



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 Case No. 2016-07-01

8 March 2017, Riga

The Constitutional Court of the Republic of Latvia comprised of: chairman of the court sitting Aldis Laviņš, Justices Gunārs Kusiņš, Sanita Osipova, Daiga Rezevska, and Ineta Ziemele,

having regard to the constitutional complaint submitted by AS DNB banka, 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,

at the court sitting of 7 February 2017 examined in written procedure the case

“On Compliance of Section 356(2) and Section 360(1) of the Criminal Procedure Law with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme* of the Republic of Latvia”.

The Facts

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

Initially the second part of Section 356 provided:

“During pre-trial criminal proceedings, property may also be recognised as criminally acquired by:

1) a decision of a district (city) court in accordance with the procedures laid down in Chapter 59 of this Law, if the owner or the legal possessor of property is not known and a person directing the proceedings has sufficient evidence that does not cause any doubt regarding the criminal origins of the property (the relation of the property to a criminal offence);

2) a decision of a person directing the proceedings, if, during pre-trial investigation property was found with and seized from a suspect, accused, or third person in relation to which property the owner or lawful possessor thereof had previously submitted a loss of property, and, after finding thereof, has proven his or her rights to such property, eliminating any reasonable doubt.”

Pursuant to Section 153 of the law of 12 March 2009 “Amendments to the Criminal Procedure Law” the words “the owner or the legal possessor of property is not known and” of Para 1 Section 356(2) of the Criminal Procedure Law were deleted, but in Para 2 the word “investigation” was replaced by “criminal proceedings”. Pursuant to Section 28 of the law of 21 October 2010 “Amendments to the Criminal Procedure Law” the words of Para 1 of Section 356(2) of the Criminal Procedure Law “(the relation of the property to a criminal offence)” were replaced by the words “or the relation of the property to a criminal offence”. Since 1 January, when the law of 21 October 2010 “Amendments to the Criminal Procedure Law” entered into force, the second part of Section 356 of the Criminal Procedure Law has not been amended and is force in the following wording:

“During pre-trial criminal proceedings, property may also be recognised as criminally acquired by:

1) a decision of a district (city) court in accordance with the procedures laid down in Chapter 59 of this Law, if a person directing the proceedings has sufficient evidence that does not cause any doubt regarding the criminal origins of the property or the relation of the property to a criminal offence;

2) a decision of a person directing the proceedings, if, during a pre-trial criminal proceedings, property was found with and seized from a suspect, accused, or third person in relation to which property the owner or lawful possessor thereof

had previously submitted a loss of property, and, after finding thereof, has proven his or her rights to such property, eliminating any reasonable doubt.”

The first part of Section 360 of the Criminal Procedure Law, in turn, provides: “If criminally acquired property has been found on a third person, such property shall be returned, on the basis of ownership, to the owner or lawful possessor thereof.” This norm of the Criminal Procedure Law has not been amended and is in force in its initial wording.

2. The applicant – AS DNB banka (hereinafter – the Applicant) – holds that the second part of Section 356 and the first part of Section 360 of the Criminal Procedure Law are incompatible with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme* of the Republic of Latvia.

2.1. On 7 February 2011 the Applicant purchased at an auction immovable property, which later was corroborated into the Land Register in its name. However, already in 2008 criminal proceedings with respect to fact that this immovable property had been obtained fraudulently had been initiated, about which, allegedly, the Applicant did not know. On 24 November 2011 a decision was adopted within the framework of criminal proceedings to seize this property and also an entry was made into the Land Register. The Applicant, in turn, had been granted the status of a third person in the criminal proceedings. On July 15 2015, concurrently with the decision by the official in charge of proceedings on terminating criminal proceedings the immovable property owned by the Applicant was recognised as being criminally acquired and, on the basis of Section 360(1) of the Criminal Procedure Law, the decision was taken to return it to the owner, who had lost the immovable property as the result of a criminal offence (hereinafter also – the initial owner). Although the decision of 15 July 2015 by the official in charge of proceedings has not been implemented yet and the Applicant is still registered in the Land Register as the owner of the respective immovable property, its right to property and possibilities for exercising this right are said to be restricted.

2.2. Allegedly, the contested norms restrict without grounds the Applicant’s right to property, as well as legal certainty with respect of public credibility of entries into the Land Register and the principle of protecting trust linked to it.

The Applicant agrees that the restriction upon fundamental rights has been established by a law adopted in due procedure and that this restriction might have a legitimate aim – protection of other persons. However, the restriction upon fundamental rights established by the contested norms is said to be disproportional.

The Applicant notes that at the moment, when its right to property is corroborated into the Land Register, the State' obligation to protect this right arises, *inter alia*, to protect unhindered exercise of this right and to not deprive of this right to property. Discrete interference would be admissible only in an exceptional case.

The Applicant, referring to the case law of the European Court of Human Rights (hereinafter – ECHR) in cases involving confiscation of property, notes that in all cases, when a decision on the property right to a immoveable property that is linked to a criminal offence is taken, the good faith of the third person must be assessed. The Applicant also points to a number of international documents, *inter alia*, 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, which respects the protection of a *bona fide* acquirer of immoveable property.

The Applicant underscores that the contested norms are applied both to moveable objects, with respect to which the right to property is transferred without the State's interference, and to immoveable objects, with respect to which the State has established that the title to property is transferred by a discrete act, for example, an entry into the Land Register. By depriving third persons of property, the State, substantially, is correcting its mistake. However, appropriate compensation has not been ensured for the person who is deprived of property. Moreover, the property is said to be deprived without individual assessment of the particular situation, i.e., without assessing the scope of infringement caused to this person and the person's good faith.

It is maintained that the right envisaged in Section 360(2) of the Criminal Procedure Law to submit in civil law procedure a claim for compensation of damages cannot be considered as being an effective measure for preventing violation of the Applicant's fundamental rights. If the criminal proceedings are

terminated without a final ruling, i.e., without a sentencing judgement, it is impossible to achieve collection of losses.

Allegedly, the legislator, in adopting the contested norms, did not assess alternative measures that could ensure protection of *bona fide* third persons. When the State deprives third persons, who rely upon the credibility of Land Register entries, of property, it should ensure that third persons, who have obtained immovable property in good faiths, receive a fair compensation. This could be compensation for losses from the state budget resources. Another effective alternative solution could be seizing the immovable property, which is already envisaged by regulation that is in force, thus preventing any actions with this immovable property until it is established, whether the right to property returns to the initial owner. This would allow preventing a situation, in which the Applicant currently is. I.e., when purchasing immovable property, it did not know that in 2008 criminal proceedings had been initiated in connection with possible fraudulent acquisition of immovable property, and the immovable property was seized after the title to it had been registered in the Applicant's name. The Applicant notes that at the time, when it acquired immovable property, there had been no entry in the Land Register indicating that this property was linked to criminal proceedings or that the immovable property could be confiscated during the pre-trial proceedings or following a sentencing judgement.

It is maintained that the contested norms cannot be justified by the aim to ensure fairness. Such fairness cannot even objectively be restored, and, by returning immovable property to the initial owner, a third person is turned into a victim. Inability to rely upon the ownership of immovable property, i.e., entries into the Land Register, in fact, blocks all civil turnover in the field of immovable property. Ensuring legal security, stability and, at the same time, stability of civil turnover is said to be in the interests of society as a whole.

By defining in regulatory enactments public credibility of the Land Register entries, the State is said to recognise that a third person might develop certainty about the correctness of such entries and that this certainty would not be disproportionately restricted. An entry into the Land Register is said to promote

security in legal relationships, and this is said to be in the interests of all participants in civil turnover.

The Applicant notes that the State, on the hand, has established the principle of public credibility of the Land Register, but, on the other hand, has created the contested norms, which violate this credibility. This has caused disproportional restriction upon a person's fundamental rights, because the benefit gained by society does not outweigh the harm inflicted upon an individual. Hence, the contested norms are said to be incompatible with Article 1 and Article 105 of the *Satversme*.

2.3. The Applicant holds that the contested norms are incompatible with the principle of equality enshrined in the first sentence of Article 91 of the *Satversme*. The contested norms are said to allow differential treatment of third persons, which are *bone fide* acquirers, in two procedures – in civil proceedings and in criminal proceedings. In civil proceedings with respect to transition of immoveable property, quite to the contrary of the regulation established by criminal procedure, the fundamental principle that the court has the obligation to examine a third person's good faith has been established. A *bona fide* third person's right to property should be given priority protection compared to the rights of that person, who initially was unlawfully deprived of property. Although this fundamental principle has not been established *expressis verbis* in regulatory enactments, it has been recognised in the case law of the Supreme Court and the legal doctrine that it follows from principles included in Section 994(1) of the Civil Law and Section 1 of Land Register Law.

A claim regarding right to property can be brought in civil procedure also in case, if the property had been alienated as the result of a criminal offence. This leads to a situation, where persons, who are essentially in similar circumstances, can reach different outcomes. Thus, persons, who are in similar circumstances, are not ensured similar approach to the issue of who is considered to be the owner of immoveable property. Likewise, unequal treatment of third persons is said to occur also in those cases, when criminal proceedings take place in Latvia, and in cases, when a ruling by an international court is enforced.

2.4. The Applicant holds that the contested norms are incompatible also with a person's right to a fair trial enshrined in Article 92 of the *Satversme*. The Applicant's rights as a third person in criminal proceedings, where Para 2 of Section 356(2) of the Criminal Procedure Law is applied, substantially are set out in Section 111¹ and Section 375 of the Criminal Procedure Law. However, the Applicant as a third person in criminal proceedings has not been granted the right to familiarise itself with case materials, thus, these persons have not been ensured equal possibilities to influence effectively the decision on criminally acquired property substantially; i.e., the principle of equality of parties is violated. It is maintained that procedural equality is not complied with also in the case, where a decision is adopted in procedure established by Para 1 of Section 356(2) of the Criminal Procedure Law.

3. The institution, which adopted the contested act, – the *Saeima* - holds that the contested norms are compatible with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme*.

3.1. The *Saeima* notes that the contested norms envisage a restriction upon the right to property, i.e., they allow depriving a third person from the right to ownership or possession and grant it to the owner, who lost the immoveable property as the result of a criminal offence. The *Saeima* agrees that this restriction upon a person's fundamental rights should be examined in the light of the first and the third sentence of Article 105 of the *Satversme*, since this cannot be regarded as alienation of property for public needs.

The restriction upon fundamental rights that the contested norms comprise is said to be adopted by law and to have a legitimate aim – protection of other persons. To substantiate the legitimate aim of the restriction upon fundamental rights, the *Saeima* notes that guaranteeing the victim's right to restitution of justice is one of the most important objectives of criminal procedure. By returning immoveable property to its initial owner or legal possessor the aim of restituting the previous status is achieved, and, thus, justice to the victim of criminal offence.

It is maintained that therefore the Applicant's view that the contested norms are incompatible with the principle of proportionality is unfounded. The restriction upon fundamental rights included in the contested norms is said to be appropriate for reaching the legitimate aim, it ensures to the victim the right to a fair compensation if his rights have been infringed without basis, which is established in the third sentence of Article 92 of the *Satversme*.

The *Saeima* does not uphold the Applicant's arguments regarding alternative measures for reaching the legitimate aim. The *Saeima* underscores: although in some cases the rights and legal interests of third persons may be affected in criminal proceedings, the issue of compensating for the losses of these persons is not linked to the regulation of criminal law relationships. To this end Section 360(2) of the Criminal Procedure Law provides for the rights of a third person to claim compensation for losses in civil procedure. The Applicant has also pointed to the possible seizure within the framework of existing regulation as a possible alternative measure. However, seizure cannot be regarded as an alternative measure, since in criminal proceedings it does not define final actions with criminally acquired property. Moreover, the *Saeima* underscores that the Applicant's arguments are basically targeting possible deficiencies in the particular criminal proceedings in connection with seizure of its immovable property.

