



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Judgment

On Behalf of the Republic of Latvia

Riga, 20 October 2011

Case No. 2010-72-01

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis, and Sanita Osipova,

having regard to constitutional complaints of Mr. Ilvars Gudrimovičs and Ms. Natalija Grevcova,

according to Article 85 of the Satversme [Constitution] of the Republic of Latvia, Article 16 1st indent, Article 17 (1), 11th indent, Article 11 and Article 28.¹ of the Constitutional Court Law

on 20 September 2011 in writing examined the case

“On Compliance of the First Sentence of Section 78 (3) of the Civil Procedure Law with the First Sentence of Article 92 and Article 96 of the Satversme of the Republic of Latvia”.

The Facts

1. On 14 October 1998, the Saeima [Parliament] of the Republic of Latvia (hereinafter – the Saeima) adopted the Civil Procedure Law (hereinafter – the CPL) that came into force on 1 March 1999.

The first sentence of Section 78 (3) of the above mentioned law provides: “Third persons may enter into a matter before the adjudicating of the matter on the merits has been completed in a court of first instance” (hereinafter – the Contested Norm).

2. The applicants **Mr. Ilvars Gudrimovičs and Ms. Natalija Grevcova** (hereinafter – the Applicants) indicate that the Contested Norm fails to comply with the first sentence of Article 92, as well as Article 96 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) because, in matters on dissolution of marriage and division of property acquired during marriage, a joint stock company “Swedbank” was invited as a third person. In the applications, they asked to recognize the Contested Norm as null and void in respect to the Applicants as from the date of its adoption.

2.1. The Civil Case Panel of the Riga Regional Court [*Rīgas apgabaltiesa*] has failed to take into account objections of the Applicants against entering of a third person in their matters on dissolution of marriage. Thus, the right to a fair trial has not been ensured, it, in fact, being a proper procedure of a law-governed State.

In the frameworks of a civil procedure, participants often take advantage of the institute of a third person to delay case adjudication. The Applicants hold that this institute fails to reach its legitimate aim, which is to increase effectiveness of court proceedings and assure case adjudication within a reasonable term. Ensuring of procedural economy is an important task of the State in matters on dissolution of marriage where usually interests of children are affected.

The Contested Norm is not proportional because benefit gained by the society is

lesser than the restriction of the fundamental rights of the Applicants. The right of third persons to a fair trial would not be materially restricted if they would not be summoned to the court.

A third person has the right to submit an ancillary complaint for a court judgment rejecting a request to invite a third person in a matter. The Applicants indicate that failure to appear of a third person before the court does not deprive it of the right to ensure its interests in any other way. However, the Applicants do not have the right to submit an ancillary complaint in respect to a court decision to invite or allow a third person in a matter. The CPL establishes a prohibition to divide claims that follow from family legal relationships. Therefore claims regarding division of property of spouses are reviewed together with a claim on dissolution of marriage.

2.2. When substantiating non-compliance of the Contested Norm with Article 96 of the Satversme, the Applicants indicate that the principle of openness cannot be applied to matters of dissolution of marriages. Requirement of closed court hearings and restricted access to case materials of such hearings follows from Article 11 (1) indent 3 of the CPL and Section 28.⁴ of the Law “On Judicial Power”. If participation of third persons is permitted in the proceedings, information on private life of the Applicants becomes known also to persons who are not concerned. Therefore the right of spouses to keep their private life in secret is not ensured. Since third persons are given unlimited access to information contained in the court file, the right of the Applicants to provide explanations and evidence are ensured only at the formal level.

The Applicants question the necessity of the restriction included in the Contested Norm in a democratic society, as well as contest its proportionality. The purpose of the Contested Norm can even be reached by only inviting third persons to civil proceedings instead of allowing them entering a matter. Thus third persons could not delay case adjudication by submitting requests to participate in review of matters and appealing against court judgments rejecting such requests.

3. Institution that adopted the Contested Norm, **the Saeima** indicates that the Contested Norm does comply with the first sentence of Article 92 and Article 96 of the Satversme.

3.1. The Contested Norm does not regulate issues referred to in the particular application because it only establishes the moment, up to which persons can enter into proceedings. It can be concluded from the application of Mr I. Gudrimovičs that a representative of the credit institution has failed to appear to a court hearing where the particular matter was reviewed. Consequently, there are doubts whether legal proceedings should be proceeded with before the Constitutional Court.

During legal proceedings it is not possible to assure absolute inviolability of the right to private life. The State is not only committed to ensure inviolability of private life of persons but also to guarantee access to the court and unhampered functioning of institutes of legal proceedings. Entering of legally interested third persons into a civil matter follows from the fundamental rights established in Article 92 of the Satversme in respect to these persons. Consequently, entering of these persons into matters on dissolution of marriage has a legitimate aim, which is to protect rights of other persons and ensure due legal proceedings.

