



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

on behalf of the Republic of Latvia

In Riga 21 February 2022

Case No. 2018-10-0103

The Constitutional Court in the following composition: Chairman of the Court Session Ineta Ziemele, Justices Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis and Artūrs Kučs,

in the presence of the Applicant, Mr Mareks Beluga, and the Applicant's authorised representative, Ms Jekaterina Halturina,

the authorised representative of the institution which issued the contested award – the Saeima of the Republic of Latvia – Senior Legal Adviser of the Saeima Legal Bureau, Ilze Tralmaka; and

the authorised representative of the institution that issued the contested award - the Cabinet of Ministers of the Republic of Latvia - Deputy State Secretary of the Ministry of the Interior Vilnis Vītoliņš,

with Baiba Tropiņa, Registrar of the hearing,

under Article 85 of the Satversme of the Republic of Latvia and Clauses 1 and 3 of Section 16, Clause 11 of Paragraph 1 of Section 17 and Section 28 of the Constitutional Court Law,

heard the case in open court in Riga on 15 and 22 January 2019

"On Compliance of Section 237.¹ Paragraph 2 of the Criminal Law, in the Wording in Force from 1 April 2013 to 1 December 2015, with Article 90 and the Second Sentence of Article 92 of the Satversme of the Republic of Latvia and with Sub-clause "e" of Division 10A905 of the Annex to Cabinet Regulation No 645 of 25 September 2007 "Regulations on the National List of Goods and Services of Strategic Significance", in the Wording in Force from 28 November 2009 to 23 January 2014, with the Second Sentence of Article 92 of the Satversme of the Republic of Latvia".

Establishing Part

1.1. The Law of 12 March 2009 "Amendments to the Law on the Circulation of Goods of Strategic Significance", which entered into force on 15 April 2009, the Law on the Circulation of Goods of Strategic Significance was supplemented, inter alia, Section 5¹, the first Paragraph of which, in the wording in force until 26 April 2016, provided as follows: "Natural persons shall be prohibited to acquire, possess and use equipment, devices or instruments and their components (hereinafter - special devices) specially designed or adapted for the purpose of carrying out operational activities in a special manner, which are listed in the National List of Goods and Services of Strategic Significance of the Republic of Latvia."

1.2. The Law of 10 September 2009 on Amendments to the Criminal Law, which entered into force on 14 October 2009, Section 237¹ was added to the Criminal Law, criminalizes the violation of the rules on the circulation of goods of strategic significance if it causes significant damage, or the violation of the prohibition on the circulation of equipment, devices or instruments and their components specially designed or adapted for special operational measures.

On 1 April 2013, the Law of 13 December 2012 on Amendments to the Criminal Law entered into force, amending Section 237¹ of the Criminal Law. Section 237¹ of the Criminal Law, in the version in force from 1 April 2013 to 1 December 2015, provided:

"(1) For violation of the rules on the movement of goods of strategic significance, if significant damage has been caused thereby, -

punishment shall be temporary imprisonment, or forced labour, or by a fine

(2) For violation of the prohibition on circulation of specially designed or adapted equipment, devices or instruments and their components for special operational measures -

punishment shall be deprivation of liberty for a term not exceeding two years or temporary deprivation of liberty or forced labour or a fine, or deprivation of the right to engage in certain occupations for a term not exceeding five years."

1.3. On 25 September 2007, Cabinet Regulation No 645 "Regulations on the National List of Goods and Services of Strategic Significance" (hereinafter - Regulation No 645) was issued, the Annex to which contains the National List of Goods and Services of Strategic Significance (hereinafter - the List).

In the version in force from 28 November 2009 to 23 January 2014, Clause "e" of Annex 10A905 to Regulation No 645, Division "Equipment, devices or instruments, specially designed or adapted for specific operational activities, and components thereof", provided:

"e. equipment and devices for disrupting operational activities:

(cf. Common Military List of the European Union)

1. special indicators
2. special locators
3. scanners
4. scramblers
5. special frequency meters
6. wide frequency range noise generators".

2. The Applicant - Mr Mareks Beluga (hereinafter - the Applicant) - has been found guilty of the criminal offence provided for in Section 237¹ Paragraph 2 of the Criminal Law (here and hereinafter - in the wording in force from 1 April 2013 to 1 December 2015), as he stored the article indicated in the Annex of Regulation No. 645, Division 10A905, clause "e", sub-clause 6 (hereafter in the version in force from 28 November 2009 to 23 January 2014), namely a wide frequency range noise generator.

The Applicant holds that Paragraph 2 of Section 237¹ of the Criminal Law (hereinafter - the contested norm of the Criminal Law) and sub-clause "e" of Division 10A905 of the Annex to Regulation No 645 (hereinafter - the contested norm of the Regulation) do not comply with the norms of the Satversme of the Republic of Latvia (hereinafter - the Satversme). The contested norm of the Criminal Law and the contested norm of the Regulation (hereinafter both together referred to as the contested norms) have not been adopted in accordance with the procedure established by normative legal acts, and are not sufficiently clear to hold a person criminally liable on the basis of them.

2.1. The Applicant considers that the fact that the initial draft law, which envisaged the addition of Section 237¹ to the Criminal Law, was submitted to the Saeima by the Minister of Justice is a violation of Article 65 of the Satversme. Moreover, Section 237¹ of the Criminal Law was included in the draft law only by a proposal before the third reading of the draft law. Consequently, Section 237¹ of the Criminal Law has not been examined in three readings in accordance with the requirements of Article 114 of the Rules of Procedure of the Saeima.

Moreover, the contested provision of the Criminal Law is not sufficiently clear and intelligible to hold a person criminally liable on its basis. At the time of the offence, case-law on the interpretation of this provision had not yet been established. Therefore, the content and scope of the provision could not have been ascertained by the person other than through independent interpretation of the provision and the application of legal doctrine.

It can be concluded from the grammatical wording of the contested provision of the Criminal Law that it establishes criminal liability only for violation of the prohibition on circulation of devices intended specifically for the implementation of operational measures to be carried out in a special manner. It follows from the provisions of the Law on Operative Activity that all operative activity measures to be carried out in a special manner are aimed only at obtaining information. Therefore, it clearly follows that the contested provision of the Criminal Law does not cover devices which cannot be used to obtain information and which are intended solely to interfere with operational measures. It cannot reasonably be foreseen that, under the contested provision of the Criminal Law, a person will also be held criminally liable for possession of equipment or devices, the purpose of which, i.e. obstruction of operational activities, is diametrically opposed to the purpose of the operational activities to be carried out in a particular manner. Section 5.¹ Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance, which was in force from 15 April 2009 to 26 April 2016, also does not mention goods intended to disrupt operational activities.

The legislator also did not consider that the contested norm of the Criminal Law provided for criminal liability for violation of the prohibition of circulation of devices intended for obstruction of operational activities. This understanding by the legislator is evidenced by the fact that on 12 November 2015 the Law "Amendments to the Criminal Law" was adopted, whereby the legal composition of the contested norm was supplemented with a direct reference to devices intended to interfere with operational activities. The Law on the Circulation of Goods of Strategic Significance was later amended in a similar way, with Section 5.¹ including an explicit reference to devices intended to disrupt operational activities.

Moreover, in order to understand that the content of the contested norm of the Criminal Law must be clarified by taking into account Regulation No 645 and its Annex, one must first examine a number of other normative legal acts. Such an overly complex structure of a blanket provision does not meet the quality requirements of a criminal law provision. According to the Applicant, even with

the assistance of a qualified lawyer it is impossible to come to the conclusion that the contested norm of the Criminal Law establishes criminal liability for violation of the prohibition of circulation of devices intended for obstruction of operational activities in a special manner.

2.2. The application indicates that the Cabinet of Ministers has issued the contested norm of the Regulation in violation of the limits of its competence, which derive from the normative acts of Latvia and the European Union.

The EU has exclusive competence to regulate the movement of military and dual-use goods. The legislator has also recognised in Section 2 Paragraph 2 of the Law on the Circulation of Goods of Strategic Significance that the movement of goods of strategic significance falls within the scope of Council Regulation No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (hereinafter - Regulation No 428/2009).

The devices referred to in the contested provision are dual-use goods. It follows from Articles 4 and 8 of Regulation No 428/2009 that Member States are entitled to impose restrictions only on the export of dual-use items. On the other hand, the contested norm of the Regulation prohibits the movement of dual-use goods specified therein in their entirety. The European Union has not granted the Member States the right to impose such a general ban on the circulation of goods, therefore the Cabinet of Ministers was not entitled to include the specific devices in the contested norm of the Regulation and thus to impose general restrictions on their circulation.

Furthermore, pursuant to Article 4(1) of Regulation No 428/2009, Member States may apply export control measures to certain dual-use items not listed in Annex 1 thereto only if those measures are justified on grounds of public security or human rights. However, the technical characteristics of equipment such as that in the possession of the Applicant are so insignificant that they cannot pose a threat to public safety or the rights or interests of other persons. Therefore, the Cabinet of Ministers was not entitled to include such goods in the List and thus to subject them to export restrictions. The Applicant further points out that such devices are freely traded in several Member States of the European Union. Goods of that kind are not included either in the Common Military List of the European Union or in Annex 1 to Regulation No 428/2009 and are therefore not subject to the restrictions on their movement laid down by European Union legislation.

