



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia
in Riga on 23 December 2019
in Case No. 2019-08-01

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

having regard to Juris Jurašs' 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 19² and Section 28¹ of the Constitutional Court Law,

at the court hearing of 21 November 2019 examined, in written procedure, the case

“On Compliance of the Second Part of Article 17 and Article 19 of the Rules of Procedure of the *Saeima* with the Second Sentence of Article 92 and the First Sentence of Article 101 of the *Satversme* of the Republic of Latvia”.

The Facts

1. The second part of Article 17 of the Rules of Procedure of the *Saeima* provides: “If the *Saeima* agrees that criminal prosecution of a *Saeima* Member be initiated, the respective *Saeima* Member shall lose the right to participate in the sittings of the *Saeima*, meetings of its committees and other institutions to which this Member has been elected or appointed by the *Saeima* until the charges are dismissed or until the court sentence enters into force. During this time the Prosecutor's Office and the court have the right to apply any of the coercive measures applicable under the criminal procedure laws.”

Article 19 of the Rules of Procedure of the *Saeima* provides: “If a Member has been suspended from participating in the work of the *Saeima* on the basis of Article 17 of this Law, he/she shall lose entitlement to the reimbursement prescribed in Article 14, and his/her monthly salary shall be reduced by 50 %. If arrest as a security measure has been applied to a Member, the payment of his/her monthly salary shall be suspended for the period of arrest as well. If the case in a criminal matter has been dismissed and if the Member has been found not guilty or has been acquitted, he/she shall receive the full amount of monthly salary and relevant reimbursement [..].”

2. The applicant – Juris Jurašs (hereafter – the Applicant) – participated in the election of the 13th convocation of the *Saeima*, was elected to the *Saeima*, and, at the *Saeima* sitting of 6 November 2018, his mandate as the member of the parliament was approved. On 18 January 2019, the Prosecutor General forwarded to the *Saeima* an application with the proposal by the prosecutor of the Division for Investigating Particularly Serious Crimes of the Criminal Justice Department of the Prosecutor’s General Office regarding consent to commencing criminal prosecution against the Applicant. By its decision of 31 January 2019, the *Saeima* consented to commencing criminal prosecution against the Applicant (hereafter – the *Saeima*’s Decision of 31 January 2019).

The Applicant has submitted a constitutional complaint regarding the compliance of the second part of Article 17 and Article 19 of the Rules of Procedure of the *Saeima* (hereafter – the contested norms) with the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*), being of the opinion that, since the *Saeima*’s Decision of 31 January 2019 was adopted, the contested norms prohibit him from fulfilling his obligations of a Member and from exercising his Member’s rights until the moment when the criminal prosecution is terminated or a convicting sentence comes into force. Hence, the Applicant’s rights, established in the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme*, are said to be disproportionately restricted.

The Applicant notes that the restriction on rights, established by a political decision, – prohibition to take the position of a *Saeima* Member, as to its nature should be equalled to punishment or a security measure. Although a security measure should be applied to a person and a person should be recognised as being guilty only in a procedure established by law, the prohibition to take the

position of a Member, had been applied to the Applicant on the basis of a political decision adopted by the *Saeima*, without a decision on applying a security measure, adopted by the official in charge of the respective proceedings, or without a convicting sentence. The Applicant could be regarded as being incompatible with the position of a *Saeima* Member only if he had been recognised as being guilty of committing a criminal offence by a convicting court's judgement that had entered into force or by a prosecutor's penal order. However, the consequences of the *Saeima*'s Decision of 31 January 2019 are suspending the Applicant from further performance of the Member's duties.

The restriction on fundamental rights, established by the contested norms, which prohibit from performing the duties of a *Saeima* Member, might have several legitimate aims, i.e., the need to ensure protection for the democratic order of the state and not obstruct the course of the criminal proceedings; however, the restrictions that have been set are not appropriate for reaching these aims.

Section 5 of the *Saeima* Election Law includes the conditions, pursuant to which the compatibility of the candidate for the position of a *Saeima* Member with the criterion of "full rights", enshrined in Article 9 of the *Satversme*, is reviewed. It would be possible to establish that the Applicant does not comply with the criterion of "full rights", set in this Article, if he had been punished for committing an intentional criminal offence by a convicting judgement that had entered into effect or by a prosecutor's penal order. It is alleged that the contested norms allow a situation, where a *Saeima* Member, against whom criminal proceedings have been commenced, who cannot be prohibited from standing as a candidate at the *Saeima* elections, immediately after becoming a *Saeima* Member, is suspended from participation in the work of the *Saeima* and is subject to the restrictions on rights established in the contested norms.

If the people have elected their representative to the *Saeima* and he has obtained the Member's mandate then it is very important to ensure that this people's choice is implemented. If a *Saeima* Member is prohibited from performing his duties of office, although no deficiencies in the Member's "full rights" have been established then this is interference into the election results and the people are denied the participation of their representative in the legislative process. Thus, by interfering into the composition of the Members elected to the *Saeima* and by changing it arbitrarily, a democratic state order is not ensured. The restriction established in the contested norms is said to "freeze" the Applicant's mandate and support the possibility that political charges and even

provide incentives for it. It is maintained that society gains no benefit from the restriction on fundamental rights established in the contested norms. Hence, the aim of the restriction on the Applicant's rights is not to ensure that only the *Saeima* Members with full rights perform the duties of a Member's office.

Allegedly, the measure established in the contested norms does not differentiate between the cases, where the criminal proceedings have been commenced against a person in connection with the fulfilment of the Member's duties or circumstances that are totally unrelated to the performance of these duties. The contested norms are said to allow political charges against Members of the *Saeima*, as this allows achieving that they are suspended from the office long before a court's judgement enters into force.

The Criminal Procedure Law comprises a security measure – prohibition on specific employment, which may be applied by the official in charge of the proceedings. As to its nature, this security measure is said to be identical to the provisions made in the contested norms. Its legitimate aim is to ensure undisturbed course of the criminal proceedings, i.e., to ensure that the person does not use his/her office to obstruct the criminal proceedings from reaching their aim. However, this restriction on rights is established in another procedure and on the basis of other legal norms. It is applied in the particular criminal proceedings, on the basis of grounds that are established and enshrined in the procedure set out in law. Moreover, it may be applied if there are grounds to consider that the respective person will continue criminal activities, will evade pre-trial criminal proceedings or legal proceedings, or will obstruct these processes. Such grounds, defined in law, imposes an obligation on the official in charge of the proceedings to assess, what the person is accused of and what kind of objective should be reached by imposing the security measure. The respective decision by the official in charge of the proceedings is subject to multi-tier review – both on the level of the prosecutor's office and the court. Thus, if in the criminal proceedings, in connection with which criminal prosecution has been commenced against the Applicant, grounds were established to apply prohibition on specific employment, the official in charge of the proceedings would have at his/her disposal alternative measures that are of better quality, more effective and less restrictive on a person's fundamental rights for reaching the legitimate aim of the restriction on fundamental rights established in the contested norms.

The prohibition to take the office of a *Saeima* Member, established in the contested norms, is said to violate the presumption of innocence since the restriction on rights, as to its nature, could be equalled to the actual dismissal of

the Applicant from office and prohibition to exercise the rights established in Article 101 of the *Satversme*. The actual effect of the *Saeima*'s decisions is said to be identical to the effect of a convicting judgement or a prosecutor's penal order. Although the Applicant's guilt of the criminal offence he has been charged with has not been established in the procedure set out in the Criminal Procedure Law, already at present, he, like a convicted person, because of the criminal prosecution that has been commenced against him and which is not subject to appeal, has been prohibited from performing his Member's duties.

3. The institution, which issued the contested act, – the *Saeima* – notes in its written reply that the contested norms comply with the first sentence of Article 101 of the *Satversme* and requests terminating legal proceedings in the case in the part regarding the compliance of the contested norms with the second sentence of Article 92 of the *Satvermse* since, with respect to the Applicant, the presumption of innocence had not been violated.

The *Saeima* notes: The Applicant's assumption that, as the result of applying the contested norms, he actually has been prohibited from performing the Member's duties of office and fulfil in any way the mandate of trust granted to him by the voters in democratic elections as a *Saeima* Member, is erroneous. Substantially, the contested norms envisage only some restrictions, interpreted narrowly in practice, i.e., the prohibition to participate in the status of a *Saeima* Member in the sittings of the *Saeima* and its committees. With respect to the sittings of the *Saeima* committees, this restriction, substantially, means prohibition to participate in voting in those committees, to which the Member had been elected and where he would have the right to vote. However, the sittings of the *Saeima* committees are open and a *Saeima* Member, against whom criminal prosecution had been commenced, can attend them, request the chairperson of the committee the floor and speak on the matter under review, *inter alia*, on proposals he has submitted himself.

The prohibition to participate in the *Saeima* sittings means that the Member, against whom criminal prosecution has been commenced, is not allowed to be present in the *Saeima* Session Hall, participate in the discussions and vote. In accordance with long-practiced parliamentary traditions, the presence in "the Member's part" of the *Saeima* Session Hall is strictly limited. Only the *Saeima* Members, who have the right to participate in the *Saeima* sittings, and other persons, who may participate or who have been given special permission to participate in the *Saeima* sittings, may be present there.

Consenting to the commencement of criminal prosecution and prohibition to participate in the sittings of the *Saeima* and its committees, allegedly, do not have an impact on the Member's right to actively exercise other rights and authorisation of a Member. For example, he is not prohibited from submitting proposals regarding the draft laws to be examined by the *Saeima*, to submit, together with other Members, draft laws to the *Saeima* or applications to the Constitutional Court, to submit, together with other Members, proposals regarding expressing non-confidence in the Cabinet, the Prime Minister, the Vice Prime Minister or a Minister, to participate in the work of the *Saeima* factions, the Council of Factions and political blocks and exercise other rights that the *Satversme* and the Rules of Procedure of the *Saeima* envisage for the Member. Likewise, a Member, with respect to whom criminal prosecution has been commenced, does not lose the right to receive timely information needed by the Member, *inter alia*, information about the submitted draft laws, proposals or draft decisions.

