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**The norms, which regulate the term for submitting a cassation complaint in criminal proceedings, comply with the *Satversme***

On 26 March 2020, the Constitutional Court passed the judgement in case No. 2019-15-01 “On Compliance of the Third Sentence of Section 564 (7) and Section 570 (1) of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

**The Contested Norms**

The third sentence of Section 564 (7) of the Criminal Procedure Law: “A court may take a decision to extend a term for appeal for 10 days due to special complexity and amount of criminal proceedings.”

Section 570 (1) of the Criminal Procedure Law: “A cassation complaint or protest shall be submitted not later than within 10 days or, if a court has extended the term for appeal, not later than within 20 days after the day when a full court ruling became available.”

**The Norm of Higher Legal Force**

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

**The Facts**

The case was initiated in the Constitutional Court on the basis of Jānis Loze’s application. In the criminal case, in which the applicant had the status of the accused, the appellate instance court, in compliance with the contested norms, set the term of 20 days for

submitting the cassation complaint. The applicant noted that, in some cases due to the complexity or the scope of the ruling, the term of 20 days for drawing up the complaint could deny a person the possibility to draw up and submit a cassation complaint. Hence, allegedly, the contested norms restrict a person's right to access to court, established in the first sentence of Article 92 of the *Satversme*.

## **The Court's Findings**

### On the content of Article 92 of the *Satversme*

The Constitutional Court noted: the reasoning for the claims expressed in the cassation complaint had to be included therein; i.e., the arguments of the accused person's defence that reveal a violation of the Criminal Law or a substantial violation of the norms of the Criminal Procedure Law. After examination of the cassation complaint, the cassation instance court may revoke the appealed ruling in full or in a part thereof and transfer the case for examination anew or terminate criminal proceedings, or amend the ruling. Hence, the drawing up and submitting of the cassation complaint is a part of the accused person's defence, and the first sentence of Article 92 of the *Satversme* comprises the accused person's right to draw up and submit a cassation complaint to defend their rights in criminal proceedings. [9.]

### On the content of the contested norms

The Constitutional Court noted that the contested norms restricted the drawing up of a cassation complaint in terms of time. Thus, the contested norms define the term for preparing defence, in drawing up a cassation complaint in particularly complicated and large-scale criminal proceedings. [10.]

On whether the term for submitting a cassation complaint set in the contested norms in particularly complicated and large-scale criminal proceedings is sufficient for exercising the right to defence in drawing up a cassation complaint

The Constitutional Court noted: in assessing, whether the time allocated for preparing defence had been sufficient, the following circumstances should be taken into account: the complexity of the case, the procedural stage of the case, whether the person had had time to familiarise themselves with the materials in the case previously, whether the accused person provided the defence themselves or had a counsel, whether the term and the date set for the legal proceedings had been foreseeable. [10.]

*On the role of cassation instance in criminal proceedings*

The Constitutional Court underscored that the contested norms had to be examined in the united system of regulation on the cassation instance in criminal proceedings. [10.]

The cassation instance court has a special nature, and it determines the peculiarities of the respective legal proceedings. To draw up a cassation complaint, the person submitting the cassation complaint has no need to analyse repeatedly all materials in the case but only whether violations of the Criminal Law and substantial violations of the Criminal Procedure Law can be discerned in the judgement. [11.1.]

*On the possibility to prepare timely for submitting a cassation complaint*

The Constitutional Court noted that the accused person's participation in the legal proceedings ensured to them the possibility to follow the course of criminal proceedings and allows preparing timely for exercising the right to defence in cassation instance. Participation in legal proceedings allowed the accused person to point out to the court substantial violations of the Criminal Procedure Law committed during adjudication of the

case and, if the accused person's arguments are not taken into account and the violations are not eliminated, to note these to include them later in the reasoning of the cassation complaint. [11.2.]

*On the importance of an abridged judgement*

The Constitutional Court recognised that, in order to exercise one's right to defence effectively, it was important for the accused person to familiarise themselves with the part of reasoning in the judgement to be appealed. Therefore, the availability of the full text of the judgement is important for drawing up the cassation complaint. [11.3.]

