THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, January 17, 2002

JUDGMENT
in the name of the Republic of Latvia

in case No. 2001- 08 – 01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, the justices Romāns Apsītis , Ilma Čepāne, Juris Jelāgins, Andrejs Lepse, Ilze Skultāne and Anita Ušacka,

under Article 85 set by the Satversme (Constitution) as well as Item 1 of Article 16; Article 17 (the first part, Item 11) and Article 28^1 of the Constitutional Court Law

on the basis of the constitutional claim by Liāna Aldermane

holding the proceedings in writing reviewed the case

" On Conformity of Article 348 (the seventh part) of the Civil Proceedings Law with Article 92 of the Republic of Latvia Satversme (Constitution)".

The Constitutional Court **established:**

On December 12, 1996 the Saeima adopted the Law " On the Insolvency of Undertakings and Companies" (henceforth – the Insolvency Law). Article 49 of the Law determines that "A debtor shall be declared as insolvent by a court, and its judgment shall be final".

On October 14, 1998 the Saeima adopted the Civil Proceedings Law. The seventh part of Article 348 of the Law (henceforth – the challenged legal norm) establishes:"The court judgment in the insolvency case is final and allowing of

no appeal". Up to March 1, 1999 Article 285^{30} of the Civil Proceedings Code in the wording: "The court judgment in the insolvency case is final" was applied.

The applicant of the constitutional claim (henceforth – the applicant) - Liāna Aldermane questions the compliance of the seventh part of the Civil Proceedings Law Article 348 with Article 92 of the Republic of Latvia Satversme – Constitution (henceforth – the Satversme).

The applicant holds that the challenged legal norm contradicts Article 92 of the Satversme, which determines that "everyone can protect his/her rights and legal interests in a fair court." The applicant points out that by the challenged norm the legislator denies the right of a person to appeal against the judgment in cases of insolvency of entrepreneur companies and undertakings. To her mind appellation is a claim addressed to the court of the second instance, expressing a request to repeatedly review the case, which has been misinterpreted at the court of the first instance, in order to reach a new decision.

In her constitutional claim L.Aldermane describes the actual circumstances of the case. On September 10, 1997 the mother of the applicant - Rita Grīnberga, who at that time was the owner of the farm "Rukši", had died. L.Aldermane had submitted an application to the Liepāja District Court, requesting to certify her inheritance right. By the Liepāja District Court September 24, 1997 decision she was appointed the trustee of the inheritance left by R. Grīnberga. The applicant points out that on February 5, 1999 the newspaper "Latvijas Vēstnesis" published the Liepāja Court announcement that persons who had any rights or claims on the above inheritance should contact the court within the period of three months. No-one appeared at the court or expressed the claim. By the Liepāja Court December 22, 1999 decision L.Aldermane – as the heir of the first category received certification to her inheritance right. All the claims, not submitted within the above term, were declared as cancelled. The farm "Rukši" was included in the entirety of property of the estate. On April 24, 2001 the Kurzeme Regional Court received the claim on the insolvency of the farm "Rukši" from the State Stock Company "Latvenergo". On April 30, 2001 the Kurzeme Regional Court Civil Matters Division initiated the case on insolvency of the farm "Rukši". By the Kurzeme Regional Court June 21, 2001 decision the farm, which is located in the Nīcas pagasts, Liepāja district was declared as insolvent from December 31, 2000. At that time L. Aldermane was the owner of the farm.

The applicant holds that the challenged norm denies her the right of realizing the human rights, guaranteed by the Satversme – namely –protecting her violated rights and legal interests in a fair court. In the specification of her application L.Aldermane requests the Constitutional Court to declare the challenged legal norm as unconformable with Article 92 of the Satversme.

The institution, which has passed the challenged act – **the Saeima -** in its written reply points out that the right, incorporated into Article 92 of the Saeima, i.e. – the right of appealing against a judgment (decision), has not been separated as a constituent part of the right to a fair court. In accordance with Article 89 of the Saeima, the contents incorporated into the human rights' norms of the Satversme, shall be interpreted in compliance with the international human rights norms and their application in practice. The Saeima holds that Article 92 of the Satversme shall be interpreted by taking into consideration interpretation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention) by the European Court of Human Rights (henceforth – the Court of Human Rights). Thus in its Judgments *Delcourt v. Belgium /1970/* and *Belgian Linguistic case /1968/* the Court of Human Rights has declared that the right of appealing against a court decision has not been included into Article 6 of the Convention. The right of appealing against a court decision is determined by Article 2 of the seventh Protocol of the Convention - and even then - only with regard to criminal cases. As the applicant's procedural right has been violated in civil and not criminal matters, the limitation of appealing against the court decision cannot be regarded as unconformable with Article 92 of the Satversme.

