



Liene Neimane

**Criminal Legal  
and Procedural Problems and Prospects  
for Improvement in Preventing  
and Combating Money Laundering**

Summary of the Doctoral Thesis for obtaining  
the scientific degree “Doctor of Science (*PhD*)”

Sector Group – Social Sciences

Sector – Law

Sub-Sector – Criminal Rights

Rīga, 2023



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## Abbreviations used in the Thesis

USA	United States
SC	Supreme Court
Directive No 91/308/EEC	Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering
Directive No. 2010/64/EU	Directives 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings
Directive No. 2014/42/ EU	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 No 2015/849	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Regulation (EU) No 684/2012 and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)
Directive No 2018/843	Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance)
ECB	European Central Bank
ECHR	European Court of Human Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EC	European Commission

ENAP	Economic Crime Prevention Board of the State Police Main Criminal Police Administration
EU	European Union
CJEU	Court of Justice of the EU
FATF	<i>Financial Action Task Force</i>
FIS	Financial Intelligence Service
FinCEN	<i>Financial Crimes Enforcement Network</i>
Fintech	<i>Financial technology</i>
FM	Ministry of Finance
FCMC	Financial and Capital Market Commission
CS	Control Service (Anti-Money Laundering Service)
CEA	Cybercrime Enforcement Authority
CL	Criminal Law
CPL	Criminal Procedure Law
CM	Cabinet of Ministers
LPC	laundering of the proceeds of crime;
Prevention Law	Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing
PMLFTP	Prevention of money laundering and financing of terrorism and proliferation
Regulation (EU) 2015/847	Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No.1781/2006
LV	Republic of Latvia
Satversme	Constitution of the Republic of Latvia
Law on Compensation	Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offences

Warsaw Convention	Council of Europe Convention of 16 May 2005 on the prevention of money laundering and the financing of terrorism, and on the tracing, seizure and confiscation of these funds
SRS	State Revenue Service
SP	State Police
OECD	(Organisation for Economic Co-operation and Development)
PLG	Beneficiary
Moneyval	Council of Europe Expert Committee on the Prevention of Money Laundering and the Financing of Terrorism
AML / CFT	<i>Anti Money Laundering / Combating the Financing of Terrorism</i>



## Introduction

Money laundering is a relatively new illegal activity by criminal groups that has a negative impact on a country's economy. The "Dirty" money introduced into the national economy through money laundering is capable of exposing the country's favourable economic stability to negative fluctuations. Such fluctuations may be caused, for example, by the rapid reorientation of organised crime in the national market. In recent years, money laundering has become one of the most serious threats to the normal economic development of countries.

At the United Nations 10th Congress "On the Prevention of Crime and Treatment of Offenders"<sup>1</sup>, which discussed the problems of the fight against organised crime in the world, the delegates emphasised in particular that the prevention of money laundering is one of the effective ways of combating organised crime. Latvia's involvement in European political and economic processes and its participation in various international organisations have made the prevention of money laundering an issue of current concern. In order to successfully integrate and actively participate in the cycle of European political and economic processes, Latvia has made certain commitments, which also cover the issues of preventing and combating crime. One of the most important issues in preventing and combating crime should be the response to money laundering. Special attention should be paid to this issue as a matter of priority. Thus, it could be said that the policies developed by the State to combat money laundering are aimed not only at full participation in European political and economic processes, but also at promoting and ensuring the independent, normal development of the national economy, which is not subject to fluctuations that

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<sup>1</sup> General Assembly. 2000. Tenth United Nations Congress On the Prevention of Crime and the Treatment of Offenders. <https://digitallibrary.un.org/record/404748>

may be caused by the illegal actions of transnational organised crime. It is important to carry out extensive research at both theoretical and practical levels reflecting the views of both academics and practitioners on the prevention of money laundering. It is equally important to carry out a theoretical and practical analysis of foreign laws and regulations and court practice related to the solution of such issues, especially now that Latvia is obliged to participate purposefully in the European Union and other international organisations. Despite the fact that money laundering is a relatively new type of crime compared to other crimes, it can already be said that a certain jurisprudence has been developed in Latvia and law enforcement agencies have a basis for analysing it by drawing the necessary conclusions, however, in reality, as mentioned above, specific research in this area has hardly been carried out.<sup>2</sup>

The legal framework must ensure a fair settlement of criminal legal relations. One of the objectives is to achieve effective and economical criminal proceedings by ensuring a fair resolution of criminal legal relations without interfering with a person's private life. The need for accession to the European Union for further democratisation of jurisdiction is also indicated by Uldis Krastiņš, a professor at the University of Latvia.<sup>3</sup>

In recent years, the opinions of various experts on the seizure of property subsequently found by a court to be criminally acquired have been increasingly expressed in publications. The decisions and their reasoning differ, however, the question of the validity of the decisions taken by the court remains controversial. Recent decisions, which can be considered tendentious, have led to several applications to the Constitutional Court and a number of complaints to

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<sup>2</sup> Judin, A. 2008. Criminal liability for money laundering. *Name of lawyer*. 3 (507). <https://juristavards.lv/doc/169498-kriminalatbildiba-par-noziedzigi-iegutu-lidzeklu-legalizesanu/>

<sup>3</sup> Krastiņš, U. 2018. *Criminal law theory and practice. Viedokļi. Problēmas. Solutions (2015–2017)*. Riga: Court House Agency, 435.

the European Court of Human Rights regarding various human rights violations. In the case of money laundering, the 6 December 2022 issue of “Jurista Vārds” collected the opinions of several experts and academics, who contributed to a broad discussion on the implementation of the relatively new regulation and its consequences. There is no doubt that in the near future the court decisions in money laundering cases will have a significant impact on the state budget, which may be obliged to compensate for the losses incurred. The Doctoral Thesis is analysing the amendments made to the Criminal Procedure Law and the Criminal Law and their scope, which clearly shows that a significant period of time will have to pass before an ideal and fair solution can be found. This is also confirmed by the fact that there is still no uniform interpretation of the legal provisions for their application in practice. There is no common understanding and criteria that should be included in the content of the notification to the property owner who has been harmed in money laundering cases, namely a list of specific evidence with a simultaneous reference to the time period of this evidence. According to Article 28 of the Accounting Law, accounting documents are kept for ten years, but often the persons conducting the proceedings are interested in transactions for which the supporting documents significantly exceed this period. In accordance with the laws and regulations of other countries, the period of storage of the transaction documents in this case differs from the procedure established by the laws and regulations of Latvia. As it is known, according to the Law on Criminal Procedure, if a person does not submit evidence or documents of the transaction within 45 days, he or she is not entitled to claim compensation. If a person is on a business trip and, for objective reasons, is unable to provide evidence or documentation of the transaction, he or she may request an extension of the time limit for submission. In practice, however, there is no clear answer to this question due to a lack of experience in this area, and a person may be denied an extension of time to provide evidence.