The Cabinet of Ministers, by adopting the contested norm of the Regulation, has also violated the limits of its statutory authority. Section 3 Paragraph 1 of the

Law on the Circulation of Goods of Strategic Significance empowers the Cabinet of Ministers to establish a list of devices or instruments and their components specially designed or adapted for special operational measures. In contrast, the Cabinet of Ministers has also included in the List equipment and devices for disrupting operational activities. Thus, the Cabinet of Ministers has broadened the content of the contested norm of the Criminal Law, but this is not permissible under the second sentence of Article 92 of the Satversme.

Moreover, the contested norm of the Regulation was not available to the Applicant on the website *www.likumi.lv* in the wording in which that norm was applied to him. In particular, in the printout of the systematised version of Regulation No 645, available on the aforementioned website, dated 14 October 2013, the text of the contested provision was partially deleted.

The contested norm of the Regulation is not sufficiently clear and comprehensible, because according to Section 11 of the Law on the Circulation of Goods of Strategic Significance, experts determine whether a particular device is a good of strategic significance, i.e. whether it falls within the scope of the contested norm of the Regulation, based on the information available to them, as well as their own expertise. The identification of the device found in the possession of the Applicant was also carried out by an expert appointed by the Security Police. Consequently, it is not possible to apply the contested norm of the Regulation without the assistance of an expert. The Cabinet of Ministers has also acknowledged that the contested norm of the Regulation is not sufficiently clear. In particular, in the annotation to Regulation No 648 of the Cabinet of Ministers of 4 October 2016 "Amendments to Regulation No 645 of the Cabinet of Ministers of 25 September 2007 'Regulations on the National List of Goods and Services of Strategic Significance'" (hereinafter - Regulation No 648) it is stated that the definitions of special devices and software included in the List are incomplete and inaccurate.

The Applicant holds that it may be inferred from the reference to the Common Military List of the European Union included in the contested provision that the contested provision refers to certain categories of goods in general terms, but the restrictions on circulation apply only to those goods which conform to the technical parameters set out in the Common Military List of the European Union for a given category of goods. It does not clearly follow from the contested provision that the restrictions on circulation apply to all goods falling within the categories in question, therefore it must be held to be unclear and misleading.

It is also apparent from the reference to Council Regulation No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology ('Regulation No 1334/2000') that a person has the right to use certain devices for personal purposes such as possession or collecting. Moreover, the categories of goods in the List for special operational measures are formulated in such general terms that a person who has no experience in the field of operational activities would not be able to understand the meaning and content of the relevant concepts.

2.3. At the hearing, the Applicant's authorised representative, Ekaterina Halturina, additionally stated that Regulation No 645 had been issued in violation of Section 3 Clause 1 Sub-clause "e" of the Law on the Functioning of the European Union and Article 133 of the Treaty establishing the European Community, as well as other laws and regulations of the European Union, as it restricted the free movement of goods.

Ms J. Halturina also stressed that the structure of the contested norms is too complex and it is impossible for a person to understand the real meaning of these norms. The lack of clarity of the provisions is also reflected in the fact that they have been interpreted differently, including contradictorily, by different experts, including lawyers. Criminal Law regulations should clearly define what is and what is not prohibited. It was also pointed out at the hearing that the Applicant had not applied to the Committee for the Control of Goods of Strategic Significance (hereinafter - the Committee) referred to in Section 11 of the Law on the Circulation of Goods of Strategic Significance (hereinafter - the Law on the Circulation of Goods of Strategic Significance) to clarify the status of the goods in his possession, as he was not considered to be a subject of the circulation of goods of strategic significance. The Applicant has not been able to find out what the goods are.

3. The institution which issued the contested act– the Saeima – holds that the contested provision complies with Articles 90 and 92 of the Constitution.

In its reply, the Saeima points out that the requirements imposed by the second sentence of Article 92 of the Satversme with regard to the quality of legal norms regulating criminal law are higher than those imposed by Article 90 of the Satversme. Therefore, the compliance of the contested norm of the Criminal Law with the two aforementioned norms of the Satversme must be assessed in the given case in conjunction with each other, on the basis of the requirements of the quality

of a legal norm, which follow from the second sentence of Article 92 of the Satversme.

The Applicant has not expressed any objections to the process of adoption of the contested norm of the Criminal Law. In particular, he has objected only to the process by which the Law of 10 September 2009 on Amendments to the Criminal Law, which inserted Section 237.¹ into the Criminal Law, was adopted, but the provisions of that law have not been challenged in the present case. Section 237.¹ Paragraph 2 of the Criminal Law was amended in the contested wording by the Law of 13 December 2012 "Amendments to the Criminal Law", which was adopted and promulgated in accordance with the procedure established by the Satversme and the Rules of Procedure of the Saeima.

According to the jurisprudence of the Constitutional Court and the European Court of Human Rights (hereinafter - ECtHR), a legal norm cannot be declared unconstitutional solely because the content of that norm is ascertainable through its interpretation. The contested provision of the Criminal Law is a blanket provision, the legal constituent elements of which are to be found in other legal acts or in case-law. The contested norm of the Criminal Law provides for liability for violation of the prohibition on movement of certain types of goods of strategic significance. The rules on the circulation of goods of strategic significance are contained in the Law on the Circulation of Goods of Strategic Significance, which, inter alia, authorises the Cabinet of Ministers to issue the List and prohibits natural persons from acquiring, possessing and using equipment, devices or instruments specially designed or adapted for operational activities included in the List (in the version in force from 1 October 2011 to 26 April 2016).

It follows from the list of goods in the List that devices for disrupting operational activities are a type of device specially designed or adapted for operational activities and not another category of goods of strategic significance. The content of the contested norm of the Criminal Law has been repeatedly explained by representatives of the Ministry of Justice and by the Ombudsman during the legislative process. Thus, according to the first paragraph of Section 5.¹ of the Law on the Circulation of Goods of Strategic Significance, in the version in force from 1 October 2011 to 26 April 2016, the circulation of devices intended to interfere with operational activities was also prohibited. One could reasonably have foreseen that the criminal liability provided for in the contested norm of the Criminal Law could also be incurred for possession of a device intended for interference with operational activities, namely a noise generator with a wide frequency range.

The Saeima additionally points out that in order to find a person guilty of committing a criminal offence provided for in the contested norm of the Criminal Law, it is necessary to establish the subjective aspect of the criminal offence, i.e. that the person was aware of their actions and intended to commit the actions referred to in this norm. According to Section 11 of the Law on the Circulation of Goods of Strategic Significance, a person may resolve doubts about the status of a particular good by referring the matter to the Committee. This prevents the possibility that a person who was not aware of the harmfulness of his or her conduct might be found guilty of the offence in question. Consequently, the contested provision of the Criminal Law is sufficiently clear and comprehensible to enable a person, if necessary, after appropriate consultations, to ascertain for what acts one will be held criminally liable under that provision.

The Law of 12 November 2015 on Amendments to the Criminal Law explicitly refers to the prohibition of the circulation of devices intended to interfere with operational activities in the second part of Section 237.¹ of the Criminal Law in order to strengthen the liability provided for in the previously contested provision of the Criminal Law. These amendments do not in themselves mean that this category of goods was not, prior to their adoption, included in the legal composition of the contested provision of the Criminal Law or that the provision was unclear. Moreover, the content of this provision has been clarified in case law, and the fact that criminal liability attaches to the violation of the prohibition on the circulation of devices intended to interfere with operational measures included in the List was consistently recognised even before the entry into force of the amendments. According to the Saeima, a clear idea had already been established in the case law that the legal content of the contested norm of the Criminal Law covers also the violation of the prohibition of circulation of devices intended for obstruction of operational activities. Thus, the content and scope of the contested norm of the Criminal Law is clearly apparent from the case-law.

During the hearing, the representative of the Saeima, Ilze Tralmaka, additionally pointed out that items of strategic significance are listed in three lists: firstly, the list of dual-use items established by Regulation No 428/2009, secondly, the Common Military List of the European Union and, thirdly, the list contained in the Annex to Regulation No 645. It is common practice for the Saeima to authorise the Cabinet of Ministers to issue regulations on technical matters, taking into account the rapid development of technology.

In order to understand what goods are and are not allowed to be possessed under the contested provision of the Criminal Law, a person does not need to be

an expert in operational activities, and information on the means and methods of operational activities is not generally available. The understanding of the contested provision of the Criminal Law is in no way based on the fact that a person should know what operational measures can be carried out with a device in one's possession. Whether or not a particular device seized from an applicant is an item of strategic significance is a question of practice to be determined in each individual case.

I. Tralmaka also stressed that the List does not list goods according to their technical characteristics, but according to their function. All a person needs to do is read the product description or the instructions for use and, if necessary, refer the matter to the Committee. No one has been prosecuted for this. Moreover, the Applicant's allegation that the equipment and devices at his disposal could not be used in operational activities is unfounded. Although the function of the device in question is "jamming", it is still a product suitable for specific operational measures.

The representative of the Saeima reiterated at the hearing that the amendments to the contested norm of the Criminal Law should be perceived as an editorial clarification and not as substantive changes.

4. The institution that issued the contested award – the Cabinet of Ministers – in its reply notes that already in the initial wording of the List, equipment and devices for disrupting operational activities were included as one of the types of equipment and devices specially designed or adapted for operational activities to be carried out in a special manner. The 12 November 2015 Law on Amendments to the Criminal Law, *inter alia*, supplemented the contested provision of the Criminal Law with an explicit reference to specially designed or adapted devices for the purpose of obstructing operational activities, in order to particularly emphasise the liability for violation of this prohibition. During the drafting of the amendments, it was pointed out that, under the contested norms, criminal liability for violation of the prohibition on the circulation of the devices in question had already been provided for.