The *Saeima* notes that the Applicant has based its arguments regarding alleged incompatibility of the contested norms with the *Satversme* on the case law and legal regulation in cases of confiscation of property. However, the contested norms do not envisage transferring property to the State without compensation, but returning property to the initial owner, and these are two different institutions. It is maintained that the contested norms do not regulate cases of property confiscation.

A criminal offence is said to be not only a violation of the victim's individual rights, but also adverse conduct against society. Therefore the public interest to protect the person, who has suffered from a criminal offence, to retribute justice and to compensate for the loss caused, is said to outweigh the damage caused to a *bona fide* acquirer of property.

The principle of legal certainty, allegedly, does not mean that the right to property, which has been corroborated by an entry into the Land Register, cannot be restricted. Legal certainty with respect to credibility of information corroborated in public registers could be important in considering, whether the Applicant can be considered as being a *bona fide* acquirer of property. However, even in the case, where a person has been recognised as being a *bona fide* acquirer of property, its right to property may be restricted in a way envisaged in the *Satversme*.

3.2. The *Saeima* does not uphold the Applicant's opinion that the contested norms are incompatible with the principle of legal equality enshrined in the first sentence of Article 91 of the *Satversme*. *Bona fide* acquirers of property are said to be in similar and comparable circumstances in both civil and criminal proceedings. A *bona fide* acquirer of property is, indeed, less protected in criminal proceedings compared to the civil proceedings, however, this differential treatment is said to have objective and reasonable grounds. In criminal proceedings priority in protection is given to the victim – the initial owner of property or legal possessor thereof. The *Saeima* refers to the opinion expressed in legal doctrine and notes that also in civil law protection of a *bona fide* acquirer does not apply to those cases, where property initially has been acquired in a criminal way.

It is maintained that differential treatment of third countries is non-existent also in those cases, where a judgment of a foreign court is being enforced, and in cases, when criminal proceedings take place in Latvia. The Applicant in its substantiation refers to Section 903 of the Criminal Procedure Law, which is applicable to enforcement of such judgement of an international court that envisages a monetary fine or confiscation of property. Returning of the criminally acquired property to its initial owner or legal possessor and confiscation of property are said to be two different institutions. The contested norms are not applicable in the case of property confiscation.

3.3. It follows from the application that the Applicant, substantially, has contested compliance of Section 356(2) of the Criminal Procedure Law with Article 92 of the *Satversme*. However, the *Saeima* additionally draws attention to the fact that the Applicant has contested Para 1 of Section 356(2), which,

substantially, does not regulate the procedural rights of persons involved in this case. Whereas with respect to Para 2 of Section 356(2) the Applicant has neither contested the fact that the particular decision is adopted by the official in charge of proceedings, nor the procedure for appealing against such a decision.

The *Saeima* underscores that within the framework of proceedings it is the initial owner or legal possessor who has the obligation to prove his right to the particular property. Moreover, the affected owner of the property has the right, on the basis of Section 111¹ of the Criminal Procedure Law, to express his attitude orally or in writing, to submit applications or complaints with respect to the decisions that have been adopted on property. Therefore the *Saeima* holds that the legislator has ensured a reasonable balance between the procedural rights of the affected owner of the property and those of the victim.

4. The summoned person – the Ministry of Justice – holds that the contested norms comply with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme*.

The Ministry of Justice underscores that the purpose and basic principles established in Section 1 of the Criminal Procedure Law differ significantly from the ones existing in private law. *Inter alia*, guaranteeing the victim's rights in establishing a fair regulation of criminal law relationships is said to be one of the most important objectives of criminal procedure.

The Criminal Procedure Law is said to be an instrument by which the State attempts to regulate the criminal law relationship between the person, who has committed a criminal offence, the State and the victim, whereas the *bona fide* acquirer of a property and pledgee are not linked to the criminal offence.

In criminal procedure the rights and interests of a victim – a person, who has been deprived of property as the result of criminal offence, are primarily protected, *inter alia*, by ensuring to him the right to property guaranteed in Article 105 of the *Satversme*, which have been infringed by the criminal offence. By returning the criminally acquired property to the victim, he is ensured the possibility to restore his financial situation as it was prior to the criminal offence.

Moreover, the *bona fide* acquirer of property still has the right to bring a claim in civil procedure. The fact, whether the *bona fide* acquirer of property has acquired his right to property as the result of civil law transaction, is said to be a dispute about property rights, including the validity of transaction. The issue of bad faith of persons involved in the transaction should be resolved in civil procedure; it cannot be resolved with the framework of criminal proceedings.

The Ministry of Justice points to the right of an owner of criminally acquired property to participate in pre-trial criminal proceedings, established in Section 111¹ of the Criminal Procedure Law. However, the restriction established in Section 375 of the Criminal Procedure Law with respect to familiarising oneself with the case materials is said to ensure a reasonable balance between keeping the secret of investigation and respecting other persons' rights, as well as abiding by the principle of equal possibilities for parties.

5. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the rights guaranteed in Article 1 and the first and the third sentence of Article 105 of the *Satversme* have been violated by Section 360(1) of the Criminal Procedure Law.

The Ombudsman upholds the opinion of the *Saeima* provided in its written reply that the contested norm allows reaching the legitimate aim – protection of victim's rights. The State must guarantee general justice, and one type thereof is eliminating the consequences of a criminal offence. However, the assessment of the possibility to reach the legitimate aim by alternative measures *prima facie* indicates that other, more lenient measures exist. The Ombudsman underscores that the State has a positive obligation to protect a person's rights, *inter alia*, the right to property. If a person has been deprived of his rights as the result of a criminal offence, the State has the obligation to perform all the necessary actions to reconstitute the legal status. However, concurrently the State should also guarantee public credibility of the Land Register and protect persons' legal certainty. The Ombudsman draws attention, *inter alia*, to deficiencies in legal regulation, noting that the legislator has

not created an effective regulation to ensure the rights of a *bona fide* acquirer and public credibility of the Land Registers.

In examining compliance of the contested norms with Article 91 of the *Satversme*, the Ombudsman notes that the principle of protecting a *bona fide* acquirer in civil cases has been introduced as an exception to the principle that envisages a person's right to claim his property (possessions) back from any third person. This exception has been envisaged to ensure stability of civil turnover and trust. Persons in civil proceedings and in criminal proceedings are said to be in similar actual circumstances, but not in similar legal circumstances. Therefore differential treatment in different legal proceedings should not be considered as being a violation of the equality principle enshrined in Article 91 of the *Satversme*.

Differential treatment of *bona fide* acquirers cannot be established in cases, where rulings of foreign courts regarding alienation of property in favour of victims of criminal offences are enforced. International commitments and provisions of the Criminal Procedure Law envisage that in the case, when a judgment of a foreign court is enforced, property that is in the possession of a *bona fide* acquirer can be alienated.

The Ombudsman notes that the Applicant's arguments with respect to compatibility of Section 356(2) of the Criminal Procedure Law with the *Satversme* are not directed against possible incompatibility of the norm with the *Satversme*, but rather at possible deficiencies in other norms of the Criminal Procedure Law, which have not been contested. There are no grounds to question, whether *bona fide* acquirers are ensured procedural equality. The restriction on familiarizing oneself with the case materials established in Section 375 of the Criminal Procedure Law is said to be aimed at reaching the aim of criminal proceedings and is not to be understood as a general prohibition to hand out materials of a criminal case during pre-trial proceedings. Moreover, this restriction applies not only to the Applicant as a third person in criminal proceedings, but also to those persons exercising defence in criminal proceedings. Moreover, afterwards persons involved in criminal proceedings have equal rights to contest the decisions adopted by the official in charge of criminal proceedings in accordance with the Criminal Procedure Law.

6. The summoned person – the Prosecutor’s General Office – holds that the contested norms comply with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme*.

In criminal proceedings the victim, exactly as the person who has the immovable property, i.e., the Applicant, has the right to expect that the State’s actions will be consistent and predictable, and the victim’s rights will be respected. Therefore comparison of such persons in criminal procedure should be recognised as being well-founded, in difference to comparison within the framework of different procedures.

The Prosecutor’s General Office points out that both the civil law and criminal law regulation aims at restoring the initial status, to the extent possible, as it was prior to the rights infringement. Guaranteeing the victim’s rights is one of the objectives of criminal procedure, so that the property, which the victim had been deprived of as the result of criminal offence, would be returned to him. A situation, where property that had left the possession of the victim due to a criminal offence would return to civil turnover, should not be created. A *bona fide* acquirer of property, in turn, is protected in criminal procedure, since he still has the right to claim compensation for losses in civil procedure. In such cases assessment of a person’s good faith is said to not be the aim and objective of criminal proceedings.

The contested norms should be applicable to any property, the title to which the victim has lost contrary to his will, both to immovable and moveable property, moreover, irrespectively of the fact, whether this property is registered in public registers.

The Applicant had had the right to participate in pre-trial criminal proceedings, as well as the right to familiarise itself with the case materials. The need for effective investigation in criminal proceedings and protection of public interests justify the fact that a large part of information acquired in the course of pre-trial proceedings is a secret of investigation and is not disclosed.

The Prosecutor’s General Office notes, *inter alia*, to possible deficiencies in legal regulation, because the decision by the official in charge of proceedings on

terminating criminal proceedings and registration of the victim as the owner of immovable property is not one of the grounds, referred to in the Land Register Law, for altering an entry. I.e., pursuant to Section 44 of Land Register Law rights to immovable property which are based upon a lawful transaction, a judgement or a decision of a court or a statement of administrative institutions, or which exist on the basis of the law itself, Section 5, are corroborated in the form of an entry (changes and extinguishing of these rights are also likewise corroborated). Therefore a decision of this kind adopted by the official in charge of proceedings cannot be enforced. On 16 August 2016 the Cabinet has submitted a draft law “Amendments to the Criminal Procedure Law” (No. 630/Lp12), which, *inter alia*, envisages supplementing Section 356 of the Criminal Procedure Law by providing that during pre-trial criminal proceedings or following termination of criminal proceedings against a person on non-exonerative grounds, in the case referred to in Para 2 of the second part of this Section, a property, the title to which has been registered in public register and the entry in this register has been amended (changed) after a criminal offence had been committed, could be recognised as being criminally obtained in procedure established in Chapter 59 of the Criminal Procedure Law.

7. The summoned person – the Office of Land Register of the Vidzeme Suburb Court of the City of Riga (hereinafter – the Office of Land Register) – notes that the right to property can be corroborated in the Land Register in cases provided for in Section 44 of the Land Register Law.

The Office of the Land Register had received the decision by the official in charge of proceedings of 15 July 2015 on terminating criminal proceedings, which, *inter alia*, envisaged that the immovable property should be returned to its initial owner. Since this decision did not comply with any type of documents defined in Section 44 of the Land Register Law, which could be the grounds for corroborating rights *in rem*, the instructions included in the decision could not be fulfilled, but the document was annexed to the Land Register file. A person’s right to property,

which had been alienated as the result of a criminal offence, can be corroborated only on the basis of a court ruling.

