

Case C-49/23**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

1 February 2023

Referring court:

Satversmes tiesa (Latvia)

Date of the decision to refer:

31 January 2023

Appellants before the Satversmes tiesa:

AZ

*1Dream OÜ**Produktch Engineering AG*

BBP

*Polaris Consulting Ltd***Respondent:**

Latvijas Republikas Saeima

Subject matter of the main proceedings

Assessment of the compatibility of Article 631(3) of the Kriminālprocesa likums (Law on Criminal Procedure) with the first sentence of Article 92 of the Latvijas Republikas Satversme (Constitution of the Republic of Latvia).

Subject matter and legal basis of the request for a preliminary ruling

Pursuant to Article 267 TFEU, the referring court seeks to ascertain, first, whether the provision at issue in the main proceedings, on the right to challenge judicial decisions in cases concerning illegally obtained assets, falls within the scope of

Directive 2014/42/EU and Framework Decision 2005/212/JHA; second, whether the concept of ‘confiscation order’ includes both judicial decisions declaring that assets have been obtained illegally and ordering their confiscation and judicial decisions discontinuing proceedings relating to illegally obtained assets; third, whether legislation pursuant to which persons connected to the assets have no right to challenge confiscation orders is compatible with the Charter of Fundamental Rights of the European Union and Directive 2014/42; fourth, whether, in the event that the provision at issue should be considered incompatible with EU law, its legal effects may be maintained until the time set by the referring court.

Questions referred for a preliminary ruling

1.1. Does national legislation pursuant to which a national court rules on the confiscation of the proceeds of crime in separate proceedings relating to the illegally obtained assets, which are separated from the main criminal proceedings before it is established that a criminal offence has been committed and before anyone has been found guilty of the offence concerned, which also provides for confiscation based on materials taken from the criminal case file, fall within the scope of Directive 2014/42, in particular Article 4 thereof, and of Framework Decision 2005/12, in particular Article 2 thereof?

1.2. If the first question is answered in the affirmative, must the concept of ‘confiscation order’ within the meaning of Directive 2014/42, and in particular the second sentence of Article 8(6) thereof, be found to include not only the judicial decisions declaring that assets have been obtained illegally and ordering their confiscation but also judicial decisions discontinuing proceedings relating to the illegally obtained assets?

1.3. If the second question is answered in the negative, is legislation compatible with Article 47 of the Charter and with the second sentence of Article 8(6) of Directive 2014/42 in so far as it provides no right for persons connected to the assets to challenge confiscation orders?

1.4. Is the principle of the primacy of European Union law to be interpreted as precluding the constitutional court of a Member State, which is seised of an action for a declaration of unconstitutionality brought against national legislation which has been held to be incompatible with European Union law, from ruling that the principle of legal certainty is applicable and that the legal effects of that legislation are to be maintained temporarily until the time set in the decision of that court as the point at which the provision at issue will cease to have effect?

Provisions of EU law relied on

Charter of Fundamental Rights of the European Union (‘the Charter’): first paragraph and second paragraph, first sentence, of Article 47.

Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property ('Framework Decision 2005/12'): recital 10 and Articles 1, 2 and 4.

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 ('Directive 2014/42'): recitals 9, 15, 22 and 38 and Articles 1(1), 2(4), 3, 4 and Article 8(1) and (6).

Case-law

Opinion 1/09 of the Court of 8 March 2011 (Draft agreement on the European and Community Patents Court), EU:C:2011:123, paragraph 84.

Judgment of the Court of 19 March 2020, '*Agro In 2001*', C-234/18, EU:C:2020:221, paragraphs 56 and 57.

Judgment of the Court of 28 October 2021, '*Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo*', C-319/19, EU:C:2021:883, paragraphs 36, 37 and 41.

Judgment of the Court of 16 December 1976, '*Rewe-Zentralfinanz and Rewe-Zentral*', 33/76, EU:C:1976:188, paragraph 5.

Judgment of the Court of 14 September 2010, '*Akzo Nobel Chemicals and Akcros Chemicals v Commission*', C-550/07 P, EU:C:2010:512, paragraph 113.

Judgment of the Court of 12 February 2015, '*Baczó and Vizsnyiczai*', C-567/13, EU:C:2015:88, paragraph 42.

