



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA Riga, 20 November 2008 in Case No. 2008–07–01

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

based on Article 85 of the Satversme and Item 1 of Article 16, Item 11 of the first part of Article 17 and Article 28.¹ of the Constitutional Court Law,

having regard to the constitutional claim of Mihails Kondakovs,

on 21 October 2008 in the Court session examined the case in written proceedings:

“On Compliance of the First and the Fourth Part of Section 458 of the Civil Procedure Law with Article 91 and Article 92 of the Satversme (Constitution) of the Republic of Latvia”.

The Constitutional Court has established:

1. On 1 March 199, the Civil Procedure Law took effect. The first and the fourth part of Section 458 provided according to the wording that was effective before 25 June 2008:

“(1) Upon a cassation complaint being submitted, a security deposit shall be paid in the amount of fifty lats. [..]”

(2) A security deposit is not required to be paid by persons who pursuant to law of a judgment of a court or a judge are exempted from State fees.”

According to the Law “Amendments to the Civil Procedure Law” of 22 May 2008, the fourth part of Section 458 of the Civil Procedure Law was supplemented by a sentence in the following wording:

“A court or a judge, taking into consideration property status of a natural person, can fully or partially exempt a person from State fees.”

These amendments took effect on 25 June 2008.

2. The Applicant Mihails Kondakovs (hereinafter – the Applicant) asks the Constitutional Court to recognize the contested norms as non-compliant with Article 91 and Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

2.1. The Applicant indicates that on 24 October 2007 he had submitted a cassation complaint regarding the decision of 12 September 2007 by the Civil Matters Council of the Riga Regional Court in the case No. C27086705 CA-627/2. At the same time the Applicant asked to exempt him from security deposit by justifying this request by acquisition of the status of a low-income person.

On 25 October 2007, a judge of the Civil Matters Council of the Riga Regional Court denied the request of the Applicant because the Civil Procedure Law does not provide that a court or a judge could exempt a submitter of a cassation complaint from security deposit or reduce the amount thereof if a person has not been exempted from State fees.

The Applicant holds that thus his rights to address court are violated; therefore he had submitted an application to the chairman of the Civil Matters Council of the Riga Regional Court, the Prosecutor General Office and the Ministry of Justice. The Applicant had received a reply that the decision of the court is lawful and valid.

On 8 January 2008, a judge of the Civil Matters Council of the Riga Regional Court adopted a decision to regard the application of the Applicant as non-submitted and deliver it over to the Applicant. The Applicant submitted an ancillary complaint regarding this decision to Chamber of Civil Cases of the Supreme Court. On 10 March 2008 it adopted a decision to leave the decision of 8 January 2008 by the Civil Matters

Council of the Riga Regional Court unchanged and to deny the ancillary complaint of the Applicant.

2.2. It was indicated in the constitutional claim that the contested norms discriminate person as to their property status by thus violating Article 91 of the Satversme. The contested norms form a situation that person who enjoy equal and, according to certain criteria, comparable conditions are differently treated. A person with less income is denied the possibility to submit a cassation complaint. The Applicant holds that such attitude has no legitimate objective.

2.3. The Applicant indicates that the contested norms restrict the rights to access to court guaranteed in Article 92 of the Satversme. This restriction has been established by law, and it is possible to see its legitimate objective – to prevent person from addressing courts with ungrounded claims by thus increasing workload of cassation instance courts without reason. However, proportionality has not been observed – there is no balance ensured between the legitimate objective, on the one hand, and the rights of a person to access to court, on the other. The Applicant holds that the legislator has not selected the most lenient means possible that would restrict the basic rights at a lesser extent.

According to the constitutional claim, the Applicant can not understand why the legislator has established that a person has the rights to ask for exemption from State fees at the courts of first and the second instance but, if a person has not exercised these rights, then he or she is denied the rights to ask for exemption from the fees at a cassation court. Property status of a person during court proceedings can change, - it also can deteriorate. The Applicant indicates that the status of a low-income person was conferred to him on 1 October 2007. At the time when the case was examined at the first instance court and an appellate instance court, he had the level of incomes that ensured the possibility to pay State fees. Therefore the Applicant has not asked to exempt him from State fees.

3. The institution that passed the contested act – **the Saeima** – indicates in the reply that on 22 May 2008 the Saeima examined a draft law “Amendments to the Civil Procedure law” (reg. No. 575/Lp9) and approved it in the wording submitted by the responsible commission. The amendments to the law adopted by the Saeima

provides to supplement the fourth part of Section 458 of the Civil Procedure Law by providing that a court or a judge, taking into consideration property status of a person, shall fully or partially exempt a person from security deposit. Thus the question mentioned in the application is solved, as well as the decision of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01 is taken into account. The Saeima asks the Constitutional Court, when examining the case, to take into account the fact of amendments made.