In the light of the above, it must be concluded that the principle of equality is not respected in this category of cases. In practice, it is often necessary to contend with unjustified decisions by the person directing the proceedings regarding the possibility of acquainting oneself with certain materials of the case.

The functions and responsibilities of the Control Service were expanded at the same time as it became the Financial Intelligence Service. In practice, the discussion is also stimulated by the fact that the orders issued by the Financial Intelligence Service only refer to an article that mentions the concept of freezing funds, which can be appealed to the specially authorised prosecutor's office, but does not provide an answer to the question of whether it is possible to appeal against the decision of the Financial Intelligence Service if a person has not been informed about certain transactions that are suspicious in the view of the Service. Even today, orders issued by the Financial Intelligence Service are a source of confusion and extensive debate among law enforcement agencies. In addition, there is a tendency among the prosecutors that in cases where the Financial Intelligence Service has issued an order and sent materials to the State Police for the performance of procedural activities, there are grounds to believe that the Service has made a decision and that in a particular case it is mandatory to initiate proceedings on money laundering. However, such an assertion (unwritten practice) cannot be accepted, since in most cases it is possible to verify in a timely and professional manner whether the funds were obtained legally, using various criminal procedural methods, and in most cases there is no need to freeze the funds for a maximum period of time. The order of the Financial Intelligence Service to freeze funds can take up to 45 days. A number of factors, including lack of experience, knowledge, understanding or even responsibility, prevent quick and objective decisions from being made. The author of the work has a lot of experience in international investigation cases, so for comparison purposes it is possible to mention the experience of other countries, for example,

Switzerland, where the detention of funds, not the freezing, is fixed for a period – 5 working days. If a person is able to prove the specific transactions within 5 days, the funds are released. Undoubtedly, the development of a correct understanding requires time, exchange of information and experience, which would give a correct picture of the correct application and interpretation of the norms in the process of money laundering. One of the most important factors in adjudicating a case is the examination of the essence of the case by the judge monitoring the case and familiarisation with all the materials of the case contained therein. In the Author's opinion, the assessment of certain procedural reasons of the investigator separated from the case materials in general, gives the right to a person, for example, a suspect, to apply to the European Court of Human Rights in the future and ask for compensation for the damage caused.

### **Tasks of the Doctoral Thesis**

In order to achieve the objective of the Doctoral Thesis, the following tasks were set:

- 1) to explore the development of criminal money as an institute of law, conceptual explanation and understanding of its content, as well as the entities involved in the prevention of money laundering;
- 2) to study and analyse the changes and problems of the international legal framework for preventing and combating money laundering, including the Baltic States, the legal framework of the Republic of Latvia;
- 3) to examine the role, actual activities and results achieved by the supervisory authorities, including the Financial Intelligence Service and the Financial and Capital Market Commission, credit institutions and financial institutions;

- 4) to investigate and analyse the problem of evidence and proof in criminal proceedings and reverse proceedings on money laundering;
- 5) to develop recommendations for the improvement of property issues, analysing the practical importance of providing information on the legality of the origin of property, the mechanism of confiscation of property, as well as the rights and obligations of a person, when their property is recognised as having been obtained through criminal means.

### **Novelty of the Doctoral Thesis**

The most relevant research related to the topic of the work is Bachelor's, Master's and Doctoral theses developed at the academic level, for example, in 2020 Ivo Afanasiev's Bachelor's thesis "The Composition of Money Laundering and the Problems of Proof thereof" was developed at the University of Latvia; in 2020 Erika Gribonika's Master's thesis "Proof of Money Laundering" was developed at the University of Latvia;<sup>4</sup> in 2020 Karina Kaclapa's Master's thesis "Proof of the Composition of Money Laundering" was developed at the University of Turība;<sup>5</sup> in 2019 Juris Stukāns' Doctoral thesis "Recognition of Property as a Legal Regulation of Crime and Problems of its Application" was defended at the Rīga Stradiņš University.<sup>6</sup>

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<sup>4</sup> Afanasyev, I. 2020. The composition of money laundering and the problem of its proof: a bachelor's thesis. Rīga. Gribonika, Ē. 2020. Proof of money laundering: Master's thesis. Rīga.

<sup>5</sup> Kaclapa, K. 2020. *Proof of the composition of money laundering: Master's thesis*. Rīga, Turība.

<sup>6</sup> Stukāns, J. 2019. *The legal framework for the recognition of property as a criminal asset and the problems of its application: doctoral thesis*. Rīga. <https://dspace.rsu.lv/jspui/handle/123456789/2343>

At the request of the Financial Intelligence Service in 2021, a quantitative and qualitative study “Tax Crimes and Money Laundering. Border Delimitation, Typologies and Case Law”, developed by SIA “Sorainen ZAB” (Ltd.),<sup>7</sup> aimed at clarifying the current situation regarding money laundering cases, where predicate offences are tax crimes. The study focuses on the investigation of the tax predicate offence and the resulting borderline of money laundering,<sup>8</sup> which is also interdisciplinarily related to the purpose of this Doctoral Thesis.

Although in 2019, the Ministry of Justice developed a manual for the handling of property in criminal proceedings<sup>9</sup>, including issues of confiscation of property as a means of obtaining criminal property in accordance with the laws and regulations on confiscation of property in criminal proceedings drafted by the legislator, such an instrument has not eliminated the problems arising in practice in property issues related to the prevention of money laundering.