Judgment of the Court of 27 February 2014, '*Pohotovost*', C-470/12, EU:C:2014:101, paragraph 51.

Judgment of the Court of 5 December 2013, '*Asociación de Consumidores Independientes de Castilla y León*', C-413/12, EU:C:2013:800, paragraph 39.

Judgment of the Court of 14 January 2021, '*Okrazhna prokuratura – Haskovo and Apelativna prokuratura – Plovdiv*', C-393/19, EU:C:2021:8, paragraphs 47 and 48.

Judgment of the Court of 22 June 2021, '*Latvijas Republikas Saeima (Penalty points)*', C-439/19, EU:C:2021:504, paragraphs 132 and 133.

Case-law of the European Court of Human Rights

Judgment of the Grand Chamber, 28 June 2018, '*G.I.E.M. S.r.l. and Others v. Italy*' (CE:ECHR:2018:0628JUD000182806), paragraphs 211, 223 to 225 and 233.

Judgment of 12 May 2015, *Gogitidze and Others v. Georgia* (CE:ECHR:2015:0512JUD003686205), paragraphs 102 and 103.

Provisions of international law relied on

European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 6 and 7.

Provisions of national law relied on

Latvijas Republikas Satversme (Constitution of the Republic of Latvia) ('the Constitution'): first sentence of Article 92, which provides that everyone is entitled to defend his rights and legitimate interests before an impartial court.

Krimināllikums (Criminal Code): Articles 70.¹⁰, 70.¹¹(1) and 70.¹³(1)

Kriminālprocesa likums (Law on Criminal Procedure): Articles 380, 626, 627(1), (2), (3) and (4), 628, 629(2) and (6), 630(1), (2) and (4) (Article 630(4) has been in force since 3 November 2022) and 631(1), (3) and (4) (Article 631(4) has been in force since 3 November 2022).

Article 631(3) of the Law on Criminal Procedure ('the provision at issue') provides: 'After examining the action or complaint, the court may set aside the decision of the district (city) court (*ajona (pilsētas) tiesa*) and adopt the decision referred to in Article 630 of this Law. No appeal may be brought against that decision.'

Succinct presentation of the facts and the main proceedings

- 1 The provision at issue is in Chapter 59 of Title 11 of the Law on Criminal Procedure, which governs proceedings relating to illegally obtained assets. Pursuant to that legislation, in order to rule in a timely fashion on any property issues which may arise in the preliminary stage of the criminal proceedings, and in the interests of procedural economy, the person directing the proceedings may remove the materials relating to illegally obtained assets from the criminal case file and institute proceedings for a declaration that those assets are the proceeds of illegal activities. In that situation, the person directing the proceedings will send those materials to a first instance court, which will decide whether the assets were obtained illegally. If the first instance court considers that the assets were obtained illegally, it will decide what is to happen to them, including whether they are to be confiscated. An appeal may be brought against the decision of the first instance court before a regional court (*apgabalaltiesa*). The provision at issue provides that the regional court may set aside the decision of the first instance court and adopt a decision on the illegally obtained assets, which will not be subject to appeal.

