



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia

in Riga, on 11 October 2017

in Case No. 2017-10-01

The Constitutional Court of the Republic of Latvia comprised of: chairperson of the court hearing Ineta Ziemele, Justices Artūrs Kučs, Gunārs Kusiņš, Jānis Neimanis, Aldis Laviņš, Sanita Osipova, and Daiga Rezevska,

having regard to the constitutional complaint submitted by IMEX PROVIDER LTD (hereafter – the Applicant),

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1) as well as Section 19² and Section 28¹ of the Constitutional Court Law,

on 21 September 2017 examined, in written procedure, the case

“On Compliance of Section 629 (5) of the Criminal Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia and on Compliance of the Second Sentence of Section 631 (3) of the Criminal Procedure Law with the First Sentence of Article 91 of the *Satversme*”.

The Facts

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

On 8 July 2011, the *Saeima* adopted the law “Amendments to the Criminal Procedure Law”, by which the fifth part was added to Section 629 of the Criminal Procedure Law. Since 11 August 2011 when the law of 8 July 2011 “Amendments to the Criminal Procedure Law” entered into force Section 629 (5) of the Criminal Procedure Law has not been amended and is in force in the following wording: “The case materials in proceedings regarding criminally acquired property shall be an investigative secret, and a person directing the proceedings, a public prosecutor and a court examining the case may get acquainted with the case. The persons referred to in Section 628 of this Law may get acquainted with the case materials with a permission of the person directing the proceedings and in the amount specified thereby.” Persons related to property, referred to in Section 628 of the Criminal Procedure Law (hereafter also – persons related to property) are the suspect or the accused of the person, from whom the property was withdrawn or seized, or another person who has the right to the specific property.

Whereas Section 631 (3) of the Criminal Procedure Law was expressed in the wording that is currently valid by the law of 12 March 2009 “Amendments to the Criminal Procedure Law”. In accordance with the second sentence of the third part of the Section, the decision by a regional court on the criminally acquired property is not subject to appeal.

2. On 23 May 2017, the Constitutional Court passed the judgement in case No. 2016-13-01 (hereafter also – judgement in case No. 2016-13-01). By the aforementioned judgment, Section 629 (5) of the Criminal Procedure Law, insofar the court could not review the decision by the person directing the proceedings regarding a person’s right to familiarise oneself with the legality and validity of materials in the case regarding criminally obtained property, was recognised as being incompatible with the first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) and invalid as of the date the judgement was published. Whereas with respect to the submitter of the constitutional complaint in case No. 2016-13-01 – limited liability company “Cell Finance”, Section 629 (5) of the Criminal Procedure Law, insofar the court could

not review the legality and the validity of the decision by the person directing the proceedings regarding a person's right to familiarise oneself with the materials in the case regarding criminally obtained property, as incompatible with the first sentence of Article 92 of the *Satversme* and invalid as of the moment when the submitter's of the constitutional complaint fundamental rights were infringed upon.

3. The Applicant – IMEX PROVIDER LTD – holds that Section 629 (5) of the Criminal Procedure Law is incompatible with the first sentence of Article 92 of the *Satversme* and the second sentence of Section 631(3) of the Criminal Procedure Law is incompatible with the first sentence of Article 91 of the *Satversme*.

Allegedly, Section 629 (5) of the Criminal Procedure Law imposes disproportionate restrictions on the Applicant's right to a fair trial since it does not ensure in full the procedural safeguards that fall within the right to a fair trial. The Applicant is not ensured the right to familiarise oneself with the case materials in the proceedings regarding criminally obtained property and the documents that had been appended to this case during the court hearing; however, all documents had been accessible to the person directing the proceedings. The permission to familiarise oneself with materials in the case is said to depend only on the subjective opinion held by the person directing the proceedings; however, he cannot be considered as being a neutral and impartial person in the proceedings. Moreover, in the proceedings regarding criminally obtained property, the person directing the proceedings had been granted significant and unsubstantiated advantages compared to the person, the origin of whose property or connection to a criminal offence is being decided on.

The Applicant holds that the second sentence of Section 631 (3) of the Criminal Procedure Law prohibits it from submitting a cassation complaint regarding the decision by the appellate instance court in the proceedings regarding criminally obtained property, but in the case if such special proceedings had not been initiated the injured owner of the property would have this right in the basic criminal proceedings. Hence, it is alleged that Criminal Procedure Law, without

reasonable grounds, allows differential treatment of the injured owner of the property in the proceedings regarding criminally obtained property, on the one hand, and the injured owner of the property, if the matter of recognising property as being criminally obtained and on handling the criminally obtained property is decided on in the basic criminal proceedings, on the other hand.

Pursuant to Para 2 of Section 111¹ (1) of the Criminal Procedure Law, allegedly, the injured owner of property has the right to submit a cassation complaint regarding the decision by the appellate instance court also on property related matters. The finding expressed in the judicature of the Supreme Court that the Criminal Procedure Law does not envisage the right of the injured owner of property in criminal proceedings to submit a cassation complaint. The Applicant, referring to the legal doctrine, notes that the concepts used in the Criminal Procedure Law require systemic interpretation. I.e., the concept “official”, used in Section 111¹ of the Criminal Procedure Law should be viewed systemically, in interconnection with other norms of the Criminal Procedure Law. Pursuant to Section 27 of the Criminal Procedure Law, during the trial the official, which directs the criminal proceedings, is the court, therefore a conclusion should be made that the injured owner of property in the basic criminal proceedings has the right to submit a cassation complaint.

Allegedly, the Criminal Procedure Law envisages a different scope of rights for the injured owner of property, which depends on whether the person directing the proceedings has separated proceedings with respect to criminally obtained property. Such separation and initiation of proceedings are said not to be mandatory, i.e., in each particular case, the person directing the proceedings assesses and decides, whether initiation of such proceedings is useful. The injured owner of property in the case, where the issue of recognising property as being criminally obtained is decided on in the proceedings regarding criminally obtained property, and in the case, where this issue is decided on in the basic criminal proceedings, are said to be in similar and according to certain criteria comparable circumstances. Both cases share common elements: the injured owner of property is a participant of the proceedings, whose right to handle property is restricted, in both

these cases the person does not have the right to defence and the court decides on the connection between these persons' property and a criminal offence or criminal origins, as well as on handling this property. The Applicant holds that this differential treatment cannot be justified. Therefore, the equality principle is violated.

