



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

---

## JUDGEMENT

**on Behalf of the Republic of Latvia  
in Riga, on 19 February 2021  
in Case No. 2020-23-01**

The Constitutional Court of the Republic of Latvia, comprised of: Chairperson of the court hearing Sanita Osipova, Justices Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

having regard to Pāvels Volkovs' constitutional complaint,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), as well as Section 19<sup>2</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

at the court hearing of 19 January 2021 examined in written procedure 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 Facts

1. On 17 June 1998, the *Saeima* adopted the Criminal Law, which entered into force on 1 April 1999. Chapter XX of the Criminal Law envisages criminal liability for criminal offences against general safety and public order.

Section 236 (1) of the Criminal Law, in the wording that was in force from 18 June 2004 until 31 March 2013 (hereafter also – the contested norm of the Criminal Law) – at the time when the applicant committed actions for which he was made criminally liable and punished, provided: “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 violation of the regulations 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 of up to fifteen minimum monthly salaries, with deprivation of the right to engage in certain business activities for a period of up to three years.”

By the law of 29 October 2015 “Amendments to the Criminal Law”, which entered into effect on 3 December 2015 (hereafter – the Amendments of 29 October 2015. ), *inter alia*, the constitutive elements of the criminal offence, envisaged in Section 236 (1) of the Criminal Law were changed, expressing it in new wording: “For unauthorised storage, carrying, transportation and forwarding of firearms, essential components of firearms, firearm ammunition, high-powered pneumatic weapons, explosives and explosive devices, if as a result of which any of the abovementioned items has been lost or acquired by another person, –”. Whereas the Transitional Provision of the said law (hereafter – the contested Transitional Provision) provides: “The provisions of this Law shall not be applicable to individuals who committed an offence before the date on which this Law comes into force.”

**2. The applicant – Pāvels Volkovs** (hereafter – the Applicant) – has been recognised as being guilty of committing the criminal offence envisaged in the contested norm of the Criminal Law. The Applicant holds that the contested norm of the Criminal Law is incompatible with Article 90 and Article 92 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) because it had not been sufficiently clear at the time when the Applicant committed the actions, for which he was made criminally liable and punished, and that the contested Transitional Provision is incompatible with Article 1 and Article 92 of the *Satversme* because it prohibits from applying to the Applicant more favourable regulation with retroactive force.

**2.1.** The contested norm of the Criminal Law is said to establish criminal liability for a person’s actions, which are envisaged in another regulatory enactments, and the constitutive elements of the crime are substantive. Thus, to recognise a person as being guilty of committing the criminal offence envisaged in the contested norm of the Criminal Law, not only a violation of the legal norms regulating the storage of firearms and ammunition but also certain consequences need to be established, i.e., the

possibility created for another person to acquire these objects or substances. The setting in of these consequences is said to be a mandatory feature of the respective criminal offence; the contested norm of the Criminal Law, however, envisages only an abstract possibility of such consequences setting in.

The Applicant notes that the violation of the Cabinet Regulation of 27 December 2011 “Regulations Regarding the Acquisition, Registration, Recording, Possession, Transportation, Conveyance, Carrying, Sale of Weapons and Ammunition and Possession of Collections of Weapons” (hereafter – Regulation No. 1001), which was in force at the time when the Applicant committed actions, for which he was made criminally liable and punished, *per se* does not constitute elements of the criminal offence, since the criminal offence envisaged in the contested norm of the Criminal Law should be distinguished from the administrative violation envisaged in Section 181 (1) of the Latvian Administrative Violations Code (hereafter – the Code).

The Applicant holds that the consequences envisaged in the contested norm of the Criminal Law, i.e., the possibility for another person to acquire a firearm or ammunition, are very vague. Also storage that complies with Regulation No. 1001 does not exclude the possibility that a third person could acquire the firearm or ammunition through malicious actions, i.e., by stealing from a metal safe or acquiring during transportation or an attack.

It can be concluded from the publicly available court rulings that, in the cases of administrative violations, the courts had not discerned signs of the constituent elements of a criminal offence in those instances where a firearm or ammunition had been kept outside a safe.

Hence, the Applicant holds that it is impossible to identify clearly the meaning of the contested norm of the Criminal Law by interpreting the contested norm of the Criminal Law and examining the case law. Moreover, clear and understandable criteria had not been set to differentiate between the offences provided for in the contested norm of the Criminal Law and Section 181 (1) of the Code.

**2.2.** The Applicant notes that by the Amendments of 29 October 2015 the legislator has decriminalised situations where the firearm or ammunition have not been lost and have not come into the possession of another person, the Transitional Provision, however, envisages an exception to the principle regarding the retroactive force of regulation that is more favourable to a person, in accordance with Section 5 (1) of the Criminal Law.

When the Amendments of 29 October 2015 were reviewed in the *Saeima*, the proposal to amend Section 236 (1) of the Criminal Law had been included in the respective draft law only before the second reading and had been adopted without discussions. The legislator had not explained the meaning of this amendment and had neither examined whether it was admissible that the retroactive force of amendments was limited by the respective transitional provision. The Applicant holds that the restriction on the retroactive force lacks a legitimate aim.

Section 1 of the Criminal Law is said to be applicable also in a situation where, at the moment when a criminal case is heard, the legal norm that envisaged actions to be recognised as criminally punishable had become invalid. Otherwise, the punishment would actually be applied for actions that the legislator has recognised as being criminally unpunishable.

The Applicant holds that the legislator may not limit the norms of Section 5 (2) of the Criminal Law regarding retroactive force of the law if such restriction lacks a legitimate aim and conditions that would make such limitation necessary are non-existent.

**3. The institution, which issued the contested act, – the *Saeima* –** holds that the contested norm of the Criminal Law complies with Article 90 and Article 92 of the *Satversme* and the contested Transitional Provision complies with Article 1 and Article 92 of *Satversme*.

**3.1.** The *Saeima* is of the opinion that the statements made in the application prove that the possible violation of the Applicant's fundamental rights is caused by the interpretation of the contested norm of the Criminal Law, and not by the contested norm of the Criminal Law itself. Hence, it should be assessed whether the legal proceedings regarding the compliance of the contested norm of the Criminal Law with the *Satversme* are to be continued.

The *Saeima* holds that the contested norm of the Criminal Law has been adopted and promulgated in accordance with the procedures specified in the *Satversme* and the Rules of Procedure of the *Saeima*, as well as is publicly available.

The contested norm of the Criminal Law determines criminal liability for the actions of a person provided for in another regulatory enactment, and the subject of a criminal offence is a person who has been issued a permit to acquire, keep and carry a firearm and ammunition in accordance with the law. Criminal liability for negligent storage of firearms or ammunition is said to set it when it enables another person to

acquire such firearms or ammunition, including by robbing or finding them. The court should assess in each specific case whether as a result of violations of regulatory enactments a possibility has been created for another person to acquire a firearm or its ammunition. It is necessary to establish a causal connection between the negligent storage, carrying, transportation of highly hazardous objects, specified in the contested norm of the Criminal Law, and the possibility for another person to acquire these objects.

The *Saeima* holds that the Applicant, the senior inspector of the Criminal Police Group of Riga Kurzeme District of Riga Region of the State Police, had to be familiar with the criminal law regulation and had to keep the firearm and its ammunition with particular care, assessing the risks involved in his professional activities. Moreover, the State Police is said to be the institution that supervises the circulation of weapons, ammunition, their components and special means. The police are the most visible institution that exercises the state power. Its responsibilities include not only preventing and combating crime, but also promoting public trust by abiding, in its operations, with the rule-of-law requirements.

Referring to the case law, the *Saeima* points out that in practice criminal liability, in accordance with the contested norm of the Criminal Law, had been applied not only for the loss of a firearm or ammunition, but also for leaving it in a place where these items pose a potential risk of being accessed by other persons. Namely, with regard to the storage of firearms without complying with the requirements of regulatory enactments, the court has indicated that the possibility created for another person to accidentally acquire a firearm may manifest itself as storing the firearm in a place that is not adjusted for this purpose and does not comply with regulations, that is accessible to unauthorised persons and where other persons have the possibility to acquire and use it without obvious obstacles.

As an example, the *Saeima* mentions a case when a person, who had hidden a firearm in the bushes by the railway tracks while going to meet another person, had been held criminally liable. Whereas a person, who had stored a firearm in his car for a relatively short period of time in a manner inconsistent with the requirements of regulatory enactments but had installed an alarm system and performed other activities to ensure that the firearm was not accessible to other persons, had not been held liable.

The Applicant has had the opportunity to reasonably foresee that, when assessing the nature of his actions or failure to act, the accessibility of a firearm ammunition storage site to other persons will also be assessed. In the case of the

Applicant, the court had assessed whether the place where the Applicant had stored the firearm ammunition contrary to the requirements of regulatory enactments had been such that could be accessed by other persons and had concluded that access to the Applicant's office had been very free. Thus, whether criminal liability will set in for a person depends on the actual circumstances of the particular offence and the legal assessment of these circumstances.

The opinion expressed by the Applicant that in similar cases only administrative liability had set in and criminal liability had not been applied, is not of decisive importance.

It does not follow from the case law that persons are always held criminally liable for storing firearm ammunition outside the safe, however, the possibility follows from it that storing a firearm and its ammunition in a place where other persons may also have access to it may be criminally punishable. Even if, at the moment when the criminal offence was committed, there could be different possibilities for interpreting legal norms, this does not mean *per se* that the legal norm is unclear or unpredictable. This only means that there are several possibilities for interpreting this legal norm and that it is for the courts to arrive at one interpretation of a legal norm in specific actual circumstances, ensuring that such interpretation is reasonably foreseeable and appropriate for the nature of the offence.

