THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, June 2, 2008

in case No. 2007-22-01

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

having regard to the constitutional claim of the limited liability company "Zeltaleja-1" and Jānis Kalniņš,

based on Article 85 of the Satversme (Constitution) of the Republic of Latvia and Item 1 of Article 16, Item 11 of the first part of Article 17, Articles $19.^{2}$ and $28.^{1}$ of the Constitutional Court Law,

on May 13, 2008 in the Court Session examined the case in written proceedings

"On Compliance of Sections 434 and 464 of the Civil Procedure Law with Articles 82, 86 and 92 of the Satversme (Constitution) of the Republic of Latvia"

The Constitutional Court has established:

1. On October 14, 1998, the Saeima adopted the Civil Procedure Law that is effective from March 1, 1999. It has been amended several times.

Section 434 of the Civil Procedure Law regulates coming into lawful effect of a judgment of an appellate instance court. At the time when there were cases initiated having regard to constitutional claims of the limited liability company "Zeltaleja-1" and Jānis Kalniņš, this Section provided:

„An appellate instance court judgment shall come into lawful effect at the time it is pronounced."

Article 464 of the Civil Procedure Law, which includes legal regulation of the Senate Assignment Sitting of the Supreme Court of the Republic of Latvia provided at the moment when the cases were initiated:

"(1) All cassation complaints and protests submitted to the Senate after the end of the time period for the submission of the explanation provided for in Section 460, Paragraph one of this Law, shall be examined at an assignments sitting in order to decide whether they comply with the requirements of Sections 450-454 of this Law and whether they are to be adjudicated at a cassation instance court sitting.

(2) A civil matter shall be examined at an assignments sitting by a collegium of the Senate, composed of three judges appointed by the Chairperson of the Senate Department.

(3) If a collegium of the Senate unanimously finds that a cassation complaint does not comply with the requirements of law, it shall take a decision to terminate the cassation proceedings.

(4) If at least one of the senators considers that a matter should be adjudicated at cassation instance, the collegium of the Senate shall take a decision to refer the matter for it to be adjudicated in accordance with cassation procedure.

(5) By unanimous decision of a collegium of the Senate, a matter may be referred for it to be adjudicated, in accordance with cassation procedure, to the Senate in expanded composition.

(6) If a matter is referred for the adjudicating thereof to the Senate, pursuant to the application of a party, execution of judgment in such matter may be stayed pursuant to the decision of an assignments sitting.

(7) If in a Senate assignments sitting, the collegium of the Senate take a decision regarding the assigning of a matter to the European Court of Justice for the

rendering of a preliminary ruling, it shall suspend the court proceedings until the adjudication of the European Court of Justice comes into legal force."

2. On October 31, 2007, there was a case initiated on the basis of the constitutional claim by the limited liability company "Zeltaleja-1", but on December 18, 2007, there was a case initiated on the basis of the constitutional claim of Jānis Kalniņš. The constitutional claims of the limited liability company "Zeltaleja-1" and Jānis Kalniņš (hereinafter – the Applicants) were similar. In order to favour an exhaustive and fast adjudication of both cases, they were joined according to the sixth part of Article 22 of the Constitutional Court Law.

It has been indicated in the constitutional claims, that Section 434 and 464 of the Civil Procedure Law (hereinafter – the Contested Norms) violate the right of the Applicants to a fair court, which follows from Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme), and they do not comply with Article 92 of the Satversme in conjunction with Article 1, 82 and 86 of the Satversme.

2.1. The Applicants hold that the legal regulation included in Section 434 of the Civil Procedure Law prohibits implementing the rights to a fair court established in Article 92 of the Satversme. Although the restriction of the basic rights has been established by law, it has no legitimate objective.

The Contested Norm, which provides for coming into effect of an appellate instance court at the time it is pronounced, does not comply with the principles of civil procedure. The elements of lawful validity of a judgment are both, incontestability of a judgment and feasibility thereof. However, the Contested Norm, when assess in conjunction with other norms included in the Civil Procedure Law, permits that a judgment of an appellate instance court having took effect may be appealed against according to cassation procedures, as well as it can later be deleted. Consequently, execution of a judgment of the court is permitted before final adjudication of the court.

In the constitutional claims, attention is paid to the order, according to which a shortened judgment of the court came into effect, namely, it came into effect at the moment of pronouncing the Concluding Part of the judgment. Consequently, execution of such judgment, the full text of which has not yet been written, is also possible. However, according to Section 454 of the Civil Procedure Law, it is possible to appeal

against a judgment in accordance with cassation procedures only of a full text of the judgment has been received.

The Applicants express a viewpoint that the Contested Norm does not comply with Article 82 and 86 of the Satversme. It follows from the abovementioned Articles of the Satversme that it is possible to administer justice only according to the order established by law. Consequently, each institution of a court has the right to administer justice only within the scope of competence established by law and a supreme instance court is not authorized to cancel a judgment of a lower instance court.

Moreover, Section 434 of the Civil Procedure Law does not comply with the principle of legal security established in Article 1 of the Satversme. The action of the State shall be not only lawful, but also consequent. Consequently, a judgment that has come into lawful effect, which has the force of a law according to Section 16 of the Law "On Judicial Power", confers the right to a person to rely on the fact that the judgment is final and can not be cancelled only because the fact that a supreme instance court has a different opinion regarding application of legal norms. However, if the judgment can be appealed against, it can not be recognized as having come into lawful effect.

2.2. The Applicants hold that Section 464 of the Civil Procedure Law, namely, the third part of this Section, restricts the rights of a person to a fair court. It has been indicated in the constitutional claim that the Contested Norm prohibits appealing against a decision of the Senate Assignment Sitting and hence it does not allow implementing rights to examination of a case in a cassation instance. This restriction has been established by Law. It has a legitimate objective – not to examine such complaints in a cassation instance court, wherein correctness of application of a contested norm is not contested. However this restriction may not be regarded as proportionate.

The Applicants indicate that the Senate Assignment Sitting, when examining cassation complaints and passing decisions regarding termination of legal proceedings of cassation, has exceeded the area of authority provided by law and has in fact undertook the functions of cassation instance court. The Applicants draw attention to the fact that the decision adopted by the Senate Assignment Sitting regarding termination of legal proceedings of cassation also in other cases show that the

Assignment Sitting sometimes undertake the functions of cassation instance court. Namely, instead of verifying whether a cassation complaint complies with the requirements of the law, the Senate Assignment Sitting in fact decides whether an appellate instance court has committed violations of material and procedural legal norms indicated in the cassation complaint.

The Applicants hold that only a cassation instance court, when examining a case in an open session, and only at the presence of representatives of parties it is possible to assess lawfulness of a judgment of an appellate instance court. However, the Senate Assignment Sitting is authorized to assess only the fact whether a cassation complaint complies with Section 453 of the Civil Procedure Law, which provides for the content of a cassation complaint.

It is impossible to appeal against a decision of the Senate Assignment Sitting, which is adopted exceeding the limits of the competence established by law, and consequently, the rights to a fair court are restricted, i.e. examination of a cassation complaint in a cassation instance court. However, the Applicants admit that the prohibition of appellation follows not from Section 464 of the Civil Procedure Law, but from the practice of the Supreme Court to interpret and apply the norms of the Civil Procedure Law, which is considered as anti-constitutional by the Applicants.

Moreover, the rights to examination of the case in all three instances, including a cassation instance follows from Article 82 of the Satversme. However, the restriction to appeal against a decision of the Senate Assignment Sitting does not comply with Article 86 of the Satversme, if the decision has been adopted exceeding the limits of authority established by law.