The content of the contested norms is objectively ascertainable, taking into account their interrelation, as well as their interrelation with other legal norms regulating the movement of goods of strategic significance in Latvia and the European Union. It has also been recognised in case-law that the contested norms established criminal liability for the prohibition of circulation of equipment and devices intended for obstruction of operational activities. Thus, a person could

deduce which violation of the prohibition on the circulation of goods was punishable by criminal law, and the contested provision was sufficiently clear.

According to the Cabinet of Ministers, the contested norms have been adopted and promulgated in accordance with the procedure established by normative legal acts and the contested norm of the Regulation has been adopted by the Cabinet of Ministers within the framework of the authority established by Section 3 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance. The Applicant, interpreting Section 2 of the Law on the Circulation of Goods of Strategic Significance, erroneously concluded that the legislator recognised the circulation of goods of strategic significance as falling within the scope of Regulation No 428/2009. The objectives of the Law on the Circulation of Goods of Strategic Significance are broader and the law provides for stricter rules on the movement of the goods concerned than Regulation No 428/2009. EU regulations set only minimum requirements for Member States and do not prevent Member States from imposing stricter rules. Thus, the first part of Section 5.¹ of the Law on the Circulation of Goods of Strategic Significance provided for a prohibition on the movement of the goods listed in the List, which does not affect the import, export or transit of those goods, i.e. a restriction which is unrelated to the requirements of Regulation No 428/2009 and does not fall within its scope. This restriction is justified by the interests of national security, and the laws and regulations of the European Union do not limit the competence of the Member States in matters of national security and public order and safety.

The Law on the Circulation of Goods of Strategic Significance is designed to assist in the identification of such goods. Section 11 of this Law provides for a procedure for the identification of goods of strategic significance, i.e. a clear procedure for a natural or legal person to ascertain whether certain goods are included in the lists of goods of strategic significance. Annex 1 to Regulation No 428/2009 and the Common Military List of the European Union also specify categories of goods within which an item can be identified only by a person whose duties include such identification.

The goods referred to in the contested provision are included in the List on the basis of goods falling within category 5 of Annex 1 to Regulation No 428/2009, such as jamming devices falling within Division 5A001.f thereof, specially designed or adapted for the intentional and selective interference, suppression, delay, impairment or diversion of mobile communications. The type of devices referred to in sub-clause 6 of the contested provision - wide frequency range noise generators - correspond to said category of goods by their characteristics and use.

Such goods are therefore included not only in the List but also in Annex 1 to Regulation No 428/2009. The reference in the contested provision to the Common Military List of the European Union is of an informative nature, that is to say, it is intended to alert the Applicant to the possibility that an item may also be included in that list and may therefore be subject to different conditions of control.

According to Section 5.¹ Paragraph 2 of the Law on the Circulation of Goods of Strategic Significance, mobile phone silencers may be used not only for operational purposes, but also in prisons, schools, court hearings, theatres or airports, where this is necessary to ensure internal security and order. These devices are therefore dual-use goods. Their circulation is prohibited because these devices could be used to interfere with the interception of mobile communications by the subjects of operational activities. The use of equipment and devices specially designed or adapted for the purpose of carrying out operational activities in a particular manner may endanger the security of the State, society or individual persons, inter alia, by interfering with operational activities carried out by law enforcement authorities and thereby hindering the prevention and investigation of criminal offences. Therefore, the restriction of fundamental rights laid down in the contested norms is proportionate. In everyday life, a natural person would not need a silencing device.

During the hearing, the representative of the Cabinet of Ministers Vilnis Vītoliņš emphasised that Regulation No 645 was issued on the basis of the authorisation contained in Section 3 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance, and the List is mentioned not only in Section 5.¹ Paragraph 1 of the Law, but also in other provisions of the Law, for example, in relation to licensing. Thus, it is incorrect to link the List only to Section 5.¹ Paragraph 1 of the Law.

V. Vītoliņš pointed out: one cannot agree with the Applicant that the operational measures to be carried out in a special manner are aimed solely at obtaining information. In operational activities, there is a fundamental difference between the acquisition of information as the end goal of operational activities and the methods of implementing operational activities. While the ultimate purpose of operational measures is to obtain information, the implementation of these measures may also require the use of various equipment and devices. Consequently, there is no justification for referring solely to the final purpose of the operational measures - obtaining information - and there is no reason to consider that the equipment and devices referred to in the contested norm of the

Regulation are not also intended for the implementation of the operational measures to be carried out in a particular manner.

The representative of the Cabinet of Ministers also pointed out at the hearing that a person may apply to the Committee, as well as exercise the right provided for in the Law on Administrative Procedure to apply to the State Security Service and request a reference to clarify the scope of his rights and obligations. However, in this respect, it is more important to receive legal advice than that of technical experts, as it is first of all necessary to understand the purpose of the equipment or device in question, as stated by the manufacturer in the usage manual.

5. The invited party - the Ministry of Defence - points out that only a person with special knowledge or a person who is informed about a particular device or its application and functions could conclude that a device falls within one of the categories of devices set out in the contested norm of the Regulation. A person who has no special knowledge or is not informed about the use and functions of the device would not be able to independently determine whether the device is intended to interfere with operational activities. However, the regulatory enactments applicable to the movement of goods of strategic significance provide for restrictions for traders aimed at ensuring that goods of strategic significance do not come into the possession of natural persons.

During the hearing, Ilze Tooma, a representative of the Ministry of Defence, additionally pointed out that the laws and regulations provide for a sufficient set of measures to prevent goods included in the Common Military List of the European Union from falling into the possession of natural persons who are prohibited from doing so. The control and supervision of a given area is divided between institutions, each with its own competences. The Ministry of Defence is responsible for licensing and supervising operators. Ivars Freibergs, representing the Ministry of Defence, pointed out that equipment and devices with high power are used for military purposes, but in some cases a similar effect can be achieved by connecting several devices or equipment with low power. In addition, these installations and devices have adverse effects on human health.

6. The invited person - the Ministry of the Interior - agrees with the opinion expressed in the replies of the Saeima and the Cabinet of Ministers on the compatibility of the contested norms with the Satversme. The Ministry of the Interior additionally points out that the regulatory enactments regulating the movement of goods of strategic significance contain preconditions w which a

merchant must comply in order to be able to carry out activities involving the equipment and devices specified in the contested norm of the Regulation. However, natural persons cannot freely obtain such equipment and devices for their own use, i.e. natural persons would have to take deliberate steps to obtain them.

The restrictions on the circulation of goods of strategic significance provided for in the Law on the Circulation of Goods of Strategic Significance, including the goods specified in the contested norm of the Regulation, are closely related to the interests of national security. International treaties and other sources of law, including laws and regulations of the European Union, without prejudice to national competence in matters of national security.

At the hearing, Ieva Skirusa, a representative of the Ministry of the Interior, stressed that the equipment and devices on the List are excluded from civil law circulation. The list is also drawn up taking into account the harm that the equipment and devices may cause to the rights of others, public safety and national security.

7. The invited party, the Ministry of Justice, points out that the views of the Ministry of Justice on the issues relevant to the present case have already been included in the Cabinet of Ministers' reply.

During the hearing, Laila Medina, a representative of the Ministry of Justice, pointed out that the Cabinet of Ministers' Regulations could be drafted in parallel with the drafting of the law. When assessing the contested provision of the Criminal Law, it is important to take into account the regulation established by the Law on the Circulation of Goods of Strategic Significance, namely that natural persons are prohibited to acquire, possess and use special devices listed in the List. A natural person who comes into contact with this type of product should be particularly cautious and, using the various possibilities provided for by law, should first find out whether he has the right to possess and use the product. If necessary, the natural person may use the possibilities provided for in the Law on Applications and the Law on Administrative Procedure, as well as apply to the Committee in accordance with the Law on the Circulation of Goods of Strategic Significance. The range of instruments available to a person is sufficient, given the sufficiently clear provision in the law that natural persons are prohibited from circulating certain goods.

Moreover, it is the duty of any lawyer to point out to a person which specialists are able to help him professionally. The authority can only give a

general explanation, as it cannot know all the specific circumstances of the case and cannot explain everything on the basis of an application alone. The contested norms were sufficiently clear to enable a person to be aware that he could be held criminally liable.

The representative of the Ministry of Justice also pointed out that the European Union may require absolute harmonisation on various issues, i.e. Member States may not derogate from a regulation that applies directly and in exactly the same way, but there are also issues where Member States are allowed to exercise their positive discrimination rights and to impose stricter rules in their countries. The Ministry has concluded that, in the situation at hand, Latvia may derogate from the provisions of the Regulation for reasons of national security and public policy. Stricter rules may also be imposed because Latvia is a country at the external border of the European Union.

8. The invited party - the Committee for the Control of Goods of Strategic Significance -, points out that its views are already included in the Cabinet's reply. The Committee further notes that the devices referred to in sub-clause 6 of the contested norm are not manufactured in Latvia and can only enter Latvia if they are imported. Accordingly, under the customs procedure, the goods to be imported are examined and identified. If it is established that a particular commodity falls within one of the categories of commodities set out in the contested norm of the Regulation, natural persons are prohibited from importing that commodity, while legal persons are referred to the procedure for obtaining the appropriate licence. However, a person may purchase such goods in another EU Member State where their sale is authorised and import them into Latvia without customs control. The movement of goods imported into Latvia in this way is controlled by the State Security Service.

