



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT ON BEHALF OF THE REPUBLIC OF LATVIA in Case No. 2012-06-01 1 November 2012, Riga

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

having regard to the application by the joint-stock company “Kālija parks”,

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 28¹ of the Constitutional Court Law,

at a court sitting on 2 October 2012 examined in written procedure the case

“On Compliance of Para 3, Para 5 and Para 7 of Section 128(2) of the Civil Procedure Law with Article 90 and Article 92 of the Satversme of the Republic of Latvia”.

The Facts

1. The Saeima of the Republic of Latvia (hereinafter – the Saeima) on 14 October 1998 adopted the Civil Procedure Law (hereinafter – CPL), which entered into force on 1 March 1999. Section 128(2) of CPL provides that the statement of claim should include the subject-matter of the claim (Para 3), the facts on which the

plaintiff bases his or her claim, and evidence, which corroborates such facts (Para5), as well as the claims of the plaintiff (Para 7) (hereinafter also – the contested norms). Even though Section 128 of CPL has been amended several times, the contested norms are still in force in the initial wording.

2. The joint-stock company “Kālija parks” (hereinafter – the Applicant) notes in its constitutional complaint that on 4 October 2011 Kurzeme Regional Court received its statement of claim. The claim was brought against a number of private persons. Kurzeme Regional Court with the decision of 11 October 2011 No.3-11/0030 (hereinafter – the decision by Kurzeme Regional Court) left the statement of claim not proceeded with. Kurzeme Regional Court noted in its decision that the Applicant had not complied with Para 5 and Para 7 of Section 128(2) of CPL: the claims should be stated clearly and unambiguously, as well as understandably both to the Court and the defendant. The inclusion of alternative claims, brought on different grounds, in one statement of claim was not admissible. The claims with the condition “in case if...” were not accurate and understandable, therefore the plaintiff should decide, what kind of claim and on what kind of grounds it wanted to bring.

The Applicant submitted an auxiliary complaint regarding the decision by Kurzeme Regional Court to the Chamber of Civil Cases of the Supreme Court of the Republic of Latvia (hereinafter – the Chamber). The Chamber rejected the Applicant’s auxiliary complaint with the decisions of 14 December 2011 No.PAC-2715 (hereinafter – the decision by the Chamber) The Chamber in its decision upheld the substantiation of the decision by Kurzeme Regional Court, additionally noting that conditional claims “in case if...” were inadmissible in Latvian civil procedure. This follows from the generally recognised case law in Latvia, as well as the whole Section 128(2) of CPL and the requirements of Para 3 and Para 7 of Section 128(2) of CPL.

It is noted in the Constitutional Complaint that the prohibition to include subordinate claim in the statement of claim cannot be found in the text of the contested norms. The Applicant had been able to find out about the existence of such a prohibition in two ways: firstly, from the generally recognised case law in Latvia, referred to in the decision by the Chamber, and, secondly, from the decisions by Kurzeme Regional Court and the Chamber, which were adopted after the Applicant

had submitted the statement of claim to the court. “The generally recognised case law in Latvia”, which was not specified in the decision by the Chamber, is not publicly accessible. Therefore the current situation, where the Chamber expects persons’ to know this “generally recognised case law” is incompatible with the requirement of the predictability of a legal norm.

The State’s obligation to create a legal mechanism that would ensure a person’s right to be informed about valid legal regulation follows from Article 90 of the Satversme. This obligation of the State also envisages a person’s rights, upon entering into legal relationships with institutions of state power, to be informed about its rights. Moreover, the State has an obligation to adopt such procedural regulation that would allow a person to understand the way, in which he or she can defend in court his or her rights and lawful interests that have been violated. The State has failed to fulfil this obligation, since the Applicant and, in general, “any average reasonable individual” can find out that subordinate claims are inadmissible in the statement of claim only after bringing a claim to court, i.e., from the court’s decision to leave the claim not proceeded with.

The contested norms are of essential importance in the civil procedure. Thus, also the content of these norms should be clearly understandable. Since their content is not understandable, the restriction to the fundamental rights set out in Article 90 of the Satversme cannot be recognised as being established by law, it has no legitimate aim and is not proportional.

To substantiate the incompatibility of the contested norms with Article 92 of the Satversme, it is noted in the application that the principle of procedural economy is one of the elements in a fair court procedure. Thus, also “civil procedural economy is an element in the fundamental right to a fair court.” The contested norms allegedly create a situation, where civil procedures continue for years. This is detrimental to the pace of civil procedure, as it forces to split the civil law dispute of persons into a number of judicial proceedings, and each of them is adjudicated in a three instance judicial system.

The Applicant holds that in the particular legal situation the contracts with the defendant are invalid. However, the court might rule otherwise and it could turn out that these contracts must be just be revoked, but are not invalid. Likewise, it might turn

out that the Applicant is mistaken regarding revoking of the contracts, but the contracts envisage penalties in the amounts of millions of lats, which is disproportional. It would be reasonable to submit this dispute for adjudication to one court and as one case. Thus, the whole dispute would be dealt with within the framework of one civil procedure. Parallel judicial proceedings, obviously, are contrary to the principle of procedural economy.

The Applicant holds that both in the practice of pre-war Latvian civil procedure, as well as in other countries belonging to the circle of Western law, and also in the case law of the Court of Justice of the European Union such subordinate claims have been allowed. Thus, the contested norms should be assessed as “remnants of the Soviet law”.

The conclusion included in the decision by the Chamber that the subordinate claims make the statement of claim contradictory and incomprehensible, is alleged to be unfounded. Quite on the contrary: the inclusion of subordinate claims ensures that the claims are comprehensible and are not contradictory. Anyway, the aim to ensure comprehensibility of claims and disallow contradictions can be reached by other means, less restrictive upon the right to a fair court.