Likewise, the Applicant's opinion that amendments to Section 236 (1) of the Criminal Law prove that the contested norm of the Criminal Law had not been sufficiently clear is said to be unfounded since the scope of Section 236 (1) of the Criminal Law had been narrowed by these amendments.

**3.2.** Pursuant to Section 5 (2) of the Criminal Law, unless the legislator has provided otherwise, the retroactive effect of the norm is not applicable and those legal norms, which had been in force at the time when the offence was committed, must be applied. The Applicant has not contested the compliance of principles, enshrined in Section 5 of the Criminal Law, with the *Satversme*.

The contested Transitional Provision is said to ensure predictability and legal certainty in those criminal cases, which had been initiated before the date when the Amendments of 29 October 2015 entered into force. The Applicant could have predicted clearly that a person had to be made criminally liable for the actions, referred to in the contested norm of the Criminal Law, committed prior to the date when the Amendments of 29 October 2015 entered into force

The *Saeima* draws attention to the fact that the legislator has assessed both the amendments with respect to Section 236 of the Criminal Law and the contested Transitional Provision. The legislator did not have any doubts that effect of the law in time, defined in the contested Transitional Provision, was applicable also to Section 236 of the Criminal Law. Thus, the contested Transitional Provision had been adopted in accordance with the principles of criminal law and allows to clearly determine on the basis of which legal norms criminal liability may set in for a person.

**4. The summoned person – the Ministry of Justice** – notes that it fully upholds the *Saeima*'s opinion.

The fact that the scope of adverse consequences, included in the contested norm of the Criminal Law, had been narrowed by the Amendments of 29 October 2015, does not mean that the scope of adverse consequences, defined previously, had been incompatible with Article 90 and Article 92 of the *Satversme*. These amendments had been adopted not to remove the unclarity of the contested norm of the Criminal Law, but in order to have criminal liability subsequently established for such offences in the field of arms circulation, which in practice had been recognized as especially dangerous, but in other cases persons would be subjected to administrative liability.

The Ministry of Justice draws attention to the fact that the initial wording of the draft Amendment of 29 October 2015 to the law had already included the contested Transitional Provision. The contested Transitional Provision is applicable not only to Section 236 (1) of the Criminal Law, but also to other sections. Its purpose had been to ensure a reasonable and balanced transition from the old legal regulation to the new legal regulation. The new definition of adverse consequences is said to be forward-looking and it is not recognised by the aforementioned amendments that the existing legal regulation in this area had been unlawful.

**5. The summoned person – the Ombudsman** – holds that the contested norm of the Criminal Law complies with Article 90 and Article 92 of the *Satversme*; however, the legislative materials and the statements made in the written reply by the *Saeima* suggest that the contested Transitional Provision could be incompatible with Article 1 of the *Satversme*.

**5.1.** The Ombudsman holds that the requirements regarding circulation of weapons and ammunition must be known to any private person who has been granted a permit to carry weapons or an official who has been granted a permit to carry a

weapon. If the opportunity to obtain information about his or her rights in the field of circulation of weapons and ammunition were restricted or denied to a person, he or she would not be able to obtain a permit to carry a weapon.

Firearms and their ammunition are said to be a special category of objects, the circulation of which is usually strictly regulated. It is also objectively expected that the State will establish liability for violations of the rules on the circulation or storage of firearms and ammunition.

The State is said to enjoy broad discretion in the area of penal policy. By envisaging liability for violations in the field of arms circulation in various regulatory enactments and not providing for manifestly disproportionate or cruel penalties for such activities, the legislator has not violated the limits of the said discretion. Moreover, administrative and criminal liability are also provided for other offences, i.e., offences in the area of road traffic and public order.

The Ombudsman holds that any violation of the rules on circulation of weapons may create a possibility for another person to acquire a weapon or ammunition in storage and therefore there is no reason to consider that the contested norm of the Criminal Law and Article 181 of the Code provide for liability for identical actions.

The Applicant has not pointed to difficulties related to performing the inspector's official duties, the particular requirements and obligations defined for this position, to obstacles for receiving legal assistance in order to understand the scope of the contested norm of the Criminal Law or in relation to various interpretations of the contested norm of the Criminal Law in identical circumstances. Thus, the contested provision of the Criminal Law had been sufficiently clear and predictable to serve as the grounds for making a person criminally liable.

**5.2.** The Ombudsman points out that the contested Transitional Provision initially had been related to amendments to the sections of the Criminal Law on criminal offences against traffic safety, which differ, as to their nature, from criminal offences against general safety and public order. Moreover, the fact that the scope of the criminal penalty to be imposed for those offences is different suggests that the level of threat to society as a whole caused by those offences also differs. Hence, similar considerations regarding derogation from the principle of retroactive effect of favourable regulation in cases of various criminal offences may indicate a lack of due care during the discussion of the draft law. The public unavailability of the legislator's considerations and the general nature of the considerations indicated by the *Saeima* also do not create confidence that the derogation from the principle of retroactive force

of favourable regulation had been properly assessed and discussed. Such practice is said to be contrary to the principle of good legislation.

**6. The summoned person –Evija Vīnkalna, lecturer at the Department of Criminal Law, the Faculty of Law, the University of Latvia** – holds that the contested norm of the Criminal Law is compatible with Article 90 and Article 92 of the *Satversme* and that the contested Transitional Provision complies with Article 1 and Article 92 of the *Satversme*.

Pursuant to the contested norm of the Criminal Law, criminal liability 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 sets in also if by it a possibility has been created for another person to acquire these objects or substances, e.g., a possibility has been created to rob them, to find the lost weapon or ammunition.

The contested norm of the Criminal Law establishes criminal liability for the actions of a person provided for in another regulatory enactment, and the subject of the criminal offence provided therein may be only a person, who has been issued a permit to acquire, keep and carry a firearm and ammunition in the procedure set out in law.

To make a person criminally liable for the criminal offence provided for in the contested norm of the Criminal Law, the specific adverse consequences must be established – the possibility created for another person to acquire a firearm or firearm ammunition, high-powered pneumatic weapons, explosives, explosive devices, as well as causal relation between the respective offence and the said consequences. The term “created” is said to point to the mandatory feature of the objective side of substantive constituent elements of the crime – causal relationship. Whether adverse consequences, caused by the offence, can be established is an issue that needs to be assessed.

The contested norm of the Criminal Law can be differentiated from the administrative violation provided for in Section 181 of the Code by taking into account, *inter alia*, the need to establish the adverse consequences set out therein and the causal relationship

The constitutive elements of the crime provided for in Section 236 (1) had been narrowed by the Amendments of 29 October 2015, compared to the wording that had been in force previously, however, the contested Transitional Provision sets out a special requirement that does not permit applying Section 5 (2) of the Criminal Law to

persons who had committed the respective criminal offence prior to the date when this law entered into force.

**7. The summoned person – senior researcher at Riga Stradins University Dr. iur. Jānis Baumanis** – points out that it clearly follows from the explanation provided by the Ministry of Justice regarding the Amendments of 29 October 2015 that these amendments had eliminated uncertainties in Section 236 (1) of the Criminal Law. In the opinion of the Ministry of Justice, the respective criminal offence had been completed at the moment when the regulatory enactments that regulate the handling of the particular objects were violated because this violation *per se* creates the possibility for a third person to acquire these objects.

Already since the date when the Criminal Law entered into force, the wording of Section 236 (1) of the Criminal Law had set out criminal liability for the respective offence because it created the possibility for another person to acquire the objects referred to in the said norm. It follows from the findings made in the legal doctrine that an offence is completed only when the consequences set it.

Although it is not directly underscored in the commentary to the Criminal Law that an object, referred to in the contested norm of the Criminal Law, has to be robbed, lost or should come into another person's possession by other means, the indication, however, that the offence has substantive constitutive elements is said to prove clearly and unambiguously that consequences must set it.

A possibility cannot be the consequences of a criminal offence, these can set it in only if the possibility is made use of. This statement can be substantiated by the fact that it has been indicated in the doctrine, when commenting on a norm of analogous construction, which refers to the opportunity of acquiring something, i.e. Section 182<sup>1</sup> (1) of the Criminal Law, that this criminal offence is completed by committing the action referred to therein, i.e., this offence has formal constituent elements. Thus, although the norm provides for criminal liability for an offence if it creates a possibility to persons to acquire something arbitrarily, this possibility is not the consequences, therefore the offence is said to have formal constituent elements.

Consequently, Jānis Baumanis is of the opinion that the statements made in the explanation provided by the Ministry of Justice and in the criminal law doctrine prove that the contested norm of the Criminal Law is too unclear or easy to misunderstand to allow deciding unequivocally on whether this norm sets out criminal liability for handling the objects referred to therein if, as the result of this action, none of the said

objects has been lost or has been acquired by another person. If the contested norm of the Criminal Law is applied to a person, as the result of whose actions the object referred to in the norm has not been lost or has not been acquired by another person, then it must be recognised that this person could not clearly understand, whether the particular action reaches the threshold of harmfulness of a criminal offence.

The contested Transitional Provision had been included in the draft law before the proposal was made to amend Section 236 of the Criminal Law. It follows from the substantiation provided for the contested Transitional Provision that the legislator had wanted to retain, following the amendments, the interpretation of consequences of criminal offences provided for in the norms of the Criminal Law, hence, interpretation of consequences, rather than interpretation that does not comprise consequences. Thus, even assuming that later the legislator has recognised that the substantiation of the contested Transitional Provision applies also to Section 236 (1) of the Criminal Law, this substantiation may not under any circumstances be applied to such interpretation of the wording of Section 236 (1) of the Criminal Law that does not include consequences.