The legitimate aim of the established differential treatment could be the interests of procedural economy and speeding up the proceedings; i.e., resolving promptly issues of property that have arisen in the proceedings. The fact that the injured owner of property does not have the right to appeal against the decision by the appellate court in cassation procedure could speed up the adoption of the final ruling in these proceedings. However, it is alleged that other, more lenient measures exist that would allow reaching the legitimate aim, for example, setting terms for reviewing cases regarding criminally obtained property at the cassation instance court. The Applicant underscores that in the proceedings regarding criminally obtained property only the facts are assessed, i.e.: whether property is connected to a criminal offence and whether the property is of criminal origin; whether the owner or legal possessor of the property is known; whether any person has lawful title to this property. Matters of law, allegedly, are not reviewed in these proceedings. Hence, the fact that the injured owner of property does not have the right to appeal against the judgement by an appellate instance court in cassation instance, even if substantive violations have been made, is said to increase the risk that in the proceedings regarding criminally obtained property an unjust ruling could be passed. Likewise, taking into account Chapter 59 of the Criminal Procedure Law, there are no grounds to speed up, even more, the resolution of property issues in criminal proceedings and, at the same time, decrease the scope of the Applicant's procedural rights. Hence, the benefit gained by society does not outweigh the damage inflicted on an individual's rights and lawful interests.

Upon familiarising itself with the materials in the case, the Applicant notes that it does not uphold the considerations made by the *Saeima* regarding the termination of legal proceedings and also makes several requests, *inter alia*, a request to continue legal proceedings in the case. Additionally, the Applicant notes

that Section 629 (5) of the Criminal Procedure Law not only is incompatible with the first sentence of Article 92 of the *Satversme* but also places disproportionate restrictions on its right to property, guaranteed in Article 105 of the *Satversme*.

The Applicant holds that the Constitutional Court, in examining the compliance of the second sentence of Section 631 of the Criminal Procedure Law with the *Satversme*, should take into account the procedural guarantees for the injured owner of property in proceedings regarding criminally obtained property, which are said to be insufficient.

4. The institution, which issued the contested act, – the *Saeima* – does not uphold the Applicant’s view and believes that the legal proceedings in the case should be terminated.

The *Saeima* notes that in case No. 2016-13-01 the Constitutional Court ruled on the same subject of claim as the one in the present case, i.e., the compliance of Section 629 (5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme*. Therefore the Constitutional Court, on the basis of Para 5 of Section 29 (1) of the Constitutional Court Law, would have the grounds for terminating the legal proceedings.

The legal proceedings regarding the compliance of the second sentence of Section 631 (3) of the Criminal Procedure Law with the first sentence of Article 91 of the *Satversme*, in turn, should be terminated on the basis of Para 3 of Section 29 (1) of the Constitutional Court Law. The Applicant’s assumption regarding the infringement of its fundamental rights is said to be based on an erroneous interpretation of Section 111¹ of the Criminal Procedure Law. Allegedly, this legal norm does not envisage the right of the injured owner of property to contest court’s rulings, which have been adopted in examining a criminal case on its merits. Section 571 (1) of the Criminal Procedure Law is said to define the persons who have the right to submit a cassation complaint; however, the injured owner of property does not have this right.

It is maintained that also the Department of Criminal Cases of the Supreme Court interprets and applies the legal norms in this way. I.e., the Criminal Procedure

Law does not envisage the right of the injured owner of property to contest the court's rulings by which the case is adjudicated on its merits, *inter alia*, the right to submit a cassation complaint. The term "official", used in Para 2 of Section 111¹ (1) of the Criminal Procedure Law is said to apply to the judge or the court in the case, where the "action" or "decision" of a judge or a court, by which the criminal case is not adjudicated on its merits, is contested. Moreover, this norm should be interpreted and applied in interconnection with other norms of the Criminal Procedure Law, which specify the right to appeal against a decision, terms and other requirements.

Thus, allegedly, the second sentence of Section 631 (3) of the Criminal Procedure Law does not envisage more unfavourable rules for the Applicant for protecting its rights compared to the injured owner of property in a criminal case if proceedings regarding criminally obtained property are not initiated. The aforementioned legal norm, likewise, does not infringe upon the Applicant's right to equal treatment, guaranteed in the first sentence of Article 91 of the *Satversme*.

Additionally, the *Saeima* draws attention to the draft law "Amendments to the Criminal Procedure Law" (No. 630/Lp12), which, *inter alia*, envisages improving and expanding the rights of the injured owner of property in the basic criminal proceedings, among others, the right to submit a cassation complaint.

The legislator, taking into account the meaning and nature of the proceedings regarding criminally obtained property, had chosen to determine that such cases are examined in two instances. Moreover, both judicial instances have the right to decide on the matter of the property's origin and further handling of this property, taking into account all legal and actual circumstances. By envisaging examination of this matter also in the cassation instance and prolonging the duration of these proceedings, separate proceedings regarding the criminally obtained property would become meaningless. Taking into account the nature and substance of the matters to be resolved in the proceedings regarding criminally obtained property, a special procedure of appeal can be envisaged, and this, allegedly, does not violate a person's right to a fair trial.

Having familiarised itself with the case materials, the *Saeima* draws attention to the fact that the second sentence of Section 631 (3) of the Criminal Procedure Law does not place the Applicant in an unequal situation compared to the injured owner of property in the basic criminal proceedings. In none of the proceedings, the injured owner of property has the right to submit a cassation complaint regarding the respective ruling by the appellate instance court, therefore the Applicant's rights, envisaged in the first sentence of Article 91 of the *Satversme*, have not been infringed upon.

5. The summoned person – the Ministry of Justice – notes that, in view of the judgement in case No. 2016-13-01 and Para 5 of Section 29 (1) of the Constitutional Court Law, there is a precondition for the Constitutional Court to decide on terminating legal proceedings in the part of the claim regarding the compliance of Section 629 (5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme*.

The Ministry of Justice underscores that the right of the injured owner of property in the basic criminal proceedings to submit a cassation complaint does not follow from Section 111¹ of the Criminal Procedure Law in interconnection with Section 571 of this law. Thus, the injured owner of property, allegedly, does not have this right either in the process regarding criminally obtained property or in the case of basic criminal proceedings if the proceedings regarding criminally obtained property have not been initiated.

The *Satversme* does not prohibit the legislator from providing that in the proceedings regarding criminally obtained property the judgement by the appellate instance court is not subject to appeal. These proceedings are to be considered as being an exception to the general criminal procedure and are envisaged for resolving issues of property in a timely manner and in the interests of procedural economy. The purpose of the proceedings regarding criminally obtained property is not to recognise a person as being guilty of committing a particular criminal offence.

Article 92 of the *Satversme* does not guarantee the right to endless legal proceedings but, quite to the contrary, guarantees the right to legal proceedings that must conclude within a reasonable period of time with a court ruling that has come into force. Hence, Section 631 of the Criminal Procedure Law, by providing that the decision by the appellate instance court regarding criminally obtained property is not subject to appeal, most effectively reaches the purpose of the proceedings regarding criminally obtained property.