The novelty of this Doctoral Thesis at the academic level is related to the insufficiently analysed issues in practice regarding the criminal legal and procedural problems of the prevention of money laundering and the prospect of their improvement, as a result of which the author's conclusions and proposals arising from the research conducted in the author's work may become part of the basic development of both criminal law and criminal procedural law and legal doctrine. The work is a research carried out by the author, which is based on

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<sup>7</sup> Sorainen ZAB. 2021. *Tax offences and money laundering*. Study. [http://petijumi.mk.gov.lv/sites/default/files/title\\_file/Criminal%C4%ABgi\\_offense%C4%ABjumi\\_tax%C4%BCu\\_area%C4%81\\_PETIJUMS.pdf](http://petijumi.mk.gov.lv/sites/default/files/title_file/Criminal%C4%ABgi_offense%C4%ABjumi_tax%C4%BCu_area%C4%81_PETIJUMS.pdf)

<sup>8</sup> Sorainen ZAB. 2021. *Tax offences and money laundering*. Study. [http://petijumi.mk.gov.lv/sites/default/files/title\\_file/Criminal%C4%ABgi\\_offense%C4%ABjumi\\_tax%C4%BCu\\_area%C4%81\\_PETIJUMS.pdf](http://petijumi.mk.gov.lv/sites/default/files/title_file/Criminal%C4%ABgi_offense%C4%ABjumi_tax%C4%BCu_area%C4%81_PETIJUMS.pdf)

<sup>9</sup> Tieslietu ministrija. 2022 *Handbook for dealing with property in criminal proceedings*. <https://www.tm.gov.lv/en/media/4207/download>

personal work experience (practice), legal literature, historical and current legal framework research.

The work is related to the problem of determining the probationary period, which is still relevant in matters of origin of property. There are cases where a person is required to produce documents for transactions that have taken place even 10 or more years ago. Similarly, there is a difference of opinion in cases where a person has to prove the origin of the property in question, taking into consideration the principle of procedural economy, in which there is no uniform and clear understanding of what constitutes clear and reliable evidence and what is the scope of these actions that should be carried out in order to prove it.

The conclusions drawn and compared in the Paper provide an opportunity for others to understand the problem of money laundering and the latest trends in combating it. The author gives a vision that the application of legal norms unfortunately does not have a common understanding, nor does it clearly respect the rights of individuals to a fair trial.



# 1 Money laundering as an institute of law

## 1.1 Historical development of money laundering

The term money laundering is also associated with the combination of commonly used colloquial words “money laundering”. How to distinguish embezzlement, theft and robbery from the illegal acquisition of money? In this chapter, the author will focus on a theoretical view of the historical development of money laundering.

The term “money laundering” was first coined in 1972 in the context of the *Watergate* scandal, when Richard Nixon, then President of the United States, became the first President in US history to resign from office. The main reason for the president's resignation was that in the Democratic Party headquarters, the committee received illegal campaign funds for the president's re-election, first sent to Mexico and then returned to the party through a Miami-based company<sup>10</sup>. It follows from the basic circumstances that a person “bringing” money back for his own benefit by using a fictitious third party. This type of scheme and money laundering is called a *white-collar crime*, because it is by its very nature, a highly sophisticated crime that tends to involve officials. This non-legislative term – “white-collar crime” – refers to crimes that differ from other types of crimes by the characteristics of the subject of these crimes – they are committed by the state (state and local government) or by business representatives and officials. These crimes have financial motives – the tendency to obtain or avoid losing money, property or services, or to gain some personal or business advantage. The damage caused by “white collar crimes” to the interests of the state and legitimate business exceeds tenfold the damage caused by “traditional” crimes against property (theft, robbery, extortion, destruction of or damage to property).

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<sup>10</sup> A&E Television Networks. Original posted: 2009. Updated: 2022. *Watergate Scandal*. <https://www.history.com/topics/1970s/watergate>

It is the “white-collar crimes” that make up the so-called “shadow economy” that Latvia is so actively fighting today.<sup>11</sup>

The term *money laundering* originated in the United States. The activity was based on the business of criminals and members of various gangs (then called “gangsters”) – extortion, prostitution, gambling, alcohol smuggling. The criminal activities were hidden behind legitimate business activities, such as gambling activities. Financial activities were carried out by mixing the proceeds of crime (“dirty” money) with the proceeds of law (“cash” money). As a result of these actions, after a series of successful financial transactions, the “dirty” money is legalised – i.e. laundered. The fight against money laundering began in the late 1980s with the application of methods that were used to combat illegal alcoholic beverages.

## 1.2 Concept and understanding of money laundering

As the author mentioned in the first chapter, the concept of “money laundering” first appeared in the context of the Watergate scandal in the United States in 1972<sup>12</sup>, when illegal activities involving funds from a political campaign were carried out at the headquarters of the Democratic Party Committee, leading to the resignation of the then President of the United States, R. Nixon. These illicit funds were originally sent to Mexico and returned through a Miami-based company.

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<sup>11</sup> Breeding, E. Petrov, S. 09.12.2020. *White-collar crimes*. <https://www.njordlaw.com/en/balto-apkklisu-n-Crime>

<sup>12</sup> A&E Television Networks. *History Watergate Scandal. A June 1972 break-in to the Democratic National Committee headquarters led to an investigation that revealed multiple abuses of power by the Nixon administration*. 21.06.2022. <https://www.history.com/topics/1970s/watergate>

Money laundering activities were initially linked to money laundering through extortion, prostitution, illegal gambling and alcohol smuggling, but in 1980 they were supplemented by drug trafficking and arms smuggling. In 2001, the concept of terrorism financing also emerged.

Money laundering should be seen as a relatively new illegal activity (activity) of criminal groups, which in most cases is clearly closely linked to the economic activities of organised crime. As noted by the employees of the Interpol Bureau of the Ministry of the Interior of the Republic of Latvia (hereinafter – LV), a particularly close relationship between financial crime and organised crime is observed precisely in the field of money laundering<sup>13</sup>. Like other crimes, money laundering as a phenomenon and process has its own history of development and the conditions that contribute to it. The most successful criminals have always managed to launder the “dirty” money obtained from illegal sources, so that it can later circulate relatively safely, i.e. be laundered. As Gerald Moiben, a German police superintendent who was active in the management and coordination of Interpol's anti-money laundering unit, has said: “... there has always been a goal to hide the criminal origins of these proceeds and to get rid of the attention of law enforcement agencies”.<sup>14</sup>

Money laundering is usually divided into three stages:

- I. **placement**, when cash or cash equivalents are placed into the financial system (currency exchange, exchange of denominations, cash transportation, cash investments);
- II. **layering**, where a series of complex financial transactions are carried out in order to disguise the origin of the money (shuffling or stratification of feet; money transfers, cash withdrawals, cash

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<sup>13</sup> Interpol Office of the Ministry of the Interior of the Republic of Latvia. 1996. Evaluation of the General Secretariat of Interpol on money laundering in Latvia.

