Constitutional judgment 3-2-1-75-14

SUPREME COURT

EN BANC

ORDER

Case number	3-2-1-75-14
Date	21 April 2015
Formation	Chairman: Priit Pikamäe; members: Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Saale Laos, Viive Ligi, Jaak Luik, Ivo Pilving, Jüri Põld, Malle Seppik and Tambet Tampuu
Case	Application by Osaühing Aktiva Finants against Siiri Seero in expedited order for payment proceedings for the recovery of the sum of 1138 euros and 12 cents
Contested judicial decision	Order of the Tallinn Circuit Court of 28 February 2014 in civil case no. 2-13-24905
Appellant and type of appeal	Appeal by Siiri Seero
Parties to the proceedings and their representatives in the Supreme Court	Applicant: Osaühing Aktiva Finants (registry code 10746479) Debtor: Siiri Seero
Hearing	Written procedure

OPERATIVE PART

To dismiss the appeal filed by Siiri Seero.

FACTS AND COURSE OF PROCEDURE

1. On 22 May 2013, private limited company Osaühing Aktiva Finants (applicant) filed with the Pärnu County Court (first instance) an application for expedited order for payment proceedings against Siiri Seero (debtor) for the purpose of recovery of a principal debt of 950 euros plus late interest.

2. In an order dated 20 June 2013, an assistant judge of the Pärnu County Court made to the debtor a proposal for payment of the principal debt of 950 euros, late interest of 106 euros and 2 cents (0.06% of the principal debt a day from 15 November 2012 to 21 May 2013), late interest calculated by the court until making the proposal for payment and amounting to 17 euros and 10 cents (0.06% of the principal debt a day from 22 May 2013 to 20 June 2013), the state fee of 45 euros and the procedural expenses of 20 euros (1138 euros and 12 cents in total). The county court noted that late interest charged at the rate of 0.06% of the principal debt a day would be added to the claim as of 2 June 2013 until the principal debt had been settled.

3. The proposal for payment was delivered to the debtor on 28 June 2013 at her address registered in the Republic of Finland. The county court received the debtor’s statement of opposition to the proposal for payment on 31 July 2013.

4. By a letter dated 1 August 2013, the county court informed the debtor that the statement of opposition was submitted after the expiry of the time limit. The county court granted the debtor a time limit for filing an application for the restoration of the time limit for filing a statement of opposition and paying the security.

5. The debtor filed with the court an application for termination of proceedings in the civil case. In the application, the debtor argued that since her registered place of residence has been the Republic of Finland since 1 October 2012, Estonian courts do not have jurisdiction regarding the matter in accordance with the international jurisdiction provisions.

6. In a letter dated 28 August 2013, the county court explained to the debtor that since under the contract the debtor was provided with the service in the Republic of Estonia, Estonia has jurisdiction in the matter. The county court granted the debtor a new time limit for filing an application for the restoration of the time limit for filing a statement of opposition and paying the security. The debtor did not submit to the county court any application for restoration of the time limit for filing a statement of opposition.

7. On 14 November 2013, the assistant judge of the county court made an order-for-payment order because the debtor had not paid the sum specified in the proposal for payment or filed a statement of opposition to the proposal within the prescribed time limit. It follows from the court order that the debtor filed a statement of opposition to the proposal on 31 July 2013, but the statutory closing date for filing a statement of opposition was 29 July 2013. The county court noted that in the e-mail sent on 1 August 2013 the court informed the debtor of the possibility to have the time limit for filing a statement of opposition restored, but in the letter dated 21 August 2013 the debtor applied for the termination of the proceedings because Estonian courts do not have jurisdiction in the matter based on the provisions concerning international jurisdiction. In a letter dated 28 August 2013, the county court responded to the debtor by explaining that since the services were provided in the Republic of Estonia, Estonian courts are competent to settle the dispute. The county court noted that the debtor did not file an application for restoration of the time limit for filing a statement of opposition. The county court ordered the debtor to pay the applicant the principal claim of 950 euros, the collateral claim of 206 euros and 91 cents, the state fee of 45 euros, the procedural expenses of 20 euros (1221 euros and 91 cents in total) plus late interest at the rate of 0.06% of the principal claim a day calculated as of 15 November 2013 until

settlement of the principal claim. The county court noted that the debtor must pay late interest to such an extent that the collateral claims in total do not exceed the principal claim filed in the application and the amounts claimed do not exceed 6400 euros in total.

8. The debtor filed an appeal to the order-for-payment order made by the county court on 14 November 2013, asking to quash the order and suspend its immediate compulsory enforcement. The debtor argued that the order for payment was made in violation of the criteria of the expedited order for payment procedure. The expedited order for payment procedure is a type of non-contentious procedure to which optional jurisdiction does not apply. Under subsection 1 of § 79 of the Code of Civil Procedure (CCP), a claim against a natural person can be filed with the court of their residence in line with the principles of general jurisdiction, but the defendant's domicile was in a foreign country at the time of initiation of the court proceedings. Since the expedited order for payment procedure was initiated in conflict with the provisions regulating international jurisdiction, the county court was not competent to make procedural decisions, incl. the proposal for payment. Upon initiation of the expedited order for payment procedure, the provision regulating international jurisdiction was violated and, therefore, the appellant had difficulty adhering to the time limit upon filing a statement of opposition to the proposal for payment. Upon delivery of procedural documents by mail from a foreign country, the time limit should be calculated as of the date of handing the document over to the postal agency, not as of the date of reaching the court, because the latter does not depend on the sender.