2.3. Having got acquainted with the case materials, the Applicants fully maintain the opinion expressed in the constitutional claims. The Applicants emphasize that the argument that examination of a case in two instances would fully ensure protection of the interests of both parties can not be regarded as grounded. Therefore the rights to examination of a case in a cassation instance may not be restricted by the fact that a cassation instance court does not assess factual circumstances, but examines lawful aspects of a dispute.

The Applicants additionally indicate that the first part of Section 464 of the Civil Procedure Law establishes too broad area of competence for the Senate

Assignment Sitting when assessing compliance of the cassation complaint with the requirements of Sections 450 – 454 of the Civil Procedure Law and establishing whether the cassation complaint would be examined in a cassation instance court sitting. Such legal regulation permits such situation when not only compliance of a cassation complaint with formal requirements of law, but also insufficiency of arguments indicated in the cassation complaint regarding violations of material and procedural law in the judgment of an appellate instance is assessed.

3. The institution that has passed the contested act – the Saeima – indicates that the Contested Norms shall be recognized as compliant with Article 1, 82, 86 and 92 of the Satversme.

3.1. The reply contains a viewpoint that Section 434 of the Civil Procedure Law shall be recognized as compliant with the Satversme. The objective of Section 434 of the Civil Procedure Law is to ensure rapidity of civil circulation and fastest possible execution of judgments. However, the Saeima recognizes that acceleration and simplification of civil circulation may not serve as the main objective. It is necessary to ensure that, when executing a judgment before coming into force of the final decision of the court, Article 92 of the Satversme would not be violated. Therefore the law must provide for mechanisms that would provide a possibility to reduce the consequences of immediate execution of an appellate instance court judgment or to ensure prevention of these consequences. It is ensured by the sixth part of Section 464 of the Civil Procedure Law, which provides for a possibility to arrest a judgment if the case is being submitted for examination in a cassation instance court, as well as Section 634 of the same Law, which provides for a reversal of execution of a judgment.

The Saeima holds that execution of a judgment shall not be related with coming into force of the final judgment of the court. A judgment of the court in certain cases may be executed also if it is not final and it can be appealed against. In several laws, execution of judgments of a first instance court disregarding the fact whether it is possible to appeal against the judgment. For example, in the frameworks of civil procedure, the judgments regarding reinstatement shall be executed immediately. However, in the frameworks of administrative procedure, judgments regarding

inclusion of a person into election register or a prohibition (restriction) to organize a procession, a piquet or a meeting shall be executed immediately on the basis of law. Immediate execution of a judgment is related with the necessity to ensure protection of important interests.

3.2. It was indicated in the reply that Section 464 of the Civil Procedure Law shall be regarded as compliant with Article 92 of the Satversme. The objective of this Section is ensuring of an adequate functioning of the Senate. Moreover, the restriction included in this Section complies with the principle of proportionality, because it provides not for a mechanical restriction, but for a duty of assessment in the frameworks of the Senate Assignment Sitting. Moreover, a cassation complaint shall be submitted for examination in a cassation instance court if at least one of the senators that participate in the Senate Assignment Sitting, considers it as necessary.

The Saeima does not agree to the viewpoint of the Applicants that the judgment of the Senate Assignment Sitting should be appealed against. Non-appeal against the judgment of the Senate Assignment Sitting follows from Section 441 of the Civil Procedure Law, which provide for cases when it is possible to submit a ancillary complaint of a decision of the court. It can not be done in the cases when no such possibility is provided by law. This principle is included in all procedural laws by regulating the rights to submit complaints for procedural issues, which also include rejection or non-forwarding of a claim. Moreover, appealing against a decision of a Senate Assignment Sitting is not lawfully possible because there is no higher instance where it would be possible to appeal against a decision of a Senate Assignment Sitting. The Saeima indicates that a decision of the Senate Assignment Sitting can and may not be appealed against.

Referring to the judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-04-01 and the judgment of March 14, 2006 in the case No. 2005-18-01, the Saeima indicates that legal norms that restrict the rights of persons to address a cassation instance court in order to hamper, by means of ungrounded complaints, functioning or protection of the interests of other persons by the Senate are admissible and even indispensable. When assessing the are of responsibility of the Senate, it is necessary to take into consideration the importance of a cassation instance and the

circumstance that only issues regarding correctness of application of material and procedural norms are examined in a cassation instance.

The Saeima draws attention to the judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-04-01, wherein, by referring to the recommendation No. R95(5) of 1995 by the Committee of Ministers of the Council of Europe [*Recommendation No. R (95) concerning the introduction and improvement of the function of appeal systems and procedures in civil and commercial cases*; hereinafter – Recommendation No. R95(5) of the Council of Europe] regarding the appeal system, introduction of procedures and amelioration of activities in civil cases and commercial cases it has been indicated that the states should consider a possibility to introduce such order or examination of cases that would permit restricting the number of those cases that are submitted to the court for the third time.

3.3. When assessing compliance of the Contested Norms with Article 82 and Article 86 of the Satversme, the Saeima indicates that the legal norms regarding the area of responsibility of the Senate Assignment Sitting and immediate execution of a decision of an appellate instance court does not at all violate the provision that in Latvia justice is administered by regional (parish) courts, district courts and the Supreme Court, as well as the provision that justice shall only by adjudicated by those bodies that have been conferred such rights by law and only according to the order established by law. Simultaneously, the Saeima holds that the Contested Norms are not related with Article 82 and 86 of the Satversme and therefore it is unnecessary to continue proceedings as to this issue.

3.4. The Saeima expresses a viewpoint that it is not useful to continue proceedings also regarding the issue of compliance of the Contested Norms with Article 1 of the Satversme because the Applicant who has asked to asses compliance of Section 434 and Section 464 with Article 1 of the Satversme has not included arguments into the legal justification of the application regarding compliance of the Contested Norms with the abovementioned Article of the Satversme. Taking into consideration the fact that no arguments of the Applicant are know in relation with this claim, the Saeima can only indicate that in the case if the Contested Norms would not comply with the rights to a fair court established in Article 92 of the Satversme, it would still comply with Article 1 of the Satversme.

4. The Ministry of Justice of the Republic of Latvia holds that the Contested Norms comply with the norms of the Satversme.

Legal regulation included in Section 434 of the Civil Procedure Law does not restrict the rights of a person to a fair court, because according to Section 450 of the Civil Procedure Law it is possible to appeal against a decision of an appellate instance court. Participants of the case are not prohibited to submit a case for examination thereof in all three court instances, and consequently legal interests and basic rights of persons are not violated.

Issues regarding correctness of application of material and procedural norms only are examined in a cassation instance court. Moreover, the cassation principle has publicly legal status because it is directed towards a uniform application and interpretation of legal norms in the entire State. Therefore appealing against a decision in a cassation instance can be justified in those cases that would develop the law and make contribution into its uniform interpretation.

Simultaneously the Ministry indicates that the necessity to assess whether any amendments should be made due to considerations of expediency and single regulation of procedural legal norms. In the Civil Procedure Law, when providing that a decision of an appellate instance court shall come into effect after the term of appealing against the decision according to cassation procedures has expired and the decision has not been appealed against.

The Ministry of Justice draws attention to the fact that it does not follow from the arguments provided by the Applicants that the dispute has risen regarding the legal regulation included into Section 464 of the Civil Procedure Law rather than regarding the circumstance that decisions in the Senate Assignment Sitting are sometimes adopted by violating the limits of the area of responsibility of the Senate Assignment Sitting. The Ministry holds that thus there may problems arise in practice regarding interpretation and application of Section 464 of the Civil Procedure Law. However it does not mean that the legal regulation included in the abovementioned norm of the Civil Procedure Law shall be regarded as non-compliant with the Satversme.

5. The Civil Matters Department of the Senate of the Supreme Court of the Republic of Latvia (hereinafter – the Senate) holds that the Contested Norm shall be recognized as compliant with the Satversme.

