



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

in the name of the Republic of Latvia

Riga, 14 March 2025

Case No. 2022-32-01

The Constitutional Court composed of the chairperson of the court hearing Irēna Kucina, judges, Anita Rodiņa, Jānis Neimanis, Jautrīte Briede, Veronika Krūmiņa, Mārtiņš Mits, and Juris Juriss,

following the constitutional complaints of Vitaly Leshkov, Zhanna Shalman, LIREVA INVESTMENTS LIMITED, Vladyslav Itskovskyy, FORTRESS FINANCE INC., Yanina Filatova, Andrey Sizov, Veronika Ribalchenko, ASG Resolution Capital, AS, Person N, Person O, SIA “SUNHOUSE”, Rana Malikova, Murad Melikov, KASPIANLAB LP and the application of the Economic Court,

under Section 85 of the Constitution of the Republic of Latvia, and Sections 16(1), 17(1)(9) and (11), 19¹, 19² and 28¹ of the Law on the Constitutional Court,

in the written procedure, at the court session on 12 February 2025, examined the case

“On the compliance of Section 124(6) and (7), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law with the first and second sentences of Section 92 of the Constitution of the Republic of Latvia”.

Establishing Part

1. On 21 April 2005, the *Saeima* of the Republic of Latvia adopted the Criminal Procedure Law, which entered into force on 1 October 2005.

With the amendments of 22 June 2017, which entered into force on 1 August 2017, Section 124 of the Criminal Procedure Law was supplemented with a sixth paragraph in the following wording: “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.”

By the mentioned amendments, Section 126 of the Criminal Procedure Law was supplemented with Paragraph 3¹, which reads as follows: “If a person involved in criminal proceedings claims that property should not be regarded as criminally acquired, the burden of proving the lawfulness of the origin of the property lies with that person.”

With the amendments of 20 June 2018, which entered into force on 1 September 2018, Section 124 of the Criminal Procedure Law was supplemented with a seventh paragraph in the following wording: “To prove money laundering, it must be proven that the funds were obtained through criminal activity, but it is not necessary to prove from which specific criminal offence the funds were obtained.”

In turn, with the amendments of 21 November 2019, which entered into force on 24 December 2019, in Section 124(6) of the Criminal Procedure Law, the words “Subject of proof” were replaced with the words “Subject of proof in criminal proceedings and proceedings on criminally acquired property”.

The same amendments remove the words “it must be proven that the funds were obtained through criminal activity, but” from Section 124(7) of the Criminal Procedure Law.

By these amendments, Section 125 of the Criminal Procedure Law was supplemented with Paragraph three which reads as follows: “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 the property is, most likely, of criminal origin.”

Likewise, by these amendments, Section 126(3¹) of the Criminal Procedure Law was supplemented with a sentence which reads as follows: “If a person fails to provide reliable information on the lawfulness of the origin of the property within the time limit set, that person shall be denied the possibility of obtaining compensation for the damage caused by the restrictions imposed on him or her in the criminal proceedings.”

2. Following constitutional complaints from several individuals, 14 cases have been initiated in the Constitutional Court regarding the compliance of Section 124(6) and (7), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law (collectively referred to as the contested norms) with the first and second sentences of Section 92 of the Constitution of the Republic of Latvia (hereinafter referred to as the Constitution). Following an application by the Economic Court, a case has been initiated concerning the compliance of Section 124(7) of the Criminal Procedure Law with the first sentence of Section 92 of the Constitution.

To facilitate the comprehensive and speedy examination of these cases, they were combined into one case under Section 22(6) of the Constitutional Court Law – in Case No 2022-32-01 “On the compliance of Section 124(6) and (7), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law with the first and second sentences of Section 92 of the Constitution of the Republic of Latvia”.

3. The applicants of the constitutional complaints – Vitaly Leshkov, Zhanna Shalman, LIREVA INVESTMENTS LIMITED, Vladyslav Itskovskyy, FORTRESS FINANCE INC., Yanina Filatova, Andrey Sizov, Veronika Ribalchenko, ASG Resolution Capital, AS, Person N, Person O, SIA “SUNHOUSE”, Rana Malikova, Murad Melikov and KASPIANLAB LP (also referred to as the Applicants) – believe that the contested norms do not comply with the first and second sentences of Section 92 of the Constitution.

Several separate criminal proceedings were initiated in Latvia under Section 195(3) of the Criminal Law for possible large-scale money laundering. In all the mentioned criminal proceedings, the person directing the proceedings

seized the Applicants' property, initiated proceedings to recognise the property as criminally acquired (also referred to as the proceedings on criminally acquired property) and transferred the proceedings materials to the court for decision. By the final court ruling in all the mentioned proceedings, the Applicants' property was recognised as criminally acquired and confiscated for the benefit of the State.

The Applicants point out that the contested norms in the proceedings concerning criminally acquired property significantly reduce the possibilities of the person related to the property to effectively contest the recognition of the property as criminally acquired and place the owner of the property in a significantly worse position compared to the person directing the proceedings, as they ease the burden of proof. This violates the principle of equal opportunities for the parties. After the person directing the proceedings has expressed an assumption that the property is likely to have a criminal origin, the person related to the property must prove the legality of the origin of the property, but does not have sufficient and effective procedural guarantees to refute the assumption made by the person directing the proceedings.

The Applicants believe that the contested norms are not clear and predictable, as they do not determine the cases and limits of their application. The adoption of these norms has violated the principle of good legislation because their compliance with general principles of law, the Constitution, European Union law, and international treaties was not assessed. The contested norms do not comply with the Constitution, to the extent that they are applied in proceedings concerning criminally acquired property. There must be a proven connection between the criminally acquired property and the predicate criminal offence, but the contested norms allow this not to be done. The contested norms should not be applied to proving the origin of property in proceedings concerning criminally acquired property in cases where autonomous money laundering is being investigated in criminal proceedings, however, in fact they are applied in these proceedings. They allow the seizure of property on a "preponderance of probability" standard of proof, regardless of whether or not the owner of the property is involved in a criminal offence.

The Applicants point out that, under the contested norms, the person directing the proceedings may assume the criminal origin of the property and a

disproportionate obligation is imposed on the person related to the property to refute this assumption. The person directing the proceedings is not required to justify their assumption and is not required to notify the person related to the property of facts that the person should refute. The burden of proof may be shifted to a person when the person directing the proceedings does not have evidence of a criminal offence. Thus, the person directing the proceedings is exempted from proving the criminal origin of the property. The person related to the property is in a less favourable position compared to the person directing the proceedings. The contested norms do not provide a person with the opportunity to prove the legality of the origin of property with evidence at their disposal or easily obtainable evidence. They do not set minimum criteria and standards regarding the form and content of the evidence to be submitted. The person is not aware of the facts on which the person directing the proceedings bases their assumptions. They must submit evidence within a disproportionately short time, in the official language and certified in a certain form. Evidence must be submitted for transactions carried out over an unlimited period. In addition, evidence must also be submitted regarding third-party transactions. Therefore, it is very difficult or even impossible to provide evidence of the legality of the origin of the property. If a person cannot prove the legality of the origin of the property, then the court may declare the property to be the proceeds of an unsolved criminal offence based on a preponderance of the evidence even if there is doubt about it. Furthermore, the court assesses the origin of the property based on the evidence that the person directing the proceedings has selectively extracted from the underlying criminal case, and not from all the criminal case materials. The court does not have the competence to examine the evidence submitted in the proceedings concerning the criminally acquired property, and thus the principles of directness and orality have been violated.

The Applicants draw attention to the fact that in the proceedings regarding criminally acquired property, no person's guilt is established and no criminal penalty is imposed, however, a conclusion is drawn regarding the criminality of the origin of the property and the performance of money laundering activities with such property, thus establishing the elements of the criminal offence provided for in Section 195 of the Criminal Law. Therefore, the contested norms allow the person directing the proceedings and the court to express an assessment that the person related to the property is guilty of committing a criminal offence. A person

is effectively punished with confiscation of property for committing a criminal offence for which their guilt has not been proven. The contested norms also impose an obligation on the person related to the property to rebut the presumption that they have committed money laundering. In addition, a court decision declaring property to be the proceeds of crime may be used as evidence in criminal proceedings to convict a person of money laundering. Thus, the contested norms violate the principle of the presumption of innocence.

4. The Applicant – the Economic Court – believes that Section 124(7) of the Criminal Procedure Law is inconsistent with the first sentence of Section 92 of the Constitution.