9. The county court's assistant judge accepted the debtor's appeal for adjudication and, based on subsection 7 of § 663 of the CCP, referred it to a judge for adjudication. The judge accepted the debtor's appeal for adjudication by an order dated 27 January 2014. By an order dated 20 February 2014, the judge dismissed the request for suspension of the debtor's enforcement proceedings because the debtor had not eliminated the deficiencies in the request for suspension of the enforcement proceedings by the prescribed date. By the same order, the judge dismissed the debtor's appeal and sent it to the circuit court for a review based on subsection 5 of § 663 of the CCP. The court did not give any reasons regarding the dismissal of the appeal and noted that, according to the second sentence of subsection 5 of § 663 of the CCP, no separate order needed to be made regarding the dismissal of an appeal and no separate order needed to be sent to the parties to the proceedings either.

10. By an order dated 28 February 2014, the Tallinn Circuit Court upheld the order of the county court and dismissed the appeal. The circuit court decided the appeal without a descriptive part and a statement of reasons, in accordance with subsection 1 of § 667 of the CCP. The circuit court noted that the order could not be appealed.

11. The debtor filed an appeal with the Supreme Court, requesting that the order of the circuit court and the order-for-payment order of the county court be quashed. The debtor argued that the courts took the wrong view by finding that an Estonian court can decide the matter based on international jurisdiction. Due to the violation of the provisions regulating international jurisdiction, the prerequisites for the expedited order for payment procedure were not fulfilled. The debtor requests that the compliance of subsection 5 of § 489^1 of the CCP with subsection 5 of § 24 of the Constitution be verified in that it does not allow for filing an appeal with the Supreme Court against an order of the circuit court in a situation where an application for an expedited order for payment has been accepted for adjudication in violation of the provisions regulating international jurisdiction. The order-for-payment order has been made by an assistant judge whose competence does not include administering justice for the purposes of § 146 of the Constitution. At the same time it follows from the special provisions regulating orders for payment that one cannot appeal an order made without the statement of reasons by the circuit court. A situation where the administration of justice in a three-instance court system has been replaced by a payment order of a judicial official, which cannot be appealed against, is unconstitutional. The debtor requested that the compliance of subsection 8 of § 174 of the CCP with § 146 of the Constitution be examined.

12. By its order dated 3 September 2014, the Supreme Court postponed the hearing of the case and referred the case to the full Civil Chamber because the three-member formation of the Civil Chamber had disagreements of principle as to how to apply and interpret subsection 5 of § 489^1 and subsection 1 of § 667 of the CCP in a situation where the circuit court reviewed an appeal to an order-for-payment order made by an assistant judge.

13. By its order dated 17 December 2014, the Civil Chamber of the Supreme Court, acting on the basis of clause 3 of subsection 4 of § 19 and the first sentence of subsection 1 of § 690 of the CCP and the second sentence of subsection 3 of § 3 of the Judicial Constitutional Review Procedure Act (JCRPA), referred the case to the Supreme Court *en banc* because the Civil Chamber found it necessary to have the Court *en banc* decide whether subsection 5 of § 489^1, subsection 5 of § 663, subsection 1 of § 667 and subsection 1 of § 489^2 of the CCP are in line with the Constitution.

ORDER OF THE CIVIL CHAMBER

14. Upon adjudicating the case, the majority of the Civil Chamber came to suspect that subsection 5 of § 489^1 of the CCP may be in conflict with subsection 5 of § 24 of the Constitution, which states that, in accordance with the procedure provided by law, everyone is entitled to appeal a judgment rendered in their case to a higher court. The provisions of the expedited order for payment procedure allow for making an order (order for payment) at the first instance in a simplified form; also, the county court has not been required to state the reasons of dismissal of an appeal sent to the circuit court and the circuit court has not been required to state the reasons for dismissal of the reviewed appeal to the order. Thereby subsection 5 of § 489^1 of the CCP does not allow for appealing against the circuit court order to the Supreme Court. The Chamber has doubts as to whether the restriction of the right of appeal is constitutional in a situation where no reasoned judicial decision has been made in the case. The Chamber also finds it questionable whether the provisions that allow for a judicial decision that does not have a descriptive part and a statement of reasons (subsection 5 of § 663 and subsection 1 of § 667 of the CCP) is in accordance with the principles of fair administration of justice and subsection 5 of § 24 of the Constitution as well as with the first sentence of § 15 of the Constitution, according to which everyone has the right of recourse to the court in the event of a violation of their rights and freedoms.

