



Satversmes tiesa

Press release

Case No. 2021-18-01

23.05.2022

The Constitutional Court recognises that confiscation of criminally acquired property within the framework of insolvency proceedings does not infringe the principle of legal equality in relation to the creditor; in the remaining part of the case, the Constitutional Court terminates the proceedings

On 23 May 2022, the Constitutional Court rendered a judgement in Case No. 2021-18-01 “On the Compliance of Section 70¹¹, Paragraph Four of the Criminal Law and Section 358, Paragraph One of the Criminal Procedure Law with the first sentence of Article 91 and Article 105 of the Satversme of the Republic of Latvia”.

THE CONTESTED PROVISIONS

Section 70¹¹, Paragraph Four of the Criminal Law until the moment of adjudication of the case on the merits was concluded, stated: “The criminally acquired property, proceeds of crime which the person has obtained from the disposal of such property, and also 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(, Paragraph One of the Criminal Procedure Law provides for that criminally acquired property shall be confiscated with 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 of lawful possessor, and acquired financial resources shall be included in the state budget.

NORMS WITH A HIGHER LEGAL FORCE

- The first sentence of Article 91 of the Satversme of the Republic of Latvia (hereinafter referred to as – the Satversme):
“All human beings in Latvia shall be equal before the law and the courts.”
- Article 105 of the Constitution is the following:
“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 OF THE CASE

Two cases were initiated before the Constitutional Court on the constitutionality of Section 70¹¹, Paragraph Four of the Criminal Law and Section 358, Paragraph One of the Criminal Procedure Law (hereinafter jointly referred to as – the contested norms). To facilitate a more comprehensive and speedy trial, these cases were merged into a single case.

The Joint-Stock Company under liquidation “TRASTA KOMERCBANKA” (hereinafter referred to as – the Bank) pointed out that, from the moment of deposit, the financial resources deposited with the credit institution become its property. Thus, by confiscating property that has been declared criminally acquired – the financial resources deposited with the Bank – the Bank is obliged to return its property to the state, thereby reducing the amount of property owned by the Bank. In the Bank's opinion, the contested norms are incompatible with the first sentence of Article 91 and Article 105 of the Satversme.

Whereas, *ERGO TEC LLP*, a UK-registered merchant (hereinafter referred to as – the Bank's creditor) had deposited financial resources with the Bank and filed a creditor's claim within the Bank's insolvency proceedings. On the basis of the contested norms, the state's failure to comply with the round of creditors' claims allegedly significantly reduces the Bank's property, which prevents it from meeting its obligations to the Bank's creditors in full. According to the creditor of the Bank, the contested norms are incompatible with the first sentence of Article 91 and the first three sentences of Article 105 of the Satversme.

CONCLUSIONS OF THE COURT

I. On the requests of the Saeima to dismiss the proceedings and the sequence in which these requests were examined

The Saeima is of the opinion that the proceedings in the case should be terminated on the basis of Article 29, Paragraph One, Clause 6 of the Constitutional Court Law, because the contested norms do not cause infringement of the fundamental rights of the Applicants contained in the first sentence of Article 91 as well as in Article 105 of the Satversme. Moreover, the Applicants allegedly have not complied with the time-limit set for submission of the applications to the Constitutional Court. Consequently, it was indicated to the Constitutional Court that these arguments, which could be the grounds for termination of the proceedings, should be examined first. [23]

The Constitutional Court found that in order to decide on the continuation or termination of the proceedings, it was necessary to distinguish the factual circumstances relating to the Bank from the factual circumstances relating to the creditor of the Bank. Consequently, the Constitutional Court indicated that it would first assess the arguments on dismissal of the proceedings in respect of the Bank, however, explaining that the aspects of the assessment related to the scope of Article 105 of the Satversme would be extended to the assessment of infringement of the fundamental rights of the creditor of the Bank. Finally, the Constitutional Court recognised that, when assessing the considerations related to the termination of proceedings in respect of the Bank, the first sentence of Article 91 and Article 105 of the Satversme must be viewed in their context. [24]

II. Assessment of the arguments for dismissal of proceedings

On the scope of Article 105 of the Satversme

The Constitutional Court concluded that the contested norms did not provide for compulsory expropriation of property within the meaning of the fourth sentence of Article 105 of the Satversme. Thus, in the present case, confiscation of criminally acquired property should be examined within the framework of the first three sentences of Article 105 of the Satversme. [25.1]

Consequently, the Constitutional Court pointed out that, in general, financial resources deposited with a credit institution and the right to claim them were “property” protected by the first three sentences of Article 105 of the Satversme. [25.2]