5.1. The Senate holds that the legal regulation included in Section 434 of the Civil Procedure Law does not restrict the rights of a person to a fair court. It has been recognized in the criminal procedure law that a judgment of a court usually can not be recognized as contestable or amendable after coming into effect thereof. However this is not an absolute condition. It is important that the law also provides for a sufficient mechanism of protection of the rights of a natural person in the case if a decision of an appellate instance is appealed against. It is ensured by the legal regulation included in the sixth part of Section 464 and Section 634 of the Civil Procedure Law.

5.2. The Senate indicates that Section 464 of the Civil Procedure Law shall be recognized as compliant with the norms of the Satversme. The task of the Senate Assignment Sitting is to assess compliance of submitted cassation complaints with the requirements of the Law and to adopt a corresponding decision by thus ensuring that a cassation instance court examines only such cases that comply with the requirements of the Law.

By referring to the judgments of the Constitutional Court, the Senate indicates: in order to ensure an adequate functioning of the Civil Matters Department, namely, deciding on the issues regarding application of material and procedural legal norms, the legislator, as far as it is possible, must relieve the Department from examination of ungrounded complaints. It is important that the Civil Matters Department could examine cases that are related only to examination of interpretation of norms only, and it would be protected from aimless litigation of certain persons.

The Senate emphasizes that according to the legal regulation established by Section 464 of the Civil Procedure Law, cassation proceedings shall be terminated only in the case if none of the senators doubt the fact that the cassation complaint does not comply with the requirements of the Law.

The Senate explains that the collegium of the Senate is entitled to assess compliance of a cassation complaint with the requirements of the Law. When assessing compliance of a cassation complaint with the requirements of the Law, the content of the cassation complaint shall be assessed, by the Assignment Sitting, in

conjunction with the civil case avoiding ungrounded submission of the cassation complaint for examination in a cassation instance court. Namely, establishment of factual circumstances, verification and reassessment of proofs of the case does not fall within the scope of competence of the Senate as a cassation instance court. Therefore only such cassation complaints that contain such arguments that are directed towards establishment of factual circumstances of the case or reassessment of proofs can be recognized as non-compliant with the requirements of the Law.

5.3. When providing information regarding practice of application of Section 464 of the Civil Procedure Law, the Senate indicates that the number of cases to be submitted to a court according to cassation procedures depends on compliance of the arguments of the cassation complaint with the requirements of the Law. Quality of composing a cassation complaint and reflection of legal issues and problems included therein has ameliorated. It is manifested by increase of the number of cases submitted for examination according to cassation procedures. In 2005, cassation proceedings in 45.5 percent of cases were terminated in the Assignment Sitting, whereas in 2006 – in 41.3 percent of cases. Also in 2007, the number of cases that were submitted for examination according to cassation procedures continued to increase.

6. The Civil Matters Chamber of the Supreme Court of the Republic of Latvia indicates that the Contested Norms ensure implementation of the rights to a fair court established in Article 92 of the Satversme.

6.1. The content of the rights to a lawful and fair court also includes the rights to an effective judgment of a court, and one of these points shall be implemented. The circumstance that an appellate instance court decision comes into a lawful effect at the moment of pronouncing thereof favours more active, extensive and purposeful exercising of the procedural rights conferred to the parties. The legal regulation included in Section 434 of the Civil Procedure Law, according to which an appellate instance court decision shall come into force at the moment of pronouncing thereof, does not jeopardize implementation of the rights established in Article 92 of the Satversme.

By admitting appealing against an effective decision according to cassation procedures and by simultaneously permitting execution thereof, a balance between the

necessity to protect subjective rights of the plaintiff within a reasonable term and the rights of each member of the society to equality before the law is ensured. Moreover, the Civil Procedure Law also provides for a reversal of execution of a decision in the case when an executed judgment is being cancelled but a decision regarding rejection of the claim is being prepared after re-examination of the case.

6.2. The legal regulation included in Section 464 of the Civil Procedure Law neither prohibits a person to exercise the rights to a fair court established in the Satversme. The Civil Procedure Law justly confers a cassation instance the right to assess submitted cassation complaints in order to establish whether they fit for examination thereof in a cassation instance sitting. Moreover, the procedural order of assessment is favourable for a complainant, because it is possible to refuse examination of a cassation complaint in a cassation instance sitting only by unilateral decision of three senators.

The objective and the task of a cassation instance is not settling of disputes regarding civil law. Its task is to ensure that the laws are uniformly interpreted and applied in the State with the view to ensure equality of persons before the law. Public legal interests, rather than subjective interests of parties play the decisive role in a cassation instance. Therefore, in order to ensure successful fulfilment of the task of a cassation instance court, it would not be correct to make it examine all submitted cassation complaints. It should not examine those cases according to cassation procedures wherein parties contest the facts and assessment of proofs established by an appellate instance court, but it should examine only those cassation complaints, wherein interpretation and application of law is contested.

7. The Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) submitted its opinion regarding compliance of the Contested Norms with the Satversme of the Republic of Latvia.

7.1. The regulation included in Section 434 of the Civil Procedure Law complies with Article 82 and 86 of the Civil Procedure Law. There is no reason to consider that these articles of the Satversme would require that each case were examined in all judicial institutions. Consequently, Article 82 and Article 86 of the Satversme does not prohibit providing in procedural laws that cases of a certain

category shall be examined only on one or two instances. Moreover, these Articles do not prohibit the legislator to establish that an appellate instance court decision shall come into force at the moment of pronouncing thereof, although the law also provides for a possibility to submit a cassation complaint under certain criteria.

Also Article 92 of the Satversme does not obligate the State to provide for a possibility to appeal against a decision in each case according to appeal and cassation procedures. It has the duty to ensure at leas one possibility of appealing against a decision only in criminal cases. Therefore the fact that Section 434 of the Civil Procedure Law provides for coming into effect of an appellate instance court decision at the moment of pronouncing thereof does not *per se* contradict Article 92 of the Satversme.

However, it is necessary to interpret Article 92 of the Satversme in conjunction with the principle of lawfulness, which is established in Article 1 of the Satversme. One of the elements of the principle of lawfulness is the principle of legal certainty, which among the rest also requires that effective decision of courts shall not be contested. This means that nobody has the right to ask to review a final and effective decision, especially if it has already been executed. A reasonable balance between legal stability and justice would be ensured only in the case if revision of effective decisions would be possible in the case of an exception.

The State should ensure observance of several conditions if it would intend to consider revision of a case in a cassation instance as an exception when revision of already effective decision of a court is permitted in the interest of justice. First of all, the State should explicitly establish that a cassation complaint is exclusive protective means. Second, the State should ensure an adequate protection of interests of the persons involved in the matter. The legislator should also assess whether it is reasonable to establish for all categories of cases that an appellate instance court decision shall come into effect at the moment of pronouncing thereof.

7.2. The Ombudsman indicates that neither Article 82 of the Satversme, nor Article 86 of the Satversme provides the composition of a case, according to which cases are examined in the courts. Similarly, the abovementioned articles of the Satversme do not provide for the order of examination of cases or the succession of revision of issues to be decided on in the cases. These articles permit the legislator to

establish that at first there will be the issue regarding compliance of a cassation complaint with the requirements of the Law decided in a separate sitting, and then, if the complaint would comply with these requirements, during another sitting the cassation complaint is examined in its terms. The Ombudsman emphasizes that Article 92 of the Satversme does not provide for a duty of the State to establish a possibility of appealing against decisions. Consequently, the circumstance that a decision of the Senate Assignment Sitting shall not be appealed against complies with the norms of the Satversme.

