



Satversmes tiesa

Press release

• Case No 2022-43-01 •

01.12.2022

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## Another case initiated regarding the provisions governing the proving of criminally acquired property

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On 29 November 2022, the 3rd Panel of the Constitutional Court initiated the case “On Compliance of Section 124, Paragraph six and Section 126, Paragraph 3.1 with the First and Second Sentences of Article 92 of the Constitution”.

### 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.”

Section 126, Paragraph 3.1 of the Criminal Procedure Law stipulates: “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 Constitution): “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.”

### FACTS OF THE CASE

The case was initiated on the basis of an application lodged by FORTRESS FINANCE INC., a company registered abroad (hereinafter – the Applicant). The person directing the proceedings initiated and referred to the court the proceedings regarding criminally acquired property. The court of first instance took a decision to terminate the proceedings. The Court of Appeal upheld the appeal of the person directing the proceedings and annulled the decision of the court of first instance, declaring the Applicant's financial resources to be criminally acquired and confiscating them for the benefit of the State.

According to the Applicant, the Contested rules do not ensure the right to a fair court in accordance with the first sentence of Article 92 of the Constitution. Namely, the contested provisions contain a presumption of the criminal origin of property, and they impose on the Applicant a disproportionate obligation to disprove this presumption. This also contradicts the essence and purpose of the presumption of innocence enshrined in the second sentence of Article 92 of the Constitution.

### JUDICIAL PROCEDURE

- The term for preparing the case is **1 May 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/2022/12/2022-43-01\\_lemums\\_par\\_ierosinasanu.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/12/2022-43-01_lemums_par_ierosinasanu.pdf)

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

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