THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, 30 March 2010
in Case No. 2009-85-01

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 the applications of „TOPMAR HOLDINGS" and Mr. Vitālijs Grinčišins,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 1st indent, Article 17 (1), 11th indent, and Article 28.[1] of the Constitutional Court Law,

on 2 March 2010 in writing examined the case

"On Compliance of Section 141 Paragraph 1 of the Civil Procedure Law insofar as It Provides for the Right to Submit an Ancillary Complaint Regarding Securing of a Claim with Article 91, Article 92 and Article 105 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 also – the CPL) that came into effect on 1 March 1999.

Up to October 2006, norms of Chapter 19 of the CPL "Securing Claims" established the right of a defendant to submit an ancillary complaint regarding a decision satisfying an application for securing of a claim. Section 146 Paragraph 1 of the CPL provided: "An ancillary complaint may be submitted regarding all decisions on securing claims, except cases established in Section 145 Paragraph 2 of this Law." Section 145 Paragraph 2 of the CPL regulates the situation when a decision on securing of a claim is adopted before the claim is pursued and no action has been brought within the term established by the court.

On 7 September 2006, the Saeima adopted the Law "Amendments to the Civil Procedure Law" that came into effect on 11 October 2006. These law introduced substantial amendments into Chapter 19 of the CPL. Articles 138, 139, 140, 141 and 142 of the CPL were provided another wording, whilst Articles 144, 145 and 146 of the CPL were deleted. The new wording of Section 141 Paragraph 1 provided that ancillary complaint may be submitted:

1) regarding a decision that secures losses that the defendant may suffer due to securing of a claim;
2) regarding a decision that provides that securing a claim shall be substituted by other measures,
3) regarding a decision, by which the court that has adopted the decision regarding securing a claim, cancels or substitutes a non-amended decision regarding securing of a claim.

After coming into force of the above mentioned amendments, the defendant was no more entitled to submit an ancillary complaint regarding a decision satisfying an application for securing of a claim. The defendant, however, could protect his or her rights in accordance with Section 140 Paragraph 5 of the CPL by lodging before the court that adopted the decision on securing of a claim an application to cancel the decision. Should the court satisfy the claim, the defendant has the right to submit an ancillary complaint regarding the court decision in accordance with Section 141 Paragraph 1 of the CPL.

The above mentioned procedure was preserved in the Law "Amendments to the Civil Procedure Law" adopted by the Saeima on 14 December 2006 by providing for the

following wording of Section 141 Paragraph 1 of the CPL: "An ancillary complaint may be submitted in regard to the decisions referred to in Section 140, Paragraphs two, three and five of this Law and the decision with which the application for the securing of a claim is refused."

On 5 February 2009, the Saeima adopted the Law "Amendments to the Civil Procedure Law" that introduced substantial changes not only to Chapter 19 of the CPL but also the entire Civil Procedure Law. Pursuant to the above mentioned amendments, Section 140 Paragraph 5 of the CPL acquired the following wording: "The securing of a claim may be revoked by the same court on the basis of an application by the parties." However, Section 141 Paragraph 1 obtained the following wording: "An ancillary complaint may be submitted in regard to the decisions referred to in Section 140, Paragraph three of this Law and the decision with which the application for the securing of a claim is refused. In the case referred to in Section 140, Paragraph 2 of this Law, an ancillary complaint may be submitted regarding a court decision insofar as it commits the defendant to secure losses."

Consequently, since 1 March 2009 when the above mentioned amendments came into effect, the defendant is denied the right to submit an ancillary complaint regarding a decision rejecting an application on cancelling of securing of a claim.

2. On 7 September 2009, a case has been initiated based on an application of the joint-stock company "TOPMAR HOLDINGS", whilst on 4 November 2009 – another case was initiated having regard to an application of Mr. Valērijs Grinčišins. The applications of „TOPMAR HOLDINGS" and Mr. Valērijs Grinčišins (hereinafter – the Applicants) were similar. In order to facilitate an exhaustive and fast proceedings, on 26 November 2009 the cases were joined in accordance with Article 22 Paragraph 6 of the Constitutional Court Law. The joined case NO. 2009-85-01 was given the title "On Compliance of Section 141 Paragraph 1 of the Civil Procedure Law insofar as It Provides for the Right to Submit an Ancillary Complaint Regarding Securing of a Claim with Article 91, Article 92 and Article 105 of the Satversme of the Republic of Latvia".

3. The Applicant joint stock company "TOPMAR HOLDINGS" holds that Section 141 Paragraph 1 of the CPL insofar as it fails to provide the right to submit an ancillary complaint regarding a decision satisfying the application for securing of a claim, (hereinafter – the Contested Norm) does not comply with Article 91 and Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant Mr. Vitālijs Grinčišins maintains that the Contested Norm does not comply with Article 91, Article 92, as well as Article 105 of the Satversme.

