



Satversmes tiesa

Press release

Case No. 2021-34-01

27.05.2022

The Constitutional Court terminates proceedings in the case regarding norms that provided for criminal liability for public call to eliminate national independence of the Republic of Latvia

On 27 May 2022, the Constitutional Court adopted a ruling in Case No. 2021-34-01 "On Compliance of Section 82, Paragraph One of the Criminal Law in the Wording Effective from 1 April 2013 to 10 May 2016 with the First Sentence of Article 100 of the Satversme of the Republic of Latvia and Compliance of the Transitional Provision of the Law "Amendments to the Criminal Law" of 21 April 2016 with Article 1 and the Second Sentence of Article 92 of the Satversme of the Republic of Latvia".

THE CONTESTED NORMS

Section 82, Paragraph One of the Criminal Law in the wording effective from 1 April 2013 to 10 May 2016 (hereinafter referred to as – the contested norm of the Criminal Law):

"For a public call to eliminate national independence of the Republic of Latvia with the purpose to include Latvia in a unified state formation with some other country or to eliminate it in other way – the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or community service, or fine and probationary supervision for a period of up to three years, or without it."

By the Law on of 21 April 2016 "Amendments to the Criminal Law " (hereinafter referred to as – amendments of 21 April 2016), inter alia, Section 82 of the Criminal Law was removed from the Criminal Law. The transitional provision of the said Law (hereinafter – the contested transitional provision) stipulates as follows: "Provisions of this Law shall not apply to persons who have committed a criminal offence before the date of entry of this Law into effect."

NORMS WITH A HIGHER LEGAL FORCE

- Article 1 of the Constitution of the Republic of Latvia (hereinafter referred to as — the Satversme): “Latvia is an independent democratic republic.”
- 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."
- First sentence of Article 100 of the Satversme: "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views."

THE FACTS OF THE CASE

The case has been initiated on the basis of a constitutional complaint of a natural person. The Applicant published an appeal on a website calling for collecting signatures for the Republic of Latvia to join the United States of America. By the judgement of the court, the Applicant was found guilty of the criminal offence provided for in the contested norm of the Criminal Law. The Applicant considered that this norm infringed his right to freedom of expression included in the first sentence of Article 100 of the Satversme.

The amendment of 21 April 2016 removed the contested norm of the Criminal Law therefrom, but the contested transitional provision stipulates that such amendments do not apply to persons who have committed a criminal offence before the date of entry of the amendments into effect. The Applicant considered that the contested transitional provision infringed his fundamental rights included in the second sentence of Article 92 of the Satversme and violated the principle of retroactivity of a provision favourable to a person in criminal law derived from the principle of the rule of law and falling within the scope of Article 1 of the Satversme.

CONCLUSIONS OF THE COURT

The Constitutional Court recognised that the first sentence of Article 100 of the Satversme included the right to express opinions, including such opinions which challenge the existing state system and which are implemented by peaceful means.

The parties to the case and the invited persons had expressed different views on the scope of the contested norm of the Criminal Law and its application. In order to determine whether there are grounds to assess the compliance of the contested norm of the Criminal Law with the Satversme, the Constitutional Court first of all established the purpose and the true meaning of this norm.

When interpreting the contested norm of the Criminal Law, the Constitutional Court noted that its text, *inter alia*, indicated that in order to hold a person criminally liable, it was necessary to establish a certain act – public expression of a call. Thus, the contested norm of the Criminal Law, according to its wording, prohibits any kind of public calls to eliminate the national independence of the Republic of Latvia. However, in order to ascertain the substantive scope of legal norms, including the substantive scope of criminal law norms, other methods of interpretation of legal norms must also be used.

Having examined the materials of the legislative procedure, the Constitutional Court concluded that the legislator had intended to include the contested norm of the Criminal Law in Section 81 of the Criminal Law and that there had been discussions on the wording and scope of this norm, as well as that the legislator had been aware of the importance of freedom of expression as a fundamental human right in this discussion.