6. The summoned person – the Ombudsman of the Republic of Latvia (hereafter – the Ombudsman) – upholds the Applicant’s view that the persons, whose right to handle their property have been infringed upon in the framework of separate legal proceedings, and persons, whose right to handle their property had been infringed upon in the framework of the basic criminal proceedings, are in similar and according to certain criteria comparable circumstances. Both groups of persons have an identical procedural status in criminal proceedings.

The Ombudsman subscribes to the Applicant’s opinion regarding the right of the injured owner of property to submit a cassation complaint in the framework of the basic criminal proceedings. However, the Supreme Court’s judicature makes one doubt, whether, in practice, the right of the injured owner of property to submit a cassation complaint could be interpreted broader. To identify a violation of the equality principle, included in the first sentence of Article 91 of the *Satversme*, it should be established that the differential treatment is not only theoretically possible but also exists in practice.

At the time when the constitutional complaint was submitted, the second sentence of Section 631 (3) of the Criminal Procedure Law had not infringed upon the Applicant’s fundamental rights. However, additionally, the Ombudsman draws attention to the fact that, on 22 June 2017, the *Saeima* adopted amendments to the Criminal Procedure Law, which entered into force on 1 August 2017 and envisage, *inter alia*, that the injured owner of property, whose property has been arrested, has the right to submit a cassation complaint. Therefore, currently, the rights of the same persons can be affected both when matters of property are decided on in the

basic criminal proceedings and when these are singled out in proceedings regarding criminally obtained property.

The restriction on contesting the decision, established in the second sentence of Section 631 (3) of the Criminal Procedure Law, ensures faster and more effective examination of property matters in criminal proceedings, thus facilitating the protection of victims' rights. A limited range of matters is examined in the proceedings regarding criminally obtained property. Moreover, the restriction on contesting the decision in the special proceedings, allegedly, allows deciding on how to handle criminally obtained property faster.

In the proceedings regarding criminally obtained property, as comprehensive protection of a person's rights as in the criminal proceedings, in which the criminal case is examined on its merits, is not envisaged. The person directing the proceedings has the competence to decide, whether proceedings regarding criminally obtained property should be initiated, whereas the injured owner of the property can object to such action by the person directing the proceedings only by contesting the decision on criminally obtained property on its merits.

The Ombudsman holds that a proportionate balance between different interests in criminal proceedings is not achieved by the normative regulation that is currently in force and that such differential treatment that envisages a different scope of the right to appeal in different proceedings cannot be recognised as being proportional.

7. The summoned person – the Prosecutor's General Office – upholds the statements made by the *Saeima* in its written reply and is of the opinion that with respect to the claim to recognise Section 629 (5) of the Criminal Procedure Law as being incompatible with the first sentence of Article 92 of the *Satversme* the legal proceedings in the case should be terminated on the basis of Para 5 of Section 29 (1) of the Constitutional Court Law.

The Prosecutor's General Office underscores that, often, investigation of criminal offences is a complicated and lengthy process, in the framework of which it might be necessary to resolve the matter of recognising property as being illegally

obtained and on further handling of this property without waiting for the final ruling in the criminal proceedings. Materials can be separated from the criminal proceedings, so that the court could decide on these matters within the framework of special proceedings – proceedings regarding criminally obtained property. During these proceedings, the court, in accordance with Article 630 of the Criminal Procedure Law, must examine, whether the property is connected to a criminal offence, whether it has criminal origins and whether the owner or the legal possessor of the property is known, whether any person has lawful title to this property, and also must decide on further actions with the criminally obtained property.

The proceedings regarding criminally obtained property are based on the principle of procedural economy because matters of property are resolved without unjustified items of expenditure, also decreasing the expenditure linked to the storing of withdrawn criminally obtained property. In compliance with their purpose, the proceedings regarding criminally obtained property are limited in its term. Prolongation of such proceedings, in turn, would not be compatible with the purpose. Moreover, it should be taken into account that only one of the issues, which are examined and decided upon by the court in adjudicating the criminal case, is decided upon in these proceedings. If proceedings regarding criminally obtained property had taken place during the pre-trial criminal proceedings then the court no longer decided on how to handle the criminally obtained property. A case, where the court has recognised, in these proceedings, that the connection of property to the criminal offence has not been proven or that the property is not of criminal origin, is said to be an exception.

The issue of criminally obtained property is decided on within the framework of special proceedings; i.e., proceedings regarding criminally obtained property, therefore there are no grounds to consider that persons were in similar and according to certain criteria comparable circumstances. The Prosecutor's General Office agrees that after amendments to the Criminal Procedure Law entered into force on 1 August of the current year the scope of rights of the injured owner of property differs in different proceedings; however, it should be taken into account

that the scope of rights of other participants in the proceedings differs. Therefore, the purpose of the special proceedings and range of issues to be examined in these proceedings should be respected; moreover, a similar procedure of appeal has been envisaged also in other proceedings linked to the examination of separate issues.

8. The summoned person – Head of the Department of Criminal Law, the Faculty of Law of the University of Latvia, Professor, *Dr.iur.* Kristīne Strada-Rozenberga – underscores that the proceedings regarding criminally obtained property should be recognised as being separate, independent proceedings for resolving a special matter, therefore these issues of property are not re-examined in the basic proceedings. If the court has made the decision referred to in Section 630 of the Criminal Procedure Law that the property should be recognised as criminally obtained then, in adjudicating the criminal case, there are no grounds to decide once again on how to handle the criminally obtained property.

Assessing the right of the injured owner of property to submit an appeal and a cassation complaint in the basic criminal proceedings, K. Strada-Rozenberga notes that, pursuant to the purpose of the Criminal Procedure Law and systemic interpretation of the norms of the Criminal Procedure Law, these persons have the right to submit both an appeal and a cassation complaint. However, if a person were denied the right to submit a cassation complaint regarding the decision by the appellate instance court, the right to contest the final decision on how to handle the property would be denied, and this is said to be contrary to the principle of justice.

On 1 August 2017, amendments to the Criminal Procedure Law have entered into force; these specifically envisage the right of the injured owner of property to submit an appeal and a cassation complaint. However, K. Strada-Rozenberga draws attention to the fact that the right to appeal is envisaged only for that injured owner of property, whose property has been arrested. Thus, an obvious difference is said to exist between the rights of the injured owner of property in the basic criminal proceedings and in the proceedings regarding criminally obtained property. Issues of property, *inter alia*, issues of criminally obtained property are said to pertain not only to the injured owner of property but also to other participants of the

proceedings. Some participants of the basic criminal proceedings, for example, the prosecutor, who maintains the prosecution, had been envisaged unlimited rights to submit an appeal and a cassation complaint.