3.2. Invitation of a third person is ensured by observance of principle of procedural fairness, that of legal stability, and that of procedural economy. Procedure of dissolution of marriage concerns rights of other persons, i.e. those of children or credit institutions. Entering of these persons into particular legal proceedings is an appropriate measure to protect their interests.

The Applicants do not indicate other more lenient measures for reaching of the legitimate aim. The Saeima holds that it is more rational to deal with issues that are relevant to third persons along with division of property rather than in a separate process.

3.3. Participation of third persons in matters on dissolution of marriage can even be necessary and it does comply with the principle of proportionality.

Legal norms permit the court, based on a substantiated request of a party, to assess in each particular case whether a third person has any legal interest into a particular matter, as well as the fact whether the judgment would concern interests of the third person.

The Saeima indicates that matters on dissolution of marriage are reviewed in a closed court hearing. All property issues and issues related with recovery of provisions generally cannot be reviewed in a closed court hearing. A judgment in a matter on dissolution of marriage is proclaimed in a closed court hearing. This ensures the right to private life.

If a third person would abuse the right and disseminate case materials that is has access to with the purpose to infringe the rights of any person, it could be held legally liable for defamation, unlawful actions with personal data, or disclosure of undisclosed data.

3.4. The opinion of the Applicants that the Contested Norm permits delaying legal proceedings is ungrounded. Fast adjudication of a case cannot become an aim in itself. Moreover, the law does not establish a direct prohibition to submit an ancillary complaint on invitation of a third person in a matter. However, the Contested Norm does not regulate the issue of impact of such decision on progress of a matter. The rights of the Applicants to address the court, submit evidence, express their point of view and appeal against a court judgment are not restricted.

4. Summoned person, **the Ministry of Justice of the Republic of Latvia** (hereinafter – the Ministry of Justice) indicates that the Contested Norm does comply with the first sentence of Article 92 of the Satversme. However, compliance of the Contested Norm with Article 96 of the Satversme may not be assessed because it only establishes the moment, up to which third persons have the right to enter into a matter. Consequently, the Contested Norm does not have any direct impact on the right of the Applicants to inviolability of private life.

4.1. Legal regulatory framework included into the Contested Norm shall be applicable to matters of all categories, except for those that are prescribed another review procedure, by the CLP. Right of a defendant and a plaintiff to a fair trial can not be regarded separately from rights of those persons, whose legitimate interests could be affected by such legal proceedings. The institute of a third person in a civil procedure ensures rights of those persons, whose legal interests could be infringed in the frameworks of proceedings pursuant to an application. Consequently, the Contested Norm is one of the ways for these persons to defend their legal interests and ensure the rights established in the first sentence of Article 92 of the Satversme.

In matters on dissolution of marriage, in the frameworks of which division of property of spouses is also being dealt with, interests of third persons could also be infringed. Consequently, the State is committed to ensuring protection of interests of the latter.

4.2. Pursuant to Section 81 (2) of the CPL, an ancillary complaint may be submitted regarding a court decision, by which a petition regarding entering into a matter by a third person is dismissed. However, the Ministry of Justice holds that participants in the matter have the right to submit an ancillary complaint according to Section 441 (1) indent 2 of the CPL in respect to a court judgment satisfying entering of a third person into a matter. The fact whether in the meaning of Section 441 (1) indent 2 of the CPL the court judgment hinders the matter to be proceeded with is an issue of case-law.

4.3. If third persons would not have the right to participate in matters on dissolution of marriage and division of property of spouses, this might infringe their right to be heard. However, third persons would have the right to implement their interests based on the general principle of civil proceedings included in Section 1 of the CPL, according to which each natural and legal persons has the right to defend their infringed rights or interests before the court. To exercise this right, it is possible to bring a claim, present evidence, as well as submit a request to the court. However, such solution cannot be regarded as an effective one because this would cause risk

that, when deciding one particular question, this would give grounds to another legal proceedings regarding possible infringement of rights of creditors.

According to the effective regulatory framework of civil rights, it is already possible to invite third persons into matters on dissolution of marriage and division of property of spouses. The Ministry of Justice also indicates that third persons can enter a matter on dissolution of marriage on their own initiative.

5. Summoned person, the Supreme Court of the Republic of Latvia (hereinafter – the Supreme Court) indicates that the Contested Norm does comply with the first sentence of Article 92 and with Article 96 of the Satversme.

5.1. The Contested Norm regulates only time when third person may enter a matter, and it cannot be related with the first sentence of Article 92 and with Article 96 of the Satversme. The Contested Norm is a norm of general character, and it is applicable to any civil procedure. Its legitimate aim is to protect rights and legal interests of third persons.

For an optimum solution, it would be preferable that, in a matter on dissolution of marriage, claims that follow from family legal relationships would be adjudicated at the same time, except for matters when third persons are to be involved in legal proceedings. Division of property would be reviewed in separate legal proceedings, apart from the matter on dissolution of marriage. Then a third person could be invited to such legal proceedings.

