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**The legal norms, which envisaged criminal liability for violating the prohibition on the circulation of equipment and devices intended for hindering operational measures, comply with the *Satversme***

On 21 February 2019, the Constitutional Court passed the judgement in case No. 2018-10-0103 “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 Norms**

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) (hereinafter – the contested norms of the Criminal Law):

“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 shall be 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” (hereinafter – Regulation No. 645), in the wording that was in force from 28 November 2009 to 23 January 2014 (hereinafter – the contested norms of the Regulation)

“Equipment and devices for hindering the special operational activities:  
(see The Common Military List of the European Union)

1. special indicators
2. special locators
3. scanners
4. scramblers
5. special frequency measuring instruments

6. wide-bandwidth noise generators.”

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

Article 90 of the *Satversme* of the Republic of Latvia (hereinafter – 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 was found having a device referred to in the contested norm of the Regulation

The applicant holds that the contested norms had not been adopted in the procedure established in regulatory enactments. Moreover, allegedly, they are not sufficiently clear and comprehensible to serve as the grounds for making a person criminally liable. Therefore, he had been convicted of a criminal offence, which had not been established by law.

The applicant is of the opinion that the contested norm of the Criminal Law is incompatible with Article 90 and the second sentence of Article 92 of the *Satversme*. The contested norm of the Regulation, in turn, is said to be incompatible with the second sentence of Article 92 of the *Satversme*.

### **The Court’s Findings**

On the scope of Article 90 and the second sentence of Article 92 of the *Satversme*

The Constitutional Court noted that Article 90 of the *Satversme* comprised, *inter alia*, such criteria for the quality of legal norms, in accordance with which any legal norm had to be accessible as well as sufficiently clear and foreseeable. The examination of the clarity and foreseeability of a legal norm should be based on the interpretation of this norm. I.e., a

legal norm should be deemed unclear if its true meaning cannot be established through methods of interpretation. Only such an injunction, which, *inter alia*, complies with all criteria set for the quality of a legal norm, can be recognised as being a generally binding legal norm, i.e., vested with legal force. [13.1.]

In a democratic state governed by the rule of law, a person's fundamental rights may be restricted only in compliance with law. Therefore, in examining the compliance of a legal norm of lower legal force with any norm on fundamental rights included in the *Satversme*, it must be established, whether the legal norm of lower legal force, in which the restriction on fundamental rights has been established, complies with all the quality criteria for a legal norm. [13.1.]

The concept "law", used in the second sentence of Article 92 of the *Satversme*, falls within the concept of "rights", included in Article 90 of the *Satversme*. Therefore the norms that define criminal liability can be recognised as being "law", in the meaning of the second sentence of Article 92 of the *Satversme*, only if they meet the same quality criteria for legal norms that have been included in Article 90 of the *Satversme*. [13.2.]

The Constitutional Court noted: to review the compliance of a legal norm with the second sentence of Article 92 of the *Satversme*, it should be established, first, whether it had been adopted and promulgated in the procedure established in regulatory enactments, and, secondly, whether it was accessible, was sufficiently clear and foreseeable to serve as the grounds for making a person criminally liable. [13.2.]

Since, in the present case, the compatibility with the *Satversme* of such legal norms, which envisage a person's criminal liability, is contested, the Constitutional Court examined the compliance thereof with the second sentence of Article 92 of the *Satversme*. [13.2.]

#### On the contested norm of the Criminal Law

The Constitutional Court did not develop any doubts that the contested norm of the Criminal Law had been adopted and promulgated in the procedure established in regulatory enactments as well as was accessible in compliance with the requirements set in regulatory enactments. [14.]

By interpreting the contested norm of the Criminal Law, the Constitutional Court found that, in accordance with this norm, criminal liability set in for violating the rules on the

circulation of goods of strategic significance; i.e., a particular prohibition on circulating goods of strategic significance. In Latvia, the circulation of goods of strategic significance is regulated by the law “On the Circulation of Goods of Strategic Significance”. Hence, the Constitutional Court concluded that the contested norm of the Criminal Law defined criminal liability for a person’s actions envisaged in another regulatory enactment. Thus, to examine the constitutionality of the contested norm of the Criminal Law, the content and constitutionality of the legal acts regulating the circulation of strategically significant goods had to be established. [15.]

On Section 5<sup>1</sup> (1) of the law “On the Circulation of Goods of Strategic Significance” (here and hereinafter – in the wording that was in force until 26 April 2016)

The Constitutional Court noted that Section 5<sup>1</sup> (1) of the law “On the Circulation of Goods of Strategic Significance” envisaged, *inter alia*, a prohibition on the circulation of particular equipment and devices intended for measures of operational activity to be performed by a specific method. The Constitutional Court did not develop doubts that this norm had been adopted and promulgated in the procedure established in regulatory enactments and was accessible in accordance with the requirements set in regulatory enactments. [16.]

