appropriate legal proceedings appropriate for a judicial state comprises a number of elements – interconnected rights. It comprises, for example, the right to access to court, the principle of equality and adversariality of parties, the right to be heard, the right to a reasoned judgement by a court, the right to appeal (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 8.2, and Judgement of 17 May 2010 in Case No. 2009-93-01, Para 8.3).*

In establishing the content of the fundamental rights defined in the Satversme, Latvia's international commitments in the field of human rights must be taken into consideration. The international norms of human rights and the practice of their application on the level of constitutional law serve as a means of interpretation to establish the content and the scope of fundamental rights and the principles of a judicial state, to the extent this does not lead to decreasing or restricting the fundamental rights included in the Satversme (*see, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Findings, and Judgement of 18 October 2007 by the Constitutional Court in Case No. 2007-03-01, Para 11).* The obligation of the State to take into consideration the international commitments in the field of human rights follows from Article 89 of the Satversme, which provides that the State must recognise

and protect fundamental rights in accordance with the Satversme, laws and international agreements binding upon Latvia. This article clearly points to the fact that the legislator has had the aim to harmonise the human rights included in the Satversme with the international norms of human rights (*see, for example, Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 5 of the Findings, and Judgement of 18 October 2007 in Case No. 2007-03-01, Para 11).*

In the case under review the first sentence in Article 92 of the Satversme should be examined in interconnection with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), as well the practice of applying it at the European Court of Human Rights.

10. The Applicants note that they had submitted a cassation complaint to the Senate; however, the Senate, on the basis of the contested norm, had refused to initiate cassation legal proceedings. The Applicants' fundamental rights, defined by the first sentence in Article 92 of the Satversme, allegedly had been infringed by this action, which had been substantiated by the contested norm.

10.1. The Constitutional Court has already noted that the Senate is a cassation instance and the examination and assessment of the facts of the case does not fall within its jurisdiction. A cassation instance court examines only *quaestiones iuris*; i.e., issues regarding the correctness of applying the norms of substantive and procedural law. The principle of cassation is a principle of public law nature, since it is aimed at uniform application and interpretation of legal norms throughout the state. Accessible and understandable judicature, analysis and interpretation of problematic issues provided by the cassation instance court is an important tool for developing a uniform judicature, as well as ensuring the development of law. A significant feature in the cassation institute that exists in Latvia, in particular – within the framework of civil procedure, is that the public law interests are of decisive importance, since the dispute between the parties is examined by reviewing the civil case on its merits in the first two instances (*see Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01,*

Para 2.1 of the Findings, and Judgement of 2 June 2008 in Case No. 2007-22-01, Para 18.2).

For a cassation court to be able to perform its work properly, i.e., decide on the matters of principle in applying the norms of substantive and procedural law, the legislator, to the extent possible, should release it from the examination of ungrounded complaints (*see Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 2.1 of the Findings, and Judgement of 14 March 2006 No. 2005-18-01, Para 13.1)*. By releasing the Senate from examination of ungrounded complaints, the efficiency of the Senate's work is ensured; i.e., the possibility to channel resources for the examination of those cases, where violations of substantive or procedural laws have been identified and which are of relevance in the development of judicature.

As the Senatore of the Senate Department of Civil Cases A. Laviņš notes, following the adoption of the contested norm the work of the Senate has become more efficient and the aim of the contested norm – releasing the cassation instance from examination of ungrounded complaints – has been met. I.e., the number of cases, in which the initiation of cassation legal proceedings has been refused, has significantly increased. Whereas the number of Senate's judgements, where the judgement of an appellate instance has been revoked or amended now has gained predominance over those judgements, by which the ruling of an appellate instance court has been left unchanged *(see: Laviņš A. Pārdomas par Senāta darbības efektivitāti. Latvijas Republikas Augstākās tiesas biļetens. Rīga, 2013, Nr. 6).*