The Supreme Court indicates that the Applicants could probably see infringement of the right to private life in Section 238 (1) indent 6 and Section 242 (1) of the CPL; however, they had not appealed against these norms.

By permitting third persons to enter into a civil matter on dissolution of marriage and division of property of spouses, in certain cases matters could be delayed without reason. This might also delay division of property obtained during marriage and dissolution of marriage. However, rights of third persons would be infringed if

they were prohibited to participate in such legal proceedings.

A participant in the matter may not submit an ancillary complaint on a court decision, with which a request on entering of a third person is satisfied. However, he or she can submit an ancillary complaint on a decision rejecting the request on entering of a third person into legal proceedings. All objections to decisions satisfying requests on entering of a third person into a matter can be laid out in an appeal or a cassation complaint.

5.2. The Supreme Court indicates that the fact whether a decision based on Section 441 (1) indent 2 of the CPL hinders the matter being proceeded with, is a question of a fact, and it shall be decided by the court. Invitation of third persons as such shall not be regarded as delaying of adjudication of a matter.

An application to invite a third person to a matter is submitted by one of the parties; however, an application on entering of a third person into a matter on the part of the defendant or a plaintiff is submitted by a third person itself. It is not possible to agree with the statement of the Applicants that, in matters on division of property obtained during marriage, third persons should only be invited rather than allowed, since a third person is in any case interested in result of the case. The court should verify whether circumstances indicated in an application relate to interests of a third person protected by law.

6. Summoned person, **Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that the Contested Norm fails to comply with the first sentence of Article 92 and Article 96 of the Satversme insofar as they permit entering of third persons into matters reviewed in closed court hearings without hearing opinion of the parties on necessity of such invitation of a third person, and in so far as they prohibit a litigant to appeal against a decision regarding invitation or allowing of a third person.

6.1. Entering into a matter by a third person may not be regarded as

infringement of the right to a fair trial. However, cases when the legislator wanted certain categories of matters to be reviewed in closed court hearings, should be assessed differently. The commitment of the State to ensure the right of persons to inviolability of their private life is manifested in adoption of such legal regulatory framework that would ensure closed court hearings to protect litigants against making personal information and sensitive data public. Categories of cases, adjudication of which is permitted in a closed court hearing, are established in Section 11 of the CPL that mentions, among the rest, matters on dissolution or annulment of marriage. The third part of the above mentioned section establishes the possibility for the court to decide on the type of court hearing, namely an open or a closed one if the latter is requested by participants in the matter or recognized as indispensable by the court.

Consequently, the previous legal regulatory framework is lenient in respect to each litigant who would require a closed court hearing with a view to protect his or her private life, or due to other reasons established by law.

6.2. In matters on dissolution of marriages, litigants are not protected against disclosing of information on their private life to third persons because third persons have the right not only to get acquainted with the entire court file and participate in matter adjudication, but also to receive a full text of the court judgment. The court should assess probability of infringement of the right to private life and it is committed to ensure, by means of its decision, protection of private life of persons.

The Ombudsman indicates that entering into a matter of a third person is inadmissible if both or one of spouses object. Otherwise truth would not be established in the matter. This would also protect private life of persons and guarantee non-disclosure of sensitive data.

6.3. Informative judicial system contains data on ten civil cases on dissolution of marriage and division of property of spouses, where in banks were invited as third persons. Proceedings of the matter in all court instances lasted for about three to five years. The Ombudsman is of the viewpoint that third person can not be blamed for the long term of the legal proceedings because those were credit institutions that were

generally invited; they did not enter the matters based on their own claims. The Ombudsman considers that in case if third persons would not have participated in the above mentioned cases, their interests would be infringed.

7. Summoned person, Ms Daina Ose, lecturer of the Faculty of Law of the University of Latvia indicates that the Contested Norm does comply with the first sentence of Article 92 and Article 96 of the Satversme.

Entering of a third person in an initiated matter permits protecting interests of this person and facilitates overall and comprehensive review of a matter, as well as promotes establishment of truth. In a civil proceeding, the right to address a court is a right rather than a duty of a person. When deciding to lodge a claim before a court, the claimant should be aware that review of disputes takes place pursuant to the procedure established in the Civil Procedure Law and it is related to disclosure of facts on private life to a certain circle of persons.

By exercising their procedural rights in good faith, parties of litigation can prevent all delay of legal proceedings, for instance, by submitting a request to invite a third person. Ms D. Ose indicates that failure to give an access to a third person to a matter may lead to an unlawful adjudication. Therefore a case can be transferred to a first instance court for a repeated review.

