



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT ON BEHALF OF THE REPUBLIC OF LATVIA in Case No. 2012-05-01 Riga, 29 October 2012

The Constitutional Court of the Republic of Latvia composed of the Chairperson of the court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to the constitutional complaint submitted by the joint-stock company “Swedbank”,

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

on 9 October 2012 in written procedure examined the case

**“On Compliance of Section 141(1), insofar as It Fails to Provide the Right to Submit an Ancillary Complaint for a Decision Satisfying an Application on Revocation of the Security of a Claim, with Article 92 of the Satversme of the Republic of Latvia”.**

### The Facts

1. The Civil Procedure Law, adopted on 14 October 1998, came into force on 1 March 1999. Chapter 19 of this Law regulates the issues related to securing claims.

Section 137(1) of the Civil Procedure Law provides:

“If there is a reason to believe that execution of the court judgment in the matter may become problematic or impossible, the court or judge may, according to a reasoned application by the plaintiff, take a decision on securing of a claim. [..]”

Pursuant with Section 140(5) of this Law the securing of a claim may be revoked by the same court which has secured the claim on the basis of a reasoned application by the party, or by the court in the record-keeping of which there is a matter for adjudication on the merits.

On 4 August 2011 the Saeima adopted the law “Amendments to the Civil Procedure Law”, which came into force on 1 October 2011. Section 141(1) of the Civil Procedure Law in the wording, which is currently in force, (hereinafter – the contested norm) provided:

“An ancillary complaint may be submitted in regard to the decision referred to in Section 140, Paragraph three of this Law, the decision with which the application for securing of a claim is refused, and the decision with which the application regarding revocation of securing of a claim is refused. In the case referred to in Section 140, Paragraph two of this Law an ancillary complaint may be submitted regarding a court decision for the part, by which a plaintiff is assigned to secure damages.”

**2. The applicant – the joint-stock company “Swedbank”** (hereinafter – the Applicant) – requests the Constitutional Court to recognise the contested norm, insofar as it does not envisage the right to the plaintiff to submit an ancillary complaint regarding a court decision, which satisfies an application on revocation of securing of a claim, as being incompatible with Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) and with regard to the Applicant invalid as of 28 July 2011.

The Applicant notes that with the decision of 28 July 2011 by the Panel of Civil Cases of Riga Regional Court the securing of a claim, which had been imposed on the basis of the Applicant’s application, was revoked. The contested norm prohibited the Applicant to appeal against this decision. The Applicant holds that the right to appeal against a court’s decision essentially differs from the right to submit a repeated application on securing a claim. Moreover, in submitting an application on securing a

claim, a state duty in the amount of 0.5 per cent of the claim must be paid, and this substantially limits the applicant's possibilities to request securing a claim repeatedly.

The Applicant notes that the contested norm leads to an unjustified imbalance in the parties' procedural rights, since the defendant has the right to appeal against a decision, which refuses the request to revoke the securing of a claim. The restriction to the fundamental right has been laid down by law and it could have a legitimate aim – to ensure faster and more effective hearing of disputes, decreasing the workload of courts. However, the restriction is not commensurate with the legitimate aim, since the contested norm is not the most lenient means for reaching this aim. The Applicant also holds that the court decision, by which the application on securing a claim is refused, and a decision on revoking the securing of a claim, are essentially similar, therefore it is not reasonable that one of them is subject to the control by a higher level court, but the other is not.

The Applicant holds that the contested norm causes harm to society in general. If the court decision, which refuses the application to revoke the securing of claim, can be appealed against, but the decision on revoking the securing of a claim – cannot, then the court is encouraged to decide in favour of the defendant, i.e., to adopt a decision, which is not subject to appeal. The “asymmetrical motivation” caused by the contested norm is systemically wrong.

The Applicant, after having familiarised itself with the materials of the case, submitted to the Constitutional Court an opinion, which, inter alia, emphasized that the restriction laid down by the contested norm is not proportional to its legitimate aim, since it creates imbalance in the procedural rights of the parties. The case should be adjudicated by taking into consideration the aim of the institution of revoking the securing of a claim and the significance of revoking the securing of a claim. The fact that the issue regarding the revoking of securing of a claim is decided upon during a court hearing and that the applicant has the right to express his or her objections, is irrelevant.

**3. The institution, which adopted the contested act, – the Saeima –** holds that the contested norm complies with Article 92 of the Satversme.