The *Saeima* holds that the reference, included in Article 101 of the *Satversme*, to "as provided for by law", applies also to the activities of a *Saeima* Member and comprises the legislator's right to establish the procedure and reasonable restrictions on the exercising of a Member's authorisation, including such Member of the *Saeima*, with respect to whom criminal prosecution has been commenced. Allegedly, the contested norms envisage restrictions on the Member's participation in the sittings of the *Saeima* and its committees and, thus, restrict the rights included in Article 101 of the *Satversme*.

It is not disputed in the case, whether the contested norms had been adopted and promulgated in the procedure established in the *Satversme* and the Rules of Procedure of the *Saeima*, are publicly accessible and sufficiently clear so that a person, if necessary, seeking appropriate advice, would be able to understand the content of the rights and obligations derived from them. Hence, the restriction on fundamental rights had been established by law.

As regards the legitimate aim of the restriction, the *Saeima* notes, first and foremost, that the second part of Article 17 of the Rules of Procedure of the *Saeima* follows from Article 30 of the *Satversme* and is closely interconnected with it. Article 30 of the *Satversme* enshrines the *Saeima* Member's immunity – one of the most essential safeguards of the Member's and the whole parliament's independence. Traditionally, the immunity of a *Saeima* Member follows from the immunity of the parliament, which protects the legislator against improper influence by legislator, whereas the opposition of the

parliament itself – from the pressure by the majority, ensuring compatibility with the principle of the separations of powers, appropriate for the democratic order. Moreover, immunity protects also individual Members of the parliament against possible politically motivated accusations by other political parties. It is important to take into account that coercive measures, envisaged in criminal procedural laws, can be applied to a *Saeima* Member, against whom criminal prosecution has been commenced, and these, depending on their kind, may have a significant influence on the freedom of the Member as a person or his work as a Member in the *Saeima*. For applying these measures, from the date when the *Saeima* has approved the commencement of criminal prosecution against the Member until the final ruling enters into force, repeated consent by the *Saeima* is not required. In fact, this means that the Member's criminal procedural immunity has been waived with respect to the particular criminal proceedings, therefore the legislator has provided that such Member does not participate in the decision-making in the *Saeima*. Moreover, a restriction like this eliminates the possibility that the respective Member could vote on issues pertaining to himself/herself and, thus, influence directly the criminal proceedings commenced against him/her. Hence, the legitimate aim of the restriction established in the contested norms is the protection of the democratic order of the state.

Another aim of the restriction included in the contested norms is said to be the following – protecting the reputation of the parliament, i.e., the public trust in the democratic institutions of the state. If approval is given to commence criminal prosecution against a person, in particular, a *Saeima* Member, a politician or another public official, this inevitably causes discussions in society about the reputation and trustworthiness of the respective institution. The status of a Member – a people's representative elected by the people – is said to set particularly high requirements with respect to the person's reputation. Doubts about the reputation of the Members of the parliament could have a negative impact on the public trust in the legitimacy of decisions adopted by the parliament. This risk is said to be particularly high if consent has been given to commence criminal prosecution against several Members of the parliament at the same time. Hence, the aim of the contested norms is to protect the parliament's authority or public trust in the legislator. This aim is also said to be linked to the protection of the democratic state order.

The restriction established in the contested norms is said to be appropriate for reaching the legitimate aim. The prohibition to participate in the voting at the sittings of the *Saeima* and its committees prevents the situation, where the

executive or the judicial power could be subjected to inappropriate pressure by the Members, against whom criminal prosecution had been commenced, or, in the case of them being a member of the opposition, – the parliamentary majority. This restriction also ensures that society does not develop doubts about the legitimacy and trustworthiness of the parliament's actions since the respective Member does not participate in the adoption of regulatory enactments and various decisions by the *Saeima*.

It is maintained that no other measures for reaching the legitimate aim, which would be less restrictive on the Applicant's rights exist. The restriction included in the contested norms is said both to ensure that the principle of separation of powers is complied with and that the parliament and individual Members are protected against inappropriate influence, and it also protects public trust in the decisions adopted by the legislator. Contrary to the Applicant's assertion, application of a security measure – prohibition of certain employment – would not reach the legitimate aim in the same quality. Since the security measures applicable in criminal proceedings are intended only to prevent counter-actions against reaching the objectives of the particular criminal proceedings or particular investigatory activities, these can be applied only in particular cases, where this need had been established on case-by-case basis. Thus, the measure indicated by the Applicant would not be appropriate for ensuring and protecting the parliament's independence and authority. Moreover, in the case of applying the prohibition to engage in certain employment, the restriction could be much broader and apply not only to the Member's participation in the sittings of the *Saeima* and its committees but also to exercising other rights and mandate of a *Saeima* Member.

Allegedly, the public benefit from the restriction included in the contested norms outweighs the damage inflicted on the individual's rights. The procedure, in which the parliament adopts decisions on waiving the Member's immunity, is said to fall within the area of parliamentary law, where the legislator enjoys broad discretion. The decisions on revoking the immunity of the Member of the parliament are said to be, first and foremost, political decisions, through which the parliament exercises its autonomy. The *Saeima* believes that, within the limits of its autonomy, it has the right to set also restrictions that are applicable to a Member's activities in those cases, where the *Saeima* has revoked this Member's immunity, allowing the judicial power to apply freely such restrictive measures as it deems necessary within the framework of criminal proceedings. The *Saeima* holds that the legislator's right to impose certain restrictions on exercising a

Member's authorisation if criminal prosecution had been commenced against him follows also from Article 21 of the *Satversme*. Regulation of the internal operations of the parliament is said to be a significant manifestation of the parliamentary autonomy and the respective regulation comprises also other restrictions on a Member's work, disciplinary punishments, liability for missing sittings, various limitations on terms and other important aspects in a Member's work. Before the *Saeima* decides on revoking a Member's immunity, appropriate procedure is ensured, which includes also hearing of the respective Member. The task of the Mandates, Ethics and Submissions Committee of the *Saeima* is, upon familiarising itself with each particular submission, to inform the *Saeima* if the respective request could be considered as being inadmissible interference into the activities of a Member and the parliament. Two deputies from each faction are elected to the *Saeima* Mandates, Ethics and Submissions Committee; hence, the need to revoke a Member's immunity is examined as comprehensively, democratically and neutrally as possible.

Substantially, the contested norms do not prohibit the Member to continue representing the interests of his/her electorate. They also ensure the protection of the Member's personal rights. I.e., in accordance with Article 19 of the Rules of Procedure of the *Saeima*, if the criminal case is terminated, without establishing the Member's guilt or if he/she is acquitted, he/she receives the entire monthly salary for the period of his/her suspension as well as reimbursement. Thus, the legislator had ensured the protection of a Member's financial interests and rights also in those cases, where the Member's guilt is not established in criminal proceedings. Thus, the damage inflicted on the individual's rights is said to be lesser than the benefit that society gains through the protection of the society's right to the independence and authority of the parliament.

With respect to the Applicant's arguments regarding probable violation of the presumption of innocence, the *Saeima* notes that certain restrictions linked to the commencement of criminal proceedings, which have been imposed on certain officials, *per se* do not indicate that the person would be considered as being guilty of committing the respective criminal offence. Allegedly, this presumption follows neither directly nor indirectly from the contested norms. Various kinds of restrictions, depending on the particular position and the importance of the particular functions, can be established in law and *per se* do not violate the presumption of innocence. Hence, the *Saeima* is of the opinion that the contested norms do not restrict the Applicant's rights envisaged in Article 92 of the *Satversme* and that the present case should be terminated in this part.

4. The summoned person – the Ombudsman – holds that the contested norms do not affect the presumption of innocence defined by the second sentence of Article 92 of the *Satversme* and that the restrictions established by them fall within the framework of the legislator’s discretion included in Article 101 of the *Satversme*.

The principle of the presumption of innocence is said to apply, primarily, to the examination of a person’s guilt within the framework of criminal proceedings rather than regulating issues related to the performance of a person’s duties of office while the criminal case is being examined. Hence, imposing of temporary restrictions on the performance of duties of office while a criminal case is examined *per se* is not a violation of the presumption of innocence included in the second sentence of Article 92 of the *Satversme* and does not affect the area of application of Article 92 of the *Satversme*.

The rights enshrined in Article 101 of the *Satversme* serve as a safeguard for the existence of a democratic order and are aimed at ensuring the legitimacy of a democratic state order. Section 101 (1) of the *Satversme* does not guarantee a person’s right to a particular office in the civil service, and this right cannot be considered as being absolute since Article 101 of the *Satversme* comprises a condition for exercising this right – “as provided for by law”. The Constitutional Court also had determined that Section 101 (1) of the *Satversme* envisages, in general, a person’s right to continue civil service, unless reasonable and objective grounds for dismissing a person from it exist. Hence, the respective norm envisages a person’s right but also indicates that the legislator may restrict this right.

A *Saeima* Member has been entrusted with a very high office and duties of national importance, therefore, a Member may be required to have an impeccable reputation and to assume, in front of society, responsibility for his/her activities, also for such actions that are not directly linked to the performance of his/her duties of office.

The State would be interested in achieving that the charges of committing a criminal offence brought against deputies would be examined in court as swiftly as possibly to disperse doubts caused by the fact that a person, who, in case of conviction, could not take the respective office, participates in the parliamentary work.

