



Regulation of the Criminal Procedure Law on restricting the principle of protecting a *bona fide* acquirer of property is compatible with the *Satversme*

On 8 March 2017 the Constitutional Court passed judgement in Case No. 2016-07-01 “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 356(2) of the Criminal Procedure:

“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.

Section 360(1) of the Criminal Procedure Law: “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.

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

The applicant – joint stock company DNB banka – in 2011 purchased property (an apartment) at an auction. In 2015 the person in charge of proceedings – an investigator – during pre-trial investigation adopted a decision to recognise this property as being criminally acquired and return it to the owner, who had lost the immovable property as the result of a criminal offence – fraud. During criminal proceedings it had been established that the property that had been acquired through fraud was sold to another person, who had corroborated his right to property in the Land Register. Following that the apartment was acquired by the Applicant.

The applicant holds that the contested norms restrict its right to own property and are incompatible with the principle of legal certainty. The State is said to have the obligation to protect property rights, which have been corroborated in the Land Registry, *inter alia*, the rights of a *bona fide* acquirer of property.

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, the applicant holds that the contested norms are incompatible with the right to fair trial, since in the pre-trial criminal proceedings the principle of procedural equality is not ensured to the applicant as a third person.

The Court’s Findings and Ruling

The Constitutional Court found that during the pre-trial criminal proceedings Para 1 of Section 356(2) of the Criminal Procedure Law was not applied to the applicant and did not cause to it adverse legal consequences. [13]

The Constitutional Court decided:

To terminate legal proceedings in the case in the part regarding compliance of Para 1 of Section 356(2) 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.

Content of the contested regulation

The Constitutional Court found that the legislator's will, in adopting the Criminal Procedure Law on 21 April 2005 and dividing the second part of Section 356 in two paragraphs was not linked to the form of property (moveable or immovable property), but to the fact, whether the owner or legal holder of the property is known. Thus, the legislator's aim was to cover in the course of pre-trial criminal proceedings both moveable and immovable property. [15]

On restriction on the right to property

In the case under review the principle of legal certainty is closely linked to the property right. Thus, compliance of the contested regulation with the principle of legal certainty should be examined in interconnection with the possible restriction upon the property right. [16.3]

The Constitutional Court noted that the decision adopted by the person in charge of proceedings on recognising the Applicant's property as being criminally acquired property and on returning it to the person, who was deprived of it as the result of criminal offence, denied the applicant from exercising its full power over property in its ownership. Thus, the contested regulation restricted the Applicants right to property established in Article 105 of the *Satversme*. [17]

The Constitutional Court recognised that the restriction upon fundamental rights that followed from the contested regulation was established by law [19] and that the restriction upon fundamental rights included in the contested regulation had a legitimate aim – protection of other persons' rights. [21]

The Constitutional Court found that the contested regulation was appropriate for reaching the legitimate aim [23.2] and that the legislator had selected the most lenient measure for reaching the legitimate aim, since there were no alternatives for reaching it by other measures that would be less restrictive upon a person's rights and lawful interests. [24.2]

The principle of public credibility exists in a democratic state governed by the rule of law, from which the principle of protecting a *bona fide* acquirer is derived and which in Latvia is implemented, *inter alia*, with the help of the Land Register. [25.1] Although corroboration of immovable property in the Land Register and registration of rights *in rem* is mandatory and the

respective entries have been ensured public credibility with respect to third persons, such entries that have been made into the Land Register following a criminal offence cannot be recognised as being legal. The Constitutional Court found that exceptions to the principle of protecting a *bona fide* acquirer were admissible, if the legal relationship was based upon a criminal offence. [25.2]

In applying legal norms both the principle of rational legislator and the principle of unity of legal system should be taken into consideration, I.e., the legislator adopts aligned legal norms that operate harmoniously within the entire legal system; moreover, legal norms included in various regulatory enactments should be interpreted as such that form a united legal system. [25.2]

To reach the aims and objectives of criminal procedure and protect the victim, in a democratic state governed by the rule of law exceptions to the principle of protecting a *bona fide* acquirer are admissible. A person, who has lost immovable property as the result of a criminal offence, should have measures for regaining this immovable property [25.2] Thus, the contested regulation imposes proportional restrictions upon the applicant's fundamental rights. [25.3]

On the lack of legal regulation

The Constitutional Court notes that the legislator should ensure effective handling of a criminally acquired immovable property, so that the owner, who has lost it as the result of criminal offence, would be able to achieve corroboration of the respective property in the Land Register in his name, whereas the third person - a *bona fide* acquirer of this person or a *bona fide* pledgee would have effective possibilities to claim compensation for losses. [26]

On the principle of legal equality

Both in the procedure established by criminal procedure and by civil procedure the court examines different legal relationships. The aims and principles of each procedure differ. The second part of Section 360 of the Criminal Procedure Law provides that the good faith of a person in connection to claim for compensation of losses must be examined in civil procedure. Therefore neither the aim, nor the legal regulation of criminal procedure is aimed at examining the good faith of a third person. [27.2]

The Constitutional Court found that in the case under review there were no groups of persons who would be in similar and comparable circumstances, which means that the contested regulation is not incompatible with the equality principle included in the first sentence of Article 91 of the *Satversme*. [27.3]

The Constitutional Court decided:

To recognise Para 2 of Section 356(2) and Section 360(1) of the Criminal Procedure Law as being compatible with Article 1, the first sentence of Article 91 and Article 105 of the *Satversme*.

On the right to fair trial

Arguments presented by the applicant regarding reviewing compatibility of the contested regulation with Article 92 of the *Satversme* do not pertain to content of the contested regulation. The procedural rights of parties to familiarise themselves with materials of a criminal case and to express their views are established in other norms of the Criminal Procedure Law. Thus, the contested regulation in this regard does not affect the applicant's right to fair trial guaranteed in Article 92 of the *Satversme*. [28.3]

The Constitutional Court decided:

To terminate legal proceedings regarding compatibility of Para 2 of Section 356(2) and Section 360(1) of the Criminal Procedure Law with Article 92 of the *Satversme*.

The Judgement of the Constitutional Court is final and not subject to appeal, it shall enter into force on the day it is published.

The text of the Judgement [in Latvian] is available on the home page of the Constitutional Court: http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/05/2016-07-01_Spriedums.pdf

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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