The use of jammers can not only inconvenience users of mobile services, but can also be dangerous, as radio technologies are also used to protect people's health and safety or to save lives. Moreover, Latvia is a member of the Conference of European Postal and Telecommunications Administrations, the Communications Committee of which has adopted Recommendation No (04)01 on the circulation of jammers in its Member States, which states that Member States should prohibit the sale and use of jammers (other than, for example, by national security authorities) and adopt appropriate regulations to prevent the use of jammers.

At the hearing, Nauris Rumpe, a representative of the Committee for the Control of Goods of Strategic Significance, pointed out that the Committee is a collegial body with its secretariat in the Ministry of Foreign Affairs and is subordinate to the Minister of Foreign Affairs. The Committee performs many functions, such as identifying goods, issuing licences. The Committee is also the main coordinator for communication between all the relevant authorities and, if a person needs to clarify something with another authority, it clarifies the matter itself so that the person does not have to go to "a hundred different authorities".

Around 75 percent of the Committee's daily work is devoted to the identification of goods. Anyone can send a free-form email to the Committee, enclosing a leaflet or just the name and model of the product, without mentioning whether the product is already in their possession or whether they are just considering buying it. Such a right is derived from Section 11 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance. The Committee, in turn, identifies whether or not the item is included in one of the lists of items of strategic significance. Depending on the commodity in question, the Committee will forward the information to the relevant authority for identification or, if necessary, examination, for example the State Environmental Service in the case of chemical substances or the State Security Service in the case of equipment or devices needed for operational activities. On the initiative of the relevant authority, the Committee, and subsequently the Ministry of Foreign Affairs, promotes the necessary amendments to the laws and regulations. It was the Security Police that wrote the annotation on the need to introduce changes to the contested norm of the Regulation, and the Committee pushed forward the relevant amendments.

Between 2013 and 2018, the Committee dealt with around 162,000 requests for identification. The number of requests has been decreasing year on year, as the Committee has worked hard to inform and educate professionals such as customs officers, as well as the general public. In 2009, the Ministry of Foreign Affairs published an article on the ban on the movement of certain goods.

N. Rumpe stressed that the identification of goods was free of charge and he was not aware of any instance where a fee had ever been charged for an expert examination, although the law provided for it. Goods are usually identified within one working day. An item is only sent for expert examination if it cannot be identified by the identification specialist and if the item really needs to be seriously examined and assessed as to whether or not it is in conformity. Customs officers, carriers and others can use specific CN codes for the initial identification of goods, which are assigned individually to each good.

N. Rumpe pointed out that the lists of goods were not drawn up by the European Union, but by experts from the member states of the Wassenaar Arrangement. The lists of goods are regularly amended and sometimes certain goods are excluded. Moreover, the European Commission has not objected to the List established in Latvia and to the inclusion of goods in it on safety grounds. N. Rumpe pointed out that it is easier to ban the import of certain goods than to deal with their spread in the country if such imports were allowed.

None of the lists, including Regulation No 428/2009, contain goods intended for daily use by civilians. N. Rumpe stressed that there can be many names for the same product and no single list can include them all, so only the relevant experts can navigate them and understand whether a product with a different name is the same as the one on a list. These lists can only be understood by people who need the goods.

As regards the reference to the Common Military List of the European Union contained in the contested provision, Mr Rumpe pointed out that it was included in the List in the same way as in Regulation No 428/2009 with the aim of drawing the attention of persons to the fact that an item may also be included in that list.

9. The invited party -the State Security Service (until 31 December 2018 - the Security Police) - believes that whether a person without special knowledge would be able to conclude that a particular device falls within one of the categories of devices specified in the contested norm of the Regulation is not decisive in the matter of compatibility of the contested norms with the Satversme. A person may be found guilty of committing a criminal offence provided for in the contested norm of the Criminal Law only if his attitude towards the offence, i.e. the subjective aspect of the criminal offence, is established. Thus, it is impossible that a person could be found guilty of a criminal offence under the contested provision of the Criminal Law without knowing or suspecting that the object in question is a device for interfering with operational activities specified in the contested provision of the Criminal Law.

With regard to the issues to be examined in the case, the State Security Service points out that the equipment and devices in the List are described according to their use. Thus, in order to be able to identify a particular piece of equipment or device, a person must understand or suspect its use. No technical or other specific knowledge is required for this purpose. As part of their general education, a person acquires sufficient knowledge of radio waves and their

applications to be able to understand that a particular device is intended to interfere with operational activities. In addition, information on individual devices can be found on the internet. A person who has not acquired this knowledge, however, will not be able to guess the use of the device at all. Equipment and devices for disrupting operational activities are not freely tradable due to regulatory and other reasons. Moreover, they are not useful for everyday use, i.e. they can only be used in specific situations. Therefore, such devices can only come into the possession of a person if he has sought to obtain them, has been aware of their use and has taken deliberate steps to obtain them.

By assessing the contested norms and normative enactments with which they are systemically related, a person may clearly conclude for which acts of non-compliance with the prohibition he is to be held criminally liable, as well as to which goods these prohibitions apply.

At the hearing, a representative of the State Security Service pointed out that nowadays it is impossible to fully control the circulation of special devices, but the State Security Service is the institution that issues certificates confirming that the device meets the relevant standards and can be used in the territory of Latvia. The use of uncertified devices is also not allowed in law enforcement. The State Security Service is consulted by the initiators of proceedings in relevant cases, the Committee, merchants, pre-procurement operational entities and private individuals. The State Security Service responds in accordance with the procedure for reviewing applications. The State Security Service does not have the competence to control online shops and the goods they offer. However, the possibility to purchase goods via online shops and classifieds portals that could potentially be used in operational activities may give the public the impression that these goods are freely circulating.

A person can usually distinguish a device by its characteristics, and product descriptions are usually quite precise as to the intended use of the device. However, there are also cheap goods made in China, and often even the manufacturer is not clearly identifiable. In such a case, testing and inspection must be carried out to find out what the product is. Often, the initiating parties send goods for investigation about which they are unsure. Sometimes, the results of the investigation do not identify these goods as being on the List.

The representative of the State Security Service also pointed out that equipment and devices intended to disrupt operational activities are also used to carry out operational activities. The purpose of operational activities is to protect the life, health and constitutional rights of persons against external and internal

threats. In turn, the criminal underworld uses special devices not only to hinder law enforcement from achieving their operational goals, but also to endanger other people. In addition, the adverse effects of such devices on human health must be taken into account.

A representative of the State Security Service stressed that technology is evolving very rapidly and therefore the relevant framework needs to be regularly reviewed.

10. Invited party -State Police - points out that cadets of the State Police College specialising in criminal police work receive training, inter alia, on the List of Goods of Strategic Significance and identification thereof. Knowledge about operational technical means and strategic goods used in operational work can also be acquired within the framework of Riga Stradiņš University bachelor and master level study courses "Operational Work".

The State Police does not directly control the circulation of goods specified in the contested norms. However, if the State Police officers, in the performance of their duties, find such objects which could be equipment, devices or instruments specially created or adapted for the purpose of carrying out operational activities in a special manner, they shall, in accordance with the procedure established by law, seize the goods in question. The goods are then handed over to experts appointed by the State Security Service, who give their opinion. After receiving the expert's opinion, the need to initiate criminal proceedings will be assessed.

During the hearing, Antra Stradiņa, a representative of the State Police, additionally pointed out that the station inspector or investigator may not have seen a particular device or equipment before, which is why operatives are called in or the device is removed and checked in the appropriate manner. If a person wants to find out for himself what goods are in his possession and it turns out to be one of the goods on the List, the State Police will check all the circumstances and, if necessary, initiate criminal proceedings.

11. The invited person - the Ombudsman - is of the opinion that the law, which expresses Section 237.¹ of the Criminal Law in the wording as applied to the Applicant, has been adopted in accordance with the procedure established by the normative legal acts.

According to the ECtHR, the law is foreseeable if a person, having received appropriate legal assistance, can reasonably assess the legal consequences of his or her conduct given the circumstances. This applies in particular to persons who

exercise their professional activities with due care. Such persons can be expected to pay particular attention to the potential risks associated with their professional activities.

The movement of goods of strategic significance is a specific field, and it is impossible to operate in it without knowledge of this field and the regulatory legal acts governing it. Although it is not possible to ascertain from the application whether the Applicant is active in the field of goods of strategic significance, his professional activity is related to electronic equipment and therefore it should not be particularly difficult for him to understand the restrictions laid down in the relevant regulatory enactments. Moreover, the legislator has clearly distinguished between cases when a breach of the rules on the movement of goods of strategic significance constitutes an administrative offence and when it constitutes a criminal offence. The contested norm of the Criminal Law is sufficiently clear and compatible with the Satversme. The contested norm of the Regulation also specified equipment and devices for disrupting operational activities.

It follows from European Union law that Member States have the right to impose restrictions which go beyond those laid down in Regulation No 428/2009. The restriction on the acquisition and use of the equipment and devices specified in the contested norm of the Regulation does not restrict the rights guaranteed in Article 90 and the second sentence of Article 92 of the Satversme.

In its reply, the Saeima referred to the opinion of the Ombudsman of 31 March 2014 in the examination case No 2013-56-5D, within the framework of which the prohibition for private persons to acquire and possess devices for obstruction of operational activities was assessed in the context of Article 96 of the Satversme. In this opinion, it is stated that: the legislator has restricted the right of a person to protect himself or herself against infringement of the right established in Article 96 of the Satversme by technical means, but the prohibition is proportionate to its legitimate aim of preventing the possibility of impeding the investigation, detection and prevention of criminal offences, i.e. the public benefit resulting from the restriction outweighs the harm caused to the interests of the person.