The participation of the *Saeima* Member in the work of the *Saeima* is said to be both an issue of fundamental human rights and institutional constitutional

law. On the one hand, Section 101 (1) of the *Satversme* guarantees the right to participate in the work of the State, *inter alia*, in the office of the *Saeima* Member, but, on the other hand, the first sentence of Section 21 of the *Satversme* provides that the *Saeima* creates its rules of procedure for internal work and order. The Constitutional Court has recognised that the principle of parliamentary sovereignty follows from this norm of the *Satversme*, i.e., the *Saeima* itself determines the procedure for organising its work. As regards the first sentence of the second part of Article 17 of the Rules of Procedure of the *Saeima*, the principle of parliamentary sovereignty, included in Article 21 of the *Satversme*, should be taken into account. I.e., the *Saeima* itself has the right to determine in its rules of procedure how a *Saeima* Member, against whom criminal proceedings had been commenced, may participate in the *Saeima*'s work. In this respect, the *Saeima* enjoys broad discretion, insofar the regulation it establishes is not obviously disproportionate and complies with the principle of a democratic state governed by the rule of law.

The first sentence of the second part of Article 17 of the Rules of Procedure of the *Saeima* restricts the right to hold a position on the civil service, envisaged in Section 101 (1) of the *Satversme*. However, this restriction has been established in the framework of the first sentence of Article 21 of the *Satversme* and the legislator enjoys broad discretion in regulating this matter. Hence, in assessing the legality of the restriction, the principle of parliamentary sovereignty, which leaves to the *Saeima* broad discretion in deciding on the scope of restriction on the performance of duties, should be taken into account. A restriction of a person's rights, taking into consideration the legislator's discretion, can be recognised as being unlawful only if the particular regulation were obviously disproportional and incompatible with the principle of a democratic state governed by the rule of law.

The contested norms do not deny a *Saeima* Member's rights to perform the duties of a Member totally. The second part of Article 17 of the Rules of Procedure of the *Saeima* define only three duties of the Member's office that cannot be performed in case if criminal prosecution has been commenced against a Member, and these are far from being the entire obligations of a Member.

Moreover, it should be noted that the restriction is imposed on the Member only for the period of examining the criminal proceedings. This restriction does not affect other rights established in the *Satversme* and the Rules of Procedure of the *Saeima*, for example, the right to submit proposals, to submit together with other deputies draft laws, use the *Saeima* premises for work and the

support provided by the Administration of the *Saeima*, to employ an assistant to a *Saeima* Member, to communicate with voters. Hence, it cannot be established that a person would be entirely deprived of the right to perform his/her duties of office.

The Ombudsman holds that a legal norm that would prohibit a person against whom criminal proceedings had been initiated, to be a candidate for a Member's office or would provide for immediate loss of the office if the *Saeima* gave permission to commence criminal proceedings against a person, would be obviously unlawful. In the particular situation, the Applicant is not totally deprived of the right to perform the Member's duties but only restrictions on the performance of these duties have been established, and this, in view of the legislator's discretion, is said to be admissible. The legislator has extensive possibilities to assess the necessity and expedience of the restriction established by the contested norms as well as to consider the possibilities to improve the respective regulation. The Ombudsman underscored that the need to improve normative regulation is a matter that requires political assessment.

The information collected on the legal regulation in other Member States of the European Union indicates that the normative regulation of Latvia is not the only way for organising the parliamentary work effectively. However, as the Constitutional Court has recognised, in choosing one of the potentially appropriate measures for reaching the legitimate aim, the legislator enjoys the privileges of assessing and deciding, therefore the compliance of the contested norm with the fundamental rights established in the *Satversme* should be examined rather than substituting the legislator's discretion with one's own opinion on the most rational legal solution. Hence, in assessing the compliance of a legal norm with the fundamental rights established in the *Satversme*, it must be recognised that the restrictions established by the contested norms are not obviously disproportionate and, even if variants of regulation that are more lenient towards a person exist, the choice of the particular regulation falls within the limits of the legislator's discretion.

5. The summoned person – lecturer at the University of Tartu and Judge of the Tartu Administrative Court *Mag. iur. Madis Ernits* – notes that the historical justification for the immunity of a member of the parliament is protection against abuse of criminal prosecution. The immunity of a member of the parliament is not only an element in the competence of the member of the parliament but also a personal guarantee since, to a certain extent, it protects the

particular natural person from criminal prosecution, which could cause grave consequences for him/her and would prohibit from exercising the rights following from Article 101 of the *Satversme*. The first sentence of Article 19 of the Rules of Procedure of the *Saeima* clearly applies to the Applicant as regards his individual rights. Deprivation of the right to receive reimbursement and decreasing the monthly salary up to fifty percent affect the Applicant's right to remuneration (Article 107 of the *Satversme*) and also violate Article 33 of the *Satversme*, pursuant to which the member of the parliament should receive remuneration from the State's resources. Hence, this measure is said to be of dual nature: remuneration falls within the scope of both the individual rights of the respective person and the competence of a member of the parliament.

If only the constitutional status of a member of the parliament had been affected then the member of the parliament could not submit a constitutional complaint. If the possibility to solve the disputes between bodies is absent then a person's right to submit an individual constitutional complaint in court should be recognised. In the present case, the aspect of law and the aspect of competence are said to interact. Thus, if the aspect in the competence of a member of the parliament is affected then also the individual aspect of the particular person is affected. Hence, a person should be ensured the possibility to submit a constitutional complaint to the court.

The second sentence of the second part of Article 17 of the Rules of Procedure of the *Saeima* is said to apply to the Applicant only indirectly and theoretically since there is no information that the Applicant had been deprived of liberty. The second sentence of the second part of Article 17 of the Rules of Procedure of the *Saeima* has only explanatory function – it provides that members of the parliament, who had been deprived of liberty, can be arrested and searched like any other person subject to criminal procedure. Hence, the constitutional complaint regarding the second sentence of the second part of Article 17 of the Rules of Procedure of the *Saeima* is said to be inadmissible. Since the Applicant had not been deprived of liberty, the second sentence of Article 19 of the Rules of Procedure of the *Saeima* does not affect any of his legal statuses. The third sentence of this article, in turn, is a norm that is favourable for the Applicant. As the Applicant did not allege that the reimbursement envisaged by this norm was too low, this norm should not be analysed in the present case.

As regards the first sentence of the second part of Article 17 and the first sentence of Article 19 of the Rules of Procedure of the *Saeima*, there are no doubts that the Applicant had been injured personally, presently and directly.

It should be established, first and foremost, what the scope of substantive law and personal protection in accordance with Article 14 and Article 30 in interconnection with Article 101 of the *Satversme* is. The general guarantee of the free mandate of a member of the parliament should comprise all classical rights of a member of the parliament, in particular, the right to participate (the right to speak and the right to submit requests), the right to information as well as other rights that do not fall within any of these two categories. The first sentence of the second part of Article 17 of the Rules of Procedure of the *Saeima* clearly interferes with the general guarantees of a free mandate since the member of the parliament has lost the right to participate in the sittings of the *Saeima* and its committees as well as in the sittings of other institutions, to which he has been elected or approved by the *Saeima*, until the criminal prosecution is terminated or until the moment when the convicting judgement enters into force.

The purpose why a member of the parliament is prohibited from attending the sittings of the *Saeima* and its committees, as well as the sittings of those institutions, to which he/she had been elected or approved by the *Saeima*, is not clear. The only provision, which could be considered as legitimate grounds, is the guarantee of the rule of law in legal proceedings. The first sentence of the second part of Article 17 of the Rules of Procedure of the *Saeima* could be considered as being specification of the rule of law for ensuring legal proceedings. Hence, the legitimate aim, albeit it is difficult to establish it, could be specification of the rule of law for ensuring legal proceedings.

The suitability of the restriction for reaching the legitimate aim is said to be contestable, i.e., it is difficult to discern how this measure facilitates reaching of the aim. The exclusion of a member of the parliament from the parliamentary work with respect to the aim of ensuring legal proceedings is neutral, moreover, is not necessary since there are more lenient measures for reaching the aim. For example, the security measures applicable in criminal proceedings are more lenient and effective than the exclusion of a member of the parliament from the parliamentary work.

The exclusion of a member of the parliament from the parliamentary work is said to be a disproportionate and very serious infringement of an immensely important constitutional principle. The principle of free mandate is one of the fundamental principles of democracy. If the executive power and the judicial

power are allowed to restrict the free mandate so intensively, upon initiating criminal prosecution, the democracy and compliance with the principle of separation of powers are restricted. Hence, on the one hand, a serious infringement on a general principle of law can be identified, which, on the other hand, is justified by unclear causality between the restriction and the aim – ensuring legal proceedings. This is said to be disproportional.

The presumption of innocence also is a constitutional-level principle. The probable constitutional source of this principle is human dignity (Article 95 of the *Satversme*). Exclusion of a member of the parliament from the parliamentary work, quite simply by initiating criminal proceedings, without any indications that the person could commit further criminal offences, by exercising the rights of a member of the parliament and performing the duties of a member of the parliament, is said also to be a violation of the presumption of innocence principle.

The infringement, which follows from the first sentence of Article 19 of the Rules of Procedure of the *Saeima*, are only the consequences of deprivation of immunity. The first sentence of Article 19 of the Rules of Procedure of the *Saeima* should comply with Article 33 and Article 107 of the *Satversme*. Article 107 of the *Satversme* establishes the right to commensurate remuneration as a general right. Article 33 of the *Satversme* establishes the right of a member of the parliament to remuneration. A member of the parliament falls within the scope of this right. The first sentence of Article 19 of the Rules of Procedure of the *Saeima* clearly interferes with this right.

The purpose, for which the remuneration of a member of the parliament is decreased during criminal proceedings, is not clear. Firstly, it could be considered as a simple logical conclusion that if a member of the parliament is deprived of the competence of the respective office he/she does not receive the salary. In this case, the constitutional substantiation would be the same. I.e., the aim would be to guarantee the rule of law in legal proceedings (Article 86 of the *Satversme*). However, it is questionable whether this purpose can be reached by these measures. Secondly, the purpose, for which the remuneration of a member of the parliament is decreased during criminal proceedings, could be saving the state budget resources (Article 66 of the *Satversme*). A legitimate aim also could be that the State should not be paying a salary to someone, who – with great probability – has committed a criminal offence. However, also in this respect causality is weak. Hence, the legitimate aim, albeit it is difficult to establish it,

could be saving the state budget resources and avoiding unsubstantiated expenditure.

