



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, November 5, 2008

in Case No. 2008-04-01

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, Kristīne Krūma and Viktors Skudra,

having regard to the constitutional claim of Jānis Kalniņš (hereinafter – the Applicant),

based on Article 85 of the Satversme of the Republic of Latvia and Item 1 of Article 16, Item 11 of the first part of Article 17, Article 19.² and Article 28.¹ of the Constitutional Court Law,

on 7 October 2008 in the Court session examined the case in written proceedings”

“On Compliance of the Second Part of Section 441 of the Civil Procedure Law (insofar as it Concerns Decisions Regarding Imposition of a Fine as Procedural Sanction) with Article 92 of the Satversme (Constitution) of the Republic of Latvia”.

The Constitutional Court has established:

1. Section 97 of Chapter 8 “Judicial Fines” of the Latvian Civil Procedure Code (hereinafter – the CPC) provided that a court shall impose a fine in cases and amounts established by the CPC.

However, Section 98 of the CPC provided:

“A person on whom a fine has been imposed may, within ten days after receipt of a true copy of the court decision, petition the court which imposed the fine to release such person from the fine or reduce the amount thereof. Such submission shall be adjudicated at a court sitting, and the person on whom the fine has been imposed shall be notified of the sitting in advance. The failure of such person to attend is not an impediment to the adjudicating of the submission.

It shall be allowed to submit an ancillary complaint or to make a protest against the court decision to deny release of a person from the fine or reduction of the amount thereof.”

2. On 14 October 1998, the Saeima adopted the Civil Procedure Law (hereinafter – the CPL), which came into effect on 1 March 1999.

2.1. Chapter 8 of the CPL regulates procedural sanctions. Under Item 3 of Section 65 of the CPL, one of the procedural sanctions that the court may apply is a fine.

The second and the third part of Section 68 of the CPL provide that a true copy of the court decision (extract from the minutes) regarding imposition of a fine shall be sent to the person on whom the fine is imposed. A person on whom a fine has been imposed may, within ten days after receipt of a true copy of the court decision (extract from the minutes), petition the court which imposed the fine to release such person from the fine or reduce the amount thereof. Such submission shall be adjudicated at a court sitting, and the person on whom the fine has been imposed shall be notified of the sitting in advance. The failure of such person to attend is not an impediment to the adjudicating of the submission.

2.2. Section 156 of the CPL provides for the consequences of failure to attend of participants in a matter, witnesses, experts or interpreters. The second and the third part of this Section provide:

“(2) If a participant in a matter who has failed to attend the court sitting has not given timely notice to the court of the reasons for their failure to attend, the court may impose a fine upon such person not exceeding fifty lats.

(3) If a participant in a matter fails to attend the court sitting for reasons, which the court finds unjustified, the court may impose a fine upon such person not exceeding one hundred lats.”

2.3. Chapter 55 of the CPL regulates submitting and adjudicating of an ancillary complaint. The first part of Section 441 provides:

“The decisions of a first instance court or of an appellate instance court may be appealed separately from a court judgment by participants in the matter, by the submission of an ancillary complaint, or by a prosecutor, by the submission of an ancillary protest:

- 1) in cases provided for by this Law; or
- 2) if the court decision hinders the matter being proceeded with.”

Whilst, the second part of Section 441 of the CPL (hereinafter – the Contested Norm) provides:

“An ancillary complaint may not be submitted regarding other decisions of a first instance court or of an appellate instance court; objections to such decisions, however, may be expressed in an appellate complaint or a cassation complaint.”

3. The Applicant is a defendant in the civil case No. C27105807. On 28 January 2008, the Riga Centre Region Court established that the Applicant has not fulfilled the duties of a defendant established by the CPL, even though he has been sent a notice regarding the time and location of the court sitting, and, because of unknown reasons, he has failed to attend the court sitting. The Court, by referring to Section 68, the seventh part of Section 74, and the second part of Section 156, applied procedural sanction on the Applicant – a fine at the amount of 50 lats since he failed to attend the court sitting and has not notified on the reasons of the failure the attend (*see: case materials, Vol. 2, pp. 12*).

Based on this decision, another case was registered on 26 February 2008, the case No. 127/08 on debt recovery at the amount of 50 lats from the Applicant in favour of the State. On this very day he was sent a request to fulfil the requirement of the Court of his own free will up to 12 March 2008 (*see: case materials, Vol. 1, pp. 124*).

On 10 March 2008, the Applicant asked the Riga Centre Region Court to release him from the fine imposed by indicating that during the time frame from the end of December 2007 to the beginning of March 2008 he was not in Riga and could not

receive the correspondence addressed to him, including the subpoena on attending the court sitting. He learned about the fine imposed when he received the notice of the office of the court on execution of the punishment (*see: case materials, Vol. 2, pp. 14*).

The Riga Centre Region Court denied this request by the decision of 19 March 2008 indicating, among other things, that “the defendant has not submitted any request, by means of which the Court could approve the circumstance mentioned in the application, namely, the fact that the defendant was not living in the address indicated in the claim statement; therefore the Court has no reason to regard the request as grounded” (*see: case materials, Vol. 1, pp. 8*).

4. The Applicant holds that the Contested Norm does not comply with Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme). It restricts his rights to access to court. The restriction manifest itself through “an impossibility to appeal a court decision regarding imposing of a fine”, i.e. it could not subject the decision, by means of which the Applicant was imposed a material sanction of a considerable amount, to the control of a court of appeal. The Applicant is an unemployed pensioner, and the fine imposed, 50 lats, equals about 40 percent of his monthly income.

It has been stated in the application that neither the decision regarding imposition of a fine, nor the decision regarding denial to reduce the amount of the fine or release him thereof are subject to the control of a higher instance court. The first part of Section 441 of the CPL clearly enumerate the cases when a court decision shall be appealed, whereas the Contested Norm does not allow to appeal any decision of the Court, appeal of which are not established by law, including all decisions of a court regarding imposition of a fine as procedural sanction.

According to the Applicant, the circumstance that the law does not confer a person the right to ask the same court that has made a decision regarding imposition of a fine to repeal or reduce it is of no importance. The court is not bound to reassess an issue in its terms because the reason for reducing or repealing of a fine could be of a different nature (for instance, economic situation or health condition of a person), rather than related with lawfulness or validity of the decision made. This norm can not

be compared to the possibility to ask for the control of the decision made at the court of a higher instance.

The Applicant indicates that the notion “fair court” used in Article 92 of the Satversme implies an element of appeal regarding any court decision that is related with the interests of a person, whereas the Contested Norm denies a person the rights to appeal a fine imposed on a person as procedural sanction in at least two courts.