In addition, the Applicant notes that the constitutional complaint does not contest the interpretation or elaboration of legal norms by the courts of general jurisdiction. The contested norms are the ones that create restriction to the Applicant’s fundamental rights, prohibiting from including subordinate claims in the statement of claim.

3. The institution, which adopted the contested act, – the Saeima – does not uphold the Applicant’s arguments and requests the Constitutional Court to recognise these norms as being compatible with legal norms of higher legal force.

It is noted in the written reply that the Applicant has not contested the concrete norms as such, but the interpretation provided by court. Thus, the Saeima holds, the dispute in this case is not about the constitutionality of the contested norms, but about their interpretation and application.

The legislator has defined in general several elements in the statement of claim. The contested norms were included in the Civil Procedure Law since its coming into

force and have not been amended. Both the Civil Procedure Code of Latvia, which was in force before CPL was adopted, and the laws of the inter-war period comprised a regulation similar to the contested norms and similar requirements regarding elements in the statement of claim.

The concepts used in the contested norms should be perceived as definite concepts of law, which the legislator did not define, entrusting the case law and legal doctrine to fill them with content. This approach complies with the essence of procedural law, since the legislator is unable to regulate fully all procedural issues. Therefore there are grounds for the procedural laws to define only the procedural framework. Whereas courts, hearing concrete cases, decide on the course of the procedure, by interpreting and applying procedural regulation. The arguments provided in the decisions by Kurzeme Regional Court and the Chamber, show that a sufficiently clear understanding of the application of the contested norms has evolved in practice.

To substantiate the compatibility of the contested norms with Article 90 of the Satversme, the Saeima notes that Applicant's skills in preparing the procedural documents, the range of used sources of law and the case law analysed clearly show that the Applicant has a good grasp of regulatory enactments and case law and good knowledge of procedural law. Thus, there are no grounds to believe that the contested norms were of the kind that could create difficulties for the Applicant in understanding its rights and obligations. The issue of elements in the statement of claim has been extensively analysed in procedural literature and explained in comments to the Civil Procedure Law.

The Applicant's argument regarding the inaccessibility of legal norms does not apply to the constitutionality of the contested norms. In accordance with the traditions of Latvian system of law, all court rulings are not published; however, references in subsequent rulings to the findings expressed in the previous rulings are admissible to ensure uniformity of the case law.

Thus, the Saeima holds that the Applicant's right to know its rights, established in Article 90 of the Satversme, has not been violated.

To substantiate the compliance of the contested norms with Article 92 of the Satversme, it is noted in the written reply that the right to accessibility of court should

not be interpreted as the duty of the court to accept for adjudication dispute according to a person's wishes. Procedural law has the purpose to establish an order for solving persons' disputes in a fair way. The right to accessibility of court, essentially, includes also a person's obligation to abide by procedural rules.

The materials appended to the application show that the Applicant had not been denied access to court, but the submitted statement of claim had been left not proceeded with and a term had been set for eliminating the identified shortcomings. The shortcomings that the Applicant would have to eliminate are noted in the court's decision. CPL envisages a person's right to submit an auxiliary claim, if it holds that the statement of claim has been unfoundedly left not proceeded with. Likewise, a person may submit a statement of claim repeatedly, if it had not been able to eliminate the shortcomings identified by the court within the set term. Thus, a person has been ensured sufficiently broad procedural possibilities to protect its rights.

Procedural economy does not guarantee that all issues, deemed important by the person, will be adjudicated in one case. CPL envisages flexible measures for adjudication the disputes by the same plaintiff and the same defendant in a procedurally economic way, for example, by combining cases in one judicial proceedings. The Applicant has not proven that by dividing the claims included in the statement of claim in a number of statements of claim one of the respective cases would not be examined in due time.

Adding to the opinion expressed in the written reply the Saeima notes that the content of contested norms has been revealed both in the published court rulings and in the doctrine of law repeatedly. Thus, it cannot be held that the Applicant had not been informed about the content of these norms.

Whereas the issue, noted by the Applicant, of including subordinate claims in the Civil Procedure Law is of law policy character. It requires meticulous assessment and analysis. Thus far, in the course of updating CPL, neither experts of civil law, nor judges have expressed such a proposal.

4. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested norms are not incompatible with Article 90 and Article 92 of the Satversme. The arguments provided by the

Ombudsman to substantiate this opinion are similar to the ones expressed by the Saeima.

In addition the Ombudsman notes that the contested norms do not prohibit a person from knowing its rights. The concepts used in the contested norms are general, but such regulation complies with the essence of procedural law. I.e., it is neither possible, nor necessary to solve in the text of legal norms all possible procedural issues that might arise when applying them. In each particular case the court, in accordance with the case law and legal doctrine, can assess, whether the legal requirements have been met. Moreover, the Applicant has the possibility to eliminate the shortcomings in the statement of claim, identified by court.

The contested norms also comply with the right to a fair court. The legislator has broad discretion in regulating the judicial procedure. It is impossible to establish from the actual facts of the case in what way the Applicant's right to having the case heard within reasonable term or effective access to court had been affected.

5. The summoned person – **the Ministry of Justice** – is of the opinion that the Applicant, essentially, is turning against the application of the contested norms at general jurisdiction courts.

The contested norms are sufficiently clear for the person to be able to predict the legal consequences of their application. The contested norms define the minimum requirements that must be met in preparing the statement of claim. Whereas information on the content of these minimum requirements is accessible both in legal literature and case law, which is accessible to the Applicant.

Section 28⁶ (4) of the law “On Judicial Power” provides that the Supreme Court shall create the database of judicature in the framework of the Court Information System. In accordance with the fourth part of this Section the procedure for selecting and processing information to be included in the database is established by the Chief Justice of the Supreme Court, approved by the Ministry of Justice. When selecting court rulings, it is considered whether the ruling reflects in a general way a legal issue of the respective field and would be important for gaining knowledge about the case law in the particular field of law.