Consequently, in Jānis Baumanis' opinion, the contested Transitional Provision, insofar it provides that the amendments to Section 236 (1) of the Criminal Law are not applicable to persons who, prior to the date when these amendments enter into force, have committed the offence, set out in Section 236 (1) of the Criminal Law, but as the result of which none of the objects referred to in this norm has been lost or has been acquired by another person, jeopardises a person's rights guaranteed in the *Satversme*, *inter alia*, the right to fair trial.

**8. The summoned person – Dr. iur. Māris Onževs** – holds that the contested Transitional Provision is incompatible with Article 1 of the *Satversme*, insofar amendments to Section 236 of the Criminal Law are not applied to persons, who have committed the respective criminal offence before the date when the new wording of this provision entered into force and with respect to who a convicting sentence has not yet entered into effect.

The contested Transitional Provision, i.e., that the new wording of Section 236 of the Criminal Law is not applicable to persons, who have committed a criminal offence prior to the date when this law enters into force, is to be considered as being contrary to the principles of democratic state governed by the rule of law and proportionality, enshrined in Article 1 of the *Satversme*.

Allegedly, the *Saeima* has not complied with the principle existing in a democratic state governed by the rule of law on applying the legal norms that improve the legal status of persons who have committed criminal offences to these persons if they had committed the particular offence before amendments to the said norms entered into force and if a convicting judgment has not yet entered into effect with regard to them. A violation of this principle of favourable retroactive punishment is said to be particularly obvious in a situation like the one examined in the framework of the present case, i.e., when the content of Section 236 of the Criminal Law is narrowed, decriminalising negligent storing of a firearm if a possibility has been created for another person to acquire the firearm's ammunition by this offence.

Section 5 (2) of the Criminal Law should be examined in conjunction with the general legal principles existing in a democratic state governed by the rule of law. The legislator's right to not apply more favourable penal norms to committed criminal offences, with regard to which a convicting sentence has not yet entered into force, is said to be very narrow and applicable only in exceptional cases. In the present case, it cannot be established either by the sources used in creating the law or by assessing the general legal principles that this would be such an exceptional case.

The *Saeima's* actions, actually not examining and discussing the contested Transitional Provision from the perspective of so important aspect as not applying the retroactive force of a more favourable legal norm to already committed criminal offences in a situation set out in Section 236 of the Criminal Law, is said to be an obvious violation of the principle of good legislation. Such actions, possibly, are related to the general lack of awareness of the importance of the favourable retroactive force in penal law.

## **The Findings**

9. The *Saeima* is of the opinion that the statements made in the application is an evidence that the possible violation of the Applicant's fundamental rights is caused by the interpretation of the contested norm of the Criminal Law rather than the contested norm of the Criminal Law itself. Hence, it should be assessed whether the legal proceedings regarding compatibility of the contested norm of the Criminal Law with the *Satversme* should be continued.

The Constitutional Court has recognised: if arguments have been expressed in a case that could be the grounds for terminating legal proceedings these should be

examined first and foremost (*see, for example, Judgement of 6 June 2018 by the Constitutional Court in Case No. 2017-21-01, Para 9*).

Pursuant to Article 85 of the *Satversme* and Section 1 and Section 16 of the Constitutional Court Law, the Constitutional Court, within the limits of its jurisdiction, reviews cases regarding the compliance of laws and other regulatory enactments with the *Satversme*, as well as other cases that have been transferred by this law into its jurisdiction. The Constitutional Court already has recognised that the legal review of the application of legal norms and the legality of the rulings by courts of general jurisdiction does not fall within its competence (*see, for example, Decision of 17 November 2017 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2017-01-01, Para 11*). Hence, if a person contests before the Constitutional Court the compliance of the legal regulation that had been applied in legal proceedings with the second sentence of Article 92 of the *Satversme*, maintaining that it is unclear and its interpretation had been unpredictable, it is important to differentiate between the issue of the constitutionality of the contested legal regulation and the issue whether the contested legal regulation had been applied correctly to the person (*see Judgement of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01. Para 13*).

In the present case, the Applicant had requested recognising the contested norm of the Criminal Law as being incompatible with Article 90 and Article 92 of the *Satversme* because it had not been sufficiently clear at the time when the Applicant had committed the actions for which he had been made criminally liable and punished.

The Constitutional Court has recognised previously that at the moment when an offence is committed, for which later criminal liability sets in, a clear and predictable legal norm must be in force, which provides that the conduct of the particular person – action or failure to act – is to be recognised as being criminal (*see Judgement of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01, Para 14*). Likewise, the Constitutional Court has noted in the said judgement, as well as in the judgement in case No. 2018-10-0103 that a norm is to be recognised as being unclear if it is impossible to establish its true meaning through interpretation. Hence, in the present case, grounds for terminating legal proceedings cannot be found since the compliance of the contested norm of Criminal Law with Article 90 and Article 92 of the *Satversme* needs to be examined, i.e., assessed whether the contested norm of the Criminal Law is to be recognised as being sufficiently clear and predictable to make a person criminally liable in accordance with it.

**Hence, legal proceedings in the case are to be continued.**

**10.** The Constitutional Court has acknowledged: if the compliance of several legal norms with several norms of the *Satversme* is disputed, then the Constitutional Court, taking into account the nature of the case under review, must determine the most effective approach to the assessment of this compliance (*compare see Judgement of 11 December 2020 by the Constitutional Court in Case No. 2020-26-0106, Para 9*).

In the present case, the Constitutional Court must assess, whether:

1) the contested norm of the Criminal Law, pursuant to which the Applicant had been made criminally liable and punished, complies with Article 90 and Article 92 of the *Satversme*;

2) the contested Transitional Provision, which prohibits from applying to the Applicant more favourable regulation with retroactive force, complies with Article 1 and Article 92 of the *Satversme*.

In view of the actual circumstances of the case and the arguments presented by the Applicant, to review the case more effectively, the Constitutional Court, first and foremost, will review the compliance of the contested norm of the Criminal Law with Article 90 and Article 92 of the *Satversme* and after that – the compliance of the contested Transitional Provision with Article 90 and Article 92 of the *Satversme*.

**11.** The Applicant requests recognising the contested norm of the Criminal Law, which provides for criminal liability, as being incompatible with Article 90 and Article 92 of the *Satversme*, as he considers that the contested norm of the Criminal Law was not sufficiently clear at the time when he performed activities for which he was made criminally liable and punished. Hence, the issues to be assessed in the case pertain to the scope of Article 90 and the second sentence of Article 92 of the *Satversme*.

In accordance with Article 90 of the *Satversme*, everyone has the right to know their rights. This norm of the *Satversme* falls within the principle of supremacy of law, according to which the rights and obligations of persons may be determined only by generally binding legal norms. The Constitutional Court has already recognised that Article 90 of the *Satversme* includes the obligation of the State to create a mechanism that ensures the awareness of persons about the legal regulation and its content (*see Judgement of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 13.1.*).

The laws and legal norms, which restrict a person's fundamental rights must be sufficiently comprehensible and predictable. Namely, the norm must be worded sufficiently precisely, allowing an individual, if necessary – seeking advice, to regulate his or her actions (*see Judgement of 11 May 2011 by the Constitutional Court in Case No. 2010-55-0106, Para 13.1.*).

Pursuant to the second sentence of Article 92 of the *Satversme*, the legislator must formulate the norms of criminal law to provide safeguards to a person against arbitrary accusation, conviction and punishment (*see Judgement of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01, Para 14*). A norm is to be recognised as being unclear if it is impossible to establish its true meaning through interpretation (*see Judgement of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 13.1.*).

The Constitutional Court has recognised: if a legal norm allows its addressee to understand and predict the obligation imposed on him, but the party applying legal norms – to ascertain all actual and legal circumstances in order to assess what has happened and decide on making a person criminally liable, then this norm is considered to be sufficiently clear (*see Judgment of 16 December 2008 by the Constitutional Court in Case No. 2008 09-0106, Para 8*). No matter how precisely and clearly legal norms are formulated, their content will always be clarified through interpretation (*see Judgment of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 18.1.*).

The Constitutional Court has already recognised that the term “law” used in the second sentence of Article 92 of the *Satversme* falls within the term “rights” included in Article 90 of the *Satversme* (*see, for example, Judgment of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01, Para 14*). Consequently, the norms determining criminal liability may be recognized as being a law in the meaning of the second sentence of Article 92 of the *Satversme* only if they meet the same quality criteria set for legal norms as included in Article 90 of the *Satversme* (*see Judgment of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 13.2.*). The degree of clarity of a legal norm that must be reached in the case when a criminal penalty is imposed on a person is mainly to be assessed by taking into account the specific requirements set out in the second sentence of Article 92 of the *Satversme* (*see Judgment of 28 March 2013 by the Constitutional Court in Case No. 2018-10-0103, Para 13.2.*).

The European Court of Human Rights has recognized that a person must know from the text of the relevant norm and, if necessary, after studying the court's interpretation of that text, for what action or failure to act criminal liability could set in and what kind of penalty could be applied for such actions or failure to act. Moreover, a legal norm may meet the requirements of predictability of a legal norm even if a person needs to receive qualified legal assistance in order to be able to reasonably assess the potential consequences of an action in the respective circumstances (*see Judgement of 25 June 2009 by the European Court of Human Rights in Case "Liivik v. Estonia", Application No. 12157/05, Para 93*). If a legal norm, on the basis of which a person has been sentenced, fails to meet these requirements, the European Court of Human Rights recognises that a violation of Para 1 of Article 7 of the Convention has occurred (*see, for example, Judgement of 12 February 2008 by the Grand Chamber of the European Court of Human Rights in Case "Kafkaris v. Cyprus", Application No. 21906/04, Paras 150 and 152*).

