



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, 17 May 2010

In the case No. 2009-93-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma and Viktors Skudra

having regard to constitutional complaints of Dzintars Lejnietis, Māris Rudzītis, Santa Pole, Artūrs Ikvilds, Indars Lieģis and Edijs Lieģis (hereinafter – the Applicants),

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1<sup>st</sup> indent, Article 17 (1), 11<sup>th</sup> indent, and Article 19.<sup>2</sup> and Article 28.<sup>1</sup> of the Constitutional Court Law,

on 20 April 2010 in writing examined the case

**“On Compliance of Section 400 (1) Indent 1 and Section 405 (1) and (3) of the Civil Procedure Law with Article 92 of the Satversme of the Republic of Latvia”.**

### The Facts

1. On 14 October 1998, the Saeima (Parliament) of the Republic of Latvia (hereinafter – the Saeima) adopted the Civil Procedure Law (hereinafter – the CPL) that came into effect on 1 March 1999.

**1.1.** Chapter 50 of the CPL establishes the procedure for undisputed compulsory execution of obligations.

Section 400 (1) of the CPL provides for obligations in relation to which undisputed compulsory execution of obligations is permitted:

- 1) pursuant to agreements regarding obligations which are secured with a public mortgage or a commercial pledge;
- 2) pursuant to notarially certified term agreements or term agreements of equivalent juridical effect regarding monetary payments or return of movable property;
- 3) pursuant to term lease or rental of property agreements, which are notarially certified or entered in a Land Register, and which provide that the lessee or tenant has a duty, due to expiry of the term, to vacate or deliver the leased or rented property (except an apartment) and to pay the lease or rental payments; or
- 4) pursuant to a protested promissory note.

However, Section 405 of the CPL regulates the procedure for adoption and enforcement of decision of a judge:

- (1) An application regarding undisputed compulsory execution shall be adjudicated by a judge sitting alone, within a period of seven days from the day of submission of the application, on the basis of the submitted application and documents attached thereto, and without notifying the applicant and the debtor thereof.
- (2) The judge, having examined the validity of the submitted application and having found that it is to be allowed, shall take a decision pursuant to which the obligation to be executed, and the extent to which it is to be executed, in accordance with undisputed compulsory procedure, are determined. A true copy of the decision shall be sent to the applicant and to the debtor within a period of three days.
- (3) The judge's decision shall come into effect without delay, and it shall have the effect of an execution document. The decision shall be executed in accordance with provisions regarding the enforcement of

judgments. It shall be submitted for execution together with a true copy of the document subject to undisputed compulsory execution.

- (4) If the judge finds that the application is ungrounded or the amount of contractual fine indicated in the application is unproportional with the principal debt, or if the document subject to execution contains infringing and unfair agreement provisions, he or she shall take a decision regarding the dismissal thereof. The judge shall send the applicant a true copy of the decision together with the submitted documents.

The Applicants ask the Constitutional Court to assess constitutionality of Article 400 (1) indent 1 and Article 405 (1) and (3) (hereinafter – Contested Norms).

**2. Baiba Didrihsone, an authorised representative of the Applicants** Dzintars Lejnīeks, Māris Rudzītis, Santa Pole and Artūrs Ikvīlds holds that the Contested Norms infringe the right of the Applicants to a fair court and therefore it does not comply with Article 92 of the Satversme.

B. Didrihsone indicates that, pursuant to the Contested Norms, the courts have adopted a decision to satisfy applications of the creditors regarding undisputed compulsory execution of obligations of persons represented by her and to direct recovery against immovable property owned by them.

A similar situation has occurred to the Applicants Indars Lieģis and Edijs Lieģis. **Their authorized representative Natālija Lazukina** indicates that the courts have satisfied the claims of the creditors regarding undisputed compulsory execution of obligations in relation to persons represented by her.

In the application, it has been stated that Section 400 (1) indent 1 of the CPL provides executing undisputed compulsory execution of obligations regarding agreements on obligations secured by a public mortgage. A public mortgage serves as a feasible source of information that has been registered at the Land Register based on a notarially certified notice, moreover, such mortgage contains, among the rest, the term when obligations secured by a public mortgage must be executed. At the date of submitting the application, the term when obligations of the Applicants should be executed in accordance with the entries in the

public records have not yet expired. The Contested norm permits the Court, based on evidence presented by a creditor but not allowing a debtor to provide explanations or objections regarding validity of the claim, to assess whether conditions, according to which obligations must be executed prior to the date indicated in the public register, have set in.

Such obligations can also be undertaken without a notarial act. This, in fact, is the case of the Applicants in the case under review. Notarial form of the notice requested by the Land Register Law does not ensure execution of a proper verification of lawfulness of an agreement. However, historically these have always been “indisputable” obligations or obligations of high credibility that are subject to undisputed compulsory execution of obligations. The duty of a judge established in Section 405 (4) of the CPL to assess lawfulness of an agreement cannot be regarded as an appropriate measure for adoption of a fair decision because thus the principle of competition is ignored. According to the Applicants, undisputed compulsory execution of obligations pursuant to agreements regarding obligations secured by a public mortgage is not admissible.

The Applicants are of the opinion that the Contested Norms infringe the principle of competition and that of equal possibilities of parties because the norms do not ensure the possibility to present objections regarding validity of obligation (outstanding sum, interest, contractual fine, and the procedure of recalculation of the latter), as well as to provide explanations regarding reasons for delay of obligation execution and give legal justification for it. Moreover, the Applicants are denied the right to be heard because a court decision is adopted sitting alone, without notifying an applicant or a debtor. The Applicants as debtors have been denied the possibility to present their objections regarding claims of creditors; neither had they had a possibility to explain that the credit has been disbursed within the established term. A creditor can also inform the court regarding objections of a debtor against the claim because, pursuant to provisions of Section 93 of the CPL, a creditor as an applicant must prove his or her claims, whilst a debtor must substantiate his or her objections against the claim.

According to the case-law of the Constitutional Court, the right to be heard is a fundamental right in a democratic society, and a person having the right of expression cannot be denied the right to be heard. Consequently, the legislator does not have the right to restrict this right.

The Applicants hold that the prohibition to appeal against a judge decision neither complies with the right to a fair court. Such regulation cannot be regarded as fair and impaired case adjudication because a debtor is not given the opportunity to exercise his or her rights and legal interests by submitting objections and evidence to the court regarding the claim of the creditor.

Likewise, it cannot be recognized that Section 406 of the CPL that provides: “If a debtor is of the opinion that the claim of the creditor is, on the merits, unfounded he or she may, within a period of six months from the date when the true copy of the decision is sent, bring an action against the creditor to dispute the claim”, ensures the right of the debtor to have his or her case examined in a fair court. Article 406 of the CPL envisages initiation of a new case, however the right of the debtor to a fair examination of a case at a court, namely, the right to raise objections and provide evidence should be ensured at examination of each single case. Moreover, such procedure is considerably restricted by financial possibilities of person because state tax is disproportionally high. For instance, one of the Applicants, for him to be conferred the right to raise objections against the right of a bank to recover credit before the established term, would have to pay state tax at the amount of 1399.65 lats.