The Saeima notes that the contested norm was expressed in the wording, which is currently in force, with the aim to improve the regulation on securing of a claim, simultaneously adapting it to the provisions of the Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01 (hereinafter – the Judgement in Case No. 2009-85-01) and the Judgement of 4 October 2010 in Case No. 2010-15-01.

The Saeima upholds the Applicant's opinion that the right to fair court included in the first sentence of Article 92 of the Satversme defines certain principles that the legislator has to abide by in regulating the procedure for securing a claim. However, the Saeima holds that a mandatory obligation to ensure that procedural laws envisage the applicant's right to appeal against the courts decision on revoking the securing of a claim does not follow from this norm of the Satversme.

However, the Saeima does not support the Applicant's argument that the revoking of securing of a claim is essentially similar to the refusal to secure a claim. Likewise, the Saeima does not agree to the interpretation provided by the Applicant that mechanical equalling of the plaintiff's and defendant's procedural rights would be compatible with the essence of the principle of procedural equality. On some occasions equal procedural rights of the plaintiff and the defendant might not only fail to ensure procedural balance of the parties, but even grant advantages only to one of them. Fair balancing of the procedural rights comprises more extensive field of procedural rights.

The Saeima notes that the plaintiff has the possibility to provide all the necessary arguments and evidence regarding the necessity to secure the claim both by submitting an application regarding securing of a claim and by refuting the application submitted by the defendant regarding revoking of the securing of a claim.

The Saeima also holds that deciding on the application regarding revoking the securing of a claim should not be examined in isolation, but in the framework of the system of the Civil Procedure Law, which envisages the plaintiff's right to require securing of a claim only in the presence of definite actual circumstances, i.e., if there is well-founded proof that because of certain circumstances the execution of the court's judgement might be hindered or be impossible. However, if the circumstances of the case have changed and there are no longer grounds to consider that the securing of the claim is necessary, both parties can request revoking of the securing of a claim. Thus,

this issue can be decided repeatedly, objectively analysing the evidence submitted by both parties and arguments in the framework of the adversary procedure, at the same time ensuring equality of the parties.

The Saeima notes that the aim of the civil procedure is to achieve as fast as possible adjudication of a civil case on its merits. Similarly, the aim of the contested norm is to restrict litigations regarding issues, which are not linked to examining the case on its merits. In the contested norm the legislator has defined the moment, when the application of legal remedies of the civil procedure, requested by the plaintiff, is sufficiently assessed, i.e., if the court satisfies the request to revoke the securing of a claim, then the plaintiff cannot appeal against this decision. Thus, the contested norm allows ensuring faster and more effective hearing of the case, decreases the possibility to delay judicial proceedings and the workload of courts. It also protects the right of other persons to fair court.

It is noted in the written answer that the plaintiff retains the right to submit a repeated application regarding securing of a claim. The fact that a state duty must be paid for such an application, as well as the amount of the state duty prescribed by law, cannot serve as an argument for the fact that the contested norm should mandatorily include the plaintiff's right to appeal against a court's decision on revoking the securing of a claim.

The Saeima in its additional explanations to the Constitutional Court notes that until 1 March 2009, when the Law of 5 February 2009 "Amendments to the Civil Procedure Law" came into force, Section 141(1) of the Civil Procedure Law envisaged the possibility to submit ancillary complaint about the court's decision, which satisfied or refused the application on revoking the securing of a claim. Amendments to this norm are connected with amendments to Section 140(5) of the Civil Procedure Law, pursuant to which revoking securing of a claim can be requested by submitting a reasoned application. Thus, the defendant has been imposed the obligation to substantiate and prove the claim that the aim of securing the claim no longer exists.

The Saeima also notes: if the legislator had retained the possibility to appeal against the decision, which satisfies the application on revoking the securing of a claim, this would give to the plaintiff the possibility to use the security measure as a sanction until the moment the ancillary complaint is examined, as well as delay the

adjudication of the case, since the judge of the respective court would have to transfer the case for examining the ancillary complaint. By delaying the hearing of the case on its merits, the plaintiff could demand collecting of the interest set out in law and penalties envisaged in the contract from the defendant before the judgement is made, if the court were to make a judgement in favour of the plaintiff.

**4. The summoned person – the Ministry of Justice** – holds that the contested norm complies with Article 92 of the Satversme.