When assessing the scope of the contested norm of the Criminal Law, the Constitutional Court concluded that it was systematically consistent with the fundamental rights of a person included in the Satversme and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as – the Convention) and thus did not in itself constitute a conflict with the fundamental right of a person, namely the right to freedom of expression. The Constitutional Court emphasised that the contested norm of the Criminal Law could not be interpreted broadly, without taking into account the legal framework system in which it functioned. Taking into account the first sentence of Article 100 of the Satversme and Article 10 of the Convention, the Constitutional Court recognised that a contrary conclusion to the systemic interpretation of the contested norm of the Criminal Law would be one that provides for criminalisation of any kind of public calls to eliminate the national independence. Namely, it is not sufficient to establish the fact of making a public call to hold a person criminally liable for a criminal offence under the contested

norm of the Criminal Law, if the particular situation and the substance of the person's statements are not assessed.

While systematically interpreting the contested norm of the Criminal Law in connection with the person's right to freedom of expression, the Constitutional Court concluded that this norm provided for criminal liability only for such a public call to eliminate the national independence of the Republic of Latvia, which poses a real threat to the interests of the state and society and incites to such an action that would actually enable the aim of the call to be achieved.

The Constitutional Court emphasised that the contested norm of the Criminal Law served to protect the state and its democracy. This norm contributes to the implementation of the principle of self-defensive democracy. It was also recognised that the objective purpose of the contested norm of the Criminal Law was to target persons who made such public calls for the elimination of national independence which exceed the limits of freedom of expression and pose a real threat to the national independence and democratic state system of the Republic of Latvia.

Consequently, the Constitutional Court concluded that the contested norm of the Criminal Law, according to its objective and true meaning, provided for criminal liability only for such a public call to eliminate the national independence of the Republic of Latvia which poses a real threat to the interests of the state and society and incites to such an action which would actually enable the aim of the call to be achieved.

The Constitutional Court recognised that its interpretation of the contested norm of the Criminal Law ensured protection of the fundamental rights of a person included in the first sentence of Article 100 of the Satversme. In such a way, by interpreting and applying the contested norm of the Criminal Law in accordance with the Satversme, the grounds for doubting its constitutionality are also eliminated. Thus, the Constitutional Court recognised the Applicant's assumption that the conflict of legal norms with legal norms of higher legal force was caused by the contested norm of the Criminal Law as unfounded. Whereas, assessment of the actual circumstances of the criminal case and qualification of the offence committed by the person are not within the competence of the Constitutional Court. Consequently, the proceedings in the part concerning compliance of the contested norm of the Criminal Law with the first sentence of Article 100 of the Satversme were terminated.

Whereas, with regard to the principle of retroactivity of a provision favourable to a person in criminal law, applicable also in the case when the offence in question has been recognised as not criminalised, the Constitutional Court noted that it was included in Article 1 and the second sentence of Article 92 of the Satversme in their mutual relation.

The Applicant essentially considered that the legislator, by adding to the new wording of the legal norm the indication "in a manner not provided for in the Satversme", had recognised a public call to apply against the national independence of the Republic of Latvia in a manner provided for in the Satversme as not criminalised. However, the Constitutional Court recognised that the indication "in a manner not provided for in the Satversme" only clarified the form of the expressed call, but it did not change the content and meaning of the action. Consequently, Section 81 of the Criminal Law provides, inter alia, for criminal liability for the same criminal offence as provided for in the contested norm of the Criminal Law. In addition, the Constitutional Court also concluded that the offence provided for in Section 81 of the Criminal Law was punishable more severely and, therefore, the new legal norm was to be considered even more unfavourable to the Applicant.

Consequently, the Constitutional Court concluded that, since the amendments to the Criminal Law of 21 April 2016 did not provide for recognising the criminal offence provided for in the contested norm of the Criminal Law as not criminalised and the new regulation was not otherwise more favourable, it could not be established that the fundamental rights of the Applicant had been infringed.

- The Constitutional Court resolved:

To terminate legal proceedings in Case No. 2021-34-01 "On Compliance of Section 82, Paragraph One of the Criminal Law in the Wording Effective from 1 April 2013 to 10 May 2016 with the First Sentence of Article 100 of the Satversme of the Republic of Latvia and Compliance of the Transitional Provision of the Law "Amendments to the Criminal Law" of 21 April 2016 with Article 1 and the Second Sentence of Article 92 of the Satversme of the Republic of Latvia".

The decision is not subject to appeal.

Text of the decision is available on the website of the Constitutional Court:

https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/08/2021-34-01_lemums_par_tiesvedibas_izbeigsanu.pdf