- 2 As a result of the five actions for a declaration of unconstitutionality that the appellants have brought before the Satversmes tiesa (Constitutional Court, Latvia) ('the referring court') that court is called upon to determine whether the provision at issue is compatible with the first sentence of Article 92 of the Constitution. The appellants before the Satversmes tiesa (Constitutional Court) are of the view that the provision at issue is not compatible with the first sentence of Article 92 of the Constitution, in conjunction with Article 47 of the Charter, Article 8(1) and (6) of Directive 2014/42 and Article 4 of Framework Decision 2005/12.
- 3 Each of the appellants before the Satversmes tiesa (Constitutional Court) has been prosecuted in criminal proceedings for alleged large-scale money laundering, and those prosecutions are still at the investigation stage. In the criminal proceedings, immovable property, funds and financial resources have been seized from those appellants. In each set of proceedings, the person directing the proceedings decided to institute proceedings relating to illegally obtained assets in relation to the seized assets and to forward the case materials relating to the illegally obtained assets to the court hearing the case.
- 4 By a decision in each of four of those sets of proceedings, the Ekonomisko lietu tiesa (Economic Affairs Court, Latvia) declared that the assets had not been obtained illegally and discontinued the proceedings relating to those assets. Following the prosecutor's objections to those decisions, the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases), Latvia) found in all the cases that the immovable property, funds and financial assets had been obtained illegally and ordered that they be confiscated.
- 5 In one of the sets of proceedings referred to, the Ekonomisko lietu tiesa (Economic Affairs Court) declared that part of the funds had been obtained illegally and ordered that they be confiscated, and discontinued the proceedings in respect of the remainder. After hearing the appeal brought by the person directing the proceedings in relation to the part of that court's decision discontinuing the proceedings, the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases)) found that the funds had been obtained illegally and ordered that they be confiscated.
- 6 This means that, in one of the sets of proceedings relating to illegally obtained assets referred to above, some of the assets had already been declared to be the proceeds of crime and liable to confiscation by the decision of the first instance court, whereas in respect of the remainder that finding was made by a decision of the regional court. In all the other sets of proceedings, however, the assets were found to be the proceeds of crime and were confiscated only by decisions of the regional court. Under the provision at issue, no appeal may be brought against those decisions of the regional court.

The essential arguments of the parties in the main proceedings

- 7 The appellants before the Satversmes tiesa (Constitutional Court) submit that the provision at issue prevents them from bringing an appeal on a point of law against decisions of the regional court. They argue that, in consequence, they are unable to ascertain whether that court complied with the procedural rules and correctly applied the rules of substantive law when it issued the decisions ordering confiscation of the assets. That is particularly important in those cases where the first instance court discontinued proceedings relating to illegally obtained assets and it was the regional court alone that issued a decision declaring the assets to have been obtained illegally and ordering their confiscation.
- 8 The appellants before the Satversmes tiesa (Constitutional Court) also assert that there are other ways of ensuring that property issues arising in criminal proceedings are resolved in a timely fashion and with procedural economy, such as by providing for an appeal on a point of law in proceedings relating to illegally obtained assets and setting time limits within which the appeals must be heard, or by limiting the jurisdiction of the regional court and providing that it may either confirm the decision issued at first instance or set it aside and refer back the matter of any illegal source of the assets to be re-examined by the first instance court. In their view, the principle of procedural economy cannot be allowed to prevail over other principles. Nor must that principle disproportionately limit the right to a fair trial.
- 9 The appellants submit that Directive 2014/42 is applicable, pursuant to Article 4(2) thereof, to all proceedings relating to illegally obtained assets and that the owners of such assets are entitled to the safeguards laid down in Article 8 of that directive. The safeguard established in the second sentence of Article 8(6) of Directive 2014/42, under which there must be an effective possibility to challenge a confiscation order before a court, must for its part be treated as a mandatory requirement and be applied in situations in which assets are confiscated. Since, in essence, the assets belonging to the appellants were, before the Satversmes tiesa (Constitutional Court), declared to be the proceeds of crime and confiscated by decisions of the regional court, those appellants take the view that the decisions in question must be considered to be ‘confiscation orders’ within the meaning of Directive 2014/42.
- 10 The appellants before the Satversmes tiesa (Constitutional Court) draw attention to the fact that in Latvia proceedings relating to illegally obtained assets are not civil proceedings and are instead instituted, on the basis of all the evidence available in a criminal case, before any finding of a criminal offence and before anyone has been found guilty of the offence concerned. In Latvia, therefore, the use of confiscation is linked to the commission of a criminal offence, since the proceedings relating to illegally obtained assets are based on evidence that has been drawn from the main criminal proceedings.