The Ministry of Justice draws the attention of the Constitutional Court to the fact that preparing court rulings for publishing on the Internet requires investing substantial resources. The number of civil cases adjudicated by courts is considerable – in 2010 the court of first instance received 76 581 civil cases, but 78 484 cases were completed, whereas in 2011 already 88 392 civil cases were received and 88 225 of these were completed. Thus, to ensure mandatory publication of all judgement made in civil cases on the Internet home page would require considerable resources from the State budget.

Assessing, whether CPL allows including in one statement of claim subordinate (alternative) claims, the Ministry of Justice noted that the legal regulation allows including in the statement of claim mutually related claims, without specifying, whether these can be subordinate or alternative. Section 128 of CPL recognises the mutual relatedness of several claims as the decisive criterion for inclusion in the statement of claim. Mutually related claims should be understood as such claims, separate adjudication of which would be impossible or useless, which might lead to contradictory judgements or the adjudication of which within one judicial proceedings could facilitate faster and more effective adjudication. Whereas mutually exclusive claims should be regarded as alternative claims.

Section 134(1) of CPL allows including mutually related claims in one statement of claims. The term “mutually related claims” used in the legal norm referred to is an abstract concept, which the court fills with content in each particular case.

6. The summoned person – doctoral student of the Faculty of Law, University of Latvia Martins Osis – notes that historically the understanding of the contested norms in the Republic of Latvia should be linked with the Regulation of the Civil Procedure, accessible in the edition by the Saeima Codification Division of 1932. Para 4 of Section 359 of the Regulation of the Civil Procedure provides that those facts of the case, from which the claim originates, should be indicated in the claim request, whereas Para 5 – that the plaintiff should indicate evidence and law, which serve as the grounds for the claim, but Para 6 – that the plaintiff must indicate the claim, i.e., what the court is requested to rule on. Section 360 of the Regulation of

Civil Procedure had been essential, providing: “Claims, that arise on different grounds, shall not be combined in one request of claim. A separate request of claim regarding such claim shall be submitted.”

Thus, it can be concluded that the grounds, as well as the subject matter of claim have been mandatory elements to be included in the statement of claim. The existence of the mandatory elements in the content of the statement of claim is an important precondition for the civil legal proceedings to take place altogether.

The contested norms only define the mandatory elements in the content of the statement of claim; however the wording chosen and the definition of the elements in the content (the subject matter and grounds of the claim) are left at the plaintiff’s discretion. The plaintiff in the statement of claim, likewise – the defendant in the counter-claim, are not restricted as to the choice of wording for the grounds and subject matter of claim; however, the subject matter and grounds of the claim, included in the statement of claim, should always be understandable to the court and clearly explain the plaintiff’s demands.

CPL regulation, which is in force, allows concluding that the contested norms do not prohibit the plaintiff from including into the statement of claim related claims, or to define them in a subordinate or alternative way. These are the rights and free choice of a participant to the case. Moreover, Para 1 of Section 133(1) of CPL does not envisage the right to the judge to leave the case not proceeded with, if the plaintiff has defined the claims included in the statement of claim “in subordinate order”. Para 1 of Section 133(1) would be applicable if any of the elements of content defined in Section 128 had not been included in the statement of claim altogether.

There is no need to examine the compatibility of the contested norms with the *Satversme* on their merits, since the Applicant is dissatisfied with the way a court of general jurisdiction has applied it. Likewise, the Applicant’s arguments regarding the importance of procedural economy in assessing the constitutionality of the contested norms is seen as invalid, since the principle of procedural economy is exercised in the framework of an initiated civil procedure, not prior the decision on initiating a case.

The contested norms are irreplaceable in the CPL regulation. They form the substance of the statement of claim, without them a statement of claim in a civil case

would be inconceivable. If the contested norms were recognised unconstitutional, these norms would have to be created anew.

The Substantive Part

7. The application contains a request to assess the compatibility of the contested norms with Article 90 and Article 92 of the Satversme.

7.1. The Saeima holds that the contested norms do not affect the fundamental rights established in Article 90 of the Satversme and requests the Constitutional Court to terminate judicial proceedings in this part.

The Constitutional Court has recognised that in examining cases on possible violations of particular fundamental rights, because of their nature the examination of the infringement upon fundamental rights should be combined with the examination of the case on its merits. Even if doubts have arisen concerning the possibility to terminate judicial proceedings, the Court has *ex officio* duty to examine the initiated case and to provide as extensive an assessment as possible on whether the Applicant's fundamental rights have been violated (*see Judgement of 7 April 2009 by the Constitutional Court in Case No. 2008-35-01, Para 11.3*). The Constitutional Court, in examining, whether a concrete legal norm is sufficiently clear, so that its regulation would not come into conflict with Article 90 of the Satversme, its case law has conducted such an assessment by examining the case on its merits (*see, for example, Judgement of 30 March 2011 by the Constitutional Court in Case. 2010-60-01, Para 15*).

Thus, the Constitutional Court has no grounds to satisfy the request by the Saeima regarding termination of the judicial proceedings in this part.

7.2. Article 90 of the Satversme provides: "Everyone has the right to know about his or her rights."

In interpreting this norm, the Constitutional Court has recognised that it introduces the catalogue of fundamental rights included in the Satversme and points to the significance that the legislator has attributed to enshrining this fundamental right in the Satversme. Only a person, who knows his or her rights, is able to exercise them

and – in a case of ungrounded violation – to defend them at a fair court. Thus, the Satversme envisages a person’s subjective public right to be informed about his or her rights and also obligations.

A person’s right to know his or her rights also defines the framework for the legislator’s actions. Laws and other regulatory enactments must be publicly accessible. Likewise, a person has the right to find out about the case law in applying regulatory enactments, i.e., in a democratic state judicature must be freely accessible to all interested parties. Whereas a norm adopted by the legislator should be worded in such a way that an individual, in case of necessity asking for appropriate advice, would be able to regulate his or her actions (*see Judgement of 20 December 2006 by the Constitutional Court in Case No. 2006-12-01, Para 16, and Judgement of 30 March 2011 in Case No. 2010-60-01, Para 15.2*). With the help of judicature, in particular, persons obtain important information on the practical aspects of application of legal norms and thus are able both to defend their rights more effectively and to form a better understanding of their obligations.