The Economic Court is considering proceedings regarding criminally acquired property. It was separated from criminal proceedings initiated under Section 195(3) of the Criminal Law for possible large-scale money laundering.

The Economic Court points out that, in general, the proceedings on criminally acquired property provides equal rights to the persons involved. In these proceedings, the person related to the property can learn what the person directing the proceedings' assumption about the criminal origin of the seized property is based on, and to provide the court with explanations and evidence to refute this assumption. The court controls this assumption by examining whether the evidence establishes, on a preponderance of the evidence, the criminal origin of the property. However, the balance of power between the involved parties is disrupted if the special proceedings are separated from the criminal proceedings, in which autonomous money laundering is investigated without establishing the possible predicate offence. In the criminal proceedings for autonomous money laundering, Section 124(7) of the Criminal Procedure Law allows for the omission of evidence of the predicate criminal offence from which the property originated, with which possible money laundering activities were later carried out. Likewise, this affects the proceedings on criminally acquired property separated from these proceedings. If evidence is not obtained regarding the origin of the seized property from the alleged predicate criminal offence, the body of evidence obtained by the person directing the proceedings concerning the origin of the property is inconclusive and the equal opportunities of the parties are disrupted. The person related to the property has no means to balance the evidentiary relief. The less

specific is the assumption by the person directing the proceedings about the criminal origin of the property, the more difficult it is to refute it. The legislator has allowed the person directing the proceedings not to fully clarify the chain of origin of the property; however, the person related to the property must be able to explain how this property came into their ownership or possession and that the movement of this property was legal also between third parties. Therefore, the person related to the property must provide more information about the origin of the property than the person directing the proceedings in the criminal proceedings has been able to ascertain. Thus, the application of Section 124(7) of the Criminal Procedure Law in the proceedings concerning criminally acquired property increases the possibility of confiscating property that is not of criminal origin.

5. The authority which issued the contested act, i.e., the *Saeima*, believes that the contested norms comply with the first and second sentences of Section 92 of the Constitution.

The *Saeima* indicates that the essence of the proceedings on criminally acquired property is to decide the issue of recognising property as criminally acquired while the person has not yet been found guilty of committing a criminal offence following the procedures established by law. This likewise follows from Latvia's international obligations that impose a duty to establish a legal framework to ensure the confiscation of criminally acquired property. Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law are closely interrelated because they regulate issues regarding proving the criminal origin of property and are part of the overall regulation regarding criminally acquired property. On the other hand, Section 124(7) of the Criminal Procedure Law can be used to prove money laundering, which is a separate criminal offence for which liability is provided under Section 195 of the Criminal Law. This provision does not apply to proceedings concerning criminally acquired property because it does not decide on the criminal offence, but on the criminal origin of the property. Moreover, the contested norms do not regulate the issue of the right to inspect the case materials.

The *Saeima* believes that the standard of proof "preponderance of probabilities" applies only to proving the criminal origin of property and not to proving that a person is guilty of committing a criminal offence. The guilt of a

person, regardless of the proof of the criminal origin of the property, must be proven according to the standard “beyond reasonable doubt”. The contested norms do not introduce a reverse burden of proof because the person directing the proceedings must prove that the property was obtained through criminal means. Regardless of whether the person has submitted information about the legality of the origin of the property, the person directing the proceedings must collect a sufficient body of evidence indicating that the origin of the property is most likely criminal. When the person directing the proceedings expresses an assumption about the criminal origin of the property, there must be a body of evidence that indicates this. The assumption of the person directing the proceedings regarding the criminal origin of the property cannot be subjective or unsupported by evidence. In turn, instead of proving beyond reasonable doubt that the origin of the property is legal, the person has to provide such an amount of reliable information about the legal origin of the property that it is no longer possible to prove that the origin of the property is most likely criminal. It is a duty that can be fulfilled. If a person fails to provide information on the lawfulness of the origin of the property within the specified time limit, the person loses the opportunity to receive compensation for the damage caused to them by the restrictions imposed in criminal proceedings on dealing with this property. These are the only consequences that a person incurs due to the failure to fulfil this obligation. A person has the right to submit information about the legal origin of the property even after the specified deadline.

The *Saeima* highlights the fact that the contested norms relate to proving the criminal origin of property, and do not impose an obligation on the person to prove their innocence in committing a criminal offence. The proceedings on criminally acquired property do not assess the subjective side of the criminal offence, and the recognition of property as criminally acquired does not imply a presumption of the person’s guilt. It does not follow from Section 70¹¹(1) of the Criminal Law that the criterion for recognising property as criminally acquired is the person’s connection with committing specific criminal offences. Recognising property as criminally acquired does not presume a person’s connection to a specific criminal offence or the person’s guilt in committing a criminal offence. Thus, the principle of the presumption of innocence has been respected.

6. The invited person – the Ministry of Justice – considers that the contested norms comply with the first and second sentences of Section 92 of the Constitution.

The Ministry of Justice points out that the contested norms are part of the legal framework that was introduced to promote the fight against money laundering and ensure the confiscation of criminally obtained assets thereby ensuring the fulfilment of international obligations. The purpose of Section 124(7) of the Criminal Procedure Law is directly related to the conviction of a person in cases of autonomous money laundering and stems from the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (hereinafter referred to as the Warsaw Convention). This norm applies only in criminal proceedings in which a person's guilt in money laundering is decided. Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law were introduced as part of the legal framework on criminally acquired property, considering the legal framework 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 (hereinafter referred to as the Directive 2014/42). Article 14 of Directive 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation also contains a regulation on the “preponderance of probabilities” standard of proof, which allows for the confiscation of criminally acquired property if the property was obtained as a result of criminal activity.

The Ministry of Justice believes that in proceedings regarding criminally acquired property, the person related to the property has received all the necessary procedural means. A person whose property is presumed to have been obtained through criminal means must only prove the origin of the property and does not need to prove that they are not connected to an unsolved criminal offence. In cases where it is not possible to obtain information about the predicate criminal offence in pre-trial criminal proceedings, the criminal origin of the property is proven by the objective side of the criminal offence under Section 195 of the Criminal Law, namely, by the laundering activities under Section 5 of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (hereinafter referred to as the Prevention Law). If the predicate criminal offence has not been

established in the case, the autonomous money laundering is investigated, and it is proven based on indirect evidence indicating the criminal origin of the property, typologies and signs of money laundering, as well as the person's ability to prove the legal origin of their property. The person directing the proceedings must prove that the property is likely to have a criminal, rather than a legitimate, origin. Only if a person claims the opposite, they are obliged to prove the legal origin of their property.

The Ministry of Justice indicates that Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law do not apply to proving that a person is guilty of committing a criminal offence; therefore, these provisions do not impose an obligation on a person to prove their innocence. Recognising property as criminally acquired does not presume the person's connection to a specific criminal offence. It is possible that a person possesses criminally obtained property even if the person has not committed a criminal offence or it is impossible to establish this. Confiscation of criminally acquired property is not a penalty but a procedural coercive measure. Therefore, the principle of the presumption of innocence is not violated. Also, according to the case law of the European Court of Human Rights, confiscation of criminally acquired property does not contradict the principle of the presumption of innocence.

7. The invited person – the Office of the Prosecutor General – agrees with the *Saeima's* reply and considers that the contested norms comply with the first and second sentences of Section 92 of the Constitution.

The Office of the Prosecutor General specifies that throughout the world, including Latvia, the state's ability to prove money laundering without a direct link to the predicate offence, namely, the autonomous money laundering, is still considered a challenge. Recognising property as proceeds of crime when autonomous money laundering is investigated in criminal proceedings complies with Latvia's international obligations, including the Warsaw Convention and the recommendations of the Financial Action Task Force on Money Laundering (hereinafter referred to as the Financial Action Task Force).