The European Court of Human Rights has stated: no matter how precisely and clearly legal provisions have been worded, their content, also in criminal law, will always have to be clarified through interpretation. It will always be necessary to clarify dubious issues and adapt legal norms to changing circumstances (*see Judgement of 25 June 2009 by the European Court of Human Rights in Case "Liivik v. Estonia", Application No. 12157/05, Para 94*).

In the present case, the compliance with the *Satversme* of such a legal norm, which envisages criminal liability of a person, is contested. Thus, the Constitutional Court must verify the compliance of the contested norm of the Criminal Law with Article 90 of the *Satversme* in conjunction with the second sentence of Article 92 of the *Satversme*.

**12.** The Applicant holds that the contested norm of the Criminal Law is vague and therefore he could not have predicted that he would be held criminally liable and punished in accordance with this norm.

To assess whether the contested norm of the Criminal Law complies with Article 90 of the *Satversme* in conjunction with the second sentence of Article 92, it must be ascertained, first, whether the contested norm of the Criminal Law has been adopted and promulgated in accordance with regulatory enactments and, secondly, whether it is accessible and is sufficiently clear and predictable to be the grounds for making a person criminally liable (*compare Judgment of 21 February 2019 by the*

*Constitutional Court in Case No. 2018-10-0103, Para 13.,2 and Judgment of 24 September 2020 in Case No. 2019-22-01, Para 15).*

**13.** Section 236 (1) of the Criminal Law, in the wording that was in force from 18 June 2004 until 31 March 2013, i.e., during the period when the Applicant committed actions, for which he was made criminally liable and punished, was included in the Criminal Law by the law of 20 May 2004 “Amendments to the Criminal Law”. The said draft law was reviewed by the *Saeima* in three readings and adopted in the third reading on 20 May 2004. The law was promulgated in the official journal “*Latvijas Vēstnesis*” on 4 June 2004 and entered into force on 18 June 2004.

The *Saeima* holds that the contested norm of the Criminal Law has been adopted and promulgated in accordance with the procedures set out in regulatory enactments. The Applicant has not expressed any objections in connection with the procedure for adoption and promulgation of the contested norm of the Criminal Law. Neither does the Constitutional Court doubt that the contested norm of the Criminal Law has been adopted and promulgated in accordance with the procedure set out in the *Satversme* and the Rules of Procedure of the *Saeima*.

**Thus, the contested norm of the Criminal Law has been adopted and promulgated in the procedure set out in regulatory enactments.**

**14.** The promulgation of the law is necessary for everyone to know their rights, and it is also a precondition for the validity of the law (*see Judgment of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01, Para 17*). Whereas a person has a subjective public right to be properly informed about his or her rights and also obligations (*see Judgment of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 13.1.*).

The parties to the case do not doubt that the contested norm of the Criminal Law was publicly available. Nor does the Constitutional Court have any doubts that the impugned norm of the Criminal Law was publicly available, as it was announced in an official publication in accordance with the procedures specified in regulatory enactments.

**Thus, the contested norm of the Criminal Law is publicly available to everyone.**

15. In formulating sections of the Criminal Law, the *Saeima* is entitled to use various methods of legal technique, if the result of their use ensures the necessary safeguards against arbitrary accusation, conviction and punishment included in the second sentence of Article 92 of the *Satversme* (see *Judgment of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01, Para 23*).

The contested norm of the Criminal Law provides for criminal liability for negligent storage, transportation or transfer of the objects or substances referred to therein, violating regulatory enactments regulating the circulation of weapons, if such an offence has created a possibility for another person to acquire these objects or substances. The constituent elements of the contested norm of the Criminal Law includes, *inter alia*, a reference to other regulatory enactments that regulate the circulation of weapons (compare. see also *Decisions of 19 March 2013 by the Department of Criminal Cases of the Supreme Court Senate in Case No. SKK-100/2013; Krastiņš U., Liholaja V., Niedre A. Krimināllikuma zinātniski praktiskais komentārs. 3. Sevišķā daļa. Rīga: AFS, 2007, 238. lpp.*).

The Constitutional Court has already recognised that the inclusion of such legal norms that determine criminal liability for a person's actions provided for in another regulatory enactment in the Criminal Law is considered as one of the means for formulating criminal law precepts and such norms determining criminal liability cannot be declared unclear simply because their content needs to be clarified on the basis of other regulatory enactments (see *Judgment of 16 December 2008 by the Constitutional Court in Case No. 2008-09-0106, Para 7.2, and Judgment of 21 February 2019 in Case No. 2018-10-0103, Para 15*).

The Applicant was held criminally liable and punished for negligent storage of firearm ammunition in violation of regulatory enactments regulating the circulation of weapons, if such an offence created a possibility for another person to acquire this ammunition. At the time when the Applicant committed the actions, for which he was held criminally liable and punished, the circulation of weapons was regulated, *inter alia*, by Regulation No. 1001.

**The fact that the contested norm of the Criminal Law provides, *inter alia*, criminal liability for violation of another regulatory enactment is not *per se* the grounds for recognizing it as being unclear or unpredictable.**

16. The Applicant notes that it is impossible to unambiguously clarify the meaning of the contested norm of the Criminal Law. Moreover, no clear and

comprehensible criteria have been defined for differentiating between the violations provided for in the contested norm of the Criminal Law and Section 181 (1) of the Code.

The Constitutional Court has recognised that such situations may arise when the content of a legal norm is rather abstract and the party applying this this norm, in order to ascertain the rights or obligations arising therefrom, must use sources of legal doctrine or judicature, as well as interpret the respective legal norm (*see Judgment of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 11*).

**16.1.** The Applicant holds that the contested norm of the Criminal Law is unclear because, although the occurrence of the consequences provided for therein is a mandatory feature of the respective criminal offence, this norm envisages only the possibility that abstract consequences might occur.

Pursuant to Section 1 (1) of the Criminal Law, only a person who is guilty of committing a criminal offence, i.e. who has deliberately (intentionally) or through negligence committed an offence set out in this law and who has all the constituent elements of a criminal offence, is to be held criminally liable and punished. Thus, if a person's offence lacks even one of the elements provided for in the Criminal Law, his or her offence does not contain the constituent elements of a criminal offence (*see also: Krastiņš U., Liholaja V. Krimināllikuma komentāri. Pirmā daļa (I VIII<sup>2</sup> nodaļa). Otrās papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2018, 16. lpp.*). A person may be found guilty of committing a criminal offence and a criminal penalty may be imposed on him or her by a court judgment and in accordance with the law, hence, the court, in applying the corresponding norm of the Criminal Law, must establish, within the framework of the particular criminal case, the compliance of the constituent elements of a criminal offence, set out in the Criminal Law, with the actual constituent elements of the criminal offence. Only such an offence, committed by a person, which fully corresponds to the constituent elements of the criminal offence included in the Criminal Law, turns into the grounds for criminal liability. Thus, the constituent elements of a criminal offence, included in all sections of the Criminal Law, is an indispensable part of the constituent elements of the respective legal norm.

It follows from the contested norm of the Criminal Law that criminal liability for the respective offence sets in for a person only if the following is established: 1) 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 violation of the regulations

that regulate circulation of weapons, and 2) the possibility created by this offence for another person to acquire this firearm, firearm ammunition, high-powered pneumatic weapons, explosives and explosive devices. Hence, in interpreting the contested norm of the Criminal Law, it can be concluded: in order to make a person criminally liable, the element set out in this norm must be identified – the possibility created, in violation of regulatory enactments, to another person to acquire the objects or substances referred to in this norm, which is an integral part of the constituent elements of this legal norm. The Constitutional Court concludes that this element does not envisage the use of unclear conditions or criteria and complies with the requirements of clarity and predictability. The question whether all the constituent elements of a criminal offence can be established in the offence committed by the particular person, *inter alia*, also whether as the result of violating regulations on the circulation of weapons the possibility was created for another person to acquire the respective weapon, should be examined within the framework of the respective criminal proceedings. The arguments expressed by the Applicant only indicate that the contested norm of the Criminal Law is applied in a manner that it is not to his liking. The general opinion expressed by the Applicant that even the storage of weapons or ammunition in accordance with regulatory enactments does not exclude the possibility that they could be acquired by another person also relates to the application of the contested norm of the Criminal Law and not the constitutionality of this norm.

**16.2.** The participants in the case have expressed different opinions as to whether the case law had evolved regarding the interpretation of the contested norm of the Criminal Law. The Applicant holds that in the case law the contested norm of the Criminal Law is applied only in such situations where the weapon has been lost or left in a publicly accessible place. The *Saeima* points out that in accordance with the contested norm of the Criminal Law, in practice, criminal liability is applied not only for the loss of a firearm or ammunition, but also for leaving it in a place where there is a potential risk that other persons may have access to these objects. However, the *Saeima* has referred to such court rulings that have entered into force after the Applicant had committed activities, for which he was held criminally liable and punished.

According to the second sentence of Article 92 of the *Satversme*, whether judicature or case law regarding the interpretation of a specific legal norm has already been established may not be decisive in assessing the clarity and predictability of this legal norm, unless its content can be clarified by methods of interpretation of legal

norms (*see, for example, Judgment of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 21, and Judgment of 24 September 2020 in Case No. 2019-22-01, Para 21.6*). Nor can Article 7 of the Convention be interpreted as precluding gradual interpretation of norms that envisage criminal liability, using the interpretation provided by courts in individual cases, if only such development complies with the nature of the respective offence and has been reasonably predictable (*see, for example, Judgement of 12 July 2007 by the European Court of Human Rights in Case “Jorgic v. Germany”, Application No. 74613/01, Par 101, and Judgement of 28 August 2018 in Case “Seychell v. Malta”, Application No. 43328/14, Para 44*).