The Saeima in its written reply points out that the law has envisaged the possibility of controlling the legitimacy and validity of the court decision in insolvency cases. Articles 483 – 485 of the Civil Proceedings Law determine the procedure under which the Chairperson of the Senate Civil Matters Department or the Prosecutor General may submit a protest on the court decision within ten years from the date of it taking effect. Essential violations of material or procedural rights, established in cases, reviewed only by the courts of the first instance, which have not been appealed against because of reasons not depending on the participant in the case, may serve as the reason of submitting a protest. Even in the particular case the applicant might have used the right envisaged by law and requested the above mentioned persons to submit the protest on the court decision, if they recognized that the court had essentially violated legal norms.

The Saeima points out that the procedural norms are based on material legal norms. Therefore there is no possibility for determining different from the material legal norms conditions for the procedural norms. To their mind the challenged legal norm follows from Article 49 of the Insolvency Law, establishing that a debtor shall be declared as insolvent by the court, and its judgment shall be final. However, the applicant has not challenged compliance of Article 49 of the Insolvency Law with the norm of higher legal force.

The applicant in her written replies, submitted to the Constitutional Court, has expressed the viewpoint that the Saeima in its reply has ungroundedly made the reference to the interpretation used with regard to international

human rights norms, at the same time paying no attention to the national legal system. L.Aldermane does not agree with the statement of the Saeima that she has had to challenge also the compliance of Article 49 of the Insolvency Law with the legal norm of higher force.

The Constitutional Court, evaluating the conformity of the challenged legal norm with the legal norm of higher legal force

concluded:

1. One cannot agree with the point of view, expressed in the Saeima written reply, that the applicant in her constitutional claim has had to challenge compliance of Article 49 of the Insolvency Law with the Satversme, as there is no possibility of including into the procedural norms the condition, which differs from the material norms. In this case the legislator has incorporated norms, the content of which is similar, into two laws. Besides, among the norms of material nature the procedural legal norm and not the material legal norm is incorporated into Article 49 of the Insolvency Law. Thus the circumstance that the applicant out of similar legal norms, incorporated into two laws has challenged just one, cannot serve as an obstacle to her right of addressing the Constitutional Court and submitting a constitutional claim.

2. In the case on the insolvency of the farm ”Rukši”, the court with its decision has declared the insolvency of the debtor, by establishing all the three insolvency features, determined by the law. The debtor in this particular case is a legal person – the farm ”Rukši” and the challenged legal norm creates direct legal effects to it, no matter who the owner is. When the insolvency process was commenced, the above company was legal and had not completed its activities under the procedure envisaged by the law: it was not liquidated or re-organized and its activities had not been suspended. As regards the creditors, change of owners (even by inheritance) does not influence the rights and obligations of the legal person i.e. – the company – the farm. L.Aldermane is not a debtor but the representative of the debtor in the insolvency process of the farm ”Rukši”. In compliance with the second part of Article 64 of the Insolvency Law and Article 3 (part 1) of the Law ”On Individual (Family) Undertakings, Farms or Fishing Undertakings and Individual Work”, the property of a debtor shall also be the property belonging to an owner of an individual undertaking, farms or fishing undertaking, except property against which collection proceedings may not be brought against. Thus the dispute on the rights, which L. Aldermane could come across in connection with acceptance of the inheritance, may not be solved under a particular for this insolvency case court procedure. The Kurzeme Regional Court in its June 21. 2001 Decision on Insolvency of the Farm ”Rukši” acknowledged that the debtor had admitted the fact that there existed liabilities (debt) for a certain amount (sum) established by the court.

3. Article 92 of the Satversme determines that everyone can protect his/her rights and legal interests in a fair court. To evaluate the conformity of the challenged legal norm with this legal norm of higher force, it is necessary to ascertain if the notion ”a fair court” always incorporates the right to appeal against the court decision on a civil case at the appellate instance court. Article 92 of the Satversme does not directly determine it.