The Applicants indicate that a plaintiff, when submitting an application for securing of a claim, is not obligated to present evidence on unlawful activities of the defendant. The court, however, when deciding on securing of a claim, does not have the duty to analyse the essence of the claim and decide whether the claim can be satisfied. To decide the question, it is sufficient by the plaintiff to submit a motivated application by indicated that execution of the decision is problematic or impossible. Moreover, the decision is adopted in the absence of the parties, and the defendant is denied the possibility to be heard. The Contested Norm permits the court to adopt, without prior examination of evidence and based only on statements of one of the parties, a decision that cannot be contested. This restricts the rights of the other party of the case at a considerable rate, and it does not comply with the right to a fair court established in Article 92 of the Satversme.

If the court decision is unfavourable for the defendant and the claim is secured, the Contested Norm prohibits the defendant to submit an ancillary complaint regarding the decision satisfying an application for securing of a claim. In such a case, the only possibility for the defendant is to address the court that has secured the claim by asking it to cancel the above mentioned decision. However, it can be concluded from the case-law of the Supreme Court that the defendant does not have the right to challenge lawfulness and admissibility of security of a claim. The defendant only has the right to try to prove that circumstances that for the basis of the security of a claim have changed. Consequently, in the case of having secured the claim, the Contested Norm denies the right of the defendant to submit an ancillary complaint regarding substantial decisions that are disadvantageous to him or her. The defendant can challenge such decision only by submitting an appeal. The plaintiff, however, has the right to appeal against such

decision immediately by submitting an ancillary complaint. Consequently, the Contested Norm does not comply with Article 91 of the Satversme because it does not ensure procedural equality of the parties.

The Applicant joint stock company "TOPMAR HOLDINGS" expresses a viewpoint that the possible aim of the Contested Norm is to speed up examination of civil cases and avoid delaying of proceedings. However, then it is not clear why the plaintiff has been conferred the right to submit an ancillary complaint whilst the defendant has not. The Applicant Mr. V. Grinčišins indicates that the Contested Norm does not have an objective substantiation because, before the norm was adopted, the previous procedure that existed for a long time provided that a decision on security of a claim can be challenged by both parties. Since the security of a claim remains in force up to the date of coming into force of a judgment, the Contested Norm might cause a situation when the rights of a person would be restricted during several years by thus denying the possibility to examine lawfulness of such restriction at a court of a higher instance.

The Applicant Mr. V. Grinčišins holds that the Contested Norm neither complies with Article 105 of the Satversme. Property right include the right to gain all possible benefits from property. In the result of application of the Contested Norm, value of person's property might reduce; consequently, the Contested Norm restricts the property right of the Applicant. There is no doubt that the court has the statutory right to restrict persons' property right, and this restriction has a legitimate objective, namely, to ensure execution of a court judgment as a public act by protecting property interests of the applicant. However, the Contested Norm cannot be regarded as proportional because the Civil Procedure Law does not provide for any other effective mechanism to protect the rights of the person who is applied the security of a claim.

4. The Saeima, the institution that adopted the contested act does not share the opinion of the Applicants and holds that the Contested Norm does comply with Article 91, Article 92 and Article 105 of the Satversme.

Since the defendant can irreversibly influence the right of the plaintiff to achieve execution of a judgment, for instance, by hiding or expropriating property, the legislator has provided that decisions regarding securing of a claim shall be adopted without delay,

without hearing the defendant or organizing a court sitting. This does not mean, however, that these decisions can be taken voluntarily. The court may satisfy applications on securing of a claim only if it complies with certain criteria and the court has made sure that, in case if the claim is not secured, the plaintiff would not be satisfied even if the judgment is favourable to him or her. Such decision should be motivated and based on evidence provided by the plaintiff.

When analysing compliance of the Contested Norm with Article 92 of the Satversme, the Saeima indicates that the norm serves as one of the measures to ensure effectiveness of civil procedure and eliminating actual problems. Before the amendments were introduced, the possibility to submit an ancillary complaint established in the Civil Procedure Law was often applied with a view to delay court proceedings. After having received such an ancillary complaint, the court transferred it to a court of a higher instance for it to examine the ancillary complaint. Moreover, such transfer could be repeated several times. The Contested Norm ensures that a particular case is examined on its merits within a reasonable term. Consequently, the aim of the Contested Norm is to ensure faster settlement of disputes by eliminating the possibility to delay court proceedings and to reduce workload of courts.

The Saeima indicates that it is better to establish that assessment of repeated security of claims falls within the scope of jurisdiction of first instance courts. After having received a plaintiff's application and evidence, the court of the first instance may decide on cancelling or amending of the security of a claim due to changes of circumstances. Moreover, in such a case both parties are conferred the right to present their opinion.