The Findings

8. The Saeima holds that proceedings in the present matter should be terminated due to several reasons. When reviewing civil matters of the Applicants, the third person, namely, a representative of a credit institution did not appear before the court. Therefore the Contested Norm does not concern the Applicants. Moreover, the Contested Norm only establishes the term, up to which third persons can enter into a

matter; it does not regulate issues, in relation to which the Applicants have addressed the Constitutional Court (*see: Case materials, pp. 15 – 16, 35 – 36*).

Termination of legal proceedings is regulated by Article 29 of the Constitutional Court Law. The first part of the above mentioned section establishes cases when the Constitutional Court shall have the right to terminate proceedings in a matter before a judgment is announced. However, the law establishes the right rather than a duty of the Constitutional Court to terminate proceedings in a case. If any of circumstances mentioned in the Constitutional Court Law occurs thus permitting termination of a matter, this does not mean that it is impossible and unnecessary to proceed with a particular matter (*see, e.g.: Judgment of 8 February 2007 by the Constitutional Court in the case No. 2006-09-03*).

In order to assess whether proceedings in the present matter should be continued, the Constitutional Court shall investigate whether the Contested Norm affects the Applicants. Only after this the Constitutional Court would assess compliance of the Contested Norm with the first sentence of Article 92 and Article 96 of the Satversme.

8.1. In matters on dissolution of marriage of the Applicants, credit institutions were involved as third persons. It follows from minutes of court hearing dated 11 May 2010 of the Civil Matter Panel of the Riga Regional Court that, when deciding on entering of a third person into the matter on dissolution of marriage of the Applicant Mr I. Gudrimovičs, the Court referred to Section 78 (3) of the CPL (*see. Case materials, pp. 5 – 6*). However, the Contested Norm was applied to the Applicant Ms N. Grevcova by means of a decision of the Civil Matter Panel of the Riga Regional Court dated 20 April 2010 because a third person was allowed to a matter based on the above mentioned decision (*see: Case materials, pp. 26 – 27*).

Consequently, the Contested Norm did affect the Applicants.

8.2. The Contested Norm establishes time, up to which a third person can enter into a matter, the term being the end of review of the case on its merits at the court of first instance. It also follows from the Contested Norm that the third person can be

allowed or invited to a matter on its own initiative, or based on a request of litigants or a prosecutor. The Contested Norm applies not only to civil cases that are reviewed in open court hearings, but also to matters reviewed in closed court hearings.

The Saeima holds that one of the reasons for terminating legal proceedings is the fact that a third person failed to appear to a court hearing where a matter on dissolution of marriage of the Applicant Mr I. Gudrimovičs was reviewed (*see: Case materials, pp. 16*). It follows from case materials, that a judge established the following at the court hearing: the third person has submitted a request to examine the application at its absence and also indicated that it fully maintains its application (*see: Case materials, pp. 5*). Thus the third person has fully exercised its right and expressed its opinion on the claim in writing. Consequently, the fact that a representative of the credit institution failed to appear at the court hearing where a matter on dissolution of marriage of the Applicant Mr I. Gudrimovičs was reviewed shall not be recognized as the reason for termination of legal proceedings at the Constitutional Court.

Since the Contested Norm has been applied to the Applicants and it also concerns participation of third persons in closed court hearings on dissolution of marriage or division of property acquired during marriage, legal proceedings in the present matter shall be proceeded with.

The Constitutional Court has the grounds to assess compliance of the Contested Norm with the Satversme.

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

It has been established in the case-law of the Constitutional Court that 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 (*see, e.g. Judgment of*

5 March 2002 by the Constitutional Court in the case No. 2001-10-01, Para 2 of the Findings, and judgment of 20 December 2006 in the case No. 2006-12-01, Para 9.3).

A fair court [trial] as a judicial procedure adequate for a law-governed State includes several mutually related rights. It includes, for instance, the right to access to courts, the principle of equality and competition of parties, the right to be heard, the right to a motivated court judgment, the right to appeal (*see: Judgment of 5 November 2008 by the Constitutional Court in the case No. 2008-04-01, Para 8.2, and judgment of 17 May 2010 in the case No. 2009-93-01, Para 8.3).*

Article 92 of the Satversme commits the State to form a proper judicial system and adopt procedural norms, according to which the court would examine cases based on procedure ensuring fair and objective adjudication of cases (*see: Judgment of 17 May 2010 in the case No. 2009-93-01, Para 8.2).*

The Constitutional Court has already indicated that civil process that ensures fair and objective examination of a case is an element of a fair court and it falls within the scope of Article 92 of the Satversme; therefore civil procedure that should comply with the requirements of Article 92 of the Satversme (*see: Judgment of 30 March 2010 by the Constitutional Court in the case No. 2009-85-01, Para 10 and 11).*

10. According to the Applicants, the Contested Norm permits entering of third persons into matters on dissolution of marriages without reason (*see: Case materials, pp. 3 and pp. 24).*

10.1. The Contested Norm includes a general principle that third persons can get involved in a civil matter. Pursuant to Section 11 (1) indent 3 of the CPL, matters on dissolution or annulment of marriage shall be examined in a closed court hearing. However, Section 238 (1) of the CPL establishes claims that would be reviewed concurrently with claims on dissolution or annulment of marriage. Based on Section 238 (1) indent 6 of the CPL, one of such claims is division of the property of spouses, also if it affects third persons. When establishing review of such claims in the

frameworks of single legal proceedings, the legislator wanted to ensure timely adjudication of matters based on the principle of procedural economy.

