



LATVIJAS REPUBLIKAS SATVERSMES TIESAS TIESNESIS

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SEPARATE OPINION of

Justices of the Constitutional Court of the Republic of Latvia

Gunārs Kusiņš and Jānis Neimanis

in Riga on 6 January 2020

in Case No. 2019-08-01

“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”.

1. The Constitutional Court, by its judgement of 23 December 2019 in Case No. 2019-08-01 “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”, recognised, *inter alia*, 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 92 and the first sentence of Article 101 of the *Satversme* of the Republic of Latvia and, with respect to Juris Jurašs, void as of 31 January 2019.

2. 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) provide that if the *Saeima* consents to the commencement of

criminal prosecution against a Member of the *Saeima*, the respective Member of the *Saeima* loses the right:

- 1) to participate in the sittings of the *Saeima* and its committees as well as in the sittings of those institutions, to which he has been elected or approved by the *Saeima*, until the criminal prosecution is terminated or a convicting judgement by the court enters into force;
- 2) to reimbursement of transportation costs, reimbursement for the renting of residential premises (hotel) and reimbursement of business trip expenditures;
- 3) to receive monthly salary in full amount.

3. The Constitutional Court has noted already in Para 5.3 of its judgement of 23 February 2006 in case No. 2005-22-01 that the presumption of innocence *per se* does not prohibit from imposing temporary restrictions on a person, linked to his/ her reputation, insofar such restrictions are allowed by other norms of the *Satversme*.

Since the Constitutional Court recognised correctly that the contested norms were incompatible with Article 5 and Article 101 of the *Satversme* because the contested norms interfered excessively with a Member's right to the mandate of free representation, it had the grounds to recognise, for the very same reason, that the restrictions established by the contested norms were incompatible also with the presumption of innocence.

4. However, the Constitutional Court recognised the contested norms as being incompatible with the second sentence of Article 92 of the *Satversme* because: 1) allegedly, they punish a *Saeima* Member for a criminal offence, in connection with which criminal prosecution has been commenced against him/her, and 2) in the case of suspension, reimbursement is said to be insufficient (*see Para 20 of the Judgement*). We do not uphold these findings by the Constitutional Court.

5. The contested norms establish legal consequences in addition to those that follow from other legal norms, which regulate giving consent to commencing criminal prosecution against a *Saeima* Member. Therefore the Constitutional Court analysed correctly the compliance of the whole legal regulation with the principle of the presumption of innocence and recognised correctly that the norms, pursuant to which consent is given to commencing criminal prosecution against a *Saeima* Member, as well as the procedure of consenting do not comprise concrete statements regarding the guilt of the particular *Saeima* Member of committing a criminal offence, the Member does not have to justify himself with regard to the request for consent and does not have to prove his/her innocence. The *Saeima* does not act as if the Member, for the criminal prosecution of which consent is requested, would be guilty of committing a criminal offence before his/her guilt has been proven in court.

6. Neither the norms that regulate giving consent to commencement of criminal prosecution against a Member, nor the particular *Saeima*'s decision asserts that the Member, against whom criminal prosecution should be commenced, had committed any unlawful action, and neither do they comprise any references to the assessment of the Member's activities or the Member's guilt in connection with the criminal proceedings, for the commencement of which consent is sought. The contested norms define only the mandatory legal consequences, which set in automatically if the *Saeima* adopts a decision on consenting to the commencement of criminal prosecution against a Member.

7. Neither the text of the contested norms nor the history of their drafting, systemic interconnection with other legal norms, nor their purpose shows that these legal norms, as to their nature, would be punitive. The purpose of suspension was only to prevent the threat to the *Saeima*'s internal order and public interests, as discerned by it, taking a cautious approach to the participation of a Member, against whom criminal prosecution had been

commenced, in the sittings of the *Saeima* and its committees and impact on the legislator's work. The legal consequences envisaged in the contested norms are restrictive but temporary in nature, i.e., the restrictions established by these norms are in force only for a certain period of time – until the time when a ruling that concludes the criminal prosecution enters into force.

8. The Constitutional Court recognised that the contested norms were incompatible with the presumption of innocence because of the absence of sufficiently compensatory measures. We cannot uphold this finding since the law envisages compensatory measures if the criminal case has been terminated, without establishing the Member's guilt, or if the Member is acquitted. The third sentence of Article 19 of the Rules of Procedure of the *Saeima* envisages full reimbursement of the deducted amounts but, additionally, the law "On Compensation for Damages Caused in Criminal Proceedings and Record-Keeping of Administrative Violations" envisages compensatory measures, *inter alia*, in the case where the previous status cannot be restored. Finally, Article 92 of the *Satversme* establishes compensatory measures in the case of exceedingly prolonged legal proceedings.

Justice

G. Kusiņš

Justice

J. Neimanis