The opinion of the Applicants that the Contested Norm does not comply with Article 91 of the Satversme is not grounded. Both parties have the possibility to submit evidence and arguments when the court decides on securing a claim or cancelling the security of the claim. The principle of legal equality in procedural rights does not require ensuring both parties with identical legal remedies. The above mentioned principle means that both parties should have equal possibilities to protect their rights and interests. However, the only possible model to review the decision and to be applied by the plaintiff is an ancillary complaint. The Saeima concludes that the Civil Procedure Law

guarantees equality of parties when deciding the issue of securing a claim. The choice of the legislator in favour of different but equally effective solutions can be substantiated by objective arguments and it complies with the principle of legal equality.

According to the Saeima, the Contested Norm does not establish any restriction to the property right. It establishes restriction only in the case of securing the claim to examine claims that follow from property issues. These restrictions shall be assessed in the light of Article 92 of the Satversme.

To concretize the opinion expressed in the reply, the Saeima indicates that the no statistical data on the number of ancillary complaints regarding securing of claims have been summarized when adopting the Contested Norm. However, the legislator took into account real cases. According to the information provided by the Ministry of Justice, a working group executed an assessment, this group including judges of different ranks and law scholars.

5. The summoned person **the Ministry of Justice** indicates that a judge or a court secures a claim only if the plaintiff has presented evidence proving that in the case of a more favourable court judgment the execution thereof would be problematic or impossible.

The aim of the Contested Norm is ensuring effectiveness of civil procedure because in practice the procedure of ancillary complaint has been often applied with a view to delay court proceedings.

According to the Ministry of Justice, quality of procedural rights of parties in a civil procedure plays a substantial role when ensuring a fair and right judgment. However, it is possible to make exceptions in order to achieve the aim of the security of a claim. However, the institute of the security of a claim does not confer to the parties equal procedural rights. The Civil Procedure Law offers the defendant other equal legal remedies. The defendant has the right to request compensation of losses caused by securing of a claim and to address an application on cancelling of the security of a claim to a court that has secured the claim. When examining the request of the defendant to cancel the security of the claim, the court or the judge should assess the same arguments that would be assessed by a court of a higher instance in case if the defendant had the

right to submit an ancillary complaint. Consequently, the right of persons to a fair court would not be infringed.

When assessing compliance of the Contested Norm with Article 92 of the Satversme, the Ministry of Justice draws attention to authority of the legislator to establish the number of courts for examining of cases of a certain category. If the legislator has established that cases of a particular category shall be examined only in one court, it should ensure an adequate court procedure in the particular instance. According to Section 140 Paragraph 5 and 9 of the CPL, the defendant has the possibility to provide oral explanations and present proper evidence to the court when asking to cancel the security of a claim. Moreover, in the case if such an application is examined, the court, having assessed the evidence presented, shall have the right to cancel the security of the claim.

The restriction of the fundamental rights established in Article 92 of the Satversme has been established by law, and the legitimate aim of the restriction is ensuring faster and more efficient settlement of disputes. Although the defendant does not have the right to challenge a particular court decision after the claim has been secured, he or she still has the possibility to submit an application regarding cancelling of the security of the claim. Consequently, the benefit gained by the society from the fact that the decision regarding securing of a claim is not subject to appeal is greater than the negative consequences that could be caused to a particular person. Moreover, this leads to reducing of workload of courts, and cases are examined in reasonable terms.

6. The summoned person, **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that according to Article 6 the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and Article 14 of the UN International Pact on Civil and Political Rights, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The European Court of Human Rights (hereinafter – the ECHR) has indicated in its case law that the State must ensure the most effective protection of the fundamental

rights of a person. However, the right to address a court are not absolute and can be restricted if the restriction has a legitimate objective, it is proportional and indispensible in a democratic society.

The Ombudsman indicates that the restriction included in the Contested Norm has a legitimate objective, i.e. ensuring of efficiency of the civil procedure. The term "a fair court" includes a process consistent with the state, notably, the process that is not only fair but also effective. The right to prove one's truth conferred to the participants of the case could not be exercised if a civil case would not be examined and participants of the case would not exercise their rights in good faith.

The legislator has included into Chapter 19 of the CPL a compensatory mechanism for the parties to be able to balance exercising of their rights and fulfilling of their duties and none of them would have an unequal situation. The defendant has the possibility to ask the court to substitute the established remedy of securing a claim or any other claim, or to cancel it if the remedy has been unreasonably established. Likewise, a judge may obligate the plaintiff to compensate losses that the defendant may suffer due to securing of a claim.

The Ombudsman concludes that the regulatory framework guarantees observance of the right to a fair court; moreover, the restriction established in the Contested Norm is proportional and indispensible in a democratic society.

7. The summoned person, **Professor of the Rēzekne Higher Education Institution [*Rēzeknes augstskola*] Dr. iur. Jānis Rozenbergs** indicates that equality of parties should be ensured in a civil procedure. The general principle of equality forms the basis of such equality. Since parties of the case have equal procedural status and this is only the court that can determine the mutual rights and duties of the parties when examining the case on its merits, parties should be ensured equal possibilities to enjoy protection by the court when adjudicating the case.