According to the Applicants, the Contested Norms do not comply with the principle of proportionality because the legitimate objective, which is to accelerate examination of civil cases and simplify legal proceedings, could be reached by other measures that would restrict the rights of person at a lesser extent, for instance, by providing for cases when appellate procedure can be applied or state tax can be reduced.

**3. The institution that adopted the contested act, the Saeima** does not share the opinion of the Applicant and holds that the Contested Norms do comply with legal norms of a higher legal force.

The Saeima indicates that the right to a fair court is not absolute and they can be restricted, especially if it is done with a view to protect substantial interests provided that the principle of proportionality is observed. The Contested Norms have a legitimate objective – to facilitate accelerated adjudication of civil cases and simplify

legal proceedings, which also protects the rights of other persons. Compliance of the Contested Norms with the first sentence of Article 92 of the Satversme is ensured in several ways. First, there are strictly established pre-conditions for applying undisputed compulsory execution of obligations. Second, the procedure also contains exceptions when such procedure cannot be applied. Third, a debtor is granted several procedural guarantees.

Moreover, the law guarantees to a debtor, who is a consumer, protection against unfair conditions included in an agreement because it commissions a judge to assess them.

The Saeima indicates that Section 404 (3) of the Civil Procedure Law requires that an application regarding undisputed compulsory execution of obligations must be supplemented with evidence proving issuance of a warning to a debtor. It follows from the aforesaid that, before lodging of the respective application before the court, the applicant must notify a debtor, pursuant to a proper procedure, regarding his or her intention to address the court.

The Saeima draws attention to the fact that the law guarantees the debtor several possibilities for protecting his or her rights.

First, Section 406 (1) of the CPL provides: If a debtor is of the opinion that the claim of the creditor is, on the merits, unfounded he or she may, within a period of six months from the date when the true copy of the decision is sent, bring an action against the creditor to dispute the claim. When bringing an action, a debtor can ask suspending the undisputed compulsory execution but, if the debt-collector has already received claim satisfaction according to the above procedure, he or she shall have the right to ask securing of a claim.

Second, if a decision of a judge has not yet been enforced, a debtor has the right to submit a claim of consideration to the court by asking to repeal judge's decision, to release him from compulsory execution of obligations and to reject the claim against him. If a decision of a judge is already executed, a debtor has the right to submit a claim of reverse execution, also by requesting recovering from creditor everything that it has received in the result of c procedure of compulsory execution of obligations. Claims shall be submitted before the court in accordance with general provisions of

proceedings by paying the respective state tax or asking to fully or partially release from payment of it.

Third, after a debtor has received warning on undisputed compulsory execution of obligations, he or she has the right to be the first who addresses the court according to procedures regarding claims by thus preventing application of the Contested Norms.

Article 92 of the Satversme does not commit the State to establish, in all cases, a possibility to appeal against a decision of the court before a court of a higher instance. The legislator has the right to legislate what cases fall within the scope of competence of what courts and in how many instances cases of different categories are to be examined. Moreover, if a debtor truly wants to defend his or her rights and to provide arguments against a decision of a judge regarding compulsory execution of obligations, he has several possibilities to initiate proceedings based on a claim, which usually is executed in three court instances.

The Saeima holds that the Contested Norms, if these are viewed in conjunction with other norms of the Law, do comply with the principle of proportionality and therefore with the first sentence of Article 92 of the Satversme. The Law guarantees to a debtor rather extensive possibilities to defend his or her rights and interests in a fair court. Therefore the Saeima asks the Constitutional Court to recognize Section 400 (1) Indent 1 and Section 405 (1) and (3) of the CPL as compliant with Article 92 of the Satversme.

**4. The summoned person – Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that at legal proceedings parties should be ensured equal rights during case examination period; however, the fact that a party cannot submit explanations does not mean that the result of the proceedings is expected to be unfair. If a case participant gives no explanations or if no such rights are granted to a party before a decision is adopted, justice must be ensured by assessing submitted evidence and adopting a fair decision. If, according to a party, no such decision is adopted, it would be necessary to establish procedure for defending infringed rights.

When analysing compliance of Section 405 (1) and (3) of the CPL with Article 92 of the Satversme, the Ombudsman concludes that the contested section restricts possibilities of a debtor to present his or her objections against a claim regarding undisputed compulsory execution of obligations, and fails to confer equal rights to both parties to appeal against judge's decision. The above mentioned restriction has been established with a view to accelerate and it makes more effective the procedure of examining civil cases at a court. Although a defendant has not been conferred the right to submit objections against an application, this restriction can be regarded as a proportional one because: 1) transactions, executions of which is contested in such an application, are notarially certified or registered in the Land Register; therefore the will of the parties that have undertaken obligation to conclude a transaction cannot be questioned; 2) it envisages warning of a debtor; moreover, such warning is a compulsory provision, except for cases when parties have agreed not to send such warning. Moreover, after receipt of a warning, a debtor is not denied the right to defend infringed rights according to civil procedure or to solve dispute by means of negotiations with the creditor.

As to the question regarding the possibility to appeal against a court decision according to appellate procedure, the Ombudsman refers to case-law of the European Court of Human Rights (hereinafter – ECHR) and indicates that the State has the duty to ensure protection of fundamental rights of a person as effective as it is possible, whilst the right to address a court are not absolute; therefore the latter can be proportionally restricted. Section 406 of the CPL guarantees a debtor the right to submit a claim of consideration and a claim of reverse execution; therefore there is no reason to state that the CPL prohibits a debtor to protect his or her rights by appealing against judge's decision.

The Ombudsman holds that Section 400 (1) Indent 1 and Section 405 (1) and (3) of the CPL guarantee observance of the right to a fair court and comply with Article 92 of the Satversme.

**5. The summoned person – the Ministry of Justice** – indicates the following: if an agreement stipulates the right of a creditor to request anticipatory payment of a

credit under certain conditions, the creditor shall have the right to exercise this right and request anticipatory disbursement of the credit and the estimated interest. The above mentioned rights of a creditor (pledgee) follow also from Sections 1319 – 1339 of the Civil Law (hereinafter – CL), in particular, from Section 1326 that provides: “If payments on a claim by a pledgee are divided between several time periods, then the pledge may be sold as soon as there is default in regard to any of such time periods”.

However, under Section 6 (10) of the Customer Rights Protection Law, if a dispute regarding whether the terms included in the contract are unfair arises between a manufacturer, seller or service provider and a consumer, any of the contracting parties has the right to apply to court, but the consumer has the right to apply to the Consumer Rights Protection Centre. Moreover, Section 6 (10.<sup>1</sup>) of the same Law provides for the rights of a customer to bring an action to court for the protection of his or her lawful rights and interests if losses are caused to a consumer due to unfair contractual terms. Upon resolving a dispute or carrying out other procedural actions arising from the contract entered into between a manufacturer, seller or service provider and a consumer, the court shall evaluate the terms of the contract and for the resolution of the dispute shall not apply the unfair terms provided for in the contract in relation to the consumer. The above mentioned legal norm also applies to undisputed compulsory execution of obligations because, according to Section 405 (4) of the CPL, if the judge finds that the application is unfounded or the act to be executed contains unfair agreement provisions that infringe the rights of consumers, he or she shall take a decision regarding the dismissal thereof.