It has been indicated in the application that, in order to make sure whether Article 92 of the Satversme implies the rights to appeal a fine imposed in the frameworks of a civil case, Article 92 of the Satversme must be analysed in conjunction with Article 2 of Protocol No. 7 of the European Covenant for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Covenant), on the one hand, and it is necessary to observe “the broadened rights to appeal” included in Article 92 of the Satversme, on the other (*see: case materials, Vol. 1, pp. 3*).

The Applicant holds that the fine imposed in the frameworks of a civil case, in fact, does not comply with the content of an administrative penalty. Although the Contested Norm does not provide for initiating an administrative procedure, the essence of this norm is to inflict a penalty in the form of a fine. A fine has the nature characteristic for a criminal sanction.

Referring to the criteria elaborated by the European Court of Human Rights, according to which it is possible to establish whether an administrative case has characteristics of a criminal case, as well as referring to the judgment of the Constitutional Court, the Applicant concludes that the rights to appeal a criminal penalty shall apply to a fine imposed as procedural sanction (*see: case materials, Vol. 1, pp. 4*).

5. The institution that passed the contested act – the Saeima – does not agree, in its reply, with the point of view of the Applicant and holds that the Contested Norm complies with the legal norms of a higher legal force. The Saeima asks to recognize the application as ungrounded and the Contested Norm - compliant with Article 92 of the Satversme.

The Saeima indicates that not all decisions of the court must be appealed pursuant to appellation procedures. Such requirement applies only to such cases that are provided for in Article 6 and Article 2 of the Protocol No. 2 of the Covenant.

Referring to the judgment of the European Court of Human Rights in the Case “*Ravnsborg v. Sweden*”, it has been indicated in the reply that in the case when the penalty to be imposed is of a disciplinary nature, Article 6 of the Covenant shall not apply thereto; consequently, neither will apply Article 2 of the Protocol No. 2 of the Covenant. According to the practice of application of the Covenant, the Contested Norm does not comply with the Covenant.

Simultaneously, the Saeima, by referring to Para 5 of the Concluding Part of the Judgment of 20 June 2002 by the Constitutional Court in the case No. 2001-17-0106, indicates that the Covenant provides for the minimum of the rights to appeal, but these rights are included into Article 92 of the Satversme in a broader scope. Consequently, the Saeima presumes that the requirement of the first sentence of Article 92 of the Satversme regarding broader rights to appeal shall be applied in the cases when the court imposes a fine on a person as procedural sanction.

The Saeima emphasizes that the second part of Section 441 of the Civil Procedure Law does not *expressis verbis* provide for the possibility that a decision regarding imposing a fine as procedural sanction shall not be appealed. The Law provides for the possibility to appeal such a decision, however not immediately but by raising objections when the case is reviewed in its terms in a court of a higher instance.

It has been indicated in the reply that in the case if it would be considered that the Contested Norm contains a restriction of the basic rights, it would still comply with the Satversme.

The restriction included in the Contested Provision has a legitimate objective. This norm is indispensable in order to observe the principle of procedural economy and thus also ensure protection of the rights of other persons.

The Saeima draws attention of the Constitutional Court to the fact that application of procedural sanctions is an exclusive competence of any court and is applied to a restricted circle of persons, and only for violations clearly and unambiguously provided for by law. The scope of these violations is very restricted. Imposing of a sanction does not require a complex establishment of facts, for example, investigating whether explanations have been submitted on time.

Moreover, the legislator, in the third part of Section 68 of the CPL, has provided a person who has been imposed a fine with the possibility to protect his or her rights

and submit evidence to the court that would confirm that the reasons why the person has failed to attend a court sitting are justifying.

Consequently, the Contested Norm complies with the principle of proportionality since it reasonably restricts the rights to appeal. Moreover, it has been provided by law that a person on whom a fine has been imposed may once more ask to revise lawfulness and validity of the decision adopted by submitting the respective evidence.

6. The Ombudsman's Office of the Republic of Latvia and the Ministry of Justice are recognized as external parties of the case. The chairman of the Supreme Court of the Republic of Latvia has also been asked to submit his opinion. The information of the case was provided by the Court Administration of the Ministry of Justice of the Republic of Latvia.

6.1. The Ombudsman Office of the Republic of Latvia (hereinafter – the Ombudsman) holds that the Contested Norms complies with Article 92 of the Satversme.

Referring to the judgment of the European Court of Human Rights in the Case “*Ravnsborg v. Sweden*”, the Ombudsman indicates that Article 6 of the Covenant shall not be applied to the cases when the penalty inflicted is of a disciplinary nature. However, by referring to Para 5 of the Concluding Part of the Judgment of 5 March 2002 by the Constitutional Court in the case No. 2001-10-01, the Ombudsman states that the notion “his or her rights and lawful interests” included in Article 92 of the Satversme has a broader meaning if compared to the UN International Covenant on Civil and Political Rights, as well as to the rights to a fair court established in the Covenant.

The Ombudsman emphasizes that imposition of a fine as procedural sanction violates the rights and lawful interests of a person, and Article 92 of the Satversme must be applied in the situation under review, however these rights can be restricted insofar as they are not denied in their terms. The Contested Norm provides for a restriction of rights, though the restriction is not absolute since this very norm also provides that objections to such decisions may be expressed in an appellate complaint or a cassation complaint.

The Ombudsman draws attention to the legitimate objective of the restriction – to ensure the rights of other persons involved in the procedure, and agrees with the argumentation provided by the Saeima that the restriction is proportionate.

6.2. The Ministry of Justice indicates that the legislator is provided a person on whom a fine has been imposed as a procedural sanction with the possibility to protect his or her rights and submit evidence to the court that would prove that the reasons, because of which the person has failed to attend a court sitting, are grounded. In the case of providing such evidence the court has no reason to reject the application of a person regarding the release from the fine imposed by the court or reduction thereof.

The Ministry holds that the rights to raise objections, in a cassation complaint or an appellate complaint, also to a decision, by which a fine has been imposed as procedural sanction.

By referring to the Judgment of 17 January 2002 by the Constitutional Court in the case No. 2001-08-01, the Ministry expresses a viewpoint that Article 92 of the Satversme does not guarantee a possibility to appeal any decision in the frameworks of revising a case. Such rights are neither guaranteed by Article 6 of the Covenant. The rights established in article 92 of the Satversme shall be applied also to the rights to appeal a decision regarding imposition of a fine as procedural sanction. The restriction regarding appealing a decision to impose a fine as procedural sanction is proportionate. Keeping in mind the fact that “the CPL provides for revision of the respective decision” (*see: case materials, Vol. 2, pp. 3*), the area of regulation established by the CPL ensures a judicial procedure conformable with Article 92 of the Satversme as for applying procedural sanctions.