At the time when the Applicant committed actions, for which he was held criminally liable and punished, court rulings had been made by which persons had been held criminally liable and punished in accordance with the contested norm of the Criminal Law both in situations where the objects referred to in the contested norm of the Criminal Law had been lost or stolen and in situations where it had not been established that these items had actually come at the disposal of another person (*see, for example, Judgement of 26 March 2009 by Valmiera District Court in Case. 11130012109, Decision of 24 September 2009 by the Panel of Criminal Cases of Vidzeme Regional Court in Case No. 11130137108, Judgement of 24 August 2010 by Madona District Court in Case No. 11300020310, Judgement of 15 March 2012 by Riga City Vidzeme Suburb Court in Case No. 11091047911*).

Thus, such court rulings were also available, in which the courts had interpreted and applied the contested norm of the Criminal Law to persons whose actions, provided for in this norm, did not lead to the said objects being lost or acquired by another person.

**16.3.** The Applicant holds that clear and comprehensible criteria had not been set for differentiating between the offences set out in the contested norm of the Criminal Law and Section 181 (1) of the Code.

At the time when the applicant committed the actions, for which he was held criminally liable and punished, Section 181 (1) of the Code provided: “In the case of violation of the procedures for the acquisition, registration, storage, transport, delivery, carriage, and importation into the Republic of Latvia or export from the Republic of Latvia of a firearm, munitions or high-energy airguns, committed by a natural person, who has a relevant permit – a fine shall be imposed in an amount up to LVL 250 or suspension of the right to acquire, store and carry a firearm and high-energy airgun

shall be applied for a time period from one year up to three year.” Thus, also the Code provided for administrative liability to a person for violating the procedure of weapon circulation.

It was noted in the commentary on the Criminal Law that, *inter alia*, that negligent storage, carrying, transportation or forwarding of a firearm or firearm ammunition or for negligent storage, transportation or forwarding of objects (substances), referred to in the contested norm of the Criminal Law, was understood as cases when the necessary precautionary regulations on the storage, carrying, transportation or forwarding thereof were not complied with. Criminal liability 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 violation of the regulations that regulate circulation of weapons, sets in if by it the possibility is created for another person to acquire these objects or substances (rob them, find the lost weapon or ammunition, etc.). Causal relationship must be identified between the negligent storage, carrying, transportation or forwarding of the objects or substances referred to above and the consequences envisaged in the section – a possibility created for another person to acquire this weapon or ammunition. As to the subjective part, the respective offence may be committed only due to negligence, mainly – criminal negligence. The offender, by violating the regulations on storing firearms and ammunition, does not foresee that, as the result of his negligent actions, these objects may come at the disposal of another person. In the case of criminal self-reliance, the offender has foreseen that consequences of his negligent actions could set in but nevertheless has carelessly relied on these being prevented (*see: Krastiņš U., Liholaja V., Niedre A. Krimināllikuma zinātniski praktiskais komentārs. 3. Sevišķā daļa. Rīga: AFS, 2007, 239.–240. lpp.*).

The constituent elements of the particular criminal offences, *inter alia*, is what allows differentiating between these offence and other offences. The Constitutional Court already noted that the element, envisaged in the contested norm of the Criminal Law, which provides that criminal liability, sets in only if because of violations of regulatory enactments a possibility is created for another person to acquire the objects and substances referred to in the contested norm of the Criminal Law. Thus, the offence set out in the contested norm of the Criminal Law can be differentiated from

the administrative violation set out in Section 181 of the Code by taking into account the elements defined in these norms.

**Hence, the person could have predicted that the contested norm of the Criminal Law could be applied if the possibility were created for another person to acquire the objects referred to therein, *inter alia*, also in such cases where these objects had not been lost and they had not been acquired by another person.**

17. Section 236 (1) of the Criminal Law provides for criminal liability for negligent storage, carrying, transportation or forwarding of a firearm or ammunition by violating regulations if by it a possibility was created for another person to acquire this weapon or ammunition already since 1 April 1999 when the Criminal Law entered into force.

The contested norm of the Criminal Law, in the wording that was in force at the time when the Applicant committed actions, for which he was made criminally liable and punished, was included in the Criminal Law by the law of 20 May 2004 “Amendments to the Criminal Law”, which entered into force on 18 June 2004. The amendment to Section 236 of the Criminal Law was introduced to envisage liability in this norm not only for negligent storage, carrying, transportation and forwarding of a firearm or ammunition but also for negligent storage, transportation or forwarding of high-powered pneumatic weapons, explosives and explosive devices (*see annotation to draft law No. 535 “Amendments to the Criminal Law and Case Materials, Vol. 1, pp. 130–132*).

The law of 13 December 2012 “Amendments to the Criminal Law”, which entered into force on 1 April 2013, amended, *inter alia*, the criminal punishment for criminal offences set out in the first and the second part of Section 236 of the Criminal Law.

The Amendments of 29 October 2015, in turn, amended the constituent elements of the criminal offence provided for in Section 236 (1) of the Criminal Law, expressing it in new wording: “For unauthorised storage, carrying, transportation and forwarding of firearms, essential components of firearms, firearm ammunition, high-powered pneumatic weapons, explosives and explosive devices, if as a result of which any of the abovementioned items has been lost or acquired by another person, –”.

The proposal to amend Section 236 (1) of the Criminal Law was submitted for the second reading of the draft law by the Minister for Justice. In the substantiation provided for the proposal for draft law No. 187/Lp12 “Amendments to the Criminal

Law”, the Minister for Justice noted that the wording that was in force at the time envisaged that “as soon as the fact of negligent storage, carrying, transportation of forwarding of a firearm of ammunition is established, [..], in violation of regulatory enactments that regulate the circulation of weapons, the possibility for another person to acquire has been created, therefore criminal proceedings must be initiated. However, Section 181 of the Code provides for administrative liability for violating the regulations on the circulation of a firearm, firearm ammunition [..] for a person who has the respective permit. In practice, criminal proceedings are initiated only if another person has acquired the firearm, ammunition, a high-powered pneumatic weapon or these have been lost, in other cases the minutes on administrative violation are drawn up in accordance with Section 181 (1) of the Code. In view of the above, by the proposal, liability in Section 236 (1) of the Criminal Law is clearly set out only in those case when the respective weapon has been lost or has been acquired by another person” (*Case Materials, Vol. 2, pp. 5–9*). The proposal to provide for criminal liability in the future only for such offence, set out in Section 236 (1) of the Criminal Law, as the result of which the respective object or substance had been lost or had been acquired by another person, was discussed also at the sitting of the *Saeima* Legal Committee on 17 June 2015. At this sitting, the representative of the Ministry of Justice informed that the proposal had been submitted because the parties applying law had indicated that the element envisaged in the contested norm of the Criminal Law – the hypothetical possibility for another person to acquire the firearm – was very hard to prove and establish in practice (*see audio recording of the sitting from 1.14.42 to 1.15.23*).

The Constitutional Court has acknowledged that the legal regulation is constantly evolving, *inter alia*, the legislator is improving the wording of regulatory enactments so that they would reflect its will more accurately. Therefore, the mere fact that the issuer of regulatory enactments later decides to amend the relevant norms does not mean *per se* that they would not have been sufficiently clear previously (*see Judgment of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 18.2, and Judgment of 24 September 2019 in Case No. 2019-22-01, Para 22.2*). Thus, the fact that the legislator has subsequently amended the contested norm of the Criminal Law, *inter alia*, specifying the offence for which criminal liability is provided for subsequently, is not in itself grounds for recognizing the contested norm of the Criminal Law as being unclear or unpredictable.

It is not possible to conclude from the materials of drafting the Criminal Law and its amendments at the disposal of the Constitutional Court that the legislator would

have wanted to criminalize only the offence referred to in Section 236 (1) of the Criminal Law in the wording in force until 31 March 2013, as a result of which the relevant object or substance has been lost or acquired by another person. From the materials of drafting the Amendments of 29 October 2015, the opposite can be concluded, i.e., that only these amendments narrowed the constituent elements of the criminal offence referred to in Section 236 (1) of the Criminal Law, subsequently providing criminal liability only for the offence, as the result of which the respective object has been lost or acquired by another person. In the present case, the reference made in the process of adoption of the Amendments of 29 October 2015 that, in practice, criminal proceedings were initiated only if the firearm, ammunition or high-energy pneumatic weapon had been acquired by another person or they had been lost is not of decisive importance. Moreover, this general reference is not based on specific examples of case law.

With the amendments of 29 October 2015, the legislator has amended Section 236 (1) of the Criminal Law with the purpose of envisaging subsequently criminal liability in the future for only such offences, as the result of which the respective object or substance has been lost or acquired by another person; however, this does not mean *per se* that previously this norm would not have been sufficiently clear to be the grounds for making a person criminally liable.

**18.** A legal norm must be recognized as being sufficiently clear and predictable even if a person, receiving appropriate legal aid, could have foreseen as a result of which action he or she may be held criminally liable for committing the criminal offence specified in the relevant legal norm (*see, for example, Judgement of 21 October 2013 by the Grand Chamber of the European Court of Human Rights in Case “Del Río Prada v. Spain”, Application No. 42750/09, Para 79*).

Both in interpreting the contested norm of the Criminal Law and evaluating the adopted court rulings on the application of this norm, as well as the findings made in the legal doctrine, it can be concluded, *inter alia*, that the scope of the contested norm of the Criminal Law also includes such offences, as the result of which the objects referred to in this norm have not been lost or have not been acquired by another person. The question of whether all constituent elements of the relevant criminal offence can be identified in a person's offence must be assessed within the framework of the specific criminal proceedings. The Constitutional Court additionally points out: even if a person were unable to ascertain the scope of the contested norm of the Criminal Law,

he could have ascertained it by receiving appropriate legal assistance. Thus, the contested norm of the Criminal Law defines with sufficient clarity the actions, for which a person may be held criminally liable.