4. The Social Service of the Vidzeme Suburb indicates that the Applicant was issued notices on the status of a low-income person for the time period from 1 October to 31 December 2007, From 1 February to 31 April 2008 and 1 May to 31 July 2008.

The Constitutional Court holds:

5. 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.”

It follows from the constitutional claim that the Applicant asks the Constitutional Court to assess compliance of the contested norms only with the first sentence of Article 92 of the Satversme, which guarantees every person the rights to protect their rights and lawful interests in a fair court.

The first sentence of Section 92 of the Satversme includes both the institutional aspect – the court shall be fair, and the procedural aspect – everybody has the right to free access to court. Both aspects are inseparably connected: fairness of the court would be of no importance, if access to court were not ensured; and vice versa – access to the court would be unnecessary, if fairness of the court were not ensured (*see: Judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 8*).

The first part of Section 47 of the Law “On Judicial Power” provides that The Senate of the Supreme Court shall be the court of cassation instance for all matters,

which have been adjudicated, by district (city) courts and regional courts. The Senate is composed of three departments, including the Civil Matters Department that fulfills the function of cassation court in civil cases.

It does not fall within the jurisdiction of the Senate to examine and assess factual circumstances of the case. Only *quaestiones iuris* – i.e. issues on the rightness of appliance of material and procedural norms – are reviewed by the cassation instance. The cassation principle is of a legal public nature as it is directed to uniform application and interpretation of legal norms throughout the State (*see: judgment of 27 June 2003 by the Constitutional Court in the case No. 2003-04-01, Para 2.1 of the Concluding Part*).

The Applicant asks to assess whether the area of regulation providing for paying security depositing for submitting a cassation complaint and a possibility for a person to be exempted from paying the deposit complied with the basic rights to a free access to court established in Article 92 of the Satversme.

The Constitutional Court has already concluded that introduction of different payment restricts the rights to a free access to court (*see: judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, Para 7.2 and judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 9*).

Also the request to pay security depositing for submitting a cassation complaint restricts the abovementioned basic rights.

Consequently, the contested norms restricted the rights of the Applicant to a free access to court.

6. The Applicant asks to recognize the contested norms as invalid with a retrospective date – as from 24 October 2007, namely, the date when he submitted the cassation complaint asking to exempt him from paying security deposit.

The State has the duty to ensure efficient protection of each person, the rights or lawful interests of whom have been violated (*see: judgment of 5 December 2001 by the Constitutional Court in the case No. 2001-07-0103, Para 1 of the Concluding Part*).

Consequently, the Constitutional Court must assess the restriction of the basic rights caused for the Applicant.

7. The Constitutional Court has reiterated that the rights to a fair court are one of the most important basic rights of a person. Therefore they can be restricted only in the most necessary cases. The rights to a free access to court, like other basic rights, can be restricted if such restriction is established by a law adopted according to proper procedure and if the restriction has a legitimate objective, as well as if the restriction is proportionate with the legitimate objective (*see, e.g.: judgment of 27 June 2003 by the Constitutional Court in the case No. 2003-04-01, Para 1.2 of the Concluding Part*).

8. The contested norms are contained in the first and the fourth part of Section 458 of the Civil Procedure Law. The Civil Procedure Law has been adopted according to proper procedure and proclaimed according to the procedure established in the Satversme.

Consequently, the restriction of the basic rights established by the contested norms has been established by law.

9. Circumstances and arguments why it is needed shall be the basis for any restriction of fundamental rights, namely, the restriction is determined because of significant interests – the legitimate aim (*see: judgment of 22 December 2005 by the Constitutional Court in the case No. 2005-19-01, Para 9 and judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 13*).

The institution of security deposit has been introduced with a view to ensure efficient function of the Civil Matters Department. This objective follows from the duty of protection of interests of other persons. The Civil Cases Department has to principally give interpretation of material and procedural rights, which may substantially influence the rights of many persons at different court processes. Thus it is important that the Civil Cases Department may review matters, in which just the issue on interpretation of legal norms is disputable; as well as it shall be protected from aimless litigation. The restriction, established in the impugned norm, has been determined to deter separate persons from appealing to the court with groundless

claims (*see: judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 13.2*).

Consequently, the restriction of the basic rights established by the contested norms had a legitimate objective.