Well-grounded is the reference of the Saeima that in cases, when doubt on the contents of the norm of the human rights, incorporated into the Satversme, arises, it should be interpreted as near as possible to the interpretation used in the international practice of applying the human rights. In its turn, both – the context in which it is used, and the applicant's viewpoint that the national legal system has not been taken into consideration, shall be discussed from two aspects. To establish whether Article 92 of the Satversme includes the right of always appealing against the court decision on a civil case at a higher instance court, on the one hand the Convention and its interpretation in the practice of the Court of Human Rights and norms of other international human rights have to be analyzed. On the other hand, one should ascertain whether the legislator has not included more extensive rights than those, determined by international documents, in Article 92 of the Satversme.

On the one hand the possibility and even the necessity of applying international norms for interpretation of the fundamental rights, incorporated into the Satversme, follow from Article 89 of the Satversme, determining that the State recognizes and protects the fundamental rights of a person in accordance with this Constitution, the laws and international agreements binding on Latvia. It can be seen that the objective of the legislator has not been to contradistinguish the norms of the human rights, included in the Satversme with the international human rights norms. Quite to the contrary – the objective was to create mutual harmony of these norms (*see the Constitutional Court August 30, 2000 Judgment in caseNo. 2000 – 03 – 01).* Besides Chapter VIII of the Satversme”Fundamental Human Rights” was adopted after Latvia had undertaken the above international liabilities. Constitutional Courts of other states also interpret the human rights included in their Fundamental Laws in like manner. For example, the German Federal Constitution has pointed out that ”when interpreting the Fundamental Law one should take into consideration the contents and state of development of the European Convention for the Protection of Human Rights and Fundamental Freedoms as far as it does not decrease or limit the fundamental rights, included in the Fundamental Law, i.e., the influence, which is excluded by the Convention itself (Article 60 of the Convention). Thus the judgments of the European Court of Human Rights serve as basic means of interpreting the contents and limits of the fundamental rights determined by the Fundamental Law… One may not presume that the legislator, if he has not stated it clearly, would have wanted to deviate from the international liabilities binding on the German Federative Republic or allowed the possibility of infringing the above

liabilities" (*see BverfGE 74, 358).* On the other hand, to establish the contents and limits of the Satversme Article, it is not always possible to confine oneself just to the interpretation of the Convention and the practice of the European Court of Human Rights, especially in cases when the Satversme Article does not envisage specified (concrete) rights. One should take into consideration the norm, incorporated into Article 60 of the Convention (in the wording of the Convention, which took effect on November 1, 1998 – Article 53). The norm determines that nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms, which may be ensured under the laws of any High Contracting Party or any other agreement to which it is a Party.

Article 6 of the Convention determines: "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". In several of its judgments the European Court of Human Rights has declared that Article 6 of the Convention does not imply the right of access to an appeal. The only explicit provision for appeals is in Article 2 of Protocol No. 7, which guarantees such a right in respect of criminal proceedings (*see Human Rights. The 1998 Act and the European Convention. Sweet and Maxwell, London, 2000, p. 231 and Judgments in the Belgian Linguistic case /1968/ as well as Delcourt v. Belgium /1970/).* The Court of Human Rights has stated that Article 6 of the Convention does not compel States to institute a system of appeal courts. The State, in accordance with its legal system, may determine the scope of the principle of appeal. A State, which does set up such courts, may in the national law determine the category of cases, which have no right of access to an appeal.

Other international norms of human rights, binding on Latvia, also do not contain the requirement to ensure the possibility of reviewing any civil case at the court of higher instance. Thus, for example, Article 14 of the International Convention on Civil and Political Rights envisages the right of access to an appeal only in criminal cases.

Thus, the notion " a fair court" in the understanding of the Satversme Article 92 or international instruments on human rights does not guarantee the right of appealing against a court decision in a civil case.

4. To evaluate whether the Satversme Article 92 envisages the possibility of appealing against a court decision in a civil case, it is necessary to ascertain the nature of the particular case category and the objective of the legislator, when adopting a specific (concrete) law. It may be established only after ascertaining what the link of the particular law with the whole legal system is and how the adopted law fits in with it.

The essence of civil proceedings lies in the following: mutual disputes of the parties on violated rights and protected by law interests are solved by observing the principle of equality of the parties. In the event of action proceedings, the court reviews and reaches a decision on disputes and gives an objective opinion on the evidence, submitted by the parties. In the Latvian court system the right of reviewing cases at the appellate instance is one of the basic conditions in civil cases, which are to be reviewed under the procedure of action proceedings,. The objective of the appeal is to prevent the potential errors, which the court of the first instance could have made when reviewing cases on violation of person's rights and protected by law interests.