Under Section 405 (1) of the CPL, an application regarding undisputed compulsory execution shall be adjudicated by a judge sitting alone, within a period of seven days from the day of submission of the application, on the basis of the submitted application and documents attached thereto, and without notifying the applicant and the debtor thereof. The above mentioned procedure considerably differs from procedures for court proceedings by way of action; however it has been established deliberately. Obligations that can be applied undisputed compulsory execution procedure, are listed in Section 400 (1) of the CPL. The legislator saw a possibility to subject obligations that follow from respective transactions to undisputed compulsory

execution by establishing a special regulatory framework for it implemented in Chapter 50 of the CPL.

The Ministry of Justice emphasizes that Section 404 (3) of the CPL requires, among the rest, that an application regarding undisputed compulsory execution of obligations is supplemented with evidence proving that a debtor has been sent a warning in case if it does not follow from the act or law that no such warning is necessary. It follows from the aforesaid that after the respective application is submitted to the court, an applicant has the duty to warn, according to a proper procedure, a debtor on his or her intention to address an application regarding undisputed compulsory execution of obligations to the court. Warning of a debtor is a substantial guarantee of protection of his rights because applications are examined by the court without presence of participants of the case and without notifying them on it. Likewise, the Ministry of Justice concludes that Section 404 of the CPL guarantees to a debtor the right to raise objections against admission of undisputed compulsory execution of obligations.

Likewise, the Ministry holds that legal regulation included in Section 400 (1) Indent 1 and Section 405 (1) does not infringe the fundamental rights of the Applicants established in the first sentence of Article 92 of the Satversme.

The Ministry of Justice indicates that, according to Section 405 (3) of the CPL, restriction of the fundamental rights exists insofar as the case is examined only in one court.

This restriction has been established by law, it is aimed at accelerating examination of case on its merits and making this procedure more effective, which would thus ensure the right of persons to a fair court, as well as those rights, for defending of which persons have addressed the court. Consequently, the restriction of the fundamental rights has a legitimate aim, namely, protection of the rights of other persons.

Having assessed proportionality of the restriction of the fundamental rights, the Ministry of Justice indicates that undisputed compulsory execution of obligations is possible only in cases precisely enumerated by the Civil Procedure Law. Although the decision satisfying a claim regarding undisputed compulsory execution of obligations is

not subject to appeal, the CPL still provides a debtor with other equivalent legal remedies.

One of such remedies is, according to the Ministry of Justice, Section 406 (1) of the CPL that provides a possibility to raise a claim against a creditor. Claim of consideration is, in fact, a measure of appeal.

The Ministry of Justice holds that the Contested Norms do comply with Article 92 of the Satversme.

**6. The summoned person** – a sworn advocate **Gvido Zemribo**, a member of a regular work group of the Ministry of Justice responsible for elaboration of amendments to the Civil Procedure Law holds that the Contested Norms do not comply with Article 92 of the Satversme.

Mr. G. Zemribo indicates that, in the frameworks of the case under review, several issues should be assessed. It follows from Section 405 (3) of the CPL that judge's decision shall come into force without delay; moreover, cases of this category must be examined only at one court. Referring to the judgment of 17 January 2002 by the Constitutional Court in the case No. 2001-08-01, he emphasizes that the term "fair court" in the light of international documents or Article 92 of the Satversme, does not guarantee the right to appeal against each civil case in an appellate instance. Therefore in legal proceedings in the frameworks of one instance (the Ministry mentions insolvency procedure for illustration), it is necessary to ensure a fair court and, among the rest, the right to be heard.

Mr. G. Zemribo draws attention to the fact that, for instance, the court examines insolvency cases in a special litigation, and, if in a matter to be adjudicated in accordance with special adjudication procedures a dispute arises regarding rights and such dispute is required to be adjudicated in court in accordance with procedures regarding actions, the court, depending on the substance of the dispute, shall leave the application unadjudicated or stay the court proceedings until the dispute is decided (Section 258 of the CPL). However, the Contested Norms do not prohibit a debtor the right to defend his or her rights before the court, as well as to appeal against judge's decision. Therefore it is necessary to assess admissibility of such restrictions.

The restriction included in the Contested Norms has a legitimate objective – accelerated and effective execution of undisputed obligations.

Mr. G. Zembiro holds that restriction of the rights of a debtor is not proportional with the legitimate aim of the Contested Norms. In cases when a dishonest applicant (creditor) refers to circumstances that have occurred during the period of execution of an agreement and that cannot be disproved by a debtor, an applicant could attain immediate execution of obligations, consequences of which are then difficult to be eliminated.

Mr. G. Zemribo indicates that a more lenient and adequate measure to reach the legitimate aim is to provide an extrajudicial procedure of examination for undisputed compulsory execution of obligations indicated in Chapter 50 of the CPL by conferring a debtor the right to contest obligation claims by instituting legal proceedings in case if dispute arises. Claim of consideration or that of reverse execution established in Section 406 of the CPL does not always serve as an efficient measure to defend the rights of a debtor especially if a judge has not taken into account the fact that the amount of contractual fine is incommensurate with the principal debt or if the act to be enforced includes unfair contractual provisions that infringe the rights of consumers.

**7. The Civil Case Department of the Senate of the Supreme Court of the Republic of Latvia** (hereinafter - the Senate) indicates that, when examining an application according to the procedure established in Chapter 50 of the CPL, adjudication procedure is not exercised: a decision is adopted by a judge without having property verified, in substance, validity of a claim regarding undisputed compulsory execution of obligations included in the application.

Chapter 50 of the CPL is based on the same principles established in chapter three of the pre-war Civil Procedure Regulations. It was established in Section 236 thereof that a justice of the peace, after having recognized the request of an applicant to be executed according compulsory procedure, adopts a decision on it and writes it down on the act, or, if there is no space, on a separate sheet bound to the act, without summoning a defendant.

The Senate emphasizes that instituting proceedings on execution of obligations is a free choice of a creditor. The principle of dispositivity prevailing in the civil procedure permits a creditor raising claim or submitting an application regarding undisputed compulsory execution of obligations.

The Senate draws attention to the fact that, when examining an application according to the procedure established in Chapter 50 of the CPL, a judge relies on the application and considers included information regarding infringement of obligations and outstanding payments as true. Obligations secured by a pledge should be regarded as payment liability that is fully or partially secured by a mortgage or commercial pledge. Consequently, a public act is required, i.e. a pledge registered at the Land Register or the Commercial Register. If Section 400 (1) Indent 1 sets forth registration of obligation security in a public register as a substantial precondition, then the issue regarding the extent of securing of obligations is of the same importance. According to the wording of Section 1278 of the CL, a pledge rights is such right in regard to property of another as on the basis of which the property secures the claim of a creditor so that the creditor is able to receive from the property payment for such claim. Moreover, it is indicated in Section 1281 of the CL that, in registering such mortgage in the Land Register, the amount of the credit available shall be indicated, in regard to which extent of the credit mortgage also has priority rights from the time it is registered in the Land Register. Under section 1290 of the CL, unless specifically agreed otherwise, a pledge right shall not only secure the principal claim but also its associated ancillary claims. A similar clause can be found in Section 7 of the Commercial Pledge Law that provides that the commercial pledge shall secure not only the principal claim but also auxiliary claims. The Senate emphasizes that the object of pledge should be of sufficient value in order to secure not only the basic claim but also payment of interest and default charges, contractual fines and other claims that follow from the respective secured obligation. Consequently, it can be concluded that Section 400 (1) Indent 1 of the CPL permits fulfilling obligations only at the extent they are secured by mortgage or a commercial pledge.