The Ministry of Justice explains that amendments of 5 February 2009 to Section 141(1) of the Civil Procedure Law were made, because the appeal was used for delaying the judicial proceedings.

After the coming into force of the Judgement by the Constitutional Court in Case No. 2009-85-01 a standing working group was established by an order of the Minister for Justice for drafting amendments to the Civil Procedure Law. The discussions in the working group resulted in an agreement on the need to make the defendant's procedural rights commensurate with the plaintiff's procedural rights.

Thus, since the coming into force of the amendments of 4 August 2011 the procedural equality of both parties has been ensured on a maximum level. Moreover, the current regulation is aimed at maximum effectiveness of court work un procedural economy, as well as ensuring that the claim is heard on its merits as fast as as possible, and thus because of artificially prolonged litigations, the interest set out in law or the penalties envisaged in the contract, which the plaintiff might demand, are not increased.

The Ministry of Justice notes that the ancillary complaints about the issues related to securing a claim are, on the average, are heard by the court of the highest level, within 29 days. Event though this term is proportional; nevertheless, an increase in the number of ancillary complaints would create a significant burden for courts. That would decrease the time allocated for hearing other cases and would have an adverse effect upon the effectiveness of court work.

**5. The summoned person – the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm complies with Article 92 of the Satversme.

The term “fair court” comprises also proceedings appropriate for a judicial state, i.e., proceedings, which are not only fair, but also effective. A civil case must be heard timely, and the rights granted to the parties to the case must be exercised in good faith.

The Ombudsman notes that the principle of adversary parties has been enshrined in the civil procedure, which envisages the obligation of the plaintiff and the defendant to prove the validity of their claim. When requesting securing of a claim or revoking of securing of a claim, the parties must substantiate their request and provide appropriate proof. Even though in the main proceedings the issue of securing a claim is of secondary importance, nevertheless, the examination of this claim should also be subject to the general principles set out for judicial proceedings – the principles of fairness and timeliness.

The Ombudsman holds that the restriction to fundamental rights, included in the contested norm, has been established by law and its aim is to ensure faster and more effective hearing of cases, reducing the work load of courts. The principle of proportionality has also been complied with, since the legislator in Chapter 19 of the Civil Procedure Law, prohibiting the plaintiff to appeal against the court’s decision to revoke the securing of a claim, has included a balancing mechanism, so that the parties in exercising their rights and fulfilling their obligations were not placed in an unequal situation. I.e., to assess the defendant’s application on revoking the securing of a claim, the parties are summoned to the court hearing and can fully realise their defence within the framework of guaranteed adversary proceedings, by submitting evidence and providing explanations in person. The Ombudsman holds that by envisaging the possibility to appeal against the court’s decision on revoking the securing of a claim, the hearing of the case on its merits would be delayed. Moreover, the issues linked with the securing of claim would be transferred to examination on its merits for the third time.

The Ombudsman notes that the regulation, which is in force, balances two elements of Article 92 of the Satversme – the economy of proceedings and the equality

of procedural rights, since the repeated examination of an issue during a court hearing, in the presence of the parties, granting to the parties equal procedural rights does not restrict the rights of one party to the case. The scheduling of a court hearing is a sufficiently lenient mechanism, giving the plaintiff the possibility to achieve that the securing of a claim is retained.

### **The Findings**

**6.** 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.”

The constitutional complaint contains a claim regarding the compliance of the contested norm with Article 92 of the Satversme; however, it follows from the constitutional complaint that essentially only the assessment of the compliance of the contested norm with the first sentence of this Article, which enshrines the right to a fair court, is requested.

**7.** The Constitutional Court has recognised that the term “fair court”, referred to in Article 92 of the Satversme, comprises two aspects: fair court as an independent institution of judicial power, which hears the case, and fair court as due procedure, appropriate for a judicial state, for hearing the case. The State has the obligation both to establish a system of appropriate judicial institutions and to adopt such procedural norms for hearing cases by court, which would ensure fair and unbiased adjudication of these cases (*see, for example, Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Findings, and Judgement of 17 May 2010 in Case No. 2009-93-01, Para 8.1 and 8.2*).

Fair court as due procedure, appropriate for a judicial state, covers a number of elements – interconnected rights. It comprises, for example, the right to access to court, equality of parties and the adversary principle, the right to be heard, the right to

a reasoned court decision, 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*). The Constitutional Court has also concluded that the right to fair court is not absolute. Article 92 of the Satversme does not envisage the obligation to the State to envisage in all cases the possibility to appeal against a ruling or to prescribe in law how many instances should hear the cases of various categories (*see, for example, Judgement of 17 January 2002 in Case No. 2001-08-01, Para 3 of the Findings, and Judgement of 17 May 2010 in Case No. 2009-93-01, Para 13.1*).