The Ministry holds that with the effective regulation on procedural sanction in the framework of civil procedure the legislator has ensured an efficient examination of cases in their terms. If the legislator would have provided for a possibility to appeal a decision regarding imposing a fine as procedural sanction or a decision, wherewith the application to release a person from the fine or reduce the amount thereof is denied, the principle of procedural economy would have been breached. Such possibility would prolong the term of examination of a case, therefore it is not admissible.

6.3. The chairman of the Supreme Court of the Republic of Latvia (hereinafter – the Supreme Court) indicates that the norms of Chapter 8 of the Civil Procedure Law serve only as supplementary aid to ensure efficient judicial procedure. Application or non-application thereof, unlike other norms of the first section of the CPL, does not impact lawfulness of a judicial procedure (only the question regarding expulsion of a participant of the procedure from the court room is disputable).

Since the norms of the CPL regarding imposition of a fine as procedural sanction are not, in fact, related with the basic regulations of civil procedure and do not impact lawfulness of examination of a case, there is no lawful grounds to raise objections, in a cassation complaint or an appellate complaint, against a decision of a judge, according to which such procedural sanction has been applied. The decision regarding imposition of a fine shall not be applied to the essence of the dispute to be settled, it can not impact settling of the dispute and hence it can not serve as a subject of examination in the court of appellate of cassation instance.

The chairman of the Supreme Court holds that the third part of Section 68 of the CPL ensures a fair judicial procedure because in a court sitting, when examining an application of a person regarding release from the fine or reducing the amount thereof, the respective person shall have the right to provide explanation, as well as to submit evidence for justification of his or her application.

By referring to the decision of 25 September 2003 by the First Department of the European Court of Human Rights “On Passage for Revision of the Application No. 62393/00 Submitted by Arnis Kadiķis against Latvia (No. 2)”, the chairman of the Supreme Court emphasizes that the decisions of judges regarding imposing of fines are trusted, and revision thereof are regarded as unnecessary.

The chairman of the Supreme Court indicates that recognition of the Contested Norm as invalid would not for legal basis for the possibility to separately appeal a decision regarding imposing of fines as procedural sanction.

6.4. It has been indicated in the report regarding person to whom a fine has been imposed for failure to attend a court sitting in civil cases examined by the court of towns and regions of Latvia provided by the Court Administration of the Ministry of Justice of the Republic of Latvia that such penalty has been imposed on 110

persons, which in total constitute 3625 lats. The minimum amount of a fine imposed for the abovementioned violations, in 2007, was five lats but maximum amount – 100 lats.

The Court Administration has no data at its disposition regarding application of other kinds of procedural sanctions in civil cases, as well as regarding the number of cases when a person has submitted a request, as provided for in the third part of Section 68 of the CPL, regarding release from the fine or reducing the amount thereof.

The Constitutional Court has concluded:

7. According to Section 65 of the CPL, in the cases established in this Law the court can apply different procedural sanctions: 1) a warning, 2) expulsion from the court room, 3) a fine, or 4) forced conveyance to the court. In the case under review, the participant of the court was imposed a fine as procedural sanction for the failure to attend court sitting and not informing on the absence. Consequently, in order to assess whether the basic rights of the Applicant established in Article 92 of the Satversme have been violated, the Constitutional Court shall assess the Contested Norm only insofar as it concerns the kind of procedural sanction imposed on the Applicant – a fine.

The CPL provides for several cases when the court is allowed to impose a fine as procedural sanction. For instance, a fine shall be imposed on the participant of the case if he or she fails to notify on change of address during court proceedings (the second part of Section 58 of the CPL), if he or she submits evidence after the expiry of the term for submitting thereof, and the court recognizes that adjudication of the case is impeded on purpose (the third part of Section 93 of the CPL). In the frameworks of the case under review, the Constitutional Court shall assess the Contested Norm only insofar as it concerns the fine imposed on the Applicant, namely, the fine to be imposed on the participant of the case, as established in the second and the third part of Section 156 of the CPL, if he or she has failed to attend a court sitting and has not timely notified on the reason of the absence or has failed to attend the court sitting because of reasons that the court regards as unjustified.

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 application contains a claim regarding compliance of the Contested Norm with the entire Article 92 of the Satversme, it still follows from the application that in fact compliance of the Contested Norm with the first sentence of Section 92 of the Satversme is questioned, namely, “everyone has the right to defend his or her rights and lawful interests in a fair court”.

It has been established in the case-law of the Constitutional Court that the notion “fair court” mentioned in Article 92 of the Satversme implies two aspects, namely, a fair court as an independent institution of judicial power that examines cases, and a fair court as a procedure adequate for a judicial State where the case is examined. As to the first aspect, this notion shall be interpreted in conjunction with Chapter 6 of the Satversme, as to the second one – in conjunction with the principle of a law-governed state, which follows from Article 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, Judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 8 and Judgment of 20 December 2006 by the Constitutional Court in the case No. 2006-12-01, Para 9.3*).

8.1. In the case under review, there is no dispute regarding the fact that the decision to impose a fine as procedural sanction is made by the court, which, from the constitutional point of view, complies with the criteria that are established, in Article 92 of the Satversme, for a court as an independent institution of judicial power.

8.2. A fair court as a judicial procedure adequate for a law-governed State includes several mutually related rights.

8.2.1. In the case under review, there are mainly doubts about compliance of the Contested Norm with the rights to appeal a court decision adopted at a higher court instance.

Moreover, the participants of the case provide different points of view not only regarding the content of Article 92 of the Satversme, but also regarding the fact

whether the Contested Norm establishes a restriction to appeal a decision regarding procedural sanction at a higher court instance.

Therefore, the Constitutional Court, in order to assess constitutionality of the Contested Norm, will at first establish its content and then examine compliance thereof with Article 92 of the Satversme.

8.2.2. It also follows from the application that procedure in the court where the fine was imposed as procedural sanction does not ensure the rights for a person to be heard out before imposition of a fine. However, the respective norms of the CPL have not been contested in the application. Consequently, this issue in the judgment must be assessed insofar as it is closely related with constitutionality of the Contested Norm.