Equality of the parties does not mean that all procedural rights and duties of the parties should absolutely coincide. Equality also permits a differentiated attitude towards the rights of persons if this is justifiable in a democratic society. Deviations from the principles of equality established in the Civil Procedure Law have been grounded in an

objective and reasonable manner. Since the parties usually have different, and even opposed legal interests, it is not always possible to balance the rights of the parties. However, in all cases when one of the party is conferred more rights or less obligations, the other party should be ensured with appropriate procedural remedies.

Mr. J. Rozenbergs concludes that equality of persons has been observed when deciding on securing of claims. Although the Contested Norm does not establish the right of the defendant to challenge the decision securing the claim, the legislator has conferred other rights to the defendant. Consequently, restriction of equality of the parties, when appealing against securing of a claim is proportional with the aim of the civil procedure, namely, to ensure fast and correct examination and adjudication of cases.

8. In its letter, **the Court Administration** supplied the Constitutional Court with the information regarding ancillary complaints regarding securing of claims examined in regional courts in the period from 2004 to 2008. For instance, in 2008 regional courts examined 180 ancillary complaints regarding securing of claims. In 91 cases, the decision was left unchanged and the complaint was rejected, whilst in 60 cases the decision was fully or partially cancelled and the issue was transferred for revision.

The Constitutional Court has concluded:

9. 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."

Both applications contest compliance of the Contested Norm with Article 92 of the Satversme. However, it follows from the applications that, in fact, compliance of the Contested Norm with the first sentence of Article 92 of the Satversme only is contested. This sentence provides that everyone has the right to defend his or her rights and lawful interests in a fair court.

10. When analyzing the first sentence of Section 92 of the Satversme, the Constitutional Court has acknowledged that the concept "fair trial" included therein provides for two aspects, namely, "fair trial" as an independent judiciary institution, which examines the case, and "fair trial" as a proper process relevant for a judicial country, wherein this case is examined. Section 92 of the Satversme provides for both - the responsibility to create a relevant judicial institution system and the responsibility to adopt relevant procedural norms (*see, e.g.: Para 2 of the Concluding Part of the Judgment of the Constitutional Court of 5 March 2002 in case No. 2001-10-01 and Judgment of the Constitutional Court of 9 May 2008 in the case No. 2007-24-01, Para 8*).

When ascertaining the nature of the fundamental rights established by the Constitution, one should also take into account the international commitments that Latvia has undertaken in the area of human rights. The international regulations of human rights and the practice of their application at the level of constitutional rights serve as interpretative means for determining the nature and scope of the principles of judicial state and fundamental rights as far as they do not lead to the restriction of the fundamental rights provided by the Constitution. The obligation of the State to observe its international commitments in the area of human rights follows from Article 89 of the Constitution, stating that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. This article clearly shows the constitutional legislator's intention to harmonise the constitutional provisions concerning human rights with the international regulations of human rights (*see e.g.: Judgment of the Constitutional Court of 9 May 2008 in the case No. 2007-24-01 Para 11 and judgment of 11 December 2009 in the case No. 2009-43-01 Para 20*).

Article 6 of the Convention provides among the rest things that in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. However, Article 14 of the International Pact on Civil and Political Rights provides that "[..] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

Consequently, 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.

11. Securing of claims is regulated in Chapter 19 of the CPL. The first sentence of Section 137 Paragraph 1 of the CPL provides: "If there is reason to believe that the execution of a court judgment in a matter may become problematic or impossible, a court or a judge may, pursuant to a reasoned application by the plaintiff, take a decision regarding the securing of a claim."

The right to request securing of a claim is a substantial procedural right that the plaintiff may exercise at any stage of court proceedings, as well as before instituting proceedings before a court. Securing of a claim and deciding on questions related thereto is a material element of civil procedure that should comply with the requirements of Article 92 of the Satversme like the entire civil procedure does.

Consequently, a court should take decisions regarding securing of claims according to the established procedure compliant with Article 92 of the Satversme.

12. The Applicants have indicated that the Contested Norm does not ensure procedural equality to the parties. Consequently, the principle of equality established in Article 91 of the Satversme is infringed.

The Satversme is a cohesive whole and the legal norms, incorporated into it, are mutually closely connected. To establish the contents of the above norms more completely and more impartially, the norms shall be interpreted as read together with other norms of the Satversme (*see: Judgment of 18 October 2007 by the Constitutional Court in the case No. 2007-03-01 Para 30 and Judgment of 2 June 2008 in the case No. 2007-22-01 Para 9.2*).

