



The norm, which does not envisage the right for the participants in the case to request recusal of a judge in the stage of initiating cassation legal proceedings in civil procedure, is compatible with the *Satversme*

On 16 July 2020, the Constitutional Court delivered the judgement in case No. 2019-23-01 “On Compliance of the First Part of Section 464 of the Civil Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Section 464 (1) of the Civil Procedure Law:

“In order to decide on an issue regarding the initiation of cassation proceedings, cassation complaints, cross complaints and protests after expiry of the time period for submitting the explanations provided for in Section 460, Paragraph one and Section 463, Paragraph three of this Law shall be examined at the Supreme Court assignments hearing by a judicial collegium established in accordance with the procedures laid down by the Chairperson of the Department in the composition of three judges.”

The Norm of Higher Legal Force

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

The Facts

The case has been initiated with respect to an application submitted by Ltd. “Spilbridge & Partners”. A collegium of the Judges of the Department of Civil Cases of the Supreme Court, in compliance with the contested norms, refused to initiate cassation proceedings on the basis of its cassation complaint.

The applicant holds that Section 464 (1) of the Civil Procedure Law is incompatible with the first sentence of Article 92 of the *Satversme* since it does not envisage the right of a participant in the case to demand recusal of judges included in the composition of the collegium of the Supreme Court Judges.

Allegedly, the first sentence of Article 92 of the *Satversme* includes a person's right to demand the recusal of judges but the contested norm restricts this fundamental right of a person. This restriction on fundamental rights is said to have a legitimate aim – facilitating the effectiveness of legal proceedings. However, it is maintained that the restriction on fundamental rights is not proportional since the legitimate aim could be reached by measures that restrict an individual's rights to a lesser extent. Moreover, the public benefit gained from this restriction on fundamental rights does not outweigh the damage inflicted on a person's rights and lawful interests.

The Court's Findings

On the requested recusal of Justice Gunārs Kušņš

At the court hearing, the applicant's representative requested recusal of Justice Gunārs Kušņš. The grounds for the recusal were the fact that Gunārs Kušņš formerly served as the Head of the *Saeima* Legal Bureau. While being the Head of the *Saeima* Legal Bureau he had participated in the sitting of the *Saeima* Legal Committee, which had examined, *inter alia*, the contested norm. Hence, he might have a pre-established view on the constitutionality of the contested norm. [9.]

At the court hearing, the Constitutional Court dismissed the request of recusal, submitted by the applicant's representative, noting that it would provide the substantiation for it in its ruling. [9.]

The Constitutional Court found that Gunārs Kušņš, while being the Head of the *Saeima* Legal Bureau, did not decide on the adoption of the contested norm. The Constitutional Court noted: in assessing the objectivity of a Constitutional Court's Justice, the nature of the constitutional legal proceedings and the cases heard before the Constitutional Court should be taken into account. The obligation of the Constitutional Court's Justice to recuse

himself and the application requesting the recusal of a Constitutional Court's Justice may not cause a situation, in which the Constitutional Court no longer would be able to function. [9.]

The opinion held by the Constitutional Court's Justice on the legal regulation *per se* could not be the reason for his self-recusal from hearing the case or the only grounds for his recusal. Such circumstances that are indicative of the Justice's possible interest in achieving a particular outcome in the case could be the grounds for the obligation of the Constitutional Court's Justice to recuse himself from hearing the case or for the recusal of the Justice. [9.]

In the present case, the Constitutional Court did not identify such circumstances that would be indicative of Gunārs Kusiņš' bias. Whereas Gunārs Kusiņš', as the Head of the *Saeima* Legal Bureau, participation in the sitting of the *Saeima* Legal Committee, in which, *inter alia*, the contested norm was discussed, *per se* cannot be the grounds for doubting his objectivity. [9.]

On the requirement of the Court's objectivity

The Constitutional Court noted that, in accordance with the first sentence of Article 92 of the *Satversme*, the State had the obligation to establish an appropriate system of judicial institutions and also the obligation to adopt such procedural norms, in accordance with which the court would hear cases in a procedure that would ensure fair and objective adjudication of them. [10.]