Entries into the Land Register serve to protect third persons. The principle of public credibility in the meaning of the Land Register Law allows persons to trust entries into the Land Register and, in particular, that the immovable property is, indeed, in the ownership of that person, who has been entered into the Land Register as the owner. However, the principle of public credibility is said to be applicable only if the activities of parties is not based upon unlawful actions. Public credibility is created by *bona fide* requesters of corroboration and *bona fide* acquirers of rights.

8. The summoned person – PhD student of the University of Latvia Faculty of Law Mg. iur., LL. M. Jūlija Kolomijceva – holds that some issues of civil law can be dealt with also within criminal proceedings. Returning property to the initial owner, envisaged in Section 360(1) of the Criminal Procedure Law could be considered as being one of such issues. If the actual and legal circumstances are similar, then also the outcome of applying civil law as provisions of substantial law should be similar.

Civil law and criminal law have shared principles of law, however, they have different objectives. In criminal proceedings only the issue of returning physical moveable property can be decided on, when the issue of a person's right to this property is not decided on its merits.

Grammatical interpretation of the contested norms leads to the conclusion that they cannot be applied to immovable property. In the meaning of the contested norms, "property" is understood only as things than can be found, seized and physically returned, which is not immovable property. The aim of criminal proceedings is said to be fair regulation of relationships envisaged in the Criminal Procedure Law, not establishing civil rights and obligations of persons.

The official in charge of the proceedings, in deciding on the property rights of involved persons, does not assess the actual circumstances on their merit in accordance with civil law regulation and does not take into consideration the third

person's considerations and evidence with respect to the way this third person acquired the property in its ownership. This should be considered as a violation of the right to a fair trial.

J. Kolomijceva holds that the rights of a *bona fide* acquirer prevail over the right of the initial owner both in civil proceedings and in criminal proceedings. A criminal offence *per se* cannot be an obstacle to acquisition of property in good faith. It is the legislator's obligation to adopt such legal regulation that would ensure effective protection of interests of both *bona fide* persons and of victims. Concurrently, adoption of a particular legal regulation is to be assessed as a political choice of the legislator on whether the *bona fide* acquirer becomes an owner in the meaning of civil law. However, even if Section 360 of the Criminal Procedure Law were to be recognised as being compatible with the *Satversme*, a *bona fide* acquirer of property should have sufficiently effective measures at his disposal to achieve compensation for losses.

9. The summoned person – lecturer of the University of Latvia Faculty of Law Mg. iur. Gunārs Kūtris – notes that Para 2 of Section 356(2) had been applied to the Applicant. However, Para 1 of this provision envisages an entirely different procedure, in which property is recognised as being criminally obtained, and this had not been applied in the case under review.

G. Kūtris points to possible issues in applying legal norms in the particular pre-trial criminal proceedings, *inter alia*, that the official in charge of criminal proceedings – the investigator – adopts a decision that a judge of the Office of Land Register has no right to enforce. Moreover, grammatical and systemic interpretation of Section 356 of the Criminal Procedure Law shows that Para 2 of the second part of this Section is not applicable to immovable property. Those cases, where criminal proceedings are terminated, if the person, who should be made criminally liable, has deceased, have not been resolved in the Criminal Procedure Law. However, currently an appropriate provision has been included in the draft law “Amendments to the Criminal Procedure Law” (No. 630/Lp12).

It is the legislator's choice – to establish whose person's property rights have suffered the greatest infringement and adopt such legal regulation that would comply with public interests to the extent possible. Criminal activities cannot be the basis for the transfer of right to property. A regulation that would, on the basis of the public credibility principle of entries into the Land Register and the status of a *bona fide* acquirer, legalise consequences of a criminal offence would not be compatible with the understanding of a state governed by the rule of law. All acquirers of property, in particular, in transactions with immovable property, should assess the participants to the transaction and the terms thereof, as well as take into consideration that transactions are linked to a certain risk.

Protection of the victim's rights is one of the fundamental principles of criminal proceedings, enshrined in Section 22 of the Criminal Procedure Law. This principle is said to comprise compensation for losses, *inter alia*, returning particular property to the victim, if the criminal offence has created criminal law relationship between the culpable person and the State, but also between the culpable person and the victim. The State protects the victim's fundamental rights; *inter alia*, the right to property guaranteed in Article 105 of the *Satversme*. Protection of this right is said to follow also from a number of international documents. Moreover, this approach is also compatible with the public interest to be protected against crime.

A *bona fide* acquirer, i.e., the owner of the infringed property, can appeal against the decision by the official in charge of proceedings within the framework of the prosecutor's office. However, even if this person were granted the possibility to turn to court, its claim could apply only to either a mistake or a violation of law in the actions or decision by the official in charge of proceedings, but not to protection of its own right to property. A claim like this is, substantially, would not alter the fact of criminal origins of the property. The prosecutor's office should ensure supervision of the legality of actions taken by an official in charge of proceedings.

At the same time G. Kūtris agrees that in the particular situation it would be problematic for the Applicant to achieve protection of its rights by submitting a

claim for compensation of losses in civil procedure. However, it is impossible to completely avoid cases, where a person's death prevents full resolution of an issue.

10. The summoned person – PhD student of the University of Latvia Faculty of Law Mg. iur. Martins Osis – holds that the contested norms are applicable to the principle of public credibility insofar it is necessary and sufficient for reaching the aims defined in Section 1 of the Criminal Procedure Law. Application of the contested norms is aimed at restitution of the previous status, not at punishing the perpetrator of a criminal offence.

The contested norms are applicable both to moveable and immoveable property. A regulation allowing differential treatment of criminally acquired moveable and immoveable property would be inadmissible in a democratic state governed by the rule of law.

In applying the contested norms, a third person's good faith is not assessed. Mechanism defined in Section 360(2) of the Criminal Procedure Law is envisaged for the protection of a *bona fide* acquirer. The rights and interests of the initial owner and the *bona fide* acquirer should be weighed in civil procedure.

The contested norms should not be considered as being confiscation of property, but returning of property. The principle that property, irrespectively of its location, should be returned to its legal possessor or owner is included also in Section 357 (1) of the Criminal Procedure Law; however, constitutionality of this legal provision had not been contested in the case under review.

M. Osis, referring to the case law of the pre-war Senate and the Constitutional Court, points out that corroboration or making an entry in the Land Register is aimed at protection of third persons. The principle of public credibility promotes legal certainty and stability of civil turnover, at the same time restricting the possibility to exercise claim to property. However, the principle of public credibility is said to serve not only to protect third persons' rights, but is also applicable to the protection of that subject, who has been entered into the Land Register as the owner of an immoveable property. At the same time, it is essential to assess also the subjects involved in legal relationship. I.e., the care and skills of a

merchant and a credit institutions should be differentiated from those that a natural person acquiring immovable property for non-commercial purposes might have.

The case law of the ECHR is said not be directly applicable in the case under review. Application of the contested norms is not confiscation of property, i.e., alienation of property without compensation into the State's ownership, but alienation of property in favour of a certain person.

M. Osis refers to the case law of ECHR and points out that attention should be paid not only to the rights and interests of a *bona fide* acquirer, but also the status of previous owners. Moreover, taking into consideration the rights and interests of the initial owner cannot be considered as being a matter of secondary importance.

M. Osis refers to the judicature of various cassation instances, *inter alia* to examples from which the propriety of the initial owner's rights follows, if the property rights of such a subject had been infringed as the result of a criminal offence, and thus underscores the existing diverse understanding regarding the priority of rights of a *bona fide* acquirer or the initial owner.

The legislator has used the contested norms to establish a mechanism for restituting the previous status that would be as close as possible to the status that the subject of rights enjoyed prior to the criminal offence. Returning of a criminally acquired property within the framework of criminal proceedings has a public law nature, which imposes an obligation upon the official in charge of proceedings to restore *ex officio* the legal order that has been disrupted by the criminal offence. Assessing the good faith of a person is said not to be the objective of criminal procedure.

11. The summoned person – advocate Jens-Christian Pastille from a Member State of the European Union (Germany), practicing in Latvia, – holds that the contested norms, insofar they are in force concurrently with Section 994 of the Civil Law and interpretation reflected in judicature of the Supreme Court, are incompatible with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme*.

It is admissible to differentiate between acquisition of property, depending on whether this property is a moveable or an immovable object. I.e., in the case of moveable objects the initial owner's rights would have priority, whereas in the case of immovable property the principle of legal certainty would be more important, i.e., protection of a *bona fide* acquirer's rights. However, the criminal procedure does not envisage differentiation of this kind.

Protection of a *bona fide* acquirer is said to be a matter of the legislator's choice. It is the obligation of the legislator to decide, whose interests prevail. Moreover, the legislator may provide for a differential treatment of moveable and immovable property. However, in view of the fact that the Land Register exists, the legislator should decide in favour of protecting the interests of a *bona fide* acquirer. The legislator cannot support both solutions at the same time, as it is currently. Different regulation in civil law and criminal law is said to create a contradiction within the legal system. Unity of legal system and consistent application of legal norms is said to follow from the principle of a state governed by the rule of law.

Punishing the guilty person is said to be the primary aim of criminal law. However, by the contested norms the criminal procedural regulation is said to interfere into the civil procedural regulation. In civil law protection of a *bona fide* acquirer of immovable property is said to manifest itself not as a possibility to claim compensation for losses, but as recognition of the *bona fide* acquirer's right to property. Legal regulation that is contrary to such protection of a *bona fide* acquirer is said to be contrary to the system of Land Registers existing in Latvia and the principle of public credibility. Allegedly, a *bona fide* acquirer is denied protection, although pursuant to the civil law regulation he should be recognised as being the owner. Existence of the Land Register is justified by the public interest in knowing the true owner of immovable property. By not recognising that the interests of a *bona fide* acquirer of immovable property prevail, legal certainty and public trust in the entries into the Land Register are jeopardized, moreover, due to such approach by the legislator, a person feels uncertain about legal consequences.

Appropriate measure for reaching the legitimate is the possibility for a victim to submit a claim for compensation for losses. Criminal law is not suitable for resolving civil law disputes, therefore, allegedly there are no grounds to consider that the initial owner should be granted any advantages in criminal proceedings. As regards compliance of the contested norms with the principle of equality enshrined in Article 91 of the *Satversme*, J. C. Pastille notes that the owners of moveable and immovable property are comparable. There are grounds to consider that a *bona fide* acquirer should be protected with respect to immovable property, but not with respect to moveable one. J. C. Pastille refers to the German practice to note that from the perspective of public interest Land Registers with respect to immovable property is a very strong bearer of pretence of a right and, consequently, acquisition in good faith is based upon legal trust in entries into the Land Register. Therefore, a violation of Article 91 of the *Satversme* should be established, since the contested norms do not provide for a differential treatment of acquirers of moveable and immovable property.

J. C. Pastille points to a number of possible deficiencies in legal regulation. Pursuant to the regulation that is currently in force, the possibility to appeal in court against decision adopted by the official in charge of proceedings is not envisaged. A decision on criminally acquired property is adopted before a sentencing judgement on a criminal offence is passed. Moreover, pursuant to provisions that are currently in force, it is impossible to enforce such a decision adopted by the official in charge of proceedings.

12. The summoned person – Professor Emeritus of the University of Freiburg, Dr. Dres. h. c. Rolf Stürner – considers that the legal regulation that envisages returning property to the owner, who lost the immovable property as the result of a criminal offence, is compatible with the *Satversme*.

In connection with the case under review, *inter alia*, examining the protection of the Applicant's right to property, it is important to underscore that the right to property was transferred as the result of a criminal offence. The principle of justice

provides: even if differential treatment in civil law and criminal law is admissible, an action like this must be substantiated.