- 11 The institution which adopted the provisions at issue, the Latvian Parliament, argues that those provisions are compatible with the first sentence of Article 92 of the Constitution.
- 12 For that institution, since proceedings relating to illegally obtained assets are an exceptional means of determining property issues in the main criminal proceedings, such proceedings can be governed by different rules intended to ensure that they achieve their aim effectively and in a timely manner. The arrangements laid down in the provision at issue constitute one of the means for the timely and effective resolution of property issues. The issue of whether an asset has been obtained illegally and may be confiscated can be examined by two bodies, each of which must examine the source of the asset independently and assess the facts and legal issues underlying the case.
- 13 It also argues that neither Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms nor the first sentence of Article 92 of the Constitution suggests that there is an obligation to establish an appeal on a point of law for proceedings relating to illegally obtained assets, or to guarantee a right of appeal against decisions of regional courts declaring that assets have been obtained illegally and may be confiscated. In its view, the State has a margin of discretion to determine appeal bodies and proceedings depending on the type of case involved. Whether or not proceedings relating to illegally obtained assets must include an appeal on a point of law limited to examining issues concerning the correct application of the substantive and procedural rules is therefore, rather than a matter of law, a matter of what is appropriate that must be decided by the legislature.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 14 The case-law of the referring court recognises that, for the purposes of establishing the content of national legal provisions and applying those provisions, it is necessary to take into account EU law which strengthens democracy and the interpretation of that law in the case-law of the Court of Justice.
- 15 The provision at issue forms part of the legislation governing proceedings relating to illegally obtained assets. It is apparent from the case-law of the referring court that, in proceedings relating to illegally obtained assets, persons connected to those assets are guaranteed the right to a fair trial enshrined in the first sentence of Article 92 of the Constitution. A fair trial has two features in particular: the trial must be ‘impartial’ in the sense that the case must be examined by an independent court, and it must be ‘fair’ in the sense that an appropriate procedure must be conducted, in accordance with the rule of law, in which the case is examined. A fair trial in the sense of an appropriate judicial procedure in accordance with the rule of law includes the right to bring an appeal.
- 16 The referring court has held that the first sentence of Article 92 of the Constitution does not require the State to establish a right to bring an appeal on a point of law

against judicial decisions in all types of cases. The State must nevertheless establish a judicial framework and a procedure for appeals against judicial decisions in which persons concerned can effectively protect their legitimate rights and interests. The State also has a duty to act to ensure that rights are effectively upheld in proceedings concerning illegally obtained assets, which entails the persons concerned having procedural safeguards in order to protect their rights to property.

- 17 In the present case, in order to determine whether the provision at issue is compatible with the first sentence of Article 92 of the Constitution, the referring court must examine whether that provision ensures that persons connected to the assets have an effective possibility to protect their right to property. Specifically, it must assess whether the legislature was authorised to adopt a provision pursuant to which there is no possibility to challenge decisions of the regional court, even where they are the first decisions issued in a case that declare that assets have been obtained illegally and may be confiscated. Since the provision at issue forms part of legislation governing proceedings for the confiscation of the proceeds of crime, Article 47 of the Charter, Directive 2014/42 and Framework Decision 2005/12 are relevant in that assessment.
- 18 For the referring court, the offences being tried in the criminal proceedings from which the proceedings concerning illegally obtained assets have been separated are among the offences covered by the instruments referred to in Article 3 of Directive 2014/42 and, therefore, fall within the material scope of that directive. Furthermore, the punishment laid down for those offences is a prison sentence of between 3 and 12 years.
- 19 The Court of Justice has held that Directive 2014/42, like Framework Decision 2005/12, to which it refers, requires Member States to adopt common minimum rules on the confiscation of crime-related instrumentalities and proceeds, in order to facilitate the mutual recognition of confiscation orders issued by a court in criminal proceedings. Directive 2014/42 does not govern the confiscation of instrumentalities and proceeds resulting from illegal activities ordered by a court in a Member State in proceedings that do not concern the finding of one or more criminal offences or do not immediately follow such a finding. Such confiscation in fact falls outside the scope of the minimum rules laid down by that directive, in accordance with Article 1(1), and its regulation falls within the scope of the Member States' power, referred to in recital 22 of that directive, to provide more extensive powers in their national law. The referring court must therefore examine whether Directive 2014/42, and Framework Decision 2005/12, to which it refers, is applicable to a legal framework such as that in Chapter 59 of the Law on Criminal Procedure.
- 20 In the present case, the provision at issue concerns the proceedings established in Chapter 59 of the Law on Criminal Procedure in which, by a judicial decision, assets are declared to have been obtained illegally. That is to say, the court issues its decision in separate proceedings relating to illegally obtained assets, before the