<sup>14</sup> Фентон, Б. *Тайны службы мира*. 1996. Москва: Интерпол, 240–241.

deposits with other banks, allocation and pooling of account funds, drawing up fictitious contracts and invoices). At this stage of structuring, the proceeds of crime resulting from the staging of various transactions are: (a) transferred and structured with a view to moving them away from the source of the proceeds; (b) creating the impression that civil transactions are taking place, such as:

- (1) transfers of funds between countries or between many banks or other financial institutions;
- (2) transfer of funds between different accounts within the same financial institution;
- (3) the conversion of funds into financial instruments;
- (4) resale of exclusive goods (jewellery, art objects);
- (5) mediation and use of shell formations; activities based on supposedly legal civil legal transactions – payment for goods, services, obtaining loans, repayments, investments;

III. *integration*, where funds are reintegrated into the economy in such a way as to make it appear that their origin is legitimate. The purpose of integration is to create a clear legal origin for the proceeds of crime (excuse) (fictitious loans, turnover, income from capital, disguising property rights, criminal means in third party transactions).<sup>15</sup>

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<sup>15</sup> Financial Intelligence Service 2021. Typologies and features of money laundering: methodological material. Second edition. [https://FIS.gov.lv/uploads/files/2021/FIS\\_Typeology%20materials\\_II\\_red.pdf](https://FIS.gov.lv/uploads/files/2021/FIS_Typeology%20materials_II_red.pdf)

### 1.3 Entities involved in prevention of money laundering

Article 10 of the United Nations Convention against Transnational Crime<sup>16</sup> requires each Member State to adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences referred to in paragraph one.

Also Article 10 of the Council of Europe Convention<sup>17</sup> on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism provides that each Member State shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, who has a leading position within the legal person.

On 5 May 2005, the Saeima supplemented the general part of the Criminal Law (hereinafter – the Criminal Law) with Chapter VIII<sup>1</sup> “Coercive Measures Applicable to Legal Persons”. This chapter contains four coercive measures: liquidation, restriction of rights, confiscation of property and recovery of money. It follows from these sanctions that the Saeima has chosen to impose private liability on legal persons. If, according to the CL, a legal person becomes liable for a criminal offence, the liability will not primarily have a punitive, but a compensatory function. This is necessary to compensate the financial sector for the losses caused by money laundering, since a legal person does not have

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<sup>16</sup> *United Nations Convention against transnational organised crime and the Protocols thereto*. 2004. New York, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

<sup>17</sup> On the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Latvijas Vēstnesis No. 205, 30.12.2009. <https://likumi.lv/ta/id/203016-par-eiropas-padomes-konkonvenciju-par-noziedzigi-iegutu-lidzeklu-legalizacijas-un-terrorisma-finansesanas-noversanu-ka-ari-so-lidzeklu-meklesanu-iznemsanu-un-konfiskaciju>

the intention to commit a criminal offence. The purpose may be limited to natural persons acting on behalf of the legal person. Section 3 of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (hereinafter – the Prevention Law) lists the subjects of the law:

- 1) credit institutions,
- 2) financial institutions
- 3) tax advisors, outsourced accountants, sworn auditors and commercial companies of sworn auditors;
- 4) sworn notaries, sworn advocates, other independent providers of legal services, when they, acting on behalf and for their customer, assist in the planning or execution of transactions, participate therein or perform other professional activities related to transactions for their customer concerning the following:
  - a) buying and selling of immovable property, shares of a commercial company capital;
  - b) managing the customer's money, financial instruments and other funds;
  - c) opening or managing all kinds of accounts in credit institutions or financial institutions;
  - d) establishment, management or provision of operation of legal persons or legal arrangements, as well as in relation to making contributions necessary for the establishment, operation or management of a legal person or a legal arrangement;
- 5) providers of services related to the establishment and provision of operation of a legal arrangement or legal person;
- 6) real estate agents;
- 7) organisers of lotteries and gambling;
- 8) persons providing cash collection services;

- 9) other legal or natural persons trading in means of transport, cultural monuments, precious metals, precious stones, articles thereof or trading in other goods, and also acting as intermediaries in the abovementioned transactions or engaged in provision of services of other type, if payment is made in cash or cash for this transaction is paid in an account of the seller in a credit institution in the amount of EUR 10 000 or more, or in a currency the amount of which according to the exchange rate to be used in accounting in the beginning of the day of the transaction is equivalent to or exceeds EUR 10 000 regardless of whether this transaction is made in a single operation or in several mutually linked operations;
- 10) debt recovery service providers.

## 2 Mechanism and problems of preventing and combating money laundering

### 2.1 International legal framework and its impact on national legislation

The European Court of Human Rights (ECtHR) has recognised the existence of common European and international legal standards encouraging the confiscation of property associated with serious criminal offences such as corruption, money laundering and drug-related crime.<sup>18</sup>

Article 3 (1) of the Council of Europe's binding convention on money laundering of 1 June 2010, also known as the Warsaw Convention, obliges the Member States of the Council of Europe to adopt such laws, regulations and other measures as may be necessary to enable them to confiscate instrumentalities and proceeds of crime or property the value of which corresponds to the value of the proceeds of crime and the proceeds of money laundering<sup>19</sup>. Similarly, Article 12 (1) (a) of the Palermo Convention obliges its Member States to introduce, to the greatest extent possible and in accordance with their internal legal systems, the necessary measures to enable the confiscation of proceeds of crime, that is to say proceeds of offences covered by that Convention, or property the value of which corresponds to those proceeds<sup>20</sup>.

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<sup>18</sup> Judgment of the European Court of Human Rights of 26 June 2018 in *Telbis and Viziteu v. Romania*. From: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-184058%22%5D%7D>

<sup>19</sup> Council of Europe Convention on the Prevention of Money Laundering and the Financing of Terrorism and on the Search, Seizure and Confiscation of These Proceeds: an international instrument. Latvijas Vēstnesis No. 205, 30.12.2009

<sup>20</sup> United Nations Convention against Transnational Organized Crime: an international instrument. Latvijas Vēstnesis No. 87, 06.06.2001.