It has been recognized in the scientific literature and the case-law of the European Court of Justice that equality of procedural rights is one of the elements of a fair trial. This principle means that both, in civil procedure and criminal procedure the rights of the parties should be balanced in a fair manner (*see: Ovey C., White R. Jacobs and White, The European Convention on Human Rights. Fourth Edition. Oxford: Oxford University*

Press, 2006, p. 176, as well as, e.g., Judgments of the ECHR in the cases Kress v. France, judgment of 7 June 2001, application no. 39594/98, para. 72; Ankerl v. Switzerland, judgment of 23 October 1996, application no. 17748/91, para. 38; Dombo Beheer B.V. v. the Netherlands, judgment of 27 October 1993, application no. 14448/88, para. 33 un Neumeister v. Austria, judgment of 27 June 1968, application no. 1936/63, para. C 22).

Equality of procedural rights is a material element of the right to a fair trial and a manifestation of the principle of legal equality (*see: Grabenwarter C. Europäische Menschenrechtskonvention. München: C. H. Beck, 2005, S. 310)*. It can also be concluded from Section 9 Paragraph 1 of the CPL establishing that the parties have equal rights that procedural equality of the parties is a manifestation of the principle of legal equality in the civil procedure.

Consequently, the Constitutional Court, when assessing compliance of the Contested Norm with Article 92 of the Satversme, will assess whether it ensures procedural equality of the parties.

13. In order to establish whether the Contested Norm restrict equality of procedural rights of the parties, it is necessary to analyse what procedural rights are conferred to the plaintiff and the defendant in a court procedure adjudicating securing of a claim.

If the court decision is favourable to the plaintiff and the claim is secured, then, according to the Contested Norm, the defendant cannot appeal against this court decision by submitting an ancillary complaint. However, if the court decision is unfavourable to the plaintiff and the court has refused securing the claim, the defendant has the right to submit an ancillary complaint regarding the decision.

The Saeima and the Ministry of Justice have indicated that the Civil Procedure Law grants the defendant legal remedies that are equal to the right to submit an ancillary complaint about a decision satisfying an application for securing a claim. The defendant has the right to request substituting the requested means for securing the claim by another remedy, the right to request compensation for losses suffered by him or her due to

securing of a claim, as well as the right to submit an application on cancelling of the security of a claim before a court that has satisfied the application for securing the claim.

Under Section 140 Paragraph 3 of the CPL, the court, based on an application of a participant of a case, has the right to substitute the established means for securing a claim by other remedies; however, these rights cannot be equated with the right to submit an ancillary complaint against the decision securing the claim. Under Section 138 of the CPL, there are different means for securing claims. They, however, considerably restrict the right of the defendant to use his or her property or restrict the defendant carrying out certain activities. Having achieved the change of means for securing claims, rights of the defendant are still restricted. The initial legal status of the defendant can be restored by cancelling the security of the claim.

The right to request compensation for losses that he or she suffers due to securing of a claim, as established in Section 143 of the CPL, cannot be equated with the right to submit an ancillary complaint against a decision satisfying the application of securing a claim. Since proceedings might take place for several years, the right to request compensation of losses after coming into effect of the judgment are often ineffective. Moreover, compliance of the security of the claim with legal norms is not being verified in each proceeding, within which the defendant may request compensation from the plaintiff.

There is no reason to disagree with the viewpoint that the rights of the defendant conferred thereto by Section 140 Paragraph 5 of the CPL, namely, the right to submit an application before a court regarding cancelling of the security of a claim satisfying an application for securing a claim, is equal to the right to submit an ancillary complaint. It is possible to agree with the opinion expressed in the scientific literature that the aim of Section 140 Paragraph 5 of the CPL is to decide on cancelling of the security in case if circumstances of the case have changed and there is no reason to fear that execution of the judgment in the case would turn out to be problematic or impossible (*see: Briedis E. Par prasības nodrošinājuma atcelšanu. Jurista Vārds, 2009, No. 18, pp. 11*). However, when examining an ancillary complaint, a court of higher level reassesses arguments of

the plaintiff and provides its assessment on whether the court of a lower instance, when securing the claim, has assessed factual and legal circumstances in a right way.

Taking into account the aforesaid, the Constitutional Court concludes that the plaintiff and the defendant in court proceedings where the court decides on securing a claim enjoy unequal conditions. Consequently, equality of procedural rights pertaining to the content of the right to a fair trial is infringed.

Consequently, the Contested Norm restrict the rights of the Applicants established in Article 92 of the Satversme.

14. Equality of procedural rights in examining of civil cases is not absolute. The Constitutional Court has reiterated that 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. The Satversme is a single aggregate body and the norms, incorporated into it, shall be interpreted systemically. Presumption that it is not allowed to determine any limitations to the rights envisaged in Article 92 of the Satversme for every particular person, would be at variance with both – the fundamental rights of other persons, guaranteed by the Satversme, and the other norms of the Satversme (*see, e.g.: Judgment of 27 June 2003 of the Constitutional Court in the case No. 2003-04-01 Para 1.1 of the Concluding Part and Judgment of 4 January 2005 in the case No. 2004-16-01,Para 7.1*).

For the restriction of fundamental rights to comply with the Satversme, it should be established by law, it should have a legitimate objective and be proportional with this objective. It is also indicated in the scientific literature that deviations from equality of parties are permitted only if they are objective and reasonable (*see: Torgāns K. (red.). Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2006, pp. 34]*.