Likewise, the Constitutional Court has noted previously that the civil procedure, which ensures fair and objective hearing of a case, is an element of fair court and falls within the content of Article 92 of the Satversme, and also the court's decisions on issues of securing a claim must be adopted in accordance with a procedure compatible with Article 92 of the Satversme (*see Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 10 and Para 11*).

**8.** The normative regulation envisaging the right of the plaintiff and the defendant to appeal against the decision on securing a claim and on revoking securing of a claim has been amended several times following the coming into force of the Civil Procedure Law. A number of amendments are important in the context of this case.

**8.1.** The law of 14 December 2006 "Amendments to the Civil Procedure Law" came into force on 1 March 2007. In accordance with the respective wording of Section 141(1) of the Civil Procedure Law, it was possible to submit an ancillary complaint regarding a decision by court:

- 1) by which a plaintiff is assigned to ensure damages, which the defendant might incur in connection with securing of a claim, or which refuses to do so;
- 2) which satisfies or rejects an application on substituting measures of securing a claim by other measures;
- 3) which satisfied or rejects the application on revoking securing of a claim;
- 4) which rejects the application on securing of a claim.

Thus, both parties had the right to appeal against the court's decision in connection with revoking the securing of a claim; the plaintiff – if the application on revoking of the securing of a claim was satisfied, but the defendant – if this application was rejected.

**8.2.** As of 1 March 2009, when the law of 5 February 2009 “Amendments to the Civil Procedure Law” came into force, the new wording of Section 141(1) was in force, which envisaged that an ancillary complaint may be submitted regarding a court's decision:

- 1) by which a plaintiff is assigned to ensure damages, which the defendant might incur in connection with securing of a claim;
- 2) which satisfies or rejects an application on substituting measures of securing a claim by other measures;
- 3) which rejects the application on securing of a claim.

Hence, these amendments denied the plaintiff and the defendant the right to submit an ancillary complaint regarding a decision by which an application on the securing of a claim is satisfied or rejected.

**8.3.** On 30 March 2010 the Constitutional Court passed a Judgement in Case No. 2009-85-01, which examined Section 141(1) of the Civil Procedure Law, insofar it did not envisage the right of the defendant to submit an ancillary complaint regarding a court's decisions, by which the request concerning the securing of claim was satisfied. The judgement contained the conclusion that as regards the issues of securing of a claim, the plaintiff and the defendant have been placed in unequal positions in the court proceedings, and thus the equality of procedural rights was not guaranteed.

The Constitutional Court recognised that the restriction to fundamental right was set out by law and had a legitimate aim; however, it recognised the contested norm as being disproportional, noting that the benefit to the public was smaller than the damage inflicted upon the rights and lawful interests of an individual. The Judgement concluded *expressis verbis* that “the equality of the procedural rights of the parties would be commensurate with the procedural economy also in case, if the plaintiff had at least the right to submit an ancillary complaint on a court's decision, by which the application on revoking of the securing of a complaint is rejected” (*see,*

*Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 13 and 15–20.2).*

The Constitutional Court decided to:

1) „[r]ecognise Section 141(1) of the Civil Procedure Law, insofar it does not envisage the right to submit an ancillary complaint regarding a decision, by which the request on securing of a claim is satisfied, or a decision, by which the application regarding revoking of the securing of claim, is rejected, as incompatible with Article 92 of the Satversme of the Republic of Latvia”;

2) “until the moment Saeima introduces amendments to the legal regulation, Section 141(1) of the Civil Procedure Law shall be in force in the wording of 14 December 2006, insofar it envisages the defendant’s right to submit an ancillary complaint regarding a decision, by which the court has refused to revoke the securing of a claim” (*see Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 1 and Para 3 of the rulings*).

Thus, the Constitutional Court recognised that the defendant should have the right to submit an ancillary complaint either regarding a court’s decision on securing a claim or a decision by which the application on revoking of the securing of claim is rejected.

**8.4.** The law “Amendments to the Civil Procedure Law” of 4 August 2011 introduced the plaintiff’s right to submit an ancillary complaint regarding a court’s decision, by which the application regarding revoking of the securing of a complaint is rejected. No other amendments to the contested norm were introduced.

