



The norm on persons' right to get acquainted with case materials in proceedings regarding criminally acquired property, insofar a court may not re-examine the legality and validity of a decision by the person directing proceedings, is incompatible with the *Satversme*

On 23 May 2017 the Constitutional Court passed the judgement in Case No. 2016-13-01 "On Compliance of the Fifth Part of Section 629 of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia".

The Contested Norm

Section 629 (5) of the 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 [a suspect or accused and the person by whom property has been seized or an arrest has been imposed on property, or a person who has the right to concrete property] may get acquainted with the case materials with a permission of the person directing the proceedings and in the amount specified thereby."

The Norm of Higher Legal Force

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."

The Facts

The case was initiated on the basis of constitutional complaint submitted by limited liability company "Cell Finance" stating that proceedings regarding criminally acquired property had been initiated with regard to the applicant. In the framework of these proceedings the applicant's representative had submitted a request to the person

directing proceedings for getting acquainted with the case materials; however, on the basis of the contested norm, this request had been rejected.

The applicant holds that the contested norm places disproportional restrictions upon its right to a fair trial, since it does not ensure compliance with the principle of procedural equality. In proceedings regarding criminally acquired property persons' rights to get acquainted with case materials and to express their opinion on them is restricted; thus they are denied the right to affect the decision on criminally acquired property on its merits in an equal and effective manner. This decision is adopted by the person directing the proceedings, who cannot be regarded as being a neutral and impartial person. Moreover, the contested norm does not define the criteria that the person directing the proceedings should follow when deciding on permission to get acquainted with case materials.

The Court's Findings and Ruling

On terminating legal proceedings in the case

The *Saeima* holds that the restriction upon the applicant's fundamental rights is not caused by the contested norm, but by the practice of application thereof. [9]

The Constitutional Court concluded that no judicial review has been envisaged over the decision by a person directing proceedings regarding the right of a person linked to property to get acquainted with case materials in proceedings regarding criminally acquired property. Thus, in the case under review no grounds for terminating legal proceedings were identified and the legal proceedings were continued. [11]

On the right to a fair trial

In proceedings regarding criminally acquired property the State has a positive obligation to ensure the right to a fair trial in a way that envisages effective protection of rights. At the same time this means also the obligation of the State also to ensure to a person procedural safeguards for protecting his right to property, so that in special proceedings the case would be decided on its merits, by respecting a person's right to a fair trial. [13]

On the right to a fair trial in the institutional sense

If a person connected to property does not agree to the decision by the person directing proceedings, which has been adopted on the basis of the contested norm, he can appeal against it only within the framework of the prosecutor's office in procedure established in Chapter 24 of the Criminal Procedure Law. Legal regulation does not envisage a court's competence to re-examine this decision by a person directing proceedings. [13]

The Constitutional Court recognised that a prosecutor could not be regarded as being an independent institution of judicial power complying with denomination "court", if he was also one of the participants of the case and the one adopting the final decision on the amount, in which a person would be ensured the right to get acquainted with case materials in proceedings regarding criminally acquired property. [13]

On the right to a fair trial in the procedural sense

The Constitutional Court concluded that in proceedings regarding criminally acquired property in a democratic state governed by the rule of law it should be ensured that the principle of equal opportunities to parties should be complied with, which, *inter alia*, is linked also to a person's right to get acquainted with case materials in proceedings regarding criminally acquired property. [14.1]

In examining a person's right to get acquainted with case materials in proceedings regarding criminally acquired property, it is important to take into consideration the need to protect investigative secret. Disclosing and presenting case materials in proceedings regarding criminally acquired property might be contrary to other persons' right to a fair trial and might jeopardise successful course of pre-trial criminal proceedings. The person directing proceedings must ensure that investigative secret is protected not only in deciding on persons' right to get acquainted with case materials, but also when giving this permission. [14.2]

The Constitutional Court concluded that in order to ensure that the purpose of criminal procedure is met in proceedings regarding criminally acquired property protection of investigative secret must be ensured. It is required to avoid jeopardising the course of

criminal proceedings and to ensure that other persons may exercise their fundamental rights effectively. [14.2]

On balancing rights and interests of persons

In assessing the rights of persons connected to property to get acquainted with case materials in proceedings regarding criminally acquired property, a balance must be found between ensuring the principle of equal opportunities of the parties and protecting investigative secret. [15]

The Constitutional Court found that the person directing proceedings already now, in deciding on a person's right to get acquainted with case materials in proceedings regarding criminally acquired property, had to taken into account the general principles of law that are in force in the legal system, as well as legal regulation established by the legislator. [15.2]

In deciding on permission to get acquainted with case materials in proceedings regarding criminally acquired property, in each particular case the interests of persons involved in the case must be compared, taking into account the purpose of criminal procedure. However, neither investigative secret envisaged in the contested norm, nor the need to protect other persons' rights may serve as the grounds for not ensuring in proceedings regarding criminally acquired property the principle of equal opportunities of parties; i.e., the right to prepare properly for the examination of the case and the right to be heard. A fair court ruling on merits can be reached only in a procedure that ensures the principle of equal opportunities of parties. [15.3]

The Constitutional Court is of the opinion that the legislator should establish a procedure that would ensure the principle of equal opportunities of parties in such cases, providing the possibility to the court to examine the legality and validity of the decision by the person directing proceedings on a person's right to get acquainted with case materials in proceedings regarding criminally acquired property, thus, ensuring to a person effective protection of the right to property. The court is exactly the subject, which, in examining an issue on its merits, should at the same time perform function of control over respecting fundamental rights of persons connected to property. [15.3]

On the procedure, in which the contested norm becomes invalid

The Constitutional Court ruled that with respect to the applicant, insofar a court could not re-examine the legality and validity of the decision by the person directing proceedings on a persons right to get acquainted with case materials in proceedings regarding criminally acquired property, the contested norm was to be recognised as invalid as of the moment when the violation of fundamental rights occurred. [16.1]

The Constitutional Court notes that proceedings regarding criminally obtained property are aimed at timely and effective resolution of property issues in criminal proceedings. In criminal proceedings the fundamental rights of those persons, who in proceedings regarding criminally acquired property wish to get acquainted with case materials, must be protected until the moment when the legislator adopts legal regulation that complies with the *Satversme*. [16.2]

The Constitutional Court draws attention to the fact that until new regulation is adopted the right of persons connected to property to request a court to re-examine the decision by a person directing proceedings on getting acquainted with case materials in proceedings regarding criminally acquired property referred to in Section 628 of the Criminal Procedure Law, must be ensured by directly applying Article 92 of the *Satversme* and the findings of this Judgement. [16.2]

The Constitutional Court held:

The contested norm, insofar a court may not re-examine the legality and validity of a decision by the person directing proceedings on a person's right to get acquainted with case materials in proceedings regarding criminally acquired property, is incompatible with the first sentence of Article 92 of the *Satversme*.

With respect to the limited liability company "Cell Finance", insofar a court may not re-examine the legality and validity of a decision by the person directing proceedings on a person's right to get acquainted with case materials in proceedings regarding criminally acquired property, the contested norm is incompatible with the first sentence

of Article 92 of the *Satversme* as of the moment when the violation of fundamental right occurred.

The Judgement of the Constitutional Court is final and not subject to appeal, it has entered into force on the day of its publication.

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/2016/07/2016-13-01_Spriedums.pdf

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 ruling 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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