



**A case initiated with respect to the clarity of a norm of the Criminal Law  
and the period of validity of amendments to the Criminal Law**

On 27 April 2020, the 1<sup>st</sup> Panel of the Constitutional Court initiated the case “On compliance of Section 236 (1) of the Criminal Law (in the Wording that was in Force until 31 March 2013) with Article 90 and Article 92 of the *Satversme* of the Republic of Latvia and of the Transitional Provision of the Law of 29 October 2015 “Amendments to the Criminal Law” with Article 1 and Article 92 of the *Satversme* of the Republic of Latvia”.

**The Contested Norms**

Section 236 (1) of the Criminal Law (in the wording that was in force until 31 March 2013):

“For negligent storage, carrying, transportation or forwarding of a firearm or firearm ammunition or for negligent storage, transportation or forwarding of high-powered pneumatic weapons, explosives and explosive devices, in violating regulatory enactments that regulate circulation of weapons, if by this offence another person has been given the possibility to acquire this firearm, firearm ammunition, high-powered pneumatic weapons, explosives and explosive devices, the applicable punishment shall be deprivation of liberty of up to two years or arrest, or a fine up to fifteen minimum monthly salaries, depriving of the right to engage in certain business activities for the period up to three years”

Transitional Provision of the law of 29 October 2015 “Amendments to the Criminal Law”:

“The provisions of this Law shall not be applicable to persons, who had committed a criminal offence prior to the date when this Law enters into force.”

**The Norms of Higher Legal Force**

Article 1 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*): “Latvia is an independent democratic republic.”

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

Article 92 of the *Satversme*: “Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.”

## **The Facts**

The case was initiated on the basis of Pāvels Volkovs’ application. The applicant had been recognised as being guilty of committing a criminal offence, envisaged in Section 236 (1) of the Criminal Law, in the wording that had been in force until 31 March 2013.

The applicant holds that the norm of the Criminal Law is not sufficiently clear and foreseeable. The features of the constituent elements of the criminal offence are not, allegedly, sufficiently concrete; moreover, it is not clear how to differentiate between this norm of the Criminal Law and a similar norm of the Latvian Administrative Violations Code. The applicant notes that also in practice persons had been made administratively rather than criminally liable for similar offences.

While the legal proceedings in the applicant’s criminal case had not been concluded yet, Section 236 (1) of the Criminal Law had been expressed in a new wording by the law of 29 October 2015 “Amendments to the Criminal Law”. The court, on the basis of the contested transitional provision, did not apply this norm in the new wording to the applicant.

The applicant notes that the new wording of Section 236 (1) of the Criminal Law is more favourable to him. However, the contested transitional provision prohibits from applying it retroactively. The applicant is of the opinion that this transitional provision is incompatible with the general legal principle that amendments to the norms of the Criminal Law that are favourable to a person should be applied retroactively and, thus, is incompatible with Article 1 and Article 92 of the *Satversme*.

## **Legal Proceedings**

The Constitutional Court has requested the institution, which issued the contested act, – the *Saeima* of the Republic of Latvia – to provide a reply on the facts of the case and legal reasoning by **29 June 2020**.

**The term for preparing the case is 27 September 2020.** The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

---

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 judgement 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).

### **Ketija Strazda**

Head of Public Relations and Protocol Department  
of the Constitutional Court

Ketija.Strazda@satv.tiesa.gov.lv,  
+ 371 67830749, + 371 26200580