Pursuant to the contested norm in the wording, which is currently in force, an ancillary complaint may be submitted regarding a court’s decision, :

- 1) by which the plaintiff is assigned to secure damages, which the defendant might incur in connection with the securing of a claim;
- 2) which satisfies or rejects an application regarding substitution of the securing of a claim by other measures;
- 3) which rejects an application on the securing of a claim;
- 4) which rejects an application on revoking of the securing of a claim.

Thus, these amendments envisaged the defendant's right to submit an ancillary complaint regarding a court's decision by which an application on revoking the securing of a claim had been rejected.

9. The Applicant holds that the conclusions made in the Judgement by the Constitutional Court in Case No. 2009-85-01 can be applied to the case under review. It is noted in the application that the norm, which is contested in this case, leads to unjustifiable imbalance of the parties' procedural rights, since the defendant may appeal against a court's decision, by which the application on revoking the securing of a claim is refused, but the plaintiff may not appeal against a decision, by which such an application is satisfied (*see Case Materials, Vol.1, p.9*).

The Constitutional Court in its Judgement in Case No. 2009-85-01 assessed the scope of the plaintiff's and the defendant's procedural rights and the possibilities to achieve review of the court's decision on issues linked with the securing of claim and found that the defendant was placed in an unequal situation.

The Constitutional Court concludes that the Saeima, by introducing the amendments of 4 August 2011 to the contested norm, did not narrow the scope of the plaintiff's rights, but only expanded the scope of the defendant's rights in compliance with the Judgement by the Constitutional Court in Case No. 2009-85-01.

In accordance with the legal regulation on securing a claim and on issues of revoking the securing of a claim, which is currently in force, the legislator has envisaged the right for the plaintiff and the defendant to appeal against a decision, by which the court has refused their applications on securing a claim or revoking of the securing of a claim, restricting the rights of the other party to appeal against the decisions by which the aforementioned applications are satisfied.

**Thus, the contested norm ensures the equality of the parties' procedural rights.**

10. The aim of securing a claim is to ensure that a court's judgement can be executed. The right to request securing of a claim is an important procedural right, which the plaintiff can use at any stage of the judicial proceedings, and the securing of a claim and deciding upon issues linked to is an essential part of the civil procedure

(see *Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 11*).

The Applicant holds: if the court satisfies the defendant's application on revoking the securing of a claim, then "the defendant can perform such operations with the property, which might hinder the execution of a judgement or make it impossible" (see *Case Materials, Vol.1, p.11*).

The contested norm had prohibited the Applicant to appeal against a court's decision on revoking the securing of a claim, and thus, possibly, the execution of the judgement may be under threat.

Hence, the contested norm restricts the Applicant's right to appeal, which is part of the content of the right to a fair court enshrined in Article 92 of the Satversme.

The Constitutional Court must assess, whether the restriction of fundamental rights, which follows from the contested norm, has been laid down by law, whether it has a legitimate aim and whether it complies with the principle of proportionality.

**11.** The contested norm is included in the Civil Procedure Law. The Case does not dispute that the contested norm has been adopted and promulgated in accordance with the procedure set out by the Satversme and the Saeima Rules of Procedure.

**Hence, the restriction to fundamental right, which follows from the contested norm, has been laid down by law.**

**12.** Any restriction to fundamental rights must be based upon circumstances and arguments on its necessity, i.e., the restriction is imposed because of important interests – a legitimate aim (see, for example, *Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

The concept "to defend his or her rights and lawful interests" in the understanding of the first sentence of Article 92 of the Satversme does not mean the right to infinite judicial proceedings, but, quite on the contrary, – to proceedings, which must be concluded within reasonable period of time with a stable ruling that has

come into force (*see, Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 5 of the Findings*).

The Applicant recognizes the legitimate aim of the contested norm – which also the Constitutional Court has referred to repeatedly – to ensure faster and more effective hearing of disputes, decreasing the workload of courts (*see Case Materials, Vol.1, pp. 9 – 10*). By hearing a case within reasonable term, the rights of other persons to a fair court are protected (*see also the Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 16*). Moreover, at least one of the parties is interested in having the case heard on its merits as fast as possible and stopping the legally uncertain situation.

The Constitutional Court has recognised the need to ensure effective hearing of a case on its merits and abiding by the principle of procedural economy as a legitimate aim (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 13.2*).