It can be concluded from the replies of the Saeima and the Cabinet of Ministers that the restriction included in the contested norms was established with the aim of preventing the possibility of hindering the investigation, detection and prevention of criminal offences. Moreover, the presence of equipment and devices in the possession of a private person for the purpose of interfering with operational activities cannot have a legitimate aim.

During the hearing, the Ombudsman's representative, Juris Silčenko, drew attention to the fact that these devices can also affect the functioning of other devices, such as mobile communications and medical equipment. The possession and use of such devices by natural persons could therefore endanger the life, health and interests of others. Therefore, restrictions on the movement of such goods must be regarded as proportionate to the interests of society and of other individuals.

The Ombudsman's representative expressed the opinion that there is no obstacle for a person to find out that natural persons are prohibited from purchasing and using such devices. The amendments to the contested provision of the Criminal Law have clearly improved the quality and clarity of the law. Improving the quality of legislation is an ongoing process, but the amendments in question have not introduced anything fundamentally new.

As regards the fact that a person trying to find out what kind of device is in his possession could lead to an inspection or even criminal proceedings, the Ombudsman's representative pointed out that an inspection in itself does not lead to any consequences. However, if as a result of this examination a person has suffered any damage or losses, the person may always receive compensation for damages in accordance with the Law "On Compensation of Damages Caused in Criminal Proceedings and Administrative Offences", with direct reference to Article 92 of the Satversme.

12. Invited person - Associate Professor, Faculty of Medicine, University of Latvia *Dr. iur. Aldis Lieljuksis* - agrees with the Saeima's reply that the compatibility of the contested norms with the Satversme should be assessed on the basis of the quality standards of a legal norm included in the second sentence of Article 92 of the Satversme.

The legal content of the provisions of the blanket law is to be ascertained in light of the provisions of other normative legal acts. Therefore, the objective aspect of the criminal offence provided for in the contested norm of the Criminal Law is to be ascertained in the light of the norms of the Law on Operative Activity. In its judgment of 31 January 2017 in Case No SKK-41/2017, the Supreme Court has concluded that the devices for disrupting operational activities specified in the contested norm of the Regulation are a type of devices specially designed or adapted for operational activities, and not another category of goods of strategic significance. A. Lieljuksis believes that the aforementioned conclusion of the Supreme Court cannot be agreed with, because the Cabinet Regulations, i.e. a

regulatory enactment of lower legal force, cannot extend the object directly defined in a norm of the Criminal Law.

Electronic communication jamming devices are not designed to extract information and are therefore technically distinct from means of controlling electronic communications. Interception of conversations is not a measure provided for by the Law on Operative Activity, and its implementation does not require the control of a judge or prosecutor. According to the Cabinet Regulation of 1 February 2011 No 93 "Regulations on the Procedure for the Use of Special Radio Means and Technical Requirements for Their Operation", electronic communication jamming means may be used only by state security authorities in the performance of their functions. According to the provisions of these Cabinet Regulations, if electronic communications are disrupted for more than one hour, the relevant public security authority is obliged to inform the public. This aspect of openness makes an important distinction between the activities in question and the special operational measures, which are carried out in secret. Devices for the purpose of wiretapping activities cannot be considered to be a type of device specially designed or adapted for the purpose of specific operational activities, notwithstanding the structure of Division 10A905 of the List. High-power jamming devices can cause harm not only to individual users of the means of communication, but also to other persons, which is why such devices should be included in the List, but they are not intended for the implementation of operational measures to be carried out in a particular manner.

Moreover, similar devices to the one found in the possession of the Applicant are also used for other purposes, for example, for blocking the communication of pupils of an educational institution during the educational process or in theatres during performances. They can also be used by businesses to protect their trade secrets. A. Lieljuksis doubts that an absolute ban on the purchase and use of low-power jammers is necessary in a democratic society. Technological progress makes it necessary to distinguish between nuisance devices that can be used individually and those that can cause harm to society as a whole.

A. Lieljuksis considers that the amendments made to the contested norms indicate that the contested norm of the Criminal Law did not previously cover such equipment intended to interfere in a particular way with operational activities.

A. Lieljuksis admits that the expert appointed by the Security Police classified the device found in the possession of the Applicant on the basis of the internal terminology of the Security Police, where the content of the term

"operational activity measure" is different. Moreover, the expert opinion of the Security Police shows that the device in question is a dual-purpose device, i.e. a device intended both for carrying out operational activities and for interfering with such activities. Interference with operational activities is not defined as an operational measure in the Law on Operational Activities, but it is possible that such activities could be classified as operational activities in the internal regulations of the state security institutions.

At the hearing, Mr Lieljuksis emphasised that the contested norm of the Criminal Law had been incorrectly applied to the Applicant. This provision criminalizes only the violation of the prohibition on the circulation of equipment and devices which are capable of being used for special operational activities. It follows from the Law on Operative Activities that the special form of operational measures is aimed at active acquisition and preservation of information, as well as operational access to ensure the implementation of other operational measures. However, the contested provision of the Criminal Law is clear, but the same cannot be said about the contested provision of the Regulation.

Concluding Part

13. The Applicant requests the Constitutional Court to declare the contested norm incompatible with the second sentence of Article 90 and with Article 92 of the Satversme

13.1. Article 90 of the Satversme stipulates as follows: "Everyone has the right to know their rights." This norm of the Satversme is part of the principle of the supremacy of law, according to which the rights and obligations of persons can be determined only by generally binding legal norms. The Constitutional Court has already recognised that Article 90 of the Satversme includes the State's obligation to create a mechanism ensuring that persons are informed about the legal regulation and its content. In turn, a person has the subjective public right to be duly informed about his or her rights and obligations (*cf. paragraph 16 of the Constitutional Court's judgment of 20 December 2006 in Case No 2006-12-01 and paragraph 7.2 of the judgment of 1 November 2012 in Case No 2012-06-01*).

Article 90 of the Satversme contains, inter alia, criteria of the quality of legal norms, according to which every legal norm must be accessible, as well as

sufficiently clear and predictable (*cf.*, for example, paragraph 16 of the Constitutional Court's judgment of 20 December 2006 in Case No 2006-12-01 and paragraph 15.2 of the judgment of 30 March 2011 in Case No 2010-60-01). The Constitutional Court has previously recognised that the clarity and predictability of a legal norm must be assessed on the basis of the interpretation of that norm. Namely, a legal norm shall be recognised as unclear if it is impossible to ascertain its true meaning using methods of interpretation (*cf.* Paragraph 15.2 of the Judgment of the Constitutional Court of 30 March 2011 in Case No 2010-60-01). Only a rule that, *inter alia*, meets all the criteria of a legal rule can be recognised as a generally binding legal rule, i.e. as having legal force.

In a democratic state governed by rule of law, a person's fundamental rights can be restricted only by law. Therefore, when assessing compliance of a legal norm of lower legal force with any norm of fundamental rights included in the Satversme, it is necessary to establish whether the legal norm of lower legal force, which establishes a restriction of fundamental rights, complies with all criteria of quality of legal norms (*cf.*, for example, Paragraph 17.2 of the Constitutional Court's judgment of 15 June 2017 in Case No 2016-11-01 and Paragraph 15 of the judgment of 24 November 2017 in Case No 2017-07-01). The exercise of all fundamental rights enshrined in the Satversme is based on a person's right to know his or her rights.

13.2. The Second sentence of Section 92 of the Satversme states: "Everyone shall be presumed innocent until his or her guilt has been established in accordance with law." The Constitutional Court has already recognised that this norm of the Satversme, *inter alia*, includes the principle *nullum crimen, nulla poena sine lege*, i.e. the principle that a person may be found guilty and punished only for conduct that has been recognised as criminal in accordance with the law (*cf.* Paragraph 4.2 of the Constitutional Court Judgment of 16 December 2008 in Case No 2008-09-0106). The concept of "law" used in the second sentence of Article 92 of the Satversme is included in the concept of "right" included in Article 90 of the Satversme. Therefore, norms determining criminal liability may be recognised as law within the meaning of the second sentence of Article 92 of the Satversme only if they comply with the same quality criteria of legal norms as those contained in Article 90 of the Satversme. The Constitutional Court has already assessed compliance of legal norms with the second sentence of Article 92 in conjunction with Article 90 of the Satversme (*cf.* Paragraph 15.5 of the Judgment of the Constitutional Court of 28 March 2013 in Case No 2012-15-01).

However, because criminal liability is the most serious form of legal responsibility available and its consequences can have a significant impact on a person's life even after serving a criminal sentence, rules on criminal liability must be more specific than rules in other branches of law. Thus, in order to assess compliance of a legal norm with the second sentence of Article 92 of the Satversme, it must be established, first, whether it was adopted and promulgated in accordance with the procedure established by normative enactments and, second, whether it is accessible, as well as sufficiently clear and predictable to be able to constitute a basis for bringing a person to criminal liability (*cf. paragraph 5 of the Constitutional Court's judgment of 16 December 2008 in Case No 2008-09-0106*). Moreover, the Constitutional Court has already indicated that the second sentence of Article 92 of the Satversme covers fundamental human rights established in Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention), therefore, compliance of legal norms with the second sentence of Article 92 of the Satversme should be assessed by also applying the interpretation of Article 7 of the Convention provided by the ECtHR (*cf. Paragraph 4.2 of the Judgment of 16 December 2008 in Case No 2008-09-0106 of the Constitutional Court*). The ECtHR has recognised that the necessary degree of foreseeability of a legal norm depends, inter alia, on the content of the relevant regulatory enactment, the sector it is to regulate, as well as the number and status of its subjects (*cf., for example, paragraph 35 of the judgment of the European Court of Human Rights in Cantoni v. France, Application No 17862/91, of 11 November 1996, and paragraph 235 of the judgment in Kononov v. Latvia, Application No 36376/04, of 17 May 2010*).