court's final judgment in the criminal prosecution. These are separate and distinct proceedings in which the court confines itself to the single question at issue in the case: the property matter. The proceedings do not determine a person's guilt, but rather rule on whether the origin of the assets is illegal or whether those assets are connected to a criminal offence (they are proceedings *in rem*), and they rule finally on property issues. Although the preliminary phase of criminal proceedings includes proceedings relating to illegally obtained assets in which the court declares that assets have been obtained illegally, in the main criminal proceedings the court does not then rule on what will happen to those assets. In the proceedings concerning illegally obtained assets there is no assessment of a person's guilt and those proceedings are not based on a conviction.

- 21 Directive 2014/42, like Framework Decision 2005/12, to which it refers, may therefore be interpreted as meaning that it is not applicable to the legal framework in Chapter 59 of the Law on Criminal Procedure, because the judicial decision rules that assets have been obtained illegally before any finding that a criminal offence was committed and before anyone has been found guilty of the offence concerned.
- 22 The European Court of Human Rights, when examining whether confiscation in the absence of a criminal conviction equates to punishment within the meaning of Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, has ruled that the starting point for conducting such an assessment is whether confiscation is ordered following a decision in which the person concerned is found to be guilty of committing a criminal offence. However, other factors are also involved in that assessment, such as the character and purpose of the proceedings and the scale of the confiscation, and the nature of those proceedings as defined in national law and the detailed rules for their application.
- 23 Under the Latvian legislation, in proceedings relating to illegally obtained assets, the materials providing the basis for the connection between the assets and the offence or for the criminal source of the assets are separated from the criminal case being investigated in relation to a criminal offence. Nevertheless, in those separate proceedings, the findings on the connection between the assets and the offence or the criminal source of the assets are based, *inter alia*, on materials from the criminal file compiled in the main criminal proceedings intended to determine whether a criminal offence has occurred and in which a person is found guilty of committing that offence.
- 24 Article 4(2) of Directive 2014/42 provides that, in certain circumstances, the directive is also applicable in cases where criminal proceedings have been initiated regarding a criminal offence but there has been no conviction in those criminal proceedings. No case-law of the Court of Justice exists in relation to that provision.

- 25 It can be inferred from that provision, in conjunction with Article 2(4) of Directive 2014/42, that Directive 2014/42 is also applicable, in certain circumstances, to the confiscation of the proceeds of crime in the absence of a criminal conviction. Furthermore, the wording of Article 4(2) of Directive 2014/42 may also indicate, *inter alia*, that the circumstances it mentions as reasons why confiscation may not be possible are not listed exhaustively.
- 26 Accordingly, in the case before the referring court, the interpretation of Directive 2014/42 and of Framework Decision 2005/12 could give rise to divergent conclusions regarding whether the specific confiscation procedure under examination falls within the Member States' competence, as referred to in recital 22 of Directive 2014/42, and whether, as a consequence, those legislative acts are not applicable to such a procedure.
- 27 Although the Court of Justice has interpreted Article 4(1) of Directive 2014/42 and Article 2(1) of Framework Decision 2005/12 on a number of occasions, including in relation to national legislation according to which the proceeds of crime can be confiscated in the absence of a criminal conviction, neither of those legislative acts has to date been interpreted in relation to proceedings regarding the confiscation of illegally obtained assets, which are provided for in national law, where those proceedings are not conducted in the context of civil proceedings and are initiated on the basis of a body of evidence existing in criminal proceedings before it is found that a criminal offence has been committed and before anyone is found guilty of the offence concerned. As is apparent from the case-law of the Court of Justice, the correct interpretation and application of Directive 2014/42 and Framework Decision 2005/12 is not, in the light of their aim of improving the confiscation of assets in criminal proceedings within the European Union, so obvious in the present factual and legal circumstances as to leave no room for reasonable doubt regarding the scope of those legislative acts.
- 28 If the rules on the confiscation of illegally obtained assets laid down in Chapter 59 of the Law on Criminal Procedure fall within the scope of Directive 2014/42 and of Framework Decision 2005/12, to which it refers, the Member States have an obligation to adopt the measures necessary to ensure that persons affected by the measures provided for in that directive are entitled to an effective remedy and a fair trial in order to safeguard their rights.
- 29 Recital 38 of Directive 2014/42 states that the directive respects the fundamental rights and observes the principles recognised by the Charter and should be implemented in accordance with those rights and principles. Article 47(1) of the Charter, for its part, provides that everyone whose rights and freedoms guaranteed by the law of the European Union have been violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. The fundamental rights enshrined in Article 47 of the Charter are restated in Directive 2014/42 itself, in particular in the second sentence of Article 8(6), which provides that Member States must provide for the effective possibility for a

person in respect of whom confiscation is ordered to challenge the order before a court.