7.3. Whereas Article 92 of the Satversme provides: “Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.”

Even though the Application contains a request to assess the compatibility of the contested norms with the whole Article 92 of the Satversme, it follows from the Application that the substantiation provided applies only to the compatibility of the first sentence in this Article, which guarantees the right to defend one’s rights and lawful interests in a fair court.

The insight that the concept “fair court”, mentioned in the first sentence of Article 92 of the Satversme, *inter alia*, means also due procedure, compatible with a judicial state, for hearing the case has been enshrined in the case law of the Constitutional Court (*see, for example, Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Substantive Part, and Judgement of 20 December 2006 in Case No. 2006-12-01, Para 9.3*). In this respect Article 92 of the Satversme envisages the State’s obligation to adopt procedural

norms, in accordance with which the courts would examine cases in a procedure that would ensure fair and unbiased adjudication of these cases (*see Judgement of 17 May 2010 by the Constitutional Court in Case No. 2009-93-01, Para 8.2*). The right to a fair court also means that a person has a right to access to court. I.e., the fairness of the process of adjudication would be meaningless if access to the judicial procedure were not ensured (*see, for example, Judgement of 14 March 2006 by the Constitutional Court in Case No. 2005-18-01, Para 8*).

Thus, Article 90 of the Satversme in interconnection with the first sentence of Article 92 provides that the procedural legal norms adopted by the legislator, which regulate access to court, should be sufficiently clear and unambiguous.

8. It is noted in the constitutional complaint that the contested norms deny the Applicant the right to submit to court a statement of claim, which would include claims, founded upon mutually excluding grounds – claims including the condition “in case if” (hereinafter also – subordinate claims). Subordinate claims are understood as such claims, indicated in the statement of claim in the order of priority, the assessment of which (satisfying or rejecting) is linked with the assessment of the preceding claim (satisfying or rejecting).

In legal science the subject matter of a claim is understood as the request to prevent violation of substantive rights by a court ruling. It is the legal relationship between the plaintiff and the defendant, the existence or absence of which the court is asked to identify by the plaintiff, who at the same time requests protection of his or her infringed or contested rights or interests that are protected by law [*see: Civilprocesa likuma komentāri. I daļa (1. – 28. nodaļa), autoru kolektīvs prof. K. Torgāna zinātniskajā redakcijā. Rīga, Tiesu namu aģentūra, 2011, 321. lpp.*].

The Department of Civil Cases of the Supreme Court Senate (hereinafter – the Senate) has repeatedly explained the grounds of claim, which are closely linked with the subject matter of claim, as the circumstances (legal facts), which the plaintiff uses to substantiate his or her claim regarding existence, amendment or termination of a legal relationship (*see Judgement of 15 November 2006 by the Senate in Case No. SKC-635 the Substantive Part, and Judgement of 12 December 2007 in Case No. SKC-237, the Substantive Part. Latvijas Republikas Augstākās tiesas Senāta*

Civillietu departamenta spriedumi un lēmumi 2006. Rīga, Tiesu namu aģentūra, 2007, 533. lpp.; Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedumi un lēmumi 2007. Rīga, Tiesu namu aģentūra, 2008, 603. lpp.).

The identification of the content of the contested norms with regard to claims admissible in judicial proceedings regarding a claim is inseparably linked with Section 134(1) of CPL, as the legislator has *expressis verbis* envisaged in this section that several mutually related claims can be combined in one statement of claim. On the basis of this norm, it would be permissible to include in one statement of claim, for example, the claim to recognise dismissal from job by the employer as invalid, claim to reinstate a person into the job and the claim to collect remuneration for work for the period of forced absence from work. Likewise, the claim for collecting rent payments and claim regarding eviction of the defendant from the residential premises also could be included in one statement of claim.

However, some civil procedure norms also envisage prohibition to separate a claim. Thus, for example, Section 238(1) of CPL provides that in a case of dissolution or annulment of marriage claims that follow from legal family relationship should be adjudicated concurrently. Such claims are disputes regarding determining of custody, exercise of right to access, child support, means for the provision of the previous welfare level of support of the spouse, joint family home and household or personal articles, division of property of spouses (also if it affects third persons). The legislator, by establishing that such claims must be examined within the framework of one judicial proceedings had wanted, in accordance with the principle of procedural economy, to ensure that cases are examined by court in due time (*see Judgement of 20 October 2011 by the Constitutional Court in Case No. 2010-72-01, Para 10.1*).

The Ministry of Justice also notes that the CPL regulation allows including in the statement of claim mutually related claims, without specifying what kind of claims these should be. The law recognises the mutual relatedness of claims as the decisive criterion for including them in one statement of claim. Mutually related claims should be understood as such claims, separate adjudication of which would be impossible or inexpedient, which might lead to conflicting judgements or the joint adjudication of which in one judicial proceedings, from the perspective of procedural economy, would facilitate faster adjudication of the case (*see Case Materials, p.121*).

When deciding on the received statement of claim, the court, first of all, taking into account the principle of legal certainty and the procedural guarantees of a fair court, must consider, whether the claims included into it can be recognised as mutually related claims, which Section 134(1) of CPL allows joining into one statement of claim. In such a case the court, *inter alia*, would have to assess, whether the claims included in the statement of claim have one and the same defendant, whether one and the same court has the jurisdiction to examine these claims, whether the claims are subject to the same type of judicial procedure, whether the law does not prohibit joining such claims.

Thus, CPL allows the defendant to submit to a court also a statement of claim containing several claims.