Decreasing the remuneration of a member of the parliament for the period of criminal proceedings is appropriate for saving the state budget resources. There are no more lenient measures for saving the state budget resources than decreasing the remuneration. Hence, this restriction on fundamental rights is necessary. However, the proportionality of this measure in a more narrow sense is questionable.

It could be asserted that decreasing the remuneration of a suspended member of the parliament is constitutional if his/her suspension is constitutional. Since, in the present case, the suspension of the Applicant is anti-constitutional then the decrease of his remuneration is also such. The decreasing of remuneration is one of the manifestations of the legal consequences to the suspension of a member of the parliament and, thus, – only complementary. Therefore the decrease of remuneration is disproportional insofar the suspension of a member of the parliament is anti-constitutional.

6. The summoned person – docent of the Public Law Department of the Faculty of Law of the University of Vilnius Dr. Jurgita Paužaitė-Kulvinskienė – noted that the procedure for suspending a Member of the *Seimas* of Lithuanian is regulated by Article 22–23 of the Statute of the *Seimas*. The Member of the *Seimas* is not prohibited from participating in the sittings of the *Seimas* and voting if the *Seimas* has decided to consent to his prosecution. Although the Constitutional Court of Lithuania has not expressed its opinion on this matter, Dr. J. Paužaitė-Kulvinskienė is of the opinion that the prohibition for a Member to participate in the sittings of the *Seimas* and vote would not be an appropriate measure. It would be disproportional to restrict the principle of free mandate of the *Saeimas* Member, the meaning of which is the freedom of the Member – the people’s representative– to exercise his/her rights and obligations in accordance with the constitution and laws. The Constitutional Court of Lithuania has noted that the principle of the free mandate of the *Saeimas* member, enshrined in the Constitution of Lithuania, grants to the Member the right to vote on any decision by the *Seimas*. Moreover – and this is said to be very important – the free mandate of the *Seimas* Member is not a privilege of the people’s representative. It is one of the legal remedies that ensures that people are duly represented in the representative body, democratically elected by it. A prohibition for the *Seimas*’ Member, for whose criminal prosecution consent had

been given, to work in the *Seimas* would also violate the principle of continuity of the actions of the *Seimas* Member. The Constitutional Court of Lithuania has recognised that the participation of the *Seimas* Member in the work of the *Seimas* is the constitutional obligation and right of the Member and regulation, which prohibits a Member to participate in the *Seimas*' work or creates other impediments for it, is inadmissible. Hence, in accordance with the constitutional doctrine of Lithuania, the contested norms would be recognised as being incompatible with the Lithuanian Constitution.

The Findings

7. The Applicant has submitted the application as a constitutional complaint regarding the compliance of the second part of Article 17 and Article 19 of the Rules of Procedure of the *Saeima* with the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme*. The Constitutional Court's panel has initiated the case in this scope.

The first sentence in the second part of Article 17 and Article 19 of the Rules of Procedure of the *Saeima* comprise several legal norms that apply to different actual constituent elements, therefore, the Constitutional Court, first and foremost, must define the limits of the claim.

The first sentence in the second part of Article 17 of the Rules of Procedure of the *Saeima* provides: "If the *Saeima* agrees that criminal prosecution of a *Saeima* Member be initiated, the respective *Saeima* Member shall lose the right to participate in the sittings of the *Saeima*, meetings of its committees and other institutions to which this Member has been elected or appointed by the *Saeima* until the charges are dismissed or until the court sentence enters into force."

The first sentence in the second part of Article 17 of the Rules of Procedure of the *Saeima* provides that "during this time the Prosecutor's Office and the court have the right to apply any of the coercive measures applicable under the criminal procedure laws".

The first sentence of Article 19 of the Rules of Procedure of the *Saeima* provides: "If a Member has been suspended from participating in the work of the *Saeima* on the basis of Article 17 [...] he/she shall lose entitlement to the reimbursement prescribed in Article 14, and his/her monthly salary shall be reduced by 50 %."

The second and third sentence of Article 19 of the Rules of Procedure of the Saeima provide: “If arrest as a security measure has been applied to a Member, the payment of his/her monthly salary shall be suspended for the period of arrest as well. If the case in a criminal matter has been dismissed and if the Member has been found not guilty or has been acquitted, he/she shall receive the full amount of monthly salary and [...] reimbursement not paid to him/her during the time of his/her suspension from office.”

Summoned person M. Ernits draws the Constitutional Court’s attention to the fact the legal proceedings with respect to the compliance of the second sentence in the second part of Article 17 and the second and third sentence of Article 19 of the Rules of Procedure of the *Saeima* with the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme* should be terminated because these legal norms have not affected the Applicant’s rights.

Pursuant to Section 19² (1) of the Constitutional Court Law, any person, who considers that his/her fundamental rights, enshrined in the *Satversme*, had been infringed by a legal norm that is incompatible with a legal norm of higher legal force, may submit a constitutional complaint (application) to the Constitutional Court.

The Constitutional Court points out that, by the *Saeima*’s Decision of 31 January 2019, legal effects envisaged in the first sentence in the second part of Article 17 and the first sentence of Article 19 of the Rules of Procedure of the *Saeima* have been caused for the Applicant; i.e., the Applicant has been deprived of the right to participate in the sittings of the *Saeima* and its committees as well as the sittings of those institutions, to which he had been elected or approved by the *Saeima*, has been deprived of the right to receive reimbursement for transportation costs, rent of residential premises (hotel) and expenditure of business trips, to which a member of the *Saeima* is entitled, but the monthly salary is disbursed to him in the amount of fifty per cent.

In his application, the Applicant has not expressed separate considerations regarding the compliance of the second sentence in the second part of Article 17 and the second and third sentence of Article 19 with the *Satversme*. The Constitutional Court has established that, following the adoption of the *Saeima*’s Decision of 31 January 2019, the coercive measures envisaged in the criminal procedural laws had not been applied to the Applicant; the security measure – arrest – had not been applied to the Applicant, but the legal proceedings in the criminal case are still ongoing (*see Case Materials, Vol. 3, p. 76*). Hence, the Constitutional Court finds that the second sentence in the second part of

Article 17 and the second and third sentence of Article 19 of the Rules of Procedure of the *Saeima* have not been applied to the Applicant and neither do they cause direct, inevitable infringement.

Therefore, on the basis of Para 3 of Section 29 (1) of the Constitutional Court Law, in the present case, legal proceedings with regard to the compliance of the second sentence in the second part of Article 17 and the second and third sentence of Article 19 of the Rules of Procedure of the *Saeima* with the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme* must be terminated.

8. The *Saeima* requests terminating legal proceedings in the part with respect to the compliance of the first sentence in the second part of Article 17 and the first sentence of Article 19 of the Rules of Procedure of the *Saeima* (hereafter – the contested norms) with the second sentence of Article 92 of the *Satversme* because it considers that the contested norms do not restrict the Applicant's right to the presumption of innocence, established in the second sentence of Article 92 of the *Satversme*. The *Saeima* notes that the restriction imposed upon a *Saeima* Member, which prohibits him from participating in the sittings of the *Saeima*, speak therein and vote, *per se* does not mean that the Member is considered to be guilty of committing the criminal offence, in connection to which consent has been given for his/her criminal prosecution.

The Constitutional Court, first of all, examines arguments regarding termination of legal proceedings (*see, for example, Judgement of 27 June 2016 by the Constitutional Court in Case No. 2015-22-01, Para 12*).

The second sentence of Article 92 of the *Satversme* provides that everyone must be presumed innocent until his or her guilt has been established in accordance with law. This norm comprises a general principle of law – the presumption of innocence principle. The presumption of innocence applies to natural persons, who are the suspects or accused in criminal proceedings, in all stages of these proceedings – starting from the moment when a person is suspected or accused of committing a criminal offence until the moment, when the ruling, which determines finally that a person has committed the respective criminal offence, is no longer subject to appeal. The presumption of innocence as legal presumption may be complied with or breached.

The Constitutional Court has noted that the principle of presumption of innocence prohibits treating a person as if it had been proven that he/she has committed a criminal offence. In criminal procedure, the presumption of

innocence principle requires ensuring to a person the right to be deemed innocent of the charges made until the person's guilt is recognised by a court's judgement that has come into force (*see more Judgement of 23 February 2006 by the Constitutional Court in Case No. 2005-22-01, Para 4 and Para 5*). A person does not have the obligation to prove either the facts of the case indicated in the charges or their innocence. The presumption of innocence principle also means, *inter alia*, that a person does not have the obligation of self-incrimination.

The European Court of Human Rights has found that the presumption of innocence as criminal procedural safeguard sets requirements also with respect to the pre-trial publicity and statements made by the court or other public persons regarding the accused person's guilt before it has been determined by a court's final decision that has entered into force (*see Judgement of 12 July 2013 by the European Court of Human Rights in Case "Allen v. the United Kingdom", Application No. 25424/09, Para 93*). However, the presumption of innocence principle does not prohibit the institutions bringing and maintaining the charges from implementing criminal procedural measures and to apply criminal procedural security measures to the suspect or the accused, *inter alia*, arrest. Likewise, the presumption of innocence principle does not prohibit the competent institutions from bringing the charges and asserting that the person is guilty of committing a certain criminal offence (*compare, see Judgement of 23 February 2006 by the Constitutional Court in Case No. 2005-22-01, Para 5*).