In assessing the contested norms in interconnection with Section 994(1) of the Civil Law, R. Stürner admits that acquiring of immovable property after its initial owner had been a victim of a criminal offence should not be admissible. Section 994 of the Civil Law does not envisage inadmissibility of any exceptions or restrictions to the principle of protecting a *bona fide* acquirer. Such an interpretation of Section 994(1) of the Civil Law that would always inexorably protect a *bona fide* acquirer would lead to systemic problems. An exception to the principle of protecting a *bona fide* acquirer is said to exist also in other countries, for example, in France, England and the USA, where, as a matter of principle, acquisition in good faith of immovable property after its initial owner had been subjected to a criminal offences is inadmissible. Moreover, in Germany, in the case of a criminal offence a sales agreement may be invalid. The *bona fide* acquirer, in turn, must have the possibility to claim compensation for losses in full amount in civil procedure.

In Latvia, a third person, upon acquiring immovable property, has no possibility to research extensively previous transaction with it and to arrive at comprehensive conclusions about the previous transactions. Whereas in Germany, where a strong system of preventive justice is legally regulated, there are grounds to provide that the protection of a *bona fide* acquirer, who has been corroborated in the Land Register, prevails. If a preventive system like this has not been established, then it is admissible that the property rights of a *bona fide* acquirer that are collaborated in the Land Register are not fully protected. The rights and interests of a *bona fide* acquirer could prevail, if measures for guaranteeing correctness and organisational quality of transferring immovable property were improved.

The Findings

13. The Applicant requests the Constitutional Court to examine compliance of Section 356(2) and Section 360 (1) with Article 1, the first sentence in Article 91, Article 92 and Article 105 of the *Satversme*. However, the contested norms pertain

to different actual component elements, therefore the Constitutional Court, first and foremost, must specify the limits of claim.

Section 19² (1) of the Constitutional Court Law provides that any person, who considers that his fundamental rights, enshrined in the *Satversme*, have been infringed by a legal norm of higher legal force, may submit a constitutional complaint (application) to the Constitutional Court.

A person may turn to the Constitutional Court only in those cases, where a direct connection exists between the infringement upon the person's rights and the contested legal norm. An infringement upon a person's fundamental rights in the light of the Constitutional Court Law means that the contested norm causes adverse consequences to the applicant personally (*see Decision of 11 November 2002 by the Constitutional Court on termination legal proceedings in Case No. 2002-07-01, Para 3*). When reviewing a case regarding a person's constitutional complaint, it is the task of the Constitutional Court to examine compliance with the norms of higher legal force of a legal norm that actually has infringed upon a person's fundamental rights. Therefore in such cases the actual circumstances, in which the contested norm has infringed upon the applicant's fundamental rights, must be seen as relevant (*see Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 12*).

Section 356(2) of the Criminal Procedure Law defines the subjects who have the right to recognise property as being criminally acquired in pre-trial criminal proceedings. I.e., Para 1 of this norm provides for the case, when property may be recognised as being criminally acquired by a district (municipal) court in the procedure established by Chapter 59 of the Criminal Procedure Law – by initiating proceedings with respect to criminally acquired property, whereas Para 2 of the second part provides for a case, where property may be recognised as being criminally acquired by the official in charge of proceedings.

In the Applicant's case property was recognised as being illegally acquired by a decision adopted by a person in charge of criminal proceedings – the investigator (*see Case Materials, Vol. 1. pp. 28 – 29*). The official in charge of proceedings, on the basis of Section 360 (1) of the Criminal Procedure Law,

decided to return the immovable property, which had been recognised as being illegally acquired property, to the person, who had lost this immovable property as the result of a criminal offence. The summoned person G. Kūtris notes that Para 2 of Section 356 (2) and Section 360(1) of the Criminal Procedure Law had been applied to the Applicant during criminal proceedings (*see Case Materials, Vol. 3, p. 109*).

Para 1 of Section 356 (2) of the Criminal Procedure Law was not applied to the Applicant and did not cause adverse legal consequences for it.

Hence, legal proceedings in the part of the claim regarding compliance of Para 1 of Section 356 (2) of the Criminal Procedure Law with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme* must be terminated in accordance with Para 3 of Section 29(1) of the Constitutional Court Law.

14. The Applicant requests the Constitutional Court to examine compliance of a number of provisions of the Criminal Procedure Law with the *Satversme*.

14.1. The Applicant holds that the procedure established by Para 2 of Section 356(2) and Section 360 (1) of the Criminal Procedure Law for recognising property as being criminally acquired is a united regulation and is incompatible with the *Satversme*. A number of summoned persons have also included in their opinions arguments with respect to compatibility with the *Satversme* of the aforementioned legal norms as a united regulation, which envisages that if during pre-trial proceedings property has been recognised as being criminally acquired by a decision of an official in charge of proceedings, it should be returned to the owner (*see, for example, Opinion by the Ministry of Justice, Case Materials, Vol. 1, pp. 107–110, and Opinion by the Prosecutor’s General Office, Case Materials, Vol. 1, pp. 111–113*).

Para 2 of Section 356(2) and Section 360(1) of the Criminal Procedure Law are included in Chapter 27 of the Criminal Procedure Law “Actions with Criminally Acquired Property”. Section 356(1) of the Criminal Procedure Law sets out the general procedure in case, where a property can be recognised as being criminally

acquired by a court adjudication that has entered into effect or a prosecutor's decision regarding the termination of criminal proceedings. The second part of this Section, in turn, defines those cases, where property can be recognised as being criminally acquired also in pre-trial proceedings, *inter alia*, by a decision by the official in charge of proceedings. If property has been recognised as being criminally acquired and is with a third person, it must be returned to the owner or legal possessor thereof, who has lost this property as the result of a criminal offence.

Para 2 of Section 356(2) and Section 360(1) of the Criminal Procedure Law as a whole define actions with criminally acquired property during pre-trial proceedings, if the property is with a third person, and, thus, they constitute a united legal regulation (hereinafter also – the contested regulation).

14.2. The Applicant holds that the contested regulation is incompatible with Article 1, the first sentence of Article 91, Article 92 and Article 105 of the *Satversme*.

If compatibility of legal norms with a number of provisions of the *Satversme* is contested, then the Constitutional Court must define the most effective approach to assessing this compatibility by taking into consideration the substance of the case under review.

It follows from the case materials, that the basic issue – i.e., the issue of recognising property as being criminally acquired and returning thereof to the owner, who has lost it as the result of a criminal offence, first and foremost pertains to the Applicant's fundamental rights that are included in Article 1 and Article 105 of the *Satversme*. After compatibility of the contested regulation with Article 1 and Article 105 of the *Satversme* has been examined, it is possible, on the basis of conclusions made, to assess compatibility of the contested regulation with the first sentence of Article 91 and Article 92 of the *Satversme*.

Therefore the Constitutional Court will examine Para 2 of Section 356(2) and Section 360(1) of the Criminal Procedure Law as a united legal regulation, first of all reviewing its compatibility with Article 1 and Article 105 of the

***Satversme*, and then – its compatibility with the first sentence of Article 91 and Article 92 of the *Satversme*.**

15. To conclude, whether the Constitutional Court has the grounds for examining compliance of the contested regulation with the *Satversme*, first its content must be established.

In the case under review the contested regulation was applied with respect to immovable property, which had been registered in the Land Register in the Applicant's name.

The summoned persons J. Kolomijceva and G. Kūtris note that, substantially, Para 2 of Section 356(2) of the Criminal Procedure Law can be applied only to moveable property. J. Kolomijceva notes that the concept "property" in the meaning of the contested regulation is a synonym to the concept "thing", used in the Civil Law. Moreover, only physical moveable things can be found, seized and returned, but not physical immovable things (*see Case Materials, Vol. 1, pp. 125 –126*). G. Kūtris points out that immovable property can be found, but cannot be seized. Moreover, if it were assumed that Para 2 of Section 356(2) of the Criminal Procedure Law could be applied both to moveable and immovable things, Para 1 of Section 356(2), which provides that property can be recognised as criminally acquired by a decision of a district (municipal) court in the procedure established in Chapter 59 of this Law, would become unnecessary (*see Case Materials, Vol. 1, p. 110*).

Whereas the Applicant holds that the contested regulation is applicable to both moveable and immovable property, including property, the transfer of title whereof is registered in a public register. This Applicant's opinion is also upheld by the *Saeima*. Allegedly, registration of the right to property in a public register is relevant in assessing good faith of a person.

Similarly, also the summoned persons the Prosecutor's General Office and the Ombudsman uphold the opinion that the contested regulation is applicable to any property, which has been recognised as being criminally acquired and the title to which the victim has lost contrary to his will (*see Opinion of the Prosecutor's*

Genera; Office, Case Materials, Vol. 1, p.112, and Opinion of the Ombudsman, Case Materials, Vol. 1, p. 119). The summoned person M. Osis also holds that differential approach in cases of moveable or immoveable thing would be inadmissible in a democratic state governed by the rule of law. Moreover, at least the same legal consequences should apply to immoveable things, which both actually and from the victim's perspective are more valuable, as the ones that apply to criminally acquired but less valuable objects (*see Case Materials, Vol. 3, pp. 83-84*).

Section 355 of the Criminal Procedure Law defines the property that can be recognised as being criminally acquired; i.e., understanding of the content of criminally acquired property is defined. Whereas in Section 356 of the Criminal Procedure Law the legislator has established the procedure, in which property like this may be recognised as being criminally acquired, *inter alia*, provided that property can be recognised as being criminally obtained also during pre-trial criminal proceedings.

The legislator's initial will, in adopting the Criminal Procedure Law on 21 April 2005 and splitting Section 356(2) thereof in two paragraphs, was not linked to the kind of property (moveable or immoveable thing), but to the fact, whether the owner or the legal possessor of property was known. I.e., Para 1 applies to those cases, where the owner or the legal possessor of property is not known and the official in charge of proceedings has sufficient evidence that do not cause doubt as to the criminal origin of this property (connection of the property with a criminal offence), whereas Para 2 of the same part – to those cases, where the owner or the legal possessor of property has already previously reported the loss of property and after it has been found, eliminating reasonable doubt, has proven his right.

Thus, the Constitutional Court concludes that until now the legislator's aim in pre-trial criminal proceedings had been to cover by the contested regulation both moveable and immoveable property.

16. The Applicant holds that the contested regulation is compatible neither with the right to property established in Article 105 of the *Satversme*, nor with the

principles of legal certainty and legal security that follow from Article 1 of the *Satversme*.

16.1. Article 105 of the *Satversme* provides: “Everyone has the right to own property. Property shall not be used contrary to interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

Article 105 of the *Satversme* envisages, on the one hand, the State’s obligation to promote and support the right to property, i.e., by adopting such laws that would ensure protection of this right, but, on the other hand, the State also has the right to intervene in the exercise of the right to property within a certain scope and in a certain procedure (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 21*).

The finding has been consolidated in the case law of the Constitutional Court that in those cases, where compliance of a legal norm with the entire Article 105 of the *Satversme* is contested, the exact sentence of this Article, compliance with which is being contested, must be established, because these provisions envisage different criteria for assessing legality of a restriction (*see, for example, Judgement of 13 October 2015 by the Constitutional Court in Case No. 2014-36-01, Para 15.1*).

The Saeima and persons summoned in the case share the opinion that the contested regulation does not envisage expropriation of property for public needs.

The contested regulation envisages returning property to the person, who has lost the respective property as the result of a criminal offence. This regulation is linked to possible deprivation of the right to property, because the property is linked to a criminal offence. The regulation referred to does not envisage expropriation of immovable property for public needs, but provides for returning thereof to the owner, who has lost the immovable property as the result of a criminal offence.