8.2.3. It is necessary to take into account the fact that in constitutional law, when analysing 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. For example, a former member of the Civil Procedure Law elaboration work group, the chairman of the Civil Case Department of the Supreme Court Senate, senator Mārtiņš Dudelis, when commenting Section 441 of the CPL, has indicated: “If compared to the general procedure of appealing decisions, there was a different procedure established for decisions on imposition of a fine as procedural sanction as established in the Civil Procedure Law (Section 68 of the CPL). A person on whom a fine has been imposed may, within ten days after receipt of a true copy of the court decision (extract from the minutes), petition the court which imposed the fine to release such person from the fine or reduce the amount thereof.” (*Comments of the Civil Procedure Law. Third extended edition, Riga, Tiesu namu aģentūra, 2006, pp. 608*).

9. The second part of Section 441 of the Civil Procedure Law does not *expressis verbis* establish that a decision on imposition of a fine as procedural sanction cannot be appealed in a higher instance court. The Saeima, the Ministry of Justice and the Ombudsman, when referring to the text of the Contested Norm, express a

viewpoint that the Norm gives a possibility to raise objections, in a cassation complaint or an appellate complaint, against the decision, by which a fine has been imposed as procedural sanction according to the procedure established in the CPL (*see: case materials, Vol. 1, pp. 137, Vol. 2, pp. 3 and 111*). The chairman of the Supreme Court Andris Guļāns, by referring to the essence of appellate and cassation institution, does not share this viewpoint. There is no information at the disposition of the Supreme Court regarding the fact that any objections would have been raised in appellate complaints or cassation complaints regarding the fine imposed as procedural sanction under Section 156 of the CPL (*see: case materials, Vol. 2, pp. 20 – 21*).

In order to find out the content of the second part of Section 441 of the CPL, it is not sufficient to consider only assessment of this text; it should be interpreted in conjunction with other norms of the CPL. The Constitutional Court has already established that “Civil procedure forms a common and publicly lawful system of relationships. In order to ensure implementation of the rights to a fair court, civil procedure may not contain internal contradictions that could make the rights to a fair court ineffective.” (*see: Judgment of 2 June 2007 by the Constitutional Court in the case No. 2007-22-01, Para 16.2*). The Contested Norm should be interpreted in accordance with the CPL system in general by first of all taking into consideration the norms of Chapter 8 of the CPL, as well as the norms regarding revision of matters in appellate or cassation institutions.

Initially, the third part of Section 68 of the CPL had the following wording:

“A person on whom a fine has been imposed may, within ten days after receipt of a true copy of the court decision, petition the court which imposed the fine to release such person from the fine or reduce the amount thereof. Such submission shall be adjudicated at a court sitting, and the person on whom the fine has been imposed shall be notified of the sitting in advance. The failure of such person to attend is not an impediment to the adjudicating of the submission. A decision of the court shall not be subject to appeal.”

During elaboration of the draft law, the Saeima Legal Bureau proposed to exclude the sentence “A decision of the court shall not be subject to appeal”. The Saeima Legal Commission, when preparing the draft law for the third reading, accepted this proposition (*see: case materials, Vol. 1, pp. 172*). However, it can not be

understood neither from the letter of the Legal Bureau, nor from the transcripts of the Saeima Commission meetings (*see: case materials, Vol. 1, pp. 151 – 202*) what was the objective and justification of the proposition. The proposition could have been submitted and accepted with a view to give a possibility to appeal a decision on imposition of a fine as procedural sanction, as well as to avoid verbosity in the Law, since it already follows from other norms of the law that the decision shall not be subject to appeal.

During the third reading, when reporting, at the Saeima meeting, on behalf of the Commission, the chairman of the 6th Saeima Legal Commission Juris Kaksītis said the following regarding the CPL draft law: “The Commission accepts the proposition to exclude the sentence “A decision of the court shall not be subject to appeal” from the third part of Section 68 of the CPL” (*Transcript of the meeting of the 6th Saeima of the Republic of Latvia on 14 October 1998; case materials, Vol. 1, pp. 77; http://www.saeima.lv/steno/st_98/st1410.html*).

On the other hand, M. Dudelis when commenting Section 441 of the CPL has indicated that the decision established in the third part of Section 68 of the CPL shall not be subject to appeal. He also added that previously Section 98 of the CPL provided for the right to appeal a decision, wherewith release from the fine or reduction of the amount thereof was denied (*see: Comments of the Civil Procedure Law, Third extended edition, Riga, Tiesu nama aģentūra, 2006, pp. 608*).

The Contested Norm is included into Chapter 55 of the CPL that regulates submitting and adjudicating of ancillary complaints, rather than examination of a case according to appellate or cassation procedure. The Contested Norm does not *per se* regulate neither appellate, nor cassation procedure, and the words included therein, “objections to such decisions, however, may be expressed in an appellate complaint or a cassation complaint”, should be interpreted in a narrow way, only insofar as decision, against which objections are raised, are related with issues that, according to other norms of the CPL, must be examined, respectively, according to appellate or cassation procedure.

Under Section 413 of the CPL, participants in a matter may submit an appellate complaint regarding a judgment (supplementary judgment) of a court of first instance.

Item 5 of Section 416 of the CPL requires indicating how the error in judgment is manifested.

The understanding of the essence of an appellate institution in jurisprudence of Latvia has been formed already at the 20-s and 30-s of the previous century. When defining an appellate institution, Latvian scientists of law nowadays also refer to the definition of this institution provided by Vladimirs Bukovskis: ““An appellate is a complaint addressed to the court of the second instance regarding a decision of a court of the first instance asking to revise the case in its terms since the case has been wrongly adjudicated at the court of the first instance, and to provide a judgment” (Bukovskis V. *Civīlprocesa mācības grāmata*. – Riga: author’s edition, 1933, pp. 453)” (*Comments on the Civil Procedure Law, Third extended edition. Riga, Tiesu namu aģentūra, 2006, pp. 587*).

On the other hand, under the third part of Section 450 of the CPL, a judgment of an appellate instance court may be appealed pursuant to cassation procedures if the court has breached norms of substantive or procedural law or, in adjudicating a matter, has acted outside its competence.

The Constitutional Court has already indicated that “The cassation instance has a special function, which establishes the specifics of the process of the cassation court. [...] the essential feature of the Latvian cassation institute is the fact that the conclusive importance does not lie in the interests of the parties, which are sufficiently protected when reviewing the case in the first two instances of the court, but in legal public interests. Only *quaestiones iuris* – i.e. issues on the rightness of appliance of material and procedural norms – are reviewed by the cassation instance” (*see: Judgment of 27 June 2003 by the Constitutional Court in the case No. 2003-04-01, Para 2.1 of the Concluding Part*).