The presumption of innocence *per se* does not prohibit from suspending a person from the office in connection with criminal proceedings initiated against him/her if such suspension is in public interests and is not penal by nature. However, even if the suspension *per se* is not of penal nature, in the case of prolonged suspension, it must be assessed how this restriction of rights influences this person's right to the presumption of innocence, taking into account, in particular, the legal remedies available to this person (*compare, see Judgement of 22 November 2011 by the European Court of Human Rights in Case "Țehanciuc v. Romania", Application No. 20286/08, Para 19 and Para 20*).

The European Court of Human Rights has recognised that the presumption of innocence is infringed not only by a concrete statement regarding a person's guilt but also by an identifiable opinion of a person as being guilty of committing a criminal offence. Whether the presumption of innocence has been breached must be assessed in taking into account the circumstances of each particular

situation (*see, for example, Judgement of 15 July 2010 by the European Court of Human Rights in Case “Šikić v. Croatia”, Application No. 9143/08, Para 52*).

In view of the above, the Constitutional Court recognises that in the case, where a *Saeima* Member is suspended from participation in the *Saeima*'s work because charges in criminal proceedings could be brought against him, the Constitutional Court must examine the compliance of such suspension with the presumption of innocence principle.

9. The contested norms provide that in the case where the *Saeima* has consented to criminal prosecution against a Member, this Member is suspended from further participation in the *Saeima*'s work and such suspension is manifested as the prohibition for the Member to participate in the work of the *Saeima* and its committees as well as in the sittings of other institutions, to which he had been elected to or approved by the *Saeima*, and from receiving full remuneration for the performance of the Member's duties and reimbursement of transportation costs, rent of residential premises (hotel) and business trip expenses. These legal consequences set in exactly with the *Saeima*'s decision to consent to commencement of criminal prosecution against a *Saeima* Member.

Article 30 of the *Satversme* provides that criminal prosecution against a *Saeima* Member cannot be commenced without the *Saeima*'s consent. This means that a *Saeima* Member has criminal procedural immunity or a special legal status with respect to his/her rights and obligations in criminal proceedings. The law policy purpose of the criminal procedural immunity of the *Saeima* Member is ensuring the Member's freedom in adopting decisions at the *Saeima* and protection the *Saeima*'s ability to function, at the same time, if necessary, protecting a *Saeima* Member against inadmissible external influence, also the impact by other branches of power, which could hinder the Member in the performance of his duties (*see Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03, Para 10 of the Findings*).

To receive the *Saeima*'s consent for making a *Saeima* Member criminally liable, the sixth and the seventh part of Section 120 of the Criminal Procedure Law provides for the prosecutor's obligation to submit a respective proposal to the *Saeima*. The circumstances, in which the criminal offence was committed, insofar these have been established in the criminal procedure and serve as the grounds for bringing charges, must be indicated in the proposal. The *Saeima* itself has determined that the proposal is submitted to the Mandates, Ethics and Submissions Committee. Pursuant to Para 2 of the first part of Article 179 of the

Rules of Procedure of the *Saeima*, this committee has the competence over preparing a draft decision of the *Saeima* in connection with the submission by the Prosecutor's General Office regarding initiating criminal prosecution against a – *Saeima* Member, arresting, detaining or searching him/her or restricting a person's freedom in another way. It follows from the aforementioned norms that the prosecutor, first of all, submits a proposal to the Prosecutor's General Office and it, confirming the validity of the proposal, turns, respectively, to the *Saeima*. In accordance with Article 25 of the *Satversme*, the *Saeima* Mandates, Ethics and Submissions Committee has the right to request additional information and explanations that could be necessary for reporting to the Members of the *Saeima* and preparing the draft decision by the *Saeima*.

The first part of Article 17 of the Rules of Procedure of the *Saeima* provides that following the report by the Mandates, Ethics and Submissions Committee the *Saeima* votes on the consent to commence criminal prosecution against a *Saeima* Member, to arresting or searching him/her or restricting the person's freedom otherwise. Pursuant to Article 19 of the *Satversme*, the *Saeima* examines the draft decision at the sitting of the *Saeima*, in which the Member, regarding the commencement of criminal prosecution against whom is being decided, has the right to participate but does not have the obligation to speak. Neither the *Satversme* nor the Rules of Procedure of the *Saeima* require a *Saeima* Member, regarding the commencement of criminal prosecution against whom is being decided, to speak at the *Saeima's* sitting regarding commencement of criminal prosecution against him/her, so the Member is not required to justify himself/herself with respect to the probable charges, nor prove his/her innocence, nor self-incriminate.

In deciding on consenting to commencement of criminal procedure against a Member, the *Saeima* verifies, whether the criminal prosecution is not linked to the Member's political activities and whether this criminal prosecution will not jeopardise the *Saeima's* ability to operate. The *Saeima's* right to decide on the consent to commencing criminal prosecution against a *Saeima* Member is a manifestation of the *Saeima's* – as a constitutional state body – autonomy. Therefore the *Saeima* and only the *Saeima* has been granted the right to decide on suspending the criminal procedural immunity of the *Saeima* Member and consent to criminal prosecution against him.

If the *Saeima* consents to criminal prosecution against the *Saeima* Member, the name and the surname of the Member are indicated in the *Saeima's* decision as well as the fact that the *Saeima* consents to commencement of

criminal prosecution. In its decision or public announcement about the adopted decision with respect to the suspected Member, the *Saeima* does not express its opinion, on whether he is guilty of committing a criminal offence.

Pursuant to Section 404 and Section 405 of the Criminal Procedure Law, consent to the commencement of criminal prosecution against a *Saeima* Member means that legal obstacles for pressing charges in criminal proceedings are eliminated. With the statement of charges, a *Saeima* Member loses his/her status as a suspect and acquires the legal status of the accused in criminal proceedings.

The Constitutional Court finds that a *Saeima* Member as a person, who is suspected of and, after the *Saeima* has decided to consent to commencement of criminal prosecution, can be charged in criminal proceedings, is protected by the presumption of innocence.

The compliance of legal norms with several norms of the *Satversme* is contested in the case. If the compliance of the legal norms with several norms of the *Satversme* is contested then the Constitutional Court determines the most effective approach to reviewing the compliance (*see Judgement of 8 March 2017 by the Constitutional Court in Case No. 2016-07-01, Para 14.2.*). The Constitutional Court holds: in the present case, to determine, whether the contested norms violate the principle of presumption of innocence, it should, first and foremost, assess, whether the restriction, established by the contested norms, which prohibit the Member, against whom criminal prosecution has been commenced, from participating in the *Saeima's* work and receive remuneration in full amount, has a legitimate aim and whether such restriction on rights is proportional.

In view of the above, the Constitutional Court shall examine, first and foremost, the compliance of the contested norms with the first sentence of Article 101 of the *Satversme* and afterwards – with the presumption of innocence principle included in the second sentence of Article 92 of the *Satversme*.

10. The first sentence of Article 101 of the *Satversme* provides that “every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service”.

Article 101 of the *Satversme* guarantees to every citizen of Latvia the right to participate in the *Saeima* election in the procedure established by law and, thus, creates pre-conditions for the citizen's participation in the work of the State

(compare, see, *Judgement of 7 November 2013 by the Constitutional Court in Case No. 2012-24-03, Para 13, and Judgement of 5 February 2015 in Case No. 2014-03-01, Para 14*). Article 101 of the *Satversme* grants the right to be registered as the candidate for the Member's position and to stand at the election. If a person is elected to the *Saeima* then Article 101 of the *Satversme* is applicable also to the right to fulfil the Member's position.

The State's obligation to take into account the international commitments in the area of human rights to achieve the harmony of human rights, included in the *Satversme*, with the international norms of human rights follows from Article 89 of the *Satversme*. Therefore the first sentence of Article 101 of the *Satversme* must be interpreted in interconnection with Article 3 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention). Article 3 of the First Protocol to the Convention provides: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” In the case law of the European Court of Human Rights, Article 3 of the First Protocol to the Convention has been interpreted to mean that not only the right to stand for the election of a legislative body but also to act as a Member of the parliament after the election follows from it (see, for example, *Judgement of 11 June 2002 by the European Court of Human Rights in Case “Sadak and Others v. Turkey (no. 2)”*, Applications. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, Para 33, and *Judgement of 24 May 2016 in Case “Paunović and Milivojević v. Serbia”*, Application No. 41683/06, Para 58). The European Court of Human Rights has explained that the purpose of the Convention demands interpretation and application of rights established in it in a way that they are exercised not only theoretically or illusory but practically and effectively. If a person has been elected to the parliament he/she has the right to be a member of the parliament (see *Judgement of 20 November 2018 by the European Court of Human Rights in Case “Selahattin Demirtaş v. Turkey (no. 2)”*, Application No. 14305/17, Para 229 and Para 234).

The Constitutional Court concludes that Article 101 of the *Satversme* envisages a person's right not only to participate in the *Saeima* election but, in case of being elected, to fulfil the position of a Member without such interference into the performance of the functions of this office that would be contrary to the general principles of law and the rights established in the *Satversme*.

If a person has been elected to the *Saeima* then Article 101 of the *Satversme* grants him/her the right to participate in the *Saeima*'s work in the status of a Member.

11. Abiding by the principle of the unity of the *Satversme*, Article 101 of the *Satversme* must be examined systemically with other norms of the *Satversme* that regulate a Member's legal status and activities. The legal status of the *Saeima* Member is defined in Article 5 of the *Satversme*, envisaging that the *Saeima* consists of one hundred representatives of the people. This means that the *Saeima* Member has the obligation to be the people's representative. The Member of the *Saeima* must be recognised as the representative of the people of Latvia in its totality, without singling out a part of the people, neither geographically or according to any other features: the electoral district, electors' profession, religious belief, political opinions, and the like. It follows from the obligation to represent the people that the Member has the mandate of representation.

