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**The norm of the Criminal Law, which defined the concept of a public official,  
complies with the *Satversme***

On 24 September 2020, the Constitutional Court delivered the judgement in case No. 2019-22-01 “On Compliance of Section 316 (1) of the Criminal Law, in the Wording that was in Force from 2 January 2004 to 31 March 2013, with the Second Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

Section 316 (1) of the Criminal Law (here and hereafter - in the wording that was in force from 2 January 2004 to 31 March 2013: “Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding upon other persons, or who has the right to perform any functions regarding supervision, control, investigation, or punishment or to deal with the property or financial resources of the state or local government, shall be considered to be public officials.”

**The Legal Norm of Higher Legal Force**

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

**The Facts**

The Constitutional Court initiated the case on the basis of constitutional complaints. The Applicants, on the basis of a court’s judgement that had entered into force, had been

recognised as being guilty of committing a criminal offence envisaged in Section 320 (3) of the Criminal Law. A special subject – a public official – is to be made liable for committing a criminal offence envisaged in this Section. Whereas Section 316 (1) of the Criminal Law (hereafter – the contested norm) provided the legal definition of this special subject – a public official.

The Applicants are of the opinion that, at the time when they conducted the activities, the contested norm had not been sufficiently clear. The Applicants hold that the contested norm is incompatible with the second sentence of Article 92 of the *Satversme* because it had been impossible to predict that such positions as the board member of a state stock company and the technical director of production at the state stock company fall within the scope of the contested norm. Hence, the Applicants could not have predicted that they would be recognised as being public officials in the meaning of the contested norm.

### **The Court's Findings**

#### On terminating legal proceedings:

The institution, which issued the contested act, – the *Saeima* – has requested termination of the legal proceedings in the case because the Applicants, allegedly, are contesting the clarity and predictability of the interpretation of the contested norm provided in the court's ruling, by which they have been recognised as being guilty of committing a criminal offence, rather than the clarity and predictability of the contested norm.

The Constitutional Court noted that the Applicants had requested recognising the contested norm as being incompatible with the second sentence of Article 92 of the *Satversme*, which, *inter alia*, sets requirements regarding the clarity and predictability of legal norms. The Constitutional Court concluded that in order to establish the true meaning of the

contested norm and, thus, review the compatibility of this norm with the second sentence of Article 92 of the *Satversme*, the legal proceedings in the case had to be continued. [13.]

On the content of the second sentence in Article 92 of the *Satversme*

The second sentence in Article 92 of the *Satversme* comprises the principle that a person can be recognised as being guilty and be punished only for actions that have been recognised as being criminal in accordance with the law. [14.]

The Constitutional Court noted that a democratic state governed by the rule of law required such a legal system that gave to a person the possibility to clarify the kind of behaviour the law required, *inter alia*, the norms of the criminal law should provide clearly and predictably what kind of actions or failure to act were to be recognised as being criminally punishable and what kind of punishment was applicable for it. Hence, the Constitutional Court concluded that the second sentence of Article 92 of the *Satversme* included the requirement set for the legislator to formulate the norms of criminal law so as to ensure to persons safeguards against arbitrary charges, sentencing and punishing. [14.]

On the Constitutional Court's competence

To examine, whether the contested norm complies with the second sentence of Article 2 of the *Satversme*, the Constitutional Court must establish, firstly, whether the contested norm had been adopted and promulgated in the procedure set out in regulatory enactments and, secondly, whether it is accessible as well as sufficiently clear and predictable to be the basis for making a person criminally liable. [15.]

The Constitutional Court noted that, in the present case, it was not reviewing the application of the contested norm to the Applicants in the framework of a concrete

criminal case but was examining the constitutionality of the contested norm, i.e., its compliance with the second sentence of Article 92 of the *Satversme*. [15.]

On the procedure, in which the contested norm was adopted and promulgated

The *Saeima* and also the Applicants stated that they did not have at their disposal information that would give grounds for doubting that the contested norm had been adopted and promulgated in the procedure set out in regulatory enactments. Neither did the Constitutional Court develop doubts that the contested norm had been adopted and promulgated in the procedure set out in regulatory enactments. [16.]

On the accessibility of the contested norm

The Constitutional Court noted that a law had to be promulgated so that everyone would know his or her rights, and this was also the precondition for the validity of a law. [17.]

The participants in the case had no objections regarding inaccessibility of the contested norm. The Constitutional Court also found that the contested norm was publicly accessible to all, *inter alia*, to the Applicants. [17.]

On the interpretation of the norms of criminal law

Notwithstanding how precisely and clearly legal norms have been formulated, the content thereof is always clarified through interpretation. [18.]

The Constitutional Court noted that the grammatical method of interpretation was only the first among the methods of interpretation and that it was not correct to follow only the *verbatim* meaning of a legal norm. Also in establishing the scope of the content of criminal law norms, all methods of interpretation should be used. [18.]

The contested norm does not comprise an enumeration of the positions of public officials; however, it includes a set of the features of public officials – categories of persons (representative of the State authority or persons who permanently or temporarily perform their duties in the State or local government service) and their rights (making decisions that are binding upon other persons, performing functions of supervision, control, investigation and punishment; dealing with the property or financial resources of the State or local government). The Constitutional Court noted that the need to establish the content of the features of public officials, established in the contested norm, was not *per se* the grounds for recognising a legal norm unclear or unpredictable. [19.]