The Office of the Prosecutor General draws attention to the fact that the conclusion about the criminal origin of the property is based on a lower standard

of proof – probability, however, it must be justified and convincing. The standard of proof contained in Section 124(6) and Section 125(3) of the Criminal Procedure Law applies only to proving the origin of property that the person directing the proceedings considers to be criminally acquired. In proceedings on criminally acquired property, the court does not evaluate evidence relating to the person’s guilt in committing a criminal offence and does not decide on it. The court must only assess the evidence regarding the origin of the seized property. The essence of the presumption contained in Section 124(6) and Section 125(3) of the Criminal Procedure Law is to exclude the need to obtain evidence of the predicate criminal offence. When verifying the origin of property, three criteria must be evaluated: 1) the property has been objectively subject to money laundering activities; 2) the body of evidence gives the person directing the proceedings grounds for assuming that the property is likely to have a criminal origin, and 3) the person involved in the criminal proceedings cannot credibly explain the legal origin of the property. The most important prerequisite for assuming is sufficient evidence, and only then the person has the obligation to credibly explain the legality of the origin of the property. The case law of the European Court of Human Rights has recognised that a person may be required to explain the legality of the origin of property. If the person is unable to credibly explain it, then the property is presumed to have been obtained through criminal means. In addition, a person involved in proceedings on criminally acquired property may submit evidence not only to the person directing the proceeding, but also to the court. In judicial practice, individuals do exercise this right. Courts carefully consider the “preponderance of probabilities” standard of proof and whether the person directing the proceedings has gathered evidence that supports the assumption that the property is likely to have criminal origins, so that the person would have a need to prove the legality of the property’s origin. The person directing the proceedings must prove that the origin of the property is likely to be criminal, regardless of whether the person has provided information about the legality of the origin of the property. The difficulties of proof indicated in the applications are related to the individual application of the contested norms, and not to the inconsistency of these norms themselves with the Constitution.

8. The invited person – the Ombudsman – considers that the contested norms comply with the first and second sentences of Section 92 of the Constitution.

The Ombudsman refers to international documents and emphasises that to implement the recommendations of the Financial Action Task Force and successfully prove autonomous money laundering, it is essential to demand that the person justifies the origin of the funds at their disposal. In turn, the state must ensure that the presumption of money laundering is based on at least initial evidence.

The Ombudsman points out that in court practice, Section 124(7) of the Criminal Procedure Law is not applied in proceedings regarding criminally acquired property to justify a decision to recognise property as criminally acquired. If in cases of money laundering it is not necessary to prove from which criminal offence the property originated, then it is even less necessary to assess it in a separate proceeding from these criminal proceedings regarding the property obtained by crime. To recognise property as being obtained through crime, the application of the “preponderance of probabilities” standard of proof is permissible. This is not a disproportionate restriction of fundamental rights, as long as the balance of rights of the parties is respected and the right to examine evidence is ensured. The contested norms do not obligate the person related to the property to prove the legal origin of the property beyond a reasonable doubt. The legal presumption of fact with a reduced standard of proof regarding the origin of the property is in itself permissible if the principle of equal opportunities for the parties is observed in the trial and the decision on the criminal origin of the property is made by an independent court after examining the evidence. The person has the right to submit information confirming the legal origin of the property to the person directing the proceedings from the moment when their right to dispose of the property is restricted, and such right must also be maintained throughout the proceedings on the criminally acquired property. The contested norms do not deny a person the right to submit information substantiating the legal origin of property, and the principle of equal opportunities for the parties is not violated.

The Ombudsman draws attention to the fact that the court must examine the evidence to verify whether the assumption that the property is most likely of

criminal origin is justified. The person related to the property does not have to prove that they have not committed a criminal offence; they only need to credibly explain the legal origin of the property. The person directing the proceedings must substantiate the suspicion of the criminal origin of the property with a set of evidence that provides grounds for the assumption that the property is likely to have a criminal origin. In proceedings on criminally acquired property, the court must verify this assumption regardless of whether the person has provided information about the legal origin of the property. The court must ensure that the legal presumption of fact is applied within reasonable limits and that the person is not required to prove negative facts. The provisions of the Criminal Procedure Law do not limit the right of a person related to property to strengthen their position in proceedings on criminally acquired property with materials and arguments proving the legal origin of the property. If any procedural documents contain statements that violate the principle of the presumption of innocence, then the mechanisms for protecting personal rights under the Criminal Procedure Law may apply.

9. The invited person – the Latvian Council of Sworn Advocates – considers that the contested norms do not comply with the first and second sentences of Section 92 of the Constitution.

The Latvian Council of Sworn Advocates agrees with the arguments mentioned in the applications that the person related to the property is placed in a less favourable situation compared to the person directing the proceedings and it is not clear what set of evidence could refute the assumption of the person directing the proceedings. In addition, the Latvian Council of Sworn Advocates believes that in proceedings concerning criminally acquired property, in which a person is not held liable for money laundering, Section 124(7) and Section 125(3) of the Criminal Procedure Law do not apply.

The Latvian Council of Sworn Advocates considers that the legitimate aim of the restriction of fundamental rights under the contested norms, namely – public security, – can be achieved by means that are less restrictive of the fundamental rights of the individual. The contested norms do not obligate the person directing the proceedings to first establish a criminal offence and only then to raise an assumption regarding the criminal origin of the property and do not provide precise provisions on how the assumption of the person directing the

proceedings can be refuted. Thus, the benefit to society cannot be greater than the harm caused to the rights of the individual. The contested norms do not comply with the provisions and objectives of Directive 2014/42.

The Latvian Council of Sworn Advocates believes that in cases where a person related to property acquires a status that gives the right to defence, a violation of the principle of the presumption of innocence may be established. Most often, evidence of the criminal origin of property and the guilt of a person are essentially the same. Therefore, by obligating a person to prove the legality of the origin of property, they are also imposed the obligation to prove their innocence. The principle of presumption of innocence may also be violated in cases where a person's accusation of money laundering is based on the fact that the person has not been able to prove the legal origin of the property and the property has been recognised as being obtained through crime.

10. The invited person – lecturer at the Department of Criminal Justice of the Faculty of Law of the University of Latvia, *Dr. iur.* Gunārs Kūtris – believes that the contested norms do not comply with the first and second sentences of Section 92 of the Constitution, and argues as follows.

The legal institutions contained in the contested norms are necessary and permissible; however, their incorrect application may result in significant violations of law. The contested norms are not sufficiently clear and may also be applied to legal relationships for which they are not intended to be regulated.

The standard of proof “preponderance of probabilities” contained in Section 124(6) of the Criminal Procedure Law applies only to the origin of the property. Only when the person directing the proceedings proves that the origin of a particular asset is likely to be criminal does a person have an interest in proving the opposite. Even if the person does not attempt to refute the assumption of the person directing the proceedings, the court must determine from which criminal offence the property originated. If the proceedings on criminally acquired property are separated from the criminal proceedings for money laundering, then the predicate criminal offence from which the relevant funds were obtained must be proven. The standard of proof “preponderance of probability” can only be applied to criminally acquired property that is not an element of the incriminated criminal

offence. This does not apply to each case where the issue of criminally acquired property is being considered. It attributes solely to the case of application of the presumption of the criminal origin of the property. However, it cannot be assessed in the proceedings on criminally acquired property because in these proceedings, only property whose criminal origin is beyond doubt can be confiscated. The court does not examine evidence of a person's guilt in this process.

Section 124(6) of the Criminal Procedure Law is in itself consistent with the Constitution, provided it is applied correctly. The legal presumption of the fact of criminal origin of the property under Section 125(3) of the Criminal Procedure Law is not applicable in proceedings on criminally acquired property, as it applies to any proven criminally acquired property under Section 70¹¹(1) of the Criminal Procedure Law. The application of this presumption in a proceeding separated from a criminal proceeding for money laundering is also questionable, as then the criminal origin of the property is presumed because money laundering activities were carried out with it. However, money laundering activities as an objective aspect of the crime are not proven in the proceedings on criminally acquired property. Thus, the mentioned provision is not sufficiently clear. The legislator has not determined the limits of the application of the presumption; its application in proceedings on criminally acquired property creates procedural advantages for the person directing the proceedings and does not provide equivalent guarantees for the person related to the property. The person related to the property has difficulty presenting evidence to rebut the presumption, as it depends on the time frame and the person's resources. The person directing the proceedings may require that evidence be submitted in a certain form, certified and in the official language, and for an unlimited period. Such requirements are not specified in the law.

In criminal proceedings, it is permissible to impose the burden of proof on the opposing party, but not on the issue of the commission of a criminal offence. It is not permissible to require a person who has the right to a defence in criminal proceedings to prove that the funds used in the money laundering were not obtained through criminal means, as this means proving that the person did not carry out the laundering. Such application of the contested norms violates the principle of the presumption of innocence. A court decision recognising property as criminally acquired may also be used as evidence of a person's guilt in criminal

proceedings for money laundering, based on Section 125(1)(7) of the Criminal Procedure Law.