## **The Constitutional Court holds:**

**8.** 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.” Although the applications contain a claim regarding compliance of the Contested Norms with Article 92 of the Satversme in general, it still follows from the applications that, in fact, compliance of the norms with the first sentence of Article 92 of the Satversme is contested, namely, that “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

**8.1.** It has been established in the case-law of the Constitutional Court that the notion “a fair court”, mentioned in Section 92 of the Satversme, includes two aspects, namely, “a fair court” as an independent institution of the judicial power, which reviews a case and “a fair court” as an adequate process, complying with the law-governed state, under which the case is being adjudicated. In the first aspect this notion shall be interpreted as read together with Chapter VI of the Satversme; in the second – as interpreted together with the principle of a law-governed state, which follows from Section 1 of the Satversme (*see, e.g.: Judgment of 5 March 2002 by the Constitutional Court in the case No. 2001-10-01, Para 2 of the Concluding Part, and Judgment of 20 December 2006 in the case No. 2006-12-01, Para 9.3*).

**8.2.** Article 92 of the Satversme commits the State to form a proper judicial system and adopt procedural norms, according to which the court would examine cases based on procedure ensuring fair and objective adjudication of cases.

The Constitutional Court has already indicated that the civil process that ensures fair and objective examination of a case is an element of a fair court and it falls within the scope of Article 92 of the Satversme, therefore the civil procedure in general should comply with requirements of Article 92 of the Satversme (*see: Judgment of 30 March 2010 by the Constitutional Court in the case No. 2009-85-01, Para 10 and 11*).

**8.3.** A fair court as a judicial procedure adequate for a law-governed State includes several mutually related rights (*see: Judgment of 5 November 2008 by the Constitutional Court in the case No. 2008-04-01, Para 8.2*). It includes, for instance, the right to access to courts, the principle of equality and competition of parties, the right to be heard, the right to a motivated court judgment, the right to appeal.

**9.** The procedure of undisputed compulsory execution of obligations is included in the Civil Procedure Law.

In order to assess whether elements of a fair court can be applied to the above mentioned procedural institution and to determine the extent of application thereof, it is necessary to establish the essence and nature of the particular legal institute and the aim of the legislator.

**9.1.** The core of civil proceedings often is manifested through settling disputes regarding infringement of rights and interests protected by law by observing the principle of equality of parties. In the case of proceedings by way of claim, the court examines and adjudicates cases on disputes and provides an objective assessment of evidence presented by parties. In the frameworks of proceedings by way of claim, there exist several legal institutions: ancillary claim, allowance of a claim, conciliation, security, appeal, a.o.

Civil cases of different character are subject to adjudication procedure. The Civil Procedure Law establishes not only proceedings by way of claim, but also other kinds of proceedings: special adjudication procedure, execution of obligations on a no contestation basis and undisputed execution of obligations on a warning basis. Cases of this category differ from cases to be examined in proceedings by way of claim by the fact that in the first, there is no dispute regarding the rights.

Consequently, the aim of execution of obligations on a no contestation basis is to establish a simplified and accelerated procedure of debt recovery rather than to settle disputes regarding the rights.

**9.2.** Already at the period of Ancient Rome, a simplified procedure for recovering debts according to obligations that were rather indisputable was broadly applied. Undisputed extrajudicial debt recovery based on a written debt document was

also established in medieval proceedings. Later, however, it was necessary to issue laws prohibiting creditors to arbitrarily and without adjudication implement their rights in relation to debtors. This procedure was well known also in European countries (*see: Bukovskis V. Civilprocesa mācības grāmata. Rīga: Autora izdevums, 1933, pp. 528 – 531*).

A simplified undisputed procedure that is applied to cases on compulsory execution of obligations based on acts existed in Latvia during the interwar period (*see: Konradi F., Zvejnieks T. Civilprocesa likums ar paskaidrojumiem – izvilkumiem no Latvijas Senāta un Tiesu palātas spriedumiem un no attiecīgās zinātniskās literatūras, kā arī dažādiem aizrādījumiem uz likumdošanas motīviem. Rīga: Valsts tipogrāfijas izdevums, 1939, pp. 79 – 89*).

On 23 February 1995, a chapter on undisputed compulsory execution of obligations was included in the Latvian Civil Procedure Code. Thus, by introducing minor amendments, undisputed compulsory execution of obligations based on public acts that existed in Latvia before 1940 was restored (*see: Civilprocesa likuma komentāri. Trešais papildinātais izdevums. K. Torgāna red. Rīga: Tiesu namu aģentūra, 2006, pp. 551*).

**9.3.** In the European Union there also exist legal acts that regulate such simplified and accelerated procedure of execution of obligations. For instance, Article 5 of the Directive 2000/35/EC on combating late payment in commercial transactions provides that Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, normally within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority. There also exists the Green Book on the European procedure of executing commitments and measures for simplification and acceleration procedure of claim examination regarding small amounts (*see: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0746:EN:HTML>, consulted on 22 April 2010*).

“All Member States try to tackle the issue of accelerated recovery of uncontested claims. In some of them, judgments by default are the principal procedural instruments to cope with uncontested claims. The majority of Member

States have, however, introduced a so-called “*Order for payment*” procedure that has proven to be a particularly valuable tool to ensure the rapid and cost-effective collection of claims that are not the subject of any controversy. In this purely written procedure a payment order is served on the defendant with an instruction to abide by it or to contest the claim within a certain time limit. Only if he lodges a statement of opposition will the case be transferred to ordinary civil proceedings. Hence, as opposed to normal procedural rules, the burden to initiate adversarial proceedings rests with the addressee of the payment order.” ([http://ec.europa.eu/civiljustice/simplif\\_accelerat\\_procedures/simplif\\_accelerat\\_procedures\\_gen\\_lv.htm](http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_gen_lv.htm), consulted on 23 April 2010).

In Latvia, too, one of such simplified and accelerated procedures, in the result of which a creditor can attain satisfaction of his or her claim is undisputed compulsory execution of obligations or compulsory execution of obligations by way of warning.

Similar simplified procedures of debt recovery exist on other states. In Great Britain, Ireland, Spain and Sweden, a special procedure regarding claims on small amounts has been established. It provides for different simplifications if compared to a regular procedure. In Germany, procedure regarding claims on small amounts can be appointed by the court on its own discretion. Civil procedure laws in Austria, France, the Netherlands and Finland, as well as other Member States provide for several procedural simplifications if compared to a regular procedure (*see: [http://ec.europa.eu/civiljustice/simplif\\_accelerat](http://ec.europa.eu/civiljustice/simplif_accelerat), consulted on 23 April 2010*).