Examination of a case pursuant to both, appellate and cassation procedures, is guided towards issues that are substantial for adjudication of the respective civil case. The norms of the CPL regarding imposition of a fine as procedural sanction, however, shall not be applied to the dispute under consideration and neither can it impact it. The decision regarding imposition of the abovementioned fine or a decision to deny release of a person from the fine or reduction of the amount thereof can not serve as the subject of proceedings pursuant to appellate or cassation procedures. It is approved by

Section 432 of the CPL on the content of judgments and decisions of an appellate instance court and Section 474 on the jurisprudence of a cassation court.

If the opposite is assumed, there would be a situation formed that an appellate or a cassation complaint should also be submitted by the participant of the case who is satisfied with the judgment by but is not satisfied with the procedural sanction imposed. Such situation would not comply with the essence of the abovementioned institutions.

Moreover, a fine as procedural sanction can be applied also to a witness or an expert who have failed to attend the court sitting. Namely, the second part of Section 109 of the CPL provides for the possibility to impose a fine at the amount of 40 lats on a witness, whereas the second part of Section 122 of the CPL – to impose the same fine on an expert. Neither a witness, nor an expert has the right to submit an appellate or cassation complaint. There is no reason to consider that the legislator would have provided to the both parties, rather than a witness or an expert, the possibility to appeal such fine in an appellate instance court or in a cassation court if it wanted to.

The decision, by which a fine is imposed as procedural sanction for failure to attend a court sitting and failure to notify on the reasons of absence, cannot be appealed pursuant to appellate or cassation procedure. Consequently, the Contested Norm prohibits appealing such decision at a higher instance court.

10. In order to assess compliance of the Contested Norm with Article 92 of the Satversme, the Constitutional Court will first of all establish whether the issues related with imposition of a fine as procedural sanction fall within the scope of Article 92 of the Satversme and whether it provides for the rights to appeal a decision on imposition of a fine as procedural sanction in a higher instance court, as well as a decision regarding a request to release from the fine or reduce the amount thereof.

10.1. Parties involved in the case agree with the opinion established in the case-law of the Constitutional Court that, when establishing the content of the basic rights established in the Satversme, it is necessary to take into consideration international liabilities of Latvia in the field of human rights. International liabilities of Latvia in the field of human rights influence interpretation of fundamental rights and the principle of the law-governed state. International norms of human rights and the practice of their application serve as means of interpretation on the level of constitutional law to

determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights included in the Satversme (*see, e.g.: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Concluding Part, Judgment of 18 October 2007 by the Constitutional Court in the case No. 2007-03-01, Para 11*).

The participants of the case, however, have an opposite view concerning the fact whether the duty of the State to ensure a possibility to appeal a fine imposed as procedural sanction before a higher instance court follows from Article 6, and Article 2 of Protocol No. 7 of the Covenant.

The first sentence of the first part of Article 6 of the Covenant provides:

“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.”

Article 2 of Protocol No. 7 of the Covenant, however, provides:

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

Issues related with the scope of protected field are particularly important in relation to the rights guaranteed in Article 6 of the Covenant; moreover, they are even more important regarding other rights guaranteed in the Covenant (*see: Grabenwarter C. Europäische Menschenrechtskonvention. München, C. H. Beck, 2005, S. 283*). The rights to a fair court guaranteed in Article 6 of the Covenant are generally applied only to the procedure related with “determination of a criminal charge” or “civil rights and obligations”, whereas, under Article 2 of Protocol No. 7 of the Covenant, the rights to appeal a judgement – only to the cases when the court has recognized a persons as guilty.

The European Court of Human Rights uses the three alternative criteria established in the judgment in the case “*Engel and Others v. the Netherlands*” (*Engel and Others v. the Netherlands, judgment of 8 June 1976, Series A no. 22, para 82*), by means of which it is possible to establish whether the particular situation falls under the scope of the notion “determination of a criminal charge” (*bien-fondé de toute accusation pénale*) of Article 6 of the Covenant. These criteria are as follows: 1) classification of the offence in issue according to the legal system of the respondent state, to criminal law; 2) nature of the offence; 3) compatibility or non-compatibility of a sanction with criminal law as to its kind and gravity. (*see, e.g.: Judgments of the European Court of Human Rights in the case: Weber v. Switzerland, judgment of 22 May 1990, Series A no. 177, Para 31-34; Ravensborg v. Sweden, judgment of 23 March 1994, Series A no. 283-B, Para 30; Putz v. Austria, judgment of 22 February 1996, Reports of Judgments and Decisions 1996 I, Para 31*).

The Constitutional Court has referred to these judgments also in the judgment of June 20, 2002 in the case No. 2001-17-0106 in order to establish whether an administrative offence case had features of a criminal case.

Consequently, the Constitutional Court will assess whether the decision to impose a fine as procedural sanction, taking into consideration the abovementioned criteria, fall within the scope of Article 6 of the Covenant.

10.1.1. A fine imposed as procedural sanction is regulated by the CPL. This fine shall be applied “for violations of the legal norms of civil procedure committed without any justifying reasons. Breach of civil procedure is a deliberately unlawful activity, which manifests itself through non-fulfilment of any responsibility established by the civil procedure” (*see: Comments to the Civil Procedure law, Third extended edition. Riga, Tiesu namu aģentūra, 2006, pp. 127*). From the point of view of Latvian national law, a fine imposed as procedural sanction does not fall within the scope of criminal law. Consequently, this punishment does not comply with the first of the abovementioned criteria.

10.1.2. According to the case-law of the European Court on Human Rights, any indication to the nature of an offence can follow from both, the essence of the offence provided for by a norm and legal consequences thereof. As to the essence of a violation, it is important to take into consideration the circle of those persons who are

subject to the particular regulation. The fact that the regulation is (at least potentially) guided towards the society in general shows that the regulation has a nature of criminal law. As to the legal consequences of an offence, it is important to take into account the nature and functions of the regulation that the sanction possesses in general in the legal system (*see: Grabenwarter C. Europäische Menschenrechtskonvention, München, C. H. Beck, 2005, S. 290*).

The European Court of Human Rights, when adjudicating cases related with court inflicted procedural sanctions has established that they are beyond the scope of Article 6 of the Covenant. Rules enabling a court to sanction disorderly conduct in proceedings before it are a common feature of legal systems of the Contracting States. Such rules and sanctions derive from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by courts under such rules are more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence. (*see: Ravensborg v. Sweden, judgment of 23 March 1994, Series A no. 283-B, p. 30, Para 34, Putz v. Austria, judgment of 22 February 1996, Reports 1996-I, p. 324, Para 33*).