9. Pursuant to Article 85 of the Satversme and Section 1 and Section 16 of the Constitutional Court Law, reassessment of the interpretation, application of legal norms or evaluation of evidence conducted by a court of general jurisdiction do not fall within the jurisdiction of the Constitutional Court (*see, for example, Judgement of 21 October 2002 by the Constitutional Court in Case No. 2002-05-010306, Para 7 of the Substantive Part, and Judgement of 3 June 2009 in Case No. 2008-43-0106, Para 12*). Matters of principle regarding interpretation of legal norms are decided upon by cassation instance court, which also ensures uniform application of legal norms (*see Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 2.1 of the Substantive Part*).

Thus, the Constitutional Court has no right to re-examine the way a court of general jurisdiction has interpreted or applied concrete CPL norms. Section 128(2) of CPL defines the minimum requirements that the law establishes regarding the drafting and content of the statement of claim. Likewise, the contested norm regulates several requirements regarding elements in the statement of claim. The case does not contain a dispute regarding the plaintiff's obligation to indicate in the statement of claim the subject of claim, the facts on which the plaintiff bases his or her claim, evidence, which corroborates such facts, as well as the claims of the plaintiff.

It follows from the constitutional complaint that the contested norms had served as the grounds for the court to set preconditions of procedural nature for examining the

claims included in the statement of claim on their merits. In this case the Applicant's right to access to court has been affected: the court of general jurisdiction has noted that the contested norms deny the Applicant the right to submit to court a statement of claim containing subordinate claims. This is the reason why the Applicant holds that the contested norms are incompatible with norms of higher legal force, since they have caused adverse legal consequences, i.e., served as the basis for denying the Applicant the right to submit to court a statement of claim with content that the Applicant would have preferred.

CPL grants to a person the right to defend rights or interests protected by law, if these have been violated, according to the procedure established by law. Concurrently the law also imposes the obligation to abide by the procedural order for right protection established in it. The fact that the rights must be protected in a particular procedural order prohibits a person to turn to court in a way, which is not envisaged in law.

Thus, the contested norms, to the extent they deny the plaintiff the right to include subordinate claims in one statement of claim, have restricted the Applicant's fundamental rights.

10. The Satversme does not directly define those cases, where the right to a fair court could be restricted, however, this right cannot be considered to be absolute (*see Judgement of 4 January 2005 by the Constitutional Court in Case No. 2004-16-01, Para 7.1*). An assumption that no restrictions altogether can be applied to concrete fundamental rights would enter into conflict with other person's rights guaranteed in the Satversme, as well as other norms of the Satversme (*see Judgement of 22 October 2002 in Case No. 2002-04-03, Para 2 of the Substantive Part*).

A person's right to access to court may be restricted; however, it must be verified, whether the restriction can be justified, i.e., whether 1) it has been established by law; 2) it has a legitimate aim; 3) it is proportional (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 12*).

The Constitutional Court has recognised that the first sentence in Article 92 of the Satversme does not guarantee to a person the right to have any issue, of subjective importance to him or her, adjudicated by court (*see Judgement of 23 April 2003 by the*

Constitutional Court in Case No. 2002-20-0103, Para 1 of the Substantive Part). Neither does Article 92 of the Satversme envisage that the concrete issue will be adjudicated in accordance with a person's preferred procedural regulation.

Thus, the first sentence of Article 92 of the Satversme defines the legislator's obligation to adopt procedural norms that are necessary for fair administration of justice; however, these norms do not envisage a person's rights to demand adoption of procedural norms with concrete content.

11. While the case was being prepared, no materials were obtained that would cause doubt, whether the contested norms had been adopted and promulgated in due procedural order.

However, the Applicant holds that the restriction included in the contested norms has not been established by law, since a clear prohibition to include in the statement of claim also subordinated claims does not follow from these norms.

The Constitutional Court has recognised that the legislator is obliged to adopt such legal norms, which are sufficiently clear. However, legal regulation should not be too casuistical, as in such a case the regulation, in view of the changeability of legal relations or the special facts of a particular case, could be unfair. A situation like that would be made even more feasible, if the legislator instead of defining the most essential regulations, applicable to a longer period of time, were to describe in detail the legal content of each norm (*see Judgement of 16 December 2008 by the Constitutional Court in Case No. 2008-09-0106, Para 7.2*).

Situations may arise, where a legal norm has a rather abstract content, and the party applying this norm, in order to establish rights or obligations that follow from it, has to use sources of legal doctrine or judicature, as well as interpret the legal norm. However, the need to establish the content of a legal norm *per se* cannot be recognised as being incompatible with the Satversme.

Simultaneously, the Constitutional Court notes: a situation, where the grounds of a court ruling on the legal consequences of applying particular norms would be limited to a general reference to abstract case law or unidentifiable judicature, would be unacceptable. Judicature is significant in adjudicating cases, as it can be used to follow the argumentation included in a court ruling. Likewise, judicature helps to form

a better understanding of the court's considerations in deciding to accept arguments expressed by participants of a case, or, on the contrary – to reject these. The aforementioned obliges the court to include as accurate and clear as possible references to those court rulings, which have served as the grounds for adopting the particular ruling.

However, the Constitutional Court cannot uphold the Applicant's opinion that it had been impossible to establish the content of the contested norms and the legal consequences of applying them before submitting the claim to court. As regards the contested norms, it must be noted that their content has been described in commentaries to CPL, which have been published repeatedly (*see, for example: Civilprocesa likuma komentāri, 320. – 323. lpp.*). Moreover, the issues regulated by the contested norms have been repeatedly examined in the published rulings by the Senate (*see, for example: Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedumi un lēmumi 2006, 530. – 533. lpp.; Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta spriedumi un lēmumi 2007, 600. – 606. lpp.; home page of the Supreme Court www.at.gov.lv, section „Nolēmumi”:* *Senāta Civillietu departaments, accessed on 10 October 2012; homepage: <http://juridika.tiesas.lv/> E-pakalpojumu judikatūras datubāzes „Nozares un apakšnozares” sadaļa „Civilprocess”, accessed on 10 October 2012).*

The opinion expressed by the Ombudsman can be upheld, i.e., even if prior to submitting the statement of claim to Kurzeme Regional Court the Applicant was not informed about the interpretation of the contested norms and the case law in Latvia regarding the particular issue, the court of general jurisdiction explained to the Applicant these issues (*see Case Materials, p.77*).