The Constitutional Court has recognised that in those cases, where compatibility of a legal norm with the entire Article 105 of the *Satversme* is contested, but the norm does not provide for expropriation of property, only

compliance of this norm with the first three sentences of Article 105 of the *Satversme* should be examined (*see Judgement of 7 July 2014 by the Constitutional Court in Case No. 2013-17-01, Para 18*).

Thus, the contested regulation must be examined within the scope of the first, second and third sentence of Article 105 of the *Satversme*.

16.2. Article 1 of the *Satversme* provides that Latvia is an independent democratic republic.

The Constitutional Court has recognised that the scope of Article 1 of the *Satversme* includes the principle of legal certainty, derived from the fundamental provision on a democratic state governed by the rule of law, which protects only such rights, with respect to which legal, substantiated and reasonable certainty could have developed, which is the core of the general legal principle referred to above (*see Decision of 21 October 2016 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2016-03-01, Para 13*). The State has the obligation to abide by this principle in its actions (*see Judgement of 19 June 2010 by the Constitutional Court in Case No. 2010-02-01, Para 4*).

The principle of legal certainty is linked to the principle of legal security and ensures stability required by it, prohibiting inconsistent actions of the State. This principle is based upon the idea that a person may rely that the State will act legally and consistently, and the State must safeguard the trust granted to it.

Existence of the principle of legal certainty as one of the general legal principles is linked not only to trust in state power, but also in the possibilities of addressees of the legal norms to exercise discretion (*see: Onževs M. Tiesību normu laika aspekti tiesiskā un demokrātiskā valstī. Rīga: Latvijas Vēstnesis, 2016, 93. lpp.*).

The principle of legal certainty protects rights that the person has already acquired; i.e., persons may only expect that the rights, acquired in accordance with a valid legal act, will be maintained and actually exercised within the set period of time [*see, for example, Judgement of 10 June 1998 by the Constitutional Court in Case No. 04-03(98) and Judgement of 20 March 2002 in Case No. 2001-12-01, as well as Judgement of 26 October 2004 in Case No. 2004-03-01*]. However, the

principle of legal certainty includes also the fact that the rights that a person has acquired may be amended in a lawful and legal way. I.e., this principle does not give the grounds to believe that the once established legal situation will never change. It is essential that in such a case the legislator provides for “a more lenient” transitional period or an adequate compensation.

16.3. The Applicant holds that as of the moment, when its title to immovable property is corroborated in the Land Register, it has the right to rely that the State will protect this right to property and will not deprive it of the right in a way that would be incompatible with the principle of proportionality.

The *Satversme* is a unified and coherent system, and the legal norms that it comprises are closely interlinked. Each norm of the *Satversme* has its own definite place within the constitutional system (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 13*). In examining compatibility of a legal norm with the general principles of law derived from the fundamental norm of a democratic state governed by the rule of law, which fall within the scope of Article 1 of the *Satversme*, it must be taken into consideration that these principles may manifest themselves differently in different fields of law. Nature of the contested norm, link to other norms of the *Satversme* and place within the legal system also influence the review performed by the Constitutional Court. If in a case compliance of a legal norm with both the principle of legal certainty and Article 105 of the *Satversme* is contested, then compliance of the contested norm with Article 1 of the *Satversme* must be examined in interconnection with Article 105 of the *Satversme* (*see, for example, Judgement of 6 December 2010 by the Constitutional Court in Case No. 2010-25-01, Para 4, and Judgement of 19 October 2011 in Case No. 2010-71-01, Para 15*).

In the case under review the principle of legal certainty is closely linked to the right to property. In examining the possible restriction upon a person’s right to property, the principle of legal certainty must be taken into consideration as one of criteria characterising the legality of this restriction.

Hence, compliance of the contested regulation with the principle of legal certainty must be examined in interconnection with the possible restriction upon the right to property.

17. To examine compliance of the contested regulation with the right to property enshrined in Article 105 of the *Satversme* and the principle of legal certainty derived from the fundamental norm of a democratic state governed by the rule of law that falls within the scope of Article 1 of the *Satversme*, first of all it must be established, whether the contested regulation restricts the respective right.

Article 105 of the *Satversme* envisages comprehensive guarantee for rights of financial nature and is not limited solely by the right to property. “The right to property” must be understood as all rights of financial nature, which the entitled person may exercise to his own advantage and which it can use according to his own will, *inter alia*, in the meaning of Section 927 of the Civil Law (*see, for example, Decision of 20 April 2010 by the Constitutional Court on terminating legal proceedings in Case No. 2009-100-03, Para 8.2, and Judgement of 3 November 2011 in Case No. 2011-05-01, Para 15.2*).

The first sentence of Article 105 of the *Satversme* protects a person’s property that has been legally acquired, whereas the second and third sentence allow the State to restrict the right to property for public purposes by law (*see Judgement of 8 April 2015 by the Constitutional Court in Case No. 2014-34-01, Para 12.3*).

The Applicant’s title to the particular immovable property is corroborated in the Land Register (*see Case Materials, Vol. 1, pp. 19 –20*). Section 927 of the Civil Law provides that ownership is the full right of control over property; it is the right to possess and use it, obtain all possible benefit from it, and to act with it. The right corroborated in the Land Register is not absolute either and may be restricted in procedure established by law and in accordance with the principle of proportionality.

In view of the fact that the Applicant’s property is linked to a criminal offence, it was seized during the pre-trial criminal proceedings (*see Case Materials, Vol. 1, p. 25*). Whereas later the official in charge of proceedings, on the basis of the

contested regulation, took the decision on recognising the immovable property in the Applicant's ownership as being a criminally acquired property and returning it to the person, who had lost it as the result of a criminal offence (*see Case materials, Vol. 1, pp. 28–29*).

The contested regulation is aimed at returning the immovable property, which has been recognised as being criminally acquired and is with a third person, to the owner, who lost it as the result of a criminal offence. Therefore it is aimed at altering the existing right to property. The immovable property in the Applicant's ownership should be returned to the owner, who lost it as the result of a criminal offence. The fact that the respective decision by the official in charge of proceedings cannot be enforced and that this decision has been annexed to the Land Register file, concurrently means that actually the seizure has not been lifted. As the result of this the Applicant cannot fully exercise its right of power over the property in its ownership, because the contested regulation envisages depriving of this right to property and returning it to the victim of the criminal offence. Thus, the Applicant's right to property is restricted.

Hence, the contested regulation restricts the Applicant's right to property established by Article 105 of the *Satversme*.

18. In assessing, whether the restriction upon fundamental rights established by the contested regulation is justifiable, the Constitutional Court must verify, whether it has been established by law, whether it has been established for a legitimate aim, and whether it complies with the principle of proportionality (*see, for example, Judgement of 8 June 2007 by the Constitutional Court in Case No. 2007-01-01, Para 22*).

19. To examine, whether the restriction upon the Applicant's right to property has been established by law, the Constitutional Court must verify:

1) whether the law has been adopted in compliance with the procedure set out in regulatory enactments;

2) whether the law has been promulgated and is publicly accessible in compliance with requirements of regulatory enactments;

3) whether the law has been worded with sufficient clarity, so that a person would be able to understand the content of rights and obligations following from it and the consequences of application thereof (*see, for example, Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 14*).

The contested regulation has been included in the Criminal Procedure Law and is publicly accessible in accordance with requirements of regulatory enactments. There is no dispute in the case under review on whether the contested regulation has been adopted and promulgated in the procedure set out in the *Satversme* and the *Saeima* Rules of Procedure, and that the legal provisions have been defined with sufficient clarity.

Thus, the restriction upon fundamental rights that follows from the contested regulation has been established by law.

20. Any restriction upon fundamental rights should be based upon circumstances and arguments regarding its necessity, i.e., the restriction is established for important interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

If a legal norm establishes restrictions upon rights, then in the proceedings before the Constitutional Court the obligation to demonstrate and substantiate the legitimate aim of such restrictions primary rests upon the institution, which has issued the contested act, in the particular case – the *Saeima* (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 12, and Judgement of 11 December 2014 in Case No. 2014-05-01, Para 18*).

The *Saeima* notes in its written reply that the aim of the contested regulation is restituting justice for the person, who has suffered as the result of a criminal offence; i.e., to return property to the person, who has lost it as the result of a criminal offence (*see Case Materials, Vol. 1, p. 58*). The Applicant also holds that

the legitimate aim of restriction upon rights established by the contested regulation is protection of other persons' rights.

Restitution of justice for the protection of victim's rights is one of the most important objectives of criminal procedure. By returning property that has been recognised as being criminally acquired to the person, who lost it as a result of a criminal offence, justice is restituted and protection of victim's rights is ensured.

Thus, in the case under review the Constitutional Court must establish the content of principle of victim's rights protection.

21. The Criminal Procedure Law is a tool that is used to regulate criminal law relations. The purpose of this Law is enshrined in Section 1 thereof, i.e., to determine such order of criminal procedure that ensures the effective application of the norms of the Criminal Law and the fair regulation of criminal legal relations without unjustified intervention into the life of a person.

It follows from this purpose of the Law that criminal proceedings are aimed not only at punishing the guilty person, but also at protecting the person, who is to be considered as the victim of a criminal offence, to eliminate to the extent possible the injustice caused by the criminal offence and restore the previous situation, which, *inter alia*, envisages restoring the victim's previous situation. A fair regulation of criminal legal relations comprises also the principle of victim's rights protection (*see: Meikališa Ā., Strada-Rozenberga K. Kriminālprocess. Raksti. 2005–2010. Rīga: Latvijas Vēstnesis, 2010, 35. lpp.*).

The summoned person G. Kūtris points out that the principle of victim's rights protection is one of the principles of criminal procedure. A criminal offence has created criminal legal relations not only between the accused person and the State, but also between the accused person and the victim (*see Case Materials, Vol. 3, pp. 112*). This principle has been enshrined in Section 22 of the Criminal Procedure Law, which provides that a person, upon whom harm has been inflicted by a criminal offence must, taking into account the moral injury, physical suffering, and the financial loss incurred, be guaranteed procedural opportunities for the requesting and receipt of moral and financial compensation.

Victim's protection in criminal proceedings and the importance thereof has been highlighted in a number of European Union and international documents. The Constitutional Court has recognised that with ratification of the treaty on Latvia's accession to the European Union the European Union law has become an integral part of the Latvian law. Pursuant to this treaty, legal acts adopted by institutions of the European Union are binding upon Latvia (*see Judgement of 7 June 2004 by the Constitutional Court in Case No. 2004-01-06, Para 7, and Judgement of 17 January 2008 in Case No. 2007-11-03, Para 24.2*). National regulatory enactments must be interpreted in the light of the European Union legal acts, as well as norms of international law binding upon Latvia.

Para (48) of the Preamble to Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA provides that recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, subject to exceptional circumstances, such as in a dispute concerning the ownership or where the possession of the property or the property itself is illegal. Para (11) of this Preamble provides that the Member States may provide a higher level of protection. Article 15 of the Directive, in turn, sets out that the Member States must ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims are determined by national law. Pursuant to Article 2 of the aforementioned Directive, a victim in the meaning of this Directive is a natural person, who has suffered harm caused by a criminal offence.

Article 14 of the United Nations Convention against Transnational Organised Crime also provides that, when acting on the request made by another State Party in accordance with Article 13 of this Convention, State Parties must, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State

Party, so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

To have a fair regulation of legal relations, criminal procedure should comprise such legal regulation that would ensure the principle of victim's rights protection. The Constitutional Court has recognised that ensuring justice is the main purpose of a democratic state governed by the rule of law (*see Judgement of 11 April 2007 by the Constitutional Court in Case No. 2006-28-01, Para 20.1*).