On the content of the contested norms

The Constitutional Court concluded that, by the contested norms, the Latvian legislator had stipulated special confiscation of property aimed at alienation of criminally acquired property without compensation within the state ownership. [26.1]

The obligation to establish a legal framework which would ensure that criminally acquired property is confiscated also arises from the Latvia's international obligations. [26.2]

Confiscation of criminally acquired property is carried out to protect important public interests and is generally aimed at ensuring the rule of law. In order for confiscation of criminally acquired property to fulfil its tasks, which include preventing the consequences of the criminal act and restoring the situation before the criminal act was committed, such property must be removed from civil legal circulation. Thus, the contested norms are, in their essence, aimed at

removing criminally acquired property from civil legal circulation by alienating it for the benefit of the state and thus changing the ownership of such property. Consequently, they fall within the scope of the fundamental rights contained in the first three sentences of Article 105 of the Satversme. [26.3]

On violation of the fundamental rights of the Bank contained in the Satversme

The Constitutional Court assessed the legal nature of deposits, indicating that, upon disbursement of deposit to a depositor, the credit institution's liability towards the customer ceases and, therefore, the impact on the credit institution is neutral. In the present case, it was also established that the Bank was obliged to transfer the funds declared to have been criminally acquired to the state budget, however, at the same time, within the framework of the insolvency proceedings, it was no longer obliged to disburse the funds to the person who had deposited them with the Bank. Consequently, the confiscation of financial resources that would otherwise be due to a depositor or other creditor of the Bank within the framework of the insolvency proceedings do not cause any adverse consequences specifically for the Bank. Namely, confiscation of criminally acquired property does not directly infringe the Bank's right to own property contained in the first three sentences of Article 105 of the Satversme, nor does it infringe the Bank's right contained in the first sentence of Article 91 of the Satversme. [27]

Consequently, the Constitutional Court concluded that, based on Section 29, Paragraph One, Clause 6 of the Constitutional Court Law, the proceedings in respect of the Bank's claim on compliance of the contested norms with the first sentence of Article 91 and Article 105 of the Satversme should be dismissed. [27]

On the infringement of the fundamental rights of the creditor of the Bank as contained in the Satversme

The Constitutional Court recognised that, with regard to the creditor of the Bank, the main issue in the present case was the impact of confiscation of criminally acquired property on the ability of the creditor of the Bank to seek satisfaction of its claim in the insolvency proceedings. [28]

The Constitutional Court indicated that in order to ensure protection of the rights of creditors and debtors, smooth progress of the insolvency proceedings, as well as public confidence in the effectiveness of the regulation of insolvency proceedings, the legislator had established the regulation of insolvency proceedings which, inter alia, was aimed at ensuring that the claims of creditors were satisfied as far as possible during the insolvency proceedings. [29]

However, the Constitutional Court recognised that the rights of a creditor in insolvency proceedings could not be examined in isolation from the factual circumstances in the case in question, which are related to the recognition of financial resources deposited in a credit institution as criminally acquired property, its confiscation and transfer to the state budget. Creditor's right arising from the legislative instruments to recover the deposited financial resources within the insolvency proceedings according to the rounds of satisfaction of creditors' claims does not entitle it to claim for the property which has been recognised as criminally acquired and participate in the distribution of such a property. Thus, the contested norms, which provide for the confiscation of the criminally acquired property, do not cause direct negative consequences for the creditor of an insolvent credit institution, since the property, to the confiscation of which the creditor attributes the infringement of their fundamental rights, is criminally acquired and, therefore, must be removed from civil legal circulation. [29]

Consequently, based on Section 29, Paragraph One, Clause 6 of the Constitutional Court Law, the Constitutional Court dismissed the proceedings in respect of the claim of the creditor of the Bank on compliance of the contested norms with the first three sentences of Article 105 of the Satversme. [29]

In assessing whether the creditor of the Bank had complied with the six-month time limit for submitting an application to the Constitutional Court, account was taken of the moment when the creditor of the Bank became aware of the decisions adopted in criminal proceedings in which confiscation of criminally acquired property was established. Thus, taking into account that the creditor of the Bank had complied with the time limit for submitting the application, the proceedings in respect of the claim of the creditor of the Bank regarding compliance of the contested norms with the first sentence of Article 91 of the Satversme were continued. [30]

III. On compliance of the contested norms with the first sentence of Article 91 of the Constitution

Do the contested norms provide for unjustified differential treatment of persons who have a claim against a credit institution directly in insolvency proceedings?