**Thus, the restriction to fundamental rights, which follows from the contested norm, has a legitimate aim – to protect the rights of other persons.**

**13.** The principle of proportionality requires establishing a reasonable balance between the interests of society and those of a person, if the public power restricts a person's rights and lawful interests. When assessing, whether the restriction to fundamental rights is proportional, the Constitutional Court, first of all, verifies, whether the chosen means are appropriate for reaching the legitimate aim; secondly, whether the legitimate aim could be reached by using means less restrictive to an individual's rights; thirdly, whether the benefit to society exceeds the harm inflicted upon an individual's rights.

**14.** The restriction of the parties' right to submit an ancillary complaint about any decision taken by a court, would decrease the length of time for hearing the case on its merits and making a judgement, thus increasing the effectiveness of judicial proceedings, ensuring that the case is heard within reasonable term, and it would also reduce the work load of courts (*see Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 18*).

The Ministry of Justice has noted that in the absence of the restriction, which follows from the contested norm, the hearing of a case on its merits would be prolonged for approximately a month, and this would also increase the workload of courts (*see Case Materials, Vol. 2., p. 6*).

**Thus, the contested norm is appropriate for reaching the legitimate aim, as it ensures hearing of a case within reasonable term and increases the effectiveness of the judicial proceedings.**

15. The Constitutional Court has found that substituting the legislator's discretion with its own' opinion on the most rational solution is not it's task, however, verification, whether the legislator, in restricting a person's fundamental rights, has duly examined, whether alternative measures, less restrictive to the fundamental rights, exist, falls within the competence of the Constitutional Court (*see Judgment of 15 February 2005 by the Constitutional Court in Case No. 2004-19-01, Para 7.5, and Judgement of 30 March 2010 in Case No. 2009-85-01, Para 19*).

Furthermore, the Constitutional Court, assessing, whether it would be possible to reach the legitimate aim by other means, has emphasized that a more lenient measure is not just any other measure, but a measure, allowing to reach the legitimate aim in at least the same quality (*see, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings*).

The Constitutional Court already found that the contested norm was expressed in the wording, which is currently in force, to enforce the rulings made in the Judgement by the Constitutional Court in Case No. 2009-85-01. The Saeima and the Ministry of Justice have also noted that after this Judgement came into force, the standing working group, which was established with an order by the Minister for Justice for drafting amendments to the Civil procedure Law, decided upon more appropriate regulation, which would ensure a reasonable balance between the procedural rights of the parties, as well as procedural economy and effectiveness (*see, Case Materials, Vol.1, p.98, and Vol. 2, p.4*).

**Thus, the Constitutional Court has no reason to doubt that an appropriate assessment was conducted within the framework of the legislative process to select the most lenient measure for reaching the legitimate aim.**

**16.** To assess, whether the restriction is appropriate, i.e., whether the benefit to society exceeds the damage inflicted upon an individual's rights, the Constitutional Court must establish, which of the rights included in the content of the right to a fair court – a person's right to appeal or a person's right to effective and timely hearing of the case – should be given preference in the concrete case.

**16.1.** Possibilities to submit an application repeatedly and to submit ancillary complaints regarding the court's decisions on issues linked with the securing of a claim would disproportionally delay hearing the case on its merits. The right to submit an ancillary complaint about the court's decision, which satisfies the application on revoking the securing of a claim, would not only prolong the hearing of the particular civil case as to its merits, but would also burden courts of higher level. Hence, this could infringe not only upon the rights of the parties to the concrete civil case, but also other persons' rights to hearing the case within reasonable term.

**16.2.** The Constitutional Court holds that in assessing the proportionality of the contested norm, the way, in which the court's decision, which is not subject to appeal, on revoking of the securing of a claim, is adopted, must be taken into consideration.

The court takes the decision on securing of a claim no later than on the next day following the initiation of a case (Section 140 (1) of the Civil Procedure Law) or sometimes prior to the initiation of a case (Section 139 of the Civil Procedure Law) without informing the defendant and other parties of the case about examining this issue in advance. Thus, the defendant has no previous information about adoption of this decision and he or she has no possibility to express objections against it.

The issue of revoking the securing of a claim, however, is heard at a court hearing within 30 days after the receipt of the respective application and the parties to the case are informed about this in advance (Section 140(9) of the Civil Procedure Law). Thus, in conformity with the adversary principle, both parties have equal opportunities to prepare their opinion prior to the court hearing and express their reasoned opinion during it: the defendant – that revoking of the securing of a claim will not threaten execution of a judgement, but the plaintiff – why the revoking of the securing of a claim is inadmissible.

