

ECBA Spring Conference 2022

23 April 2022

Ombudsman of the Republic of Latvia

Juris Jansons

My task as the ombudsman is to promote the protection of human rights in Latvia and make sure that state power is implemented lawfully, efficiently and in accordance with the principle of good governance.

The right to a fair trial and the right to effective redress mechanisms in various legal relationships are some of the main themes of my daily work. My applicants often have not used all mechanisms fully and therefore it is not possible to assess their effectiveness. In such cases, I urge the applicants to make use of them, since only the competent authorities have the power to adopt binding decisions on matters of law that are relevant to the applicant. On the other hand I, as the Ombudsman, have not been delegated the right to participate directly in the decision-making process or to influence the content of those decisions in relation to the applicant.

Within the framework of redress mechanisms and the right to a fair trial, a wide range of rights, including the right to property of individuals, may be affected. They may limit or seize the property by confiscation, as is the case with criminally acquired property. Such property may be held by persons who are not directly involved in criminal proceedings or by persons who may even be regarded as beneficiaries in good faith.

Therefore, the mechanisms established in the state regarding the detection, recognition, and confiscation of criminally acquired property must be effective and operate in strict compliance with the requirements of international obligations and the national legal framework. At the same time, they must provide the private individual with sufficiently effective opportunities to prove the legal origin of their property, to exercise the right to review the initial decision, thereby facilitating correct and well-founded decisions, so

that the fundamental right of a person to property is not affected as laid down in the first paragraph of Article 1 of Protocol No 1 to the European Convention on Human Rights.

In this regard, I would like to draw your attention to two topical issues that have recently been highlighted in my practice.

From several applications received by private individuals, who have been recognised as owners of the affected property, I found that the persons directing the proceedings had refused to attach documents regarding the origin of the seized funds to the materials of the criminal proceedings. If they were drawn up in a foreign language, a notarially certified translation into the official language is not attached. When examining national and international legal frameworks and clarifying the opinion of Latvian law academics, I found that there is no obligation for the owner of the affected property to translate the materials to be submitted to the investigator. It unjustifiably restricts a person's right to a fair trial, guaranteed in the first sentence of Article 92 of the Satversme.

State Police and the Public Prosecutor's Office view this issue and the content of the legal provisions in different ways. I would like to stress that the legal provisions must be clear and predictable. An overly free interpretation of a provision which permits a disproportionate restriction of a person's right to a fair trial cannot be accepted.

By June 1 of this year, I invited the Ministry of Justice as the institution responsible for criminal law policy to carry out activities, including, if necessary, drafting proposals for amendments to the Criminal Procedure Law, which would ensure clarity of legal norms to prevent disproportionate restriction of rights guaranteed in the first sentence of Article 92 of the Satversme. Accordingly, this aspect has not yet been resolved.

If it is established in criminal proceedings or proceedings regarding criminally acquired property that a person has criminally acquired property which is subject to confiscation, it is essential to ensure effective legal protection measures for the owner of such property, including the right of appeal.

In the case on the measures of protection of rights included in the so-called Confiscation Directive, I concluded that they were not properly implemented and transposed in Chapter 59 of the Latvian Criminal Procedure Law in cases where a decision on confiscation of property is taken by the regional court as the first court instance. I contacted the Parliament and the Ministry of Justice, but unfortunately no solution to the problem was reached. The proposals for amendments to Section 631 of the Criminal Procedure Law submitted by the Ministry of Justice only partly solve the situation, as it still envisages the right of regional courts as the first instance to decide on recognition of property as criminally acquired. Therefore, I prepared a proposal for an amendment to Section 631 of the Criminal Procedure Law and submitted it to the Legal Committee of the Parliament for consideration¹. With this I propose, in essence, to narrow the jurisdiction of the regional court. This proposal has not yet been examined at the Subcommittee on Criminal Law Policy of the Legal Affairs Committee of the Saeima, but it has already been discussed repeatedly in the working group of the Ministry of Justice. As a result of the discussions, it was agreed that my proposal is partly linked to the amendment to the Criminal Procedure Law submitted by the Ministry of Justice, thus eliminating my concerns and objections on this issue.

However, several members of the working group from the judiciary do not support the joint proposal of the Ombudsman and the Ministry of Justice, therefore, a clear and unified position on the issue has still not been achieved and discussions are likely to continue both at the level of the legislator and beyond.

¹ With the above proposal, I would like to ensure effective protection of the rights of every person in proceedings regarding criminally acquired property by stating that in any case, when a decision of a district (city) court to terminate proceedings on criminally acquired property does not comply with the conditions of Section 630, Paragraphs one and two of the Criminal Procedure Law (decision does not comply with the requirements laid down in the law or the connection of property with criminal activity, it has not been established, whether the origin of the property is not criminal), or when a decision of a district (city) court would have committed a violation of the Criminal Procedure Law, which in any case leads to revocation of the decision, it is cancelled and the materials are sent for new examination to the district (city) court.

In addition, it should be noted that several cases on this issue have been initiated to the Constitutional Court, where I have just given my opinion.

My efforts as an Ombudsman are aimed at ensuring that the processes regarding the freezing and confiscation of instrumentalities and proceeds obtained through criminal means comply with European Union law regarding respect for human rights, to avoid unjustified interference with property rights and the right to a fair trial and to eliminate risks in the adoption of unjustified decisions. For example, by facilitating the regularisation of the legal framework regarding the procedure for the submission of documents proving the origin of property and ensuring the possibility of reviewing the decision on the confiscation of property in all cases.

With regard to the European Public Prosecutor's Office, which was launched in 2021, I would like to point out that the establishment and effective functioning of this authority clearly contributes to the obligation of states to freeze and confiscate instrumentalities and proceeds of crime in the European Union, thereby protecting the EU's financial interests against criminal offences. However, in the realisation of these vital interests, the persons involved in the proceedings under the supervision should also have the right to participate in it and defend their interests to the same extent as other persons in criminal proceedings.