The required level of predictability of a legal norm depends, *inter alia*, on the content of the respective regulatory enactment, the area that it regulates, as well as the number and status of its subjects (*see Judgment of 21 February 2019 by the Constitutional Court in Case No. 2018-10-0103, Para 13.2*). Persons, who have become accustomed to acting with special precaution in their professional activities can reasonably be expected to assess the risks associated with such activities with particular care and, accordingly, to be able to forecast the criminal law risks related to their professional activities better than other persons (*see Judgment of 24 September 2019 by the Constitutional Court in Case No. 2019-22-01, Para 24*). The European Court of Human Rights has also recognized that the predictability of a norm is assessed from the point of view of the sentenced person (*see Judgment of 21 October 2013 by the Grand Chamber of the European Court of Human Rights in Case “Del Río Prada v. Spain”, Application No. 42750/09, Para 112*).

Regulatory enactments that regulate the circulation of weapons require that a proficiency test be passed before the first acquisition of a firearm. Passing such a test confirms, *inter alia*, that the person is familiar with the procedure for the circulation of weapons and ammunition. The applicant was performing the duties of a senior inspector at the Criminal Police Group of Riga Kurzeme District of Riga Region of the State Police at the time when he committed the activities, for which he was held criminally liable and punished. The Applicant, as an official of the State Police, was allowed to use a firearm as a service firearm while performing official duties. Such right is inextricably linked to the duty to exercise special care in the performance of the service.

Hence, it is reasonable to expect that a person who has the right to handle a weapon in the performance of his or her duties is more familiar than other persons not only with the rules governing the circulation of weapons and ammunition, but also with the criminal law risks related to violation of these regulations.

**19.** Summarizing the above, the Constitutional Court concludes that a person could find out for what action he or she could be held criminally liable in accordance with the contested norm of the Criminal Law. Consequently, the Contested norm of the

Criminal Law is considered to be sufficiently clear and predictable to make a person criminally liable.

**Thus, the contested norm of the Criminal Law complies with Article 90 and the second sentence of Article 92 of the *Satversme*.**

20. Substantially, the Applicant requests assessing the compliance of the contested Transitional Provision with Article 1 and Article 92 of the *Satversme*, as he considers that the legislator cannot limit the retroactive effect of the law improving a person's situation.

By the judgement of the Riga City Ziemeļi District Court of October 2016, the Applicant has been recognised as being guilty of committing the criminal offence provided for in the contested norm of the Criminal Law. It follows from the said judgement that the Applicant, in violating the provisions of Para 29 of Regulation No. 1001 and the provisions of Para 62 of Regulation No. 1 of the Ministry of the Interior of 4 January 2006 "Regulations on the Procedure for Receiving, Storing, Registering, Issuing for Service, Carrying and Using Arms in the Institutions of the System of the Ministry of the Interior", stored the pistol cartridges in his use in the desk drawer in his cabinet, thus allowing the possibility that ammunition of the weapon could come into the hands of unauthorised persons. By the judgement of the Riga Regional Court of 13 December 2018, the judgment of the Riga City Ziemeļi District Court was left unchanged in this part.

The Applicant has noted that both in the appellate and cassation complaint that by Amendments of 29 October 2015 his offence had been recognised as not being criminally punishable since, in accordance with the charges, ammunition of the weapon had not been lost and had not been acquired by another person. However, both the Riga Regional Court in its judgement of 13 December 2018 and the Supreme Court in its decision of 21 November 2019, by which this judgement by the Riga Regional Court was left unchanged, noted that, pursuant to the contested Transitional Provision, amendments to the law did not apply to those persons, who had committed the criminal offence before the date when the Amendments of 29 October 2015 entered into force, and, thus were not applicable to the Applicant, who had committed the criminal offence provided for by the contested norm of the Criminal Law prior to 3 December 2015.

The Amendments of 29 October 2015 narrowed, *inter alia*, the constituent elements of the criminal offence provided for in Section 236 (1) of the Criminal Law,

providing for criminal liability only in cases where the object or substance referred to in this norm had been lost or acquired by another person (*see Para 17 of this judgment*). Consequently, on 3 December 2015, such actions, for which the Applicant was made criminally liable and punished, became criminally unpunishable. However, the contested Transitional Provision determined that the norm of the Criminal Law, which was in force at the time of committing the offence, had to be applied.

Although, when reviewing a case initiated on the basis a constitutional complaint, significant importance should be attached to the actual circumstances of the case, in which the contested norm had violated the Applicant's fundamental rights (*see, for example, Judgment of 23 November 2015 by the Constitutional Court in Case No. 2015-10-01-12*), the Constitutional Court, however, must also assess the situation of all those persons who are in circumstances that are similar and comparable to the circumstances of the submitter of the constitutional complaint. Moreover, the Constitutional Court must ensure comprehensive and objective examination of the case, as well as procedural economy and the existence of such a legal system, in which regulation that is incompatible with the *Satversme* is prevented as completely and comprehensively as possible (*see Judgment of 24 November 2017 by the Constitutional Court in Case No. 2017-07-01, Para 12.2*).

The contested Transitional Provision applies not only to the amendments to Section 236 (1) of the Criminal Law, but also to amendments to other sections of the Special Part of the Criminal Law. The main issue in the present case is related only to the amendments to Section 236 (1) of the Criminal Law.

Consequently, within the framework of the present case under review, the Constitutional Court will assess the compliance of the contested Transitional Provision, insofar as it does not provide for retroactive effect of the amendments to Section 236 (1) of the Criminal Law with respect to offences committed before 3 December 2015, with Article 1 and Article 92 of the *Satversme*.

**21.** The Applicant's opinion regarding the incompatibility of the contested Transitional Provision with Article 1 and Article 92 of the *Satversme* is based on the fact that he had been punished for an offence, which had already been recognized as not criminally punishable during the examination of the criminal case. The Applicant's considerations regarding Article 1 of the *Satversme*, i.e., violation of the principle of a state governed by rule of law, are related to the arguments regarding the

incompatibility of the contested Transitional Provision with Article 92 of the *Satversme*.

The Constitutional Court has concluded: if the compliance of a legal norm with several legal norms of higher legal force is contested, then the Court, taking into account the substance of the case under review, must determine the most effective approach to the assessment of this compliance (*compare see Judgement of 15 May 2020 by the Constitutional Court in Case No. 2019-17-05, Para 13*).

**21.1.** Article 1 of the *Satversme* provides that Latvia is an independent democratic republic. The Constitutional Court has concluded that the general principles of law, derived from the basic norm of a democratic state governed by the rule of law, including the principle of the rule of law, fall within the scope of Article 1 of the *Satversme* (*see, for example, Judgment of 5 March 2019 by the Constitutional Court in Case No. 2018-08-03, Para 11*).

The Constitutional Court has acknowledged: if the legislator's decisions infringe on the rights and lawful interests of an individual, then it should be assessed whether they comply with the principles of a state governed by the rule of law (*see Judgment of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01*). Article 1 of the *Satversme* includes several principles of a state governed by the rule of law, including the principles of proportionality, legitimate expectations, justice, and the rule of law (*compare for example, Judgment of 17 October 2005 by the Constitutional Court in Case No. 2005-07-01, Para 7.3, and Judgement of 4 January 2007 in Case No. 13-01-03, Para 10, and Judgement of 11 April 2007 in Case No. 2006-28-01, Para 12*).

**21.2.** Article 92 of the *Satversme* provides: "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 Applicant considers that a criminal penalty has been imposed on him for such activities, which at the time of the trial of the case had already been recognized as not being criminally punishable by the legislator. Hence, the issues to be assessed in the case relate to the scope of the second sentence of Article 92 of the *Satversme*.

In accordance with the second sentence of Article 92 of the *Satversme*, a person may be found guilty and a punishment may be imposed on him or her only for such an action, which has been recognized as punishable in accordance with law (*see Judgment of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01, Para 14*).

The Constitutional Court has recognised that the legislator enjoys broad discretion in determining punishment for particular offences, as well as defining conditions for releasing a person from the liability for them. When adopting such regulation, the legislator usually relies on the notions, views and values accepted by the society and which it is entitled to express in a normative manner. In developing penal policy, the legislator defines the framework of a person's behaviour, thus protecting public safety (*compare, see Judgment of 19 November 2013 by the Constitutional Court in Case No. 2013-09-01, Para 10*).

**21.3.** When assessing the compliance of a legal norm with the general legal principles derived from the basic norm of a democratic state governed by the rule of law, which fall within the scope of Article 1 of the *Satversme*, it must be taken into account that these principles can be manifested differently in different areas of law. The nature of the contested norm, its connection with other norms of the *Satversme* and place in the legal system also influence the review exercised by the Constitutional Court (*compare, for example, Judgment of 11 December 2020 by the Constitutional Court in Case No. 2020-26-0106, Para 10.2*).

The Constitutional Court concludes that the basic issue of the present case is related to the fact that the Applicant was punished for an offence, which had already been declared criminally unpunishable during the trial of the criminal case. Consequently, the compliance of the contested Transitional Provision with the general legal principles included in Article 1 of the *Satversme* should be assessed in conjunction with the second sentence of Article 92 of the *Satversme*.

**21.4.** The Constitutional Court has recognised that the main goal of the legal system of a democratic state governed by the rule of law is to ensure justice (*compare see Judgment of 12 March 2020 by the Constitutional Court in Case No. 2019-11-01, Para 14*). The principle of a state governed by the rule of law requires, *inter alia*, that the result of criminal proceedings be fair (*see, for example, Judgment of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 8, and Judgment of 11 April 2007 in Case No. 2006-28-01 Para 12*).