K. Strada-Rozenberga upholds the Applicant's view that, in the present case, unfair treatment of the injured owner of property in the basic criminal proceedings and in the proceedings regarding criminally obtained property can be discerned and, hence, the existing normative regulation should not be recognised as being compatible with the *Satversme*. Moreover, also the normative regulation with respect to the possible effectiveness of appeal in the basic criminal proceedings and in the proceedings regarding criminally obtained property is said to be problematic.

9. The summoned person – doctoral student of the Riga Stradins University Mg. iur. Juris Stukāns – does not uphold the Applicant's opinion regarding the incompatibility of the second sentence of Section 631 (3) of the Criminal Procedure Law with the first sentence of Article 91 of the *Satversme*. From the perspective of the equality principle, not only the number of possible appeals but also the examination of property matters in court on their merits should be assessed.

The cassation instance court reviews the legality of the ruling by the appellate instance court, i.e., establishes the presence or absence of violations of the Criminal Law and substantive violations of the Criminal Procedure Law. At the same time, usually, cassation complaints or protests are examined in written procedure. Also, the regulation of the Criminal Procedure Law since 1 August 2017 envisages that the appellate instance court may examine the appellate complaint, the request expressed in which pertains only to criminally obtained property, in written procedure. A person's request regarding oral hearing is not binding upon it.

J. Stukāns underscores that, compared to the basic criminal proceedings, regulation of Chapter 59 of the Criminal Procedure Law differs in the sense that all facts of the case are examined in oral proceedings in two instances. Thus, the court examines both actual and legal circumstances and ensures to the person connected to the property the possibility to exercise its rights. The second sentence of

Section 631 (3) of the Criminal Procedure Law, compared to the general procedure of the Criminal Procedure Law, ensures equal treatment and equal possibilities to the injured owner of property. Assessing the nature of the proceedings regarding criminally obtained property and persons possibilities to exercise their rights, there are no grounds to recognise that these would be diminished or limited by the restriction to appeal against the ruling by the regional court.

J. Stukāns is of the opinion that the legislator had validly set a different number of court instances in the basic criminal proceedings and in the proceedings regarding criminally obtained property, at the same time ensuring to persons connected to property equal opportunities to exercise their rights. Moreover, with respect to several cases envisaged in the Criminal Procedure Law, the legislator had chosen to establish a different procedure for appealing against a ruling and a form for reviewing criminal proceedings. In view of the content, nature of the legal proceedings and the court's competence, the comparison of different proceedings is said to lack legal substantiation.

The Findings

10. The preparation of this case was completed on 11 August 2017. At the assignments sitting of 6 September 2017, it was decided to examine it in written procedure on 21 September 2017.

Pursuant to Section 28¹ (2) of the Constitutional Court Law, within fifteen days after the receipt of notification that the case will be examined in written procedure, the participants of the case have the right to familiarise themselves with the case materials and express their opinion thereon in writing.

On 18 September 2017, the Constitutional Court received the Applicant's written opinion in case No. 2017-10-01 (hereafter – the Applicant's written opinion). In this opinion, the Applicant has expressed its considerations with respect to the present case and has requested the Constitutional Court to continue legal proceeding in the case and has maintained the claim included in the constitutional complaint to recognise Section 629 (5) of the Criminal Procedure Law as being

incompatible with the first sentence of Article 92 of the *Satversme* and void with respect to the Applicant as of 25 October 2016, as well as to recognise the second sentence of Section 631 (3) of the Criminal Procedure Law as being incompatible with the first sentence of Article 91 of the *Satversme* and void with respect to the Applicant as of 25 October 2016. In this written opinion, the Applicant, additionally, requests the Constitutional Court:

1) to recognise Section 629 (5) of the Criminal Procedure Law as being incompatible with Article 105 of the *Satversme* and void with respect to the Applicant as of 25 October 2016;

2) to indicate in the judgement that the Applicant has the right to use the new procedural regulation developed by the legislator and, thus, ensure the possibility to examine *de novo* the case regarding criminally obtained property, using the procedural safeguards included in the new procedural regulation;

3) to indicate in the judgement that the enforcement of the decision by the Panel of Criminal Cases of the Riga Regional Court of 7 March 2017 in criminal case No. 11816005914 is suspended until the Applicant's application regarding renewal of the proceedings regarding criminally obtained property due to newly discovered circumstances is reviewed.

The Constitutional Court has recognised that, usually, matters of procedural nature should be examined before reviewing the constitutionality of a legal norm, insofar examination of some aspect of the case on their merits is not necessary (*see, for example, Judgement of 27 June 2013 by the Constitutional Court in Case No. 2012-22-0103, Para 10, or Judgement of 10 February 2017 in Case No. 2016-06-01, Para 17*).

Hence, the Constitutional Court, first and foremost, will examine successively the additional requests included in the Applicant's written opinion.

11. In its written opinion, the Applicant requests, additionally, the Constitutional Court to recognise Section 629 (5) of the Criminal Procedure Law as

being incompatible with Article 105 of the *Satversme* and void with respect to the Applicant as of 25 October 2016.

In its constitutional complaint, the Applicant has not defined the claim and provided legal reasoning regarding the compliance of Section 629 (5) of the Criminal Procedure Law with Article 105 of the *Satversme* and a case regarding such claim has not been initiated at the Constitutional Court. Substantially, the Applicant in its written opinion asks the Constitutional Court to broaden the limits of the claim in the present case.

The Constitutional Court has repeatedly found that, in certain cases, it may broaden the limits of the claim in a case that already has been initiated (*see, for example, Judgement of 19 December 2007 by the Constitutional Court in Case No. 2007-13-03, Para 6, and Judgement of 17 January 2008 in Case No. 2007-11-03, Para 18*). However, in broadening the limits of claim, both the principles of legal proceedings before the Constitutional Court and the procedural stage of the case must be taken into account.

At the Constitutional Court, a case is prepared for review and is reviewed, taking into account the claim indicated in the constitutional complaint and in the decision on initiation of the case as well as the legal reasoning regarding this claim included in the written reply by the *Saeima* (*see, for example, Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 16.2.*). The *Saeima* has submitted a written reply, presenting the facts of the case and legal reasoning with respect to the claim indicated in the constitutional complaint and the decision on initiating the case. Likewise, persons summoned in the case have provided their opinion regarding the aforementioned claim.

In the present case, the requested expressed in the Applicant's written opinion regarding broadening of the claim, substantially, is to be recognised as being a new constitutional complaint, on the basis of which the Constitutional Court should, first and foremost, decide on initiation of a case and, then, prepare the case for adjudication. Therefore, in the present case, broadening the limits of the claim in this stage of hearing the case is incompatible with the principles of the legal proceedings before the Constitutional Court.

Hence, the Applicant's request to broaden the limits of the claim must be dismissed.