In the abovementioned cases, procedural sanctions were imposed for derogation of the court, namely, for insulting expressions addressed to the judges. However, a common feature of the Contracting States also is such procedural sanctions that the court can inflict for failure to attend a court sitting or failure to timely notify on the reasons of absence. Such norms and sanctions, too, are derived from the rights characteristic for a court to ensure a proper and orderly functioning of its own proceedings. Measures used in the frameworks of such norms resemble more the use of disciplinary power rather than infliction of penalty for a criminal offence.

A fine imposed as procedural sanction can be applied to a limited circle of persons – to participants of civil cases. The basic function of this sanction is to ensure proper and timely adjudication of a particular civil case. Consequently, according to the second criterion, such infliction of penalty does not fall within the scope of Article 6 of the Covenant.

10.1.3. The third criterion – kind and gravity of punishment – is closely related with the second criterion – nature of offence, and especially legal consequences thereof. The kind of sanction for the purpose of the third criterion includes the

potential impact of a punishment on a certain person who depends on the kind of punishment (deprivation of liberty, a fine, other restrictions of freedom, etc.), highest possible limits of the punishment inflicted and characteristics of application thereof. Namely, the third criterion includes the overall gravity of negative consequences for a person. It is possible to speak of a criminal offence first of all in the case if infliction of punishment on a person would cause grave consequences that would, as to its nature, equal to deprivation of liberty, which is not short-term (*see: Grabenwarter C. Europäische Menschenrechtskonvention. München, C. H. Beck, 2005, S. 291-292*).

No particular amount of a fine has ever been established in the case-law of the European Court of Human Rights, which would serve as the grounds for considering such punishment as compliant with the third criterion and as criminally lawful for the purpose of the Covenant. On the one hand, the European Court of Human Rights has regarded a fine of 500 Swiss francs as sufficient for application of this criterion (*see: Judgment of the ECHR in the case Weber v. Switzerland, judgment of 22 May 1990, series A no. 177, Para 34*). On the other hand, however, it has not established that that fines of 1000 Swedish kronas (*see: Judgment of the ECHR in the case Ravensborg v. Sweden, judgment of 23 March 1994, Series A no. 283-B, Para 35*) and fines of 5000, 7500 and 10 000 Austrian shilling (*see: Judgment of the ECHR in the case Putz v. Austria, judgment of 22 February 1996, Reports 1996-I, p. 324, Para 34–37*) imposed as procedural sanction would comply with this criterion.

If the abovementioned fines imposed in Swiss francs and Swedish kronas were converted into lats at the present currency rates, then they would be higher than the fine imposed on the Applicant. The abovementioned fines in Austrian shillings would also be higher if converted into euros at the official currency rate established for Austrian shilling when introducing euro currency, and then converted into lats at the present currency rate. However, taking into consideration the fact that the judgments are made at a different time period and that the states had different economic situations, it is not possible to compare the judgments.

It also has to be emphasized that, in the case “Putz v. Austria”, the Applicant had indicated that fines imposed on him reach and even exceeds the amount of a fine that can be inflicted for a criminal offence.

The amount of a fine established in the CPL, including the procedural sanction inflicted on the Applicant – 50 lats, does not reach such minimum amount of a fine established in the Criminal Law that the court can inflict. Namely, under Section 41 of the Criminal Law, “a fine proportionate to the seriousness of the criminal offence and the financial status of the offender shall be determined for an amount of not less than one, and not exceeding two hundred times the minimum monthly wage prescribed in the Republic of Latvia at the time of the judgment, and the amount of the fine shall be set out in the currency of the Republic of Latvia in the judgment”.

The European Court of Human Rights considered that the fact whether a fine can substitute imprisonment is a substantial criterion. In the case of failure to pay the fine, the fine imposed as procedural sanction as provided for in the CPL in Latvia, unlike from the situation in the abovementioned cases of the European Court of Human Rights “Ravnsborg v. Sweden” and “Putz v. Austria” cannot be substituted by imprisonment.

Consequently, the a fine imposed as procedural sanction provided for by the CPL in Latvia, as to its amount and procedure of execution, is even more lenient than punishments inflicted in the abovementioned cases of the European Court of Human Rights. Even in the abovementioned cases, however, the European Court of Human Rights had not established any feature characteristic for a criminal offence and had applied Article 6 of the Covenant.

Consequently, also from the point of view of the third criterion, punishment inflicted as procedural sanction pursuant to the procedure established in the CPL does not fall within the scope of the Covenant.

Consequently, the opinion expressed in the application that a fine imposed as procedural sanction pursuant to the CPL could be considered as criminal offence for the purpose of the Covenant is not grounded.

10.2. The persons involved in the case share the viewpoint of the Constitutional Court that the notion “his or her rights and lawful interests” included in Article 92 of the Satversme are broader than the rights to a fair court for “determination of a criminal charge” established in the European Covenant for the Protection of Human Rights and Fundamental Freedoms (*see: Judgment of 5 March 2002 by the Constitutional Court in the case No. 2001-10-01, Para 5*).

Imposing of a fine as procedural sanction violates the rights and lawful interests of a person and, first of all, his or her reputation and material and financial conditions, property, and therefore it falls within the scope of Article 92 of the Satversme.

Consequently, if a fine as procedural sanction is imposed on a person, it is necessary to adequately ensure the rights of this person to a fair court.

10.3. However, Article 92 of the Satversme does not provide each rights and legal interests with a possibility to examine a case in at least two courts. The Constitutional Court has already established that Article 92 of the Satversme does not provide for a duty of the State to provide for a possibility to appeal against a decision according to appellation procedures and cassation procedures in all cases (*see: Judgment of 2 June 2008 by the Constitutional Court in the case No. 2007-22-01, Para 11*).

The rights to a fair court in each particular case category shall be interpreted in conjunction with the principle of proportionality, which follows from Article 1 of the Satversme.

Taking into consideration already assessed objective, nature and a law-provided amount of a fine imposed as procedural sanction, it can be concluded that Article 92 of the Satversme does not require, as to this case category, providing a possibility to appeal in each case in a higher instance court, if there have been proper court proceedings ensured at the court instance that has imposed the fine.

11. Consequently, the Constitutional Court must assess, whether, by imposing a fine as procedural sanction, a person is ensured with a fair court procedure at the court instance that inflicts the procedural sanction.