In the present case, the compatibility with the Satversme of such legal norms, which provide for criminal liability of a person, has been contested. Therefore, the Constitutional Court should review the contested provision for compliance with the first sentence of Article 92 of the Satversme.

14. The Applicant considers that the contested norm of the Criminal Law has not been adopted in accordance with the procedure established by normative enactments, and indicates his observations on the process of adoption of the Law of 10 September 2009 "Amendments to the Criminal Law". However, the Criminal Law was supplemented by Section 237.¹ in its original wording by the Law of 10 September 2009 on Amendments to the Criminal Law. However, the contested provision of the Criminal Law was included in this Section only by the Law of 13 December 2012 on Amendments to the Criminal Law. The Saeima has also

pointed to this circumstance in its reply and at the court hearing (*cf. case file vol. 2 p. 54 and vol. 6 p. 29*). Thus, the Applicant has only raised arguments with regard to the law which introduced Section 237.¹ in the Criminal Law in its original wording. The application does not contain any arguments concerning the law by which the contested provision of the Criminal Law was incorporated into the Criminal Law. Consequently, the specific arguments put forward by the Applicant do not relate to the contested norm of the Criminal Law.

From the information available in the Saeima database of parliamentary documents, it follows that the draft Law of 13 December 2012 "Amendments to the Criminal Law" was submitted to the Saeima by the Cabinet of Ministers on 21 October 2011. In accordance with the Rules of Procedure of the Saeima, the draft law was examined by the Saeima in three readings and adopted in the third reading on 13 December 2012, and promulgated on 27 December 2012 in the official gazette "Latvijas Vēstnesis" No 202. The participants in the case did not express objections to the procedure for adoption and promulgation of the contested provision of the Criminal Law, and the Constitutional Court has no doubts that the contested provision of the Criminal Law has been adopted and promulgated in accordance with the Satversme and the Saeima Rules of Procedure, as well available according to the requirements of the regulatory enactments.

15. The contested provision of the Criminal Law is contained in Section 237.¹ of the Criminal Law, which consists of two paragraphs. Criminal law theory recognises that if a section of the Criminal Law consists of several parts, the first part of the article specifies the basic elements of the criminal offence, while the remaining parts specify its qualified elements, i.e. similar criminal offences for which the legislator has provided for a different type or amount of punishment, with certain additional qualifying features which usually indicate the more serious nature of the offence (*cf. Krastiņš U. Criminal offence. Riga: Court Houses Agency, 2000, pp. 21-23*).

Section 237.¹ of the Criminal Law is entitled "Violation of the Rules on the Circulation of Goods of Strategic Significance", and its first paragraph criminalizes "[t]he violation of the rules on the circulation of goods of strategic significance, if this has caused substantial damage". The contested provision of the Criminal Law, on the other hand, provides for criminal liability for "[t]he violation of the prohibition on the circulation of specially designed or adapted equipment, devices or instruments and their components for special operational measures". Interpreting the contested provision of the Criminal Law, it can be concluded that

criminal liability under this provision is incurred for violation of the provisions on the circulation of goods of strategic significance, i.e. a specific prohibition on the movement of goods of strategic significance. The circulation of goods of strategic significance in Latvia is regulated by the Law on the Circulation of Goods of Strategic Significance. It follows from the above that the contested norm of the Criminal Law establishes criminal liability for a person's conduct provided for in another regulatory enactment. The Constitutional Court has already recognised that such norms determining criminal liability cannot be recognised as unclear solely because their content is to be ascertained on the basis of other normative acts (*cf. Paragraph 7.2 of the Constitutional Court's judgment of 16 December 2008 in Case No 2008-09-0106*). Thus, in order to assess the constitutionality of the contested norm of the Criminal Law, it is necessary to ascertain the content and constitutionality of normative enactments regulating the movement of goods of strategic significance.

16. The first paragraph of Section 5.¹ of the Law on the Circulation of Goods of Strategic Significance (hereafter - in the version in force until 26 April 2016) provided, inter alia, for the prohibition of circulation of equipment and devices specially designed for operational measures to be carried out in a special manner.

The Applicant essentially considers that this prohibition has not been established in the manner prescribed by the regulatory enactments because: (1) the regulation of the movement of the devices in question is an area of exclusive competence of the European Union in which the Member States are not entitled to impose restrictions on their own; (2) under the provisions of Regulation No 428/2009, the Member States are entitled to impose restrictions only on the export of such goods; (3) under the provisions of Regulation No 428/2009, the Member States are entitled to impose export control measures on goods not listed in its Annex only if certain criteria are met.

The exclusive competences of the European Union are laid down in the Treaty on the Functioning of the European Union. Article 3(1)(e) of the Treaty provides, inter alia, that the European Union has exclusive competence for regulating the common commercial policy. Only the European Union can therefore regulate the common policies of the Member States on trade with third countries. However, the movement of goods of strategic significance and restrictions on such movement within a particular Member State of the European Union is not a matter for the exclusive competence of the European Union. It is also clear from Article

1, Article 2(2), (5) and (7) and Article 3 of Regulation 428/2009 that its purpose is to establish a common regime for the export of dual-use items outside the territory of the European Union. Accordingly, Articles 4 and 8 of this Regulation lay down the conditions under which Member States may impose additional restrictions on the export of dual-use items. Regulation 428/2009 therefore does not cover the movement of dual-use items within a Member State of the European Union. It therefore also does not restrict the freedom of Member States to regulate the movement of such goods within their territory.

The first part of Section 5.¹ of the Law on the Circulation of Goods of Strategic Significance was introduced into the Law by the Law of 12 March 2009 "Amendments to the Law on the Circulation of Goods of Strategic Significance". This Law has been examined by the Saeima in three readings, adopted and promulgated in the "Latvijas Vēstnesis" official gazette in accordance with the procedure established by the Satversme and the Saeima Procedure Rules. The Constitutional Court has no doubts that the first part of Section 5.¹ of the Law on the Circulation of Goods of Strategic Significance has been adopted and promulgated in accordance with the procedure established by the normative enactments and is available in accordance with the requirements of regulatory enactments.

Section 5.¹ Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance stipulates that: "Natural persons shall be prohibited to acquire, possess and use equipment, devices or instruments and their components specially designed or adapted for the purpose of carrying out operational activities in a special manner, as listed in the National List of Goods and Services of Strategic Significance of the Republic of Latvia [...]." Firstly, the content of the prohibition specified in the contested norm of the Criminal Law follows from the text of the first part of this Section, i.e. natural persons are prohibited to acquire, possess and use the goods of strategic significance. Secondly, it follows from the text of the first paragraph that the goods in question are listed in the List. According to Section 3 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance, the List shall be established by the Cabinet of Ministers. The Cabinet of Ministers has established the List in the Annex to Regulation No 645. Thus, in order to clarify the content of the contested norm of the Criminal Law, it is necessary to clarify the regulation of the List established by the Cabinet of Ministers.

17. According to the Applicant, the Cabinet of Ministers, by adopting the contested norm of the Regulation, has violated the limits of its authority

established in Section 3 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance. The aforementioned provision of the Criminal Law explicitly refers only to devices intended for special operational measures. According to the provisions of the Law on Operative Activities, all operative activities carried out in a special manner are aimed at obtaining information, and therefore the category of devices cannot include devices used to interfere with operative activities, the use of which is the opposite. According to the Applicant, this view of the Applicant is also confirmed by the subsequent amendments to the contested norm of the Criminal Law and the first paragraph of Section 5.¹ of the Law on the Circulation of Goods of Strategic Significance, whereby a direct reference to equipment and devices intended for obstruction of operational activities was included in these norms. Mr A. Lieljuksis also points out that the inclusion of devices intended for disrupting operational activities in the category of devices intended for operational activities to be carried out in a special way is not justified. In contrast, the Cabinet of Ministers is of the opinion that it has established the List in accordance with the mandate given to it by law. Therefore, the Constitutional Court will assess whether the Cabinet of Ministers, by issuing the List, has complied with the authorisation established by the legislator.

17.1. Section 1 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance states that goods of strategic significance are systems, equipment, components, materials, chemicals, items, software, technologies and services included in a number of European Union normative acts and the List. Since the entry into force of the Law on the Circulation of Goods of Strategic Significance on 19 July 2007, the definition of goods of strategic significance contained in this clause has not been substantially amended, i.e., the legislator has only updated the list of the relevant European Union normative acts. The first part of Section 2 of the Law on the Circulation of Goods of Strategic Significance stipulates that the purpose of this Law is to ensure the controlled movement of goods of strategic significance in accordance with the national and international interests of the Republic of Latvia, the requirements of international export control regimes and to prevent the proliferation of nuclear, chemical, biological and other weapons of mass destruction, as well as to prevent the threat of international terrorism.

