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**The norm that provides that the decisions by a regional court in proceedings regarding criminally acquired property is not subject to appeal complies with the principle of equality enshrined in the *Satversme***

On 11 October 2017, the Constitutional Court adopted a decision in case No. 2017-10-01 “On Compliance of Section 629 (5) of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia and on Compliance of the Second Sentence of Section 631 (3) of the Criminal Procedure Law with the First Sentence of Article 91 of the *Satversme*.”

**Contested Norms**

Section 629(5) of Criminal Procedure Law: “The case materials in proceedings regarding criminally acquired property shall be an investigative secret, and a person directing the proceedings, a public prosecutor and a court examining the case may get acquainted with the case. The persons referred to in Section 628 of this Law may get acquainted with the case materials with a permission of the person directing the proceedings and in the amount specified thereby.”

Section 631(3) of the Criminal Procedure Law: “In examining a complaint or protest, a court may repeal a decision of a district (city) court and take a decision referred to in Section 630 of this Law. A decision shall not be subject to appeal.”

**Norms of Higher Legal Force**

The first sentence of Article 91 of the *Satversme*: “All human beings in Latvia shall be equal before the law and the courts.”

The first sentence of Article 92 of the *Satversme*: “Everyone has the right to defend his or her rights and lawful interests in a fair court. “

## **Facts of the Case**

The case was initiated with regard to a constitutional complaint submitted by IMEX PROVIDER LTD, in which it was noted that in October 2016 the person directing the proceedings had adopted a decision to initiate proceedings regarding criminally acquired property. At the court hearing, when this case was heard, the applicant's representative submitted a request to be allowed to familiarise himself with the case materials. However, on the basis of Section 629 (5) of the Criminal Procedure Law this request was rejected. In March 2017 the Panel of Criminal Cases of Riga Regional Court adopted a decision on recognising property as being criminally acquired. Pursuant to the second sentence of Section 631 (3) of the Criminal Procedure Law this decision is not subject to appeal in cassations instance court.

The applicant holds that in the proceedings regarding criminally acquired property its right to a fair trial, defined in the *Satversme*, was unfoundedly restricted. The applicant also maintains that in these proceedings it had not been ensured full possibilities to familiarise itself with the materials of the case regarding criminally acquired property.

The applicant also noted that the principle of equality had not been complied with. I.e., if proceedings regarding criminally acquired property are isolated, then the court's decision can be appealed against only in the appellate distance, in difference to a case, where the financial matters are dealt with in the framework of the basic criminal proceedings. Thus, the applicant had been unfoundedly denied the right to submit a cassation complaint regarding the decision by the appellate instance court in proceedings regarding criminally obtained property.

## **The Court's Findings and Decision**

### On requests made by the participants of the case

The Constitutional Court rejected the applicant's request expressed in the written opinion regarding broadening the limits of the claim, because in the case under review broadening the limits of the claim in the stage of examining the case would be incompatible with the principles of proceedings before the Constitutional Court. The Constitutional Court also rejected the applicant's request to suspend enforcement of the decision adopted by the court in the proceedings regarding criminally acquired property. [11, 13.]

*On terminating legal proceedings in the case*

The *Saeima* holds that the Constitutional Court already in case No. 2016-13-01 has ruled on compliance of Section 629 (5) of the Criminal Procedure Law with the *Satversme*, therefore legal proceedings with regard to this claim should be terminated. [14.]

In view of the judgment by the Constitutional Court in Case No. 2016-13-01, the Court recognised that it was not necessary to re-examine compliance of Section 629 (5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme* in the framework of the case under review. At the same time the Court recognised that in the case under review the applicant's request to recognise Section 629(5) as being invalid as of a past date must be examined, because at the time, when the case was initiated, this claim had not been adjudicated yet. Thus, in the case under review the Constitutional Court did not find grounds for terminating legal proceedings and continued legal proceedings regarding this claim. [15.1. 15.2.]

Contrary to the opinion expressed by the *Saeima* that legal proceedings in the case should be terminated also with respect to the claim regarding compliance of the second sentence of Section 631 (3) of the Criminal Procedure Law with the first sentence of Article 91 of the *Satversme*, the Constitutional Court did not establish grounds for terminating legal proceedings and continued legal proceedings also with respect to this part of the claim. [17.]