12. The Applicant also requests the Constitutional Court to provide in the judgement that the Applicant should be granted the right to use the new procedural regulation developed by the legislator and, thus, to ensure the possibility to hear *de novo* the case regarding criminally obtained property, using the procedural safeguards included in the new procedural regulation.

The Constitutional Court Law defines the Constitutional Court's right to decide on issues related to the elimination of an infringement of a person's fundamental rights. The Constitutional Court, in examining the case, takes into account that the case has been initiated on the basis of a constitutional complaint. The Constitutional Court's task is to eliminate infringements on a person's fundamental rights to the extent possible (*see, for example, Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25*). If the Constitutional Court, in its judgement, recognises a legal norm as being incompatible with a legal norm of higher legal force it decides on how to eliminate, to the extent possible, the infringement on the applicant's fundamental rights.

Hence, the Constitutional Court examines a request like this in that part of the judgement, where it decides on the date as of which the legal norm becomes void.

13. The Applicant requests suspension of the enforcement of the decision by the Panel of Criminal Cases of the Riga Regional Court of 7 March 2017 in criminal case No. 11816005914 until the Applicant's application regarding renewal of the proceedings regarding criminally obtained property due to newly discovered circumstances is reviewed.

The 3rd Panel of the Constitutional Court in its decision of 10 April 2017 on initiation of case No. 2017-10-01 provided, *inter alia*, that the enforcement of the decision by the Panel of Criminal Cases of the Riga Regional Court of 7 March 2017 in criminal case No. 11816005914 had to be suspended until the ruling of the Constitutional Court entered into force.

Section 19² (5) of the Constitutional Court Law provides that the submitting of a constitutional complaint does not suspend the enforcement of a ruling, unless the Constitutional Court has decided otherwise. The Constitutional Court has recognised that a decision on suspending the enforcement of a ruling is to be considered as an extraordinary measure of the legal proceedings before the Constitutional Court, which is applicable only to reach important aims, for example, to ensure the protection of a person's rights in those cases, where the enforcement of a ruling in the respective case before the court of general jurisdiction prior to the coming into effect of the Constitutional Court's ruling could make the enforcement of the Constitutional Court's ruling impossible or cause substantial harm to the applicant (*see, for example, Decision of 19 June 2014 by the Assignments Sitting of the Constitutional Court in Case No. 2014-09-01, Para 4 and 5*).

Suspending the enforcement of a court's ruling is, first and foremost, a measure that ensures the effectiveness of the legal proceedings before the Constitutional Court and that its purpose is reached, without causing, at the same time, a new infringement on fundamental rights. Whereas the protection of a person's fundamental rights, after the Constitutional Court's ruling has entered into force, must be ensured in accordance with Section 29 (2¹) and Section 32 (2) of the Constitutional Court Law. Hence, after the Constitutional Court's ruling has entered into force, the protection of a person's fundamental rights is ensured by the parties applying legal norms, for example, a court, taking into account also the findings included in the particular ruling.

Hence, the Applicant's request to suspend the enforcement of a court's ruling must be dismissed.

14. In the present case, the *Saeima* has expressed several requests regarding the termination of legal proceedings in the case.

The *Saeima* requests termination of legal proceedings in the claim regarding the incompatibility of Section 629 (5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme* because the Constitutional Court, in Case No. 2016-13-01, has already ruled on the same subject of claim as in the present

case.

The *Saeima* requests the Constitutional Court to terminate legal proceedings also in the claim regarding the compliance of the second sentence of Section 631 (3) of the Criminal Procedure law with the first sentence of Article 91 of the *Satversme*. I.e., the aforementioned norm of the Criminal Procedure Law, allegedly, does not cause a violation of the equality principle since it does not envisage differential treatment of the Applicant.

If arguments that could be the grounds for terminating legal proceedings in the case have been expressed, the Constitutional Court, first and foremost, must examine these (*see, for example, Judgement of 27 June 2016 by the Constitutional Court in Case No. 2015-22-01, Para 12*).

To establish, whether legal proceedings in the case should be continued, the Constitutional Court will successively examine:

1) whether there are grounds for terminating legal proceedings, on the basis of Para 5 of Section 29 (1) of the Constitutional Court Law, in the claim regarding the compliance of Section 629 (5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme*;

2) whether there are grounds for terminating legal proceedings, on the basis of Para 3 of Section 29 (1) of the Constitutional Court Law, in the claim regarding the compliance of the second sentence of Section 631(3) of the Criminal Procedure Law with the first sentence of Article 91 of the *Satversme*.

15. The *Saeima* holds that the Constitutional Court already has decided on the issue of the compatibility of Section 629 (5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme* in case No. 2016-13-01; moreover, also with respect to the Applicant, and therefore legal proceedings regarding this claim should be terminated. The Applicant has requested the Constitutional Court to recognise the aforementioned norm of the Criminal Procedure Law as being incompatible with the first sentence of Article 92 of the *Satversme* and, with respect to the Applicant, as void since the infringement on its fundamental rights occurred.

Para (5) of Section 29 (1) of the Constitutional Court Law provides that legal proceedings in a case may be terminated before the judgement is pronounced by a decision of the Constitutional Court if a judgement regarding the same subject of claim has been pronounced in another case.

15.1. In its judgement in case No. 2016-13-01, the Constitutional Court ruled that Section 629 (5) of the Criminal Procedure Law, insofar a court could not review the legality and validity of a decision by a person directing the proceedings on a person's right to familiarise oneself with materials in the case regarding criminally obtained property, was incompatible with the first sentence of Article 92 of the *Satversme*.

The Constitutional Court recognised that, in proceedings regarding criminally obtained property, the State had the obligation to ensure the right to a fair trial in a way to realise effective rights protection. In a democratic state governed by the rule of law, in proceedings regarding criminally obtained property the principle of equal opportunities of parties should be ensured, and this, *inter alia*, is linked to a person's right to acquaint oneself with the materials of these proceedings. The fact that the person directing the proceedings, who, at the same time, is also one of the parties to the proceedings regarding criminally obtained property and, moreover, continues to investigate the criminal offence, also adopts a decision on a person's right to familiarise oneself with the case materials of the proceedings regarding criminally obtained property, caused valid doubts about the objectivity and impartiality of such a decision if it is not reviewed in court, in accordance with the principle of a fair trial. The legislator should establish a procedure that would ensure the principle of equality of both parties in these cases, envisaging a possibility for the court to verify, whether the decision by the person directing the proceedings on a person's right to familiarise oneself with the case materials in the proceedings regarding criminally obtained property is legal and valid. The court is the subject who, by examining the matter on its merits, should at the same time fulfil the function of control, reviewing whether the fundamental rights of persons connected to the property are respected (*see Judgement of 23 May by the Constitutional Court in Case No. 2016-13-01, Para 14.1. and Para 15.3.*).

