



The provisions for initiating the procedure – renewal of criminal proceedings in connection with newly disclosed circumstances – is incompatible with the Satversme

On 29 April 2016 the Constitutional Court pronounced the judgement in Case No. 2015-19-01 [“On Compliance of the First, Third and Fifth Part of Section 657 of the Criminal Procedure Law with the First Sentence in Article 92 of the Satversme of the Republic of Latvia”].

The aim of renewal of criminal proceedings in connection with newly disclosed circumstances is to ensure balance between two elements in the content of fair trial – res judicata principle and a fair judgement – in case of conflict

Contested Norms

The first part of Section 657 of the Criminal Procedure Law: “A public prosecutor has the right to renew criminal proceedings in connection with newly disclosed circumstances.”

The third part of Section 657 of the Criminal Procedure Law: “An application regarding newly disclosed circumstances shall be examined by a public prosecutor according to the location of the adjudication of the initial criminal proceedings.”

The fifth part of Section 657 of the Criminal Procedure Law: “If a public prosecutor refuses to renew criminal proceedings in connection with newly disclosed circumstances, he or she shall take a reasoned decision on such refusal, and notify the applicant thereof, by sending a copy of the decision to such applicant and explaining his or her rights to appeal such decision within 10 days from the day of the receipt to a higher-ranking public prosecutor, the decision of which shall not be subject to appeal.”

The Norm of Higher Legal Force

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

The Facts

The case has been initiated on the basis of an application submitted by Ringolds Meļķis and Ivars Straume. The applicants had submitted an application regarding renewal of criminal proceedings in connection with newly disclosed circumstances in accordance with the procedure established in the contested norms. The deputy chief prosecutor of the Riga City Latgale Suburb Prosecutor's Office adopted a decision to reject the application. The applicants appealed against the decision to a higher standing prosecutor. Whereas the chief prosecutor of Riga City Latgale Suburb Prosecutor's Office refused to renew the criminal proceedings by noting that there were no grounds for renewing the criminal proceedings in connection with newly disclosed circumstances.

The applicants hold that the contested norms restrict their right to a fair trial, which has been established in the Satversme, without grounds, because a person's application regarding newly disclosed circumstances is reviewed at the place, where the criminal proceedings were examined initially, and the person has no right to appeal against the prosecutor's refusal to renew criminal proceedings. The refusal without basis to renew criminal proceedings in connection with newly disclosed circumstances allegedly denies to a person the possibility to be acquitted of committing a criminal offence, which this person did not commit.

Court Findings and Rulings

On a claim already adjudicated by the Constitutional Court

The Constitutional Court has already reviewed the compliance of regulation similar to the contested norms with the first sentence of Article 92 of the Satversme in case No. 2001-10-01 "On Compliance of Section 390- 392² of Latvian Criminal Procedure Code, as well as Para 3 of Transitional Provisions of the Amendments to Latvian Criminal Procedure Code with Article 92 of the Satversme of the Republic of Latvia".

The Constitutional Court recognised that formally the claim of the case under examination had not been adjudicated, because in the judgement in Case No. 2001-10-01 the Constitutional Court examined compliance of the norms of Latvian Criminal Procedure Code with the same norm of

the Satversme. [10.1.] However, the legal regulation contested in the case under examination has not substantially changed compared to the regulation that was contested in Case No. 2001-10-01. [10.3.]

Additionally the Constitutional Court established, whether any new, essential circumstances existed due to which the claim could not be regarded as being already adjudicated, and came to the conclusion that the amendments to the legal system and to the legal regulation of criminal proceedings that had been introduced since the passing of judgement in Case 2001-10-01 were to be recognised as being significant new circumstances. Thus, the claim with regard to compliance of the contested norm with the first sentence of Article 92 of the Satversme was not recognised as being already adjudicated. [10.5.]

On the scope of the first sentence of Article 92 of the Satversme

The Constitutional Court noted by referring to its existing case law that *res judicata* principle and a fair judgment were integral elements of the concept “fair trial”. [12.2.]

Having assessed the findings that had been enshrined in the case law of the Constitutional Court, judicature of the European Court of Human Rights and other documents, the Constitutional Court found that such cases were possible, when in order to ensure the right to a fair trial legal proceedings should be renewed in a case, in which the final ruling had been adopted. [12.3.]

Renewal of criminal proceedings in connection with newly disclosed circumstances is a special procedural stage, which is possible only in the case, if grounds for it have been defined in law. The submission of an application regarding newly disclosed circumstances cannot be regarded as an appeal and should not be equalled to the right to turn to court, and renewal of criminal proceedings in connection with newly disclosed circumstances is an institution of law that has been created as an additional guarantee for the right to a fair trial. [12.4.]

After a ruling in a criminal case has entered into force such circumstances may be disclosed, which had not been taken into consideration in examining the criminal case, because they were not known or could not have been known. In cases like these, to ensure the fair trial and an element of it – a fair judgement, the possibility to rectify the injustice inflicted, by renewing criminal proceedings, so that in adjudication of the criminal case the newly disclosed

circumstances would be taken into account should be envisaged. Whereas in those cases, when grounds for renewing criminal proceedings in connection with newly disclosed circumstances cannot be established, in order to ensure a fair trial, a possibility should be envisaged to refuse renewal of criminal proceedings, thus respecting the court's ruling that has entered into force and abiding by *res judicata* principle. [12.4.]