The Ombudsman draws attention to the fact that in fact the way of application of Section 464 of the Civil Procedure Law when assessing compliance of the cassation complaint with the requirements of the Law during the Senate Assignment Sitting was contested in the constitutional claims. Namely, in the case under review, the Assignment Sitting has exceeded its limits of responsibility and has assessed an appellate instance court in its terms. The content of Section 464 of the Civil Procedure Law in fact is not contested.

8. A professor of the Rezekne Higher Education Institution, Dr.iur. Jānis Rozenbergs provided his assessment regarding compliance of the Contested Norms with the Satversme.

8.1. Disregarding coming into lawful effect and feasibility of the appellate institution court decision, the submitted of a cassation complaint and other participants of the case may at full extent exercise the rights established in Article 92 of the Satversme. The norm included in Section 434 of the Civil Procedure Law shall not be regarded as non-compliant with Articles 82 and 86 of the Satversme.

Coming into lawful effect of an appellate instance court decision does not influence the possibility to appeal against it in accordance with cassation procedures. A cassation instance court can objectively and independently examine a cassation complaint even if at the moment of examination thereof the respective decision of an appellate instance court has already been executed. This circumstance does not serve as an obstacle for a cassation instance court to satisfy the cassation complaint and cancel the executed decision and submit the case for re-examination, if justified.

J. Rozenbergs draws attention to the fact that Section 434 of the Civil Procedure Law does not rather comply with Article 1 and 91 of the Satversme, because in the case if an already executed decision of an appellate instance court is being cancelled, no equal protection of the interests of the participants of the case is being ensured.

Although Section 634 of the Civil Procedure Law provides for a reversal of execution of a decision, the Law does not provide the defendant with any possibility to lawfully ensure this reversal with adequate legal means. Consequently, a considerable inequality between the parties arises. The defendant is provided with broad possibilities to ensure his or her claim with different legal means before pursuing a claim in a court, as well as during examination of the case. If the defendant has not provided a claim during examination of the case, it can be provided also by execution of a decision of a court. Simultaneously, the defendant has no analogous possibilities to ensure a reversal of execution of a judgment when the execution has initiated based on the legal regulation established in Section 434 of the Civil Procedure Law disregarding the fact that the decision has been appealed against according to cassation procedures. Such inequality of the parties often in practice causes irreparable loss for the defendant, which in fact have been caused in a lawful way.

8.2. The third part of Section 464 of the Civil Procedure Law shall be regarded as non-compliant with Article 82 and 92 of the Satversme. The objectives of the restriction included in the abovementioned norm – to ensure that a cassation instance court would accept only such cassation complaints that comply with the requirements of the Law – can be reached by means that restrict the rights of a person at a lesser extent.

Namely, civil procedure provides for a general provision that the procedural document shall be suspended and its submitter shall be provided with the term for elimination of deficiencies of the document if the respective document has been incomplete as to its content and form. The Civil Procedure Law provides also for suspension of a cassation complaint. However it is suspended only in cases if the deficiencies made in the cassation complaint are related to its form. No possibilities to eliminate those deficiencies that are related to the content of the cassation complaint are permitted. This is the only case in civil procedure when no suspension of a

document is provided for elimination of deficiencies made therein. Such exception is not useful and necessary.

The Constitutional Court holds:

9. The constitutional claim includes a claim to assess compliance of the Contested Norms with Article 1, 82, 86 and 92 of the Satversme.

Article 82 of the Satversme provides: "In Latvia, court cases shall be heard by district (city) courts, regional courts and the Supreme Court, but in the event of war or a state of emergency, also by military courts." Article 86 of the Satversme provides; "Decisions in court proceedings may be made only by bodies upon which jurisdiction regarding such has been conferred by law, and only in accordance with procedures provided for by law. Military courts shall act on the basis of a specific law." The Saeima indicates in its reply that it would not be useful to continue proceedings regarding compliance of the Contested Norms with Article 82 and 86 of the Satversme, because the Contested Norms are not related with the abovementioned articles of the Satversme.

The Saeima also indicates that it would not be useful to continue proceedings regarding compliance of the Contested Norms with Article 1 of the Satversme, because the Applicant who has asked to assess compliance of Section 434 and Section 464 of the Civil Procedure Law with this Article of the Satversme has not included a sufficient legal justification in the application regarding non-compliance of the Contested Norm with this Article of the Satversme, which provides that "Latvia is an independent democratic republic."

9.1. Termination of proceedings is regulated by Article 29 of the Constitutional Court Law. The first part of this Article provides for cases when proceedings may be closed before the judgment is announced by a decision of the Constitutional Court. However this Law provides for the rights of the Constitutional Court to terminate proceedings, but does not provide for a duty to do it. If there exist any other circumstance mentioned in the Constitutional Court Law, which permits termination of proceedings, it does not mean that continuation of proceedings in the case is not

possible or necessary (*see, e.g.: Judgment of February 8, 2007 by the Constitutional Court in the case No. 2006-09-03*).

It follows from the first part of Article 28 and Item 1 of the sixth part of Article 19.^{2} of the Constitutional Court Law that in a constitutional claim it is necessary to legally justify non-compliance of the each contested norm with the legal norms of a higher legal force indicated in the application. The Constitutional Court, in its former practice, in separate cases has not assessed compliance of contested norms with article of the Constitutional Court indicated in the constitutional claim, because, when adjudicating the case, the Court has established that the constitutional claim submitted to the Constitutional Court does not gives sufficient legal justification for assessing of the compliance of the impugned norm with Article 1 of the Satversme (*see: Judgment of February 15, 2005 by the Constitutional Court in the case No. 2004-19-01, Para 10*).

However, in the case under review, the Saeima has not justified the fact why the arguments (*see: case materials, Vol. 1, pp. 112*) mentioned in the constitutional claim, wherein it has been asked to assess compliance of Section 434 of the Civil Procedure Law with Article 1 of the Satversme are insufficient in order to assess compliance of this norm with Article 1 of the Satversme and with the legal principles that follow from this Article in conjunction with the rights to a fair court established in Article 92 of the Satversme.

9.2. 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 claim included in the constitutional claims requires assessing compliance of the Contested Norm with Article 92 of the Satversme, it does not follow from the constitutional claims that in the case under review that compliance of the Contested Norms with the first sentence of Article 92 of the Satversme is being contested, which provides for the rights of each person to defend his or her rights and lawful interests in a fair court.

The Constitutional Court has already established that the norms of Chapter 6 of the Satversme, including Article 82 and 86, are closely related with the first sentence of Article 92 of the Satversme, which provides for the rights of a person to address a fair court (*see: Judgment of December 20, 2006 by the Constitutional Court in the case No. 2006-12-01, Para 9.3*).

The notion ”a fair court”, mentioned in Section 92 of the Satversme, includes two aspects, namely, ”a fair court” as an independent institution of the judicial power, which reviews a case and ”a fair court” as an adequate process, complying with the law-governed state, under which the case is being adjudicated. In the first aspect this notion shall be interpreted as read together with Chapter VI of the Satversme; in the second – as interpreted together with the principle of a law-governed state, which follows from Section 1 of the Satversme (*see: Judgment of March 5, 2002 by the Constitutional Court in the case No. 2001-10-01, Para 2 of the Concluding Part, Judgment of March 24, 2006 by the Constitutional Court in the case No. 2005-18-01, Para 8 and Judgment of December 20, 2006 by the Constitutional Court in the case No. 2006-12-01, Para 9.3*).

The Satversme is a cohesive whole and the legal norms, incorporated into it, are mutually closely connected. To establish the contents of the above norms more completely and more impartially, the norms shall be interpreted as read together with other norms of the Satversme (*see: Judgment of October 18, 2007 by the Constitutional Court in the case No. 2007-03-01, Para 30*). In the frameworks of the case under review, the principle of unity of the Satversme prohibits assessing compliance of the Contested Norms with Article 92 of the Satversme taken separately from Article 1, Article 82 and Article 86 of the Satversme.

