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**A case initiated with respect to a norm of the Criminal Law that provides liability for violating the rules on circulation of a device specially designed for operational activity measures**

On 13 June, the 1st Panel of the Constitutional Court initiated the case “On Compliance of Section 237<sup>1</sup> (2) of the Criminal Law, in the Wording that was in Force from 1 April 2013 to 1 December 2015, with Article 90 and the Second Sentence of Article 92 of the *Satversme* of the Republic of Latvia and of Sub-para ”e” of Annex 10A905 to the Cabinet Regulation No. 645 of 25 September 2007 “Regulation on the National List of Goods and Services of Strategic Significance”, in the Wording that was in Force from 28 November 2009 to 23 January 2014, with the Second Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

Section 237<sup>1</sup> (2) of the Criminal Law, in the wording that was in force from 1 April 2013 to 1 December 2015) provided that the sanction for the violation of the prohibition on the circulation of the equipment, devices or instruments and their component specially designed or adapted for the operational activity measures to be performed by a specific method was deprivation of liberty for the term up to two years or short-term deprivation of liberty, or community service, or a monetary fine, with the deprivation of the right to a certain employment for the term of up to five years.

The Cabinet Regulation No. 645 of 25 September 2007 “Regulation on the National List of Goods and Services of Strategic Significance” (in the wording that was in force from 28 November 2009 to 23 January 2014) provided that the equipment and devices for hindering the special operational activities were special indicators, special locators, scanners, scramblers, special frequency measuring instruments and wide-bandwidth noise generators.

### **The Norms of Higher Legal Force**

Article 90 of the *Satversme*: “Everyone has the right to know about his or her rights.”

The second sentence of Article 92 of the *Satversme*: “Everyone shall be presumed innocent until his or her guilt has been established in accordance with law.”

### **The Facts**

The case was initiated on the basis of an application submitted by Mareks Beluga. The applicant was recognised as being guilty of committing a criminal offence envisaged in the contested norm of the Criminal Law because he had kept at his workplace a device referred to in the contested norm of the Cabinet Regulation.

The applicant holds that the contested norm of the Criminal Law had not envisaged liability for violating the prohibition to circulate a device that was intended for hampering performance of operation activity and not for the performance of it. Thus, he had been sentenced for a criminal offence, which at the moment when the offence had been committed had not been directly envisaged by law. Moreover, the contested

norm of the Criminal Law is said to not be sufficiently clear and comprehensible to make a person criminally liable on the basis of it.

The applicant holds that the contested norm of the Criminal Law is incompatible with Article 90 and the second sentence of Article 92 of the *Satversme*. Whereas the contested norm of the Cabinet Regulation is said to be incompatible with the second sentence of Article 92 of the *Satversme*.

## **Legal Proceedings**

The Constitutional Court has requested the *Saeima* and the Cabinet of Ministers to provide a reply on the facts of the case and legal substantiation by 13 August 2018.

The term for preparing the case is 13 November 2018. The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

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The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available on the home page of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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