The court gets familiarised and assesses the plaintiff's opinion twice: first of all, when, on the basis of the plaintiff's applications, it adopts the decision on securing the claim and, secondly, examining the defendant's application on revoking the securing of a claim. The decision on securing the claim is adopted on the basis of the arguments presented by only one party, i.e., the plaintiff, but when the decision on revoking of the securing of a claim is adopted, the arguments of both parties are taken into consideration. In accordance with the rules of the Civil Procedure Law, the court hearing is conducted in accordance with the adversary principle, i.e., both parties have equal rights to present documents, to express their opinion during the court hearing, to receive the assistance of a qualified lawyer.

Therefore, even though the contested norm does not envisage the possibility to appeal against the decision on revoking the securing of a claim, in deciding upon this issue due judicial proceedings are ensured.

**16.3.** The Applicant, in substantiating it's opinion, has noted other arguments.

First, the Constitutional Court upholds the Applicant's opinion that the right to submit a new application on the securing of claim cannot be perceived as being such, which substitutes the possibility to appeal against the court's decisions, which the applicant is not satisfied with (*see Case Materials. Vol.1, p.9*). However, the Constitutional Court noted that the applicant's right to submit a repeated application on the securing of a claim, is a guarantee, which the law envisages in such a case, if the defendant, following the revoking of the securing of a claim, does not act honestly. Moreover, the defendant does not have the right to appeal against a court's decision on the securing of a claim, but has the right only to submit an application on revoking of the securing of a claim.

Secondly, the circumstance, referred to by the Applicant, that a state duty must be paid upon submitting an application regarding the securing of a claim (*see Case Materials, Vol.1, p.12*), is not a sufficient reason to establish the possibility for appealing against the court's decision on the revoking of the securing of a claim. The securing of a claim not only increases the possibility that the judgement will be enforceable, but also significantly restricts the defendant's possibilities to operate with his or her property and may encumber or even make impossible normal activities of a

merchant. Therefore, the state duty motivates the plaintiff to assess, whether the securing of a claim is, indeed, necessary.

Thirdly, the Constitutional Court does not uphold the Applicant's opinion that the court's decision on revoking of the securing of a claim, which the plaintiff cannot appeal against, is essentially similar to the decision, which rejects the application on securing of a claim and which the plaintiff can appeal against, therefore it is not reasonable to subject only one of them to the control by a higher level court (*see Case Materials, Vol.1, p.12*). As mentioned above, the Constitutional Court in its Judgement in Case No. 2009-85-01 already found that both decisions should not be subject to appeal, even though they are similar as to the consequences they cause, and noted that the defendant should have the right to appeal against either the court's decision, by which the claim is secured, or the decision, which rejects his or her application on revoking the securing of a claim. The legislator, within the limits of its discretion, may choose the most effective variant of regulation.

Moreover, no substantiation has been provided for the Applicant's argument that the contested norm leads to a situation, in which the courts are encouraged to interpret the law and assess the facts in a biased way, since it is "easier" and "safer" to decide in favour of the defendant, i.e., to adopt a decision on revoking the securing of a claim, which is not subject to appeal (*see. Case Materials, Vol.1, p.13*). The information provided by the Ministry of Justice shows that from 1 October 2011 to 20 June 2012 67 applications on revoking the securing of a claim have been examined. Three applications have been partially satisfied, but 47 applications – rejected (the securing of a claim was retained). The application on revoking the securing of a claim was satisfied in 17 cases (*see Case Materials, Vol. 2, p.6*).

The Constitutional Court concludes that the public benefit that the contested norm creates exceeds the restriction imposed to a person's rights.

**Hence, the restriction to the fundamental rights, which follows from the contested norm, is proportional and the contested norm complies with Article 92 of the Satversme.**

## **The Constitutional Court**

Pursuant to Section 30 –32 of the Constitutional Court Law

**h o l d s:**

**to recognise Section 141(1) of the Civil Procedure Law, insofar as it fails to provide the right to submit an ancillary complaint for a decisions satisfying an application on revocation of the security of a claim, as compatible with Article 92 of the Satversme.**

The Judgement is final and not subject to appeal

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

The Presiding Judge

G. Kūtris