11. The invited person – the European prosecutor, *Mg. iur. Gatis Doniks* – believes that the contested norms comply with the first and second sentences of Section 92 of the Constitution, and argues as follows.

Legal tools for the recovery of criminal assets are being strengthened at the international and European Union levels. States introduce special legal proceedings on property, which apply different rules than criminal proceedings, which decide whether a person is guilty of a criminal offence. There are no internationally agreed standards in this area.

The examples of Italy and Germany demonstrate common features of confiscation proceedings, namely that they can be separated and handled independently of criminal proceedings without a conviction. The rules applicable to confiscation proceedings, although they apply to the same participants in the proceedings, differ from the traditional rules of criminal procedure. The standard of proof required for the confiscation of property is lower than that required to establish beyond a reasonable doubt the guilt of a person for committing a criminal offence. Persons involved in the confiscation process may exercise their procedural rights, however, this does not always mean full access to the materials of the underlying criminal proceedings for money laundering. The German and Italian approaches have stood the test of their respective constitutional courts. The European Court of Human Rights has repeatedly confirmed that regulations providing for non-conviction-based confiscation comply with fundamental rights standards. The main consideration is that such confiscation proceedings are not of a criminal nature, as their purpose is not to establish a person's guilt in committing a criminal offence, but to remove criminally acquired property from circulation. Consequently, civil procedure standards are more likely to apply in these proceedings. Derogations from fundamental rights requirements applicable to criminal proceedings are compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) as long as they comply with fundamental rights requirements that would be applicable to judicial proceedings in which civil procedural standards apply.

The contested norms provide an effective mechanism for the protection of fundamental rights of a person in special proceedings. Possible individual cases of non-compliance with a person's fundamental rights, which must be assessed within the framework of a specific proceeding, can be prevented with the help of the mechanisms for protecting the person's fundamental rights included in the Criminal Procedure Law.

12. At its executive session on 14 March 2023 the Constitutional Court decided to refer several questions for a preliminary ruling to the Court of Justice of the European Union and to suspend the proceedings in the case until the decision of the Court of Justice of the European Union enters into force. On 4 October 2024 the Court of Justice of the European Union delivered its judgment in Joined Cases C-767/22, C-49/23 and C-161/23 "iDream and Others". On 13 November 2024 the Constitutional Court resumed proceedings in cases that were suspended until the mentioned judgment of the Court of Justice of the European Union entered into force. After the resumption of proceedings and the transfer of the case for consideration, the opinions of the Applicants regarding the case materials received essentially coincide with the arguments presented in the applications.

Concluding Part

13. The Applicants dispute the compliance of Section 124(6) and (7), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law with the first and second sentences of Section 92 of the Constitution. On the other hand, the Economic Court contests the compliance of Section 124(7) of the Criminal Procedure Law with the first sentence of Section 92 of the Constitution. The Applicants and the Economic Court dispute the mentioned legal norms to the extent that they are applied in the proceedings regulated by Chapter 59 of the Criminal Procedure Law concerning criminally acquired property. However, the parties to the case and the invited parties have expressed different opinions as to whether all the contested norms apply in these proceedings.

13.1. Under Section 19²(1) of the Constitutional Court Law, a constitutional complaint may be submitted to the Constitutional Court by any

person who considers that a fundamental right established in the Constitution is infringed by a legal norm which is incompatible with a legal norm of higher legal force. The violation of the Applicant's fundamental rights is an indispensable prerequisite for legal proceedings. When examining the case on the basis of the constitutional complaint, significant importance is to be attached to the factual circumstances of the case in which the contested norm has infringed the fundamental rights of the Applicant (*see Paragraph 12 of the judgment of the Constitutional Court of 25 October 2011 in the Case No 2011-01-01*).

Under Section 19¹(1)(1) of the Constitutional Court Law, a court may apply to the Constitutional Court with an application only regarding the constitutionality of a legal norm that should be applied in the case under consideration and which it considers to be inconsistent with a legal norm of higher legal force. Also, in the case of a court application, the circumstances of the specific case are important for deciding the case (*see Paragraph 10 of the judgment of the Constitutional Court of 11 October 2018 in the Case No 2017-30-01*).

Thus, the Constitutional Court will first examine whether all the contested norms could have caused a violation of the Applicants' fundamental rights and whether they are applicable in proceedings on criminally acquired property.

13.2. It can be concluded from the case materials that the contested norms were applied or, possibly, should have been applied in the proceedings on criminally acquired property. These proceedings are separated from criminal proceedings under Section 195(3) of the Criminal Law on money laundering, which is investigated without establishing the criminal offence from which the relevant property originated (autonomous money laundering).

13.3. Section 124(7) of the Criminal Procedure Law states that to prove money laundering, it is not necessary to prove the specific criminal offence from which the funds were obtained.

The Applicants believe that the mentioned norm in proceedings on criminally acquired property eases the obligation of the person directing the proceedings to prove the criminal origin of the property, as he or she does not have to prove the criminal offence from which the relevant property was obtained (hereinafter also referred to as the predicate criminal offence). The Economic Court points out that the mentioned norm allows for the non-establishment of a

predicate criminal offence in proving money laundering, and this is accordingly also reflected in the proceedings on criminally acquired property. The *Saeima*, in turn, indicated that Section 124(7) of the Criminal Procedure Law applies to proving money laundering and not to proceedings on criminally acquired property because it does not decide on a criminal offence, but on the criminal origin of the property. The Ministry of Justice and the Latvian Council of Sworn Advocates also indicate that the mentioned norm can only be applied to criminal proceedings on money laundering, in which a person is held criminally liable.

From the wording of Section 124(7) of the Criminal Procedure Law, it can be concluded that it is not necessary to prove a specific predicate criminal offence to prove money laundering, which is a criminal offence for which liability is provided under Section 195 of the Criminal Law and the actions included in the objective side of which are specified in Section 5(1) of the Prevention Law. Essentially, the legislator has also included the same regulation in Section 5(2¹) of the Prevention Law, namely, money laundering is recognised as such regardless of whether it has been established from which specific criminal offence the funds were obtained. The need for amendments to Section 124(7) of the Criminal Procedure Law and Section 5(2¹) of the Prevention Law is justified in the annotations to the relevant draft laws as follows: there is an erroneous belief that in order to convict a person of money laundering, it is necessary to prove the specific criminal offence as a result of which the funds were obtained. The law needs a provision that clearly and unambiguously states that to prove money laundering, it is not necessary to prove the specific predicate criminal offence as a result of which the funds were obtained. This is provided in Article 9(5) and (6) of the Warsaw Convention (*see information in the legislative database on draft laws No 952/Lp12 “Amendments to the Law on the Prevention of Money Laundering and Financing of Terrorism” and No 1000/Lp12 “Amendments to the Criminal Procedure Law”*). Available at: saeima.lv).

Section 124 of the Criminal Procedure Law contains provisions on the subject matter and standard of proof in criminal proceedings. In the mentioned Section, the legislator has also included exceptions to the general provisions regarding the subject matter of proof, applying these provisions to both criminal proceedings and special proceedings regarding criminally acquired property. For example, Paragraph six of this Section provides that in criminal proceedings and

also in proceedings concerning criminally acquired property, which are not criminal proceedings in essence, but which the legislator has called a special criminal proceeding, the circumstances included in the subject matter of proof regarding the criminal origin of the property are deemed proven if, in the course of proving, there is reason to recognise that the property is most likely of criminal, rather than lawful, origin. In turn, in the contested Section 124(7) of the Criminal Procedure Law, the legislator has determined the standard of proof applicable to prove the composition of money laundering.