The facts of the case and the legal reasoning provided by the Applicant in the constitutional complaint in the claim regarding the compliance of Section 629 (5) of the Criminal Procedure Law with the first sentence of Article 92 of the *Satversme* are similar to the facts and legal reasoning examined in the framework of case No. 2016-13-01. In its judgement in case No. 2016-13-01, the Constitutional Court already has examined the arguments provided by the Applicant regarding the constitutionality of the aforementioned norm and has recognised this norm as being incompatible with the *Satversme*.

Hence, in its judgement in case No. 2016-13-01, the Constitutional Court already has recognised Section 629 (5) of the Criminal Procedure Law, insofar the court cannot review, whether the decision by the person directing the proceedings on a person's right to familiarise oneself with the case materials in the proceedings regarding criminally obtained property is legal and valid, as being incompatible with the first sentence of Article 92 of the *Satversme*, therefore it is not necessary to re-examine this norm.

15.2. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as being incompatible with a norm of higher legal force, is to be recognised as void as of the date when the judgement is published, unless the Court has provided otherwise. This legal norm grants broad discretion to decide on the date, as of which a norm that has been recognised as being incompatible with a norm of higher legal force becomes void.

The Constitutional Court, in its judgement in case No. 2016-13-01, recognised Section 629 (5) of the Criminal Procedure Law, insofar the court could not review, whether the decision by the person directing the proceedings on a person's right to familiarise oneself with the case materials in the proceedings regarding criminally obtained property was legal and valid, as being incompatible with the first sentence of Article 92 of the *Satversme* and void as of the date the judgement was published. The judgement in case No. 2016-13-01 was published in the official journal "Latvijas Vēstnesis" on 25 May 2017, No. 102 (5929). At the same time, the Constitutional Court provided that, until new legal regulation was adopted, the right of a person connected to the property, referred to in Section 628

of the Criminal Procedure Law, to request a court to review the decision by the person directing the proceedings on familiarising oneself with the case materials in the proceedings regarding criminally obtained property should be ensured by directly applying Article 92 of the *Satversme* and the findings made in the judgement in case No. 2016-13-01 (*see Judgement of 23 May 2017 by the Constitutional Court in Case No. 2016-13-01, Para 16.2.*).

It follows from the facts of the present case that, on 7 March 2017, the Panel of Criminal Cases of the Riga Regional Court in the proceedings regarding criminally obtained property adopted with respect to the Applicant a decision, which, in accordance with the contested norm, is not subject to appeal. On 21 March 2017, after the proceedings regarding criminally obtained property had been concluded, the Applicant submitted a constitutional complaint to the Constitutional Court. To ensure the possibility to eliminate the negative consequences incurred by the Applicant in the procedure of applying Section 629 (5) of the Criminal Procedure Law in the proceedings regarding criminally obtained property, the Applicant requested recognising this norm as void from the moment its fundamental rights were infringed upon.

At the moment when the present case was initiated, the claim regarding the compliance of Section 629 (5) with the first sentence of Article 92 of the *Satversme* had not been adjudicated yet. In case No. 2016-13-01, the Constitutional Court had not examined the matter of Section 629 (5) of the Criminal Procedure Law being void with respect to the Applicant.

Hence, in the present case, the prerequisite for terminating legal proceedings, envisaged in Para 5 of Section 29 (1) of the Constitutional Court Law, does not exist. The Constitutional Court must examine the Applicant's request to recognise Section 629 (5) of the Criminal Procedure Law as being void as of the moment when the infringement on the Applicant's fundamental rights occurred.

16. The Applicant has requested the Constitutional Court to recognise Section 629 (5) of the Criminal Procedure Law as incompatible with the first sentence of Article 92 of the *Satversme* as of 25 May 2016; i.e., as of the moment

when the person directing the proceedings decided to initiate the proceedings regarding criminally obtained property. The Applicant holds that the infringement on its fundamental rights could be eliminated by recognising the contested norm as being incompatible with the *Satversme* retroactively.

Section 32 (3) of the Constitutional Court Law grants to the Constitutional Court the competence to decide on the issue, whether, in the case if the contested norm already had become void at the moment of adopting the judgement, it would be possibly to recognise this norm as being void as of a certain past date (*see Judgement of 27 January 2011 by the Constitutional Court in Case No. 2010-22-01, Para 15*).

In its judgement in case No. 2016-13-01, the Constitutional Court, deciding on recognising the contested norm as void as of the moment when the infringement on the fundamental rights of the limited liability company “Cell Finance” occurred, took into account, *inter alia*, that there should be the possibility to defend its rights, eliminating, to the extent possible, doubts regarding the objectivity and independence of the person directing the proceedings, i.e., the official who adopted the decision on the person’s right to familiarise oneself with the case materials. To ensure that the rights of the limited liability company “Cell Finance” were defended and to provide the possibility to the applicant to submit an application in connection with newly discovered circumstances, Section 629 (5) of the Criminal Procedure Law, insofar the court could not review the legality and validity the decision by the person directing the proceedings regarding the person’s right to familiarise oneself with the case materials in the proceedings regarding criminally obtained property, was recognised as being void as of the moment when the infringement on the applicant’s rights occurred (*see Judgement of 23 May 2017 by the Constitutional Court in Case No. 2016-13-01, Para 16.1*).

It follows from the case materials that the Applicant’s legal situation is similar to the one of the submitter’s of the constitutional complaint – the limited liability company “Cell Finance” – in case No. 2016-13-01.

In view of the above and also of the fact that the constitutional complaint was submitted at the time when case No. 2016-13-01 had not been heard yet, the

Constitutional Court holds: to ensure to the Applicant the right to a fair trial it should have protection of its rights equal to the one that the submitter of the constitutional complaint in case No. 2016-13-01 had.

Thus, to eliminate, to the extent possible, the adverse consequences caused by Section 629 (5) of the Criminal Procedure Law with respect to the Applicant this norm is to be recognised as being void as of the moment when the infringement on its fundamental rights occurred.

17. The *Saeima* holds that there are grounds for terminating legal proceedings in the present case in the part of the claim regarding the compliance of the second sentence of Section 631 (3) of the Criminal Procedure Law with the first sentence of Article 91 of the *Satversme* since this legal norm does not cause for the Applicant more adverse consequences than for the injured owner of property in the basic criminal proceedings. I.e., also this injured owner of property does not have the right to submit a cassation complaint regarding the decision by the appellate instance court. Therefore, it is contended that the second sentence of Section 631 (3) of the Criminal Procedure Law does not create differential treatment of the Applicant.

