



The procedure, in which the matter on initiating cassation proceedings in criminal procedure is decided, is incompatible with the *Satversme*

On 14 June 2018, the Constitutional Court passed a judgement in Case No. 2017-23-01 “On Compliance of the Second and the Third Part of Section 573 of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

The second part of Section 573 of the Criminal Procedure Law provides that the issue regarding the examination of a judgment in accordance with cassation procedure is decided by a judge appointed by the Chairperson of the Department of Criminal Cases of the Supreme Court.”

The third part of Section 573 of the Criminal Procedure Law: provides that the decision is written in a manner of resolution and is not subject to appeal.”

Norm of Higher Legal Force

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

The Facts of the Case

The case has been initiated with regard to an application submitted by Ēriks Ošs. The applicant holds that, in deciding on the matter of initiating cassation legal proceedings in criminal procedure in the procedure established by the contested norms, a person’s right to a fair trial that follows from the first sentence of Article 92 of the *Satversme* are not respected. I.e., allegedly, the fact that the decision to refuse initiation of cassation proceedings in criminal procedure is adopted by a single judge, moreover, that it does not comprise the court’s reasoning on why the court refuses to initiate cassation legal proceedings is incompatible the right to a fair trial.

The Constitutional Court's Findings

The Constitutional Court recognised that collegiality was one of the principles that guaranteed the objectivity of a court and that fell within the scope of the first sentence of Article 92 of the *Satversme*. Thus, to ensure that the principle of objectivity is complied with at the cassation instance court, the principle of collegiality should be abided by in the stage of initiating cassation proceedings in criminal procedure. [13.3., 13.6.]

The Constitutional Court also recognised that the principle of a democratic state governed by the rule of law was ensured only in the case if the court's reasoning with respect to the considerations indicated in the cassation complaint was made known to a person. The Constitutional Court underscores that the court's reasoning that is included in the refusal to initiate cassation legal proceedings in criminal procedure should be sufficient for the person to understand why the cassation legal proceedings have not been initiated after examining the arguments provided in the complaint. In view of the significance of the cassation instance court in criminal procedure in a democratic state governed by the rule of law as well as in ensuring unity, development of the legal system, and in ensuring a person's fundamental rights, the contested norm does not provide sufficient guarantees for exercising the right to a fair trial. [14.2.]

The Constitutional Court points out that until the moment when the legislator has improved the legal regulation with respect to acceptance of a cassation complaint, the right of persons to a fair trial must be ensured by direct application of Article 92 of the *Satversme* and the findings of this judgement.

The Constitutional Court held:

1. to recognise the second and the third part of Section (573) of the Criminal Procedure Law, insofar it provides that the matter on initiating cassation proceedings in criminal procedure is decided by one judge, without providing reasoning for refusal to initiate cassation proceedings in criminal procedure, as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia.

2. with respect to the applicant, to recognise the second and third part of Section 573 of the Criminal Procedure Law, insofar it does not envisage that in the refusal to initiate cassation proceedings reasoning must be provided, as being void as of the moment when the violation of his fundamental rights occurred.

The judgement by the Constitutional Court is final and not subject to appeal, it will enter into force at the moment of its publication.

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=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/09/2017-23-01_Spriedums.pdf#search=2017-23-01

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of a ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available on the homepage of the Constitutional Court: www.satv.tiesa.gov.lv.

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