Consequently, compliance of the contested norms with Article 93 of the Satversme shall be assess by interpreting the rights to a fair court established in this Article in conjunction with other norms of the Satversme indicated in the constitutional claim.

10. The Applicants hold that the legal regulation included in Section 434 of the Civil Procedure Law restricts the rights of a person who wants to appeal against an appellate instance court decision according to cassation procedures to fully and

effectively implement the rights to a fair court established in Article 92 of the Satversme, because a judgment would come into force at the moment of pronouncing thereof without waiting for a cassation instance decision. Moreover the fact that a judgment that is appealed against according to cassation procedures has already come into effect and can be executer may not only restrict exercising of the right to a fair court, but also insufficiently ensure protection of legal interests of a person who has appealed against a decision according to cassation procedures.

The Constitutional Court establishes that in the case under review, the dispute is not about the rights to appeal against an appellate instance court decision according to cassation procedures, but about efficiency of appellation procedure in the situation when an appellate instance court decision is executed although the parties may take advantage of the possibility to appeal against it according to cassation procedures. Therefore the Constitutional Court shall asses whether, the rights of persons to a fair court established in Article 92 of the Satversme have been observed when favouring civil circulation and fastest possible execution of judgments.

11. The duty of the State to ensure formation of independent court and to provide for a lawful procedure of adjudication follows from the first sentence of Article 92 of the Satversme. However, 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.

The Constitutional Court has already concluded that In the first sentence of Article 86 of the Satversme „is included authorization to the legislator to pass laws, which would confer to concrete state institutions the functions of making decisions in court proceedings, as well as to adopt procedural laws, which would determine the procedure of adjudication" (*see: Judgment of December 20, 2006 by the Constitutional Court in the case No. 2006-12-01, Para 8*). Consequently, the legislator is authorized to provide by law what kind of matters fall within the area of responsibility of each institution and in how many institutions cases of different categories shall be examined. Simultaneously it is necessary to take into consideration the fact that there exists a link between the structure of judicial power and the possibility to ensure the rights to a fair court, because justice can not be regarded separately form efficiency

(Guidance for Promoting Judicial Independence and Impartiality, Office of Democracy and Governance, Technical Publication Series, January 2002, p. 5, 37).

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: Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Concluding Part and Judgment of October 18, 2007 by the Constitutional Court in the case No. 2007-03-01, Para 11*). The duty of the State to take into account the international liabilities in the field of human rights follows from Article 89 of the Satversme, which determines that the State recognizes and protects the fundamental rights of a person in accordance with the Constitution, the laws and international agreements binding on Latvia. From this Article it can be seen that the aim of the legislator has not been to oppose norms of human rights, included in the Satversme to the international ones (*see: Judgment of August 30, 2000 by the Constitutional Court in the case No. 2000-03-01, Para 5 of the Concluding Part, Judgment of January 17, 2002 by the Constitutional Court in the case No. 2001-08-01, Para 3 of the Concluding Part and Judgment of October 18, 2007 by the Constitutional Court in the case No. 2007-03-01, Para 11*).

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) provides: "In the determination of his civil rights and obligations [..], everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The European Court of Human Rights (hereinafter – ECHR) has established that Article 6 of the Convention does not obligate the Member States to form appellate or cassation instance court in each case. However, if such courts are established, they shall observe Article 6 of the Convention in their functioning (*see, e.g.: Judgment of the ECHR in the cases: Decourt v. Belgium, judgement of 17 January 1970, para. 25; Staroszczyk v. Poland, judgement of 22 March 2007, para. 125; Dunayev v. Russia, judgement of 24 may 2007, para. 34).*

Consequently, Article 92 of the Satversme does not prohibit the legislator establishing the moment when an appellate instance decision shall come into effect, however it must assess whether the legal regulation included in Section 434 of the Civil Procedure Law shall be recognized as the one, which does not ensure a fair adjudication procedure compliant with the Satversme.

12. Even though the Satversme does not directly envisage cases in which the right to a fair court might be restricted, the right is not absolute (*see: Judgment of January 4, 2005 by the Constitutional Court in the case No. 2004-16-01, Para 7.1*).

The ECHR has also indicated that the rights to a fair court are not absolute and they can be restricted. These restrictions of the rights though may not be of the king that would in fact prohibit exercising the rights to a fair court (*see, e.g.: Judgments of the ECHR in cases: Edificaciones March Gallego S.A. v. Spain, judgement of 19 February 1998, para. 34; Garcia Manibardo v. Spain, no. 38695/97, para. 36; Staroszczyk v. Poland, judgement of 22 March 2007, para. 125).* Consequently, the Constitutional Court, as well as the ECHR have explicitly concluded that the rights to address a court can be restriction insofar as these are not denied in their terms.

The Constitutional Court has already indicated that the rights to a fair court are one of the most significant rights of a person, therefore restrictions to this right of a person shall be determined in the most indispensable cases (*see: Judgment of March 14, 2006 by the Constitutional Court in the case No. 2005-18-01, Para 10*). The basic rights of a person, including the rights to address a court, can be restricted only in the cases established by the Satversme if it is required by protection of important interests of the society and if the principle of proportionality is observed.

Article 86 of the Satversme establishes that "decisions in court proceedings may be made only by bodies upon whom jurisdiction regarding such has been conferred by law and only in accordance with procedures provided for by law". When interpreting Article 92 of the Satversme as read together with Article 86, one may conclude that the right to defend the rights at a fair court may be restricted by law if the restriction has been conferred by law, has a legitimate aim and the restriction is proportionate to that aim (*see, e.g.: Judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-04-01, Para 1.2 of the Concluding Part*).

Consequently, it is necessary to assess, whether the restriction of rights established in Section 434 of the Civil Procedure Law is, first of all, established by law, second, whether this restriction has a legitimate objective and, third, whether the restriction is proportionate with the legitimate objective.

13. The restriction of the basic rights is established by law. The Contested Norm is included into the Civil Procedure Law, which has been adopted and announced according to the order established in the Satversme and the rules of order of the Saeima.

Consequently, the restriction of the basic rights is established by law.

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

14.1. It has been indicated in the reply of the Saeima that the necessity of Section 434 of the Civil Procedure Law can be justified by the interests of civil circulation, namely, to allow, as soon as possible, to dispose of the matter of dispute. Examination of a case in three instances without the possibility to start the soonest possible execution of a decision would jeopardize the speed of civil circulation (*see: case materials, Vol. 1, pp. 87 and 164*). It the opinion of the Senate, it has been indicated that the objective of this norm is ensuring of the efficiency of civil procedure by providing in the Law a possibility to execute a court decision after the case has been examined in two judicial instances and an appellate instance decision has been pronounced (*see: case materials, Vol. 1, pp. 73 – 74*).

14.2. The Committee of Ministers of the Council of Europe, according to Article 15.b of the Statute of the Council of Europe, is authorized to take the form of recommendation of the governments of members. Although these recommendations are not legally binding, they are taken regarding the issues that are considered as the common policy of the Member States. The Committee of Ministers of the Council of Europe, on February 28, 1984, has adopted the Recommendation No. R (84)5 on the

principles of civil procedure designed to improve the functioning of justice and on February 7, 1995, it passed the Recommendation of the Council of Europe No. R (95)5. The abovementioned recommendations were adopted by, among the rest, observing the necessity to favour efficiency of legal procedures, as well as the rights of each person to examination of a case within reasonable terms. One of the basic objectives of these recommendations is favouring of efficiency of judicial procedure. Thus also the Council of Europe has drawn attention to the necessity to favour efficiency of judicial procedure.

