

# NJORD LATVIA: The Constitutional Court of Latvia Evaluated the Challenged Norms on Proving the Origin of Property Obtained Through Criminal Means

On March 14, 2025, the Constitutional Court issued a long-awaited decision in case No. 2022-32-01. The court recognized that the norms of the Latvian Criminal Procedure Law, which regulate the proof of the origin of property obtained through criminal means within a separate process concerning such property, extracted from the criminal process of money laundering, fully comply with the Constitution of Latvia.

## APPLICANTS' ARGUMENTS

The case was initiated based on constitutional complaints from several private individuals and a motion from the Latvian Economic Court. The applicants argued that the challenged norms of the Criminal Procedure Law limit the ability of owners of seized property to effectively contest the recognition of the property as criminally obtained and place them at a disadvantage compared to the person initiating and conducting the criminal process (i.e., the investigation). Thus, in their opinion, the principle of equal opportunities for parties, enshrined in the first part of Article 92 of the Constitution of Latvia (Satversme), is violated.

## CHALLENGED NORMS

The case challenged the constitutionality of several key norms of the Criminal Procedure Law regulating the process concerning property obtained through criminal means (in the decision, this process is also briefly referred to as the "Process of the Thing"), in particular:

1. Part six of Article 124 of the Criminal Procedure Law, according to which the criminal origin of property is considered proven if, in the process of proving, there is a basis to recognize that the property is more likely to have a criminal rather than a legal origin.
2. Part three of Article 125 of the same law, according to which it is considered proven that the property with which legalization actions were carried out is obtained through criminal means if the person involved in the criminal process cannot reliably explain the legal origin of the property, and if the totality of evidence gives the initiator of the process grounds to believe that the property is more likely to have a criminal origin.
3. Part three of Article 126 of the same law, according to which, if a person does not submit reliable information about the legality of the property's origin within the established period, the person loses the opportunity to receive compensation for damage caused by restrictions established in the criminal process on disposing of the property.

## ASSESSMENT OF FAIR BALANCE

In its decision, the court emphasized that the legal regulation of the process concerning criminally obtained property must ensure a fair balance between the principle of equal opportunities for parties and the interests of society so that such property can be effectively confiscated, thereby restoring legality.

To determine whether the challenged regulation ensures a fair balance between the principle of equal opportunities for parties and the interests of society in the effective confiscation of criminally obtained property, the Constitutional Court assessed whether the person associated with the property can be obliged to prove its legal origin and whether procedural rights are guaranteed to this person to present relevant evidence.

The Constitutional Court concluded that the challenged regulation does not shift the burden of proof solely onto the property owner. It provides for the division of proof responsibilities between the investigation and this person. The investigation must present evidence substantiating the assumption of the criminal origin of the property, while the property owner is obliged to prove its legal origin. The court recognized that under such conditions, imposing the obligation to prove the legality of the property's origin on its owner is permissible. However, the court's decision does not contain direct and unequivocal indications of when/at what exact moment the property owner in the criminal process is obliged to prove the legality of the property's origin. The court's decision also did not provide an unequivocal assessment of the already established judicial practice according to which the obligation to prove the legality of the property's origin arises for the owner only after the investigation has fulfilled its obligation to prove that the property is more likely to have a criminal than a legal origin.

The Constitutional Court also checked whether procedural rights are guaranteed to the property owner to prove the legal origin of the property. In connection with the applicants' indications of possible violations of the presumption of innocence in the process of proving the criminal origin of the property, the court noted that the standard of proof "preponderance of probability" regarding the criminal origin of the property is permissible and does not itself provide significant advantages to the investigation. The court indicated that the confiscation of property in the "process of the thing," within which issues of a person's guilt in committing a crime are not considered (no charges are brought against the person for committing a crime), does not have the character of punishment and therefore cannot be recognized as a basis for applying the principle of the presumption of innocence. The property owner has the right to familiarize themselves with evidence substantiating the assumption of the criminal origin of the property.

#### **LEGALIZATION ACTIONS AS INDIRECT EVIDENCE OF THE CRIMINAL ORIGIN OF PROPERTY?**

Furthermore, the court indicated that the connection between property and the criminal act can be proven both by establishing a connection with a specific crime and based on indirect evidence. In cases where it is objectively impossible or difficult to obtain information about the predicate criminal act, the criminal origin of the property can be proven using the signs of the objective side of the crime provided for in Article 195 of the Latvian Criminal Law, i.e., actions carried out with this property if such actions have signs of legalization. At the same time, the court was not troubled by the fact that legalization is an intentional act, i.e., to recognize that a certain action has signs of legalization, it is necessary, among other things, to assess the person's guilt (their subjective attitude towards the specific action). At the same time, the assessment of a person's guilt in committing legalization actions according to the court's decision is inadmissible in the "process of the thing," in which the principle of the presumption of innocence is not applied.

The Constitutional Court emphasized that the judge considering the case must be convinced that the property was more likely obtained through criminal means, which excludes arbitrariness in the confiscation process.

#### **ASSESSMENT OF THE PROCEDURAL RIGHTS OF THE PROPERTY OWNER**

The challenged regulation also provides a reasonable period for presenting evidence of the legal origin of the property. It does not establish strict requirements for the form and content of evidence, allowing the property owner to present any relevant evidence on the merits of the case.

The Constitutional Court emphasized that the court considering the case of criminally obtained property is obliged to ensure compliance with the principle of equal opportunities for parties and to ensure that the obligation imposed on the person to prove is not excessive. The property owner has the right to participate in the process personally or through a representative, including participation in court hearings where both parties have equal rights. In addition, this person has the right to appeal the decision of the district court on the recognition of the property as criminally obtained and its confiscation in an appellate procedure, which provides additional procedural guarantees.

#### **PREJUDICIAL DECISION OF THE EU COURT NOT TAKEN INTO ACCOUNT**

It should also be noted that the Constitutional Court in its decision did not analyze or take into account the decision of the First Chamber of the European Union Court dated October 4, 2024, which was received as a response to the Constitutional Court's request for a prejudicial decision and interpretation of several European legal acts, on the basis of which the Latvian legislator adopted the current version of section 59 of the Latvian Criminal Procedure Law. As is known, the European Union Court considered the process of the thing not corresponding to the examined European legal acts (more details here). At a press conference of the Constitutional Court, one of the judges justified such an approach by the Constitutional Court by stating that even if the challenged norm does not comply with any EU directive (even the one on the basis of which it was included in the law), it does not lose its force or become inconsistent with the Constitution of Latvia.

#### **CONCLUSION**

Thus, the Constitutional Court concluded that the challenged regulation ensures a fair balance between the principle of equal opportunities for parties and the interests of society in the effective confiscation of criminally obtained property and complies with the first part of Article 92 of the Constitution.

Overall, it can be said that contrary to expectations, the decision of the Constitutional Court did not provide unequivocal answers to the questions that courts will have to resolve when considering numerous processes concerning property obtained through criminal means.

The decision of the Constitutional Court is final and not subject to appeal.

The cases that were transferred to the courts and were suspended due to the pending Constitutional Court of Latvia's decision are expected to resume soon. The practice of these cases will show in which direction the pendulum of law enforcement practice swung after the decision of the Constitutional Court.



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