15. The Contested Norm is included in the Civil Procedure law. In the case under review, there is no dispute whether the Contested Norm has been adopted and proclaimed according to the procedure established in the Satversme and the Saeima Rules of Procedure.

Consequently, the restriction of fundamental rights has been established by law.

16. The Saeima indicates that the aim of the contested norm is to speed up adjudication of cases and make proceedings more effective, as well as to eliminate the possibility to relay court proceedings and reduce workload of courts. Consequently, by ensuring adjudication of cases within a reasonable term, the right of other persons to a fair court is being protected.

The Constitutional Court has already established that the objective to ensure faster and more efficient execution of disputes by thus reducing the workload of courts can be regarded as legitimate in the case of restricting the rights established in Article 92 of the Satversme (*see: Judgment of 17 January 2005 of the Constitutional Court in the case No. 2004-10-01 Para 8.4 and Judgment of 2 June 2008 in the case No. 2007-22-01 Para 14.3*). The ECHR, too, has indicated that the right to examination of a case within a reasonable term is a substantial element of Article 6 of the Convention (*see, e.g.: Judgment of the ECHR in the cases Bottazzi v. Italy, judgment of 28 July 1999, application no. 34884/97, para. 22 un Gromzig v. Germany, judgment of 4 February 2010, application no. 13791/06, para. 78).* However, the Committee of Ministers of the Council of Europe, in the recommendation of 28 February 1984 No. R(84)5 on the principles of civil procedure designed to improve the functioning of justice, has emphasized that it is important to improve effectiveness of court proceedings and thus to ensure the right of each person to examination of a case in a reasonable term (*see:. Recommendation No. R(84) on the principles of civil procedure designed to improve the functioning of justice, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=603496&SecMode=1&DocId=682030&Usage=2].*

Consequently, the Contested Norm has a legitimate objective.

17. In order to establish whether the principle of proportionality has been observed, it is necessary to investigate whether the means selected by the legislator are appropriate for reaching the legitimate objective and whether there exist other more

lenient means to reach the objective, and whether the action of the legislator has been appropriate of proportional.

18. When an ancillary complaint regarding the court decision has been submitted, the case together with the ancillary complaint is transferred to a court of higher instance, and the latter examines the ancillary complaint. As soon as the court takes a decision, case materials are sent back to the court that examined the case on its merits. Consequently, submission and examination of an ancillary complaint may extend case examination by the court.

By restricting the rights of parties to submit an ancillary complaint regarding the decision, or, respectively, ask to have the decision re-examined at a court of a higher instance, it is possible to reduce the time of examination of the case on its merits and that of adopting of a judgment. Consequently, this increases effectiveness of court proceedings and ensures examination of cases within a reasonable term.

Consequently, the restriction included in the Contested Norm ensures procedural economy and is appropriate for reaching of the legitimate objective.

19. When assessing whether the legislator has selected the most lenient measure to reach the legitimate objective, the Constitutional Court is not committed to establishing alternative solutions that would be more appropriate for reaching the legitimate objective. The Constitutional Court has concluded that, when establishing regulatory framework of civil procedure, the legislator enjoys a broad freedom of action unless this ensures protection of the fundamental rights. The duty of the Constitutional Court is to assess the compliance of the impugned norm with the fundamental rights, determined in the Satversme but not to substitute the freedom of action of the legislator with its viewpoint on a more rational solution (*see: Judgment of 15 February 2005 of the Constitutional Court in the case No. 2004-19-01 Para 7.5*).

The Constitutional Court, however, has the authority to verify whether the legislator, when restricting the rights of a person, has selected such alternative measures that restrict the rights of person at a lesser extent.

According to the Saeima, when adopting the Contested Norm, real cases were taken into account. The Ministry of Justice informs, however, that assessment of the Contested Norm has been performed by a working group "For Elaboration of Amendments to the Civil Procedure Law" established by the Minister of Justice, this group also including judges from city courts, regional courts, the Department of Civil cases of the Supreme Court and those of the Civil Case Department of the Senate of the Supreme Court, as well as law scholars and representatives from the Latvian Council of Sworn Advocates and the Latvian Council of Sworn Bailiffs.

It is possible to conclude that the Saeima, in collaboration with the working group of the Ministry of Justice, has assessed the way how to increase effectiveness of court proceedings and what are the most lenient measures to reach the above mentioned aim. In order to reach the legitimate objective, the legislator has adopted the Contested Norm and restricted the rights of the defendant to appeal against a court decision satisfying an application for securing a claim. Restrictions of appeals against court decisions shall be regarded as an efficient measure to ensure procedural economy. In the case under review, the rights of any of the parties would be restricted whatsoever. Therefore the Saeima uses its authority to establish the most lenient alternative measure for reaching the legitimate objective.