14.3. The Constitutional Court has already established that the objective to ensure faster and more efficient execution of disputes by thus reducing the workload of courts cab be regarded as legitimate in the case of restricting the rights established in Article 92 of the Satversme (*see: Judgment of January 17, 2005 by the Constitutional Court in the case No. 2004-10-01, Para 8.4*). The rights to a fair court can be restricted in order to ensure efficiency of functioning of courts (*see: Judgment of January 4, 2005 by the Constitutional Court in the case No. 2004-16-01, Para 8.2 and Judgment of November 5, 2004 by the Constitutional Court in the case No. 2004-04-01, Para 12*).

Consequently, the restriction of the basic rights has a legitimate objective.

15. The principle of proportionality requires observing a reasonable balance between the interests of the society and that of a person if the public power is restricting the rights and legal interests of a person. Therefore it is necessary to assess, whether a balance between ensuring of efficiency of judicial procedure, on the one hand, and the rights of a person to a fair court, on the other.

To evaluate whether the legal norm complies with the proportionality principle one has to ascertain if the means, used by the legislator are suitable for achieving the legitimate objective and if it is not possible to attain the objective by other means, which would less limit the rights of an individual as well as show whether the activity of the legislator is proportionate**.** If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, it is unconformable with the principle of proportionality and illegitimate (*see: Judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-04-01, Para 3 of the Concluding Part*).

16. In order to reach the legitimate objective, the legislator has established that an appellate instance decision shall come into lawful effect at the moment of pronouncing thereof.

16.1. Pronouncing of a decision is regulated by Section 433 of the Civil Procedure Law, the first part of which provides that an appellate instance court decision shall be pronounced according to the order established in Section 199 of this Law, i.e., according to the same order as a first instance court decision is pronounced. According to Section 199 of the Civil Procedure Law, the judgment shall be pronounced by reading it.

Section 199 of the Civil Procedure Law separately regulates the order of pronouncing of an abbreviated judgment by providing that "in pronouncing an abbreviated judgment, the court shall announce the date by which a full judgment shall be prepared". In this case, a full judgment shall be made within 14 days. In the judgment of May 5, 2005 by the Senate in the case No. SKC-303, when explaining the moment of coming into effect of an abbreviated judgment, it has been indicated: "According to Section 434 of the Civil Procedure Law, an appellate instance court decision shall come into lawful effect at the moment of pronouncing thereof. Consequently, coming into lawful effect of an appellate instance court decision is related only with the moment of pronouncing thereof, rather than with preparing a full text of the judgment, which is not pronounced" (*see: case materials, Vol. 1, pp. 30*).

Consequently, an appellate instance court decision shall come into effect when the judge shall read it at the court sitting. Moreover, an abbreviated judgment shall come into lawful effect at the moment of pronouncing the Concluding Part thereof even if participants of the case have not got acquainted with a full judgment and, consequently, with the arguments expressed by the court, that served as the basis for adopting the particular decision.

16.2. 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. Consequently, it is necessary to compare the order established in the Civil Procedure Law, according to which an appellate instance court shall come into

effect, and the order established in the same Law, according to which a first instance court decision shall come into force. It falls within the area of responsibility of both, a first instance court and an appellate instance court, to find out factual circumstances of the case, verification and assessment of proofs. Moreover, a judgment of a first instance court and a second instance court can be appealed against in a higher instance court, except for cases when appealing against a judgment in a higher instance court is not provided by law.

It follows from the Civil Procedure Law that a fist instance court decision in a civil procedure shall come into lawful effect after the term for appealing against it according to appeal procedures has expired and no claim has been submitted. If an appellate instance court has not examined an appellate complaint or has terminated appellate proceedings, a decision shall come into effect at the moment of pronouncing of the judgment. If a decision is appealed against regarding a part of it, the non-appealed part comes into effect when the term of appealing against it has expired.

According to Section 434 of the Civil Procedure Law, coming into effect of an appellate instance court decision is related only to pronouncing thereof. Moreover, the legal regulation included in the Civil Procedure Law is contradictious because, on the one hand, it provides for coming into effect of an appellate instance court decision at the moment of pronouncing of it but, on the other hand, provides for appealing against this decision according to appellation procedures.

Consequently, the order of coming into effect of an appellate instance court decision differs substantially form the order, according to which a first instance court decision in civil procedure comes into force.

16.3. In order to assess suitability of the measure established in the Contested Norm for reaching the legitimate objective, it is necessary to additionally take into consideration legal consequences of the lawful effective court decision.

The second part of Section 16 of the Law “On Judicial Power” provides that a judgment that has come into legal effect shall be executed. However, the fourth part of the same Section provides that such a judgment shall have the force of law, is mandatory for all, and shall be treated with the same respect as is due law. Also Section 538 of the Civil Procedure Law provides that court judgments and decisions shall be executed after they come into lawful effect, except in cases where pursuant to

law or a court judgment they are to be executed without delay. Consequently, also such appellate instance court decision shall be executed, the possibility of appealing against which is provided by Law.

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. Judicial stability requires not only a settled process of legal procedure but also such a completion of it, which is judicially stable (*see: Judgment of March 5, 2002 by the Constitutional Court in the case No. 2001-10-01, Para 5 and 8 of the Concluding Part*). Moreover, Article 92 of the Satversme, it has to be read together with other norms and principles (first of all – the principle of a law-based state) of the Satversme (*see: Judgment of March 5, 2002 by the Constitutional Court in the case No. 2001-10-01, Para 8 of the Concluding Part*). An essential constituent part of the principle of a law-based state is judicial stability, which, among all other thins, requires that effective court decision shall not be contested.

The European Court of Human Rights has indicated that execution of court decisions is an indispensable part of the rights to a fair court (*see, e.g.: Judgment of the ECHR in the case: Marini v. Albania, judgement of 18 December 2007, Para. 126*). In the Council of Europe Recommendation No. R (95) 5, it has been also indicated that it is necessary to ensure execution of the second instance court decisions. One of the objectives of it is to favour adoption of the final decision in the lowest instance court possible, but to provide for appealing against a decision as an exception, rather than a general order. It has also been indicated in Item "e" of Section 7 of the same Recommendation that the second instance court decision shall be executed unless execution thereof is not suspended by any second or third instance court or unless the applicant provides for sufficient guarantees for feasibility of execution of a judgment. It follows from the Recommendation that the law must provide for effective mechanisms for suspension of execution of judgments if it provides for the possibility to appeal against a judgment.

According to the legal regulation included in the Civil Procedure Law, a case shall be examined according to cassation procedures when an appellate instance court has already come into lawful effect and, in certain cases, has already been executed or

is being executed (*see: Dudelis M. Civilprocesa likuma 450. panta komentārs. Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Autoru kolektīvs prof. K. Torgāna vispārīgā zinātniskā redakcijā. – Rīga: Tiesu namu aģentūra, 2006, pp. 616).* Therefore it is necessary to assess, whether the legislator has ensured effective protection of the rights of a person in the case if a lawfully effective appellate instance court decision is being cancelled by a cassation instance decision.

16.4. The Saeima has indicated in its reply that the Civil Procedure Law includes mechanisms that ensure a possibility to reduce the consequences of execution of an appellate instance court decision (*see: case materials, Vol. 1, pp. 87 and 164*). First of all, it is ensured by the possibility to suspend execution of a judgment provided for in the sixth part of Section 464 of the Civil Procedure Law. Second, it is ensured by the reversal of execution of a judgment provided for in Section 634 of the Civil Procedure Law.

The sixth part of Section 646 of the Civil Procedure Law provides for a possibility to suspend execution of a judgment according to a request of a party, if a case is not submitted to examination thereof according to cassation procedures. However, the legislator has not provided for a possibility to ensure protection of the interests of the parties involved in the matter if an appellate instance court decision has already been executed before assessment by the Senate Assignment Sitting of a cassation complaint and therefore also a request regarding suspension of execution of a judgment.