The first paragraph of Article 5 of the Vienna Convention obliges States to take the necessary measures to enable the confiscation of the proceeds of the offences referred to in the first paragraph of Article 3 of the Convention<sup>21</sup>. Also, Recommendation 4 “Confiscation and provisional measures” of the Financial Action Task Force (hereinafter referred to as FATF), which develops and promotes policies, including those to protect the global financial system against money laundering, states that States should consider adopting measures whereby proceeds of crime or instrumentalities can be confiscated without a criminal conviction<sup>22</sup>.

Article 8 (6) of Directive 2014/42/EU requires Member States to provide for the effective possibility for a person in respect of whom confiscation is ordered to challenge the order before a court. The Directive analyses the concept of confiscation, stating that it is a definitive deprivation of property ordered by a court in connection with a criminal offence. On the other hand, Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders defines a confiscation order. It is defined as a final penalty or measure imposed by a court in the course of criminal proceedings in relation to one or more criminal offences, providing for the final deprivation of property. It is clear from that definition that the decision on confiscation of property can only be determined by a court, as Mr Voronko emphasised.<sup>23</sup>

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<sup>21</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Latvijas Vēstnesis No. 133, 26.9.2003.

<sup>22</sup> European Court of Human Rights 26.06.2018. Confiscation of cash and property in bribery investigation was a reasonable measure. <file:///C:/Users/Liene%20Krezevska/Downloads/Judgment%20Telbis%20and%20Viziteu%20v.%20Romania%20-onfiscation%20c%20of%20assets%20in%20bribery%20case%20against%20member%20of%20family.pdf>

<sup>23</sup> Ibid.

Recital 21 in the preamble to the Directive states that extended confiscation should be possible if the court is satisfied that the property in question has been derived from criminal activity, but this does not mean that it has to be proved. Member States may presume, for example, that it might be sufficient for a court to consider or reasonably assume, when assessing the likelihood, that there is a much greater likelihood that the property in question has been derived from criminal activity than from other activities. In this context, the court must take into account the specific circumstances of the case, including the facts and available evidence on the basis of which an extended confiscation decision could be taken. The fact that a person's property is disproportionate to the person's legal income could be one of the facts justifying the court's conclusion that the property was acquired in a criminal way.

In accordance with Article 5 of the Directive, Member States shall adopt the necessary measures to allow for the confiscation, in whole or in part, of property belonging to a person convicted of an offence which may give rise to a direct or indirect economic advantage where the court is satisfied, on the basis of the circumstances of the case, including specific facts and available evidence, such as that the value of the property in question is disproportionate to the lawful income of the convicted person, that the property in question has been obtained in a criminal way. The second paragraph of Article 70.11 of the CL is not aimed at proving the guilt of a particular person, but rather at the origin of the property and the nature of the criminal offence, namely, whether the criminal offence for which the person is suspected, accused or convicted is aimed at obtaining material or other benefit. This also applies to the property provided for in Section 70.11, Paragraph three of the CL. Theorists and also practitioners have indicated that the reversal of the burden of proof contained in the second paragraph of Article 355 of the CPL (excluded from the CPL as amended by the CPL, which entered into force on 1 August 2017) should be extended to crimes of a material

nature. Initially, when discussing the need to expand the range of criminal offences that would be subject to the presumption of the proceeds of crime, the possibility of supplementing the list of several criminal offences (bribery, smuggling, money laundering, etc.) included in Section 355, Paragraph two of the CPL was discussed. However, the EXPERTS in the CPL working group agreed that it was necessary to include in that list all offences of a material nature. Thus, it does not matter which criminal offence is committed under the CL. Where the offence was aimed at obtaining a material benefit, provision should be made for the possibility of applying the presumption that the funds belonging to the person were obtained as a result of criminal activities. In addition, the new framework, like the previous ONE (the second paragraph of Article 355 of the CPL, which was in force until 31 July 2017), also applies to terrorism cases and organised groups.<sup>24</sup>

The preamble to the Warsaw Convention, entitled “Council of Europe Convention on the Prevention, Search, Withdrawal and Confiscation of the Proceeds from Crime and on the Financing of Terrorism”, states that modern and effective methods must be used at international level to combat serious crime, which has become a growing international problem<sup>25</sup>. One of these methods is to deprive criminals of the proceeds of crime and of the tools of crime. At the same time, the preamble to Directive 2014/42/EU stresses that the most effective way of combating organised crime is to anticipate the serious legal consequences of

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<sup>24</sup> MINISTRY OF JUSTICE 2022 *Handbook for dealing with property in criminal proceedings*. <https://www.tm.gov.lv/en/media/4207/download>

<sup>25</sup> Council of Europe Convention on the Prevention of Money Laundering and the Financing of Terrorism and on the Search, Seizure and Confiscation of These Proceeds: an international instrument. *Latvijas Vēstnesis* No. 205, 30.12.2009

committing such crimes, as well as the effective detection, freezing and confiscation of instrumentalities and proceeds of crime<sup>26</sup>. Thus, the legitimate purpose of confiscation of the proceeds of crime may be defined as the removal of the proceeds of crime from the legal civil cycle in order to prevent its further circulation and further commission of criminal offences, as well as to reduce the financial interest in committing criminal offences.

For the purposes of the Palermo Convention, the Vienna Convention and Directive 2014/42/EU, “confiscation” shall mean the deprivation of property as decided by a court or other competent authority. In accordance with the Warsaw Convention, the term “confiscation” means a penalty or measure imposed by a court following proceedings relating to a criminal offence or offences and depriving property. The material norms for the special confiscation of property are regulated in Chapter VIII<sup>2</sup> “Special confiscation of property” of the CL, which is contained in the amendments to the CL, which entered into force on 1 August 2017. On the other hand, procedural norms for dealing with criminally acquired property, property related to a criminal offence or the object of committing a criminal offence are regulated in the CPL.<sup>27</sup>

The author concludes from the case-law and legal provisions that there are problems in the formation of uniform case-law, in the understanding of what then criminal property really is and in what cases it should be confiscated or returned to the owner. In order to reduce the gap between the different practices of the Member States, as well as in order in the future to reduce claims against the State of Latvia for unjustified confiscation of property based on an inadequate

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<sup>26</sup> 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 (2014). Official Journal of the European Union <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0042&from=RO>

<sup>27</sup> Ministry of Justice 2022 *Handbook for dealing with property in criminal proceedings*. <https://www.tm.gov.lv/en/media/4207/download>

understanding of the application of criminal procedural norms in the future, the regulatory framework should be supplemented much more precisely in order to exclude any subjective assessment of the official on specific circumstances.