**9.4.** The Saeima has indicated in its reply that the aim of Chapter 50 of the CPL is to facilitate accelerated adjudication of civil cases and simplify legal proceedings, which also protects the rights of other persons.

If a debtor fails to fulfil his or her obligations that follow from legal relations, a creditor shall have the right to request compulsory execution of the obligations through the court. A dual situation may occur in relation to compulsory execution of obligations. A debtor may reject having any obligations towards a creditor and consequently to contest the right of a creditor to request execution of obligations. If a civil dispute exists between parties, it shall be settled by way of action (*see: Commentaries to the Civil Procedure Law, pp.550*).

Undisputed compulsory execution of obligations is always based on a public act that proves that the respective obligations do exist. It is possible to submit an application regarding undisputed compulsory execution of obligations only in cases established in the Civil Procedure Law and only by a strict range of persons and against strict range of debtors. The respective obligations are established in Section 400 of the CPL, the list of creditor is given in Section 401 of the CPL, whilst the list of debtors – in Section 402 of the CPL.

According to the historical and teleological interpretation method applicable to legal norms, it is possible to conclude that the following provisions should be observed undisputed compulsory execution of obligations:

- 1) obligations listed in Section 400 can only be executed according to undisputed procedure;
- 2) these obligations should be included in public acts and certified by documents submitted to the court;
- 3) the term of execution of obligations and other provisions should be categorically established, and execution thereof cannot be related with provisions, applicability of which must be proved (*see: Commentaries to the Civil Procedure Law, pp.551*).

**Consequently, undisputed compulsory execution of obligations is a legal institute of civil procedure that ensures a simplified and accelerated procedure of debt recovery. It is aimed at facilitation of accelerated adjudication of civil cases and simplification of legal proceedings.**

**10.** Obligations indicated in Section 400 (1) of the CPL can be executed according to undisputed procedure provided that the agreement establishing obligation to be executed is notarially certified or its legal force is equal to a notarially certified agreement. An agreement may have no notarial certification in case if obligation is secured by public mortgage or commercial pledge.

The Applicants hold that the agreement must necessarily be notarially certified. Then agreement provisions regarding anticipatory execution of obligations would be explained to a person, and he or she would also be informed on the rights and duties.

Undisputed compulsory execution of obligations is applied also to cases when the final term has not yet expired. Moreover, credit agreements drafted and concluded by banks are unfair, which is testified by complaints submitted to the Consumer Rights Protection Centre.

In the frameworks of the case under review, the Constitutional Court must assess whether obligation included in Section 400 of the CPL is subject to undisputed compulsory execution.

**10.1.** Section 400 (1) Indent 1 of the CPL requires registering of obligation security in a public register as a compulsory precondition. Obligation secured by a pledge must be payment obligation that is fully or partially secured by mortgage or commercial pledge. Mortgage is made public after its registration (corroboration) in the Land Register in relation to an immovable property (*see: Commentaries to the Civil Procedure Law, pp. 551*). Consequently, a public act is required, i.e. mortgage registered in the Land Register.

Credibility can be conferred to transaction regarding obligations secured by a public mortgage or commercial pledge mentioned in Section 400 (1) Indent 1 of the CPL by an entry in the respective public register. Section 1 of the Land Register Law provides that immovable properties shall be entered in Land Registers and the rights related thereto shall be corroborated therein. Land Registers shall be available to everyone and the entries thereof shall be publicly reliable. Taking into account the aforesaid, the legislator saw a possibility to subject obligation that follows from respective transactions to undisputed compulsory execution by establishing a special regulatory framework for it.

Under Section 1278 of the Civil Law, a pledge rights is such right in regard to property of another as on the basis of which the property secures the claim of a creditor so that the creditor is able to receive from the property payment for such claim. Moreover, it is indicated in Section 1281 of the CL that, in registering such mortgage in the Land Register, the amount of the credit available shall be indicated, in regard to which extent of the credit mortgage also has priority rights from the time it is registered in the Land Register. Under section 1290 of the CL, unless specifically agreed otherwise, a pledge right shall not only secure the principal claim but also its

associated ancillary claims. A similar clause can be found in Section 7 of the Commercial Pledge Law that provides that the commercial pledge shall secure not only the principal claim but also auxiliary claims. Consequently, the object of pledge should be of sufficient value in order to secure not only the basic claim but also payment of interest and default charges, contractual fines and other claims that follow from the respective secured obligation. Consequently, it can be concluded that Section 400 (1) Indent 1 of the CPL permits fulfilling obligations only at the extent they are secured by mortgage or a commercial pledge.

Undisputed procedure prohibits a creditor as debt-collector to direct debt recovery against property or financial means of debtors and select measures of recovery in accordance with requirements of Chapter 70 of the CPL. It is confirmed by practice of the Senate. The Senate has recognized that in cases of this category, when obligations are subject to execution in accordance with Section 400 (1) Indent 1 of the CPL, recovery is directed against pledged property only (*see: case materials, Vol. 1, pp. 166 – 171*).

**Consequently, under Section 400 of the CPL, undisputed compulsory execution of obligations is admissible only based on public acts and only at the amount, at which obligation is secured by mortgage or commercial pledge.**

**10.2.** The Applicants indicate that up to the moment when applications were submitted to the court, the term when obligations of the Applicants had to be fulfilled in accordance with entries in the public register had not yet expired. The Contested norm of Section 400 of the CPL allows the court to assess whether conditions, according to which obligations can be executed before the date indicated in the public register have set in, this being done based on evidence presented by a creditor and denying a debtor the possibility to provide his or her explanations and raise objections against the claim.

Under Section 1431 of the CL, the signing of a deed shall be considered to be consent to such deed, regardless of whether it applies to the signatory or to a third person, if the contents of such were known to the signatory and if he or she has a personal interest in, and the right to object to, the lawful transaction to which the deed applies. Moreover, according to Section 1587 of the CL, a contract legally entered into

shall impose on a contracting party a duty to perform that which was promised, and neither the exceptional difficulty of the transaction, nor difficulties in performance arising later, shall give the right to one party to withdraw from the contract, even if the other party is compensated for losses. Taking into account the aforesaid, in case if the right of a creditor to request anticipatory disbursement of a credit is contracted, then, under respective provisions of the agreements, a creditor shall have the right to exercise this right and request anticipatory disbursement of credit together with interest. A debtor, however, thus undertakes the obligations to disburse credit before the expiry of the term established in the agreement, if requested by the creditor. The above mentioned rights of a creditor (pledgee) follow also from Sections 1319 – 1339 of the Civil Law (hereinafter – CL), in particular, from Section 1326 that provides: “If payments on a claim by a pledgee are divided between several time periods, then the pledge may be sold as soon as there is default in regard to any of such time periods.

