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**A case initiated with respect to norms that define the way, in which in criminal proceedings the issue regarding examination of a judgment in cassation procedure must be decided upon**

On 25 September 2017, the 2<sup>nd</sup> Panel of the Constitutional Court initiated case “On Compliance of the Second and the Third Part of Section 573 of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

**Contested Norms**

The second part of Section 573 of the Criminal Procedure Law: “An issue regarding the examination of a judgment in accordance with cassation procedure shall be decided by a judge appointed by the Chairperson of the Department of Criminal Cases of the Supreme Court.”

The third part of Section 573 of the Criminal Procedure Law: “A decision shall be written in a manner of resolution and it shall not be subject to appeal.”

**Norm of Higher Legal Force**

The first sentence of Article 92 of the *Satversme*: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

**Facts of the Case**

The case has been initiated with regard to an application submitted by Ēriks Ošs. By the judgement of a first instance court the applicant has been recognised as being guilty of committing a criminal offence and has been punished. The applicant appealed against the judgement by the first instance court in appellate procedure; however, the appellate instance court left the aforementioned judgement unchanged. The applicant has submitted a cassation complaint about the judgement by the appellate instance court. Pursuant to the contested norms, a judge appointed by the Chairperson of the Department of Criminal Cases of the Supreme Court has decided to refuse examination of the aforementioned judgement in cassation procedure.

The applicant holds that the contested norms place disproportionate restrictions upon his right to a fair trial, enshrined in the first sentence of Article 92 of the *Satversme*. It is contended that the right to a fair trial should be ensured also in deciding on acceptance of a cassation complaint, because the refusal to examine the legality of a ruling in cassation procedure becomes the final regulation in the particular criminal case. Allegedly, it follows from the regulation included in other procedural laws that only a collegial and unanimous decision on refusal to initiate cassation proceedings can ensure a person's right to a fair trial. The contested norms, to the contrary, do not ensure a fair examination of this matter. The drawing up of the decision in the form of a resolution, in turn, is said to violate a person's right to a reasoned ruling by the court.

### **Legal Proceedings**

The Constitutional Court has requested the *Saeima* to provide a reply on the facts of the case and legal substantiation by 27 November 2017.

The term for preparing the case is 25 February 2018. The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

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The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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