10.2. The Applicants hold that the Contested Norm fails to ensure a fair trial because the court has failed to take into account objections of the applicants against entering of the third person into the matter on dissolution of marriage; moreover, the Applicants may not appeal against a court decision that invites or allows a third person in a matter (*see: Case materials, pp. 1 – 2, 22 – 23*).

The Constitutional Court indicates that, first of all, it falls within its jurisdiction to assess constitutionality of the particular Contested Norm or legal act. 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. Consequently, the Constitutional Court neither has the right to assess court decisions adopted in the frameworks of civil proceedings, nor decide whether a court of general jurisdiction, when reviewing a particular case, has applied material and procedural norms in a correct way (*see: Judgment of 2 June 2008 by the Constitutional Court in the case No. 2007-22-01, Para 18.1, and judgment of 3 June 2009 in the case No. 2008-43-0106, Para 12*).

In the frameworks of a matter, the decision to invite or allow a third person to a case is taken by the court after having assessed circumstances of the case and the fact whether judgment of the case would affect any rights or duties of the third person. Documents attached to the application show that opinions of the parties regarding entering into the matter of a third person have been heard (*see: Case materials, pp. 5 – 6, pp. 26*).

10.3. Section 81 (2) of the CPL does not *expressis verbis* establish the right of parties to appeal a decision to invite or allow a third person in a matter. However, Section 441 (1) indent 2 of the CPL establishes the right of participants in the matter to appeal against decision of the first instance court and that of the court of appeal apart from the court judgment by submitting an ancillary complaint in cases established in

the CPL and in case if a particular court decision hinders the matter being proceeded with.

The Supreme Court indicates that pursuant to provisions of Section 441 of the CPL and applicable case-law, a participant in the matter cannot submit an ancillary complaint in respect to a court decision satisfying entering of a third person into a matter (*see: Case Materials, pp. 100*). Therefore it can be concluded that the parties do not have the right to separately appeal against a court decision to invite or allow a third person to a matter. Pursuant to the second sentence of Section 441 (2) of the CPL, objections to such decisions may be expressed in an appellate complaint or a cassation complaint.

However, the parties may submit an ancillary complaint in respect to a court decision according to the procedure established in Section 441 (1) indent 2 of the CPL, namely, if a particular court decision hinders the matter being proceeded with. In such a case, parties indicate and substantiate, in the ancillary complaint, all circumstances, due to which the court decision to invite or allow a third person hinders matter being proceeded with. In each particular case, the court is committed to assessing whether the decision hinders or not the matter being proceeded with.

It can be concluded from the application that the Applicants want the legislator to adopt such normative regulatory framework that would prohibit third persons to enter matters that are reviewed in closed court hearings (*see: Case materials, pp.1 – 4, pp. 22 – 25*). However, absence of such regulatory framework does not mean that the Contested Norm infringes the right of parties to a fair trial in matters on dissolution of marriage. Arguments of the Applicants regarding meaning of closed court hearings shall be considered when assessing compliance of the Contested Norm with Article 96 of the Satversme.

Consequently, the Contested Norm does not restrict the fundamental rights guaranteed to the Applicants by the first sentence of Article 92 of the Satversme and therefore proceedings insofar as they apply to compliance of the

Contested Norm with the first sentence of Article 92 of the Satversme shall be terminated.

11. Article 96 of the Satversme provides the following: „Everyone has the right to inviolability of his or her private life, home and correspondence.”

11.1. The right to private life means that the individual has the right to its private home, the right to live as he or she likes, in accordance with his or her nature and wish to develop and improve the personality, tolerating minimum interference of the state or other persons. The right includes the right of an individual to be different, retain and develop virtues and abilities, which distinguish him from other persons and individualizes him or her (*see: Judgment of 26 January 2005 by the Constitutional Court in the case No. 2004-17-01, Para 10*).

It has already been recognized in the case-law of the Constitutional Court that in the field of fundamental rights the State is obligated to observe, to protect and ensure the rights of a person. For the State to act in accordance with the human rights, it has to implement a range of measures – both, passive, for instance, non-interference with the rights of a person, and active, for instance ensuring of meeting individual needs of a person (*see: Judgment of 3 April 2008 by the Constitutional Court in the case No. 2007-23-01, Para 7*).