According to the case-law, in cases mentioned in Section 400 (1) Indent 2 of the CPL, application of the procedure established in Chapter 50 of the CPL is admitted only if the final term of payment established in the agreement has set in. However, in cases mentioned in Indent 1 of the same Section, application of the procedure established in Chapter 50 of the CPL is admitted whenever any of regular payments is delayed (*see: Judgment of 25 January 2006 of the Senate of the Supreme Court of the Republic of Latvia in the case No. SPC-7, Judgments and decisions of the Civil Case Department of the Senate of the Republic of Latvia 2006, TNA, 2007, 298 – 301*). Such conclusion made in the case law of the Supreme Court is substantiated by Section 1326 of the CL. Having established setting in of circumstances mentioned in the above mentioned Section, a creditor shall have the right to request termination of a loan agreement and recovery of the loan and the interest.

This means that a creditor does not have to wait setting in of the final term. It is sufficient to delay one contractual payment to submit an application before the court regarding compulsory execution of obligations (with certain deviations from this norm that are established in Section 8.1 of the Consumer Rights Protection Law in relation to consumers).

**Consequently, the pre-condition of undisputed compulsory execution of obligations included in Section 400 (1) Indent 1 of the Criminal Procedure Law cannot be related with the final term of execution of obligations.**

**10.3.** According to Section 6 (10) of the Consumer Rights Protection Law, if a dispute regarding whether the terms included in the contract are unfair arises between a manufacturer, seller or service provider and a consumer, any of the contracting parties has the right to apply to court, but the consumer has the right to apply to the Consumer Rights Protection Centre. Moreover, Section 6 (10.<sup>1</sup>) of the same Law provides for the rights of a customer to bring an action to court for the protection of his or her lawful rights and interests if losses are caused to a consumer due to unfair contractual terms. Upon resolving a dispute or carrying out other procedural actions arising from the contract entered into between a manufacturer, seller or service provider and a consumer, the court shall evaluate the terms of the contract and for the resolution of the dispute shall not apply the unfair terms provided for in the contract in relation to the consumer.

The above mentioned legal norm is related also to cases of application of Chapter 50 of the CPL because, according to Section 405 (4) of the CPL, if the judge finds that the application is unfounded or the act to be executed contains unfair agreement provisions that infringe the rights of consumers, he or she shall take a decision regarding the dismissal thereof.

**Consequently, the legislator has provided for legal remedies for debtors – consumers in cases if contracted provisions of agreements are unfair.**

**11.** It has already been indicated above that a fair court as a judicial procedure adequate for a law-governed State includes several mutually related rights. In the case under review, doubts are generally related with compliance of the Contested Norms with the right of a person to participate in court proceedings by expressing his or her opinion, and the right to appeal against judge's decision before a court of higher instance.

Under Section 405 (1) and (3) of the CPL, an application regarding undisputed compulsory execution shall be adjudicated by a judge sitting alone, within a period of

seven days from the day of submission of the application, on the basis of the submitted application and documents attached thereto, and without notifying the applicant and the debtor thereof. The judge's decision shall come into effect without delay, and it shall have the effect of an execution document. The decision shall be executed in accordance with provisions regarding the enforcement of judgments. It shall be submitted for execution together with a true copy of the document subject to undisputed compulsory execution.

It follows from the aforesaid that in procedure of undisputed compulsory execution of obligations, the right of a debtor to participate therein by applying the principle of equality and competition of parties, as well as the right to appeal judge's decision is restricted.

**12.** Even though the Satversme does not directly envisage cases in which the right to a fair court might be restricted, the right is not absolute. (*see: Judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, Para 7.1*).

The ECHR has also indicated that the right to a fair court are not absolute and they can be restricted; however, the restrictions cannot in substance prohibit exercising the right to a fair court (*see, e.g.: Judgment by the ECHR in cases: Edificaciones March Gallego S.A. v. Spain, judgment of 19 February 1998, para. 34; Garcia Manibardo v. Spain, no. 38695/97, para. 36; Staroszczyk v. Poland, judgment of 22 March 2007, para. 125*). Consequently, both, the Constitutional Court and the ECHR have clearly concluded that the right to a fair court can be restricted insofar as the right are not denied in substance.

The Constitutional Court has already concluded that the right to a fair court is one of the most significant rights of a person; therefore restrictions to this right of a person shall be determined in the most indispensable cases (*see: Judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 10*). The fundamental rights of a person, also the right to appeal to the court, may be restricted only in cases, determined by the Satversme, if the protection of significant public interests requires it and if the principle of proportionality is observed. Therefore the Court must assess whether the above mentioned restriction of fundamental rights has

been established by law, whether it has a legitimate objective, and whether the restriction is proportional with its legitimate aim.

**12.1.** In the case under review, the restriction of the fundamental rights has been established in the Civil Procedure Law that has been adopted and proclaimed according to the procedure established in the Satversme and the Saeima Rules of Procedure. Consequently, the restriction of the fundamental rights has been established by law.

**12.2.** When assessing whether such restriction of fundamental rights is necessary, the Court must investigate whether it has a legitimate aim.

The Constitutional Court has already concluded that the notion “to protect” in the understanding of Article 92 of the Satversme does not mean the right to an unending court process, on the contrary – to the process, which has to be completed in a reasonable period of time with a stable, effective court decision. The objective to ensure faster and more efficient adjudication of cases by thus reducing workload of courts can be regarded as a legitimate objective in the case of restriction of rights established in Article 92 of the Satversme. Similarly, the rights to a fair court can be restricted in order to ensure efficiency of functioning of courts (*see: Judgment of 5 November 2008 by the Constitutional Court in the case No. 2008-04-01, Para 13.2*).

Under Article 15.b of the Statute of the Council of Europe, the Committee of Ministers of the Council of Europe is entitled to issue recommendations to governments of members. Although these recommendations are legally binding, they apply to issues relevant to all member states. On 28 February 1984, the Committee of Ministers of the Council of Europe has issued Recommendation No. R (84)5 on the principles of civil procedure designed to improve the functioning of justice, and on 7 February 1995 – Recommendation No. R (95)5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases. The above mentioned recommendations were adopted by taking into consideration, among the rest, the necessity to facilitate effectiveness of legal proceedings, as well as to strengthen the right of each person to adjudication of a case within a reasonable term. One of the basic aims of these recommendations is

facilitation of effectiveness of legal proceedings. Consequently, the Council of Europe has drawn attention to the necessity to facilitate effectiveness of court proceedings.

The Constitutional Court has already concluded in its case-law that the aim to ensure accelerated and more effective examination of cases by reducing workload of courts, can be regarded as legitimate in cases of restriction of the rights established in Article 92 of the Satversme (*see: Judgment of 17 January 2005 by the Constitutional Court in the case No. 2004-10-01, Para 8.4*).

The contested regulation of the CPL is aimed at accelerating settling of the respective issues. By establishing a special order, according to which issues regarding debt recovery based on public acts can be decided upon in an extra-judicial way, ensures protection of the rights of creditors. An accelerated adjudication of cases ensures the possibility of creditors to fulfil their obligations with other clients, as well as to plan their economic and financial activities.