15. In addition, the Chamber had doubts as to whether the expedited order for payment procedure really is administration of justice and whether subsection 1 of § 489^2 of the CCP, which gives the right to make an order for payment to an assistant judge, is in accordance with the first sentence of § 146 of the Constitution, according to which only courts administer justice. The Supreme Court *en banc* has held that the establishment of procedural expenses in civil court proceedings in a county court constitutes administration of justice for the purposes of the first sentence of § 146 of the Constitution, which can be done only by a judge for the purposes of §§ 147, 150 and 153 of the Constitution (the judgment of the Supreme Court *en banc* of 4 February 2014 in case no. 3-4-1-29-13, paras. 43 and 44.6). The Supreme Court *en banc* has also held that an assistant judge does not have guarantees comparable to those of a judge for the purposes of §§ 147, 150 and 153 of the Constitution and the institutional independence of an assistant judge from the executive is not ensured (the order of the Supreme Court *en banc* of 26 June 2014 in case no. 3-2-1-153-13, para. 59).

OPINIONS OF PARTIES

Constitutional Committee of the Riigikogu

16.-22. [Omitted]

Legal Affairs Committee of the Riigikogu

23.-25. [Omitted]

Chancellor of Justice

26.-33. [Omitted]

Minister of Justice

34.-36. [Omitted]

DISPUTED PROVISIONS

37. Subsection 5 of § 489[1] of the CCP:
“(5) No appeal can be filed with the Supreme Court against an order made by the circuit court.”

38. Subsection 1 of § 489[2] of the CCP:
“(1) A proposal for payment, order for payment or another order related to the expedited order for payment procedure, including an order specified in § 179 of this Code, may be made by an assistant judge.”

39. Subsection 5 of § 663 of the CCP:
“(5) If the county court refuses to grant an appeal to an order, the county court will send it immediately along with any exhibits and related procedural documents annexed thereto to the circuit court of the correct jurisdiction for hearing and adjudicating. No separate order concerning denial of an appeal to an order needs to be made or submitted to the parties to the proceedings.”

40. Subsection 1 of § 667 of the CCP:
“(1) An appeal to an order is decided by a reasoned order. If the circuit court refuses to grant an appeal to an order and this order is not subject to appeal to the Supreme Court, the circuit court may make the order without a descriptive part and a statement of reasons.”

OPINION OF COURT *EN BANC*

41. The Court *en banc* must decide the debtor’s appeal where the person requests that the Supreme Court quash the order of the Tallinn Circuit Court dated 28 February 2014. By this order, the circuit court dismissed the debtor’s appeal to the order-for-payment order of the Pärnu County Court of 14 November 2014. In the appeal filed with the Supreme Court, the debtor argued that subsection 5 of § 489[1] of the CCP, which precludes filing an appeal to an order of a circuit court with the Supreme Court, is unconstitutional.

42. The Civil Chamber of the Supreme Court referred the debtor’s appeal to the Supreme Court *en banc* because the Chamber found that, in order to decide the case, it must be assessed whether subsection 5 of § 489[1], subsection 5 of § 663, subsection 1 of § 667 and subsection 1 of § 489[2] of the CCP are constitutional.

43. First, the Court *en banc* assesses the admissibility of the request for constitutional review (I). Second, the Court *en banc* will identify the fundamental right and its infringement (II) and, third, assess the constitutionality of the infringement (III).

I

44. The debtor has filed with the Supreme Court an appeal where the debtor argues that her rights have been violated and requests that subsection 5 of § 489[1] of the CCP, the provision that prevents hearing her appeal, be declared unconstitutional. Under the second sentence § 15 of the Constitution, everyone can demand upon a hearing of their case in court that any relevant law, other legal instrument or step be declared unconstitutional. The Supreme Court has held that, under the second sentence of subsection 1 of § 15 of the Constitution, the person can request special judicial review for the purpose of assessing the constitutionality of a provision regulating court procedure, including the restriction on having recourse to the court, within the same court proceedings in the course of which the contested provision should be applied. Under subsection 2 of § 15 of the Constitution, the court follows the Constitution and repeals any law, other legal

instrument or step that is in conflict with the rights and freedoms granted in the Constitution or that is otherwise unconstitutional (see the 7 December 2009 order of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-22-09, para. 10).

45. The Supreme Court *en banc* will adjudicate cases referred by the Administrative Chamber, Civil Chamber or Criminal Chamber or Special Panel if the Chamber or Special Panel has reasonable doubts that a legislative act relevant to the adjudication of the case is not in conformity with the Constitution (the second sentence of subsection 3 of § 3 of the JCRPA). The provision whose constitutionality is assessed by the Supreme Court in judicial constitutional review proceedings must be relevant to the adjudication of the dispute. Upon assessment of the relevance of procedural rules, one must examine whether the procedural rules were to be applied to reach a judgment (the 18 June 2010 judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-5-10, para. 19).

46. The appellant is a debtor in an expedited order for payment proceedings where the Pärnu County Court made an order-for-payment order on 14 November 2013. The circuit court dismissed the appeal filed by the debtor against the court order concerning the order for payment.