The aim of the institution of law – renewal of criminal proceedings in connection with newly disclosed circumstances – is to ensure balance between two elements in the content of fair trial – *res judicata* principle and a fair judgement – in case of conflict. [12.4.] Thus, the Constitutional Court found that the regulation on renewal of criminal proceedings in connection with newly disclosed circumstances that the Criminal Procedure Law comprised was to be examined within the scope of the first sentence in Article 92 of the Satversme. [12.4.]

On ensuring the balance in case of conflict between *res judicata* principle and a fair judgement

The Constitutional Court notes that the legislator had broad discretion in choosing those measures that ensured balance in case of conflict between *res judicata* principle and a fair judgement [13.]

Before adopting the final decision with regard to revoking a valid ruling and renewal of criminal proceedings in connection with newly disclosed circumstances, the information that has been received is verified and the newly disclosed circumstances are investigated. The initial verification of a person's application at the prosecutor's office allows relieving courts from examination of unfounded applications and, thus, ensures effectiveness of legal proceedings. Moreover, this initial stage of verification mainly allows establishing the existence of grounds for renewal of criminal proceedings established in law. [15.]

The Constitutional Court found that the procedure established in the contested norms was aimed at reaching a balance in case of conflict between *res judicata* principle and a fair judgement. [15.]

Whether the contested norms ensure a balance between *res judicata* principle and a fair judgement in case of a conflict

One of the elements of the first sentence in Article 92 of the Satversme is the guarantee of the impartiality or neutrality of the court. The findings made in the case law of the Constitutional

Court with regard to impartiality or neutrality of the court is equally applicable to the prosecutor's office as an institution belonging to the judicial power. [16.1.]

Pursuant to the contested norms it is the prosecutor, according to the place, where the criminal proceedings were initially examined, who has the jurisdiction to examine a person's application on newly disclosed circumstances. However, such regulation may cause a situation, where the application on newly disclosed circumstances is examined by the same prosecutor, who performed investigatory activities, supervised the investigation and criminal prosecution or brought public charges. [16.2.]

The Constitutional Court has already recognised in Case No. 2001-10-01 that the same prosecutor, who brought charges in the case, does not have the right to make the final decision on whether new circumstances have been disclosed in the case.

If a prosecutor has previously performed investigatory activities or brought public charges in criminal proceedings, then he has provided assessment and expressed an opinion on the validity of charges. Therefore reasonable doubts may arise that he will not change his opinion also in reviewing an application on newly disclosed circumstances or a person's complaint about the decision, by which renewal of criminal proceedings in connection with newly disclosed circumstances was rejected. I.e., the contested norms do not allow in all cases to prevent persons', including the applicants, doubts concerning the neutrality of those prosecutors, who decide on renewal of criminal proceedings in connection with newly disclosed circumstances. [16.3.]

The Constitutional Court also concluded that even though the legal regulation on renewal of criminal proceedings in connection with newly disclosed circumstances in general was aimed at reaching a balance in case of conflict between *res judicata* principle and a fair trial, the procedure established in the contested norms that did not ensure such balance in some cases [16.3.]

On the date as of which the contested norms become invalid

In the case under review the Constitutional Court took into consideration the fact that recognising the contested norms as being invalid as of a past date would cause a situation, where all those decisions by prosecutors to refuse renewal of criminal proceedings in connection with newly

disclosed circumstances, which had been adopted on the basis of these norms and had already entered into force, would have to be reviewed. A situation like this would be incompatible with the principle of legal certainty. It is also impossible to revoke the contested norms immediately, before new legal regulation has entered into force, since in such a case the Criminal Procedure Law would not provide for a procedure for initiating the process of renewing criminal proceedings in connection with newly disclosed circumstances. [17.]

The Constitutional Court recognised that in this situation it was necessary and admissible that the norms, which were incompatible with the Satversme, temporarily remained in force.

In view of the fact the legislator needed reasonable period of time for adopting new legal regulation, the Constitutional Court noted that in this case the contested norms could not be revoked retrogressively or recognised as being invalid as of the date when the judgement by the Constitutional Court enters into force. [17.]

On new procedural regulation

The Constitutional Court noted that in adopting the new procedural regulation the legislator should prevent doubts regarding the neutrality of those prosecutors, who decided on the issue of renewing criminal proceedings in connection with newly disclosed circumstances, moreover, the applicants should also be granted the right to use this new procedural regulation. [17.]

The Constitutional Court recognised the first, third and fifth part of Section 657 of the Criminal Procedure Law, insofar they allowed a prosecutor, who performed investigatory activities, supervised the investigation and criminal prosecution or brought public charges, to decide on the issue of renewal of criminal proceedings in connection with newly disclosed circumstances, as being incompatible with the first sentence of Article 92 of the Republic of Latvia and invalid as of 1 January 2017.

The Judgement by the Constitutional Court is final and is not subject to appeal, and it will enter into force on the day it is published in the official journal “Latvijas Vēstnesis”. The text of the Judgement [in Latvian] is available on the home page of the Constitutional Court: http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/08/2015-19-01_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the cases examined by the Constitutional Court. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the home page of the Constitutional Court www.satv.tiesa.gov.lv.

Līna Kovalevska

Assistant to the President of the Constitutional Court

Lina.Kovalevska@satv.tiesa.gov.lv

(+371) 67830748, (+371) 29813216