



Satversmes tiesa

Press release

Case No. 2022-42-01

22.11.2022

Another case initiated regarding the provisions governing the proof
of criminally acquired property

On 21 November 2022, the 3rd Panel of the Constitutional Court initiated the case “On Compliance of Section 124, Paragraph six, Section 125, Paragraph three and Section 126, Paragraph 3.1 with the First and Second Sentences of Article 92 of the *Satversme*”.

THE CONTESTED PROVISIONS

Section 124, Paragraph six of the Criminal Procedure Law provides: “In criminal proceedings and in proceedings regarding criminally acquired property, the conditions included in an object of evidence in relation to the criminal origin of the property shall be considered proven if there are grounds to recognise during the course of proving that a property is, most likely, of criminal rather than lawful origin.”

Pursuant to Section 125, Paragraph three of the Criminal Procedure Law, “it shall be considered proven that the property with which laundering activities have been performed is criminally acquired if a person involved in criminal proceedings is not able to believably explain the legality of origin of the relevant property and the totality of evidence provides grounds for the person directing the proceedings to assume that a property is, most likely, of criminal origin.”

Section 126, Paragraph 3.1 of the Criminal Procedure Law determines: “If a person involved in criminal proceedings affirms that the property is not considered as criminally acquired, such person shall have a duty to prove the legality of the origin of the relevant property. If the person does not provide credible information regarding the legality of the origin of the property within a specific time period, such

person is forbidden to receive compensation for the harm caused thereto in relation to the restrictions imposed within the criminal proceedings to act with this property.”

PROVISION WITH A HIGHER LEGAL FORCE

The first and second sentence of Article 92 of the Constitution of the Republic of Latvia (hereinafter – 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.”

THE FACTS OF THE CASE

The case has been initiated on the basis of an application submitted by Vladyslav Itskovskyy (hereinafter – the Applicant).

It follows from the application and the documents annexed thereto that the investigator initiated and, with the consent of the supervising prosecutor, referred to the court proceedings regarding criminally acquired property. By the decision of the court of the first instance, the Applicant's financial resources were declared to have been criminally acquired and confiscated for the benefit of the State. The Court of Appeal, having examined the complaints lodged by the Applicant and his representative, upheld the decision of the Court of First Instance. The contested provisions have been applied during the proceedings regarding criminally acquired property.

The right to a fair trial.

According to the Applicant, the contested provisions do not ensure him the right to a fair trial commensurate with the first sentence of Article 92 of the *Satversme*. In particular, these provisions include the presumption of the criminal origin of property. At the same time, the Applicant has allegedly been placed under a disproportionate obligation to disprove this presumption, which is contrary to the

essence and purpose of the presumption of innocence. Thus, the contested provisions are said to infringe the right of the Applicant enshrined in the first and second sentences of Article 92 of the *Satversme*.

JUDICIAL PROCEDURE

The term for preparing the case is **21 April 2023**.

The Court shall decide on the procedure and date for hearing the case after the case is prepared.

The decision on initiation of the case (in Latvian) is available here:

https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/11/2022-42-01_lemums_par_ierosinasanu.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. Further details on the latest developments, cases opened and examined by the Constitutional Court are available on the website of the Constitutional Court www.satv.tiesa.gov.lv. **We invite you to follow the Court's activities on our Twitter account [@Satv_tiesa](#) and our YouTube [channel](#).**

Zanda Meinarte

The Constitutional Court's
Public Relations Specialist

Zanda.Meinarte@satv.tiesa.gov.lv

67830759, 26393803