47. The expedited order for payment procedure is a type of non-contentious procedure where one seeks the awarding of monetary claims of up to 6400 euros (§ 481 of the CCP). To initiate an expedited order for payment procedure, the claimant files an application with the county court and the court will decide based on § 483 of the CCP. If the county court grants the application for an expedited order for payment, the court will make an order that contains a payment proposal being made to the debtor (§ 484 of the CCP).

48. The debtor may file a statement of opposition to the payment proposal (§ 485 of the CCP), after which the proceedings may transform into contentious civil claim proceedings (§ 486 of the CCP). If the debtor does not pay the sum specified in the payment proposal or file a statement of opposition against the payment proposal, the court will make an order regarding the recovery of the amount of the order for payment (the first sentence of subsection 1 of § 489 of the CCP).

49. Under subsection 1 of § 489^1 of the CCP, the debtor may file an appeal to an order-for-payment order, which can be based on one of the following circumstances listed in subsection 2 of § 489^1 of the CCP: the proposal for payment was delivered to the debtor in a manner other than personally against signature or electronically and, without the debtor being at fault, it was not delivered on time and for this reason the debtor failed to file a statement of opposition by the prescribed time (clause 1 of subsection 2 of § 489^1 of the CCP); the debtor failed to submit the statement of opposition against the proposal for payment for a good reason independent of the debtor (clause 2 of subsection 2 of § 489^1 of the CCP) or the prerequisites for the expedited payment order procedure were not fulfilled or the criteria of the expedited order for payment procedure were otherwise fundamentally violated or the claim for the recovery of which the order for payment procedure was carried out is clearly unfounded (clause 3 of subsection 2 of § 489^1 of the CCP).

50. If the court grants the appeal, the court will quash the order for payment by a court order. In the event of quashing the order for payment, the court will terminate the expedited order for payment procedure or commence contentious civil claim proceedings. Quashing the order for payment does not restrict the applicant’s right to file a claim in contentious civil claim proceedings (subsection 4 of § 489^1 of the CCP).

51. Section 489^1 of the CCP does not regulate the adjudication of an appeal in greater detail and, thus, the general provisions of adjudication of an appeal filed against a court order are followed. Under subsection 5 of § 663 of the CCP, if the county court refuses to grant an appeal to an order, the county court will send it immediately, along with exhibits and related procedural documents, to the circuit court of the correct jurisdiction for hearing and adjudicating. No separate order concerning the dismissal of an appeal will be made or submitted to the parties to the proceedings. Under subsection 1 of § 667 of the CCP, the circuit court decides an appeal filed against a court order by making a reasoned

court order. If the circuit court refuses to grant an appeal to an order and this order is not subject to appeal to the Supreme Court, the circuit court may make an order without a descriptive part and a statement of reasons. Under subsection 5 of § 489[1] of the CCP, no appeal can be filed with the Supreme Court against an order made by the circuit court.

52. The Court *en banc* could only hear the debtor's appeal if subsection 5 of § 489[1] of the CCP was declared unconstitutional and repealed. Since the order for payment procedure is a type of non-contentious procedure, the general provisions of the non-contentious procedure should be applied. An appeal to an order terminating the proceedings, which was made by the county court in non-contentious proceedings, can be filed by a person whose right has been restricted by the court order, unless otherwise provided by law (subsection 3 of § 660 of the CCP). If an appeal can be filed against a county court order, an appeal to a circuit court order made regarding the county court order can also be filed with the Supreme Court, unless otherwise provided by law (the second sentence of subsection 1 of § 696 of the CCP). Based on the aforementioned, the Court *en banc* finds that subsection 5 of § 489[1]of the CCP is relevant in adjudicating the case.

53. In the appeal, the debtor requests that the order-for-payment order and the circuit court order that dismissed the debtor's appeal for quashing the order for payment be quashed. In the appeal filed against the order for payment with the circuit court, the debtor submitted that the criteria for the expedited order for payment were not fulfilled, because, according to the jurisdiction provisions, the hearing of the dispute was not within the competence of Estonian courts. Additionally, the defendant submitted that, due to the violation of the jurisdiction provisions, it was difficult for her to file the statement of opposition within the prescribed time limit and, upon sending a statement of opposition from abroad, the time limit should be calculated as of the date of handing the document over to the postal agency, not as of the date when it reaches the court. The debtor also submitted the same in the appeal filed with the Supreme Court.

54. According to the estimate of the Court *en banc*, the debtor thus relied on two circumstances that serve as the basis for filing an appeal as set out in subsection 2 of § 489[1] of the CCP: the prerequisites for the expedited order for payment procedure were not fulfilled (the first alternative of clause 3 of subsection 2 of § 489[1] of the CCP) and the debtor was unable to file a statement of opposition to the proposal for payment for a good reason beyond the control of the debtor (clause 2 of subsection 2 of § 489[1] of the CCP).

55. The Court *en banc* finds that in the present case there is no reason to assess whether the restriction of filing an appeal with the Supreme Court in a situation where an appeal was filed with the circuit court on the ground specified in clause 2 of subsection 2 of § 489[1] of the CCP and the courts decided the appeal without stating the reasons is unconstitutional. The reason for this is that the debtor failed to file a statement of opposition to the order for payment within the prescribed time limit and thereafter did not seize the opportunity to apply for a restoration of the time limit for filing a statement of opposition.