It follows from the above that the contested regulation is compatible with the legitimate aim included in Article 116 of the *Satversme* – protection of other persons' rights.

Thus, the restriction of fundamental rights included in the contested regulation has a legitimate aim – protection of other persons' rights.

22. In examining proportionality of the restriction upon fundamental rights, the Constitutional Court must verify:

1) whether the chosen measures are appropriate for reaching the legitimate aim or whether it is possible to reach the legitimate aim by the chosen measure;

2) whether such actions are necessary or whether the legitimate aim could not be reached by measures that are less restrictive upon an individual's rights;

3) whether the restriction is appropriate or whether the benefit gained by society outweighs the damage inflicted upon an individual's rights.

If it is recognised that the restriction upon fundamental rights is incompatible with even one of these criteria, then it is incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement of 16 May 2007 by the Constitutional Court in Case No. 2006-42-01, Para 11, and Judgement of 7 July 2014 in Case No. 2013-17-01, Para 25*).

23. In examining, whether the chosen measures are appropriate for reaching the legitimate aim, the Constitutional Court verifies, whether it is possible to reach the legitimate aim by the chosen measures.

Participants of the case express divergent opinions on whether the contested regulation is appropriate for reaching the legitimate aim. The Applicant maintains that the State, essentially, is depriving it of the right to property by the contested regulation. Moreover, it is deprived of the property, allegedly, without assessment of the particular situation, i.e., without evaluating a person's good faith. The *Saeima*, in turn, notes that the contested regulation is appropriate for reaching the legitimate aim, because the victim's right to the thing, which he lost as the result of criminal offence, is restored.

23.1. Chapter 27 of the Criminal Procedure Law regulates actions with criminally acquired property within the framework of criminal proceedings. Legal regulation with respect to property, which has been recognised as being criminally acquired, allows different, unrelated models of actions, i.e., confiscation of property or return of property.

Confiscation of property, which is transferring property to the State without compensation (*see Decision of 6 January 2011 by the Constitutional Court on terminating legal proceedings in Case No. 2010-31-01, Para 7.2*), is conducted in accordance with Section 358 of the Criminal Procedure Law. Returning property to the owner or legal possessor, in turn, is regulated in Section 357 and Section 360 of the Criminal Procedure Law. Therefore confiscation of property and return of property are separate cases. In the case under review property was returned in accordance with Section 360(1) of the Criminal Procedure Law, there was no confiscation of property. Therefore the Applicant's arguments that pertain to confiscation of criminally acquired property, *inter alia*, the arguments regarding application of ECHR case law in cases involving confiscation of property, are not applicable to the case under review.

23.2. The *Saeima* and a number of summoned persons in the case point out that the contested regulation serves for the protection of victim's rights, ensures the purpose of the Criminal Procedure Law and helps to reach it (*see Opinion of the Ministry of Justice, Case Materials, Vol. 1, p. 108, and Opinion of the Prosecutor's General Office, Case Materials, Vol. 1, p. 111*).

General regulation on return of property is set out in Section 357 of the Criminal Procedure Law, where Section 360 of this Law provides discrete regulation on returning property in case, where it is with a third person. Moreover, it is provided that in the case, where property is returned, irrespectively of its location, property must be returned to its owner or legal possessor, i.e., the victim. Thus, protection of victim's rights is ensured.

Moreover, the contested regulation allows protection of the property rights only of such a victim, who previously, in the pre-trial criminal proceedings reported loss of property and after it had been found has proved his rights, eliminating any reasonable doubts. Thus, the aforementioned procedure envisages high standard of proof (*see the Saeima's written reply, Case Materials, Vol. 1, p. 65*). This is concurrently linked to the fact that recognising property as being criminally acquired in the framework of pre-trial criminal proceedings must be assessed as being an exemption to the general principle established in Section 356(1) of the Criminal Procedure Law, i.e., to the principle that property can be recognised as being criminally acquired by a court's adjudication that has entered into force or a prosecutor's decision on terminating criminal proceedings. In the interests of victim's rights protection the legislator has established legal regulation that ensures such regulation of legal relations that allows restoring the victim's status, which was disrupted as the result of a criminal offence, and as speedily as possible. By this decisions the State restitutes justice and the right to property that was suspended by the criminal offence.

Thus, the contested regulation envisages protecting the rights of a person, who, by eliminating any doubts, has proven that he had been deprived of the property right to the particular thing as the result of a criminal offence and, hence, has proven the necessity to protect his rights as those of a victim. The contested regulation is aimed at restoring the status of the victim that he had before the respective criminal offence was committed.

Therefore the contested regulation ensures that principle of victim's rights protection is complied with and the original status is restored, because it envisages returning immoveable property to the owner, who lost it as the result

of criminal offence. The contested regulation is appropriate for reaching the legitimate aim.

24. The restriction upon rights established by the contested norm is necessary, if there are no other measures that would be as effective and the choice of which would cause lesser restriction upon persons' fundamental rights. However, a more lenient measure is not just any other measure, but only such that allows reaching the legitimate aim, at least, in the same quality (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings*). In establishing, whether the legislator had more lenient measures at its disposal, the Constitutional Court must examine, whether the legislator considered alternatives to the contested norm (*see, for example, Judgement of 26 December 2009 by the Constitutional Court in Case No. 2009-08-01, Para 21, and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 30.2*). The Applicant holds that a number of alternative measures for reaching the legitimate aim exist.

24.1. The Applicant holds that the possibility for the Applicant as a third person to gain compensation from the state budget could be one of the alternative measures for reaching the legitimate aim. A third person, who relies upon entries into the Land Register and correctness thereof, should be considered being a *bona fide* acquirer of immoveable property, therefor a fair mechanism of compensation should be envisaged.

The *Saeima* does not deny that rights and lawful interests of third parties may be affected in criminal proceedings; however, the issue of compensating for third persons' losses is said to be unrelated to regulation of criminal legal relations.

The Criminal Procedure Law already now envisages a third person's right to receive compensation for damages. I.e., Section 360 (2) of the Criminal Procedure Law provides: if criminally acquired property has been returned to the owner or lawful possessor thereof, the third person who acquired such property, or pledge, in good faith has the right to submit a claim, in accordance with civil procedure, regarding compensation for the loss, including against an accused or convicted person. The legislator has envisaged this right to third persons, however, at the same

time providing that this issue is not to be dealt with in the framework of criminal procedure, but that of civil procedure, where good faith of a third person is assessed.

The Applicant, as well as a number of persons summed in the case have pointed to possible problems with respect to compensation for losses in the procedure established in Section 360(2) of the Criminal Procedure Law, for example, problems might arise if the Applicant would want to turn against the culpable person, but he would be deceased (*see, for example, opinion of the summoned person G. Kūtris, Case Materials, Vol. 3, p. 114*). However, this situation cannot be the grounds for establishing that compensation for damages should be granted from the state budget. When persons become involved in legal relations and conclude legal transactions, they concurrently assume various risks (civil turnover risks). To ensure their legal protection, the subjects that are involved in legal relations should assess these possible risks with particular care before concluding legal transactions. Moreover, also a credit institution, becoming involved in legal relations, must take into account the risk that in some cases, even if the commitments have been secured, it, possibly, will not be able to satisfy the claim in the full amount of unmet commitments. The level of care and skills of a merchant and a credit institution should be differentiated from the care and skills that a natural person might have, in acquiring immovable property for non-commercial purposes. The Applicant as a credit institution, the business activities of which in interconnection with its daughter companies is closely related to purchasing rights to immovable property (*see Case Materials, Vol. 1, p. 2,*) has sufficient possibilities to assess these risks prior to concluding transactions. The legislator does not have the obligation to adopt legal regulation that would envisage compensating from the state budget for any risk that a person assumes by becoming involved in private law relations. Moreover, a measure that requires additional financial resources from the State cannot be considered as being a more lenient measure for reaching the legitimate aim (*see, for example, Judgement of 7 July 2014 by the Constitutional Court in Case No. 2013-17-01, Para 28.3*).

Hence, claiming losses from the state budget cannot be considered as being an alternative measure for reaching the legitimate aim.

24.2. The Applicant holds that seizing of immovable property, thus restricting actions with this property, could be an alternative measure for reaching the legitimate aim.

Seizing of immovable property is already regulated in Chapter 28 of the Criminal Procedure Law. Moreover, Section 361 (1) of the Criminal Procedure Law provides that a criminally acquired property or property connected to criminal proceedings may be seized also if it is with other persons.

The *Saeima* notes that the Applicant's arguments regarding possible compensation for damages is linked to the fact that the Applicant is dissatisfied with the way the official in charge of proceedings has applied some legal norms. Summoned person G. Kūtris also points to some problems in the application of legal norms in the criminal proceedings upon which the case under review is based (*see Case Materials, Vol. 3, p. 109*).

The Constitutional Court has recognised that possible improvement in the application of legal norms cannot be seen as an alternative measure for reaching the legitimate aim (*see Judgement of 21 December 2015 by the Constitutional Court in Case No. 2015-03-01, Para 27.1*). However, the third sentence of Article 92 of the *Satversme* “comprises a general guarantee – if the State has violated an individual's rights, he is entitled to compensation”. Article 92 of the *Satversme*, like any other provision of human rights, is to be applied immediately and directly, thus, if “the applicant holds that his rights have been violated without basis, he has the right, by referring to the third sentence on Article 92 of the *Satversme*, to turn to a court of general jurisdiction with a claim regarding collecting of commensurate compensation” (*see Judgement of 5 December 2001 by the Constitutional Court in Case No. 2001-07-0103, Para 1 of the Findings*). Thus, in case where due to actions or failure to act by a state institution a person's rights have been infringed he can turn to court, for example, with a claim for compensation of losses in civil procedure.

The *Saeima* makes a valid point that seizure of property does not define the final action with criminally acquired property. Seizure of property restricts a person's right to property and is applicable as a measure for restricting the right to

property until the final ruling enters into force. Therefore seizure cannot be considered as being a more legitimate measure for reaching the legitimate aim.

The Constitutional Court has recognised that its task is to examine compatibility of contested norms with fundamental rights established in the *Satversme*, not substituting the legislator's discretion by its opinion on the most rational solution (*see Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 19*). The Constitutional Court finds and it follows from the case materials that the legislator has chosen the most lenient measure for reaching the legitimate aim.

Thus, the legitimate aim of the restriction upon fundamental rights that the contested regulation comprises cannot be reached by other measures, less restrictive upon a person's rights and lawful interests.

25. To assess proportionality of the restriction upon fundamental rights, it must be verified, whether the adverse consequences that a person incurs as the result of restriction upon his rights does not outweigh the benefit that society as whole gains from this restriction. Hence, the Constitutional Court must identify interests that should be balanced in this case and establish, which of these interests should be given priority.

In the particular case, the legislator's task is to strike a proportionate balance between the Applicant's as a third person's certainty with respect to public credibility of entries into the Land Register and protection of the right to property with the public interest in ensuring protection of victim's rights and implementing the aim defined in Section (1) of the Criminal Procedure Law. Establishing of this balance is basically linked to proportional restriction of a person's rights.