## **2.2 Legal framework and practical application of Republic of Lithuania and Republic of Estonia**

In Lithuania, as in Latvia, the wording of Article of the Criminal Code providing for liability for money laundering, has been amended several times. This is expressed in Article 216 of the Criminal Code *of the Republic of Lithuania (Laundering of Crime-Related Property)*, which provides that a person who, in order to conceal or legitimise his or another person's property knowing that it has been acquired as a result of a criminal offence, acquires, manages, uses, transfers property to other persons, conducts financial operations related to this property, enters into transactions, uses it in economic and commercial activities, otherwise transforms it or falsely indicates that it has been acquired from a lawful activity.<sup>28</sup> Such actions shall be punishable by a fine or a custodial sentence for a term of up to seven years. Similarly, a person who conceals the actual essence of his or her own or another person's property, its origin, location, alienation and transfer, or property rights or other rights related to the property, while being aware that the property has been acquired criminally, shall be punished with a fine or deprivation of liberty for a term of up to seven years. A legal person shall also be held liable for the activities provided for in this Article.

Having reviewed the case-law of the Lithuanian courts, it should be noted that in the period from 1 January 2019 to the end of the second quarter of 2021, no cases of money laundering have been examined in the Supreme Court of

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<sup>28</sup> Criminal Code of the Republic of Lithuania: No. VIII–1968. 26.09.2000. <https://e-seimas.lrs.lt/portal/legalActPrint/en?jfwid=rivwzvpvg&documentId=a84fa232877611e5bca4ce385a9b7048&category=TAD>

Lithuania, where a predicate crime has been committed in the field of taxation. On the other hand, the Court of Appeal of Lithuania has examined four such cases. In none of these four cases was the predicate offence committed abroad<sup>29</sup>.

In line with the 2019 strategy of the Lithuanian Government, Lithuania's goal was to become a strong hub for European financial technology companies<sup>30</sup>. The policy implemented by the state, ensuring a favourable business environment for *fintech* companies, has attracted investors and Revolut Bank UAB (electronic money institution), which currently works across Europe with a license obtained in Lithuania, remains popular. As of 2018, many Latvian banks began to refrain from transactions. In several banks, it was not possible to open a bank account because one bank abstained, while others were reluctant to take risks and refused to open accounts. Revolute Bank UAB was the only bank available to open an account remotely. This bank also gained popularity by offering much cheaper commissions, for example, for currency conversion. On 1 August 2022, Revolute Bank UAB electronic money institution merged with the Revolute Bank itself. The merger provided a client-based platform, modern and innovative tools, simple, fast and convenient account opening regardless of the person's location.

In Estonia, as in Latvia, the Law on the Prevention of Money Laundering and Terrorism Financing provides for a case when the property obtained from crime may be confiscated without a conviction of a person.

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<sup>29</sup> Financial Intelligence Service 27.08.2021. *Tax offences and money laundering. Boundary, typologies and case law.* [http://petijumi.mk.gov.lv/sites/default/files/title\\_file/Criminal%C4%ABgi\\_offense\\_%C4%ABjumi\\_tax%C4%BCu\\_area%C4%81\\_PETIJUMS.pdf](http://petijumi.mk.gov.lv/sites/default/files/title_file/Criminal%C4%ABgi_offense_%C4%ABjumi_tax%C4%BCu_area%C4%81_PETIJUMS.pdf)

<sup>30</sup> Lithuanian government's 2019 strategy. <https://lithuaniatribune.com/fintech-in-lithuania-can-we-take-the-leading-position-already/>

Chapter 5 of the Penal Code of the Republic of Estonia establishes liability for money laundering in § 394 – money laundering, providing for a fine or a prison sentence for up to five years. If this is done by a group of persons at least twice or in a large amount, the person is punished with a penalty – imprisonment from two to ten years. If it is done by a legal person, it is punished with a fine.<sup>31</sup>

Similar to Latvia, property held by third parties can be confiscated in Estonia provided that:

- 1) the property or part thereof has been transferred to a third party at a price significantly lower than the market price;
- 2) the third party knew that the property had been transferred to it in order to avoid confiscation.

The loudest public case of money laundering cases in Estonia, which, of course, also alarmed the Latvian population, was heard in the spring of this year, when the Estonian Financial Inspectorate came forward with an investigation carried out in 2019. At its conclusion, a report was published in March 2020 on deficiencies in the Estonian Swedbank anti-money laundering procedures. The parent bank in Sweden announced that its subsidiary in Estonia has been designated as a suspect in a money laundering investigation and the investigation will determine whether Swedbank has been laundered or any other criminal activity.

Analysing the case-law of the Lithuanian and Estonian courts, it does not find rulings on the application of the principle of double criminality when examining money laundering cases in which a predicate criminal offence is a criminal offence in the field of taxation.

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<sup>31</sup> Penal Code of the Republic of Estonia. <https://www.riigiteataja.ee/en/eli/521082014001/consolide>

At the same time, it cannot be concluded that criminal proceedings for money laundering in cases where a predicate tax crime has been committed abroad are not widespread. Based on the author's practical experience, there are a number of criminal proceedings initiated and also reviewed in Latvia with such a feature, but access to such court rulings is limited. This is explained by the fact that from these criminal proceedings cases are divided into criminal assets, examining them in accordance with the procedures of Chapter 59 (proceedings regarding criminal assets) of the Civil Code in closed court hearings, denying public access to court rulings.

## **2.3 Preventing and combating legalisation of proceeds of crime as a mechanism and problem of legal system in Republic of Latvia**

### **2.3.1 Preventing and combating money laundering as a mechanism of legal system**

Prevention of money laundering is a set of legal actions that can be taken to achieve the purpose of the Prevention Law, and which as a mechanism of the legal system can be divided into two consecutive, structural parts: 1) prevention of money laundering; 2) combating money laundering.