56. Under subsection 1 of § 62 of the CCP, the provisions of the General Part of the Civil Code Act, which regulate time limits and closing dates, apply to the calculation of a procedural time limit, unless otherwise provided by law. Under subsection 1 of § 135 of the General Part of the Civil Code Act (GPCCA), a time limit begins to run on the day following the calendar day of the occurrence of the event by which the beginning of the time limit is specified, unless otherwise provided by law or a contract. Under subsection 2 of § 135 of the GPCCA, a time limit ends on the closing date. If the expiry of a time limit is determined by a period calculated in days, the closing date will arrive on the last day of the period in accordance with subsection 6 of § 136 of the GPCCA. Under subsection 1 of § 137 of the CPCCA, a time limit expires at 0:00 on the closing date. According to the first sentence of subsection 2 of § 62 of the CCP, a procedural step can usually be taken until 0:00 on the last day of the time limit. In line with these provisions, a procedural document must reach the court within the time limit set by the court, i.e. until 0:00 (see the order of the Supreme Court of 16 May 2011 in civil case no. 3-2-1-40-11, para. 12). Thus, a procedural document cannot be deemed as filed within the prescribed time limit if it has been handed over to the postal agency within the time limit set by the court. Therefore, the Court*en banc* does not find the submissions made by the debtor in the appeal regarding the fact that her statement of opposition to the proposal for payment should be deemed as filed within the prescribed term because she mailed it in Finland within the term set by the court to be relevant. Thus, it follows from the circumstances disclosed by the debtor that the debtor has not filed the statement of opposition to the proposal for payment on time. In the present case, the county court has repeatedly given the debtor the opportunity to submit a request for the restoration of the time limit for filing a statement of

opposition against the proposal for payment, but the debtor failed to seize the opportunity.

57. Based on the above, the Court *en banc* finds that the restriction on filing an appeal to a court order under subsection 5 of § 489^1 of the CCP is constitutional only to the extent that the restriction precludes filing an appeal to a circuit court order that dismisses an appeal filed against a court order on the basis of the first alternative of clause 3 of subsection 2 of § 489^1 of the CCP.

II

58. The first sentence of subsection 1 of § 15 of the Constitution gives everyone the right of recourse to the court in the event of a violation of their rights and freedoms. It is a fundamental right that must ensure judicial protection without any gaps (see the 22 December 2000 order of the Supreme Court *en banc* in case no. 3-3-1-38-00, section 15). In combination with § 14 of the Constitution, which obligates the legislative, the executive and the judiciary as well as local authorities to uphold rights and freedoms, the first sentence of subsection 1 of § 15 of the Constitution establishes the general fundamental right to judicial protection. The general fundamental right to judicial protection secures both the right of recourse to the court for the purpose of protecting one's rights as well as the right to effective judicial protection and fair administration of justice (see the 16 May 2008 judgment of the Supreme Court *en banc* in case no. 3-1-1-88-07, para. 41).

59. Under subsection 5 of § 24 of the Constitution, in accordance with the procedure provided by law, everyone is entitled to appeal a judgment rendered in their case to a higher court. The right of appeal secured in subsection 5 of § 24 of the Constitution is part of the general fundamental right to judicial protection. The aim of the right of appeal is to ensure verification of judicial decisions in order to prevent mistakes in them (the 14 April 2011 judgment of the Supreme Court in banc in case no. 3-2-1-60-10, para. 45). Section 14, the first sentence of subsection 1 of § 15 and subsection 5 of § 24 of the Constitution secure the fundamental procedural rights whose aim is to pave the way for the exercise of the substantive fundamental rights of a person (see the 22 March 2011 judgment of the Supreme Court *en banc* in case no. 3-3-1-85-09, para. 75). Therefore, upon assessing the constitutionality of an infringement of the right of appeal, it must be taken into account what the fundamental rights are that the person wishes to protect by exercising the right of appeal.

60. The protective zone of the general right of appeal secured in the first sentence of subsection 1 of § 15 of the Constitution includes a situation where the court has not decided over the rights of a person. However, the protective zone of the right of appeal secured in subsection 5 of § 24 of the Constitution includes a situation where a court decision concerning the rights and freedoms of a person has been made (see, for example, the 30 March 2011 order of the Supreme Court *en banc* in case no. 3-3-1-50-10, para. 48).

61. The protective zone of subsection 5 of § 24 of the Constitution includes all judicial decisions, regardless of their designation, i.e. court judgments as well as court orders (see the 9 April 2008 judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-20-07, para. 18).

62. According to the estimate of the Supreme Court, the protective zone of subsection 5 of § 24 of the Constitution includes the right to appeal a decision of the court of the first instance to the circuit court as well as to appeal a decision of the circuit court to the Supreme Court. Such an interpretation of subsection 5 of § 24 of the Constitution does not mean that it must be possible to contest all judicial decisions at two instances.