The practice of its application must also be taken into account when ascertaining the content of a legal norm. The decision of the general meeting of senators of the Criminal Department of the Senate of 19 June 2019 recognised that the requirements under Article 9(6) of the Warsaw Convention have been introduced into the mentioned law by Section 124(7) of the Criminal Procedure Law. Under this Paragraph, a Member State shall ensure that a person may be convicted of money laundering if it is proven that the property was acquired by committing a predicate offence, and in such a case, it is not necessary to prove precisely which crime the acquisition of such property is related to. Furthermore, Article 9(5) of the Warsaw Convention provides that each Member State shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering (*see Paragraph 3 of the decision of the Criminal Department of the Senate of 19 June 2019*). The Economic Court, although it has contested the constitutionality of Section 124(7) of the Criminal Procedure Law, indicates that in proceedings on criminally acquired property, such judicial practice has become established that the assessment of the origin of the property is carried out by applying Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law. In several proceedings on criminally acquired property, court decisions, by which the Applicants' property was recognised as criminally acquired, contain a reference to Section 124(7) of the Criminal Procedure Law (*for example, Paragraph 10 of the decision of the Riga Regional Court of 27 October 2022 in the Case No. 11904000420 and Paragraph 18 of the decision of 24 April 2023 in the Case No. 11904002821*). However, in all cases, the court has assessed whether the obtained body of evidence has met the standard of proof under Section 124(6) of the Criminal Procedure Law that the seized property is most likely of a criminal

origin. Following this standard of proof, in conjunction with the presumption of criminal origin of property under Section 125(3) of the Criminal Procedure Law, it is not necessary to establish a specific predicate criminal offence to prove the criminal origin of property. Thus, the reference in the court decisions to Section 124(7) of the Criminal Procedure Law could not have influenced the court's conclusion regarding the criminal origin of the property.

The Constitutional Court concludes that Section 124(7) of the Criminal Procedure Law is applicable to prove the alleged criminal offence and hold a person criminally liable in criminal proceedings on money laundering. It is not applicable in proceedings on criminally acquired property to prove the criminal origin of the property, and it could not have caused a violation of the Applicants' fundamental rights. This is the basis for terminating the proceedings following Section 29(1)(6) of the Constitutional Court Law.

Therefore, the part of court proceedings concerning the compliance of Section 124(7) of the Criminal Procedure Law with the first and second sentences of Section 92 of the Constitution is to be terminated.

13.4. Section 124(6) of the Criminal Procedure Law concerning the proof of the criminal origin of property establishes the standard of proof "preponderance of probability", namely, the circumstances included in the subject matter of proof regarding the criminal origin of property is deemed proven if, during the course of proof, there is reason to recognise that the property is most likely of criminal rather than lawful origin. Section 125(3) of the Criminal Procedure Law includes a presumption that it shall be deemed proven that the property laundered has been criminally acquired if the person involved in the criminal proceedings is unable to credibly explain the lawful origin of the property in question and if the totality of the evidence gives the person directing the proceedings grounds to believe that the property is likely to have a criminal origin. On the other hand, Section 126(3¹) of the Criminal Procedure Law establishes the obligation of a person involved in criminal proceedings to prove the legality of the origin of property. Namely, if a person involved in criminal proceedings claims that the property should not be regarded as criminally acquired, the burden of proving the lawfulness of the origin of the property lies with that person. If a person fails to provide reliable information on the lawfulness of the origin of the property within the time limit set, that person

shall be denied the possibility of obtaining compensation for the damage caused to him or her by the restrictions imposed on him or her in the criminal proceedings.

Thus, Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law are closely interrelated norms that together determine the standard and obligation of proving the criminal origin of property in proceedings concerning criminally acquired property, which are separated from criminal proceedings in which autonomous money laundering is being investigated. The courts have applied these legal provisions to declare the Applicants' property as criminally acquired. Taking into account the materials of the case under consideration and the arguments provided by the parties to the case, the constitutionality of the mentioned norms in this case must be assessed to the extent that they are applied in a proceeding on criminally acquired property that is separated from the criminal proceeding under Section 195(3) of the Criminal Law regarding autonomous money laundering.

Consequently, the Constitutional Court will assess the constitutionality of Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law, to the extent that they are applied to proceedings on criminally acquired property, which have been separated from criminal proceedings under Section 195(3) of the Criminal Law regarding autonomous money laundering (hereinafter referred to as the contested regulation) as a single legal regulation.

14. The first two sentences of Section 92 of the Constitution state the following: "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."

14.1. Following the first sentence of Section 92 of the Constitution, a fair trial, as a proper judicial process consistent with a state governed by the rule of law, encompasses several elements – interrelated rights. It likewise includes the principle of equal opportunities for the parties. In a proceeding on criminally acquired property, this, on the one hand, provides all parties involved in the proceeding with the opportunity to present the circumstances of the case and, on the other hand, prevents any party from being granted significant advantages. The

right to receive complete information about the opinion expressed by the opposing party, the evidence collected and the facts is of fundamental importance in the full protection of rights and balancing the interests of the parties involved (*see Paragraph 19.1 of the judgment of the Constitutional Court of 19 February 2025 in the Case No. 2022-01-01*).

In turn, the principle of the presumption of innocence contained in the second sentence of Section 92 of the Constitution applies to natural persons in criminal proceedings at all stages of this process – from the moment when the person has acquired the status that gives the right to defence until the moment when the decision, which finally determines whether the person has committed the relevant criminal offence, has become unappealable. This principle prohibits treating a person as if it had been proven that they had committed a criminal offence. This requires ensuring the right of a person to be presumed innocent of the charges against them until proven guilty according to law. A person is not obliged to prove either the factual circumstances indicated in the accusation or their innocence (*see Paragraph 8 of the judgment of the Constitutional Court of 23 December 2019 in the Case No. 2019-08-01*).

14.2. The case under consideration is related to the confiscation of criminally acquired property as a form of special confiscation of property. The seized property of the Applicants has been recognised as criminally acquired and confiscated by court decisions made in the proceedings on criminally acquired property.

A characteristic of the proceedings on criminally acquired property is that the person's guilt is not determined in this process, but only the criminal origin of the property is decided. Proceedings on criminally acquired property correspond to the term "proceedings *in rem*" for such a special proceeding, recognised in the doctrine. This process is aimed at the timely and effective resolution of property issues in criminal proceedings (*see Paragraph 19.1 of the judgment of the Constitutional Court of 19 February 2025 in the Case No. 2022-01-01*). The Constitutional Court, referring to the case law of the European Court of Human Rights, has already recognised that since the property rights of persons related to the property under the Criminal Procedure Law are decided in the proceedings on criminally acquired property, such proceedings essentially decide issues that affect

the civil rights and obligations of persons within the meaning of Article 6(1) of the Convention. In proceedings on criminally acquired property, Article 6 of the Convention applies to persons related to the property in its civil aspect (*see Paragraph 19.2 of the judgment of the Constitutional Court of 19 February 2025 in the Case No. 2022-01-01*). Thus, the guarantees contained in the first sentence of Section 92 of the Constitution in conjunction with the guarantees of Article 6(1) of the Convention in the civil aspect apply to a person related to property in proceedings on criminally acquired property.

14.3. The Applicants consider that the compliance of the contested regulation with the first and second sentences of Section 92 of the Constitution should be assessed in conjunction with European Union law, in particular Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as the Charter), as well as Directive 2014/42 and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (hereinafter referred to as the Framework Decision 2005/212). However, the scope of application of Directive 2014/42 and Framework Decision 2005/212 does not include national legislation such as that provided for in the Criminal Procedure Law concerning proceedings on criminally acquired property. The mentioned framework is subject to Regulation 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders and the rights enshrined in the Charter (*cf.: Paragraph 12 of the judgment of the Constitutional Court of 24 February 2025 in the Case No 2023-40-01*). Thus, when assessing the compliance of the contested regulation with the first and second sentences of Section 92 of the Constitution, Articles 47 and 48 of the Charter must be taken into account. In addition it should be taken into account that under Article 6(3) of the Treaty on European Union and Article 52(3) of the Charter, the fundamental rights, as guaranteed by the Convention and as they result from the constitutional traditions common to the Member States, constitute general principles of European Union law, and the rights guaranteed by the Convention contained in the Charter have the same meaning and scope as the rights laid down by the Convention (*see Paragraph 19.3 of the judgment of the Constitutional Court of 19 February 2025 in the Case No. 2022-01-01*).

Consequently, in the case under consideration, the Constitutional Court will examine the constitutionality of the contested regulation in conjunction with the requirements under Article 6(1) of the Convention in its civil aspect and in Articles 47 and 48 of the Charter.

15. The Applicants consider that the contested regulation violates the principle of presumption of innocence contained in the second sentence of Section 92 of the Constitution because in the proceedings on criminally acquired property, an assumption is made about the Applicants' guilt and they must prove that they did not commit a criminal offence. In the proceedings on criminally acquired property, the Applicants were allegedly punished with confiscation of their property, although their guilt in committing a criminal offence had not been proven. Furthermore, a court decision declaring property to be proceeds of crime may later be used as evidence in criminal proceedings for money laundering to obtain a conviction for money laundering.