One aspect of the principle of legal certainty is the protection of legitimate expectations. The principle of legal certainty guarantees a predictable environment and requires that people be able to plan their lives safely, aware of the legal consequences of their actions. It stipulates that: 1) no state action may have retroactive effect; 2) the legislator must ensure a reasonable period of time for the citizens of the state to prepare for the application of the relevant legal instrument from the date of its publication (*see:*

Grigore-Bāra E., Kovaļevska A., Liepa L., Levits E., Mits M., Rezevska D., Rozenvalds J., Sniedzīte G. *1. panta komentārs. Grām.: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Rīga: Latvijas Vēstnesis, 2014, 201.–202. lpp.*). In accordance with the principle of legal certainty in criminal law, the criminality and punishability of a crime are determined by law in force at the time when the offence was committed.

However, retroactive force of a law is admissible in public law if it improves the subject's legal status (*see: Iljanova D. Vispārējo tiesību principu nozīme un piemērošana. Rīga, Ratio iuris, 2005, 64. lpp.*). The principle that the norms of criminal law that were in force at the time when the offence was committed should be applied to a person is the advantage since it protects the offender against arbitrary punishment, *inter alia*, the type and scope of the penalty. The principle that laws providing for criminal liability do not have retroactive effect can be restricted by the exception that new laws that make the previous rules more lenient have retroactive effect (*compare see: Krugļevskis A. Kriminālpolitika. Rīga, 1934, 30.–31. lpp.*).

The principle of the retroactive force of a rule favourable to a person in criminal law is to be derived from the principle of the rule of law, as this principle also provides that every punishable act must be subject to such punishment as the legislator deemed to be appropriate at the time when the punishment was determined. Thus, the principle of retroactive effect of a rule favourable to a person in criminal law provides: if there is a difference between the law in force at the time of the offence and the law adopted after the offence, the courts must apply the law the provisions of which are more favourable to the accused. The principle of the retroactive force of a rule that is favourable to a person in criminal law must be applied, by weighing and balancing it in the specific situation and circumstances in conjunction with other general legal principles in force in a democratic state governed by the rule of law, including the principle of justice, as well as by complying with the norms of the *Satversme* and international law.

**21.5.** In clarifying the content of fundamental rights defined in the *Satversme*, Latvia's international obligations in the field of human rights also should be taken into account. Article 89 of the *Satversme* stipulates that the State recognizes and protects fundamental human rights in accordance with the *Satversme*, laws and international agreements binding upon Latvia. According to this article, the legislator's aim is to achieve harmony between the human rights norms included in the *Satversme* and the norms of international law. International human rights norms binding upon Latvia and

the practice of their application at the level of constitutional law also serve as a means of concretization to determine the content and scope of the principles of a democratic state governed by the rule of law, insofar as it does not lead to decreasing the protection of fundamental rights included in the *Satversme* (see, for example, *Judgement of 11 December 2020 by the Constitutional Court in Case No. 2020-26-0106, Para 11.1.*) In the present case, the second sentence of Article 92 of the *Satversme* is to be assessed, *inter alia*, in conjunction with Article 15 of the International Covenant on Civil and Political Rights (hereinafter – the Covenant) and Article 7 of the Convention.

Para 1 of Article 15 of the Covenant provides: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.” It has been recognised in the legal doctrine that, in accordance with the third sentence of Para 1 of Article 15 of the Covenant, courts, in examining criminal cases, have the obligation to apply in all cases more favourable retroactive force of the law, which provides for a more lenient punishment for committing the respective offence (see: *Nowak M. U. N. Covenant on Civil and Political Rights: CCPR Commentary. 2nd ed. Kehl am Rhein: Engel, 2005, p. 366*).

The Constitutional Court has already noted that the first sentence of Para 1 of Article 7 of the Convention includes the principle of prohibiting retroactive force of law and also comprises other principles, i.e., only the law may determine, what a criminal offence is, and envisage liability for it, and that criminal law may not be applied in extended scope to the detriment for the accused, by applying analogy (see, for example, *Judgment of 16 December 2008 by the Constitutional Court in Case No. 2008 -09-0106, Para 4.1, and Judgment of 24 September 2020 in Case No. 2019-22-01, Para 14*).

The European Court of Human Rights has noted: the principle that the more lenient rules of criminal law must be applied retroactively is indirectly guaranteed in Article 7 of the Convention (see, for example, *Judgement of 3 December 2019 by the European Court of Human Rights in Case “Parmak and Bakır v. Turkey”, Applications No. 22429/07 and 25195/07, Para 64*). In accordance with the principle of the rule of law enshrined, *inter alia*, in Article 7 of the Convention, courts are expected

to apply for each punishable action such a penalty which the legislator considers proportionate. If a stricter penalty were imposed solely because it was provided for by law at the time when the criminal offence was committed, it would mean that the rules on changes in criminal law over time would be applied to the detriment of the accused. Thus, the changes in the law in favour of the accused, adopted prior to his conviction, would not be taken into account, and the penalties that the State - and the society it represents - now consider to be excessively severe would be applied. The obligation to choose from the various provisions of criminal law the most favourable to the accused is also consistent with another essential element of Article 7 of the Convention, the predictability of sentences (*see Judgement of 17 September 2009 by the Grand Chamber of the European Court of Human Rights in Case "Scoppola v. Italy (No. 2)", Application No. 10249/03, Para 108*). Moreover, this pertains not only to the application of a more favourable sentence, but also to changes in the legal provisions on criminal liability (*see Judgement of 3 December 2019 by the European Court of Human Rights in Case "Parmak and Bakır v. Turkey", Applications No. 22429/07 and 25195/07, Para 64*).

**Thus, Article 1 and the second sentence of Article 92 of the *Satversme* in their interconnection include the principle of retroactive force of a provision favourable to a person in criminal law, which is also applicable in the case when a specific offence has been recognized as not being criminally punishable.**

22. Section 5 of the Criminal Law regulates the force in time of the Criminal Law. Pursuant to Section 5 (1) of the Criminal Law, the criminality and punishability of an offence (act or failure to act) are determined by the law which was in force at the time of committing the offence. Whereas the second part of this section provides: "A law which recognises an offence as not punishable, reduces the punishment or is otherwise beneficial to a person, unless otherwise provided for in the applicable law, has retrospective effect, that is, it applies to offences which have been committed prior to the applicable law coming into force, as well as to a person who is serving a punishment or has served a punishment but regarding whom conviction remains in effect." Pursuant to the third part of this section, a law which recognises an offence as punishable, increases the punishment, or is otherwise not beneficial to a person, does not have retrospective effect.

The principle of the retroactive effect of a favourable rule in criminal law was already laid down in the Penal Law of 24 April 1933. The said law defined the guiding

principles - the law had no retroactive effect, but a more favourable law had retroactive effect. The commentaries on the Penal Law state, *inter alia*, that the State must completely waive punishment if, as a result of the development in legal awareness, it has itself repealed the relevant provision after the criminal offence had been committed. Thus, Section 12 (3) of the Penal Law provided: if a law that was in force at the time when the criminal offence was committed is repealed before the perpetrator is tried, declaring the offence unpunished, then the penalty is not applicable (*see: Mincs P., Ehlerss H., Jakobi P., Lauva J. 1933. gada 24. aprīļa Sodū likums ar likumdošanas motīviem un sīkiem komentāriem. Rīga: SIA „Limited Company”, 2016, 9. lpp.*). Also Section 6 of the Latvian Criminal Law provided that a law, which recognises an offence as being unpunishable or makes the punishment more lenient, has retroactive effect (*see, also, for example, Decision of 7 May 1996 by the Department of Criminal Cases of the Supreme Court in Case No. SKK-101/1996*).

According to the legal doctrine, Section 5 (2) of the Criminal Law provides for exceptions to the principle of application of the law in force at the time when the offence was committed, when the new criminal law applies to criminal offences committed before its entry into force, as well as to a person, who is serving a sentence or has served a sentence, but who has retained a criminal record, unless otherwise provided by law. Pursuant to Section 5 (2) of the Criminal Law, a new law has a retroactive effect (the principle of retroactivity) if it: 1) recognises an offence as not being punishable; 2) reduces the punishment; 3) is otherwise beneficial to a person. If the new law is stricter, i.e., recognises an offence as being punishable, increases the punishment or is otherwise unfavourable to a person, it does not have retroactive effect. In this case, the principle of ultra-activity, enshrined in Section 5 (3) of the Criminal Law operates, and the law of the time when the criminal offence was committed is applied (*see: Krastiņš U., Liholaja V. Krimināllikuma komentāri. Pirmā daļa (I–VIII<sup>2</sup> nodaļa). Otrās papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2018, 32.–35. lpp.*). Summoned person Māris Onževs has expressed the opinion that the principle of penal law – the legislator is obliged to define retroactive effect of a law if this law is more favourable for an offender – is to be considered as an independent legal principle within the Latvian legal system.

Legal doctrine differentiates between two types of retroactive effects of a law – the regular retroactive effect of a law, when a new, more lenient criminal law is applied to those criminal offences, which have not been tried yet or with respect to which judgements have not yet come into legal effect, and the revising retroactive effect of a

law, which is manifested as applying a new, more lenient criminal law to those criminal offences, with respect to which a judgement has already entered into legal force or the enforcement of which has been initiated, unless the new law provides otherwise. An offence can become unpunishable if the constituent elements of the criminal offence have been changed in the new law, envisaging in it such elements that narrow the circle of the criminal offence (*see Krastiņš U., Liholaja V. Krimināllikuma komentāri. Pirmā daļa (I–VIII<sup>2</sup> nodaļa). Otrās papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2018, 32.–34. lpp.*).

Thus, Section 5 of the Criminal Law reflects, *inter alia*, the general legal principle, included in Article 92 of the *Satversme*, that a person may be found guilty and a punishment may be applied only for such actions of a person which have been recognized as punishable according to law. Whereas Article 5 (2) of the Criminal Law reflects, *inter alia*, the principle that requires the application of the most favourable criminal law norms to a person.