63. Subsection 5 of § 24 of the Constitution secures the right of appeal with a simple statutory reservation. The Constitution, granting everyone the right to, in accordance with the procedure provided by law, appeal to a higher court against a judicial decision made regarding them, thus provides that the right of appeal can be restricted by law. The legislature can impose procedural restrictions (e.g. the obligation to pay a state fee, procedural time limits and the

procedure for filing an appeal) as well as substantive restrictions on the right of appeal by law, precluding the possibility of appeals of a certain type for a reason that is in accordance with the Constitution. Thus, the legislature is competent to differentiate the right of appeal based on the nature of the judicial decision and reasonable justifications (the 12 April 2011 judgment of the Supreme Court *en banc* in case no. 3-2-1-62-10, para. 38). The infringement of the right of appeal is more intensive in a situation where the law does not allow for filing the first appeal of a judicial decision to a higher court. The infringement is less intense where the law restricts the possibility to appeal to the Supreme Court, i.e. to appeal a judicial decision for the second time.

64. The Supreme Court *en banc* finds that subsection 5 of § 489^1 of the CCP, which precludes filing an appeal with the Supreme Court against a circuit court order made regarding an appeal, which is based on the first alternative of clause 3 of subsection 2 of § 489^1 of the CCP and has been filed against an order-for-payment order, infringes the right of appeal secured in subsection 5 of § 24 of the Constitution.

65. The judicial decision that in the present case arguably violates the debtor's rights and for the contestation of which the debtor wishes to exercise the right of appeal is an order-for-payment order. A court order concerning an order for payment can be made by the county court only if the court has granted an application for the order for payment and made a proposal for payment to the debtor beforehand. The county court can only grant an application for an order for payment if the criteria for the application of the order for payment procedure have been met (e.g. the criteria set out in § 481 of the CCP, the application meets the requirements set out in § 482 of the CCP and there are no grounds for the suspension of the procedure (clause 4 of subsection 2 of § 483 of the CCP)). According to the Court *en banc*, upon adjudication of an application for an order for payment, the county court must, among other things, assess whether Estonian courts are competent to adjudicate the dispute under § 70 of the CCP. Under subsection 1 of § 75 of the CCP, the court that receives the application will verify if, in accordance with the provisions of international jurisdiction, an application can be submitted to an Estonian court.

66. If the debtor finds that, upon making an order-for-payment order, the prerequisites for the application of the expedited order for payment procedure were not met, the debtor can file an appeal to the order (the first alternative of clause 3 of subsection 2 of 4891 of the CCP). The appeal will first be reviewed by the county court, which may quash the order-for-payment order (subsection 4 of § 663 of the CCP). If the county court does not grant the appeal, the county court will submit it to the circuit court (subsection 5 of § 663 of the CCP), which will decide it by making an order in accordance with the procedure set out in § 667 of the CCP. Thus, it is a situation where the debtor has a one-off right of appeal, i.e. the debtor is granted the right to file an appeal to a higher court against the decision of the court of first instance, but subsection 5 of § 4891 of the CCP does not allow the debtor to file an appeal with the Supreme Court, i.e. to appeal the decision for the second time.

III

67. According to § 11 of the Constitution, rights and freedoms may be restricted only in accordance with the Constitution. These restrictions must be necessary in a democratic society and must not distort the nature of the restricted rights and freedoms

68. In the present case, the purpose of the infringement of the right of appeal is procedural economy and adjudication of the case within a reasonable time, which are values of constitutional importance and, therefore, constitutional for the purpose of infringing the fundamental right secured in subsection 5 of § 24 of the Constitution (see the judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-1-04, para. 21). The restriction of the right of appeal arising from subsection 5 of § 4891 of the CCP is, according to the estimate of the Court *en banc*, not so intense that it outweighs the values that constitute the purpose of the infringement.

69. Upon assessing the intensity of an infringement, it is important to take into account that in the expedited order-for-

payment procedure it is possible to recover specific monetary claims arising from a private legal relationship (subsection 1 of § 481 of the CCP) and the order-for-payment order is an enforcement title that is subject to immediate enforcement (subsection 7 of § 489 of the CCP). Thus, by an order-for-payment order, the court makes a final decision regarding the proprietary rights of a person and the order-for-payment order infringes the debtor's fundamental right of property secured by § 32 of the Constitution. Furthermore, the organisation of the expedited order for payment procedure has largely been placed within the competence of assistant judges. Both a proposal for payment as well as an order-for-payment order may be made by an assistant judge in the county court (subsection 1 of § 4892 of the CCP).

