



**A case initiated with regard to protection of a person, who has acquired property
in good faith, in criminal proceedings**

On 12 May 2016 the 2nd Panel of the Constitutional Court initiated the case “On Compliance of Section 356(2) and Section 360(1) of the Criminal Procedure Law with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the Satversme of the Republic of Latvia.”

Contested Norms

Section 360(1) of the Criminal Procedure Law provides: “If criminally acquired property has been found on a third person, such property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof.

Section 356(2) of the Criminal Procedure Law provides: “During pre-trial criminal proceedings, property may also be recognised as criminally acquired by:

1) a decision of a district (city) court in accordance with the procedures laid down in Chapter 59 of this Law, if a person directing the proceedings has sufficient evidence that does not cause any doubt regarding the criminal origins of the property or the relation of the property to a criminal offence;

2) a decision of a person directing the proceedings, if, during a pre-trial criminal proceedings, property was found with and seized from a suspect, accused, or third person in relation to which property the owner or lawful possessor thereof had previously submitted a loss of property, and, after finding thereof, has proven his or her rights to such property, eliminating any reasonable doubt.

Norms of Higher Legal Force

Article 1 of the Satversme: “Latvia is an independent democratic republic.”

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

Article 92 of the Satversme: “Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.”

Article 105 of the Satversme: “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.

The Facts

In 2011 the applicant – joint-stock company AS DNB banka – purchased property (an apartment) at an auction. However, in 2015 this property was recognised as being criminally acquired property, because the initial owner had lost it as the result of criminal offence, i.e., he had been defrauded of the apartment, which subsequently had been sold to another person, who corroborated his title to the property in the Land Register. Finally the apartment ended up in the applicant’s property. Allegedly, the applicant has acquired the property in good faith.

Whereas the person directing the criminal proceedings has adopted a decision, on the basis of the contested norms, to return the immovable property to its initial owner. The applicant holds that the contested norms restrict its right to own property and are incompatible with the principle of legal certainty, as the State has the obligation to protect property rights, which have been corroborated in the Land Registry.

Likewise, the contested norms are said to be incompatible with the principle of equality. Persons, who are defending their rights in criminal proceedings and civil proceedings, are said to be in similar and comparable circumstances. The rights of a *bona fide* acquirer are said to be protected in civil proceedings, whereas in criminal proceedings the contested norms do not provide for such protection and the person is deprived of property, irrespectively of the acquirer's good faith.

Finally, it is alleged that the contested norms are incompatible with the right to a fair trial, since the investigator's decision on returning the criminally acquired property to its initial owner may be appealed against to the prosecutor, but cannot be appealed against in court.

Legal Proceedings

The Constitutional Court has invited the Saeima to submit to the Constitutional Court a written reply on the facts of the case and the legal substantiation by 12 July 2016.

The term for preparing the case is 12 October 2016. The Court shall decide on the type of procedure and the date for hearing the case after the case has been prepared.

The press release was prepared with the aim to facilitate understanding of the cases examined by the Constitutional Court. 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 home page of the Constitutional Court www.satv.tiesa.gov.lv.

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