- 30 According to the Latvian legislation, in proceedings relating to illegally obtained assets, the first instance court may decide to discontinue those proceedings if it finds that the body of evidence provided is insufficient to demonstrate that the assets are related to a criminal offence or to substantiate a finding that the assets probably have a criminal source.
- 31 The decision issued by the first instance court can be challenged before the regional court, which may: (1) confirm the decision of the first instance court; (2) set aside the decision of the first instance court declaring that the asset was obtained illegally and that it can be confiscated and discontinue the proceedings relating to illegally obtained assets; or (3) set aside the decision of the first instance court discontinuing the proceedings relating to illegally obtained assets and declare that the asset was obtained illegally and that it can be confiscated. No appeal may be brought against the decision issued by the regional court.
- 32 In Latvia, therefore, proceedings concerning illegally obtained assets can be examined at two instances and there is no possibility to appeal on a point of law against decisions issued by the regional court. Even though a first instance court has discontinued the proceedings relating to illegally obtained assets because it found the criminal source of the assets not to have been proven, the regional court may declare that the assets were obtained illegally and order their confiscation.
- 33 The provisions of Directive 2014/42 lay down no specific rules relating to the factual situation underlying the present case, that is to say, those scenarios in which a first instance court issued a decision discontinuing the proceedings relating to illegally obtained assets but that decision has been set aside by the regional court, which has issued a decision declaring the assets to have been obtained illegally and ordering their confiscation. In the present case, therefore, it is necessary to determine the interpretation to be given to the expression 'confiscation order' in the second sentence of Article 8(6) of Directive 2014/42.
- 34 On the one hand, it is arguable that the second sentence of Article 8(6) of Directive 2014/42 requires that the person whose assets have been confiscated should be entitled to challenge that decision before at least one court, irrespective of whether a decision has been issued discontinuing the proceedings relating to illegally obtained assets or declaring the assets to have been obtained illegally and ordering their confiscation. That interpretation suggests that the provision at issue already safeguards the right of the appellants before the Satversmes tiesa (Constitutional Court) to challenge the confiscation order before a tribunal and, as a result, their right to an effective remedy.
- 35 On the other hand, the second sentence of Article 8(6) of Directive 2014/42 can be interpreted as meaning that the person concerned must be assured the possibility to lodge an appeal against a confiscation order that has given rise to the final

deprivation of an asset. Specifically, Article 2(4) of Directive 2014/42 defines the concept of ‘confiscation’ as the final deprivation of property. The definition of the word ‘confiscation’ in other EU acts on the confiscation of property is similar to that set out in Article 2(4) of Directive 2014/42. For example, Article 2(2) of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders provides that a ‘confiscation order’ is a final penalty or measure, imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property of a natural or legal person. Similarly, the fourth indent of Article 1 of Framework Decision 2005/12 provides that ‘confiscation’ means a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property.