11.2. When interpreting the norms of basic rights established in the Satversme, one has to take into account international liabilities of Latvia in the field of human rights. 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, e.g.: Judgment of 13 May 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Findings, and judgment of 18 October 2007 in the case No. 2007-03-01, Para 11*).

The right to inviolability of private and family life is *inter alia* guaranteed in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention). The purpose of this international norm binding to the Republic of Latvia is, first, to protect an individual against arbitrary interference by public authorities into his or her private life. In addition to this negative undertaking, the State may have positive obligation to adopt measures designed to secure this right (*see: Judgment of the ECHR in the case “Biriuk v. Lithuania”, judgment of 25 November 2008, application no. 23373/03, para 35*).

When deciding on positive obligations, the State should still be granted certain freedom of action, namely, these positive obligations should be assessed in the context of aims established in the second part of Article 8 of the Convention, and these obligations should ensure a fair balance between interests of the society and private persons (*see, e.g.: Judgment of the ECHR in the case „Lopez Ostra v. Spain”, judgment of 9 December 1994, Series A, no. 303-C, p. 54, para 51, and „Giacomelli v. Italy”, judgment of 2 November 2006, para 78*).

It is of no decisive importance whether the provisions of the norms should be assessed as restriction or, on contrary, a positive obligation of the State. In any case, the decisive role is played by the fact that the core issue in the present case is precisely whether a fair balance was struck between the competing public and private interests involved.

12. The Applicants contest that a third person can enter into legal proceedings dealing with dissolution or annulment of marriages (*see: Case materials, pp. 1 – 2, pp. 22 – 23*). Such regulatory framework is provided, amongst the rest, by the Contested Norm.

In order to determine whether the Contested Norm restricts protection of private life established in Article 96 of the Satversme, the Constitutional Court shall first of all establish the content of the Contested Norm. In other decisions of the Constitutional Court it has also been concluded that, in the frameworks of its jurisdiction, the

Constitutional Court shall establish purpose and meaning of a contested norm or other legal norms related thereto (*see, e.g.: Decision on termination of legal proceedings of 20 January 2010 by the Constitutional Court in the case No. 2009-14-01, Para 7, decision on termination of legal proceedings of 11 June 2010 in the case No. 2010-11-01, Para 6, decision on termination of legal proceedings of 13 October 2010 in the case No. 2010-09-01, Para 9 and decision on termination of legal proceedings of 31 January 2011 in the case No. 2010-47-01, Para 6*).

Pursuant to 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 3 June 2009 by the Constitutional Court in the case No. 2008-43-0106, Para 12*). The Constitutional Court can decide the issue on interpretation and application of a legal norm only in case if no other legal remedies exist or all of them have already been exhausted in the frameworks of a particular legal dispute. Before asking the Constitutional Court executing control of a particular legal norm, it is necessary to verify whether methods for interpretation of legal norms might refute all doubts on non-compliance of a norm with legal norms of a higher legal force (*see: Decision on termination of legal proceedings of 11 June 2010 by the Constitutional Court in the case No. 2010-11-01, Para 6, and judgment of 11 January 2011 in the case No. 2010-40-01, Para 6*). In the frameworks of control of a particular legal norm, the Constitutional Court shall be regarded as the sole and the final instance to defend one's rights (*see: Decision on termination of legal proceedings of 11 June 2010 by the Constitutional Court in the case No. 2010-11-01, Para 6*).

13. Grammatical wording of the Contested Norm shows that the right of a third person to enter a matter is regulated by two criteria.

First, a third person can enter into a matter after the matter is adjudicated on its merits. Consequently, a third person can ask the court to allow it to enter legal proceedings before a court hearing by submitting a request in writing. A third person

can exercise this right at any time; however, no later than after the end of review of the matter on its merits. Second, a third person can enter a matter only when the matter is being reviewed at the first instance court. Consequently, the legislator has assured third persons with the possibility to enter legal proceedings.

According to Section 78 (1) of the CPL, a third person can either be a natural or a legal person, whose rights or obligations in respect to one of litigating parties could be affected by the judgment of a particular matter. Institute of a third person has been introduced in civil proceedings with a view to facilitate comprehensive review of a matter and assure procedural economy [*see: Civilprocesa likuma komentāri. I daļa (1. – 28. nodaļa). Autoru kolektīvs K. Torgāna zinātniskajā red. Rīga: Tiesu namu aģentūra, 2011, pp. 220*].

The Contested Norm permits a person who could facilitate unbiased case adjudication by providing explanations and expressing its opinion on the claim entering into legal proceedings. Pursuant to the second sentence of Section 78 (3) of the CPL, third persons may also be invited to participate in the matter pursuant to the petition of a public prosecutor or the parties. Depending on the nature and degree of their interest in a particular matter, the legislator has divided third persons into the following groups: persons with independent claims and persons without independent claims. Their procedural rights and duties are regulated in detail in Section 79 ad Section 80 of the CPL. Disregarding the degree of interest of a third person into a matter, decision to invite or allow in in a particular matter is assessed by the court in the frameworks of the matter. By means of a proper court decision, a third person becomes a party to a matter.

