

**Case number:**

U-I-91/15

ECLI:

ECLI:SI:USRS:2017:U.I.91.15

Challenged act:**Operative provisions:****Abstract:****Confiscation of Illicitly Acquired Property**

In Decision No. **U-I-91/15**, dated 16 March 2017 (Official Gazette RS, No. 16/17), in proceedings initiated upon the request of the Ljubljana District Court, the Constitutional Court decided on the constitutionality of certain provisions of the Confiscation of the Illicitly Acquired Property Act (the CIAPA). Proceeding from the statements contained in the request, the Constitutional Court first reviewed whether the definition of illicitly acquired property was consistent with the requirement of the clarity and precision of regulations that follows from Article 2 of the Constitution. The confiscation of illicitly acquired property is an authoritative measure of the state that has a clear and unambiguous purpose under public law, i.e. to ensure that individuals cannot retain property that they acquired in an illicit manner or through illicit activity unless, where suspicion arises that serious criminal offences were committed, they can prove the lawfulness of its acquisition. The authoritative nature of the measure requires that the legislature regulate the substantive and procedural conditions for the confiscation of illicitly acquired property in a clear and precise manner. In accordance with established constitutional case law, this condition is met if the content of the mentioned conditions can be construed through established methods of interpretation. The Constitutional Court held that the content of the definition of illicitly acquired property can be construed on the basis of established methods of interpretation and therefore the challenged provisions were not inconsistent with the principle of the clarity and precision of laws determined by Article 2 of the Constitution.

The Constitutional Court further reviewed whether the measure of confiscating property in its entirety in instances where such property is an inseparable mixture of illicitly acquired property and lawfully acquired property is consistent with the human right to private property determined by Article 33 of the Constitution. It held that the relevant provision of the CIAPA was unconstitutional insofar as it also defined property that has been mixed with illicitly acquired property as illicitly acquired property and hence enabled the confiscation of the mixed property in its entirety. In order to ensure the exercise of the CIAPA and concurrently protect the defendants' human right determined by Article 33 of the Constitution, the Constitutional Court determined the manner of the implementation of its decision. It held that in instances where the property at issue is a mixture of illicitly acquired property and lawfully acquired property, the mixed property is to be confiscated in its entirety if the defendant mixed the property in order to commit further illicit acts or to conceal the property's illicit origin, whereby the share of the illicitly acquired property in the mixed property must not be merely insignificant. If there exists no such intention or the share of the illicitly acquired property in the mixed property is insignificant, an ideal share of the mixed property is confiscated by establishing the co-ownership of the state in the share corresponding to the value of the illicitly acquired part of the mixed property and of the defendant in the share corresponding to the value of his or her contribution

to the mixed property, provided the defendant establishes that such contribution was lawful.

In the third substantive part of the decision, the Constitutional Court reviewed the consistency of the regulation of the confiscation of illicitly acquired property with the principle of the clarity and precision of legal provisions determined by Article 2 of the Constitution insofar as it refers to the spouse of a defendant (a suspect, a convicted person, or a deceased person). It held that in this part the regulation was not unconstitutional.

The Constitutional Court also reviewed whether the regulation according to which illicitly acquired property that is the joint property of a defendant and his or her spouse is to be confiscated is consistent with Article 33 of the Constitution. It assessed that this regulation interferes with the right determined by Article 33 of the Constitution, but the interference is admissible.

Thesaurus:

Legal basis:

Cases joined:

Full text:

Type of procedure:

ocena ustavnosti in zakonitosti predpisov in drugih splošnih aktov

Type of act:

zakon

Applicant:

Ljubljana District Court, Ljubljana

Date of application:

22. 6. 2015

Date of Decision:

16. 3. 2017

Type of decision adopted:

odločba

Outcome of proceedings:

ugotovitev – je v neskladju z Ustavo/zakonom

ugotovitev – ni v neskladju z Ustavo/zakonom

ugotovitev – ni v neskladju z Ustavo/zakonom

Published:

Official Gazette RS, No. 16/2017

Document:

AN03871