- 36 It could be inferred from that interpretation of the second sentence of Article 8(6) of Directive 2014/42 that the concept of ‘confiscation order’ is confined to a court decision giving rise to the final deprivation of property. However, even though there may be a possibility of the assets being confiscated, a court decision discontinuing proceedings relating to illegally obtained assets cannot be equated with a ‘confiscation order’ within the meaning of the second sentence of Article 8(6) of Directive 2014/42. Accordingly, in the present case, only the decision of the regional court declaring that the assets of the appellants before the *Satversmes tiesa* (Constitutional Court) had been obtained illegally and ordering their confiscation – which, according to the provision at issue, cannot be subject to appeal – should be equated with a ‘confiscation order’ within the meaning of that provision of EU law.
- 37 Having regard to the situation to be assessed in the present case, it is therefore possible to reach different conclusions as regards the interpretation of the second sentence of Article 8(6) of Directive 2014/42. The Court has already clarified how the concept of ‘confiscation’ within the meaning of Article 2(4) of Directive 2014/42 is to be interpreted, but has not ruled on the interpretation to be given to the concept of ‘confiscation order’ in the second sentence of Article 8(6) of Directive 2014/42. For the purposes of ruling on this case, it is therefore necessary to clarify the sense of the concept of ‘confiscation order’ in the second sentence of Article 8(6) of Directive 2014/42, that is to say, whether only a decision declaring that an asset has been obtained illegally and may be confiscated can be found to be a confiscation order, or whether a decision by which a court discontinues proceedings relating to an illegally obtained asset can also be such an order.
- 38 There is therefore uncertainty regarding whether, in the event that the provision at issue in the present case does fall within the scope of the aforementioned EU legislation, national legislation which, in the interests of the timely and effective resolution of property issues, does not establish a right for the person connected with the assets to challenge the decision issued by a regional court, even though in one case that decision is the first decision declaring that an asset has been obtained illegally and can be confiscated and even though the first instance court in the case

had ordered that the proceedings relating to illegally obtained assets be discontinued, is compatible with the right to an effective remedy enshrined in Article 47 of the Charter and with the safeguard in Article 8(6) of Directive 2014/42, which provides that an effective possibility of challenging the confiscation order before a court must be established.

- 39 The referring court also asks the Court to answer the question relating to the point until which the legal effects of the provision at issue may be maintained.
- 40 Pursuant to Article 32(1) of the Satversmes tiesas likums (Law on the Constitutional Court), a judgment of the referring court is final and enforceable as soon as it is delivered. However, pursuant to Article 31(11) of the Law on the Constitutional Court, the referring court may state in its judgment the point at which the provision concerned will cease to have effect. In order to determine the specific point at which the provision concerned will cease to have effect, the referring court assesses whether there are reasons why the provision concerned should be declared invalid with retroactive effect. Conversely, if the referring court finds that the legislature needs time in order to enact new legislation, it may provide that the provision concerned will cease to have effect from a point in the future. When deciding the point at which the provision concerned will cease to have effect, the principle of legal certainty must be weighed against the fundamental rights of certain persons.
- 41 As the Court has held, it is only exceptionally that it may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Such a restriction may be allowed only in the actual judgment ruling upon the interpretation sought.
- 42 The referring court believes that, in the present case, it should be borne in mind that the confiscation of illegally obtained assets is carried out to protect an important public interest and is aimed at safeguarding the principle of the rule of law.
- 43 The legislation pursuant to which the person directing the proceedings may remove from the criminal case file materials relating to illegally obtained assets and may institute proceedings in relation to those assets in the interests of the timely resolution of any property issues which have arisen in the investigation stage of the criminal proceedings and in the interests of procedural economy has been in force since 1 October 2005. The provision at issue, for its part, has been in force since 1 July 2009. A definitive decision by the referring court in the main proceedings would therefore affect numerous legal relationships. If illegally obtained assets are confiscated, the corresponding funds are transferred to the State budget. The provision at issue is therefore closely linked to the State budget and a declaration that it was invalid in the past could both have negative consequences for the stability of the State budget and undermine legal certainty.

- 44 Legal stability is an essential component of the principle of legal certainty, which requires, *inter alia*, not only legal proceedings which are provided for by law but also a legally sustainable outcome to those proceedings. The provision at issue is considered to be lawful and the State authorities apply it in all proceedings relating to illegally obtained assets.
- 45 Having regard to the foregoing, it is necessary to determine whether, in the event that the provision at issue is found not to comply with the requirements under the first sentence of Article 92 of the Constitution and under the Charter, Directive 2014/42 and Framework Decision 2005/12, the principles of legal certainty and of the primacy of EU law must be interpreted as meaning that the circumstances of the main proceedings bring to light considerations pursuant to which the provision at issue could be applicable and its legal effects could be maintained temporarily until the time determined by the referring court in its decision, at which point the provision at issue would cease to have effect.