Consequently, the Constitutional Court does not have the reason to question the fact that the Saeima has performed an appropriate assessment when selecting the most lenient measure for reaching the legitimate objective.

20. In order to establish whether the contested norm is proportional, the Constitutional Court has to establish whether the benefit gained by the society from the restriction of the right to a fair court established to the Applicants is greater that detriment done to rights and legal interests of a person.

Procedural economy on the one hand and equality of procedural rights on the other hand constitute elements of Article 92 of the Satversme that should be reasonably balanced. In the case under review, the Constitutional Court must assess whether the benefit for the society from procedural economy contradict or not to equality of procedural rights of the parties.

20.1. The Saeima has reasonably indicated that an ancillary complaint is often used with the view to delay court proceedings. This is also possible in the case of securing a claim. The legislator, however, must assess, when restricting procedural rights of only one of the parties, whether a fair balance among equality of procedural rights of the parties and procedural economy has been observed.

Initially Section 146 of the CPL provided that an ancillary complaint can be submitted regarding all court judgments regarding securing of claims. An exception applied to cancelling of the security in case if the decision regarding securing of a claim was adopted before cancelling of the claim and no action was instituted within the term established by the court.

In order to ensure procedural economy, the Saeima established in the law of 7 September 2006 that an ancillary complaint can be submitted regarding the decision that obligates the plaintiff to compensate losses, the decision substituting the means for securing the claim by another measure, and the decision cancelling or leaving the means for securing claims established by it effective.

However, in the Law of 14 December 2006, the Saeima established that in addition to the above mentioned decision, the plaintiff has the right to appeal against the decision rejecting to secure the claim. In the result of introducing such amendments, the plaintiff was ensured broader possibilities to appeal against unfavourable decisions regarding securing of a claim, if compared with the defendant. However, after introducing the amendments, the Civil Procedure Law still conferred the defendant the right to address the court that has secured the claim by asking it to cancel the security of the claim. If the court rejects the request, the defendant had the right to submit an ancillary complaint regarding the above mentioned decision. The Constitutional Court holds that such procedure ensured reasonable balance between equality of procedural rights of the parties and procedural economy.

Having adopted the Contested Norm, the legislator considerably limited the rights of the defendant to appeal against decisions related with securing claims. At present, the defendant has the right to contest only the decision substituting the means of securing the claim by another remedy, and the decision committing the plaintiff compensate losses. However, nothing has been changed in the field of the right to appeal of the plaintiff.

Under Section 138 of the CPL, there are different means for securing claims, for instance, attachment of movable property of the defendant, entering of a prohibitory endorsement in the register of the respective movable property or any other public register, or enjoining the defendant from performing certain actions. Consequently, the defendant can be established material restrictions of rights before the judgment is announced by thus denying him or her the possibility to ask a court of a higher instance to examine the decision of the court of a lower instance establishing the above mentioned restrictions of rights.

20.2. According to the Constitutional Court, the effective legal regulatory framework prohibiting the defendant to appeal against the decision satisfying an application of securing of a claim or the decision rejecting an application regarding cancelling of the security of a claim does not balance two substantial and mutually related elements of Article 92 of the Satversme, notably, procedural economy and equality of procedural rights.

It is possible to conclude from the information supplied by the Court Administration that a considerable number of ancillary complaints regarding securing claims are submitted to regional courts each year. Respectively, in 2004, 241 ancillary complaints were examined, in 2005 – 159, in 2005 – 206, in 2007 – 157 and in 2008 – 190 ancillary complaints (*see: case materials, pp. 73*). However, in the case under review, procedural economy has been achieved by restricting the procedural rights of the defendant in a non-proportional manner rather than by equally restricting the rights of the plaintiff and the defendant to appeal against unfavourable decisions regarding securing of claims.

It is possible to agree with what has been indicated by the Applicants that there are cases in the case-law when, by applying a contested norm, a decision not subject to appeal is adopted without having assessed evidence, this decision materially restricting the rights of one of the parties of the case. This is evidenced by the regulatory framework included in the Civil Procedure Law and by what has been indicated in the summary of the case-law confirmed by 5 April 2007 decision of the Senator joint meeting of the Civil Case Department of the Senate of the Supreme Court "Case Law on Appellate and

Cassation Instance Courts regarding Examination of Ancillary Complaints on Court Decisions".