The legislator has included the regulatory framework on the special confiscation of property in proceedings on criminally acquired property in the Criminal Procedure Law. However, as it has been repeatedly indicated, these are separate proceedings, separated from the criminal proceedings in which a person is held criminally liable (hereinafter also referred to as the main criminal proceedings) and aim to timely and efficiently resolve the property issues. It does not establish the person's guilt but rather decides on the criminal origin of the property from a civil legal perspective. Section 70.¹⁰ of the Criminal Law states that special confiscation of property is the forced, gratuitous alienation of property obtained through criminal means into state ownership and is not a criminal penalty.

The Constitutional Court draws attention to the fact that the principle of the presumption of innocence as a criminal procedural guarantee must be observed in the main criminal proceedings in relation to a person who has the status of a suspect, accused or another status that gives the right to defence. The mentioned principle protects a person in the main criminal proceedings so that facts established in proceedings on criminally acquired property are not used against that person when their guilt in committing a criminal offence is assessed. However, the presumption of innocence does not apply to a person related to property in the proceedings on criminally acquired property, which only decide on the criminal

origin of the property in civil terms. The European Court of Human Rights has also emphasised that Article 6(2) of the Convention protects an accused person's right to be presumed innocent in criminal proceedings. Forfeiture of property ordered as a result of "proceedings *in rem*", without involving determination of a criminal charge, is not of a punitive nature and thus cannot give rise to the application of the principle of presumption of innocence (*see Paragraph 126 of the judgment of the European Court of Human Rights in the Case of "Gogitidze and Others v. Georgia" of 12 May 2015, application No. 36862/05*). However, the principle of the presumption of innocence should not preclude courts in subsequent proceedings – in which they are exercising a different function to that of the criminal judge – from engaging with the same facts as were decided in the previous criminal proceedings, provided that in doing so they do not impute criminal liability to the person concerned (*cf.: Paragraph 169 of the judgment of the Grand Chamber of the European Court of Human Rights of 11 June 2024 in the Case of "Nealon and Hallam v. the United Kingdom", applications No. 32483/19 and No. 35049/19*).

Since the proceedings on criminally acquired property are "proceedings *in rem*" and decide only on the criminal origin of the property in the civil aspect, the contested regulation does not fall within the scope of the second sentence of Section 92 of the Constitution. Thus, the Applicants' fundamental rights enshrined in the second sentence of Section 92 of the Constitution have not been violated by the contested regulation. This is the basis for terminating the proceedings following Section 29(1)(6) of the Constitutional Court Law.

Consequently, the proceedings in the part concerning the compliance of the contested regulation with the second sentence of Section 92 of the Constitution should be terminated.

16. The Constitutional Court has recognised that compliance with the principle of equal opportunities of the parties in a democratic state governed by the rule of law must also be ensured in proceedings on criminally acquired property (*see Paragraph 14.1 the judgment of the Constitutional Court of 23 May 2017 in the Case No. 2016-13-01*). Therefore, the principle of equal opportunities for the parties likewise applies to the procedure for proving the legality of the origin of property.

The first sentence of Section 92 of the Constitution requires that the principle of equal opportunities for the parties be applied in every legal proceeding in a manner appropriate to the nature of the respective legal proceeding. The principle of equal opportunities for the parties must be applied, weighing and balancing it in the specific situation and circumstances in conjunction with other general principles of law and the norms of the Constitution. The legal regulation of the proceedings on criminally acquired property must ensure the procedural rights of the person related to the property in a manner that allows achieving the goal of these proceedings, but does not deprive these rights in essence (*see Paragraph 19.5 of the judgment of the Constitutional Court of 19 February 2025 in the Case No. 2022-01-01*). In addition, it is necessary to balance the rights of the person related to the property and the interests of society.

The return of criminally acquired property to the victim or its confiscation ensures the restoration of the rule of law and the observance of public interests. The Constitutional Court has already found that Latvia's international obligations include the duty to establish a legal framework ensuring that criminally acquired property was confiscated. Criminally acquired property is confiscated so that a person does not benefit and cannot unjustly enrich themselves as a result of criminal offences. Even if a person is not found guilty in a criminal proceeding, criminal activities cannot create financial benefit for them. Confiscation of criminally acquired property also has a deterrent and corrective effect, serving to prevent the consequences of a criminal act and, as far as possible, to restore the situation that existed before the criminal act was committed. To fulfil the mentioned tasks, criminally acquired property must be removed from civil circulation, and this is also the purpose of confiscation of criminally acquired property (*cf.: Paragraphs 26.2–26.3 of the judgment of the Constitutional Court of 23 May 2022 in the Case No. 2021-18-01*).

The European Court of Human Rights has recognised that the purpose of confiscation is to prevent the further circulation of criminal proceeds in the economy and that this is in line with international standards in this area. Furthermore, in this matter, states have a wide margin of discretion to decide on the most appropriate action within the framework of property control, including the confiscation of criminally acquired assets (*see Paragraph 93 of the judgment of the European Court of Human Rights of 8 October 2019 in the Case of*

“Balsamo v. San Marino”, applications No. 20319/17 and No 21414/17). Confiscation of criminally acquired property in criminal proceedings is a means of preventing money laundering in cases where it is virtually impossible to conduct criminal proceedings to determine a person’s guilt. For example, this is the case in situations where the guilty person cannot be found due to absconding, other absence or death, or when an investigation is not possible because the criminal offence was committed in another country with which Latvia does not cooperate. Thus, it is essential that confiscation of criminally acquired assets is possible even if there are objective obstacles to holding a person criminally liable.

The Constitutional Court concludes that the contested regulation, as part of the regulation of the proceedings on criminally acquired property, has been introduced to ensure the confiscation of criminally acquired property also in cases where, due to objective reasons, it is not possible to pass a conviction in the main criminal proceedings.

Therefore, to determine in the case under consideration whether the contested regulation complies with the first sentence of Section 92 of the Constitution, the Constitutional Court will examine whether it ensures a fair balance between the principle of equal opportunities for the parties and the public interest in the effective confiscation of criminally acquired property.

17. The Applicants consider that the contested regulation violates the principle of equal opportunities for the parties, as a disproportionate obligation has been transferred to the person related to the property, namely, the obligation to prove the legal origin of the property. The person related to the property allegedly cannot inspect the evidence that forms the basis for the assumption of the person directing the proceedings about the criminal origin of the property. The contested regulation does not provide a person with the opportunity to prove the legality of the origin of property within a reasonable time using evidence at their disposal or easily obtainable evidence. Furthermore, property can be recognised as criminally acquired according to the standard of proof “preponderance of probability” without proving the person’s connection to a criminal offence. The person directing the proceedings is exempted from the obligation to prove the predicate criminal offence from which the property originated, and does not need to substantiate the assumption of the criminal origin of the property.

In turn, the *Saeima* points out that the contested regulation does not introduce a reverse burden of proof because the person directing the proceedings must prove in any case that the property was obtained through criminal means. Before the person directing the proceedings expresses the assumption about the criminal origin of the property, there must be a collected body of evidence that indicates this. The person is not required to prove beyond reasonable doubt that the origin of the property is legal; they rather have to provide sufficiently reliable information about the legal origin of the property so that it can no longer be proven that the origin of the property is most likely criminal. The standard of proof “preponderance of probability” is permissible with regard to proving the criminal origin of property.

Thus, in the case under consideration, to determine whether the contested regulation ensures a fair balance between the principle of equal opportunities for the parties and the public interest in the effective confiscation of criminally acquired property, the Constitutional Court must first assess whether the person related to the property may be required to prove the legal origin of the property in such a process. If such an obligation can be imposed, then the Constitutional Court must verify whether the person related to the property, when assessing the process as a whole, has been provided with procedural guarantees so that they can prove the legal origin of the property.

18 If, during the pre-trial investigation of the criminal proceedings, the person directing the proceedings has obtained initial evidence of the criminal origin of the property, following Section 361(1) of the Criminal Procedure Law, they seize the property and express a presumption of the criminal origin of the property. Under Section 356(5) of this Law, the person directing the proceedings notifies the person related to the property that they may submit information regarding the legality of the relevant property within 45 days from the moment of notification, and likewise informs the person of the consequences of failure to submit information. Under the challenged Section 126(3¹) of the Criminal Procedure Law, if a person involved in criminal proceedings affirms that the property is not considered as criminally acquired, such person must prove the legality of the origin of the relevant property. If the person directing the proceedings, having examined the evidence submitted by the person, or if the

person has not submitted the evidence, believes that the body of evidence provides grounds for the assumption that the property seized has been obtained through criminal means, then in the cases specified by law, under Section 626(1) of the Criminal Procedure Law, they are entitled to initiate proceedings for the recognition of the property as having been obtained through criminal means.