10.2. The Constitutional Court has recognised that the State's obligation to ensure that independent courts are established and to lay down a fair procedure for hearing cases follows from the first sentence in Article 92 of the Satversme. However, the Satversme does not guarantee appealing against every decision within the framework of hearing a case and does not provide for the State's obligation to establish the possibility to appeal against decisions in the appellate and the cassation procedure in all cases. Hence, the legislator has the right to establish by law, which cases fall within the jurisdiction of each judicial institution and the number of instances, in which some categories of cases are to

be examined. The initial examination of cassation complaints and protests at the Senate assignments sitting, established by the legislator, is a measure for ensuring proper work of the cassation instance, which has been appropriately chosen (*see Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 11 and 18.2).*

The Constitutional Court, examining also the content of Article 6 of the Convention and the appropriate case law of ECHR, has found that a person's subjective right to appeal against each court ruling does not follow from Article 6 of the Convention (*see, for example, Judgement of 17 January 2002 by the Constitutional Court in Case No. 2001-08-01, Para 3 of the Findings, and the Judgement by ECHR in Case "Delcourt v. Belgium", no. 2689/65, para. 25 – 26, 17 January 1970).*

10.3. In view of the considerations noted above with regard to the special importance of the cassation instance in ensuring the functioning of the judicial system, as well as the fact that neither the first sentence in Article 92 of the Satvermse, nor the international norms of human rights binding upon Latvia envisage a person's subjective right to appeal against each ruling of the court before in the appellate or cassation procedure, allows concluding that the first sentence in Article 92 of the Satversme does not prohibit the State from defining, which cases and with what pre-requisites are to be examined in the cassation legal procedure, and it also comprises the right to grant certain discretion (discretional power) to the Senate, allowing it to examine the necessity of reviewing particular cases. Hence, the Senate's right, established by the contested norm, to refuse the initiation of cassation legal proceedings *per se* cannot be recognised as being a restriction upon the right to a fair court.

Moreover, the Constitutional Court in its Judgement in Case No. 2007-22-01 has directly pointed to an analogous regulation in APL Section 338^1 and the need to include such regulation also in the Civil Procedure Law (*see Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 18.3).*

Thus, the first sentence in Article 92 of the Satversme does not envisage an obligation to the State to ensure the examination of every civil case in the cassation procedure.

11. An obligation of the State to ensure that all categories of cases can be appealed against before an appellate instance and, even more so, cassation instance court does not follow from the right to a fair court. However, if the State has envisaged such possibilities, the judicial proceedings must comply with the accessibility of court, with fair procedure and other aspects in the right to a fair court (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 10.2, or Judgement of ECHR in Cases ECHR "Staroszczyk v. Poland", no. 59519/00, para. 125, 22 March 2007; "Dunayev v. Russia", no. 70142/01, para. 34, 24 May 2007).*

However, neither does this mean that the state, which has established courts of appellate and cassation instance, would have the obligation to ensure the court of the respective instance in all cases. This finding should be interpreted to mean that in those cases, which are reviewed also in higher instance, legal proceedings and access to it in conformity with the right to a fair court should be ensured. For example, the term for submitting an appeal should be reasonable, incommensurate financial or other kind of restrictions for submitting an appellate or cassation complaint are inadmissible, the principle of the equality of parties should be complied with, the judges should be objective and unbiased, etc. *(see: Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskajā vadībā. Rīga: Latvijas Vēstnesis, 2011, 134. lpp.).*

The arguments provided by the Applicants for the greatest part can be applied to the restriction upon the access to court. The Applicants express the opinion that the Senate should not refuse to initiate cassation legal proceedings on the basis of a cassation complaint that meets all CPL requirements.

The obligation of the State to ensure the right of access to court manifests itself, first of all, in the fact that the State must establish a court, where persons can turn to for dispute resolution in at least one instance. As the materials in the case show, the Applicants' cases have been examined both in a court of first instance and also in appellate legal proceedings. Thus, even a more extensive

scope of rights has been ensured than the required minimum of the principle of access to court.