Thus, the restriction to fundamental rights that the contested norms comprise has been established by law and complies with Article 90 of the Satversme.

12. All restrictions to fundamental rights must be founded upon facts and arguments regarding their necessity, i.e., the restriction is established due to important interests – a legitimate aim (*see, for example, Judgement of 14 March 2006 by the*

Constitutional Court in Case No. 2005-18-01, Para 13). Article 116 of the Satversme provides, *inter alia*, that restrictions to the fundamental rights of a person with the aim of protecting other persons' rights may be admissible.

In establishing restrictions to rights, in the procedure before the Constitutional Court the obligation to present and substantiate the legitimate aim of these restrictions falls upon the institution, which has adopted the contested act. In the case under review it must be established, whether the Saeima, in adopting the contested norms, acted with the purpose of reaching a legitimate aim.

The written answer by the Saeima and the additional information provided allow concluding that the legitimate aim of the contested norms is the need to protect other persons' rights. The other persons' rights are protected by the contested norm defining procedural preconditions with regard to the content of the statement of claim – they grant a court the right to leave a statement of claim containing subordinate claims not proceeded with.

The Constitutional Court notes that the rights that the contested norms and Section 134(1) of CPL grants to court of general jurisdiction, allowing it to assess the claims included in the statement of claim, are significant. The claims included in the statement of claim are closely linked with the type of judicial procedure, as well as the subject matter and grounds of the claim. They give the possibility to individualise and classify claims and define, for example, the limits for amending and proving the claim.

The grounds noted in the statement of claim allows the defendant to understand, what exactly the plaintiff wants to achieve with the mediation of court, and, thus, to prepare in the best possible way to refute the claim. Likewise, the grounds allow the court to identify the contested or violated right or legally protected interest, for the protection of which the person has turned to court and the legal assessment of which the court has to provide. The grounds for the claim must be defined accurately, so that it could be clearly distinguished from any other claim, which has been already adjudicated or is still existent, or might arise between the parties in the future, but on other grounds (*see: Bukovskis V. Civilprocesa mācības grāmata. Rīga, autora izdevums, 1933, 303. lpp.*).

In order for the claims included in the statement of claim to be recognised as being mutually related, they should be sufficiently concrete. The clarity in the wording

of the claim is closely linked with the court's obligation to adopt as unambiguous ruling as possible. I.e., after the ruling has come into force it must be understandable to what the positive aspect of the judgement *res judicata* applies – the judgement has the force of evidence in another case, as well as the negative aspect of the judgement *res judicata* – repeated turning to court regarding already adjudicated matters is inadmissible.

CPL allows the plaintiff to submit to court a statement of claim, containing mutually related claims. At the same time the court, with the objective of ensuring legal certainty and the parties' rights to fair judicial proceedings, has been granted broad discretion to give its legal assessment regarding claims that cannot be recognised as being mutually related and the adjudication of which in one judicial proceedings would be inadmissible.

In adopting civil procedure regulation the legislator has the obligation to ensure that the respective legal norms establish a fair balance between the rights or legally protected interests of parties. The contested norms protect the defendant's rights, as they impose the obligation upon the plaintiff to define the claim as unambiguously as possible, as well as submit proof of its validity. Legal regulation or such interpretation or application of Section 134(1) of CPL, which would allow including in one statement of claim without any restrictions any claims, would, undoubtedly, grant greater procedural advantages to the defendant. However, the granting of such rights would at the same time significantly burden the defendant and in some cases it could even happen that the plaintiff abuses his rights.

Thus, the restriction of the fundamental rights has a legitimate aim – protecting the rights of other participants in the civil procedure, first of all, those of the defendant.

13. To establish, whether the restriction is commensurate with the legitimate aim, which the State wanted to achieve, it must be verified, whether a reasonable balance between the restriction to person's fundamental rights and the interests of society is ensured. To assess, whether the restriction included in the legal norm

adopted by the legislator, complies with the principle of proportionality, it must be established:

firstly, whether the measures used by the legislator are appropriate for reaching the legitimate aim;

secondly, whether such action is necessary, i.e., whether the aim might be reached by other means, less restrictive to a person's rights and lawful interests;

thirdly, whether the legislator's actions are appropriate, i.e., whether the benefit gained by society exceeds the damage inflicted upon a person's rights and lawful interests.

If it is recognised that the restriction established by the legal norm is incompatible with even one of these criteria, then the restriction is incompatible 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 Substantive Part*).

13.1. The means chosen by the legislator are appropriate for reaching the legitimate aim, if this aim is reached by the particular legal regulation.

The Constitutional Court holds that in the case under review obvious causality between the contested norms and their legitimate aim exists. I.e., the contested norms envisage preconditions for exercising the plaintiff's civil procedure rights and grant to a court of general jurisdiction the discretion to leave statements of claim, which contain subordinated claims, not proceeded with. Thus, the application of the contested norms in the civil procedural relationships results in legal certainty and protects the rights of other participants of the judicial proceedings, first of all, the defendant's.

Thus, for example, the Chamber held that the Applicant had included in the statement of claim that was submitted to the court of general jurisdiction several different claims, twelve in total (*see Case Materials, pp. 18 – 20*). The statement of claim, *inter alia*, requests recognising as invalid a number of contracts, but, if that were impossible, to recognise the penalties following from these as being invalid, and in case it were impossible, to recognise the penalties that follow from the contracts as invalid, to decrease the amount of penalty payments. The court had also been asked to recognise that one natural person had been illegally present on the territory owned by the Applicant and against the Applicant's will, but another person had achieved the

signing of a contract by deceit and unlawfully. Thus, the Chamber established that the Applicant had included in one statement of claim mutually exclusive grounds for claims. Moreover – the Chamber also concluded that the Applicant had included in one statement of claim both claims that should be examined in claims procedure and such claims, the examination of which in claims procedure was inadmissible (*see Case Materials, p. 24*).