Section 3 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance stipulates that: "The Cabinet of Ministers of the Republic of Latvia shall determine the National List of Goods and Services of Strategic Significance." Interpreting this legal provision in conjunction with Section 1 Paragraph 1 and

Section 2 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance, it can be concluded that it includes the legislator's authorisation to the Cabinet of Ministers to determine the equipment, substances, materials and services to which, inter alia, the control measures established in the Law on the Circulation of Goods of Strategic Significance should be applied in accordance with the national interests of the Republic of Latvia.

Thus, the legislator has defined the limits of the authorisation given to the Cabinet of Ministers, i.e., has determined the criteria according to which the Cabinet of Ministers should assess the necessity to include certain goods or services in the List, thus subjecting their circulation to the restrictions established by law. In accordance with this norm, the Cabinet of Ministers has established the List of Goods and Services.

17.2. The Applicant holds that the Cabinet of Ministers was not entitled to include in the List the equipment and devices intended for disruption of operational activities before the inclusion of an explicit reference to the prohibition of circulation of such devices in Section 5.¹ of the Law on the Circulation of Goods of Strategic Significance.

Regulation No.645 was drafted at the same time as amendments to the Law on the Circulation of Goods of Strategic Significance, which, among other things, were to authorise the Cabinet of Ministers to establish the List. These laws and regulations have been developed by a dedicated inter-ministerial working group. Within the framework of this working group, a draft Law on the Circulation of Goods of Strategic Significance of 21 June 2007 was elaborated, the first part of Section 3 of which provided the Cabinet of Ministers with a mandate to establish the List (*cf. case file vol. 2 pp. 112-128*).

It is clear from the case file that in the period prior to the adoption of Regulation No 645, the List was determined by the Committee in accordance with the Law on the Circulation of Goods of Strategic Significance. Regulation No 645 was drafted and adopted with a view to approving the National List of Items of Strategic Significance, as determined by the Committee, by means of Cabinet Regulations. Thus, the content of the List in Regulation No 645 was not developed from scratch, but was taken from the List previously developed by the Committee. The original version of draft Regulation No 645 already included in the List under Division 10A905 "Equipment, devices or instruments and their components specially designed or adapted for special operational activities", which in sub-clause "e" referred to "equipment and devices for disrupting operational activities"(*cf. case file vol. 2 pp. 112-128*). It follows that in the present case the

legislator, by adopting Section 3 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance, was aware that the List with specific content, known to it, would be adopted within the framework of the relevant mandate.

In order to fully achieve the objective of the Law on the Circulation of Goods of Strategic Significance - to ensure controlled circulation of goods of strategic significance in accordance with the national interests of the Republic of Latvia - it is necessary to restrict not only the circulation of equipment and devices that can be used in the implementation of operational measures of a special nature, but also the circulation of devices that can be used to disrupt operational measures. The Cabinet of Ministers is entitled, pursuant to Section 3 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance, to include goods in the List also in such a way that the designation of a type of goods belonging to a category does not correspond *expressis verbis* with the name of the category, provided that it is necessary in a systemic and meaningful way for the full control of the circulation of goods of strategic significance of the given category and the achievement of the objectives of the Law. Moreover, the representative of the State Security Service indicated at the hearing that equipment and devices intended for disrupting operational activities may also be used in operational activities carried out in a special manner (*cf. case file vol. 6. p. 179*). Consequently, the Cabinet of Ministers, by establishing the List and including therein, inter alia, equipment and devices for obstruction of operational activities, as well as by adopting the contested norm of the Regulation, has acted within the authorisation established by the legislator.

17.3. Cabinet Regulation No 1334 of 24 November 2009 "Amendments to Cabinet Regulation No 645 of 25 September 2007 "Regulations on the National List of Goods and Services of Strategic Significance"", which amended the List in the version in force from 28 November 2009 to 23 January 2014, has been adopted and promulgated in the manner prescribed by the Satversme, the Cabinet of Ministers Rules of Procedure and the Law on Official Publications and Legal Information.

The Applicant points out that the contested provision of the Regulation appeared in the printout he made from the website *www.likumi.lv* in crossed-out form. From the case-file (*cf. case file vol. 2 p. 5*), it is obvious that this deletion is due to technical reasons. However, whatever the nature and the reason for the deletion, the Constitutional Court emphasises that, in accordance with Section 2 of the Law on Official Publications and Legal Information, the official publication of

the Republic of Latvia, in which the information contained is publicly reliable and binding, is the electronic publication "Latvijas Vēstnesis".

Taking into account the above, the Constitutional Court has no doubts that the contested norm of the Regulation has been adopted and promulgated in accordance with the procedure established by normative enactments and is available in accordance with the requirements of normative enactments.

18. The list is structured in several divisions. Each division names a specific category of goods or services, and for some categories there are additional notes describing the category or identifying exceptions for specific goods or services in that category. Division 10A905 of the List is entitled 'Equipment, devices or instruments specially designed or adapted for operational activities and components thereof', which corresponds to the category of goods specified in Section 5¹Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance and in the contested provision of the Criminal Law. Accordingly, equipment and devices for disrupting operational activities are included in Division 10A905(e) of the List: (1) special indicators; (2) special locators; (3) scanners; (4) scramblers; (5) special frequency meters; (6) broadband noise generators. Equipment and devices for disrupting operational activities are therefore a type of equipment and devices specially designed or adapted for operational activities.

18.1. It does not follow from the requirements of the quality of legal norms contained in the second sentence of Article 92 of the Satversme that every legal norm should be formulated as an absolutely precise instruction. The ECtHR has also pointed out that, no matter how precise and clear the wording of legal provisions, their content will always be ascertainable by interpretation (*cf. paragraph 141 of the judgment of the European Court of Human Rights of 12 February 2008 in Kafkaris v. Cyprus, application No 21906/04*). As laws are, by their legal nature, abstract prescriptions of behaviour, their formulation cannot be absolutely precise. One of the techniques used in drafting legislation is the use of general terms instead of an exhaustive list (*cf., for example, paragraph 43 of the judgment of the European Court of Human Rights of 28 August 2018 in Seychell v. Malta, application No 43328/14*). If the legal content of a legal provision is formulated in general terms, there may be factual situations in which it is not obviously clear whether or not they fall within the scope of the provision. However, doubts as to the scope of a rule of law in relation to such factual situations do not in themselves give rise to a finding that the rule of law is vague

or unforeseeable if it is sufficiently clear in the majority of cases (*cf. paragraph 32 of the judgment of the European Court of Human Rights in Cantoni v. France, Application No 17862/91, 11 November 1996*).

To ensure the sustainability of regulation in technology areas, the legislator may also use the principle of technological neutrality when drafting legal rules in technology areas. Legal norms developed and adopted in accordance with the principle of technological neutrality contain general concepts describing the regulated technologies in question according to their purpose, impact, function and other general characteristics.

The legislator may use a generic term for a particular type of device, rather than listing the specific names and models of devices in a group of devices intended to interfere with operational activities. Such a designation reflects the essential characteristics of the group of devices concerned, such as design, function or use, which are characteristic of all devices of this type whose movement is subject to control. Not only would a list of devices require a disproportionate investment of resources in the drafting process, but it would also render the relevant legal provisions inflexible and significantly undermine their effectiveness in the changing circumstances of life. Therefore, the mere fact that the contested provision does not list the devices to be controlled, but uses general terms describing the functions of the devices, which are usually indicated in the technical descriptions of those devices and made available to consumers, does not mean that the provisions of the contested provision are unclear.

The equipment and devices referred to in the contested provision are not goods of everyday use, i.e. they are not devices that any person would use in his or her everyday life or would be likely to need. They are, by their very nature, specialised devices which, because of their function and potential use, are not generally available in free civil circulation in Latvia, as well as in many other countries of the world and the European Union. Even in countries where the purchase of such devices is allowed, there may be restrictions on their use. For example, the Committee noted in its written opinion that in the United Kingdom private individuals are allowed to purchase noise generators with a wide frequency range, but are prohibited from using them (*cf. case file vol. 5 p. 95*). The fact that such devices by their very nature cannot be regarded as goods of everyday use, as well as the fact that in order to acquire such goods a person would have to take deliberate and purposeful steps to seek an opportunity to acquire them, was pointed out at the hearing by the representative of the Committee N. Rumpe (*cf. case file vol. 6 p. 118*).

A legal provision is also considered sufficiently clear and foreseeable if the person, having received appropriate legal assistance, could have foreseen that, as a result of his or her conduct, he or she could be held criminally liable for the commission of the criminal offence specified in the relevant legal provision (*cf.*, see, for example, paragraph 113 of the judgment of the European Court of Human Rights of 12 July 2007 in *Jorgic v. Germany*, application No 74613/01, and paragraph 79 of the judgment of 21 October 2013 in *Del Río Prada v. Spain*, application No 42750/09). In order to correctly interpret the contested provision of the Criminal Law and to ascertain its content, a person may require specific legal knowledge. However, a rule of law may be sufficiently clear and foreseeable even if the person concerned requires appropriate legal assistance to clarify the scope of that rule (*cf.* paragraph 35 of the judgment of the European Court of Human Rights of 11 November 1996 in *Cantoni v. France*, application No 17862/91).