The principle of access to court, to a certain extent, may be applied also to the access to the appellate and cassation instance court. Access to these instances should not be restricted by, for example, disproportionally short procedural terms or excessively high state fees. It follows from the materials in the case that the Applicants were not denied access to the cassation instance court. The Applicants have, each of them, submitted their cassation complaints, and both complaints have been examined at the Senate assignments sitting (*see Decisions of 19 June 2012 by the Assignments Sitting of the Senate Department of Civil Cases of the Supreme Court of the Republic of Latvia in Case No. SKC-458/2012, and Decision of 25 July 2012 of the Assignments Sitting in Case No. SKC-1280/2012)*. The right of access to the appellate and cassation instance court does not comprise the requirement to hear every case on its merits and prepare a full judgement of the court.

Hence, the contested norm does not infringe upon the right of access to court that follows from the first sentence in Article 92 of the Satversme.

12. The Applicants express the opinion that the submission of a cassation complaint *per se* points to possible doubts regarding the legality of the judgement delivered by the appellate instance court and that this issue could be examined only by initiating the cassation legal proceedings and reviewing the case on its merits. Likewise, it is contended that the contested norm does not comprise clear criteria and allows adopting the decision on the basis of a subjective opinion held by the collegium of Senators.

The summoned person M. Osis notes, with good reason, that pursuant to CPL Section 456(1) in general a cassation complaint must be lodged with the court that delivered the judgement, whereas CPL Section 459(1) stipulates that in the case, where the submitted cassation complaint does not meet the formal requirements of CPL, the judge of the appellate instance court takes the decision to leave the cassation complaint not proceeded with and sets a term for eliminating the deficiencies, whereas if the deficiencies referred to in CPL

Section 459(1) are identified at the Senate, then the cassation complaint is referred back to the appellate instance court.

Hence, it is the appellate instance court, which initially assesses the compatibility of the cassation complaint with the formal requirements of CPL. The above mentioned shows that before Section 464¹ was included in the Civil Procedure Law the appellate instance court and the Senators at the assignments sitting, essentially, performed the same function – verified the formal compliance of a cassation complaint with the CPL requirements.

At present, following the inclusion of Section 464¹ into the Civil Procedure Law, the Senators at the assignments sitting must, in addition, *prima facia* examine: 1) the compliance of the judgement by the appellate instance court with the Senate's judicature in similar cases, within the limits of the considerations noted in the cassation complaint (Para 1 of CPL Section 464¹ (2)); 2) the potential impact of the case upon the establishment of judicature and possible doubts regarding the legality of the judgement by the appellate instance court (the contested norm). It follows from the above that the legislator, by including Section 464¹ into the Civil Procedure Law, created a mechanism, thanks to which the Senate assignments sitting no longer performs only a formal function by repeatedly verifying that, what initially has been verified by the appellate instance court, but ensures possibilities for fulfilling the basic functions of the Senate Department of Civil Cases (*see M.Osis' opinion, Case Materials, pp. 73 – 74)*.

Thus, there are no grounds to consider that the legislator had established one and the same function both for the court, which delivered the appealed judgement, and the Senate assignments sitting. The legislator wished to grant broader jurisdiction to the Senate assignment sitting, i.e., the right to examine not only the compliance of a cassation complaint with the formal pre-requisites set for it, but also the content thereof.

The points made by the Saeima and the Supreme Court can be upheld – that the contested norm does not restrict a person's right to submit a cassation complaint. The cassation complaint that the Senate receives is reviewed by a collegium of Senators, *inter alia*, by scrutinizing the content of the cassation

complaint, the judgement made by the court and the materials in the case. Only after appropriate examination of all materials in the case the collegium of Senators can draw conclusions regarding the need to initiate cassation legal proceedings. Essentially, this procedure can be likened to reviewing a case in written procedure. The collegium of Senators that examines the application at the assignments sitting is comprised of Senators that review cases at the court hearing of cassation instance (*see, written answer of the Saeima, Case Materials, Vol. 2, pp. 44, and explanations provides by the Supreme Court, Case Materials, Vol. 2, pp. 60 - 61).*

