



Satversmes tiesa

Press Release

Case No 2021-18-01

11 May 2021

A case initiated with regard to the provisions that set out the
procedure for confiscating criminally acquired property

On 7 May 2021, the 2nd Panel of the Constitutional Court initiated the case “On the compliance of Section 70¹¹(4) of the Criminal Law and Section 358(1) of the Criminal Procedure Law with the first sentence of Article 91 and with Article 105 of the Constitution of the Republic of Latvia”.

CONTESTED PROVISIONS

Section 70¹¹(4) of the Criminal Law provides that the criminally acquired property, proceeds obtained by the person from the disposal of such property, as well as the yield received as a result of the use of the criminally acquired property, shall be confiscated, unless it must be returned to the owner or legal possessor.

Section 358(1) of the Criminal Procedure Law provides that criminally acquired property shall be confiscated, under a court ruling, for the benefit of the State if the further storage of such property is not necessary for achieving the objective of criminal proceedings and if such property does not need to be returned to the owner or lawful possessor, and the financial resources acquired shall be transferred to the State budget.

PROVISIONS OF SUPERIOR LEGAL FORCE

- First sentence of Article 91 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution): “All human beings in Latvia shall be equal before the law and the courts.”
- **Article 105 of the Constitution**: “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.”

FACTS OF THE CASE

The case has been initiated on the basis of an application filed by the stock company under liquidation “TRASTA KOMERCBANKA” (hereinafter – the Applicant). The Applicant notes that, pursuant to the contested provisions, funds owned by a good-faith third party are confiscated for the benefit of the State, in the amount corresponding to the amount of the criminally acquired property of other persons as at the moment when those persons made deposits with the Applicant as a credit institution. Also, in the Applicant’s opinion, the good-faith third parties whose property is confiscated are in a situation which is substantially different from that of other persons whose property is confiscated pursuant to the contested provisions, in other words, the contested provisions require uniform treatment of dissimilarly situated persons. Therefore, allegedly, the contested provisions infringe on the Applicant’s right to property, which is enshrined in Article 105 of the Constitution, and violate the principle of legal equality contained in the first sentence of Article 91 of the Constitution.

COURT PROCEDURE

The Constitutional Court has requested the *Saeima* to submit a written reply stating the facts of the case and the legal reasoning by 7 July 2021.

- The case is to be prepared by 7 October 2021.

The Court will decide on the type of proceedings and the date of hearing once the case has been prepared.

- The decision to initiate the case is available here: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/05/2021-18-01_lemums_par_ierosinasanu.pdf

This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the website of the Constitutional Court at www.satv.tiesa.gov.lv. You are also invited to follow the information on the Court's *Twitter* account [@Satv_tiesa](https://twitter.com/Satv_tiesa) and *YouTube* [channel](#).

Zanda Meinarte

Public Relations specialist
at the Constitutional Court
Zanda.Meinarte@satv.tiesa.gov.lv
67830759, 26393803

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