However civil cases of different nature are being reviewed. The law determines not only the action proceedings but also kinds of other proceedings: the specific procedure of litigation and meeting one's engagements on a no contestation basis. Cases on the insolvency of undertakings and companies (and the challenged legal norm belongs to that category of cases) are reviewed under a specific procedure. Cases of this category differ from the cases to be reviewed under the procedure of action proceedings. The difference lies in the fact that there is no dispute on rights in them (*see A Comment on the Civil Proceedings Law. Wording of the scientific editorial board of Professors K.Torgāns and M.Dūdelis. Rīga, 1999, page 177).*

Insolvency is the status of the debtor, which has been declared by a court judgment in case if the debtor has not been able to settle his/her obligations. In an insolvency case there does not exist an argument between the parties, but the court establishes at least one of the features of insolvency, which are determined in the Insolvency Law. The features are: 1) the debtor is not able or – because of certain circumstances - will not be able to settle the debt;

2.) the debtor has discontinued settling his debt within the envisaged time period and the conditions of Item 1 of Article 39 of the above Law have been observed;

3.) the assets of the debtor are insufficient for settling the debts (the first part of Article 3).

The objective of the Insolvency Law is to ensure the protection of real or potential creditors and not to regulate disputes on rights. The process of insolvency is specific and differs from the procedure of general civil proceedings. Insolvency is an objective condition of a company (undertaking) and establishing the fact of insolvency as well as declaring it by a court is one of the stages of the insolvency process. An appeal against the court judgment is not envisaged by law.

However, the law currently in force envisages that the debtor enjoys the right of protecting his/her rights. First of all the creditor, before submitting an insolvency petition to a court, has to notify the debtor , besides the debtor - within two weeks after the creditor has notified him/her – has the right of

satisfying the claim or objecting to it. If the debtor within two weeks has not made use of the above right, the creditor, at least one week prior to the submission of the claim to a court has to inform the debtor in writing about his/her intention to submit an insolvency petition. If the debtor does not settle the debt even within this time period, the creditor may submit an insolvency petition to a court. Thus, if any of the above demands is not observed, the case on insolvency is not initiated (Article 39, Item 1). Secondly, if during the process of review the dispute on certain rights arises, which has to be solved under the action procedure, the court - depending on the contents of the dispute- either does not review the application or suspends the proceedings to the moment of reaching a decision on the dispute (Article 258 of the Civil Proceedings Law).

Well-grounded is the viewpoint expressed in the Saeima written reply, that the Law envisages the possibility of verifying the legality and validity of the court decision in case it has not been appealed against because of reasons (circumstances) not depending on the participant in the case. As one of the reasons might be mentioned the case when the law does not envisage appealing against the decision of the court of the first instance at the appellate instance. Articles 483 – 485 of the Civil Proceedings Law regulate the procedure under which the Chairperson of the Supreme Court, the Chairperson of the Senate Civil Matters Department or the Prosecutor General may submit a protest on the effective court decision. However, the above situation arises only in cases if essential material or procedural legal norms have been violated. Thus, if the person has information on violation of essential material or procedural norms during the process of insolvency case review, he/she may address the above officials, requesting them to submit a protest on the particular decision. However, this is an exceptional case and cannot be regarded as an appeal, as it does not give the right of submitting a claim to the court by the person itself.

Initiating of an insolvency case, as well as declaring a debtor as insolvent creates legal effects. The challenged legal norm:

1.) protects the interests of the creditors, as after declaring the insolvency of the debtor, the latter loses his right of acting with his property, as well as the property of the third person, which is under the tenure of the debtor (Item 1 of the first part of Article 50 and Article 73 of the Insolvency Law). Besides, delay of the process of insolvency, which could create consequences, disadvantageous for creditors, is eliminated;

2.) interests of the debtor are protected, as after declaring the debtor insolvent, no interest increase and overdue payments are calculated (the first part of Item 3 of Article 50) ;

3.) taking into consideration the great number of insolvency cases, which is rapidly increasing, the court economy principle of duly review of cases may be observed. Thus one may conclude that the challenged legal norm creates suitable and reasonable legal effects for the protection of both – the creditors

and the debtors as well as the protection of the society and the whole court system.

On the basis of Articles 30 – 32 the Constitutional Court

decided :

To declare the seventh part of Article 348 of the Civil Proceedings Law **as conformable with** Article 92 of the Republic of Latvia Satversme.

The Judgment takes effect after its publication. The Judgment is final and may not be appealed.

The Chairman of the Constitutional Court session A.Endziņš