Reducing of the consequences of execution of an appellate instance court decision can not always be regarded as a sufficiently effective measure because the time period between pronouncing of an appellate decision and the Senate Assignment Sitting can be long enough, which may ensure the possibility that an appellate instance court is already executed.

The Saeima holds that the procedure established in Section 634 of the Civil Procedure Law is a sufficiently effective measure for reducing the consequences of an already executed and then suspended appellate instance court decision. Namely, if an executed decision is being set aside and after re-examination of the case a judgment regarding rejection of a claim or non-examination of the case is rendered, everything that was exacted from the defendant in favour of the plaintiff is returned to the

defendant after a judgment has been set aside (reversal of execution of a judgment). If it is impossible to return the property in kind, remuneration of the cost of this property is provided for in a court judgment or decision. The Constitutional Court still agrees to the opinion expressed by the professor J. Rozenbergs (*see: case materials, Vol. 1, Pp. 91 – 92*) that Section 634 does not provide for sufficient possibilities to ensure reversal of execution of a judgment by means of appropriate legal measures.

Consequently, no equality is achieved between the parties before the law, as well as before the court. The Civil Procedure Law confers the plaintiff broad possibilities to ensure his or her claim with different legal measures before pursuing a claim before the court, as well as in any other stage of proceedings (*see: Chapter 19 of the Civil Procedure Law*). However, the law does not confer any rights to the defendant to require ensuring reversal of execution of a judgment if execution has been initiated in accordance with Section 434 of the Civil Procedure Law disregarding the fact that an appellate instance decision has been appealed against according to cassation procedures.

Such legal regulation can cause substantial losses to one of the parties if an appellate instance judgment is later fully or partially set aside by means of a cassation instance court decision. The Constitutional Court has indicated that The notion of the fair court incorporates also the principle of equality of the parties, which envisages, amont the rest, endowing one of the parties with essential advantages as compared to the opponent (*see: Judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-03-01, Para 6 of the Concluding Part*). In the result of satisfying a cassation complaint, the party involved in the matter who would be conferred the right to reversal of execution of a judgment, is not ensured with fully exercisable rights to a fair court.

Thus it is not possible to agree with the viewpoint of the Saeima that the effective legal regulation ensures an adequate and effective protection of legal interests of a person, if an already effective and fully or partially executed appellate instance court decision is set aside by means of a cassation instance court decision. The restriction included in the Contested Norm may cause such situation that appealing against an appellate instance court decision according to cassation procedures becomes senseless and it does not favour protection of persons involved in the matter.

Consequently, the Contested Norm in the wording that was effective at the moment of initiating the cases under review does not ensure a balance between efficiency of judicial procedure and the rights of a person to defence. Therefore the established restriction is not the most lenient measure for reaching the legitimate objective.

The Constitutional Court has already indicated that in a law-governed state the rights must be not only declared, but also their practical implementation must be ensured (*see: Judgment of October 3, 2003 by the Constitutional Court in the case No. 2003-08-01, Para 5 of the Concluding Part*). Therefore it is necessary to ensure that examination of a case in a cassation instance is effective, not only forma. The mechanism of protection of the rights shall not be regarded as effective if no full and adequate protection of the rights of a person is ensured.

Consequently, the restriction is not proportionate with the legitimate objective and the Contested Norm restricts the rights to a fair court established in Article 92 of the Satversme in a non-proportionate manner.

17. The Constitutional Court establishes that at the moment of rendering a judgment on May 22, 208 the Saeima has adopted amendments to the Civil Procedure Law by providing for a new wording of Section 434 thereof.

17.1. Item 2 of the first part of Article 29 of the Constitutional Court Law provides that Proceedings in the case may be closed before the judgment is announced by a decision of the Constitutional Court if the disputed legal norm (act) is no longer in effect. The aforementioned is directed towards ensuring economy of the Constitutional Court procedure and ensuring that the Constitutional Court should not render a judgment in cases where there is no dispute. However, the first part of Section 29 of the Constitutional Court Law provides for the rights of the Constitutional Court to terminate proceedings, however, not for the duty to do it (*see: Judgment of June 12, 2007 by the Constitutional Court in the case No. 2007-06-03, Para 11*). Therefore, having established the conditions provided for in these norms, the Constitutional Court must assess whether there exist any considerations, which provide for the necessity to continue legal proceedings.

The amendments to the Civil Procedure Law adopted by the Saeima provide, among the rest, that the new wording of Section 434 of the Law regarding the order, according to which an appellate instance court decision shall come into lawful effect and shall be executed, shall come into effect on July 1, 2008. Therefore, at the moment of passing the judgment, the Contested Norm had not yet lost its effect and legal proceedings in the case shall not be terminated.

17.2. According to the third part of Article 32 of the Constitutional Court Law, legal norms that the Constitutional Court has recognized as non-compliant with legal norms of a higher legal force shall be regarded as ineffective from the date of publishing the judgment of the Constitutional Court, unless it is established otherwise by the Satversme.

The Constitutional Court has already indicated that in separate cases it is it is admissible that the norm that is in conflict with the Satversme remains valid for a certain period of time so that the Legislator would have an opportunity to solve the situation, wherein both, the interest of the society and of individual tax payers are observed (*see: Judgment of April 11, 2007 by the Constitutional Court in the case No. 2006-28-01, Para 22 and Judgment of October 22, 2002 by the Constitutional Court in the case No. 2002-04-02, Para 3 of the Concluding Part*). In the case under review, if the Contested Norm was cancelled from the moment of pronouncing of it, there would not exist any explicit order or legal regulation, according to which an appellate instance court decision would come into effect.

When explaining application of procedural law in time, it was indicated in jurisprudence that "a new procedural law, as soon as it has come into effect, shall be instantly applied to further procedural activities although the case has been initiated before passing of the new law. It is only necessary that the new procedural law would not change or deprive any of the parties of such procedural rights that the party had at the moment of initiation of the case" (*see: Bukovskis V. Civilprocesa mācības grāmata. Rīga: Autora izdevums, 1933, pp. 128).* Consequently, recognition of the Contested Norm as invalid before coming into force of the wording of Section 434 adopted by the legislator would not cause a more favourable legal situation for the applicant. Moreover, none of the Applicants has not asked to recognize Section 434 of the Civil Procedure Law as invalid from the moment of passing thereof.

Consequently, it is admissible in this case that the Contested Norm remains valid till the moment when the amendments to Section 434 of the Civil Procedure Law would come into force.

18. The Applicants ask to assess whether Section 464 of the Civil Procedure Law, which provides for legal regulation of the Senate Assignment Sitting, complies with Article 92 of the Satversme.

18.1. The case has been initiated regarding compliance of Section 464 of the Civil Procedure Law. However, it follows from constitutional claims that the third part of Section 464 of the Civil Procedure Law is contested, which provides: "If a collegium of the Senate unanimously finds that a cassation complaint does not comply with the requirements of law, it shall take a decision to terminate the cassation proceedings".

The Applicants hold that by means of this norm their rights to a fair court are being restricted since it does not provide for the possibility to appeal against a decision of the Senate Assignment Sitting regarding termination of legal proceedings in the case. At the same time, the Applicants indicate that impossibility of an appeal has not been directly established in Section 464 of the Civil Procedure Law, but it rather follows from the legal regulation included in the Civil Procedure Law.