The Constitutional Court has already indicated that “the principle of justice includes requirements, which are necessary for the procedure of fair review of cases, and one of the requirements is *audiatur et altera pars*. It means that both parties of the process enjoy the right of expressing their viewpoint on the particular issues, that is – to be heard out in the case” (*see: judgment of 20 April 2003 by the Constitutional Court in the case No. 2002-20-03, Para 5*).

Constitutional courts of other states have also emphasized that dignity of persons require that a person is not only an objects of proceedings. Instead, he or she must be

provided with the possibility to express his or her viewpoint before the decision related with his or her rights is made (*see. Judgment of 19 March 1992 by the Constitutional Court of the Germany Federative Republic, BVerfGE 86, 133 <144> and judgment of 11 September 1963 of the Supreme Court of Switzerland, pp. 216*).

The Liechtenstein State Court has drawn attention to the rights to be heard out also in court proceedings that do not fall within the scope of Article 6 of the Covenant by indicating that a substantial part of the rights to fair proceedings is that the participant involved in the proceedings is given a possibility to express his or her own point of view at the extent that is proportionate with gravity of the subject of the procedure and potential sanctions. The requirement of the basic rights regarding fair court procedure must ensure that a person is considered not only as an object of proceedings but also as a subject of the same proceedings. On the one hand, when involving a person into court proceedings, it is being considered that the decision adopted is factually and legally correct but, on the other hand, dignity of a person manifests itself through the rights to fair proceedings. Consequently, the rights to fair proceedings must be observed disregarding the fact whether such observation can at all impact the material aspect of a decision (*see: Judgment of 30 August 1996 by the Liechtenstein State Court in the case StGH 1996/6, Para 3.1 of the Concluding Part, www.codices.coe.int*).

The rights to a fair court established in Article 92 of the Satversme confers a person the rights to be heard out also in the cases when a fine as procedural sanction is inflicted on him or her.

12. The area of regulation established by the CPL regarding imposition of a fine as procedural sanction provides that a person is heard out before a fine is imposed on him or her. The Applicant was also heard out prior to hearing him out.

The first sentence of the third part of Section 68 of the CPL provides that a person on whom a fine has been imposed may, within ten days after receipt of a true copy of the court decision (extract from the minutes), petition the court which imposed the fine to release such person from the fine or reduce the amount thereof. The Applicant has exercised these rights.

The second and the third sentence of the third part of Section 68 of the CPL, however, provide that “such submission shall be adjudicated at a court sitting, and the

person on whom the fine has been imposed shall be notified of the sitting in advance. The failure of such person to attend is not an impediment to the adjudicating of the submission.” Consequently, the Applicant had a possibility to provide the court with oral explanations.

According to the Applicant, it is important that the third part of section 68 of the CPL does not *expressis verbis* provide for a duty to release from a fine imposed as procedural sanction in the case when a person provides evidence for the failure to attend a court sitting due to justified reasons.

Section 333 of the Civil Procedure Law of Austria (*Zivilprozessordnung*) settles this issue otherwise. The first part of this section provides for fines for maintaining order that the court imposes on a witness in the case of he or she fails to attend a court sitting. Whilst, the second part of this section provides: “If then justifying reasons for failure to attend the court sitting are provided, the fines for maintaining order imposed on the witness shall be cancelled. Moreover, the witness can be fully or partially released from remuneration of expenses related with failure to attend.”

Although the third part of Section 68 of the CPL does not *expressis verbis* provide for a similar norm, it has been indicated in the jurisprudence of Latvia, however that procedural sanctions shall be applied only to such offences of the norms of civil procedure “that have been committed without any justification” (*see: Comments to the Civil Procedure Law, Third extended edition, Riga, Tiesu namu aģentūra, 2006, pp. 127*).

When interpreting the third part of Section 68 of the CPL, it is necessary to take into consideration the objective and essence of establishment of a procedural sanction, as well as the general legal principles. The court is obligated to release a person from a fine imposed as procedural sanction if a person succeeds to submit evidence to the fact that he or she has failed to attend a court sitting and notify on the absence due to justified reasons.

The Applicant was also provided with the possibility to be heard out and, among the rest, to prove that he has failed to attend the court sitting and notify on the absence due to justified reasons. The court, taking into consideration the request of the Applicant to release him from the fine, assessed whether there exists any justified reason for failure of the Applicant to attend the court sitting and notify on his absence.

It is indicated in the decision regarding rejecting of this requires that “the defendant has not provided any evidence that would prove the abovementioned circumstance, namely, that the defendant was not living at the address previously indicated; therefore the court has no reason to recognize the request as grounded (*see: case materials, Vol. 1, pp. 8*).

Consequently, the Applicant had a possibility to be heard out before the court regarding gravity of the punishment inflicted on him. The Applicant indicates in the materials submitted to the Constitutional Court that the fine imposed on him – 50 lats – is high because he is an unemployed pensioner and he has no such incomes from real estate that would exceed the costs of maintenance thereof. Consequently, he has not provided such information to the Riga Centre Region Court and has not asked to reduce the fine imposed on him because of its high amount.

At the same time, it is necessary to take into consideration that, even though the Applicant was provided with the possibility to be heard out, it was not ensured prior to imposition of the fine but at the time when an executive procedure regarding debt recovery was initiated.

Consequently, by imposing a fine as procedural sanction, restriction of the rights to a fair court exists insofar as a person is ensured with the rights to be heard out only after a fine has been imposed and executive procedure initiated.

13. It has been established in the case-law of the Constitutional Court that the Satversme does not directly provide for cases when the rights to a fair court could be restricted. These rights, however, cannot be regarded as absolute. Whilst, restriction cannot be of the kind that would, in fact, implement the rights to a fair court. The rights to address court can be restricted insofar as they are not denied in their terms. Since the rights to a fair court are one of the most important rights of a person, restrictions thereto shall be established only in the most necessary cases (*see, e.g.: judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, Para 7.1; judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 10*).

The basic rights of a person to a fair court can be restricted only in the cases established in the Satversme because it is required by protection of substantial interests of the society and only pursuant to the principle of proportionality.

Consequently, it is necessary to assess whether the abovementioned restriction of the basic rights: first of all, is provided by law, secondly, whether the restriction has a legitimate objective, and, thirdly, whether the restriction is proportionate with the legitimate objective.

13.1. Restriction of the basic rights is established in the CPL that was adopted and published according to the procedure provided in the Satversme and the Saeima Rules of Procedure. **Consequently, the restriction of the basic rights has been established by law.**

13.2. It has been established in the case-law of the Constitutional Court that in the basis of each restriction of the basic rights, there must be circumstances and arguments of why such restriction is necessary, namely, the restriction is established due to relevant interests – a legitimate objective (*see, e.g.: judgment of 14 March 2006 by the Constitutional Court in the case No. 2005-18-01, Para 13 and Judgment of 22 December 2006 by the Constitutional Court in the case No. 2005-19-01, Para 9*).