*On recognising Section 629 (5) of Criminal Procedure Law as being invalid*

In view of the fact that at the time, when the constitutional complaint was submitted, case No. 2016-13-01 had not been heard yet, the Constitutional Court held: to ensure to the applicant the right to a fair trial, it should have protection of rights equal to the one of applicant in case No. 2016-13-01. Thus, to eliminate, to the extent possible, adverse legal consequences caused by Section 629(5) of the Criminal Procedure Law, the Constitutional Court recognised that with respect to the applicant this norm should be recognised as being invalid as of the date when the breach of its fundamental rights occurred. [16.]

On the principle of equality

The Constitutional Court noted that in the case under review the affected owners of property in different proceedings regulated by the Criminal Procedure Law were being compared, i.e., in the basic criminal proceedings or the special proceedings—regarding criminally acquired property. [20.]

The Constitutional Court found that the essential feature shared by the persons was the owner's restricted right to handle its property, the criminal origins of and future actions with which were decided upon by a court. However, the Constitutional Court recognised that, in assessing compliance of legal norms with the equality principle included in Article 91 of the *Satversme*, not only the existence of a common feature had to be established, but also it should be established, whether these persons were in similar and comparable circumstances. [19.]

To establish, whether in the case under review persons were in comparable circumstances, the Constitutional Court examined the essence and purpose of special proceedings – proceedings regarding criminally acquired property. [20.]

*The essence and purpose of the special proceedings – proceedings regarding criminally acquired property.*

The Constitutional Court recognised that the proceedings regarding criminally acquired property were separate and isolated proceedings, in the framework of which the court examined only one issue that had arisen in the case – the issue of property. [20.1.]

The legislator's purpose, in isolating assessment of property issues in separate proceedings, is to ensure that property issues that have arisen in criminal proceedings are solved in a timely manner, taking into account the interests of procedural economy. In view of the fact that proceedings regarding criminally acquired property is an exception from the procedure for dealing with property issues in the basic criminal proceedings, the Constitutional Court recognised that these proceedings could have different provisions, aimed at speedy and effective reaching of its purpose. Thus, the regulation included in the second sentence of Section 631(3) of the Criminal Procedure

Law, providing for examination of such matter in two instances, is one of the measures that ensure speedy and effective resolution of property issues. [20.2.]

The Constitutional Court found that in the case under review the first sentence of Article 91 of the *Satversme* had to be examined in interconnection with general principles of law, *inter alia*, the principle of the rule of law and the principle of a fair trial, the cope of which did not include a person's subjective right to appeal a case of any category in the cassation instance. [20.2.]

Although material issues of a person may be dealt with both in the proceedings regarding criminally acquired property and the basic criminal proceedings, in view of the different essence and purpose of the proceedings regarding criminally acquired property, there are no grounds for comparing these two proceedings. The Constitutional Court found that, in examining the second sentence of Section 631(3) of the Criminal Procedure Law in interconnection with the regulation of the Criminal Procedure Law, persons were in different and incomparable circumstances. Thus, in the case under review the legislator's right to ensure equal treatment of persons, which are in different and incomparable circumstances, does not follow from the first sentence of Article 91 of the *Satversme*. [20.2.]

**The Constitutional Court held:**

To recognise Section 629(5) of the Criminal Procedure Law, to the extent a court does not have the right to re-examine the legality and validity of the decision taken by the person directing the proceedings on a person's right to familiarise himself with materials in the case, as being invalid with respect to IMEX PROVIDER LTD as of the moment when the infringement of fundamental rights occurred, taking into consideration the judgement by the Constitutional Court of 23 May 2017 in case No. 2016-13-01.

To recognise the second sentence of Section 631(3) of the Criminal Procedure Law as being compatible with the first sentence of Article 91 of the *Satversme*.

The judgement by the Constitutional Court is final and not subject to appeal, it shall enter into force on the day of its publication.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/04/2017-10-01\\_Spriedums.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/04/2017-10-01_Spriedums.pdf)

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The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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