Pursuant to Article 18 of the *Satversme*, a person elected to the *Saeima*, acquires the mandate of representation after he/she have given the solemn promise at the sitting of the *Saeima* and the *Saeima* has approved of his/ her mandate.

The legal effect of the mandate of representation is reflected in Article 28 of the *Satversme*, which provides that a member of the *Saeima* is not held accountable for the decisions, in the adoption of which he/she has participated by voting. A member of the *Saeima* is subject neither to external orders or tasks nor orders or tasks given by their own party, other organisations or separate electors or groups of electors. Likewise, pursuant to the second part of Article 14 of the *Satversme*, the electors may not recall individual members of the *Saeima*. It follows from Article 5 of the *Satversme* that the mandate of free representation is immanent for the Member's status. The main purpose of the mandate of free representation is to protect the Member from external influence and allow the State's decisions to evolve autonomously in the *Saeima*. The deputies represent the people in their totality, rather than each separately and individually. The principle of the mandate of free representations creates pre-conditions for the Member to reach an agreement with other deputies in the content of the *Saeima*'s decisions and, thus, promotes the *Saeima*'s legal capacity.

A series of rights of the *Saeima* Member follows from the principle of the mandate of free representation: to participate in the work of the *Saeima*, the

sittings of the *Saeima* and its committees, to speak and to vote therein, to exercise the right of submission, initiative and asking questions, and the like, as well as the right to self-organisation with other deputies (for example, factions).

It has been underscored in the legal science that all these rights are not equally important. The right to participate in the sittings of the parliament and the right to speak are of decisive importance in the Member's work because the Member's rights would be significantly undermined if he/she were prohibited from orally defending their initiatives, convincing other deputies of the importance of their ideas and proposals. The Member cannot be deprived of the right to speak at the sittings since it belongs to the very substance of the parliamentary work. A Member's public participation in the sittings of the parliament and participation in decision making is an important factor, upon which their recognisability in society and the public opinion on them depend. Therefore a Member's right to participate in the sittings of the parliament and voting substantially, cannot be denied but can be restricted to ensure functioning the parliament; the parliament may regulate this issue in its internal rules on procedure (*compare: Magiera S. Art. 38. In: Sachs M. (Hrsg.) Grundgesetz. 5. Aufl., 2009, S. 1192–1193*).

The legal status of the member of the *Saeima*, established in Article 5 of the *Satversme*, is supplemented by other rights, which are directly referred to in other norms of the *Satversme*, for example, a Member's unaccountability for the vote and the opinions expressed, while fulfilling his/her office (Article 28 of the *Satversme*), restriction on search and arrest (Article 29 of the *Satversme*), criminal procedural immunity (Article 30 of the *Satversme*), the right to refuse to give evidence (Article 31 of the *Satversme*) as well as the right to appropriate remuneration for performing the duties of the *Saeima's* member (Article 33 of the *Satversme*).

The right to participate in the *Saeima's* work – in the sittings of the *Saeima* and the *Saeima* committees, speaking and voting therein, as well as act on behalf of the *Saeima* in institutions, to which the *Saeima* has elected or approved the Member, and, finally, to receive remuneration for performing one's obligations, are part of a Member's rights of office. A restriction on these rights should be examined in the interconnection of Article 101 and Article 5 of the *Satversme*.

12. Each member of the *Saeima* is a part of the constitutional body of the state power – the *Saeima*. The office of the *Saeima* Member is a public law

office; the separate rights and authorisation of this office are public law competences. In exercising the rights vested in the office of the *Saeima* Member and using the authorisation of the office, the *Saeima* Member performs public law functions and does not act in the status of a private person. However, at the same time, the *Saeima*'s deputies also enjoy fundamental rights, which, in some cases, may overlap with the authorisation of the office (*see, for example, on the matter of freedom of speech Judgement of 17 May 2016 by the Grand Chamber of the European Court of Human Rights in Case "Karácsony and Others v. Hungary", Applications No. 42461/13 and No. 44357/13, Para 137*).

Para 3 of the first part and Para 3 of the second part of Section 17 of the Constitutional Court Law provide that an application regarding review of legal norms or an application regarding the compliance of the *Saeima*'s decision with law can be submitted by at least twenty members of the *Saeima*; however, this cannot be done by a single Member. In the case of infringement upon individual rights, the Constitutional Court Law provides for the constitutional complaint as a legal remedy; however, pursuant to Section 19² (1) of the Constitutional Court Law, the constitutional complaint is a legal remedy to be used for the protection of infringed fundamental rights. In the present case, the Applicant has submitted a constitutional complaint regarding the compliance of the contested norms with the first sentence of Article 101 of the *Satversme* but the contested norms affect also the Member's rights and authorisation of office that follow from Article 5 of the *Satversme*.

The principle of the state governed by the rule of law requires an effective mechanism for protecting the infringed rights (*compare, see Judgement of 29 June 2018 by the Constitutional Court in Case No. 2017-32-05, Para 24*). A situation, where the protection of rights would be absent due to the lack of appropriate procedural legal remedy, would be incompatible with the principle of the state governed by the rule of law.

The Constitutional Court is a constitutional body of the state power, which, in accordance with Article 16 of the Constitutional Court Law, has jurisdiction over cases for reviewing the constitutionality of legal norms (Paras 1–3 and Para 6) as well as cases regarding compliance with the law of other acts issued by the *Saeima*, the Cabinet, the President, the Speaker of the *Saeima* and the Prime Minister, except administrative acts (Para 4). This is compatible with the substance of resolving disputes between the constitutional bodies of the state power and parts thereof. The legislator already has decided on granting the appropriate competence to the Constitutional Court, allowing it to review

disputes between separate constitutional bodies of the state power of parts thereof but has not established a legal remedy, which an individual Member of the *Saeima* – a part of the constitutional body of the state power – could protect his/her official authorisation in case it is infringed upon. The Constitutional Court recognises that, currently, eliminating the deficiencies in the mechanism for protecting the rights of a separate constitutional body of the state power or a part thereof by a constitutional complaint is admissible, as the constitutional complaint as to its substance and procedural pre-conditions is the closest legal remedy, even more so because Article 101 and Article 5 of the *Satversme*, as noted above, are closely interconnected.

13. The Constitutional Court already concluded that the legal consequences caused by the *Saeima*'s decision to consent to the commencement of criminal prosecution against a *Saeima* Member – the Member, to the criminal prosecution against whom the *Saeima* has consented, is suspended from further participation in the *Saeima*'s work, and this suspension is manifested as the prohibition for the respective Member to participate in the sittings of the *Saeima* and its committees as well as the sittings of such institutions, to which he/she had been elected or appointed by the *Saeima*, to receive full remuneration for performance of the Member's duties and reimbursement for transportation costs, renting of residential premises (hotel) and business trip expenditure.

The contested norms restrict the rights and authorisation of the *Saeima* Member – the right to participate in the sittings of the *Saeima* and its committees as well as of other institutions, to which he/she had been elected or appointed by the *Saeima*, to speak and to vote at these sittings, finally, to receive full remuneration for performance of the Member's duties. The contested norms prohibit the Member to substantiate more extensively his proposals or questions that are asked, while being present in the sittings of the *Saeima* or its committees, as well as to put questions and obtain information. Likewise, the restriction that prohibits a Member from participation in the *Saeima*'s work is systemically linked to the restriction, which prohibits him from receiving remuneration in full amount.

Although the contested norms do not provide that the Member of the *Saeima*, after the *Saeima* has adopted the decision to consent to the commencement of criminal prosecution against him/her, loses his/her office, a *Saeima* Member is deprived of the most important rights that are linked to his participation in the *Saeima*'s work, i.e., the right to participate in the sittings of

the *Saeima* and its committees, exercising his/her right to vote. Thus, the respective Member has the right to fulfil the functions of a Member but in a scope that has been significantly narrowed.

Hence, the Constitutional Court finds that the contested norms establish significant restrictions on the rights of Member's office, that they are closely linked and must be examined in their interconnection.

14. The rules of Article 5 of the *Satversme*, which regulate the Member's rights of office, are formulated in a very general way to resolve all issues linked to them. Therefore more detailed regulation of these issues is admissible. Pursuant to Article 21 of the *Satversme*, the *Saeima* develops its own rules of procedure to provide for its internal operations and order. Article 21 of the *Satversme* comprises the principle of parliamentary autonomy, i.e., the *Saeima* and no one else sets its order for work. The aim of the Rules of Procedure is to establish such order for work, which, while implementing the will of majority, at the same would guarantee the minority rights and ensure effectiveness of the *Saeima's* work (see *Judgement of 13 July 1998 by the Constitutional Court in Case No. 03-04 (98), Para 3 of the Findings*). The European Court of Human Rights also has recognised that the exercise of the member's of the parliament rights at the same time demands ensuring effective operation of the parliament, *inter alia*, responding to such actions by the Members of the parliament that impeded normal work of the legislator (see, for example, *Judgement of 17 May 2016 by the Grand Chamber of the European Court of Human Rights in Case "Karácsony and Others v. Hungary", Applications No. 42461/13 and No. 44357/13, Para 139*). Hence, the *Saeima* may provide more detailed regulation on issues linked to a Member's rights of office in the Rules of Procedure of the *Saeima*.

The norms contested in the present case were established by the law of 7 October 1998 "Amendments to the Rules of Procedure of the *Saeima*". It follows from the information included in the *Saeima's* legislative database that the respective draft law had been submitted to the *Saeima* for review in 15 January 1998. Pursuant to the Rules of Procedure of the *Saeima*, it was examined in three readings and adopted in the third reading on 7 October 1998. On 20 October 1998, this law was promulgated in the official journal "Latvijas Vēstnesis", and it entered into force on 3 November 1998. The contested norms have been adopted and promulgated in the procedure set out in the *Satversme* and the Rules of Procedure of the *Saeima*; likewise, they are accessible in accordance

with the requirements of regulatory enactments and worded with sufficient clarity, allowing persons to understand the content of the rights and obligations following from them and foresee the consequences of application thereof.