It has been established in Section 140 of the CPL that a decision regarding an application for securing a claim shall be taken without giving prior notice to the defendant. Consequently, the defendant is denied the possibility to retort statements of the plaintiff and express his or her opinion regarding the necessity to secure a claim. It is indicated in the above mentioned summary of the case-law, however, that the court has the right to secure a claim without having assessed evidence. It has been concluded in the summary of the case-law that, under the provisions of Section 137 of the CPL, it is not securing a claim does not require presenting evidence for circumstances that would make execution of the judgment problematic or impossible. To secure a claim, it is sufficient for the plaintiff to hold that there are doubts about execution of the possible judgment. In certain cases, judges have accepted as the grounds for rejecting an application for securing a claim the lack of motives that would prove that it is impossible to execute a judgment; however, the law does not provide such requirements for applications for securing a claim. It is required to present evidence on dishonest activities of the defendant only in the case established in Section 139 of the CPL (*see: Summary of the Case-Law [Tiesu prakses apkopojums], pp.22; see full text of the summary: http://www.at.gov.lv/lv/info/summary/2006/).*

In the frameworks of the case under review, the Constitutional Court assesses the Contested Norm in particular rather than other norms of Chapter 19 of the CPL. However, the Court cannot agree with the conclusion made in the Summary of the case-law that a judge, when deciding on securing of a claim, should not assess evidence for circumstances that would make execution of a possible judgment problematic or impossible.

As it has already been indicated, the Constitutional Court holds that equality of procedural rights of the parties would be balanced with procedural economy also in the case if the defendant were conferred at least the right to submit an ancillary complaint regarding a decision rejecting an application on cancelling of the security of the claim.

The Constitutional Court concludes that the benefit gained by the society from the Contested Norm, insofar as it does not confer the defendant the right to

submit an ancillary complaint regarding the decision satisfying an application for securing a claim or a decision rejecting an application on cancelling of the security of the claim, is lesser than the detriment caused to the rights and legal interests of a person; therefore the Contested Norm does not comply with Article 92 of the Satversme.

21. The Applicants asked to assess compliance of the Contested Norm also with Article 91 and Article 105 of the Satversme. However, it is not necessary for the Constitutional Court to assess compliance of the Contested Norm with the above mentioned articles as soon as non-compliance with Article 92 of the Satversme is established.

22. Article 32 (3) of the Constitutional Court law provides that a legal norm (act) that the Constitutional Court has declared as non-compliant with the norm of a higher legal force, shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, if the Constitutional Court has not determined otherwise.

The duty of the Constitutional Court is to make sure that the situation that could be caused from the moment when the Contested Norm becomes null and void to the moment when the Saeima replaces it by another norm would not infringe the fundamental rights of the Applicants and other persons established in the Satversme or cause material detriment to the interests of the State or those of the society. Article 31 (12) of the Constitutional Court Law provides A Constitutional Court judgment shall indicate, if necessary, other court decisions. Under the above mentioned Article, the Constitutional Court also has the right to settle issues that would prevent infringements of other fundamental rights established in the Satversme or breaches of legal regulatory framework after declaring a contested norm as null and void.

If it is possible and necessary, the Constitutional Court in the substantiating part of the Judgment may declare that legal norms, which have been amended by the impugned act, which the Constitutional Court has recognised as unconformable with the legal norms of higher legal force, recover their legal force (*see: Judgment of 16 December 2005 of the Constitutional Court in the case No. 2005-12-0103, Para 25*). The

Constitutional Court has the right to act in such a way also in the frameworks of the case under review because the Applicants have challenged the wording of Section 141 of the CPL that was adopted by the Law of 5 February 2009.

For issues related with securing of claims would be settled, after the judgment of the Constitutional Court is announced, in accordance with the requirements of Article 92 of the Satversme up to the moment when the Saeima adopts new amendments to the normative regulation, the Constitutional Court must decide on the particular wording of the law that will be effective during this period. According to the Constitutional Court, a fair balance between the procedural rights of the parties and procedural economy was ensured by Section 141 Paragraph 1 of the CPL of the wording of 14 December 2004. Therefore this wording of Section 141 Paragraph 1 of the CPL shall be applicable after coming into force of the judgment of the Constitutional Court insofar as it grants the defendant the right to submit an ancillary complaint regarding the decision rejecting to cancel the security of a claim.

In relation to the Applicants, the Contested Norm shall be null and void from the moment of adoption thereof for them to be able, in the case of necessity, to challenge court decisions prior to introduction of the amendments to the normative regulation ruled herein.

The Constitutional Court

Based on Article 30 – 32 of the Constitutional Court Law,

h o l d s :

1. Section 141 Paragraph 1 of the Civil Procedure Law insofar as it does not grant the right to submit an ancillary complaint regarding a decision satisfying an application on securing a claim or a decision rejecting an application to cancel the security of the claim does not comply with Article 92 of the Satversme.

2. In relation to the Applicants, the joint stock company "TOPMAR HOLDINGS" and Mr. Vitālijs Grinčišins, Section 141 Paragraph 1 of the Civil

Procedure Law insofar as it does not grant the right to submit an ancillary complaint regarding a decision satisfying an application for securing a claim shall be null and void from the moment of adoption thereof.

3. Up to the moment when the Saeima introduces amendments to the normative regulation as ruled herein, the wording of Section 141 Paragraph 1 of the Civil Procedure Law of 14 December 2006 shall be in force insofar as it grants the defendant the right to submit an ancillary complaint regarding the decision rejecting to cancel the security of a claim.

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