The Constitutional Court found that, firstly, the content of the prohibition set out in the contested norm of the Criminal Law followed from the text of Section 5<sup>1</sup> (1) of the law “On the Circulation of Goods of Strategic Significance”, i.e., natural persons were prohibited from acquiring, storing and using the respective goods of strategic significance. Secondly, the text of this norm leads to the conclusion that the respective goods are indicated in the National List of Goods and Services of Strategic Significance of the Republic of Latvia (hereinafter – the List), which is determined by the Cabinet. Hence, the Constitutional Court found: to establish the content of the contested norm of the Criminal Law the regulation of the List determined by the Cabinet needs to be clarified. [16.]

On the contested norm of the Regulation

The Constitutional Court noted that the Cabinet, in adopting the contested norm of the Regulation, had complied with the purpose and limits of its authorisation established in

law. The Constitutional Court did not develop any doubts that the contested norm of the Regulation had been adopted and promulgated in the procedure established in regulatory enactments as well as was accessible in compliance with the requirements set in regulatory enactments. [17.–17.3.]

The Constitutional Court established the content of the List and found that the equipment and devices for hindering the measures of operational activities were one of the types of equipment, devices or instruments and their component specially designed or adapted for the operational activity measures to be performed by a specific method. [18.]

The Constitutional Court recognised that it did not follow from the quality requirements for legal norms included in the second sentence of Article 92 of the *Satversme* that every legal norm should be worded as an absolutely precise instruction. [18.1.]

To insure the sustainability of regulation within the field of technology, the legislator, in drafting legal norms in the field of technology, may use also the principle of technological neutrality. The legal norms that have been drafted and adopted in compliance with the principle of technological neutrality comprise general concepts that characterise the respective technologies to be regulated from the perspective of the purpose of using them, their impact, functions, and other general properties. Solely the fact that the contested norm of the Regulation does not list the devices to be subject to control but is using general designations that characterise the function of devices, which are usually indicated in the technical descriptions of these devices and are accessible to a consumer, does not mean that the regulation of the contested norm is unclear. [18.1.]

The Constitutional Court underscored that the equipment and devices indicated in the contested norm of the Regulation were not goods that were used on daily basis, i.e., were not devices, which every person would use in their daily life or that might be necessary. Also in those countries, where the acquisition of such devices is allowed, restrictions on the use thereof may be established. [18.1.]

The Constitutional Court noted that in order to interpret the contested norm of the Criminal Law correctly and to establish its content a person might need specific legal knowledge. However, a legal norm may be sufficiently clear and foreseeable even if the person needs legal assistance to establish the scope of this norm. [18.1.]

The Constitutional Court recognised that the contested norm of the Criminal Law determined with sufficient clarity the criminal liability for, *inter alia*, violating the prohibition on circulation of the equipment and devices for hindering the measures of operational activities – acquisition, storing or using, and any person, receiving appropriate legal assistance, could establish for what kind of actions he could be made criminally liable in accordance with the contested norm of the Criminal Law. [18.1.]

Additionally, the Constitutional Court noted that the legal regulation was constantly developing, *inter alia*, by the legislator improving the wording of regulatory enactments to reflect more accurately its will. The fact that the Cabinet later decided to amend the definitions included in Section 10A905 of the List to make them clearer *per se* does not mean that previously they had not been sufficiently clear. [18.2.]

The Constitutional Court underscored that, in the Republic of Latvia, a procedure had been established that allowed anyone to clarify, whether the particular device had been included in the List and what kind of restrictions on circulation were applicable thereto. I.e., a person, on his own initiative or following a lawyer's advice, could turn to the Committee for Control of Goods of Strategic Significance to identify the respective product. [20.]

On the significance of judicature in assessing the clarity and foreseeability of legal norms

Additionally, the Constitutional Court noted that, pursuant to the second sentence of Article 92 of the *Satversme*, the fact, whether judicature or case law had previously developed with respect to the interpretation of a particular legal norm, could not be of decisive importance in reviewing the clarity and foreseeability of this legal norm, unless its content could be established by methods for interpreting legal norms. [21.]

In view of all the above, the Constitutional Court concluded that the person could have found out, for what kind of actions he could be made criminally liable in accordance with the contested norms, either by interpreting these norms independently or, if necessary, by receiving appropriate legal assistance. Hence, the Constitutional Court concluded that the contested norms were sufficiently clear and foreseeable to serve as the grounds for making a person criminally liable and that the norms complied with Article 90 and the second sentence of Article 92 of the *Satversme*. [22.]

**The Constitutional Court held:**

**to recognise 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, as being compatible with Article 90 and the second sentence of Article 92 of the Republic of Latvia;**

**to recognise sub-para “e” of section 10A905 of the Annex 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, as being compatible with the second sentence of Article 92 of the *Satversme*.**

The judgement by the Constitutional Court is final and not subject to appeal, it has entered into force at the moment of pronouncement thereof. The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 of the Constitutional Court Law.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/06/2018-10-0103\\_Spriedums.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/06/2018-10-0103_Spriedums.pdf#search=)

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The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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