The collegium of Senators examines, in each particular case, whether doubts could arise regarding the legality of the judgement delivered by the appellate instance court and whether the case is of relevance in the establishment of judicature. Moreover, pursuant to CPL Section 464 (2), cassation legal proceedings must be initiated, if even one Senator of the collegium has doubts regarding the legality of the judgement delivered by the appellate instance court and the significance of the case under review in the establishment of judicature. Likewise, it has been recognised in the legal doctrine that cassation legal proceedings might be initiated if the cassation complaint provided arguments that caused doubts regarding the legality of the judgement by the appellate instance court or could point to the need of changes in the judicature (*see: Jonikāns V. Izmaiņas tiesas darbu reglamentējošās tiesību normās. Jurista Vārds, 2008. gada 1. jūlijs, Nr. 24, un Vernuša E. 464.[1] pants. Grām.: Civilprocesa likuma komentāri. II daļa. Autoru kolektīvs prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2012, 817. – 818. lpp.).*

Thus, the contested norm establishes clear criteria, the compliance with which must be assessed by the collegium of Senators before it adopts the decision to refuse initiation of cassation legal proceedings. Thus, there are no grounds no believe that the collegium of Senators, after having scrutinised all materials in the case, could not make a comprehensive and objective assessment on whether doubts exist regarding the legality of the judgement made by the appellate instance court and whether the case is of relevance in the establishment

of judicature. The examination of such facts should be considered as being the basic function a Senate assignments sitting.

Hence, the right that the contested norm grants to a collegium of Senators to assess, whether doubts exist regarding the legality of the judgement by the appellate instance court or whether the case under review is of relevance in the establishment of judicature, does not infringe upon the fundamental rights that the first sentence in Article 92 of the Satversme comprises.

13. The Applicants note that in applying the contested norm in interconnection with CPL Section 464 (4^1) the decision on refusing to initiate cassation legal proceedings is adopted in the form of a resolution and therefore the submitter of the cassation complaint cannot scrutinize the reasoning of the decision (*see Case Materials, Vol. 1, p. 33 and p. 184*). The Ombudsman also points to this fact (*see the Ombudsman's opinion in the case, Case Materials, Vol. 1, p. 82).*

By applying the contested norm, the collegium of Senators, essentially, recognizes that the judgement by the appellate instance court is legal and that no facts can be found in the case that would point to the need of establishing or reviewing the judicature established by the Senate with the regard to the particular legal issue. Thus, the collegium of Senators upholds the considerations provided by the appellate instance court and the parties to the case may familiarise themselves with these in the judgement by the appellate instance court. If the judgement is recognised as being legal and the case is not relevant in establishing judicature, then repeating the reasoning of the appealed judgement in the decision by the assignments sitting is unnecessary (*see: Vernuša E. 464.[1] pants. Published in: Civilprocesa likuma komentāri. II daļa. Autoru kolektīvs prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2012, 820. lpp.).*

The contested norm defines only the right of a Senate assignments sitting, in cases provided for by law, to adopt a decision on the refusal to initiate cassation legal proceedings, but not the form of this decision. The right to adopt

the particular decision in the form of a resolution has been provided for in CPL Section 464 (4^1). This norm has not been contested in the application, and neither has the Saeima provided a written answer on its compatibility with norms of higher legal force.

Hence, the contested norm does not regulate the form of the decision to refuse initiating cassation legal proceedings and in this aspect does not infringe upon the fundamental rights that the first sentence in Article 92 of the Satversme comprises.

The Substantive Part

Pursuant to Section 30 – 32 of the Constitutional Court Law the Constitutional Court

held:

to recognise Para 2 of Section 464^1 (2) 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 it is published.

Chairperson of the court sitting G. Kūtris