#### On the features included in the contested norm

It follows from the grammatical interpretation of the contested norm that two categories of persons are its subjects: firstly, representatives of the State authority, secondly, persons, who perform their duties in the service of the State or local government and, in the performance thereof, have the right: a) to make decisions that are binding upon other persons; b) perform the function of supervision, control, investigation or punishment or c) deal with the property or financial resources of the State or local government. [20.]

The Constitutional Court found that the legislator, by defining in this way the categories of persons included in the contested norm, had not violated the requirements regarding the clarity and predictability of legal norms, defined in the second sentence of Article 92 of the *Satversme*. The Constitutional Court, within the framework of its competence, does not examine how the contested norm had been applied to the Applicants in the framework of the particular criminal case. [20.]

Additionally, the Constitutional Court noted that the concept “service of the State” could be understood not only in its institutional but also in its functional meaning and the fact that there was not united State and local government service in the country *per se* did not constitute the grounds for recognising the contested norm as being unclear or unpredictable. [20.]

On establishing the content of the features included in the contested norm

The Applicants noted that, in order to reach the result of systemic interpretation of the contested norm, they would have had to interpret the contested norm in interconnection with more than 10 laws and that this, allegedly, pointed to insufficient clarity and predictability of such interpretation. The Constitutional Court, however, noted that the fact that another law had to be used to clarify the content of criminal law norms *per se* was not incompatible with the requirements regarding the clarity and predictability of the norms of criminal law. To establish, whether the position taken by a person complies with the defined features of the special subject, there is not need to examine all regulatory enactments, in which it is mentioned, but only those that help to reveal the content of the norm. [21.]

The Constitutional Court found that the legislator had chosen to include in the contested norm an independent legal definition. However, in clarifying the content of a public official's features included in it, also other regulatory enactments must be taken into account, whereas the official duties of the respective officials, included in regulations, statutes, employment contracts and job descriptions, help to reveal the functions of the particular position and the rights of its holder. [21.2.]

The Constitutional Court noted additionally that a person, reviewing the case law of courts and the legal doctrine, could have predicted that the contested norm could be applied, on

the basis of those features that were to be interpreted autonomously and could be applied, in examining the official duties and rights of the particular person, *inter alia*, also if a person was performing official duties at a State or local government capital company. [21.6.]

On the adoption of and amendments to the contested norm

The Constitutional Court noted that, on the basis of the preparatory materials for the Criminal Law, it cannot be concluded unequivocally why the legislator had decided to delete from Section 316 (1) the words “autonomous State or local government company (business company)”; however, this decision by the legislator *per se* does not mean that the board members and employees of the State and local government capital companies did not fall within the scope of the contested norm. [22.1.]

In clarifying the content of the contested norm and examining its compliance with the requirements of clarity and predictability, more than just one method of interpretation should be used. To reveal the content of the legal norm, all methods for interpreting legal norms should be used – not only the historical method but also the grammatical, systemic and teleological methods. Only the use of all these methods allows reaching the result of the legal norm’s interpretation. [22.1.]

The Constitutional Court noted additionally that the fact that the legislator later amended the legal norm, including into its text a direct reference to the State and local government capital companies, *per se* was not the grounds for recognising the legal norm as being unclear or unpredictable. [22.2.]

On the possibility for a person to determine the scope of the contested norm’s content

The Constitutional Court noted that even if the persons themselves were unable to clarify the scope of the contested norm they could have done it by receiving appropriate legal assistance. Thus, the contested norm determines with sufficient clarity, which persons should be recognised as being the special subjects of criminal law – public officials, and everyone, receiving appropriate legal assistance, could have clarified, whether they could be made criminally liable as the special subject. [24.]

The Constitutional Court noted additionally that it could be validly expected that persons, who are accustomed to act with special caution in their professional activities, would also examine, with particular care, the risks that such activities entail and would be able to predict the criminal law risks linked to their activities better than other persons. [24.]

Thus, the Constitutional Court found that the contested norm included a set of features of public officials and two categories of persons – representatives of the State authority and persons, who, while being the State or local government service, had the right to perform certain functions. Persons could have predicted that the contested norm could be applied to them, in view of their features, which had to be interpreted autonomously. [25.]

Thus, anyone could have established, which persons were to be recognised as being public officials in the meaning of the contested norm, either by interpreting this norm independently or, if necessary, receiving appropriate legal assistance. Thus, the contested norm is sufficiently clear and predictable. [25.]

**The Constitutional Court held:**

**to recognise Section 316 (1) of the Criminal Law, in the wording that was in force from 2 January 2004 until 31 March 2013, as being compatible with the second sentence of Article 92 of the *Satversme* of the Republic of Latvia.**



The judgement by the Constitutional Court is final and not subject to appeal, it has entered into force upon being pronounced. The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 (1) of the Constitutional Court Law.

The text of the judgement is available on the homepage of the Constitutional Court:  
[https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/10/2019-22-01\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/10/2019-22-01_Spriedums.pdf)

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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 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)

**Zanda Meinarte**

Public relations specialist  
of the Constitutional Court

[Zanda.Meinarte@satv.tiesa.gov.lv](mailto:Zanda.Meinarte@satv.tiesa.gov.lv)

+ 371 67830759, + 371 26393803