70. On the other hand, upon appealing to the Supreme Court, the debtor has already been secured the right of appeal to the order-for-payment order. The reasonableness of the appeal is first assessed by a judge of the county court and thereafter by the circuit court. If an appeal to an order-for-payment order is dismissed, the county court does not have to make a written order, but must immediately forward the appeal to the circuit court (subsection 5 of § 663 of the CCP). Thereby, if an appeal is filed against an order-for-payment order made by an assistant judge, the assistant judge cannot dismiss the appeal, but must submit the appeal for review to a judge (subsection 5 of § 663 of the CCP). Even though the circuit court does not have to state the reasons for its order (the second sentence of subsection 1 of § 667 of the CCP), the circuit court is not obligated to omit the descriptive part and the statement of reasons. The second sentence of subsection 1 of § 667 of the CCP sets out the discretionary powers of the circuit court, allowing for choosing the most reasonable and effective option for making an order, given the circumstances. The Civil Chamber of the Supreme Court has held that the exercising of such an option is justified, above all, in a situation where an order of the county court is properly motivated and the circuit court fully consents to the reasons stated by the county court. If the reasons stated by the county court are not sufficient or comprehensible, the circuit court should give preference to making an order in the traditional manner along with a descriptive part and a statement of reasons (the 26 May 2014 order of the Civil Chamber of the Supreme Court in case no. 3-2-1-48-14, para. 14).

71. The Court *en banc* finds that the intensity of an infringement of the right of appeal is also reduced by the fact that the debtor can avoid making an order-for-payment order by filing a statement of opposition against the proposal for payment, filing which the debtor does not need to state (§ 485 of the CCP). As a result of filing a statement of opposition the expedited order for payment procedure transforms into the contentious civil claim procedure (§ 486 of the CCP). In such an event the debtor is secured every procedural guarantee provided for in the contentious civil claim procedure, including among other things the chance to appeal the decision of the court of first instance with the circuit court and appeal the decision of the circuit court with the Supreme Court by way of cassation.

72. In the present case, the debtor also had the opportunity to file a statement of opposition against the proposal for payment within the time limit provided for in subsection 1 of § 485 of the CCP. The debtor failed to seize the opportunity. The county court repeatedly gave the debtor the opportunity to apply for the restoration of the time limit for filing a statement of opposition, but the debtor did not seize the opportunity. Had the time limit for filing a statement of opposition been restored upon adjudication of the case in contentious civil claim proceedings, it would have been decided, among other things, whether Estonian courts are competent to hear the case. The Court *en banc* notes that in the order-for-payment order made in the present case the county court also made a decision on the debtor's submissions, according to which Estonian courts do not have jurisdiction in the dispute. Therefore, it can be presumed that, upon hearing the appeal filed against the order-for-payment order, the county court also assessed the matter of jurisdiction and since the county court forwarded the appeal to the circuit court, the court must have upheld the view taken in the order-for-payment order. It can also be presumed that the circuit court assessed the matter of jurisdiction when adjudicating the appeal filed against the order of the county court.

73. Given that the debtor had the opportunity to contest the fulfilment of the prerequisites for the expedited order for payment procedure (the first alternative of clause 3 of subsection 2 of § 4891 of the CCP) by filing a statement of opposition against the proposal for payment, the one-off right of appeal to the order-for-payment order is ensured and it may be presumed that the courts assessed the debtor's submissions, and the Court *en banc* holds that subsection 5 of § 4891 of the CCP does not disproportionately infringe the right of appeal secured by subsection 5 of § 24 of the CCP and is in line with the Constitution.

74. In view of the above, the Court *en banc* dismisses the debtor's appeal on the basis of subsection 1 of § 682 and §

695 of the CCP. Since the appeal is dismissed, the Court *en banc* cannot substantively assess the submissions made in the appeal or identify whether subsection 1 of § 4892, subsection 5 of § 663 and subsection 1 of § 667 of the CCP, which were called into doubt in the 17 December 2014 order of the Civil Chamber, are constitutional.

Dissenting opinion of Supreme Court Justices Villu Kõve, Saale Laos, Henn Jõks, Peeter Jerofejev, Tambet Tampuu and Malle Seppik in civil case No 3-2-1-75-14, with Supreme Court Justice Hannes Kiris joining paras 1–5 and 8 of the dissent

1. Unlike the majority of the Court en banc, we find that in a situation where a person has received not a single court decision supported by reasoning, a restriction imposed under § 4891 (5) of the Code of Civil Procedure (CCivP) is contrary to § 15 and § 24 (5) of the Constitution. To ensure fairness of the administration of justice required under § 15 of the Constitution, § 4891 (5) of the CCivP should have been declared unconstitutional and the appeal against the order should have been reviewed.

2. Under § 24 (5) of the Constitution, in accordance with the procedure provided by law, everyone is entitled to appeal to a higher court the judgment rendered in his or her case. The provision safeguards the fundamental right to protection by the court. The purpose of the right of appeal is to ensure review of a court decision in order to avoid errors and mistakes in judicial decisions.

3. An order-for-payment order is a final decision issued in non-contentious proceedings by which the court makes a final decision regarding the proprietary rights of a person and which may be followed by enforcement proceedings. A county court may issue this decision in an expedited order for payment procedure in a simplified form without providing reasoning (§ 489 (3) CCivP), and the court of appeal may also adjudicate an appeal against the order in a simplified form by an order not containing a descriptive part and reasoning (§ 663 (5) and § 667 (1) CCivP). In the current dispute, an order-for-payment order in a simplified form was indeed issued for recovery of money from the debtor; the County Court transmitted the debtor's appeal against the order-for-payment order to the Court of Appeal without adjudicating it by a reasoned order, and the Court of Appeal, in turn, adjudicated the appeal by an order in the form of an operative part. Thus, the appellant has not received from the courts any reasoned orders concerning the sums recovered from her. This is contrary to the principle of fairness of the administration of justice arising from § 15 of the Constitution.