Consequently, the purpose of the Contested Norm is to ensure and protect rights of third persons.

14. In the frameworks of the present case, compliance of the Contested Norm with Article 96 of the Satversme shall be assessed in relation to legal proceedings on dissolution or annulment of marriage, wherein third persons may enter.

Pursuant to Section 238 (1) of the CPL, in a matter regarding dissolution or annulment of marriage claims arising from family legal relationships shall be adjudged concurrently. Such claims shall be disputes regarding: 1) determining of custody; 2) exercising of access rights; 3) means of support for children; 4) means for the provision of the previous welfare level or support of the spouse; 5) joint family home and household or personal articles; and 6) division of the property of spouses (also if it affects third persons).

In the matters of the Applicants, credit institutions, namely, creditors were recognized as third persons (*see: Case Materials, pp. 1, 5, 26 – 27*). It is indicated in legal literature that banks often enter as third persons into matters initiated based on claims on immovable property because loans provided by them are secured by mortgage. If mortgaged immovable property would be recognized, by the court, as possessed by another person, this would make it difficult to recover it [*see: Civilprocesa likuma komentāri. 1 daļa (1. – 28.nodaļa). Autoru kolektīvs K. Torgāna zinātniskajā red. Rīga: Tiesu namu aģentūra, 2011, pp. 223*].

In the matters of the Applicants, third persons entered based on the claim on division of property acquired during marriage because interests of the third persons were affected. However, persons whose interests are affected by any other claim following from legal family relationships may be recognized as third persons in matters on dissolution or annulment of marriage.

The Contested Norm does not regulate review of these claims in one single legal proceedings. The Supreme Court has reasonably indicated that the Applicants have not contested Section 238 (1) indent 6 of the CPL, though this is the very norm that establishes that in cases on dissolution or annulment of marriage claims of spouses on division of property shall be reviewed together with other claims that follow from legal family relationships even in case if they concern third persons (*see: Case materials, pp. 99 – 100*). Pursuant to Section 242 (1) of the CPL, in rendering a judgment in a matter on dissolution of marriage, the court shall adjudge all claims

arising from the family legal relationships and regarding which actions have been brought.

Consequently, the Constitutional Court shall investigate whether it is possible to assess compliance of the Contested Norm with Article 96 of the Satversme apart from the legal regulatory framework included in Section 238 (1) indent 6 of the CPL.

15. The Constitutional Court has concluded that “in specific cases the Constitutional Court may or even must go beyond the strict formulation of a claim in order to ensure effective protection of individual rights and enforcement of a judgment” (*see: Judgment of 17 January 2008 by the Constitutional Court in the case No. 2007–11–03, Para 18*). It is also stated in Law that in the Constitutional Court proceedings, “there are cases when it is possible and even necessary to exceed limits of a claim by verifying constitutionality of such norms that have not been contested or by assessing compliance of a legal norm with such norms that have not been mentioned in a claim” (*Endziņš A. Kā vērtēt jaunāko Satversmes tiesas praksi // Jurista Vārds, 2007. gada 9. oktobris, No. 41, pp. 5*).

Limits of a claim can be extended in case if this is required by principles of the constitutional court proceedings. It should also be taken into account that the Constitutional Court can broaden *ex officio* limits of a claim only based on certain criteria and “the concept of close liaison”.

Although no case has been initiated on compliance of Section 238 (1) indent 6 of the CPL with a norm (act) of a higher legal force, legal regulatory framework included therein is closely related with the Contested Norm. No Saeima reply has been received on compliance of Section 238 (1) indent 6 of the CPL with Article 96 of the Satversme has been received; therefore the Constitutional Court does not have the right to assess compliance of the above mentioned norm with a norm (act) of a higher legal force. However, this norm is closely related with the Contested Norm and argumentation of the parties can be applied also to legal regulatory framework

included in Section 238 (1) indent 6 of the CPL. If the legal regulatory framework of Section 238 (1) indent 6 of the CPL would not exist, claims of third persons in matters on dissolution or annulment of marriage could be reviewed in a separate legal proceedings apart from claims of litigants.

Only by assessing the Contested Norm in conjunction with the prohibition to separate a claim established in Section 238 (1) indent 6 of the CPL in matters on dissolution or annulment of marriage, it is possible to establish whether entering by a third person into the above mentioned civil matters infringes or not the right of parties to private life. It also follows from the principle of procedural economy that it would not be useful to decide, once again, on issues that could be decided in the frameworks of the present matter.

Consequently, the Constitutional Court shall assess compliance of the Contested Norm with Article 96 of the Satversme in conjunction with Section 238 (1) indent 6 of the CPL.