The authorisation to establish the procedure for exercising the rights of the *Saeima* Member and the necessary restrictions also follow from the *Saeima*'s right to define the internal organisation of its work and order. Pursuant to the principle of parliamentary autonomy, the *Saeima* is free to establish such order; it has the right to define the internal order of its work, *inter alia*, restrictions on the *Saeima* Members, that would ensure effective functioning of the *Saeima* in the best way; however, restrictions on a Member's rights must comply with the general principles of law, in particular, with the principle of proportionality, as well as other norms of the *Satversme*.

Proportional restrictions on the activities of a *Saeima* Member may be established in the Rules of Procedure of the *Saeima*.

15. The principle of proportionality requires each restriction on rights to have a legitimate aim and the restriction to be necessary, suitable and appropriate. In assessing the proportionality of a restriction on rights, the Constitutional Court must verify:

- 1) whether the chosen measures are suitable for reaching the legitimate aim, i.e., whether the legitimate aim can be reached by the chosen measure;
- 2) whether this action is necessary, i.e., whether the legitimate aim could not be reached by measures that are less restrictive on an individual's rights;
- 3) whether the restriction is appropriate, i.e., whether the benefit gained by society outweighs the damage inflicted upon the individual's rights.

If it is recognised that the restriction on rights is incompatible with even one of these criteria then it is incompatible with the proportionality principle and unlawful (*see, for example, Judgement of 14 December 2018 by the Constitutional Court in Case No. 2018-09-0103, Para 18*).

16. The legitimate aim of a restriction on rights must be substantiated by the institution, which established this restriction (*compare, see, for example, Judgement of 11 December 2014 by the Constitutional Court in Case No. 2014-05-01, Para 18*).

The *Saeima* points out that the legitimate aim of the contested norms is to protect the democratic state order and the reputation of the parliament, i.e., the residents' trust in the democratic state institutions. The Applicant holds that the

legitimate aim of the contested norms is to ensure the protection of the democratic state order and unhindered course of the criminal proceedings.

The meaning of democratic legitimisation is to link the state power with the people's will, i.e., to ensure that the actions by the State comply with the people's will. Therefore the sovereign's trust in the constitutional bodies of the state power is one of the most important pre-requisites for the existence of a democratic state governed by the rule of law.

Restrictions, which facilitate the existence of appropriate constitutional order, are established with the legitimate aim to protect the democratic state order. The Member of the *Saeima* has a constitutional status – that of the people's representative. Upon acquiring this status, the Member, pursuant to Article 18 of the *Satversme*, by giving the solemn promise commits to defend Latvia as an independent and democratic state, fulfil their duties honestly and conscientiously as well as to observe the *Satversme* and the laws. Actions, which decrease the people's trust in honest actions by a *Saeima* Member as the people's representative and the *Saeima* as the legislative power of a state governed by the rule of law, which exercises the right to legislate in the interests of the State and the people as well as by abiding with the *Satversme* and laws, may jeopardise the existence of appropriate constitutional order.

However, the Constitutional Court noted that trust in the *Saeima* could be fostered by other measures, for example, the impeachment procedure, if it is implemented without bias following a serious violation of the norms of the *Satversme* or the law.

After the immunity of a *Saeima* Member has been waived, the judicial power has the right to apply to him/her such restrictive measures, as it deems necessary within the framework of the criminal proceedings. Exercising the rights of a *Saeima* Member at the time when criminal proceedings have been commenced against him/her involves the risk that this Member could adopt such decisions that would influence the authorisation of the judicial power in the implementation of criminal proceedings against him/her.

The fact that a Member, against whom criminal proceedings have been commenced, continues acting as a Member could diminish the public trust in the legislator. To prevent his possibility and ensure that criminal proceedings are not impeded, the *Saeima* may adopt such internal order that fosters performance of the legislator's functions.

Hence, the restriction included in the contested norms has a legitimate aim – protecting the order of a democratic state governed by the rule of law.

17. The measures chosen by the legislator are suitable for reaching the legitimate aim if this aim is reached by the particular regulation (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 13*).

The Applicant points out that the prohibition to him to perform a Member's obligations after criminal proceedings had been commenced against him is not appropriate for reaching the legitimate aim – unimpeded course of criminal proceedings.

The *Saeima*, however, notes that the restriction on rights established by the contested norms is suitable for reaching the legitimate aim. The prohibition to participate in voting at the sittings of the *Saeima* and its committees prevents the situation where the Member, against whom criminal proceedings have been commenced, could be subject to inappropriate pressure by the executive or the judicial power or, in the case of him/her being a Member of the opposition, – by the parliamentary majority. Allegedly, this restriction also ensures that society does not develop doubts as to the legitimacy and trustworthiness of the parliament's actions since the respective Member does participate in the adoption of regulatory enactments and various decisions of the *Saeima*.

The Constitutional Court finds that the restriction, included in the contested norms, which prohibits a *Saeima* Member, against whom criminal proceedings have been commenced, to exercise such authorisation of the Member's office as participation in the legislative process, which takes place in the sittings of the *Saeima* and its committees, as well as exercising his right to vote and also denies the right to receive remuneration for it in full amount, decreases the possible impact of the respective Member upon the legislative process. Hence, the restriction established in the contested norms reaches its aim – prevents doubts regarding compliance with the *Satversme* and laws in the legislative process.

Hence, the chosen measure is suitable for reaching the legitimate aim of the restriction.

18. The restriction is necessary if there are no other measures that would be equally effective and, if chosen, would restrict persons' rights to a lesser extent (*see, for example, Judgement of 26 April 2018 by the Constitutional Court in Case No. 2017-18-01, Para 21.3.2.*). The Constitutional Court's competence includes reviewing, whether no alternative measures exist that would infringe on

the rights to a lesser extent (*see, for example, Judgement of 24 November 2017 by the Constitutional Court in Case No. 2017-07-01, Para 19*). Moreover, it should be taken into account that a more lenient measure is not just any other measure but such that allows reaching the legitimate aim in at least in the same quality (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 14*).

The Applicant holds that the security measure included in the Criminal Procedure Law – prohibition of certain employment, which the official in charge of the proceedings has the right to apply, as to its nature is identical with the provisions of the contested norms. Moreover, the assumption that the person will continue criminal activities, will obstruct or evade criminal proceedings, as well as the decision on applying the security measure is subject to multi-tier control. Hence, the official in charge of the proceedings has at their disposal measures that are proportional and less restrictive on an individual's rights.

The *Saeima* explains in its written response that there are no other measures for reaching the legitimate aim that would restrict the Applicant's rights to a lesser extent. The restriction included in the contested norms, allegedly, both ensures compliance with the principle of separation of powers and protects the parliament and individual deputies against inappropriate influence as well safeguards the public trust in the decisions adopted by the legislator. Application of the security measure – prohibition of certain employment – would not reach the legitimate aim in the same quality. A security measure like this would not be suitable for ensuring the independence and authority of the parliament. Moreover, in case it was applied, the restriction could be much broader and apply not only to the Member's participation in the sittings of the *Saeima* and its committees but also exercising other rights and authorisations of the *Saeima* Member.

Section 254 of the Criminal Procedure Law envisages prohibition of certain employment as one of the security measures that do not involve deprivation of liberty. To apply it, the general grounds for applying security measures must be established (*see Section 241 of the Criminal Procedure Law*). The content of the prohibition of certain employment is manifested as the prohibition to engage in certain employment or perform the duties of a certain job for a definite period. If the respective security measure has been applied to a person, then they have no right to perform the duties or exercise the rights that the respective office entails (*see: Meikališa Ā. 254. pants. Noteiktas nodarbošanās aizliegums. In.: Strada-Rozenberga K. (zin. red.) Kriminālprocesa*

likuma komentāri. A daļa. Rīga: Latvijas Vēstnesis, 2019, 702. lpp.). Hence, the Constitutional Court finds that the application of the security measure – prohibition of certain employment – does not have identical effect with respect to exercising the rights and authorisation of the office of the *Saeima* Member. In the case of applying a security measure like this, a *Saeima* Member would have no right to exercise any rights or authorisations of the Member’s office.

The Constitutional Court notes that a regulation, which, although would envisage more individual approach to restricting the authorisation of the *Saeima* Member, in case of being applied, would comprise even broader restrictions on exercising the rights and authorisations of the *Saeima* Member.

Whereas an individual assessment, conducted by the *Saeima*, regarding restricting the authorisation of a *Saeima* Member, against whom criminal prosecution has been commenced, would include evaluation of the particular person, the charges brought against him/her, its nature and impact, *inter alia*, the severity of the offence, with the commitment of which the person is charged. Such assessment would cause a risk of violating the presumption of innocence and the risk of abusing the power of the opposition (*compare, see Opinion of 14 May 2014 by the Commission of the Council of Europe “Democracy through Law” (Venice Commission) No. 714/2013, Para 24 and Para 139*).

The Constitutional Court recognises as valid the point made by the *Saeima* that the application of the security measure envisaged in the criminal procedure could avert neither the risk that the principle of separation of powers is violated nor ensure that the parliament’s authority was maintained. Thus, the Constitutional Court does not find that there are more lenient measures for reaching the legitimate aim of the restriction on rights established in the contested norms – protecting a democratic state governed by the rule of law.

Thus, there are no other, more lenient measures, by which the legitimate aim of the restriction on rights established in the contested norms could be reached in, at least, the same quality.

19. In assessing the conformity of the restriction on rights, included in the contested norms, with the legitimate aim, it must be verified, whether the adverse consequences incurred to a person as the result of restricting their rights do not outweigh the benefit that society in general gains from this restriction (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 15, and Judgement of 16 June 2016 in Case No. 2015-18-01, Para 18*).