Thus adjudication of civil cases is accelerated and protection of rights of other persons is ensured because workload of courts is reduced; consequently, other persons can also count on an accelerated adjudication of cases, which ensures proportional use of resources of courts and observance of the principle of judicial economy, namely, it facilitates effectiveness of legal proceedings.

**Consequently, the restriction of the fundamental rights has a legitimate objective, which is acceleration of adjudication of cases, reducing of workload of courts and protection of the rights of persons.**

**12.3.** In order to assess, whether the restriction of the fundamental rights is proportional, it is necessary to establish: 1) whether the measures selected for reaching of the legitimate aim are truly aimed at reaching of this objective; 2) whether there exist other measures that would restrict the fundamental rights of persons at a lesser extent (would be more lenient); 3) whether the benefit gained by the society is greater than the detriment caused to rights and legal interests of a person.

**12.3.1.** It has been established in the case-law of the ECHR that, in fair legal proceedings, equality of parties is of great importance. Each party should be ensured a possibility to provide explanations and evidence in order to prevent a situation when one litigant of the case is established more advantageous circumstances if compared to

another (*see: Judgment of the ECHR in the case Dombo Beheer B.V. v. The Netherlands, judgment of 27 October 1993, 18 E.H.R.R. 213, Para. 33*). Parties must be ensured an equal possibility to interrogate summoned witnesses, as well as to receive legal assistance during case examination period.

The principle of competition has been established in the civil process. It obligates the parties to prove validity of his or her claim. However, there exist certain civil procedure activities when the court is permitted to adopt a decision if explanations of the opposite party are not received. To give an example, it is possible to mention the procedure for examination of applications regarding securing of a claim and that of adoption of judgments by default. There is no doubt that the principle of equality and competition of parties shall be applied to cases wherein disputes are settled.

However, the essence of undisputed compulsory execution of obligations does not lie in cancelling or substitution of dispute settling, i.e., examination of a case in substance. The above mentioned procedural institute postpones it because it is presumed that there is no dispute. This is also proved by the use of terminology. Participants of the case are an applicant (creditor) and a debtor, rather than a plaintiff and a defendant (*see: Commentaries to the Civil Procedure Law, pp.556 – 557*).

Based from the substantive point of view, an act, compulsory execution of which is requested by an applicant, is of such nature, in which circumstances requiring the execution have set in, a debtor does not contest them, and which has thus become an incontestable (undisputed) act. All contracted provisions must be categorically put down in the act. If both parties have signed and acknowledged the respective provisions, then there is no dispute. After having established the aforesaid, based on the procedural point of view, execution of such act has become incontestable; therefore the Law permits application of a simplified procedure and does not establish the right of a debtor to participate in the proceedings and to express his or her opinion. The above mentioned process takes place in writing. Observance of justice must be ensured by a judge who, having assess evidence present and based on the Law, must adopt a respective decision.

**Consequently, the measures selected are aimed at reaching of a legitimate aim and are appropriate for it.**

**12.3.2.** The Applicants indicate that finding out of debtor's opinion before a judge adopts a decision would be a more lenient measure that would restrict their fundamental rights at a lesser extent. Thus it would be possible to establish whether indeed no dispute that should be solved by a court exists between parties.

In cases when there exist more lenient measures, it is necessary to assess whether they ensure reaching of the legitimate aim at the same level of effectiveness. When assessing whether the legitimate aim may be reached in a more lenient way, the Constitutional Court takes has emphasized in its case-law that a more lenient means are not any means, but only such by which the aim may be reached in the same quality (*see: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 19*).

Section 404 (3) of the CPL requires among the rest that evidence that the debtor has been given a warning, unless it does not follow from the document itself or law that such warning is required must be appended to the application. It can be concluded from the aforesaid that, before submitting an application to the court, an applicant must warn the debtor, according to proper procedure, on its intention to address a court by submitting an application regarding undisputed compulsory execution of obligations. Warning of a debtor is a substantial guarantee of his or her right protection because applications are examined by the court without presence of case participants and by earning the parties on legal proceedings (*see: Commentaries to the Civil Procedure Law, pp. 561*).

Section 404 of the CPL guarantees a debtor the right to raise objections against the procedure undisputed compulsory execution of obligations and, in case if such dispute raises, to settle it in the frameworks court proceedings by way of action. Such procedure accelerates adjudication of cases because, in case of a dispute, a debtor can raise objections prior to execution of undisputed compulsory execution of obligations.

If a debtor had a possibility to inform a judge, in the frameworks of proceedings on undisputed compulsory execution of obligations, on a dispute, then, by suspending and postponing execution of obligations and asking to solve the dispute, the term of

execution of obligations would be considerably extended. This could not then be regarded as a more effective measure if compared to the right of a debtor to inform a creditor on his or her opinion immediately after receipt of a warning, namely, before undisputed compulsory execution of obligations is launched.

Section 404 of the CPL also permits the parties to agree on the fact that prior warning of a debtor is not necessary. This prevents a debtor from raising objections before launching of undisputed compulsory execution of obligations. Although a debtor is the one who undertakes obligations when agreeing to such provisions, they can considerably restrict his or her right to a fair court.

The ECHR has indicated in its case-law what rights, guaranteed in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms could be voluntarily restricted and not to be restricted. The legal science concludes that at least the rights to equality of parties, independence of courts and the right to be heard as well as the right to a fair court belong to the second group. These rights are especially vital because they are necessary for the protection of human dignity and rule of law (*see: Judgment of 17 January 2005 by the Constitutional Court in the case No. 2004-10-01, Para 9.1*).

Consequently, voluntary refusal of a warning regarding subjecting of execution of obligations to the procedure of compulsory execution denies a debtor the right to raise objections before the launch of undisputed compulsory execution of obligations and also to effectively exercise his or her right to a fair court by applying the principle of equality and competition of parties.

If a debtor is warned on subjecting of obligations to the procedure of compulsory execution, he or she may present objections to a creditor and to negotiate on terms of execution of obligations. He or she also has the right to address the court in accordance with the procedures for court proceedings by way of action with a view to protect his or her rights in case if a dispute exists.

**Consequently, only by warning a debtor on undisputed compulsory execution of obligations, his or her right to exercise the principle of equality and competition of parties is ensured.**

13. The Applicants also indicate that a judge's decision cannot be appealed against and therefore their right to appeal are restricted.

13.1. The duty of the State to establish a fair procedure of case adjudication follows from the first sentence of Article 92 of the Satversme. This Article does not commit the State to establish, in all cases, a possibility to appeal against a decision of the court according to appellate or cassation procedure.

The Constitutional Court has already concluded that the first sentence of this Article includes authorization to the legislator to pass laws, which would confer to concrete state institutions the functions of making decisions in court proceedings, as well as to adopt procedural laws, which would determine the procedure of adjudication (*see: Judgment of 20 December 2006 by the Constitutional Court in the case No. 2006-12-01, Para 8*).