In order to assess, whether a legal norm causes differential treatment of persons, the Constitutional Court must, first and foremost, assess, whether and which persons are in similar and according to certain criteria comparable circumstances (*see, for example, Judgement of 2 February 2010 by the Constitutional Court in Case No. 2009-46-01, Para 7*).

Hence, legal proceedings in the case should be continued.

18. The first sentence of Article 91 of the *Satversme* provides: “All human beings in Latvia shall be equal before the law and the courts.”

The principle of equality, enshrined in the first sentence of Article 91 of the *Satversme* must guarantee the existence of a united legal order. I.e., its aim is to ensure implementation of such requirement of a state governed by the rule of law as comprehensive effect of laws on all persons and application of the law without any privileges. This also guaranteed full effect of the law, objective and impartial

application of it, as well as that nobody is allowed to violate the precepts of law (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 9.1.*). However, the unity of such legal order does not mean levelling down because “equality allows differentiated approach if it can be justified in a democratic society (*see Judgement of 26 June 2001 by the Constitutional Court in Case No. 2001-02-0106, Para 4 of the Findings*).

In interpreting Article 91 of the *Satversme*, the Constitutional Court has recognised that the equality principle prohibits public institutions from issuing such norms that without reasonable grounds allow differential treatment of persons, who are in similar and according to certain criteria comparable circumstances. The principle of equality allows and even demands differential treatment of persons who are in different circumstances and also allows differential treatment of persons who are in similar circumstances if there are objective and reasonable grounds for that (*see, for example, Judgement of 3 April 2001 by the Constitutional Court in Case No.2000-07-0409, Para 1 of the Findings, and Judgement of 11 November 2005 in Case No. 2005-08-01, Para 5*). Differential treatment lacks objective and reasonable grounds if it does not have a legitimate aim or if the relationship between the chosen measures and the set aims is not proportionate (*see Judgement of 23 December 2002 by the Constitutional Court in Case No. 2002-15-01, Para 3 of the Findings*).

Thus, to assess, whether the contested norm complies with the equality principle, included in the first sentence of Article 91 of the *Satversme*, it must be established:

1) whether and which persons (groups of persons) are in similar and according to certain criteria comparable circumstances;

2) whether the contested norms envisages similar or differential treatment of these persons;

3) whether there are objective and reasonable grounds for such treatment, whether it has a legitimate aim, and whether the principle of proportionality is complied with (*see, for example, Judgement of 12 February 2015 by the Constitutional Court in Case No. 2014-08-03, Para 12, and Decision of 6 April 2017 on Terminating Legal Proceedings in Case No. 2016-10-01, Para 13*).

19. The participants of the case express the opinion that the injured owner of property, whose property has been arrested as one of the persons connected to property in the special proceedings – the proceedings regarding criminally obtained property, and the injured owner of property, whose property has been arrested, in the basic criminal proceedings are in similar and comparable circumstances.

The Constitutional Court has noted that two situations are never totally identical. A situation that has one or several common features with the situation to be reviewed must be chosen for comparison (*see, for example, Judgement of 4 January 2007 by the Constitutional Court in Case No. 2006-13-0103, Para 7*). In examining, whether the principle of equal treatment is respected, the decisive fact is whether several persons share a common and essential feature. To establish, whether and which persons are in similar and comparable circumstances, the main feature that these persons share must be identified (*see, for example, Judgement of 23 November 2015 by the Constitutional Court in Case No. 2015-10-01, Para 17*).

In the proceedings regarding criminally obtained property, the right to property of persons connected to the property, referred to in Section 628 of the Criminal Procedure Law, is decided upon (*see Judgement of 23 May 2017 by the Constitutional Court in Case No. 2016-13-01, Para 10*). The Applicant is the owner of property that has been arrested, so that the property could be confiscated in the special proceedings – proceedings regarding criminally obtained property. Whereas Section 111¹ of the Criminal Procedure Law comprises the injured owner of property, whose property has been arrested, as the participant of the basic criminal proceedings whose right to handle its property has been restricted.

It follows from the above that the restricted rights of the property owners to handle the property, about the criminal origins of which and further actions therewith is decided by the court, is the most essential shared feature of these persons.

However, one shared feature *per se* not always can serve as a sufficient argument for establishing that persons are in similar and comparable circumstances. The Constitutional Court must examine also whether no substantial considerations

exist that would prove that persons are not in similar and comparable circumstances (*see, for example, Judgement of 9 April 2013 by the Constitutional Court in Case No. 2012-14-03, Para 17.2., and Decision of 6 April 2017 on Terminating Legal Proceedings in Case No. 2016-10-01, Para 16*). Therefore, the Constitutional Court, in assessing the compliance of a legal norm with the equality principle, included in Article 91 of the *Satversme*, must establish not only the existence of a shared feature but, also, whether the circumstances of the persons are similar and comparable.

Therefore, the Constitutional Court must establish, whether persons are in similar and comparable circumstances.

20. In the present case, persons, who own property that has been arrested and the criminal origins of which and further handling of it is decided upon by the court (hereafter also – the injured owners of property) in various proceedings regulated by the Criminal Procedure Law, i.e., the basic criminal proceedings or the special proceedings – the proceedings regarding criminally obtained property), are being compared.

The participants of the case and the summoned persons express different opinions on whether these persons are similar and comparable circumstances. The Ombudsman, a summoned person, noted that these persons were in similar and comparable circumstances because, irrespectively of the type of proceedings, they had identical procedural status (*see Case Materials, Vol. 2, p. 133; see also the opinion by summoned person K. Strada-Rozenberga in Case Materials, Vol. 2, pp. 147–148*). The Prosecutor's General Office, in turn, underscores that, in view of the purpose of the proceedings regarding criminally obtained property and the matters examined therein, there are no grounds to compare these proceedings with the basic criminal proceedings (*see Case Materials, Vol. 3, p. 17*). This opinion is upheld also by J. Stukāns, who noted that, in view of the content, substance of the legal proceedings and the court's competence, comparison of these proceedings should not be allowed (*see Case Materials, Vol. 2, p. 151*).

Therefore, to establish, whether these persons are in comparable circumstances, the Constitutional Court must examine the substance and the

purpose of the special proceedings – the proceedings regarding criminally obtained property.

20.1. In criminal proceedings, it may be necessary to resolve issues that may affect a person's right to property or financial interests simultaneously with issues pertaining to a person's guilt for committing a criminal offence. However, investigation of criminal offences often is a complicated and lengthy process, where a decision must be taken to recognise property as being criminally obtained and on further actions with the property, without waiting for the final ruling in the criminal proceedings. Therefore, the Criminal Procedure Law provides that issues of property may be dealt with not only in the basic criminal proceedings but also in the proceedings regarding criminally obtained property.