Objective differences exist between various legal proceedings, and the legislator has the discretion both to adopt procedural laws and determine the categories of cases heard in the respective proceedings and also decide on the procedure for hearing cases of different categories. However, if the legislator envisages a person's right, in a certain category of cases, to appeal against a ruling to a court of higher instance then the legislator must ensure that the appeals procedure complies with the requirements of the accessibility of the court, of a fair procedure and other requirements regarding a fair trial. [10.]

Legal proceedings comprise not only hearing the case on its merits in one or several judicial instances but also the procedural actions to be taken in the framework of legal proceedings, aimed at ensuring fair, objective and comprehensive hearing of the case as well as enforcement of the rulings adopted by the court. Therefore, a person's right to a fair trial must be ensured throughout the duration of the legal proceedings, irrespectively of the judicial instance, in which the case is heard, and the stage in the legal proceedings. [10.]

Different stages of legal proceedings may have different nature, i.e., they may have different aims and different issues may be resolved in them. Hence, the first sentence of Article 92 of the *Satversme* requires to ensure in each stage of legal proceedings a person's right to a fair trial in a way that is appropriate for the respective stage of legal proceedings. [10.]

The first sentence of Article 92 of the *Satversme* requires ensuring the objectivity or neutrality of the court. I.e., the legal proceedings cannot be fair without guarantees of the court's objectivity, which have been recognised as one of the elements in the first sentence of Article 92 of the *Satversme*. [11.]

Pursuant to the first sentence of Article 92 of the *Satversme*, the legislator is obliged to ensure the court's objectivity in each stage of legal proceedings but does not have the obligation to envisage mandatorily the institution of recusal in each stage of the legal proceedings. The legislator has the right, taking into account the nature of the particular stage in the legal proceedings, to envisage one or several measures for ensuring the court's objectivity, insofar these measures are sufficient to ensure the court's objectivity in this stage of legal proceedings. [11.]

On the measures, envisaged in regulatory enactments, for ensuring the court's objectivity in the stage of initiating the cassation legal proceedings

The Constitutional Court found that neither the contested norm nor other norms of the Civil Procedure Law envisaged the right of participants in the case to request the recusal of judges who were deciding on the initiation of cassation legal proceedings. To review the constitutionality of the contested norm, the Constitutional Court established, first and

foremost, what measures for ensuring the court's objectivity were envisaged in the stage of initiating the cassation legal proceedings in civil procedure. [12., 13.]

A court's objectivity in the stage of initiating the cassation legal proceedings in civil procedure is ensured, first of all, by Article 83 of the *Satversme*, which includes the principle of a judge's independence, which is specified in the law "On Judicial Power". The norms of this law define the general legal remedies for ensuring the court's objectivity, which are applicable to any legal proceedings, and set high requirements regarding judges' education and professional qualification and high standards of ethics, honesty and objectivity. Section 14 of the law "On Judicial Power", in turn, establishes a judge's obligation to self-recuse from hearing a case in the presence of circumstances that might cause doubts about his or her objectivity. [13.]

In addition to the general legal remedies referred to above, in the stage of initiating the cassation legal proceedings in civil procedure, the norms of the Civil Procedure Law envisage other measures for ensuring the court's objectivity. The contested norm provides that the matter of initiating the cassation legal proceedings in a civil case is decided by three judges in a collegial manner. Whereas in accordance with the second and third part of Section 464 of the Civil Procedure Law, the judges' collegium may adopt the decision on refusal to initiate the cassation legal proceedings only unanimously. Thus, the legal regulation envisages several measures for ensuring the court's objectivity in the stage of initiating the cassation legal proceedings in civil procedure. [13.]

On the sufficiency of measures envisaged in regulatory enactments

The Constitutional Court verified, whether the measures for ensuring the court's objectivity in the stage of initiating the cassation legal proceedings in civil procedure were effective and, thus, sufficient, in view of the nature of this stage in legal proceedings. [14.]