The Constitutional Court concludes that at the moment when the person directing the proceedings expresses an assumption about the criminal origin of the property, they must have initial evidence at their disposal that substantiates this assumption, for example, the disproportion of the property or expenses of the relevant person with their income, relevant activities with financial resources because the assumption of the person directing the proceedings cannot be subjective. Furthermore, the decision to initiate proceedings on criminally acquired property, when the proceedings are referred to the court for decision, must already indicate a set of evidence that could convince the court that the property is likely to have a criminal origin. Therefore, the contested regulation does not transfer the burden of proof only to the person related to the property but provides for a shared burden of proving the origin of the property between the person directing the proceedings and the person related to the property. Namely, evidence that substantiates the assumption of the criminal origin of the property must be provided by the person directing the proceedings, while evidence that the origin of the property is legal must be provided by the person related to the property.

The European Court of Human Rights has recognised that in non-conviction proceedings on the confiscation of property linked to serious criminal offences such as money laundering, the onus of proving the lawful origin of the property presumed to have been wrongfully acquired may legitimately be shifted onto the person related to the property (*see Paragraph 105 of the judgment of the European Court of Human Rights of 12 May 2015 in the Case of “Gogitidze and Others v. Georgia”, application No. 36862/05*). It is perfectly logical and reasonable to ask the person in possession of the assets concerned to provide evidence of a positive fact and that the prosecuting authority’s findings are incorrect (*see Paragraph 86 of the Opinion of Advocate General of the Court of Justice of the European Union, Priit Pikamäe, of 11 July 2024 in joined cases C-767/22, C-49/23 and C-161/23*).

From Latvian judicial practice, it can be concluded that in proceedings on criminally acquired property, to draw a conclusion that the origin of the property is most likely criminal, courts evaluate the evidence submitted by the person directing the proceedings and the person related to the property as a whole and in their mutual relationship. Such an assessment is not arbitrary; it is based on criteria that have crystallised in theory and practice, and stem from the typologies (sets of characteristics) developed by the Financial Action Task Force. For example, the court has assessed the evidence submitted by the person directing the proceedings, which includes the Financial Intelligence Unit's analysis of financial transactions that have no obvious economic justification, as well as the evidence submitted by the person related to the property, which the court has found insufficient to prove the legality of the origin of the funds of the person related to the property. Thus, the court concluded that the totality of the presented evidence excludes the possibility of the property having a legal origin (*for example, the decision of the Riga Regional Court of 10 November 2022 in the Case No. 11905005120*). If the court has concluded that the evidence submitted by the person directing the proceedings is not sufficient to recognise the property as criminally acquired, it has terminated the proceedings on recognising the property as criminally acquired (*for example, the decision of the Riga Regional Court of 9 May 2024 in the Case No. 11903005421*). The court has likewise terminated the process of recognising property as criminally acquired in cases where the person related to the property has submitted reliable evidence of the legal origin of the property (*for example, the decision of the Economic Court of 6 December 2021 and the decision of the Riga Regional Court of 29 June 2022 in the Case No. 11270006619*).

Thus, the person related to the property may be required to prove the legal origin of the property.

19. In the future, the Constitutional Court will examine whether the person related to the property, when assessing the process as a whole, has received procedural guarantees so that they can prove the legal origin of the property.

19.1. Under Section 124(6) of the Criminal Procedure Law, in proceedings on criminally acquired property, the criminal origin of this property must be proven following the standard of proof "preponderance of probability". The Constitutional Court has already recognised that the court must examine the body of evidence to

ascertain either that the assumption that the property is most likely of criminal origin is justified, or that the evidence provided by the person provides grounds for the conclusion that the property is of legal origin.

The European Court of Human Rights, when assessing whether the proceedings on confiscating the proceeds of crime complies with Article 1 of the First Protocol to the Convention, has recognised that it is not necessary to prove the criminal origin of the property beyond reasonable doubt if the confiscation of the proceeds of crime was carried out “in proceedings *in rem*”. Evidence of a preponderance of probability or a high probability that the property is of criminal origin, combined with the person’s inability to prove the contrary, is sufficient (*cf.: Paragraph 107 of the judgment of 12 May 2015 of the European Court of Human Rights in the Case of “Gogitidze and Others v. Georgia”, application No. 36862, and Paragraph 68 of the judgment of 26 June 2018 in the Case of “Telbis and Viziteu v. Romania”, application No. 47911/15*). Thus, the standard of proof “preponderance of probability” is permissible in proving the criminal origin of property and does not in itself confer a significant advantage on the person directing the proceedings.

19.2. For a person related to the property to be able to submit evidence regarding the legality of the origin of the property, they must know the facts that form the basis for the assumption made by the person directing the proceedings regarding the criminal origin of the property. The contested regulation and the regulation of the Criminal Procedure Law on proceedings on criminally acquired property, in their connection, provide for the right of the person related to the property to inspect the evidence indicated in the decision on the initiation of proceedings on criminally acquired property and the materials attached to this decision. Namely, Section 627(4) of the Criminal Procedure Law provides for the right of the parties to the case to inspect the materials of the proceedings on criminally acquired property. The Constitutional Court has recognised that the Paragraphs four and five of the mentioned Section, also in the wording that was in force from 1 September 2018 to 2 November 2022, ensured the right of the person related to the property to inspect the materials of the proceedings on criminally acquired property to such an extent that compliance with their fundamental rights was ensured (*see Paragraph 20.4 of the judgment of the Constitutional Court of 19 February 2025 in the Case No. 2022-01-01*). Whether and to what extent the

person directing the proceedings in each individual case, in the decision to arrest the Applicants' property or in the decision to initiate proceedings on criminally acquired property, has indicated evidence that substantiates their assumption of the criminal origin of the property, is a matter of application of the contested regulation, and the Constitutional Court does not examine it.

19.3. The Applicants indicate that a connection between the property and the predicate criminal offence must be proven so that the person related to the property can refute the assumption of the person directing the proceedings regarding the criminal origin of the property; however, the contested regulation allows this not to be done.

To confiscate property as criminally acquired, the court must be satisfied that the property in question is likely to have resulted from a criminal offence. When assessing whether the contested regulation ensures that the court gains such certainty by establishing a sufficient connection between the property to be confiscated and a criminal offence, the fight against organised cross-border crime, in particular financial and economic crimes, must be taken into account. Several international instruments oblige states to introduce an efficient autonomous mechanism for combating money laundering. The Constitutional Court has already pointed out that, under Article 9(6) of the Warsaw Convention, to convict a person of money laundering, it is not necessary to prove precisely which predicate criminal offence the acquisition of property is related to if it has been proven that the relevant property was acquired through criminal means. In fulfilling its international obligations, the state must ensure effective investigation of autonomous money laundering and also the confiscation of criminally acquired property. Article 3(1) of the Warsaw Convention obliges the Member States of this Convention to adopt such legislative and other measures as may be necessary to enable it to confiscate the criminally acquired property the value of which corresponds to such proceeds and laundered property. Under Recommendation 4 "Confiscation and provisional measures" of the Financial Action Task Force, a state should introduce measures that allow it to confiscate criminally acquired assets without a conviction (*see: Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems. FATF, Paris, August 2024, p. 38*).

Under Section 70¹¹(1) of the Criminal Law, criminally acquired property is any economic benefit that has come into the ownership or possession of a person as a direct or indirect result of committing a criminal offence. In turn, under Paragraph 1¹ of this Section, indirectly criminally acquired property is any economic benefit which has come into the ownership or possession of a person as a result of further use of directly criminally acquired property, including as a result of reinvestment or transformation, or resources which the person has acquired from the sale of such property, and also the gained fruits and profit. Thus, indirectly acquired criminal property is often transformed into property of seemingly legitimate origin, into other values, or its ownership is changed to hide and disguise the criminal origin, or the true nature, origin, movement, ownership of the proceeds of crime are concealed or disguised, as well as other money laundering activities defined in Section 5(1) of the Prevention Law are carried out. In cases where it is objectively impossible or difficult to obtain information about the predicate criminal offence during the pre-trial process, the criminal origin of the property may be proven by the objective side under Section 195 of the Criminal Law, namely by the actions carried out with the property and specified in Section 5 of the Prevention Law. If the predicate criminal offence has not been established in the case and the investigation is conducted into autonomous money laundering, it can be proven, also based on indirect evidence indicating the criminal origin of the property, typologies and signs of money laundering, as well as the person's inability to prove the legal origin of their property. Indirect evidence of the criminal origin of property may be a report or opinion of the Financial Intelligence Unit and the information provided therein, as well as additional information about the facts obtained during the initial investigation stage, for example, documents submitted by individuals, testimonies, additional information from other institutions.