Consequently, the legislator is authorized to provide by law what kind of matters fall within the area of responsibility of each institution and in how many institutions cases of different categories shall be examined. Simultaneously it is necessary to take into consideration the fact that there exists a link between the structure of judicial power and the possibility to ensure the rights to a fair court, because justice cannot be regarded separately from efficiency (*see: Judgment of 2 June 2008 by the Constitutional Court in the case No. 2007-22-01, Para 11*).

**Consequently, to ensure accelerated and more effective case adjudication, the State can establish a special procedure.**

13.2. The Contested Norms of Section 405 of the CPL provide that judge's decision shall come into force as soon as it is prepared and signed. It shall not be subject to appeal by way of an ancillary complaint or an appeal (*see: Commentaries to the Civil Procedure Law, pp. 563*).

Undisputed compulsory execution of obligations is possible only in cases established in the Civil Procedure Law. Although a decision satisfying an application regarding undisputed compulsory execution of obligations is not subject to appeal, the CPL, however, provides a debtor with other, equally effective measures for protection of his or her rights.

One of such measures is a protest against a court judgment that has taken effect. Section 483 of the CPL provides that a protest regarding a court adjudication that has come into effect may be submitted to the Senate by the Chairperson of the Senate Civil Matters Department or the prosecutor general, provided that not more than 10 years have elapsed since the adjudication came into effect. However, Section 484 of the CPL provides that the grounds for submitting a protest regarding a court adjudication are the breach of substantive or procedural norms of law as has been ascertained in matters which have only been adjudicated in a court of first instance, if the court adjudication has not been appealed pursuant to procedures prescribed by law due to reasons independent of the participants in the matter, or the infringement, pursuant to a court adjudication, of the rights of State or local government institutions or of such persons as were not participants in the matter. It follows from the above mentioned norms that a debtor who holds that a judge, when adopting a decision regarding undisputed compulsory execution of obligations, has breached substantive or procedural legal norm, can submit an application to officials mentioned in Section 483 of the CPL and to request them to submit a protest.

However, submitting of a protest cannot be regarded as an appeal in its tradition meaning because a person himself or herself does not have the right to submit an appeal.

**13.3.** The Civil Procedure Law provides that the judge's decision shall come into effect without delay, and it shall have the effect of an execution document; however, it also provides for a possibility to contest undisputed compulsory execution of obligations.

It is necessary to take into account the fact that in constitutional law, when analyzing the rights to a fair court, the notions “to appeal”, “an appeal” are usually used in the sense “to appeal in a higher instance court”, “an appeal before a higher instance court” (*see, e.g.: Judgment of 20 June 2002 by the Constitutional Court in the case No. 2001-17-0106*). On the other hand, specialists of the civil procedure law use the term “to appeal” not only regarding appealing a decision in a higher instance court, but also regarding raising objections at the same instance court (*see: Judgment of 5 November 2008 by the Constitutional Court in the case No. 2008-04-01, Para 8.2.3*).

The Section 406 of the CPL provides: If a debtor is of the opinion that the claim of the creditor is, on the merits, unfounded he or she may, within a period of six months from the date when the true copy of the decision is sent, bring an action against the creditor to dispute the claim. However, the second paragraph of the same Section provides that, in bringing action, the debtor may request a stay of the undisputed compulsory execution, but if the judgment creditor has already received satisfaction through such process – may petition to ensure the action. To protect the rights and legal interests, a debtor has the right to apply one of the two possible requirements. If a judge’s decision has not yet been executed, a debtor can submit a claim of consideration to the court by asking to repeal judge’s decision, to release him from compulsory execution of obligations and to reject the claim against him. If a decision of a judge is already executed, a debtor has the right to submit a claim of reverse execution, also by requesting recovering from creditor everything that it has received in the result of c procedure of compulsory execution of obligations (*see: Commentaries to the Civil Procedure Law, pp. 563*). Actions shall be instituted in accordance with general provisions of court proceedings by way of action and also by paying the corresponding State tax. Consequently, if follows from the aforesaid that claim of consideration, according to its procedural substance, is a measure of appeal (*see: Konradi F., Zvejnieks T., pp. 85*)

**13.4.** According to the Applicants, the norm of the CPL regarding payment of a State tax prohibits debtors to implement their right to address the court to protect their rights and legal interests because often a debtor is not able to pay this tax. However, the above mentioned norm has not been contested in the case under review.

The Legislator has conferred each person the right to ask the court, upon considering the material situation of a natural person, to exempt him or her partly or fully from payment of court costs into State revenues, as well as postpone payment of court costs adjudged into State revenues, or divide payment thereof into installments (*see: Section 43 of the Civil Procedure Law*). The Constitutional Court draws attention of courts of common courts and that of the legislator to the fact that restriction of the fundamental rights is not only a question of constitutionality, but also an issue of application of the respective norms. Therefore, it is substantial for the case-law that

arguments of plaintiffs regarding reduction of the State tax or release of plaintiffs from it are appropriately assessed. Case-law of the Constitutional Court contains cases with a similar substance of claim, and materials of these cases include documents that testify that debtors who have risen a claim of consideration are not released, by courts, from payment of the State tax; the State tax has neither been reduced for them, which is substantiated by the fact that respective persons have not been granted the status of a low-income person because they have credit obligations or they are businessman.

After having examined the legal regulatory framework on State tax in Latvia till 1940, it is possible to conclude that only a half of the State tax had to be paid for submitting a claim of consideration; moreover, this coincided with the amount to be paid for an application regarding compulsory execution of obligations: “when raising a claim of consideration (reverse execution) and requesting compulsory execution of obligations based on acts, only a half of the State tax shall be paid” (*Bukovskis V.*, pp. 537). The legislator could consider this issue and assess whether the existent procedure does ensure the right of participants of the case to access a court.

**Consequently, the contested norms of Section 405 of the CPL in conjunction with the procedure of appeal against undisputed compulsory execution of obligations established in Section 406 of the CPL, ensures the element of a fair legal proceedings enshrined in Section 92 of the Satversme, which is the right to appeal.**

**14.** In the first half of 2009, undisputed compulsory execution of obligations and execution of obligations by way of warning constitute a considerable part of civil cases and applications, namely, 66.8 percent of the entire amount of cases and applications examined by the first court instance (*see: research „Tiesu varas neatkarības un efektivitātes palielināšanas un nostiprināšanas rezerves”// Jurista Vārds, 09.03.2010, No. 10*).

If the above mentioned cases were examined in the frameworks of court proceedings by way of action, this would increase work load of courts and extend terms for adjudication of cases. Undisputed compulsory execution of obligations ensures effective execution of debt recovery, whilst cases where dispute regarding

obligations itself arises, are provided with certain procedure allowing to contest obligation before the court.

**The restrictions of the rights of persons established in the Contested Norms are proportional because the benefit gained by the society are greater than the detriment done to a person.**

### **The Constitutional Court**

Based on Article 30 – 32 of the Constitutional Court Law

**h o l d s :**

**Section 400 (1) Indent 1 and Section 405 (1) and (3) of the Civil Procedure Law comply with Article 92 of the Satversme if a debtor is sent a warning on undisputed compulsory execution of obligations prior to launching of it.**

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing it.

Presiding Judge

G. Kūtris