The competence of the cassation instance court differs significantly from the competence of the first instance and the appellate instance court. The cassation instance court fulfils an important task – balances the interests of an individual and the society to ensure that the principle of the rule of law and justice is implemented in a democratic state governed by the rule of law. [14.1.]

The judges, who decide on the initiation of the cassation legal proceedings in civil procedure, verify formal provisions and also review the appealed court's judgement, the arguments presented in the cassation complaint and the case materials only insofar it is necessary to initiate cassation legal proceedings in accordance with the aims of the cassation legal proceedings. Such assessment by the judges cannot be equalled to the examination of the case on its merits at the cassation instance court. [14.1.]

The fact that the issue of initiating the cassation legal proceedings is decided on in a collegial manner and the decision to refuse initiating the cassation legal proceedings may be adopted only unanimously, in interconnection with the high qualification and ethical requirements set for judges, averts the possibility that a judge, whose objectivity could cause reasonable doubts, could achieve adoption of a decision to refuse initiation of cassation legal proceedings, unfavourable for the participants in the case. Whereas in the case, where the collegium of judges adopts the decision on initiating the cassation legal proceedings, the legal proceedings in the civil case continued at the cassation instance court. In examining the case at the cassation instance court, in accordance with Section 464³ (2) and Section 467 of the Civil Procedure Law, the participants in the case are ensured the right to request recusal of judges in the court's composition. [14.1.]

On 15 March 2018, the Constitutional Court in its judgement in case [No. 2017-16-01](#) recognised that the norms of the Latvian Administrative Violations Code, insofar they did not envisage the right to request recusal of judges who decided on initiating appellate legal proceedings in a case of administrative violation, were incompatible with the first sentence of Article 92 of the *Satversme*. I.e., in case No. 2017-16-01, the Constitutional Court reviewed the constitutionality of such legal regulation, which established the procedure for initiating legal proceedings in cases of administrative violation at the appellate instance court, the competence of which significantly differs from the competence of the cassation instance court. [14.2.]

The first sentence of Article 92 of the *Satversme* does not require ensuring the court's objectivity in the stage of initiating cassation legal proceedings in civil procedure by the same measures as in the stage of initiating appellate legal proceedings in cases of administrative violations. If the participants in the case were granted the right to request

recusal in the stage of initiating cassation legal proceedings in civil procedure it would disrupt the system of the Civil Procedure Law, pursuant to which the participants in the case have been granted the right to request recusal only in the stage of hearing the case and it is not envisaged in the stage of initiating the legal proceedings in the first instance or appellate instance court. Moreover, envisaging the institution of recusal in the stage of initiating the cassation legal proceedings in civil procedure would make the work of the judges' collegium difficult. [14.2.]

In view of the functions of the cassation instance court and the competence of the judges' collegium in the stage of initiating the cassation legal proceedings in civil procedure and also the fact that the judges take a collegial decision on initiating the cassation legal proceedings and it is envisaged that the decision on refusal to initiate the cassation legal proceedings can be adopted only unanimously, the Constitutional Court recognised that the measures, envisaged in regulatory enactments, were sufficient and effective for ensuring the court's objectivity in this stage of legal proceedings. [14.2.]

On the case law of the Supreme Court

In the course of hearing the case, the Constitutional Court found that if the participants of the case requested recusal of judges of the judges' collegium of the Supreme Court, such recusal was examined on its merits. [15.]

The Constitutional Court noted that the first sentence of Article 92 of the *Satversme* did not require ensuring the right to request recusal of judges in the stage of initiating the cassation legal proceedings in civil procedure but imposed the obligation to ensure a person's right to a fair trial. The principle of the judge's independence, included in Article 83 of the *Satversme*, in turn, allows the court, within the limits of its discretion, to provide an assessment of the arguments presented by the participants in the case, which, in the court's opinion, are important for ensuring the rights or other legally protected interests of the participants in the case or other persons. [15.]

The Constitutional Court held:

to recognise Section 464 (1) of the Civil 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 has entered into force upon being pronounced. 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 in Latvian is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/10/2019-23-01_Spriedums-1.pdf#search=

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 judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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