The Constitutional Court acknowledges: taking into account the state's obligation to ensure that criminally acquired property is confiscated and the fact that in cases of autonomous money laundering, proving a specific predicate criminal offence is often difficult or impossible, the link between criminally acquired property and a criminal offence may be proven by indirect evidence. Among other things, it is permissible that the laundering of proceeds of crime is not proven beyond reasonable doubt to recognise the property as being proceeds of crime because the standard of proof "preponderance of probability" applies to

the origin of the property with which the laundering activities were carried out. Objective money laundering activities carried out with property, together with other evidence, can form a set of indirect evidence to prove the criminal origin of the property.

The Applicants have referred to a judgment of the European Court of Human Rights, which, in their view, leads to the conclusion that, when confiscating property obtained through crime, specific information must be provided about the criminal offences which may have resulted in the property being acquired, as well as the link between any such activity and the property in question (*see the judgment of the European Court of Human Rights of 26 September 2023 in the Case of “Yordanov and Others v. Bulgaria”, applications No. 265/17 and No. 26473/18*). In this judgment, the European Court of Human Rights re-assessed the situation in Bulgaria and, considering the specific legal framework of the country, in particular the assumption of long-term involvement of persons in criminal activities, the practice of the Bulgarian Supreme Court and the legislative process, concluded that certain indications to the predicate criminal offence in the specific situation would be a personal guarantee against the advantages that state institutions accrue in the process of forfeiture of property (*see Paragraphs 113–124 of the mentioned judgment*). Taking into account the above and the fact that the contested regulation provides for the obligation of the person directing the proceedings to provide evidence for the assumption of the criminal origin of the property, it should be acknowledged that the conclusions drawn in the case under consideration do not contradict the conclusions reached in the mentioned judgment of the European Court of Human Rights.

Thus, the contested regulation ensures that, to recognise property as being obtained through criminal means, the connection with a criminal offence can be proven both by establishing the connection of the relevant property with a specific predicate criminal offence and on the basis of circumstantial evidence. The court must be satisfied from the evidence submitted by the person directing the proceedings that the property was most likely obtained from a criminal offence. This prevents any arbitrariness in the forfeiture proceedings.

19.4. Although Section 126(3¹) and Section 356(5) of the Criminal Procedure Law establish the obligation of the person related to the property to

provide information on the legality of the origin of the property within 45 days, in fact, the person can submit this information from the moment when their right to handle the property is restricted. Likewise, the Constitutional Court has already recognised that this period is longer because the person related to the property may submit evidence of the origin of the property even after the person directing the proceedings has made a decision to seize the property – this decision is made earlier than the decision to initiate proceedings for criminally acquired property – as well as throughout the entire legal proceedings until the moment when the district (city) court makes one of the decisions under Section 630(1) and (2) of the Criminal Procedure Law (*see Paragraph 13 of the judgment of the Constitutional Court of 24 February 2025 in the Case No. 2023-40-01*). Thus, the contested regulation ensures a reasonable time when a person related to the property may submit evidence of the legality of the origin of the property.

19.5. The Applicants consider that the requirement to submit translations of documents into the official language and certified in a certain form prevents the person related to the property from proving the legal origin of the property with easily obtainable evidence. Proceedings on criminally acquired property are “proceedings *in rem*” and are conducted in an adversarial manner; therefore, the person related to the property only needs to provide relevant and verifiable evidence of the legal origin of the property. In these proceedings, the person related to the property is not limited in the choice of what evidence and to what extent they will submit to prove the legality of the origin of the property. What evidence is submitted depends on the person related to the property. The state may impose requirements regarding the language and form of evidence, and these do not deprive a person of the right to present evidence on the merits.

19.6. The Applicants indicate that the person related to the property may be required to provide evidence for an unlimited time in the past. This makes it difficult to prove the legal origin of the property.

The European Court of Human Rights has recognised that the requirement to produce retroactive documents proving transactions for a long period may make it more difficult for the person concerned to prove the legality of the origin of the property; however, this requirement does not in itself render any forfeiture of property a violation of the Convention (*see Paragraphs 116–120 of the judgment*

of the European Court of Human Rights of 26 September 2023 in the Case of “Yordanov and Others v. Bulgaria”, applications No. 265/17 and No. 16473/18).

The contested regulation does not limit the time for which the person related to the property may have to submit evidence of the legal origin of the property. The circumstances to be proven in each specific proceeding regarding criminally acquired property are different, including the time when the property, the legality of the origin of which the person must prove, was acquired or came into the possession of the person related to the property, which may also be different. Since the evidence submitted by the persons involved in the proceedings is examined by the court, which also makes the decision on recognising the property as criminally acquired, the court itself must ensure compliance with the principle of equal opportunities for the parties and, among other things, must also ensure that the burden of proof imposed on the person related to the property is not disproportionate in the specific case.

It can be concluded from Latvian case law that the burden of proof imposed on the person related to the property is not disproportionate. The court has found sufficient evidence and explanations submitted by the person related to the property that are coherent, logical and credible (*for example, the decision of the Economic Court of 31 March 2023 and the decision of the Riga Regional Court of 29 January 2024 in the Case No. 16870003520*), as well as those that should be verified and are not absolutely implausible or impossible (*for example, the decision of the Economic Court of 6 December 2021 and the decision of the Riga Regional Court of 29 June 2022 in the Case No. 11270006619*).

Thus, in proceedings on criminally acquired property, a person is guaranteed the right to present evidence. The fact that the contested regulation does not limit the time for which a person related to the property may have to submit evidence does not in itself deprive the person of the right to submit evidence on the merits.

19.7. In general, when assessing the proceedings on criminally acquired property, it should be considered that, under Section 628 of the Criminal Procedure Law, the person related to the property is guaranteed the right to participate in the proceedings on criminally acquired property personally or through a defence attorney or representative, to express their attitude towards the decision made by

the person directing the proceedings orally or in writing in court, as well as to submit applications to the court. Under Section 629 of the Criminal Procedure Law, the court examines materials on criminally acquired property at a court session, in which the person directing the proceedings, the prosecutor, the person related to the property, their representative or defence counsel are heard. At a court session, persons involved in the proceedings have the same right to file objections or requests, submit evidence to the district (city) court, submit written explanations, as well as participate in the consideration of other issues arising during the court proceedings. In turn, under Section 631 of the Criminal Procedure Law, the person related to the property is guaranteed the right to appeal the decision of the district (city) court, by which the property has been recognised as criminally acquired, to the regional court, which again examines the materials on the criminally acquired property in the same manner as the court of first instance. The contested regulation does not limit the court's ability to conduct a comprehensive and complete examination of evidence and thus ensures compliance with the principles of directness and orality in this process.

Thus, in proceedings on criminally acquired property, the person related to the property, when assessing the proceedings as a whole, has received sufficient procedural guarantees to be able to prove the legal origin of the property.

Consequently, the contested regulation ensures a fair balance between the principle of equal opportunities for the parties and the public interest in the effective confiscation of criminally acquired property, and complies with the first sentence of Section 92 of the Constitution.

Decisions Part

Based on Section 29(1)(6) and Sections 30–32 of the Constitutional Court Law, the Constitutional Court

decided:

1. To dismiss court proceedings in the part of the case concerning the compliance of Section 124(7) of the Criminal Procedure Law to the first and second sentences of Section 92 of the Constitution of the Republic of Latvia.

2. To terminate the proceedings in the part of the case concerning the compliance of Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law with the second sentence of Section 92 of the Constitution of the Republic of Latvia.

3. To recognise that Section 124(6), Section 125(3) and Section 126(3¹) of the Criminal Procedure Law, insofar as these norms are applied in proceedings on criminally acquired property separated from criminal proceedings pursuant to Section 195(3) of the Criminal Law regarding autonomous money laundering, comply with the first sentence of Section 92 of the Constitution of the Republic of Latvia.

The judgment is final and not subject to appeal.

The judgment enters into force on the date of its publication.

Chairperson of the court session

Irēna Kucina