4. A statement of opposition to a proposal for payment and an appeal against an order-for-payment order are remedies which are independent from each other and entail different purposes and consequences. Filing a statement of opposition is not a prerequisite for filing an appeal against the order. On the contrary, if a statement of opposition is filed the issue of filing an appeal against the order does not arise at all because as a result of filing a statement of opposition no order for payment is issued and the dispute is terminated (at the request of the claimant) and the dispute may be adjudicated in contentious civil claim proceedings. After the issue of an order for payment, the debtor's opposition is irrelevant because an order for payment constitutes a final decision concerning the claim filed within the expedited order for payment procedure, and a statement of opposition would not eliminate the legal effect of the final decision. An order for payment can only be contested by filing an appeal against the order-for-payment order. If no appeal is filed, the order for payment enters into force and its compulsory enforcement may be sought.

5. An expedited order for payment procedure is a simplified procedure aimed at speed. The logic of the system of norms under the CCivP has been structured so that a short deadline is given to a presumed debtor for filing a statement of opposition, and if the debtor fails to file a statement of opposition within this time limit an order for payment is issued which can be contested by filing an appeal against the order. Thereby, the debtor may file an appeal, inter alia, for reasons on account of which they were unable to file a statement of opposition in time due to circumstances beyond their control (§ 4891 (2) clauses 1 and 2 CCivP). Should the right of the debtor to request restoration of the time limit for filing a statement of opposition be acknowledged, these grounds would become devoid of any meaning.

6. In adjudicating a case, at least the Supreme Court en banc should not take into consideration explanations of the court not based on the law, even if these are favourable to a party to the proceedings (paras 71, 72, 73 of the judgment). As the logic of the relevant norms under the CCivP does not provide for a possibility to restore the time limit for filing a statement of opposition (proceedings for restoration of the time limit for statement of opposition and proceedings for adjudication of an appeal filed on the same basis under § 4891 (2) clause 2 of the CCivP would lead to considerable procedural confusion and significantly impede adjudication of the case in a reasonable time), the explanation by the assistant judge suggesting that the debtor could request restoration of the time limit for filing a statement of opposition had no relevance whatsoever for adjudication of the case. Even if a debtor has no good reason to rely on a submission that they could not file the statement of opposition in time (§ 4891 (2) clauses 1 and 2 CCivP), they would retain the right to request that the order for payment be quashed on the basis that the prerequisites for an expedited order for payment procedure had not been complied with or the conditions of the expedited order for payment procedure were otherwise breached (§ 4891 (2) clause 3 CCivP). Thus, failure to file a statement of opposition or a request for restoration of the time limit for filing a statement of opposition has no relevance whatsoever in adjudicating an appeal against the order.

7. The presently contested appeal against an order actually relies to a large extent on the basis provided in § 4891 (2) clause 3 of the CCivP – i.e. lack of the prerequisites for an expedited order for payment procedure. Assuming that the reasoning in the appeal against the order is correct, the order for payment should not have been issued. It is not possible to agree with the approach arising from the decision of the Court en banc that, in a situation where no order for payment should have been issued and a party to the proceedings does not receive any reasoned judicial decision concerning the claim for recovery against them, the restriction of the right of appeal arising from § 4891 (5) of the CCivP is not so intense as to outweigh the values that constitute the purpose of the interference. In the county court, an application for an expedited order for payment procedure is heard by an assistant judge, and even though an assistant judge cannot dismiss an appeal filed against that order, due to the absence of a reasoned judicial decision it is not possible to assess to what extent the judge to whom the appeal was transmitted actually scrutinised the reasons given in the appeal. Although the court of appeal has no obligation to adjudicate the appeal by issuing an order not containing a descriptive part and reasoning, the law also does not lay down an obligation to include reasoning in an order issued with regard to an appeal against a final judicial decision in a situation where so far the appellant had not received any reasoned judicial decision concerning the matter. The presumption by the Court en banc that both the county court and the court of appeal must already have assessed the issue of jurisdiction is arbitrary (para. 72 of the judgment). If, in line with the right laid down in the law, the court of appeal in that situation has not included reasoning in its order, the motives of the order are not known or understandable to the parties to the proceedings. We believe that in this situation the restriction of the right of appeal is disproportionately intense, does not ensure review of the correctness of judicial decisions, nor is it compatible with § 24 (5) of the Constitution. The Court en banc in its order has tacitly overlooked the point that the Civil Chamber had in fact found a lack of the right of appeal in a situation where earlier proceedings did not comply with § 15 of the Constitution as being unconstitutional.

8. The appeal against the order should have been reviewed and adjudicated on the merits by a reasoned order. In the course of this, inter alia, assessment of the constitutionality of § 4892 (1), § 663 (5) and § 667 (1) of the CCivP should have been undertaken.