10. To evaluate whether the legal norm, adopted by the legislator, complies with the proportionality principle one has to ascertain: whether the means, used by the legislator are suitable for achieving the legitimate objective; whether such an activity is required and whether the activity of the legislator is proportionate or adequate. If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate (*see: judgment of 19 March 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Concluding Part*).

11.1 The Constitutional Court has already concluded that each payment established at the court procedure for an application or a complaint being submitted serves as a certain obstacle in order to prevent from submitting ungrounded applications or complaints (*see: judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, para.8.5*). The legislator, when establishing the duty to pay security deposits, tried to ensure that persons would submit well-considered and motivated complaints in the cases when there are different possibilities of interpretation of the law to be applied; not only to continue the commenced litigation, if it can be clearly seen that the person does not have noteworthy arguments, regarding the fact of how the error of the appellate instance court resolution was expressed (*see: judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 15.1*).

Consequently, the restriction of the basic rights established by the contested norms is an appropriate measure for reaching the legitimate objective.

11.2 Since payment of security deposit for a cassation complaint being submitted is an appropriate measure for reaching the legitimate objective, it is necessary to establish whether the legislator has selected the most lenient way of restriction application possible.

Before 25 June 2008 when the amendments to Section 458 of the Civil Procedure Law took effect, the requirement to pay security deposit for a cassation complaint being submitted served as an obstacle restricting free access to court as to the Applicant and other low-income persons who had no means at their disposition to pay the security deposit and who did not fall within the category of persons exempted from security deposit, as provided for in Section 458 of the Civil Procedure law. By not having provided a mechanism, according to which low-income persons could fully or partially be released from the duty to pay security deposit for a cassation complaint being submitted, the legislator has completely denied these persons the possibility to submit a cassation complaint. In a democratic law-based state it is inadmissible to make appealing a court judgment dependable only on the financial possibilities of a person. When anticipating a definite payment for appealing against a court judgment to the next court instance, the legislator has at the same time to anticipate also the possibilities for persons, who do not have the financial resources, to protect their rights in a fair court (*see: judgment of 13 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 17*). Consequently, the legislator, by having adopted the contested norms, has not ensured application of the most lenient restriction possible because it was not taken into consideration that property status of a person can deteriorate during the timeframe of court proceedings.

Consequently, the restriction of the basic rights established by the contested norms is not the most lenient measure possible for reaching the legitimate objective, and therefore the principle of proportionality has not been observed.

12. Having established non-compliance of the contested norms with a legal norm of a higher legal force, they shall be recognized as unlawful. Consequently, it is not necessary to assess compliance of the contested norms with Article 91 of the Satversme.

13. As it has been already established, the Saeima, on 22 May, 2008, adopted the law “Amendments to the Civil Procedure Law” that took effect on 25 June 2008. The fourth part of Section 458 of the Civil Procedure Law was supplemented by a regulation regarding the rights of a court and a judge, taking into consideration property status of a person, to fully or partially exempt the person from security deposit. For the Applicant to be able to implement the rights to a free access to court, however, it is necessary to decide on the date, as from which the contested norms would become invalid.

14. A judge of the Civil Matters Council of the Riga Regional Court, on 8 January 2008, based on the contested norms, adopted a decision to regard the cassation complaint of the Applicant as non-submitted and deliver it over to the Applicant (*see: case materials, pp. 23*).

In order to prevent the restriction of the basic rights of the Applicant that was caused because of his property status, the contested norms regarding the Applicant shall be regarded as invalid as from the date when he submitted the cassation complaint.

According to Item 5 of Section 479 of the Civil Procedure Law, recognition of a legal norm applied in adjudicating a case as non-compliant with a legal norm of a higher legal force shall be regarded as a newly-discovered fact. Based on this norm, the Applicant has the right to submit an application regarding the abovementioned decision of a judge of the Civil Matters Council of the Riga Regional Court to the Civil Matters Department of the Supreme Court regarding the newly-discovered facts – recognition of the contested norms as non-compliant with Article 92 of the Satversme.

The Constitutional Court

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

holds:

the first part of Section 458 of the Civil Procedure Law in conjunction with the fourth part thereof, which took effect on 25 June 2008 (insofar as these norms provided that a court or a judge shall decide on full or partial exemption of a person from security fee for a cassation complaint being submitted) does not comply with article 92 of the Satversme and is invalid in relation to the Applicant as from 24 October 2007.

The Judgment is final and not subject to appeal.

The Judgment takes effect as on the date of publishing it.

The Presiding Judge

G. Kūtris