The Constitutional Court emphasised that confiscation of criminally acquired property meant compulsory alienation of such property without compensation or deprivation of such property, which was carried out due to the criminal origin of the property. The aforementioned separates confiscation of criminally acquired property from the types of state claims referred to in the Credit

Institution Law and enforced in the insolvency proceedings. Namely, due to the nature of confiscation of criminally acquired property, as well as when assessing this legal institution within the Latvian legal system, it cannot be compared with other state claims. [32.2]

Thus, rather than exercising its right of action like any other creditor, the state is acting as a subject entitled to alienate criminally acquired property. This is done not only to comply with international obligations, but also to ensure compliance with the principle that criminal offence does not bear fruit. Moreover, the Constitutional Court indicated that the fact that in the present case the Bank was a subject of the insolvency proceedings was not to be given weight. Also, financial resources deposited with a credit institution, including within the framework of insolvency proceedings, cannot be subject to any different requirements with regard to the need to confiscate them and to do so immediately as in other cases. [32.2]

Consequently, the groups of persons identified by the creditor of the Bank – the state, for the benefit of which the criminally acquired property is confiscated, and such creditors of the credit institution as the creditor of the Bank, who have right of action against a credit institution that is a subject of insolvency proceedings – are not comparable in the circumstances of the present case in the aspect of the principle of legal equality. Since the groups of persons identified by the creditor of the Bank are not in comparable circumstances, the contested norms in this part comply with the principle of legal equality contained in the first sentence of Article 91 of the Satversme. [32.2]

Do the contested norms provide for unjustified equal treatment of creditors of a credit institution who are in different circumstances?

The Constitutional Court recognised that a creditor of a credit institution that is a subject of the insolvency proceedings and a creditor of a credit institution that is not a subject of insolvency proceedings shared both the creditor's status and the rights of action against the credit institution. These groups of persons are therefore mutually comparable. [33.1]

The Constitutional Court further indicated that the ability of a credit institution to satisfy its creditors' claims depended mainly on the amount of property available thereto. The reason for opening insolvency proceedings and whether and to what extent creditors' claims will be satisfied as a result of the confiscation of property is primarily related to the credit institution's past activities, such as the business model chosen by the credit institution, as well as the amount of property held by the credit institution before the property deposited in its accounts was declared criminally acquired and confiscated for the benefit of the state, and not to the fact of insolvency per se. Thus, the

existence of insolvency proceedings is not in itself a criterion which would place the groups of persons indicated by the creditor of the Bank in different circumstances within the scope of the contested norms. The legislator cannot and is not obliged to provide for such a differentiated treatment as to make confiscation of criminally acquired property conditional on the actions previously taken by the credit institution to preserve its property. [33.2]

The Constitutional Court further emphasised that the achievement of the objective of confiscation of criminally acquired property – to immediately remove such a property from civil legal circulation – could not be made dependent on whether the credit institution was in insolvency proceedings. [33.2]

The Constitutional Court concluded that if criminally acquired property was confiscated based on the contested norms, creditors of a credit institution that is a subject of insolvency proceedings are not in different circumstances than creditors of a credit institution which is not a subject of insolvency proceedings. Consequently, the contested norms comply with the principle of legal equality included in the first sentence of Article 91 of the Satversme. [33.2]

The Constitutional Court ruled the following:

1 To dismiss proceedings in respect of the claim of the Joint-Stock Company under liquidation “TRASTA KOMERCBANKA” on compliance of Section 70¹¹, Paragraph Four of the Criminal Law and Section 358, Paragraph One of the Criminal Procedure Law with the first sentence of Article 91 and Article 105 of the Satversme of the Republic of Latvia.

2 To dismiss proceedings in respect of the claim of ERGO TEC LLP, a merchant registered in the United Kingdom, on compliance of Section 70¹¹, Paragraph Four of the Criminal Law and Section 358, Paragraph One of the Criminal Procedure Law with the first three sentences of Article 105 of the Satversme of the Republic of Latvia.

3 To recognise Section 70¹¹, Paragraph Four of the Criminal Law and Section 358, Paragraph One of the Criminal Procedure Law as being compatible with the first sentence of Article 91 of the Satversme of the Republic of Latvia.

The Constitutional Court’s judgement is final and not subject to appeal, it enters into force on the day of its publication.

Text of the Judgement is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/05/2021-18-01_Spriedums.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. **More detailed information on the latest developments, cases opened and adjudicated by the Constitutional Court is available on the [website of the Constitutional Court](#). We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](#) and the Court's *Youtube* [channel](#).**

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