The above mentioned indicates that the contested norms were applied in order to reach the legitimate aim of the restriction to the fundamental right, – the court, disallowing examination in one judicial proceedings claims, which are mutually exclusive or should be examined in various judicial proceedings, acted with the purpose of protecting the rights of the participants to the judicial proceedings.

Thus, the contested norms are appropriate for teaching the legitimate aim.

13.2. The restriction to rights established by the contested norms is necessary in the absence of other means that would be as effective and the choice of which would be less restrictive to fundamental rights. In assessing, whether the legitimate aim could be reached by other means, the Constitutional Court emphasizes that a more mitigating measure cannot be just any other measure, but only a measure 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 Substantive Part*). The Constitutional Court in its judgements has repeatedly concluded that it is not obliged to assess, whether alternative solutions would or would not be more appropriate for solving the situation (*see, for example, Judgement of 8 March 2006 by the Constitutional Court in Case No. 2005-16-01, Para 15.8, and Judgement of 13 February 2009 in Case No. 2008-34-01, Para 22*).

The Constitutional Court notes that the Applicant had not been substantially denied the right to a fair court. The Applicant had the right to include the claims defined in the statement of claim in several statements of claim. This would prevent including different and, in the opinion of the court of general jurisdiction, mutually exclusive claims in one statement of claim.

The Applicant notes that the legislator's obligation to adopt such civil procedural regulation, which would allow including in one statement of claims subordinated claims, is derived from the principle of procedural economy. Whereas

the Saeima, substantiating the rights of the court to leave a statement of claim that contains subordinated claims not proceeded with, refers to the principle of legal certainty, as well as the need to protect the rights of other participants in the judicial proceedings.

The Constitutional Court has recognised that legal stability, which requires clearly regulated process of judicial proceedings, is an essential part in the principle of judicial state. If a number of legal principles collide, than the legislator, first of all, has the obligation to decide the issue in favour of one of these principles. The legislator has broad discretion in searching the balance between a number of legal principles (*see, Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 8 of the Substantive Part*).

The legislator, in choosing between a number of measures potentially appropriate for reaching the legitimate aim, has the privilege of assessing and deciding. Likewise, the legislator has broad discretion in establishing the regulation of civil procedure, if the protection of persons' fundamental rights is ensured (*see Judgement of 17 January 2005 by the Constitutional Court in Case No. 2004-10-01, Para 9.1*). The Constitutional Court does not deny that a different regulation on the claims to be included in the statement of claim, as well as different interpretation and application of the contested norms by a court of general jurisdiction is possible. However, pursuant to Section 19²(1) of the Constitutional Court Law the Constitutional Court must assess the compliance of the contested norms with the fundamental rights established in the Satversme, not to substitute the legislator's discretion or the considerations by the court of general jurisdiction by its opinion regarding the possibly most rational civil procedural regulation or the application of such regulation.

The contested norms and Section 134(1) of the CPL in their interconnection are aimed at establishing a fair balance between the interests of the participants in the case. These norms, with the aim of ensuring fair judicial proceedings, grant the discretion and give the right to a court to assess, whether the claims included in one statement of claim can be examined in one judicial proceedings. The Constitutional Court notes that such court's discretion is essential for reaching the necessary result of court's work – adoption of a fair ruling.

Thus, the contested norms are necessary for reaching the legitimate aim.

13.3. In assessing the suitability of the restriction to the fundamental rights for the legitimate aim, it must be established, whether the adverse consequences to a person caused by this restriction to fundamental rights do not exceed the benefit that this restriction grants to society in general. Thus, the Constitutional Court must establish, which interests should be balanced in this case, and decide, which of these interests should be given priority.

13.3.1. The Applicant notes that civil procedure should be regarded as belonging to public law, therefore the participants in its legal relationship, in accordance with the dispositive principle and the principle of private autonomy, have the right to do everything, which has not be directly prohibited by the legislator.

It has been already recognised in the case law of the Constitutional Court that the civil procedure should be regarded as pertaining to public law – civil procedure forms a united system of public law relationships (*see Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 16.2*). Hence, a private person has the right to defend its rights that have been violated, restricted or contested not in any procedure of its own liking or it subjectively holds as being the most expedient, but in the procedure established by the legislator.

Also the doctrine of law recognises that the parties' discretion, which follows from the dispositive principle as the procedural manifestation of private autonomy, has some restrictions, which are established by law or court. It means that only law or court establishes the procedure, in which the procedural rights can be exercised. The concept of parties' discretion is applicable only to the choice – to exercise the rights established by law or to waive these rights. Thus, for example, if rights have been violated, a person has the right to choose – to turn to court to defend the violated rights or to reconcile oneself to the infringement. However, the procedure for exercising the rights established by law is not and cannot be dependent only upon a party's subjective opinion (*see: Līcis A. Prasības tiesvedība un pierādījumi. Rīga, Tiesu namu aģentūra, 2003, 55. un 56. lpp.*).

Hence, the dispositive principle and the principle of private autonomy cannot be interpreted as allowing to derive from them a person's right to defend the violated civil rights in a way that has not been envisaged in law.

13.3.2. The Applicant notes that the out-dated regulation included in the contested norms is one of the reasons, why the hearing of cases in civil procedure is so protracted, and if the law would allow including subordinate claims in one statement of claim the judicial proceedings would become much shorter.