At the same time, the Constitutional Court found that it was possible to understand from the abridged judgement whether the court had taken into account the arguments expressed in the appellate complaint and during the appellate legal proceedings.

Therefore, in the period from the date of receiving the abridged judgement until the day when the full judgement becomes available, it is possible to prepare for exercising a person's right to defence effectively. [11.3.]

*On the role of defence in preparing the cassation complaint*

The Constitutional Court noted that certain legal knowledge was objectively needed to draw up a cassation complaint. The accused person has the right to involve a defence counsel in drafting the cassation complaint, who, thanks to the profession knowledge, is able to evaluate the court's ruling faster or understand whether the grounds for submitting a cassation complaint could be discerned, and provide legal arguments to substantiate a violation of law. [11.4.]

The Constitutional Court recognised that participation of the defence counsel of a person, who has the right to defence, in the adjudication of a criminal case facilitates exercising of one's rights in drawing up the cassation complaint. [11.4.]

*On supplements to the cassation complaint*

The Constitutional Court noted that the party submitting the cassation complaint could, within 10 days after expiry of the term for appealing against the ruling, submit supplements and modifications to the cassation complaint. Although formally it cannot be recognised as prolongation of the term for drawing up the cassation complaint, in fact, a person could improve substantially the legal reasoning of the initial cassation complaint. Therefore the time allocated for supplementing the cassation complaint should be taken into account in assessing the total term allocated for drawing up the cassation complaint, and, in particularly complex and large-scale criminal proceedings, the submitter of the cassation complaint, actually, had 30 days for the final statement of reasoning of the cassation complaint. [11.5.]

*On the renewal of the term for submitting a cassation complaint*

The Constitutional Court found that, in exceptional cases, a person, who due to valid reasons had missed the term set for submitting a cassation complaint, had the right to request the renewal of this term. This is an additional possibility for exercising one's right to defence. [11.6.]

On the different nature of criminal proceedings

The Constitutional Court noted that lengthy course of criminal proceedings could have an adverse impact on the rights of involved persons. Moreover, the society also is interested in fair regulation of criminal law relationships. By defining a term for submitting a

cassation complaint, which still allows the submitter to exercise their rights duly, it possible to reach legal certainty faster, thus, influencing the legal situation of other persons to a lesser extent. [12.]

#### On a person's right to a defence counsel

The Constitutional Court recognised that, although the case had been initiated regarding the compliance of the contested norms with the first sentence of Article 92 of the *Satversme*, the Constitutional Court should take into account also the rights guaranteed in other norms of the *Satversme*, *inter alia*, every person's right to the assistance of a defence counsel, included in the fourth sentence of Article 92. [13.]

The Constitutional Court underscored that the accused had the right to receive the necessary legal assistance from a person who had obtained the respective knowledge and skills. However, the accused person's right to an unlimited number of defence counsels did not follow from the fourth sentence of Article 92 of the *Satversme*. [13.]

#### On the court's role during the proceedings

The Constitutional Court recognised that the principle of the equality of parties required to ensure to each party meaningful possibility to present its position in circumstances that did not place it in a more unfavourable situation compared to the opponent. The term defined in the contested norms applies to all persons, to whom the Criminal Procedure Law grants the right to submit a cassation complaint or a cassation protest. Thus, the procedural justice is ensured. [14.]

The Constitutional Court also emphasised that, although a judge in their actions interacts with the parties of the legal proceedings, a judge's status could not be equalled to their

status. Hence, the time that the appellate instance court uses for drawing up the judgement cannot be compared to the term for preparing the defence, set in the contested norms. [14.]

**The Constitutional Court held:**

**to recognises the third sentence of Section 564 (7) and Section 570 (1) of the Criminal Procedure Law as being compatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.**

The judgement by the Constitutional Court is final and not subject to appeal, it shall enter into force on the day it is published. The judgement will be published in the official journal “*Latvijas Vēstnesis*” within the term set in Section 33 (1) of the Constitutional Court Law.

The text of the judgement is available on the homepage of the Constitutional Court: [http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/08/2019-15-01\\_Spriedums-1.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/08/2019-15-01_Spriedums-1.pdf#search=)

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The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the ruling 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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