The Constitutional court shares the viewpoint of the Saeima, the Ombudsman and the Ministry of Justice that the area of regulation of the CPL regarding imposition of fine as procedural sanction is directed towards ensuring of effective adjudication of a case in its terms, and it is necessary to observe the principle of procedural economy by thus ensuring protection of the rights of persons.

The Constitutional Court has already established that the “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” (*see: judgment of 5 March 2002 by the Constitutional Court in the case No. 2001-10-01, Para 5 of the Concluding Part*). 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 (*see: Judgment of 17 January 2005 by the Constitutional Court in the case No. 2004-10-01, Para 8.4, and Judgment of 2 June 2008 by the Constitutional Court in the case No.*

2007-22-01, Para 14.3). Similarly, the rights to a fair court can be restricted in order to ensure efficiency of functioning of courts (*see: judgment of 4 January 2005 by the Constitutional Court in the case No. 2004-16-01, Para 8.2, Judgment of 5 November 2004 by the Constitutional Court in the case No. 2004-04-01, Para 12, and judgment of 2 June 2008 by the Constitutional Court in the case No. 2007-22-01, Para 14.3*).

The area of regulation of the CPL as to imposition of a fine as procedural sanction is guided towards faster and more efficient settlement of disputes, as well as reduction of workload of courts and hence ensures the rights to a fair court established for persons, as well as those rights, protection of which persons have asked before courts. The procedural sanction established for the Applicant by the CPL regarding failure to attend a court sitting and notify on the absence is directly guided towards protection of the rights and lawful interests of the plaintiff.

Consequently, the restriction of the basic rights has a legitimate objective – protection of rights of other persons.

13.3.1. Taking into account proportionality of the restriction of the basic rights, it is necessary to, first of all, establish whether it reaches the legitimate objective, namely, whether the area of regulation of the CPL regarding imposition of a fine as procedural sanction is adequate for reaching the legitimate objective and whether this objective can be reached by other means that are more lenient in relation to interests of a person.

The fact that a fine as procedural sanction is imposed immediately and the person who evades attending the court immediately feels the negative consequences of the fine makes a fine imposed as procedural sanction an effective means for reaching a legitimate objective.

If the legislator would have provided that the court must hear out a person before inflicting of any sanction, a person could simultaneously avoid examination of the respective civil case, as well as inflicting of the respective procedural sanction, and the court would have no means at its disposition in order to make a person attend the court sitting.

Transcripts of the Saeima Legal Commission and documents attached thereto show that during the Commission meeting there were alternative solutions for

consequences that could be caused by failure to attend a court sitting by the defendant discussed. The Civil Law Department of the Faculty of Law of the University of Latvia had submitted a suggestion to supplement the CPL draft project with the following norm:

“If a defendant fails to attend a court sitting and it is known that he has been notified on the time and place of the court sitting, the court shall examine the case in its terms and make a judgment by default” (*see: case materials, Vol. 1, pp. 163*).

At that period, the Saeima Legal Commission did not accept this proposition (*see: case materials, Vol. 1, 00. 185*). Chapter 22¹ “Default Judgment” of the Civil Procedure Law was included into the CPL on 31 October 2002 by the Law “Amendments to the Civil Procedure Law”. When submitting a draft law that included a proposition to supplement the CPL by the norms on a default judgment, the Cabinet of Ministers indicated in its annotation that the objective of the draft law, among other things, was to expedite adjudication of civil cases at the court and that the draft law also contained the norms that would prohibit parties to delay examination of cases at the court.

In each particular case, taking into consideration the essence of the respective civil case, potential negative consequences of a default judgment could be both – more and less grave if compared with imposition of a fine. Moreover, CPL provides also for such cases when a default judgment is not permitted.

Consequently, there exist no means that would allow reaching the legitimate objective at the same efficient level as ensured by the regulation of the CPL regarding imposition of a fine as procedural sanction.

13.3.2. When assessing proportionality of the restriction of the basic rights, it is necessary to investigate whether the possible negative consequences, because of restriction of the basic rights of a person, are not grater than the benefit that the society gains from such restriction in general.

A fine as procedural sanction is imposed on the participant of the case only for an offence that is clearly and unambiguously provided by law – failure to attend a court sitting and noticing on the reasons of the absence. No complex examination and verification of facts is necessary for establishment of such offence. Taking into consideration the level of communications development nowadays, the cases when a

person has failed to notify on the absence due to justifying reasons are rare and exceptional. In such cases, the court, after it has received a respective request from the person, releases this person from the fine imposed.

No lowest limits of the fine that the court imposes as procedural sanction because of failure to attend court session and notify on the reasons of the absence has ever been established. It can be concluded from the statistical data submitted by the Court Administration of the Ministry of Justice that a fine for failure to attend court session in general does not exceed the maximum level of the fine established in the CPL. Usually the fine is not high, for example, five lats (*see: case materials, Vol. 2, pp. 18*).

A person, though after imposition of a fine, still has a possibility to express his or her viewpoint, and the court, if necessary, can change the amount of the fine imposed or release a person from the fine. This procedure is not time-consuming or complex.

The benefit that the society generally gains from the possibility to efficiently discipline participants of the case who have failed to attend a court sitting without a justifying reason and timely notify on the reasons of the absence, manifests itself through reduction of workload at the judicial system and raise of prestige, as well as economy of time of persons involved in the proceedings, since they do not have to attend the court several times and in vain.

The benefit that the society gains from the area of regulation established in the CPL regarding a fine that is imposed on the participant of the case as procedural sanction for failure to attend a court sitting without justifying reasons and failure to notify on reasons of the absence, is greater than possible negative consequences.

Consequently, the restriction of the basic rights complies with the principle of proportionality, and, by imposing a fine as procedural sanction on a person, the person is ensured with an adequate proceedings compliant with Article 92 of the Satversme at that court instance that inflicts the procedural penalty.

14. Since adequate court proceedings are ensured in the court instance that imposes a fine as procedural sanction, Article 92 of the Satversme does not require that this case category would be provided with a possibility of appeal at a higher instance court.

The Constitutional Court

based on Article 30 – 32 of the Constitutional Court Law

holds:

The second part of Section 441 of the Civil Procedure Law (insofar as it concerns decisions regarding imposition of a fine as procedural sanction) complies with Article 92 of the Satversme of the Republic of Latvia.

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