The applicant holds that if the people at the *Saeima* election have elected their representative and he has acquired the mandate of the *Saeima* Member it is important to ensure that the people's choice is realised. If a *Saeima* Member is prohibited from performing his duties of office, although no deficiencies regarding "the full rights" of the Member have not been established, this is interference into the results of the people's vote and the people are denied the participation of their representative in the legislative process. In this way, by interfering into the composition of the *Saeima's* deputies and changing it arbitrarily, the democratic state order is not ensured. Therefore the society gains no benefit whatsoever from the restriction on rights established in the contested norms.

The *Saeima*, in turn, notes that the public benefit of the restriction included in the contested norms outweighs the damage inflicted upon an individual's rights. Allegedly, the contested norms substantially do not prohibit the Member from representing the interests of his/her electorate. Moreover, they also ensure the protection of the Member's personal rights. I.e., if the criminal case is terminated, without establishing the Member's guilt, or if he /she is acquitted, the Member receives the monthly salary and also the compensations not disbursed to him during the period of suspension. Thus, the legislator has ensured the protection of a Member's financial interests and rights in those cases, where the Member's guilt is not established in criminal proceedings.

In a legal order, the parliament has an essential role in the political debates of a democracy. Members of the parliament, in performing their duties of office, represent voters, draw attention to their concerns and defend their interests (*see Judgement of 20 November 2018 by the European Court of Human Rights in Case "Selahattin Demirtaş v. Turkey (no. 2)", Application No. 14305/17, Para 239*). Thus, exercising the rights of a Member facilitates effective functioning of democracy – legitimisation of the legislator and the plurality of opinions in the parliament's composition, in accordance with the will expressed by the sovereign.

The mandate of free representation envisages exercising the Member's rights independently not only from external influence but also from the influence of other deputies. Hence, coerced waiving of the Member's right to the mandate of free representation would be contrary to the purpose of this mandate (*see: Weber A. European Constitutions Compared. München: Beck, 2019, pp. 116–117*). Summoned person M. Ernits also notes that the principle of free representation is one of the basic principles of a democratic state governed by the

rule of law. By allowing the executive and judicial powers to restrict a Member's rights and official authorisation as intensively, compliance with the principle of separation of powers and the existence of the order of a democratic state governed by the rule of law are jeopardised.

Likewise, the Constitutional Court takes into account that Article 9 of the *Satversme* does not prohibit from electing to the *Saeima* a person, who has the status of a suspect or the accused in criminal proceedings.

The *Saeima* notes that the contested norms allow a *Saeima* Member, against whom criminal proceedings have been commenced, to attend the open sittings of the *Saeima* committees and speak on the issue under discussion if the chairperson of the committee gives him/her the floor. However, the Constitutional Court finds that this right is incomparable with the full rights of a Member to participate in the work of a *Saeima* committee, *inter alia*, in closed sittings, and a Member's right to say speeches, to engage in full in parliamentary discussions on his own and other's initiatives and to vote on the draft decisions by the *Saeima*. Although a *Saeima* Member, against whom criminal proceedings have been commenced, may attend the sittings of the *Saeima* committees in the status of a private person, the contested norms, however, prohibit him/her from being in the composition of these committees and by his/her speeches and vote influence the committee's decision directly. Hence, the contested norms, albeit not providing that a *Saeima* Member, against whom criminal proceedings have been commenced, loses his office, they deny such Member of the *Saeima* the most essential rights, which are directly linked to participation in the legislative process itself, i.e., the right to participate in the sittings of the *Saeima* and its committees, exercising his/her right to vote.

In view of these circumstances in their interconnection, the Constitutional Court recognises that the contested norms interfere excessively with a Member's right to the mandate of free representation. Hence, the Constitutional Court finds that the adverse consequences, caused by the restriction on rights established in the contested norms, outweigh the benefit that society in general gains from this restriction.

Therefore the contested norms are incompatible with the principle of proportionality and, thus, also with the first sentence of Article 101 and Article 5 of the *Satversme*.

20. The Constitutional Court must review the compliance of the contested norms also with the presumption of innocence principle included in the second sentence of Article 92 of the *Satversme*.

In its decision on 22 November 2011 in the case “*Țehanciuc v. Romania*”, the European Court of Human Rights has drawn attention to the fact that in case, where a person has been suspended from performing the duties of office in connection with criminal proceedings, it must be examined, whether the suspension, which can be for a prolonged period of time, due to its nature, does not cause a violation of the presumption of innocence principle. The Court has noted that, in such a case, the following must be examined:

- 1) whether concrete statements regarding the person’s guilt cannot be identified;
- 2) whether the suspension from office is preventive and established in public interests;
- 3) how the suspension influences a person’s right to the presumption of innocence and whether safeguards have been envisaged in the case of prolonged suspension.

The Constitutional Court already found that the contested norms and the procedure for consenting to the commencement of criminal prosecution against a *Saeima* Member do not comprise concrete statements regarding the guilt of the particular Member of the *Saeima* of committing the criminal offence. In its decision or the public announcement regarding the decision, which has been adopted with respect to the suspect Member, the *Saeima* does not express an opinion as to whether the respective Member is or is not guilty of committing the criminal offence, in connection to which criminal prosecution has been commenced against him/her (*see Para 9 of this judgement*). The restriction established in the contested norms has been set in important public interests or to protect the order of a democratic state governed by the rule of law (*see Para 16 of this judgement*).

Having examined the way the contested norms impact a person’s right to the presumption of innocence in the case of prolonged suspension, the Constitutional Court recognised that the contested norms retain a certain scope of the *Saeima* Member’s authorisation and of the right to represent the sovereign in the case if a person’s guilt of committing a criminal offence is not established. I.e., in such a case the contested norms envisage the *Saeima* Member’s right to continue working the respective convocation of the *Saeima* and receive the

monthly salary and also reimbursement not disbursed to him during the period of suspension.

However, the restriction on the *Saeima* Member's right to the mandate of free representation cannot be justified in a democratic state governed by the rule of law (*see Para 19 of this judgement*). Pursuant to the contested norms, the *Saeima* Member is suspended from exercising the rights and authorisation of the mandate of free representation for an undetermined period of time, i.e., until criminal prosecution is terminated or until the date when a convicting judgement enters into force. The criminal proceeding may last for the whole term of office of a *Saeima* Member or for a substantial part of it. Also, at the time, when the criminal case is terminated, without establishing the Member's guilt, or if the Member is acquitted, the term of office of the respective convocation of the *Saeima* may have been expired already and this person cannot obtain the position of the Member in the respective convocation of the *Saeima*. This is the reason why the guarantees set for the status of a *Saeima* Member differ significantly from the guarantees envisaged for other professional occupations. Thus, the contested norms cause such restrictions on a *Saeima* Member's rights that not only temporarily restrict the rights and authorisation that follow from his mandate of free representation but, substantially, already punish the *Saeima* Member for a criminal offence, in connection with which criminal prosecution has been commenced against him/her.

The right, guaranteed to a *Saeima* Member, to receive the monthly remuneration and the reimbursement not disbursed during the period of suspension, is not sufficient to outweigh the fact, that the significant right to the mandate of free representation and authorisation of a *Saeima* Member, who is protected by the presumption of innocence, are significantly restricted and, substantially, he/she is deprived of them.

Hence, the contested norms are incompatible with the second sentence of Article 92 of the *Satversme*.

21. The Constitutional Court has recognised that the legislator enjoys broad discretion in choosing the most appropriate regulation for exercising the rights envisaged in the *Satversme*. The Constitutional Court cannot replace the legislator's discretion with its own opinion on the most rational solution (*compare, see, for example, Judgement of 7 November 2019 by the Constitutional Court in Case No. 2018-25-01, Para 30*). However, the Constitutional Court draws the legislator's attention to the deficiencies in the mechanism for

protecting the rights of a constitutional body of the state power or a part thereof. I.e., currently, the legislator has not established a legal remedy that an individual *Saeima* Member as a part of the constitutional body of the state power could use to protect his official authorisation in case it is infringed upon.

22. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force, must be deemed invalid as of the day when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. Pursuant to Para 11 of Section 31 of the Constitutional Court Law, when the Constitutional Court recognises a legal norm incompatible with a legal norm of higher legal force, it must determine the date, as of which the respective norm becomes void. Hence, the Constitutional Court must consider the date, as of which the contested norms, which have been recognised as being incompatible with Article 5, the second sentence of Article 91 and the first sentence of Article 101 of the *Satversme*, should be recognised as being void.

The Applicant has requested recognising the contested norms as being void as of the moment they entered into force.

The Constitutional Court finds that the infringement on the Applicant's right occurred with the *Saeima*'s decision of 31 January 2019 because, on the basis of the contested norms, he was suspended from participation in the work of the *Saeima* and his right to remuneration was restricted. The Constitutional Court has recognised that, in deciding on the date as of which the contested norm becomes void, it should take into account that its task is to eliminate, to the extent possible, the infringement on rights (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25*). Thus, to eliminate the infringement on the Applicant's rights, with respect to him, the contested norms are to be recognised as being void as of 31 January 2009.

The Substantive Part

On the basis of Sections 29–32 of the Constitutional Court Law, the Constitutional Court

h e l d :

1. To terminate legal proceedings in the case in the part regarding the compliance of the second sentence in the second part of Article 17 and the second and the third sentence of Article 19 of the Rules of Procedure of the *Saeima* with the second sentence of Article 92 and the first sentence of Article 101 of the *Satversme* of the Republic of Latvia.

2. To recognise the first sentence in the second part of Article 17 and the first sentence of Article 19 of the Rules of Procedure of the *Saeima* as being incompatible with Article 5, the second sentence of Article 91 and the first sentence of Article 101 of the *Satversme* of the Republic of Latvia and, with respect to Juris Jurašs, as void since 31 January 2019.

The judgement is final and not subject to appeal.

The judgement shall enter into force on the day it is published.

Chairperson of the court hearing

I. Ziemele