



Satversmes tiesa

Press Release

Case No. 2022-01-01

07.01.2022.

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A case initiated with respect to the right to familiarise oneself with the case materials in proceedings regarding criminally acquired property and the procedure for appealing against the decision on confiscating criminally acquired property

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On 6 January 2022, the 4<sup>th</sup> Panel of the Constitutional Court initiated the case “On Compliance of the Fourth and the Fifth Part of Section 627 and the Third Part of Section 631 of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia.”

#### THE CONTESTED NORMS

Pursuant to Section 627 (4) of the Criminal Procedure Law, the case materials regarding criminally acquired property is an investigative secret, and the person directing the proceedings, a prosecutor and a court examining the case may familiarise themselves with the case materials. The persons referred to in Section 628 of this Law may become acquainted with the case materials with the permission of the person directing the proceedings and in the amount specified by them.

Section 627 (5) of the Criminal Procedure Law provides: “The decision of the person directing the proceedings on rejecting a request to become acquainted with the case materials may be appealed to the district (city) court which examines proceedings regarding criminally acquired property. The court shall take the decision to fully or partially satisfy the complaint, or to dismiss it. The decision shall not be subject to appeal. For the court to decide whether becoming acquainted with the case materials endangers the fundamental rights of other persons, the public interests or interferes with the achievement of the objective of criminal proceedings, the court may request the materials of the criminal case and become acquainted with them.”

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

#### THE NORM OF HIGHER LEGAL FORCE

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

#### THE FACTS

The applicant’s property had been arrested on the basis of the investigator’s decision. Later, the investigator had decided to initiate proceedings regarding criminally acquired property with respect to the aforementioned property and to transfer the materials regarding criminally acquired property to a court for adjudication.

In the framework of proceedings regarding criminally acquired property, the applicant turned to the State Police with a submission, including several requests, *inter alia*, requesting the permission for getting acquainted with materials in the proceedings regarding criminally acquired property. On the basis of the investigator’s decision, these requests had been satisfied only partially – allowing to familiarise oneself with the materials in the criminal proceedings in a certain amount.

By the ruling of the Court of Economic Affairs, the applicant’s property had been recognised as being such that had not been criminally acquired and the proceedings regarding criminally acquired property were terminated. A prosecutor submitted a protest against the aforementioned ruling, whereas the investigator – an appellate complaint. The Riga Regional Court in its decision recognised the applicant’s property as being criminally acquired and it was confiscated for the benefit of the State.

The applicant holds that the regional court’s actions, in deciding on recognising its property as being criminally acquired and confiscating it, are contrary to the Criminal Procedure Law. Therefore this decision is said to be unjust, however, Section 631 (3) of the Criminal Procedure Law prohibits from appealing against it. Namely, the applicant had been denied the possibility to request examining the legality of the

decision by the Riga Regional Court and, hence, the applicant's right to a fair trial, included in the first sentence of Article 92 of the *Satversme*, had been infringed upon.

The State should ensure the possibility for appealing against the aforementioned decision of the regional court because, as the result of it, a person's property is being confiscated and a person's right to property is substantially restricted. Allegedly, the requirement to ensure the possibility for appealing against such a decision follows also from Paragraph 6 of Article 8 of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

The applicant also holds that the fourth and the fifth part of Section 627 of the Criminal Procedure Law denies access to the case materials that substantiate the criminal origins of property. These legal provisions, allegedly, provide for the possibility to deny access to several important materials in the case that the person directing the proceedings uses to substantiate criminal origins of property. Thus, the applicant's right to a fair trial, included in the first sentence of Article 92 of the *Satversme*, is infringed upon.

#### LEGAL PROCEEDINGS

The Constitutional Court has requested the *Saeima*, the institution, which issued the contested act, to submit to the Constitutional Court **by 6 March 2022** a written reply to the Constitutional Court, presenting the facts of the case and legal substantiation.

- The term for preparing the case is **6 May 2022**.

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

- The decision on initiating the case is available here:  
[https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-01-01\\_lemums\\_par\\_ierosinasanu.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-01-01_lemums_par_ierosinasanu.pdf)

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The press release was prepared to inform society about the Constitutional Court's work. More detailed information about recent developments, cases initiated and heard by the Constitutional Court is available on the Constitutional Court's webpage [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv). Please follow also information published on the Court's *Twitter* account [@Satv\\_tiesa](https://twitter.com/Satv_tiesa) and *Youtube* [channel](#).

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