The first part of the anti-money laundering system mechanism – anti-money laundering – is actually aimed at identifying a possible criminal offence on the basis of information provided by a person. And, namely, prevention of money laundering is mainly implemented with the help of the entities of the law listed in Section 3 of the Prevention Law, mostly – credit institutions and financial institutions, by the entities of the law performing the procedures laid down in regulatory enactments for the prevention of money laundering, including the establishment of an internal control system by the entities of the law and carrying out a risk assessment of clients, while establishing that the



transaction is likely to involve money laundering – by refraining from executing the transaction and informing the law enforcement authority – the Financial Intelligence Service (hereinafter – the FIS) about it. On the other hand, the second part of the anti-money laundering system mechanism – anti-money laundering – is initiated when the information initially provided by the Subjects of the Prevention Law and the information evaluated by the FIS provide sufficient grounds to conclude that a criminal offence is likely to have occurred by money laundering.

The anti-money laundering unit includes: 1) law enforcement institutions that carry out operational activities, initiate and conduct criminal proceedings, verify information, collect and consolidate evidence; 2) the prosecutor's office, which ensures supervision over criminal proceedings, initiates criminal prosecution, surrenders criminal cases to a court, maintains an indictment; 3) the court, which passes a conviction or acquits a person<sup>32</sup>.

Thus, the fight against money laundering is understood to be a set of actions carried out by law enforcement institutions, the prosecutor's office and the court, which are aimed at the information provided by the Subjects of the Prevention Law on possible money laundering and the procedural verification of the information evaluated by the FIS in order to ascertain whether a criminal offence has been committed, as well as – in order to achieve the objective of preventing money laundering by deterring persons from further money laundering.

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<sup>32</sup> Helman, I. 2023. *How does the dirty money system work*. <https://lvportals.lv/skrojrojumi/348310-ka-darbojas-netiras-naudas-apkarosanas-sistem-2023>

### **2.3.2 Implementation and practical application of legal framework**

Until 1 October 2005, the Criminal Procedure Code of the Latvian SSR of 1961 (hereinafter – the CPC) was in force in Latvia with numerous amendments, which, after the restoration of independence, was renamed the CPC of Latvia. According to the annotation of the new draft law, it was intended to create an opportunity for Latvian law enforcement institutions to act in accordance with the current guidelines of the Council of Europe and the European Union (hereinafter – EU) criminal justice and to use a more modern solution of criminal procedural relations recognised in the world; to prevent the growing accumulation of pending cases in pre-trial investigation institutions and courts, as well as to shorten lengthy legal proceedings; to reduce the basis for complaints about human rights violations.<sup>33</sup>

On 18 December 1997, the Saeima adopted the law “On Prevention of Money Laundering”, which entered into force on 1 June 1998, when the Latvian Financial Intelligence Unit – the Anti-Money Laundering Service, whose second official (abbreviated) name at that time was “Control Service” (hereinafter – CS), started its work. That law included legal provisions in accordance with EU Directives No. 91/308/EEC<sup>34</sup> and No. 2001/97/EC. The Law on the Prevention of Money Laundering, which expired on 13 August 2008, was replaced by the Law on the Prevention of Money Laundering and Terrorist Financing.

Over the years, the fight against “money laundering” has been varied. After the replacement of the head of the CS V. Carrot with I. Znotiņa, the FIS became “visible” and “audible”. On 29 June 2019, a number of substantive

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<sup>33</sup> Annotation of the draft law “Amendments to the Criminal Procedure Law”. 20.04.2003 [https://www.saeima.lv/L\\_Saeima8/lasa-dd=LP0286\\_0.htm](https://www.saeima.lv/L_Saeima8/lasa-dd=LP0286_0.htm)

<sup>34</sup> Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31991L0308>

amendments to the law entered into force. The most important of these are the change of the title of the Law on the Prevention of Money Laundering and Terrorist Financing to the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (Prevention Law), and the change of the name of the organisation to the FIS.

At the same time as amendments to the law, the procedure of the reports submitted to the CS changed, providing for the abandonment of the concept of an unusual transaction and providing for the submission of reports only on suspicious transactions. Likewise, the amendments to the law provided for the prevention of the provision of false information about the true beneficiaries of enterprises. Subjects of the Law, such as sworn advocates, outsourced accountants, credit institutions and others, were required to notify the Register of Enterprises of cases where during the course of the investigation it was concluded that the information about the beneficial owner of the client (hereinafter – PLG) does not correspond to the information recorded in the Register of Enterprises. The main rationale for the changes to the law is to transpose Directive (EU) 2018/843 of the European Parliament and of the Council, the so-called AML (Anti-Money Laundering) *5th* Directive, and to implement the recommendations of the *Moneyval* evaluation. At the same time as the draft law, amendments to the CPL were advanced<sup>35</sup>. After the adoption of the draft law, additions to the Code of Administrative Offences were necessary, providing for liability for failure to provide information to the State Revenue Service (hereinafter – SRS). It was also necessary to make amendments to the

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<sup>35</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance). Official Journal of the European Union <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>

law “On the State Revenue Service”, supplementing the SRS tasks and the rights assigned to officials, so that the SRS could ensure the supervision and control of the non-financial sector, as well as it was necessary to re-issue or amend the Cabinet of Ministers and the Financial and Capital Market Commission (hereinafter – FCMC) regulations accordingly<sup>36</sup>. This was later followed by several amendments to the CL.

There have been five evaluations of *Moneyval* so far in Latvia – the first four were technical (compliance of the law with the directive), which produced good results, but as soon as the fifth evaluation touched on the effectiveness of these norms, the evaluation also became unsatisfactory.<sup>37</sup>

Money laundering was criminalised by inserting a new article – Article 151.4 – into the Latvian Criminal Code on 2 April 1998, which provided for criminal liability for money laundering. On 1 April 1999, when the Latvian Criminal Code lapsed and the CL came into force instead, the responsibility for money laundering is now governed by Article 195, Article 195.1, and Article 195.2 of the CL. Thus, it is concluded that since 1 June 1998 the field of prevention and fight against money laundering and terrorist financing in Latvia has been legally regulated.

Regulation of regulatory enactments in the field of prevention of money laundering stipulates that the following funds shall be considered as proceeds of crime:

- 1) obtained directly or indirectly by the ownership or possession of a person through the commission of a criminal offence;
- 2) in other cases, specified in the CL.