25.1. The Applicant notes that it acquired immoveable property on the basis of a legal transaction and corroborated its right in the Land Register. When acquiring immoveable property, the Applicant had held legal certainty with respect to the correctness of the previous entries into the Land Register. It had relied, *inter alia*, that the immoveable property was not connected to criminal proceedings. At the same time the Applicant, in corroborating its right into the Land Register, had

also developed legal certainty that it would not be deprived of the respective right to property. The principle of protecting trust for the purpose of facilitating legal stability is said to protect *bona fide* certainty of the legal subject that the particular legal status conforms to the truth. However, the contested regulation makes persons doubt the public credibility and correctness of entries to the Land Register and is, thus, jeopardising the stability of civil turnover. Legal regulation should be such as to ensure that the principle of public credibility is abided by and the interests of third persons or *bona fide* persons are protected, by retaining their right to property that has been corroborated in the Land Register.

Section 993(1) of the Civil Law provides that delivery of immovable property does not of itself establish the ownership rights of the acquirer of the immovable property, these are acquired only on the basis of legal acquisition and the registration of a completed deed thereof in the Land Register. Section 994 of the Civil Law provides: “Only such persons shall be recognised to be the owners of immovable property, as are registered in the Land Register as such owners. Until registration in the Land Register, acquirers of immovable property shall not have any rights against third parties, they may not use any of the priority rights associated with ownership, and they must recognise as valid any acts pertaining to such immovable property by the person who is indicated, pursuant to the Land Register, as the owner of such property. [..]” It follows from Section 1 of the Land Register Law, in turn, that the Land Register is accessible to everyone and the entries thereof are publicly reliable. Entering of immovable properties into the Land Register and corroboration of the rights related thereto is mandatory.

The Constitutional Court has recognised that an entry into the Land Register allows verifying that the immovable property is owned by a particular person – the owner thereof. Thus, public credibility, legal clarity and certainty are ensured, as well as the possibility not only for any private person, but also the State to identify precisely the person, who is to be recognised as the owner of particular immovable property. An entry into the Land Register ensures security of transactions in business relations, and it is also complies with the interests of all participants of

civil turnover (*see Judgement of 7 June 2012 by the Constitutional Court in Case No. 2011-19-01, Para 15*).

The principle of public credibility exists in a democratic state governed by the rule of law, and the principle of protecting a *bona fide* acquirer has been derived from it, which in Latvia is implemented, *inter alia*, with the help of the Land Register. The principle of public credibility, on the one hand, protects the person, who has been entered into the Land Register as the owner, and at the same time creates certainty to third persons and ensures stability of civil turnover.

The summoned person M. Osis notes that both in the present and historically the principle of public credibility has ensured successful operation of banking sector and has also facilitated lending. This principle is significant, in particular, in disputes concerning alienation of the right to property (*see Case Materials, Vol. 3, p. 86*). When a third person acquires immovable property or accepts immovable property as a collateral, he must be certain of the truthfulness, stability, incontestability and priority of the acquired right (*see Konceptiju par Civillikuma lietu tiesību daļas modernizāciju. Available: <http://tap.mk.gov.lv/>*).

The legal doctrine also recognises that an entry in the Land Register (entry on corroboration) must ensure publicness, credibility and irrevocability (*see: Rozenfelds J. Lietu tiesības. 4. labotais, papildinātais izdevums. Rīga: Zvaigzne ABC, 2011, 118. lpp.*). Derogation from certainty ensured by the principle of public credibility would harm stability of civil turnover, i.e., an acquirer of immovable property would not be able to act with his immovable property without fearing that some deficiencies could be discovered, or banks would not be able to be certain of not losing collaterals for mortgages, because the property rights of pledger could not be relied upon (*see: Torgāns K. Īpašuma aizsardzības un mantiskās apgrozības stabilitātes interešu kolīziju risinājumi. Latvijas Republikas Augstākās Tiesas Biļetens, Nr. 1/2010, 46.–47. pp.*).

The Constitutional Court finds that the principle of public credibility serves not only to ensure the rights of an individual, but also the society's interest to ensure stability of civil turnover, i.e., predictability and transparency thereof.

25.2. Although entering immovable properties into register and corroboration right *in rem* is mandatory and the respective entries are ensured public credibility *vis-à-vis* third persons, a person's right to property, which has been corroborated in the Land Register, also may be restricted. I.e., there are exceptions also to the principle of public credibility, and it can be restricted to ensure essential public interests. In the particular case the principle of public credibility must be applied by weighing and balancing it in interconnection with other general principles of law that are in force in a democratic state governed by the rule of law, moreover, by taking into consideration the particular stage in the development of legal system.

An entry into the Land Register does not eliminate legal deficiencies underlying the transfer of the right to property (*see Opinion of the summoned person M. Osis, Case Materials, Vol. 3, p. 86*). A criminal offence underlying the activities of parties should also be recognised as a deficiency of this kind. The summoned person R. Stürner points out that in Latvia the involvement of the State and its control over transactions with immovable properties is not convincing and sufficient because, for example, not all necessary steps of complete notarial authentication are present (sales agreement, transfer, registration on the basis of a joint request). In the absence of legally strictly regulated preventive system of rights protection, prevailing of the initial owner's right to immovable property over the right of a *bona fide* acquirer could be admissible (*see Case Materials, Vol. 3, p. 62*). At the same time it is the grounds for concluding that in Latvia's situation a regulation that differs from the approach to protection of a *bona fide* acquirer existing in other countries is admissible (*see: Štirners R. Nekustamā īpašuma darījumu notariāla apliecināšana kā garants zemes reģistra ierakstu stabilitātei un ticamībai, ziņojums 2016. gada 16. septembra konferencē par plānotajiem pilnveidojumiem nekustamo īpašumu darījumu jomā, lietas materiālu 3. sēj. 80.–81. pp.*).

The summoned person the Prosecutor's General Office has noted that the principle of public credibility of the Land Register, *inter alia*, the principle of protecting a *bona fide* acquirer, is applicable only in those cases, where actions of

the parties are not based upon unlawful activities. A situation, where property that has left civil legal possession as the result of a criminal offence returns to civil turnover, is said to be inadmissible (*see Case Materials, Vo. 1, p. 111*). If prior to this offence the property was owned by someone, the criminal offence cannot be a justification for losing the right to this property. The right to property should be restituted (*see: Kūtris G. Noziedzīgi iegūta manta: tiesiskais regulējums un problemātika, Jurista Vārds, 2007. gada 17. aprīlis, Nr. 16*).

The principle of protecting a *bona fide* acquirer that is derived from the principle of public credibility may be restricted to ensure important public interests; i.e., by providing that such entries, which have been made into the Land Register following a criminal offence, cannot be recognised as being legal.

The Constitutional Court has found that a similar case was reviewed by the Lithuanian Constitutional Court. It has noted that a situation may arise, where a person, who wishes to acquire property legally, acquires property, the owner of which lost it as the result of criminal offence committed by other persons, but this person, i.e., the buyer, does not know and could not have known about it. In this regard it must be noted: even if a person acquires property without knowing and without any possibility to know that the owner lost it as the result of a criminal offence, it cannot be considered that he, i.e., the buyer obtains the right to property through this acquisition. As the Lithuanian Constitutional Court has repeatedly recognised, rights cannot originate from unlawful actions (*see Judgement of 30 October 2008 by the Lithuanian Constitutional Court in Case No. 16/06-69/06-10/07, Para 3.3. and 4.3, available: <http://www.lrkt.lt/>*).

The Constitutional Court finds that an exception to the principle of protecting a *bona fide* acquirer is admissible, if the legal relation is based upon a criminal offence. The principle of reasonable application of general legal provisions in a democratic state governed by the rule of law requires, *inter alia*, systemic interpretation of a legal norm, i.e., by taking into consideration the particular legal system, as well as general features of the current legal system. Therefore also Section 994(1) of the Civil Law must be interpreted systemically within the framework of the legal system, abiding by the principle of justice. Within the legal

system exception to the principle of protecting a *bona fide* acquirer has been established in the Criminal Procedure Law as the principle of protecting the victim. Concurrently, the Civil Law does not provide that such an exception to the principle of protecting a *bona fide* acquirer could not exist. Thus, in compliance with the principle of a rational legislator, the regulation established by the legislator is internally consistent.

In applying legal norms, both the principle of the rational legislator and the principle of unity of legal system must be abided by. I.e., the legislator adopts legal norms that are mutually consistent, which operate harmoniously within the whole framework of the legal system; moreover, legal norms that are included in various regulatory enactments must be interpreted as such that constitute a united legal system.

Hence, in order to achieve the purposes and objectives of criminal proceedings and ensure victim's rights protections, in a democratic state governed by the rule of law an exception to the principle of protecting a *bona fide* acquirer is admissible. I.e., a person, who has lost immovable property as the result of a criminal offence, should have measures for recovering this immovable property.

25.3. The Constitutional Court has recognised in its case law that justice should be achieved both with respect to each individual and with respect to society in general (*see Judgement of 25 March 2003 by the Constitutional Court in Case No. 2002-12-01, Para 1 of the Findings*).

An exception to the principle of public credibility does not mean that the property right of a *bona fide* acquirer should not be protected. The summoned person J. C. Pastille holds that protection of a *bona fide* acquirer should manifest itself exactly as recognition of a *bona fide* acquirer's right to property (*see Case Materials, Vol. 3. p. 6*). The Constitutional Court has recognised that the principle of legal certainty requires, *inter alia*, protecting the certainty that a person has developed with respect to retaining or exercising certain rights. This includes the State's obligation to meet those commitments that it has assumed *vis-à-vis* persons. Otherwise persons' trust in the State and law would be lost (*see, for example, Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-*

01, Para 23). The principle of public credibility, on the one hand, protects a *bona fide* acquirer of property; however, a person, who lost immovable property as the result of a criminal offence, also had the right to rely upon exercising the registered right to property further without interference within the framework of the principle of public credibility. Whereas in the case, where a victim has been unlawfully deprived of property as the result of a criminal offence, he has the right to expect that the previous circumstances will be restored and as swiftly as possible.

The fact that a person has been registered in the Land Register as an owner of immovable property does not automatically mean that this person simultaneously is also a *bona fide* acquirer thereof. A person's good faith is not decided on with the framework of criminal proceedings; however, the legislator has stipulated that this assessment is performed in civil procedure. I.e., a person, in whose name property has been registered in the Land Register, may develop valid well-founded certainty that protection of his rights will be ensured in civil procedure in the form of compensation in full amount, if this person were to be recognised as a *bona fide* acquirer of property.

The Constitutional Court concludes that the adverse legal consequences that are caused to a person by the contested regulation do not outweigh the benefit that society in general gains from the restriction included in the contested regulation. Thus, the restricted regulation places proportional restriction upon the Applicant's fundamental rights. Moreover, the legislator has balanced public interests and a person's legal certainty by providing that a third person has the right to submit in civil procedure a claim requesting compensation of losses in full amount, and not a claim to property.

Thus, the legislator, in adopting the contested regulation, has abided by the principle of proportionality and the contested regulation complies with Article 1 and Article 105 of the *Satversme*.

26. A number of persons summoned in the case note that the current regulation envisages returning immovable property to the person, who has lost it as the result of a criminal offence; however, complete regulation of legal relations is

not ensured (*see Opinion of the Prosecutor's General Office, Case Materials, Vol. 1, p. 113, Opinion of the Office of Land Registers, Case Materials, Vol. 1, pp. 114, and G. Kūtris' Opinion, Case Materials, Vol. 3, p.111*). Currently the decision by an official in charge of proceedings to return immovable property, which has been recognised as being criminally acquired, to its initial owner, which has been adopted on the basis of Para 2 of Section 356(2) of the Criminal Procedure Law and Section 360(1) of the Criminal Procedure Law, is not enforced in practice. This kind of decisions by an official in charge of proceedings is not basis for altering an entry in the Land Register, in accordance with Section 44 of the Land Register Law. This problem has been highlighted also in legal doctrine (*see: Meikališa Ā., Strada-Rozenberga K. Pētījums „Mantas konfiskācijas tiesiskais regulējums Latvijā un Eiropas Savienībā, tās izpildes mehānisma efektivitātes nodrošināšana”, 2010, 23. lpp., <https://www.tm.gov.lv/>*).