The Constitutional Court has already recognised that the period of time that has passed since the adopting of the contested norm *per se* cannot be the grounds for recognising this norm as being incompatible with the legal norms of higher legal force. The constitutionality of this norm can be re-examined only if the contested norm does not comply with the actual social reality or enters into conflict with the legal relationships, which in the course of society's development have become dominant (*see Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 14.3.1*).

Assessing the Applicant's arguments regarding the excessive duration of judicial proceedings, allegedly caused by the contested norms, the Constitutional Court recognizes that the right to having a case heard before the court in due time is an essential aspect of fair court. The fairness requirement for the court procedure envisages that a person should be able to defend his or her rights within reasonable time, and thus introduces legal clarity and certainty into legal relationships.

However, the connection between the duration of judicial proceedings and potential possibility to include subordinate claims in one statement of claims cannot be assessed as means for speeding up judicial proceedings.

Everybody should be able to assess his or her infringed rights or legally protected interests with sufficient accuracy, in order to bring a claim compatible with procedural and substantial law to defend them and to eliminate the infringement of rights within the framework of one judicial proceedings. Likewise, a person has the obligation to act, to the extent possible, in a way allowing already the court of first instance to ensure effective protection of the person's rights (*see, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 15.2*).

13.3.3. It is noted in the constitutional complaint that the right to include in one statement of claim subordinate claims is recognised in the civil procedure regulation of other countries, belonging to the Western circle of law. The Applicant had included a similar argument also in the auxiliary complaint, by which it appealed against the

decision by Kurzeme Regional Court. The Chamber rejected this argument, since the civil procedure, except for specially envisaged cases, is not supranational as to its nature (*see Case Materials, p.23*).

When solving particular issues in Latvian system of law the legal regulation of other states cannot be applied directly, except for cases prescribed in law. In comparative law analysis the different legal, social, political, historical and systemic context should always be taken into consideration (*see, for example, Judgement of 8 June 2007 by the Constitutional Court in Case No. 2007-01-01, Para 24.1 and Judgement of 14 March 2011 in Case No. 2010-51-01, Para 17*).

The comparative law method cannot be totally excluded; however, similar legal norms or legal institutions may have very different content in different countries. Even assuming that legal systems in other countries allow including subordinate claims in one statement of claim, the State's obligation to include the same regulation in the Civil Procedure Law cannot be extrapolated from the existence of such legal regulation, unless the legislator has not decided to do so.

Hence, the first sentence in Article 92 of the Satversme should not be interpreted as the legislator's duty to harmonise the civil procedure regulation of the Republic of Latvia with the civil procedure regulation in other states, unless the state has assumed such international commitments.

13.3.4. It is noted in the constitutional complaint that subordinated claims are admissible at the Court of Justice of the European Union.

The Constitutional Court has already recognised that the judicial proceedings of even one state – criminal procedure, civil procedure and administrative procedure – cannot be compared. Objective differences between judicial proceedings exist, for example, differences pertaining to the legal relationship affected, legal remedies or initiation of judicial proceedings (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 17*).

The Treaty on the Functioning of the European Union, Part Six, Title I, Chapter I, Section 5, regulates several types of judicial proceedings before the Court of Justice of the European Union. The constitutional complaint does not give a clear understanding to which type of judicial proceedings before the Court of Justice of the European Union the Applicant refers. Neither has the Applicant indicated the norms of

the Treaty on the Functioning of the European Union that would allow identifying the concrete type of judicial proceedings before the Court of Justice of the European Union.

Hence, the Constitutional Court sees no grounds for comparing these proceedings.

13.3.5. It is noted in the institutional complaint that in the inter-war period examination of cases, where the statement of claim included subordinate claims, had been admissible in Latvia. I.e., the Civil Cassation Department of Latvian Senate had examined a case, in which the plaintiff had paid to the defendant 200 lats on the basis of a bill of exchange and had turned to court requesting the defendant to return to him the paid for bill, but in case of not returning the bill would recognise that the debt on the basis of the bill of exchange had been settled (*see: Izvilkumi no Latvijas Senāta Civilā kasācijas departamenta spriedumiem. VI turpinājums līdz 1931. g. jūlijam ar alfabētisko rādītāju. Sastādījuši: Senators F. Konradi un Rīgas apgabaltiesas loceklis A. Walter. Rīga, autoru izdevums, 1931, 96. lpp.*).

In this particular case the debtor had met his commitments. This had been exactly the reason for turning to court, in order to prevent repeated demand to pay the debt, by taking the bill of exchange out of circulation. If the holder of the bill of exchange, upon an excuse of, for example, having lost the bill would not be able to return it, then a repeated collection could be prevented by a court's conclusion that the bill had been paid for. Both claims were related with the same grounds for the claim, i.e., the debtor on the basis of a bill of exchange had already met his commitments and settled the debt. CPL also currently envisages a similar solution with regard to joining related claims.

The Constitutional Court finds that the legislator, abiding by the constitutional requirements, has the discretion to adopt regulation on the scope of plaintiff's right in drafting the statement of claim. However, the legislator also has the obligation to ensure that the respective legal norms establish a fair balance between the parties' rights. CPL regulation, currently in force, allows the plaintiff to submit to court a statement of claim including mutually related claims. The court must assess, which of the claims cannot be recognised as being mutually related and the examination of which in one legal proceedings is inadmissible. Moreover, the content of the contested

norms must be established in interconnection with the first part of Section 134 of CPL. The legal regulation included in these norms and the practice of their application is one of the ways to establish a balance between the interests of the participants in civil procedure in compliance with the Satversme. The claims included in the statement of claim are to be examined in one judicial proceedings only if a balance between the participants' interests has been established and fairness of judicial proceedings is ensured.

Thus, the contested norms comply with the first sentence of Article 92 of the Satversme.

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

held:

to recognise Para3, Para 5 and Para 7 of Section 128(1) of the Civil Procedure Law as being compatible with Article 90 and Article 92 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal

The Judgement comes into force as of the day of its pronouncement.

The Chairperson of the Court Sitting

G. Kūtris