16. Before 1 January 2003, Section 238 of the CPL provided that a claim on annulment or dissolution of marriage can be merged with a claim on establishment of residence of a child and recovery of subsistence for a child. The present wording of Section 238 of the CPL that was adopted on 31 October 2002 came into force.

It is indicated in legal literature that the note included in Section 238 (1) indent 6 of the CPL, namely “also if it affects third persons” may not be interpreted in a way that rights of third persons can be affected in the result of division of property of spouses. Quite on contrary, disregarding the fact whether this property is divided when marriage is still in force or along with dissolution or annulment of marriage, division of property of spouses cannot deprive creditors of the spouses of their rights because rights obtained by third persons remain in force pursuant to the principle of protection of obtained rights (*see: Kalniņš E. Laulāto manta laulāto likumiskajās mantiskajās attiecībās. Rīga: Tiesu namu aģentūra, 2010, pp. 312*).

Consequently, Section 238 (1) indent 6 of the CPL ensures reaching of the purpose of the Contested Norm in matters on dissolution or annulment of marriage.

17. The Applicants object the legal regulatory framework that permits entering of third persons into matters on dissolution or annulment of marriage. They hold that the right of the parties to private life are restricted when third persons are allowed to matter review (*see: Case materials, pp. 1 – 4, pp. 22 – 25*).

17.1. Matters on dissolution or annulment of marriage are sensitive because issues of cohabitation are reviewed in such legal proceedings. When reviewing a matter, disagreements or intimate life of spouses can be disclosed.

Not only the duty of the State to abstain from interference with private life but also its duty to take all necessary measures to ensure the right to private life follow from Article 96 of the Satversme (*see: Judgment of 23 April 2009 by the Constitutional Court in the case No. 2008-42-01, Para 10*). The legislator can fulfil this duty by implementing such normative regulatory framework that would protect rights of persons to private life and also ensure balance between rights of persons in matters on dissolution or annulment of marriage.

To protect the right of persons to private life, the legislator has established deviation from the general principle of open court hearings in respect to matters on dissolution or annulment of marriage. Namely, according to Section 11 (1) indent 3 of the CPL, matters of this category shall be reviewed in closed court hearings.

Review of a matter in a closed court hearing does not mean that parties, whose dispute is settled before a court, are the only participants of a court hearing. This is audience, mass media included, which are prohibited to participate in such court hearings. However, to ensure unbiased adjudication of a matter, it is necessary to assure not only presence of the jury, court secretary and, probably, an interpreter, but also that of participants in the matter.

According to Section 11 (4) of the CPL, the participants in the matter and, if necessary, experts and interpreters, shall participate at a closed court sitting. Participants in the matter are parties, third persons, representatives of the parties of the third persons, a prosecutor and those State or municipal institutions and persons who have legitimate right to protect rights and legal interests of other persons, as well as institutions that in stipulated cases are invited to provide an opinion, or representatives of these persons. Representatives of the parties or person who have particular interests in doing so may also participate in closed court hearings.

Taking into account the aforesaid, the opinion of the Applicants that only a claimant and a defendant can participate in a closed court hearing is incorrect.

17.2. The right of third persons to enter a matter are not absolute. Section 81 (1) of the CPL provides that a third person shall be invited or allowed to participate in a matter in accordance with the decision of a court. Consequently, this falls in the competence of courts to assess entering of a third person, as well as requests submitted either by a prosecutor or by parties on entering of a third person into a matter. The court shall decide whether rights of third persons could be affected in the frameworks of a particular matter and whether it is admissible for a third person to enter a matter.

According to the Contested Norm, a third person can enter a matter before the adjudicating of the matter on the merits has been completed in a court of first instance. Neither the Contested Norm, nor the prohibition to separate claims established in Section 238 (1) indent 6 of the CPL prohibits a court to establish, at which moment a third person can enter a matter on dissolution or annulment of a matter. When adopting a decision to invite or allow a third person into a matter, the court has to respect not only rights and legal interests of the third person, but also rights of the parties to private life. Therefore, when taking the above mentioned decision, the court is committed to decide on the most appropriate moment when a third person can enter the matter.

Consequently, the Contested Norm does not contradict the right of persons

to private life.

The Ruling

Based on Article 30 – 32 of the Constitutional Court Law, the Constitutional Court

h o l d s:

1) legal proceedings in the present matter insofar as it concerns compliance of the first sentence of Section 78 (3) of the Civil Procedure Law with the first sentence of Article 92 of the Satversme of the Republic of Latvia shall be terminated;

2) the first sentence of Section 78 (3) of the Civil Procedure Law in conjunction with Section 238 (1) indent 6 of the Civil Procedure Law shall be regarded as compliant with Article 96 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing it.

Presiding Judge

G. Kūtris