The *Saeima* has approved of amendments to Section 356 of the Criminal Procedure Law in the first readings. It is noted in the annotation to the respective draft law that pursuant to sectoral legislation, a court decision is needed to recognise immovable property, as well as other property the title to which must be registered in a public register as being criminally acquired (*see annotation to the draft law No. 630/Lp12 “Amendments to the Criminal Procedure Law” submitted to the Saeima on 16 August 2016*). Thus, at the same time, the range of **cases**, where the special type of proceedings – proceedings with respect to criminally acquired property (in procedure established by Chapter 59 of the Criminal Procedure Law) is applied, is expanded.

A situation, where the issue of transferring the property right to a property that has been illegally acquired is not resolved, because transfer of property right cannot be registered in the public register on the basis of a decision by an official in charge of proceedings during pre-trial criminal proceedings on returning criminally acquired property to its owner, who has lost it as the result of a criminal offence, has existed over a long period of time – since 1 October 2005, when the Criminal Procedure Law entered into force. A situation like this is inadmissible in a democratic state governed by the rule of law.

The Constitutional Court notes that the legislator should envisage clear mechanisms to ensure effectively the fundamental rights of persons involved in the proceedings. I.e., effective actions with the criminally acquired immoveable property should be ensured so that the owner, who has lost it as the result of a criminal offence, would be able to achieve that the respective property is registered in the Land Register in his name, whereas the third person, a *bona fide* acquirer of this property or a *bona fide* pledgee, has effective possibilities to claim compensation for damages.

27. The first sentence in Article 91 of the *Satversme* provides that all people in Latvia are equal before law and the court.

27.1. The principle of equality enshrined in Article 91 of the *Satversme* prohibits state institutions from issuing such norms that allow, without reasonable grounds, differential treatment of persons, who are in similar and in accordance with certain criteria comparable circumstances. The principle of equality allows and even requires differential treatment of persons, who are in different circumstances, as well as allows differential treatment of persons, who are in similar circumstances, if there are objective and reasonable grounds for it (*see, for example, Judgement of 29 December 2008 by the Constitutional Court in Case No. 2008-37-03, Para 7, and Judgement of 21 June 2012 in Case No. 2011-20-01, Para 15*).

The principle of equality must guarantee the existence of united legal order. I.e., its task is to ensure that such requirement of a state governed by the rule of law as comprehensive impact of law upon all persons and application of law without any privileges whatsoever is met. It guarantees full force of law, unbiased and impassive application of it, as well as that nobody is allowed to disobey statutory requirements (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 9.1*). However, such unity of the legal order does not mean levelling down, because “equality allows differential treatment, if it can be justified in a democratic society” (*Judgement of 26 June 2001 by the Constitutional Court in Case No. 2001-02-0106, Para 4 of the Findings*).

Therefore to examine, whether the contested regulation complies with the first sentence of Article 91 of the *Satversme*, the Constitutional Court must establish:

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

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

3) whether this treatment has objective and reasonable grounds for it, i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (*see, for example, Judgement of 23 November 2015 by the Constitutional Court in Case No. 2015-10-01, Para 16*).

27.2. In examining possible infringement upon the principle of equality enshrined in the first sentence of Article 91 of the *Satversme*, the Constitutional Court must first and foremost verify, whether groups of persons are in similar and comparable circumstances.

The Applicant notes that the contested regulation violates the principle of equality, because in this case third persons, which should be considered as being *bona fide* acquirers, are treated differently in civil procedure and in criminal procedure. I.e., pursuant to the judicature of the Supreme Court, on the basis of Section 994(1) of the Civil Law and Section 1 of the Land Register Law, priority protection is given to the property right of that person, who in the particular situation should be considered as being a *bona fide* acquirer of property. Whereas in criminal proceedings the contested regulation is said to allow a principle to the contrary; i.e., a person, who should be considered as being a *bona fide* acquirer, is not provided priority protection, because immovable property is returned to the owner, who has lost it as the result of a criminal offence.

The Constitutional Court has recognised that the legislator enjoys broad discretion in adopting procedural laws and determining categories of cases that are reviewed in the respective proceedings. Likewise, the legislator has the right to establish procedure for reviewing cases that complies with fundamental rights. It should be taken into considerations that there are objective differences between various legal proceedings, including such that pertain to legal relations that have

been affected, initiation of legal proceedings, the duty to prove, court's specialisation, or applying temporary remedies. Comparison of the legal regulation on various legal proceedings, undoubtedly, would reveal several features that all proceedings share or even analogous characteristic. However, this could not serve as the basis for a person's demand to unify all these proceedings (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 17*).

Both in the procedure established for criminal proceedings and for civil proceedings the court reviews different legal relationships. Likewise, the aims and principle set for each proceedings differ.

Section 360(2) of the Criminal Procedure Law provides that good faith of a person in connection with a claim for compensation for damages must be examined in the framework of civil proceedings. Thus, neither the purpose, nor legal regulation of criminal proceedings is aimed at assessing the good faith of a third person. Therefore groups of persons, who would be in similar and comparable circumstances, cannot be identified.

27.3. The Applicant points out that the principle of equality, included in Article 91 of the *Satversme*, has been violated due to differential treatment of third persons in cases, where criminal proceedings are conducted in Latvia, and in cases, where a ruling by an international court is enforced. The Applicant, referring to Section 903(2) of the Criminal Procedure Law, notes that enforcement of a monetary fee or confiscation of property imposed by an international court takes place in the procedure established by Latvian legal acts, without harming the rights of third persons acquired in good faith (*bona fide*). This fact is said to make the differential treatment even more disproportional, because in those cases, where confiscation is applied as punishment, the final court ruling has come into effect and it is indisputably clear that a criminal offence has taken place and a person has been sentenced for it.

The *Saeima* notes in its written reply that the Applicant's reasoning is based upon a case, where a decision on confiscation of property has been adopted in procedure established by Section 358 of the Criminal Procedure Law; the contested regulation, however, does not envisage confiscation of property. Moreover, there

are no grounds to consider that in Latvia, in cases where property is confiscated, the rights of a third person – a *bona fide* acquirer – were not protected.

The Constitutional Court already noted that in the case under review the criminally acquired property was not confiscated, but was returned. Third persons indicated by the Applicant do not form groups of persons that would be in similar and comparable circumstances in the meaning of the first sentence of Article 91 of the *Satversme*.

Thus, there are no groups of persons that would be in similar and comparable circumstances, and the contested regulation is not incompatible with the principle of equality that the first sentence of Article 91 of the *Satversme* comprises.

28. The Applicant holds that the contested regulation is incompatible also with Article 92 of the *Satversme*.

28.1. The concept of “a fair court” referred to in Article 92 of the *Satversme* comprises two aspects; i.e., “a fair court” as an independent institution of judicial power, which hears the case, and “a fair trial” as a due procedure compatible with a state governed by the rule of law, in which this case is heard (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Findings*). A fair trial as a due procedure, appropriate for a state governed by the rule of law, comprises a number of elements – interconnected rights. It includes, for example, the right to access to court, the principle of equality and adversiality of parties, the right to be heard, the right to a reasoned court’s ruling, as well as the right to appeal (*see Judgement of 17 May 2010 by the Constitutional Court in Case No. 2009-93-01, Para 8.3*). Section 92 of the *Satversme* requires establishing a system, in which criminal cases would be heard by a fair and unbiased court, and that these cases would be heard in a procedure that would ensure fair and unbiased adjudication thereof (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Findings*).

28.2. The Applicant holds that in pre-trial criminal proceedings with respect to it as a third person the principle of procedural equality, which belongs to the right

to a fair trial, had been restricted without grounds. Allegedly, the Applicant as third person and the owner of the infringed property was not ensured the right to familiarize itself with the case materials and to express its opinion thereon.

The *Saeima* notes that the Applicant, essentially, holds that its rights are restricted by the fact that pursuant to Section 375 of the Criminal Procedure Law materials of a criminal case are a secret of investigation and that the legal regulation does not provide for third parties' rights, including the Applicant's, to familiarize themselves therewith, and also notes in addition that the rights of the owner of the affected property are defined in Section 111¹ of the Criminal Procedure Law.

Similarly also the summoned persons the Ombudsman and the Prosecutor's General Office noted that the Applicant's arguments regarding incompatibility of the contested regulation with Article 92 of the *Satversme* essentially should be applied to, in the Applicant's opinion, insufficiently regulated procedural rights; however, these have been established in Section 111¹ and Section 375 of the Criminal Procedure Law (*see Opinion by the Prosecutor's General Office, Case Materials, Vol. 1. pp. 112 –113, and the Ombudsman's Opinion, Case Materials, Vol. 1, p. 116*).

28.3. The Constitutional Court has recognised that a person's right to submit a constitutional complaint to the Constitutional Court are to be linked with an infringement upon the rights of this particular person. On the one hand, a case should be initiated only in the instance, where a Panel of the Constitutional Court were convinced about the existence of such an infringement. However, the issue, whether, indeed, the fundamental rights of a submitter of a constitutional complaint have been violated, must predominantly be decided by the Constitutional Court in examining the case on its merits (*see Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03, Para 2.2 of the Findings*).

The Constitutional Court has noted that, in adjudicating a case, the limits of the claim are binding upon it; i.e., it must examine compliance of the contested norms with legal norms of higher legal force, by taking into account the Applicant's reasoning and the motives and considerations provided in the application (*see*

Judgement of 12 February 2008 by the Constitutional Court in Case No. 2007-15-01, Para 5).

The contested regulation, with respect to which the case was initiated, does not regulate the procedural rights of parties to familiarize themselves with case materials and express their opinion thereon. This right is established in other norms of the Criminal Procedure Law. I.e., Section 111¹ of the Criminal Procedure Law defines the rights of an owner of the affected property in criminal proceedings, whereas Section 375 regulates familiarisation with the materials of the criminal case. The Applicant has not contested these norms. The arguments provided by the Applicant with respect to examining compliance of the contested regulation with Article 92 of the *Satversme* do not pertain to the contested regulation.

Thus, in this respect the contested regulation does not affect the Applicant's right to a fair court guaranteed in Article 92 of the *Satversme*.

Hence, the contested regulation does not restrict the Applicant's fundamental rights enshrined in Article 92 of the *Satversme* and legal proceedings in the part regarding compliance thereof with Article 92 of the *Satversme* are to be terminated pursuant to Para 6 of Section 29(1) of the Constitutional Court Law.

The Substantive Part

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

h e l d :

1. To recognise Para 2 of Section 356(2) and Section 360(1) of the Criminal Procedure Law as being compatible with Article 1, the first sentence of Article 92 and Article 105 of the *Satversme* of the Republic of Latvia.

2. To terminate legal proceedings in the case regarding compliance of Para 1 of Section 356(1) of the Criminal Procedure Law with Article 1, the first sentence of Article 92 and Article 105 of the *Satversme* of the Republic of Latvia.

3. To terminate legal proceedings in the case regarding compliance of Para 2 of Section 356(2) and Section 360(1) of the Criminal Procedure Law with Article 92 of the *Satversme* of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement shall enter into force on the day it is published

Chairman of the court sitting

A. Laviņš