It follows from the constitutional claims that the Applicants hold the fact that the Senate Assignment Sitting, when exercising the cassation complaint, has acted *ultra vires*, i.e. has made decisions exceeding the limits of authorization established by law, does not comply with the Satversme. The Senate Assignment Sitting has dealt with the issues that shall be examined only in a cassation instance court sittings. Therefore the constitutional claims in fact include the claim regarding compliance of the application of the third part of Section 464 of the Civil Procedure Law with the rights to a fair court established in Section 92 of the Satversme, rather than with compliance of the norm per se with the Satversme.

It is possible to conclude form the arguments mentioned in the constitutional claims and the materials appended to the claims that the practice of application of Section 464 of the Civil Procedure Law is not uniform, however this may not serve as a sufficient basis for assessment of compliance of the Contested Norm with the

Satversme and to decide on validity of this norm. The Constitutional Court has already indicated that its basic task is not to decide who in each particular case legal norms should be applied (*see: Judgment of January 4, 2005 by the Constitutional Court in the case No. 2004-16-01 17, Para 17*).

The area of authority of the Constitutional Court is established in Article 85 of the Satversme, as well as in Article 1 and Article 16 of the Constitutional Court Law. Assessment of application of norms does not fall within the scope of responsibility of the Constitutional Court (*see: Judgment of October 21, 2002 by the Constitutional Court in the case No. 2002-05-010306, Para 7 of the Concluding Part*). Consequently, the Constitutional Court is not entitled to reassess court decisions passed in the frameworks of civil procedure. The Constitutional Court is not entitled to decide on whether a court of general jurisdiction, when examining a certain case, has appropriately observed material and procedural norms. It falls beyond the scope of responsibility of the Constitutional Court to assess lawfulness of a decision of the Senate Assignment Sitting. Therefore legal proceedings regarding compliance of the third part of Section 464 of the Civil Procedure Law with articles of the Satversme shall be terminated.

18.2. The consequences that follow from the legal regulation included in the Civil Procedure Law, namely, the fact that the decision of the Senate Assignment Sitting that is made based on the third part of Section 464 of the Civil Procedure Law, shall not be appealed against, shall be assessed in conjunction with the role of cassation instance court in the frameworks of civil procedure.

The court of cassation instance in Latvia is the Senate. It does not fall within the scope of responsibility of the Senate to verify and assess factual circumstances of a case. Only *quaestiones iuris* – i.e. issues on the rightness of appliance of material and procedural norms – are reviewed by the cassation instance. The cassation principle is of a legal public nature as it is directed to uniform application and interpretation of legal norms throughout the State (*see: Judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-04-01, Para 2.1 of the Concluding Part*). Available and comprehensible jurisprudence, analysis and interpretation of problematic issues provided by a cassation instance court serves as an essential tool in formation of uniform jurisprudence, as well as ensuring of development of the rights.

The Constitutional Court holds that an important characteristic feature of a cassation instance, especially in the frameworks of civil procedure, is that the public law interests play a decisive role in a cassation instance, because the dispute between the parties is examined in two instances by revising the civil case on its terms (*see: Judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-04-01, Para 2.1 of the Concluding Part*).

In order to ensure that a cassation instance court is able to duly carry out its activities, namely, to take decisions on issues of application of material and procedural norms, the legislator shall in the best possible way unburden it from reviewing of ungrounded complaints (*see: Judgment of June 27, 2003 by the Constitutional Court in the case No. 2003-04-01, Para 2.1 of the Concluding Part and Judgment of March 14, 2006 by the Constitutional Court in the case No. 2005-18-01, Para 13.1*).

The legislator has provided in the first part of Section 464 of the Civil Procedure Law that "all cassation complaints and protests submitted to the Senate after the end of the time period for the submission of the explanation provided for in Section 460, Paragraph one of this Law, shall be examined at an assignments sitting in order to decide whether they comply with the requirements of Sections 450-454 of this Law and whether they are to be adjudicated at a cassation instance court sitting". Consequently, the Senate Assignment Sitting assesses whether a person is entitled to submit a cassation complaint, whether the cassation complaint has been compiled according to the requirements of law and whether it has been submitted within the term established by law.

Moreover, the order of passing decisions of the Senate Assignment Sitting established in Section 464 of the Civil Procedure Law shall in general be regarded as the one that makes implementation of the rights to a fair court ineffective. The Senate Assignment Sitting is entitled to pass a decision regarding termination of cassation proceedings only if there is a unanimous decision of the collegium of the Senate regarding non-compliance of the cassation complaint with the requirements of law. However, if at least one of the senators holds that the case must be examined in a cassation instance, the collegium of the Senate shall pass a decision regarding forwarding of the case for examination thereof according to cassation procedures. If there is doubt about the necessity to submit the case to a cassation instance, the

decision shall be passed in favour of forwarding the case for examination thereof according to cassation procedures.

Thus the legislator has taken measures in order to favour protection and ensuring of the interests of other persons, because a cassation instance shall provide interpretation of material and procedural legal norms, which can substantially influence the rights of many persons in different legal procedures. The objective of the Senate Assignment Sitting, among the rest, is to ensure that a cassation instance court examines the cases, where the issue of application of legal norms in particular is contested, as well as to prevent senseless litigation of separate persons and addressing the court with ungrounded claims, which could violate the rights of other people to a fair court.

The Constitutional Court indicates that Article 92 of the Satversme does not guarantee appealing against each decision in the frameworks of examination of the case. Such rights are neither guaranteed by Article 6 of the Convention. The Constitutional Court, when analysing the judgments of the ECHR regarding the rights established in Article 6 of the Convention, has indicated that the State, in accordance with its legal system, may determine the scope of the principle of appeal (*see: Judgment of January 17, 2002 by the Constitutional Court in the case No. 2001-08-01, Para 3 of the Concluding Part and Judgment of June 20, 2002 by the Constitutional Court in the case No. 2001-17-0106, Para 5 of the Concluding Part*).

Consequently, initial examination of cassation complaints and protests in the Senate Assignment Sitting provided by the legislator is an adequately selected means for ensuring proper functioning of a cassation instance.

18.3. It is always possible to improve normative regulation. It is particularly necessary in the cases that are related with ensuring the basic rights. The Constitutional Court draws attention to the fact that it would be necessary to concretize the legal regulation of the Civil Procedure Law that provides for the area of responsibility of the Senate Assignment Sitting when deciding on forwarding of the case for examination thereof according to cassation procedures.

To compare, it can be indicated that Section 338.1 of the Administrative Procedure Law provides for precise cases that can serve as the basis for a refusal to initiate cassation proceedings in the frameworks of administrative procedure. The

collegium of the Senate refuses to initiate cassation proceedings if the cassation complaint does not comply with certain requirements of the Administrative Procedure Law or it has been submitted regarding a court decision, which, according to the Law, may not be appealed against. Similarly, the collegium of the Senate shall refuse to initiate cassation proceedings if there exists jurisprudence of other similar cases adjudicated by the Department of Administrative Cases of the Senate regarding violation of material or procedural legal norms indicated in the cassation complaint and if an appellate instance court decision complies with it. Cassation proceedings shall be refused also in the cases if there is no doubt regarding lawfulness of an appellate instance court decision and the case to be examined plays no role in formation of jurisprudence.

During adjudication of the case, on May 22, 2008, the new wording of Section 464 of the Civil Procedure Law was effective, and the Law was supplemented by Section 464.1. However, in the frameworks of this judgment, it is not necessary to assess compliance of the adopted amendments with the norms of the Satversme.

Substantial Part

Based on Item 3 of the first part of Section 29 and Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

Holds:

1. Article 434 of the Civil Procedure Law does not comply with Article 92 of the Satversme of the Republic of Latvia and shall be ineffective from July 1, 2008.
2. Legal proceedings regarding compliance of the third part of Section 464 of the Civil Procedure Law with Article 1, Article 82, Article 86 and Article 92 of the Satversme shall be terminated.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding Judge J. Jelāgins