The proceedings regarding criminally obtained property are one type of special proceedings in criminal procedure (*see Judgement of 23 May 2017 by the Constitutional Court in Case No. 2016-13-01, Para 11*). Resolving the issues of property in the framework of these proceedings means that these issues are resolved within the framework of separate, independent proceedings (*see the opinion of summoned person K. Strada-Rozenberga in Case Materials, Vol. 2, p. 144*). These proceedings are aimed at only resolving the issues of property that have arisen in the criminal proceedings. The proceedings regarding criminally obtained property do not establish a person's guilt, in these proceedings the criminal origins of property or connection to the criminal offence is decided upon (*see Judgement of 23 May 2017 by the Constitutional Court in Case No. 2016-13-01, Para 10*). The *Saeima* and the summoned persons also underscore that these proceedings are aimed only at establishing a certain fact and their purpose is not to recognise a person as being guilty of committing the particular criminal offence (*see, for example, opinion of the Ministry of Justice, a summoned person, in Case Materials, Vol. 2, p. 130*). Hence, in the proceedings regarding criminally obtained property, the court has the competence over only one of those issues that are examined and assessed in the basic criminal proceedings, *inter alia*, deciding on a person's guilt for committing a criminal offence.

Para 2 of Article 4 of the 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 provides that where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States must take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial. Likewise, the Financial Action Task Force (FATF), which develops and promotes political guidelines, *inter alia*, for protecting the global financial system against legalising the proceeds of crime, has noted in its 4th Recommendation “Confiscation and Provisional Measures” that the countries should consider the possibility to establish measures, by which the proceeds or instrumentalities of crime could be confiscated without passing a convicting judgement in a criminal case (confiscation without conviction).

The Constitutional Court has recognised that the proceedings regarding criminally obtained property should be considered as an exception to the basic criminal proceedings (*see Judgement of 23 May 2017 by the Constitutional Court in Case No. 2016-13-01, Para 11*). These proceedings may be initiated only in the presence of the pre-requisites referred to in Section 626 of the Criminal Procedure Law. Moreover, in these proceedings the final decision is adopted with respect to issues of property. If proceedings regarding criminally obtained property had taken place during the pre-trial criminal proceedings and the court, within the framework of these, has recognised property as being criminally obtained then the court no longer decides on actions with the criminally obtained property in the basic criminal proceedings (*see the opinion of the Prosecutor’s General Office, the summoned person, in Case Materials, Vol. 3, p. 17*). This is one of the ways, in which a final decision is adopted with respect to criminally obtained property (*see the opinion of summoned person K. Strada-Rozenberga in Case Materials, Vol. 2, p. 144*).

Thus, the proceedings regarding criminally obtained property are separate and isolated proceedings, in the framework of which the court examines only one issue that has arisen in the case – the issue of property.

20.2. The legislator's aim, in separating examination of property issues in the special proceedings, is to ensure that issues of property that have arisen in criminal proceedings are resolved in due time and aiming at procedural economy (*see also Judgement of 23 May 2016 by the Constitutional Court in Case No. 2016-13-01, Para 10*). The public interest in effective course of criminal proceedings and protection of other person's rights must be ensured in the proceedings regarding criminally obtained property (*see Judgement of 23 May 2017 in Case No. 2016-13-01, Para 14.2.*). Separation of such proceedings is linked also to the need to ensure a person's right to having legal proceedings completed within a reasonable term. Therefore the proceedings regarding criminally obtained property are separated exactly during the pre-trial proceedings.

In view of the fact that the proceedings regarding criminally obtained property are an exception to the procedure for resolving issues of property in the basic criminal proceedings, these proceedings may have different rules, aimed at reaching their aim speedily and effectively. The *Saeima* notes that, taking into account the fact that issues to be examined in the proceedings are limited as well as the fact that the proceedings were created for as speedy and effective resolution of these issues as possible, the legislator has chosen to define that such issues are examined in two instances (*see Case Materials, Vol. 2, p. 126*). Therefore, the regulation included in the second sentence of Section 631 (3) of the Criminal Law is one of the measures by which speedy and effective resolution of issues of property is achieved.

In a democratic state governed by the rule of law, the legislator, in adopting procedural laws, enjoys discretion both in defining the categories of cases to be examined in the respective proceedings and deciding on the procedure for examining cases belonging to different categories. Likewise, the legislator has the right to establish the procedure, compliant with the fundamental rights, for examining cases, including that for appealing against rulings (*see, for example,*

Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 17). The Constitutional Court has recognised that the State's obligation to ensure the possibility of appeal to the cassation instance court in all categories of cases does not follow from the general principles of law and the *Satversme* (see, for example, *Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 17, and Judgement of 21 October 2013 by the Constitutional Court in Case No. 2013-02-01, Para 11*).

The cassation instance performs a special function, and it has public law nature, aimed at uniform application and interpretation of legal norms throughout the country (see *Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 2.1. of the Findings*). Issues regarding interpretation of the norms of substantial and material law are examined at the cassation instance (see *Judgement of 2 June 2008 by the Constitutional Court in Case No. 2007-22-01, Para 18.1.*). In the present case, the first sentence of Article 91 of the *Satversme* must be examined in interconnection with the general principles of law, *inter alia*, the principles of justice and fair trial, the scope of which does not comprise a person's subjective right to cassation instance appeal in all categories of cases.

Although a person's issues of property may be resolved both in the proceedings regarding criminally obtained property and in the basic criminal proceedings, it must be admitted that, in view of the different substance and aim of the proceedings regarding criminally obtained property, there are no grounds for comparing these two proceedings. The examination of the second sentence of Section 631 (3) of the Criminal Procedure Law in interconnection with the regulation of the Criminal Procedure Law, it can be concluded that persons are in different and incomparable circumstances. In the present case, the legislator's obligation to envisage equal treatment of persons, who are in different and incomparable circumstances, does not follow from the first sentence of Article 91 of the *Satversme*.

Since persons are not in similar and comparable circumstances the second sentence of Section 631 (3) of the Criminal Procedure Law complies with the first sentence of Article 91 of the *Satversme*.

The Substantive Part

On the basis of Sections 30–32 of the Constitutional Court Law, the Constitutional Court

held:

1. To recognise Section 629 (5) of the Criminal Procedure Law, insofar a court may not review the legality and validity of the decision by the person directing the proceedings on a person's right to familiarise oneself with the materials in the case regarding criminally obtained property as void with respect to IMEX PROVIDER LTD as of the moment when the infringement on its fundamental rights occurred, complying with the Constitutional Court's judgement of 23 May 2017 in Case No. 2016-13-01.

2. To recognise the second sentence of Section 631 (2) of the Criminal Procedure Law as being compatible with the first sentence of Article 91 of the *Satversme*.

The judgement is final and not subject to appeal.

The judgement shall enter into force on the date of its publication.

Chairperson of the court hearing

I. Ziemele