Interpreting the contested norms, it can be concluded that the equipment and devices indicated in the contested norm of the Regulation for disrupting operational activities fall within the category of equipment and devices specially designed or adapted for operational activities. Consequently, such equipment and devices are subject to the prohibition of movement set out in Section 5.¹ Paragraph 1 of the Law on the Circulation of Items of Strategic Significance. Accordingly, the contested norm of the Criminal Law establishes criminal liability, *inter alia*, for violation of the prohibition on circulation of equipment and devices intended for obstruction of operational activities, *i.e.* for acquisition, possession or use of such goods. Even if a person was unable to ascertain the legal constituent elements of the offence under the contested provision of the Criminal Law, he or she could have ascertained them by obtaining appropriate legal assistance. Thus, the contested norm of the Criminal Law establishes criminal liability for, *inter alia*, violation of the prohibition of circulation - acquisition, possession or use - of devices intended for obstruction of operational activities, and any person, having received appropriate legal assistance, could find out for which conduct he could be held criminally liable under the contested norm of the Criminal Law.

18.2. The Applicant refers to the annotation to Regulation No 648, in which the Cabinet of Ministers itself acknowledged that the definitions contained in Division 10A905 of the List are not clear.

Paragraph 2 of Regulation No 648 reworded Division 10A905 of the List. In the version of Regulation No 648, Division 10A905(e) of the List no longer contains a list of specific categories of equipment and devices, but specifies the

uses to which the controlled devices are put and adds notes providing additional characteristics of the equipment and devices concerned. The annotation to Regulation No 648 states that these amendments are necessary because, in the view of the proponents, the definitions contained in Division 10A905 of the List do not accurately describe the goods withdrawn from circulation.

The legal framework is constantly evolving, inter alia, by the legislator improving the wording of normative acts so that they more accurately reflect its will (*cf.*, for example, paragraph 10 of the Constitutional Court's judgment of 25 January 2012 in Case No 2011-08-01). Therefore, the mere fact that the Cabinet subsequently decided to amend the definitions in Division 10A905 of the List to make them clearer does not in itself mean that they were not clear enough before.

19. The Applicant points out that Division 10A905 of the List and the contested norm contained therein contain references to the laws and regulations of the European Union. On the basis of these references, the person may conclude that the control measures provided for in the Law on the Circulation of Goods of Strategic Significance apply only to those goods falling within the categories specified in the List which also meet the criteria specified in the relevant European Union legislation. In contrast, the Cabinet of Ministers, in its written opinion, and the representative of the Cabinet of Ministers, V. Vītoliņš stated at the hearing that these references were for information only.

Division 10A905 of the Schedule states: "Equipment, devices or instruments, and components therefor, specially designed or prepared for specific operational activities: (cf. Annex 1, category 5, second part, "Information security", of Council Regulation No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology)". The contested norm of the Regulation stipulates that: "equipment and devices for disrupting operational activities: (cf. Common Military List of the European Union)". Regulation No 1334/2000, which expired on 27 August 2009 and was replaced by Regulation No 428/2009, is referred to in the description of Division 10A905 of the List. In accordance with the third paragraph of Article 27 of Regulation No 428/2009, references to Regulation No 1334/2000 shall be construed as references to Regulation No 428/2009. So, in essence, Division 10A905 of the List refers to Annex 1 to Regulation 428/2009.

The aforementioned provisions of the List should be viewed in a systemic context with the definition of a strategic good in Section 1 Paragraph 1 of the Law on the Circulation of Goods of Strategic Significance in the version in force until

26 April 2016. According to this definition, items of strategic significance within the meaning of this Law are systems, equipment, components, materials, chemicals, items, software, technologies and services listed in the List, as well as in Annex 1 to Regulation No 428/2009 and in the Common Military List of the European Union. Consequently, the goods listed in Annex 1 to Regulation 428/2009 and in the Common Military List of the European Union are considered to be goods of strategic significance within the meaning of the Law on the Circulation of Goods of Strategic Significance. It would therefore not be legally correct to interpret those references as meaning that the relevant categories of goods listed in the List cover only those goods which are also included in those European Union laws and regulations. Thus, it can be concluded that the references to the regulatory enactments of the European Union contained in Division 10A905 of the List and in the contested provision of the Regulation are references of an informative nature, i.e. their purpose is to indicate that the movement of goods falling within this category is also regulated by the said regulatory enactments of the European Union.

20. The Applicant emphasises that a person without special knowledge, even with the assistance of a lawyer, would not be able to determine whether a particular device belongs to one of the groups of devices specified in the contested norm of the Regulation. This is evidenced by the provisions of the Law on the Circulation of Goods of Strategic Significance, according to which the authorities may refer to the Committee for the identification of a specific good and, if necessary, obtain an expert opinion. In the criminal proceedings in which the Applicant was convicted, the equipment found in his possession was also found to be a wide frequency range noise generator on the basis of an expert's opinion.

Mr N. Rumpe, the representative of the Committee, pointed out at the hearing that goods of strategic significance include goods of various types, ranging from technical equipment and devices to chemical substances. Lists of goods of strategic significance are drawn up in cooperation with specialists from many different fields, therefore only a person with specialised knowledge would be able to fully understand the content of concepts describing a particular category of goods of strategic significance (*cf. case file vol. 6. pp. 116 and 117*).

This is exactly why the Republic of Latvia has established a procedure for a person to find out whether a particular device is included in the List and what circulation restrictions apply to it. In accordance with Section 11 of the Law on the Circulation of Goods of Strategic Significance, the Committee's Strategic Goods

Identification Specialist provides opinions on the status of specific goods, and, if necessary, expertise may also be provided to determine the status of a good. It does not follow from the legislation that there are any financial or legal obstacles to obtaining a certificate from a Strategic Goods Identification Specialist. At the hearing, Mr N. Rumpe also explained that the Committee accepts requests from individuals in free form and issues opinions in response to requests in free form and sent by e-mail (*cf. case file vol. 6 p. 114*). In addition, Mr N. Rumpe pointed out that, although according to Section 11 Paragraph 3 of the Law on the Circulation of Goods of Strategic Significance, the opinion of the Strategic Goods Identification Specialist should be provided within 30 working days of receipt of the request, in practice the Committee, based on the principle of good administration, provides opinions as soon as possible - usually within one working day (*cf. case file vol. 6 pp. 120 and 131*). Thus, a person could, on one's own initiative or on the instructions of a lawyer, contact the Committee in order to identify the product in question.

The fact that in criminal proceedings the equipment was found to be a wide frequency range noise generator on the basis of an expert's opinion is in line with the first part of Section 194 of the Criminal Procedure Law, as the expert's opinion was necessary to clarify an issue of particular relevance in the criminal proceedings in question. However, this does not mean that a person could not use the technical description of the equipment to determine whether the equipment complies with the provisions of the legislation, either by themselves or with the assistance of other persons or public authorities.

21. The Applicant additionally points out that at the time when the device found in his possession in the criminal proceedings was found to be a noise generator of a wide frequency range, case-law on the application of the contested norms had not yet been established. On the contrary, the Saeima and the Cabinet of Ministers indicate that the case law on the application of the contested norms is clear and refers to several court decisions adopted after 3 April 2013, when said device was found in the possession of the Applicant. The institutions that have issued the contested acts, inter alia, emphasise the decision of the Supreme Court of 31 January 2017 in Case No SKK-41/2017, which confirmed the interpretation of the contested norms in accordance with which these norms were also applied to the Applicant.

The ECtHR has recognised that the progressive clarification of the content of criminal law by judicial interpretation is a deep-rooted and necessary legal

tradition in the legal systems of the Member States of the Convention. Article 7 of the Convention cannot be interpreted as prohibiting the progressive clarification of the content of criminal law by judicial interpretation, provided that the interpretation given by the courts is consistent with the nature of the offence and could reasonably have been foreseen (*cf., for example, paragraph 44 of the judgment of the European Court of Human Rights of 28 August 2018 in Seychell v. Malta, application no. 43328/14*). Even where a provision of law is interpreted for the first time, its interpretation must be regarded as foreseeable if it is reasonable and appropriate to the nature of the infringement (*cf., for example, paragraph 109 of the judgment of the European Court of Human Rights in Jorgic v. Germany, Application No 74613/01, of 12 July 2007, and paragraphs 791-821 of the judgment in Khodorkovskiy and Lebedev v. Russia, Applications No 11082/06 and No 13772/05, of 25 July 2013*). Accordingly, in accordance with the second sentence of Article 92 of the Satversme, whether there is already an established case-law or case-law on the interpretation of a particular legal norm or not, cannot be decisive in assessing the clarity and predictability of that legal norm, provided that its content can be ascertained by methods of interpretation of legal norms.

22. Taking into account all of the above, the Constitutional Court concludes that a person could have ascertained for what conduct one could be held criminally liable under the contested norms, either by interpreting those norms independently or, if necessary, by obtaining appropriate legal assistance. Thus, the contested norms are sufficiently clear and foreseeable to constitute grounds for criminal liability.

Thus, the contested norms comply with Article 90, Paragraph One, and the first sentence of Article 92 of the Satversme.

Awarding Part

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

decided:

1. Recognise Paragraph 2 of Section 237¹ of the Criminal Law, in the wording in force from 1 April 2013 to 1 December 2015, as compatible with Article 90 and with the second sentence of Article 92 of the Satversme of the Republic of Latvia.

2. To declare sub-clause "e" of Section 10A905 of the Annex to the Cabinet Regulation of 25 September 2007 No 645 "Regulations on the National List of Goods and Services of Strategic Significance", in the wording in force from 28 November 2009 until 23 January 2014, to be compatible with the second sentence of Article 92 of the Satversme of the Republic of Latvia.

The judgment is final and not subject to appeal.

The judgment was delivered in Riga on 21 February 2019.

The judgment shall enter into force as of the date of its delivery.

Chairperson of the Court session

I. Ziemele