**23.** To ascertain whether the contested Transitional Provision complies with Article 1 and the second sentence of Article 92 of the *Satversme*, it must be ascertained whether, taking into account the specific situation and circumstances, a derogation from the principle of retroactive effect of a rule more favourable to a person in criminal law is permissible.

Assessing collisions between several general legal principles, is, first and foremost, the legislator's obligation (*compare see Judgment of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 13.2*). The Constitutional Court upholds the opinion expressed by Maris Onževs that the legislator must substantiate the deviation from the principle of retroactive effect of a rule favourable to a person in criminal law. Otherwise, the meaning of this principle would be lost and the establishment of a favourable retroactive effect in criminal law would be made dependent solely on the will of the legislator.

It has been noted in the legal doctrine that the issues related to the retroactive effect of the law are dealt with in the transitional provisions of the law on amendments to the Criminal Law (*see: Krastiņš U., Liholaja V. Krimināllikuma komentāri. Pirmā daļa (I–VIII<sup>2</sup> nodaļa). Otrās papildinātais izdevums. Rīga: Tiesu namu aģentūra, 2018, 34. lpp.*).

The transitional provision on limiting the retroactive effect was included in the initial wording of both the draft law elaborated by the Cabinet “Amendments to the

Criminal Law” (draft law No. 151/Lp12) and the alternative draft law “Amendments to the Criminal Law” (draft law No. 187/Lp12). However, the initial wording of the draft law No 187/Lp12 “Amendments to the Criminal Law” did not include amendments to Section 236 (1) of the Criminal Law. As noted in Para 17 of this judgement, the proposal to amend Section 236 (1) of the Criminal Law was submitted by the Minister for Justice before the second reading.

The proposal to amend Section 236 (1) of the Criminal Law was examined at the sitting of the *Saeima* Legal Committee on 17 June 2015 (*see audio recording of the sitting from 1.14.42 to 1.15.23*). The contested Transitional Provision, in turn, was examined at the sitting of the *Saeima* Legal Committee on 29 September 2015 (*see audio recording of the sitting from 01.29.07 to 01.30.20*).

The Applicant holds that the *Saeima* has not assessed the application of the contested Transitional Provision to the amendments to Section 236 (1) of the Criminal Law. The *Saeima*, in turn, points out that both the amendment to Section 236 (1) of the Criminal Law and the contested Transitional Provision regarding the effect of law in time have been assessed and no doubts had arisen that the effect of law in time, defined by the contested Transitional Provision of the Criminal Law, was applicable to the contested norm of the Criminal Law.

Consequently, the Constitutional Court must assess whether such circumstances can be established which substantiate the deviation from the principle of retroactive effect of a rule favourable to a person in criminal law in relation to amendments to Section 236 (1) of the Criminal Law.

**24.** The contested Transitional Provision reflects, *inter alia*, that the legislator had decided to specify the principle of the retroactive effect of a rule favourable to a person in criminal law with respect to the offences, provided for in Section 236 (1) of the Criminal Law, which had been committed prior to 3 December 2015 and in the future are to be recognised as not being criminally punishable, i.e., how the legislator has decided to regulate the particular criminal law relationship. Although the proposals submitted during examination of draft law No. 187/Lp12 “Amendments to the Criminal Law” and the audio recordings of the sittings of the *Saeima* Legal Committee on 17 June 2015 and 29 September 2015 do not allow identifying considerations as to why the contested Transitional Provision was applied to the offences provided for in Section 236 (1) of the Criminal Law, which had been committed before the respective law entered into effect, however, the legislator’s purpose can be inferred from the

materials for drafting the Amendments of 29 October 2015. By amending Section 236 (1) of the Criminal Law, the intention of the legislator was not to provide for further criminal liability for an offence as a result of which the object referred to in this norm had not been lost or had not been acquired by another person. The *Saeima* points out that the contested Transitional Provision ensures predictability and legal certainty in criminal cases initiated by 3 December 2015. However, the contested Transitional Provision concerns a situation, in which the legislator must assess the principle of legal certainty by weighing and balancing it in conjunction with other general legal principles in a democratic state governed by the rule of law: the principle of retroactive effect of a rule favourable to a person in criminal law and the principle of justice.

The principle of legal certainty in criminal law obliges the State, *inter alia*, to ensure the certainty and stability of legal relations. It provides that the norm of substantive law that was in force at the time when the offence was committed is applied to a person. The principle of retroactive force of a rule favourable to a person in criminal law, in turn, requires that the legislator determine a favourable retroactive force of a legal norm that is more favourable to the person who has committed the violation, but the principle of justice – that the result of criminal proceedings be fair.

Even before the first-instance court delivered the judgement in the criminal case, the action, for which the Applicant had been punished, had become criminally unpunishable. However, the courts of all three instances found the application of the contested provision of the Criminal Law justified, as the contested Transitional Provision provided that the amendments to Section 236 (1) of the Criminal Law did not apply to offences committed before 3 December 2015.

There may be cases where, in the light of certain actual and legal circumstances, a derogation from the retroactive application of rule favourable to a person in criminal law is permissible. However, a person may not be subject to a criminal penalty solely because it was provided for in the Criminal Law at the time when the particular offence was committed, in case the legislator later amended the relevant provision of the Criminal Law, declaring the offence not being criminally punishable. In such a case, the principle of the retroactive effect of a rule favourable to a person in criminal law must prevail.

In the particular case, the Constitutional Court also does not discern other objective justifications arising from the principle of justice or other general legal principles, due to which with respect to amendments to Article 236 (1) of the Criminal

Law regarding offences committed before 3 December 2015 and subsequently, after amending this norm, an exception to the principle of the retroactive effect of a rule favourable to a person in criminal law should apply. Thus, taking into account the specific actual and legal circumstances, it can be concluded that in accordance with the main goal of the legal system of a democratic state governed by the rule of law – to ensure justice – a person cannot be subject to a punishment that the State already at the moment of applying the respective legal norm considers as being excessively strict.

**Hence, the contested Transitional Provision, insofar it does not provide for the retroactive effect of amendments to Section 236 (1) of the Criminal Law with respect to offences committed prior to 3 December 2015 and subsequently are to be recognised as being criminally unpunishable, is incompatible with Article 1 and the second sentence of Article 92 of the *Satversme*.**

25. In accordance with Section 32 (3) of the Constitutional Court Law, a legal norm which the Constitutional Court has declared inconsistent with a legal norm of higher legal force is deemed invalid from the day of publication of the judgment of the Constitutional Court, unless the Constitutional Court has provided otherwise. In accordance with Para 11 of Article 31 of the Constitutional Court Law, when the Constitutional Court recognizes a legal norm as being incompatible with a legal norm of higher legal force, it must determine the moment when the respective norm becomes invalid.

25.1. The applicant requests, substantially, that the contested Transitional Provision be declared invalid as from its entry into force.

The Constitutional Court has recognised that when deciding on the moment as of which the contested norm becomes invalid, it must be taken into account that its task is to prevent as far as possible the violation of the Applicant's fundamental rights (*see Judgment of 6 June 2018 by the Constitutional Court in Case No. 2017-21-01, Para 20.1*).

In the present case, a result of application of the contested Transitional Provision, the Applicant was held criminally liable and punished in accordance with the contested norm of the Criminal Law. Recognition of the contested Transitional Provision as invalid from the moment when the violation of fundamental rights occurred in relation to the Applicant is the only possibility to protect his fundamental rights.

Hence, the contested Transitional Provision with regard to the Applicant is to be declared invalid from the moment when the violation of his fundamental rights occurred.

**25.2.** In defining the particular date, as of which the contested norm becomes invalid, the Constitutional Court also assesses whether there are any considerations as to why the contested norm should be declared invalid retroactively not only in relation to the Applicant (*see Judgement of 6 June 2018 by the Constitutional Court in Case No. 2017-21-01, Para 20.2.* ).

Criminal liability is the most severe possible form of legal liability, and its consequences may significantly affect a person's life even after serving a criminal sentence (*see Judgment of 24 September 2020 by the Constitutional Court in Case No. 2019-22-01, Para 14*). The contested Transitional Provision has also been applied in other criminal proceedings, in which persons have been found guilty of committing criminal offences provided for in Section 236 (1) of the Criminal Law, which were committed before 3 December 2015 and subsequently were recognised as criminally unpunishable, hence, the. fundamental rights of other persons have also been violated. To protect the fundamental rights of those other persons, it is necessary to provide that the contested Transitional Provision, with respect to persons, to whom it had been applied in criminal proceedings or should be applied in criminal proceedings, is invalid from the moment when the violation of the fundamental rights of those persons occurred.

### **The Substantive Part**

On the basis of Sections 30 – 32 of the Constitutional Court Law, the Constitutional Court

**held:**

**1. To recognise Section 236 (1) of the Criminal Law (in the wording that was in force until 31 March 2013) as being compatible with Article 90 and the second sentence of Article 92 of the *Satversme* of the Republic of Latvia.**

**2. To recognise the Transitional Provision of the law of 29 October 2015 “Amendments to the Criminal Law”, insofar it does not provide for retroactive effect of Section 236 (1) of the Criminal Law with respect to offences, which**

**subsequently have been recognised as being criminally unpunishable, as being incompatible with Article 90 and the second sentence of Article 92 of the *Satversme* of the Republic of Latvia, and with respect to persons, to which this provision, insofar it does not provide for retroactive effect of amendments to Section 236 (1) of the Criminal Law, has been applied or should be applied in court, as invalid from the moment when the violation of fundamental rights occurred.**

The judgement is final and not subject to appeal.

The judgement enters into effect on the day it is published.

Chairperson of the court hearing

Sanita Osipova