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<sup>36</sup> The text of the draft law in the Saeima. 2022. [https://www.saeima.lv/Likumdosana/9S\\_DK/lasa-dd=LP0581\\_0-1.htm](https://www.saeima.lv/Likumdosana/9S_DK/lasa-dd=LP0581_0-1.htm)

<sup>37</sup> Ibid.

In addition, the following shall be considered to be proceeds of crime, which belong to a person or are directly or indirectly controlled by a person:

- 1) which is included in one of the lists of persons suspected of engaging in terrorist activities or activities related to weapons of mass destruction drawn up by certain States or international organisations of the Cabinet of Ministers;
- 2) which is included in the list of sanctions subjects drawn up by the Cabinet of Ministers on the basis of the Law on International and Latvian National Sanctions for the purpose of combating terrorist activities and activities related to weapons of mass destruction;
- 3) whose entities of operational activities, investigating authorities, prosecutor's office or court have information that provides sufficient grounds to suspect that person of an offence related to terrorism.

In accordance with the regulatory framework on money laundering, the following shall be considered to be:

- 1) alteration of the value, location or ownership of the proceeds of crime, knowing (aware) that they constitute criminal assets or attempting to conceal the true origin of such assets; participation in such activities;
- 2) concealment or disguise of the true nature, origin, location, location, movement, nationality of the proceeds of crime, knowing (aware) that they have been obtained by criminal means;
- 3) acquisition of the proceeds of crime by another person by ownership, possession or use, if at the time of the occurrence of this right it is known (with knowledge) that these funds have been acquired criminally.

Subject to the regulatory enactments in force in Latvia, if money laundering activities are detected, a person shall be held criminally liable.

## **3 Role of supervisory authorities in preventing and combating money laundering**

### **3.1 Role and performance of Financial Intelligence Service**

The FIS is an independent institution under the supervision of the Cabinet of Ministers, which is the leading and supervising institution in the prevention of money laundering. Its main objective is to carry out activities to prevent the the Latvian financial system from being used for money laundering, financing of terrorism and proliferation. The main task of the FIS is to collect and analyse financial data when reports of suspicious transactions are received, so that further information received can be forwarded to the relevant law enforcement agencies for the investigation of money laundering, terrorism and proliferation financing cases (FIS). In accordance with the Prevention Law, the FIS has the right to issue an order on the freezing of funds to the subject of the law or the manager of the state information system, if there is a reasonable suspicion that a criminal offence is taking place or has been committed, including money laundering, financing of terrorism and proliferation, or attempts at these criminal offences.<sup>38</sup>

Since 1999, CS has been a member of the *Egmont* Group of International Financial Investigation Teams. In total, *Egmont* Group currently comprises 159 financial intelligence units from around the world, and the number of its members is growing every year. Membership of the *Egmont* Group enables the CS to communicate and exchange information with all members of the group through a secure and protected information exchange channel, which is also actively used by the service, as one of the most important functions of the service's international cooperation is the preparation of replies to analogous

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<sup>38</sup> Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing. Latvijas Vēstnesis No. 116, 30.07.2008.

requests from foreign services, as well as the preparation of CS requests to foreign services. In 2018, the CS received 644 requests from foreign colleagues from a total of 57 national services, while 443 requests for information were sent to 56 national services. It should be noted that, the number of requests sent in 2018 is the highest in the history of the service.

In 2018, the CS has identified a strategic move towards information technology-based information analysis, which ensures the ability of the CS to perform operational and strategic message analysis by automating manual work. In 2018, the CS, as the central PMLFTP prevention authority, developed an innovative solution for the pseudonymised processing of data that allows any pre-trial investigation authority to obtain information from CS without disclosing the names of persons of interest or their account numbers. The same applies to the previously developed Simplified Client Research Detection Tool (found on the CS website).<sup>39</sup>

In order to promote the activities of the FIS and coordinate its cooperation with investigative bodies, the prosecutor's office, the court and the subjects of this Law, the FIS Advisory Council has been established.

In 2020, the FIS received 4833 suspicious transaction reports. Of these, 11 materials prepared by the FIS were sent to the Financial Police Board, 209 to the Economics Crime Enforcement Authority (hereinafter – ENAP), 10 to the Corruption Prevention and Combating Bureau (hereinafter – KNAB). In 2021, the FIS received 5 729 suspicious transaction reports. 8 materials prepared by FIS were sent to the Financial Police Board, 166 – ENAP, 10 – KNAB. The aforementioned materials have been prepared and handed over in accordance with Section 55, Paragraph one of the Prevention Law. In 2020, the FIS has produced material on transaction schemes with a large number of stakeholders

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<sup>39</sup> <http://CS.gov.lv/index.php/methodicalmaterials/zinosanas-system>

(20–50 and more legal and natural persons). Large sums of money (EUR 1 million and more) are involved in these business schemes in 20 cases, in 2021 – in 31 cases. In 2020, the FIS issued 440 freezing orders for a total amount of EUR 429 410 000, while in 2021 it issued 363 freezing orders for an amount of EUR 209 634 000.<sup>40</sup>

### **3.2 Role and performance of Financial and Capital Market Commission**

The FCMC is a fully autonomous public institution that regulates and supervises the activities of Latvian credit institutions and financial institutions, private pension funds, financial instrument market participants, and other financial structures. The objective of the Authority shall be to take care of the public interest by regulating and supervising the activities of financial and capital market members, promoting the protection of the interests of investors and depositors, as well as the development and sound functioning of the financial and capital market<sup>41</sup>.

The task of the FCMC is to reduce the possibility of using the Latvian financial system for money laundering, as well as to act purposefully in order to preserve and enhance the reputation of the Latvian financial system. The FCMC is constantly improving and developing procedures for the supervision and supervision of financial and capital market participants in accordance with international standards, EU directives and good practice requirements. The FCMC controls the internal control system of financial and capital market

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<sup>40</sup> Ministry of the Interior 2021. *New reporting system for submitting suspicious transaction reports and threshold declarations to FIS.* <https://www.iem.gov.lv/en/jaunums/jauna-zinosanas-sistem-aizdomigu-darijumu-zinumu-un-slieksna-deklaraciju-iesniegsanai-FIS>

<sup>41</sup> Financial and Capital Market Commission. <https://www.fktk.lv/par-mums/>



participants in order to prevent the possibility of using the Latvian financial system for money laundering.<sup>42</sup>

The last loudest decision taken by the FCMC according to the news published on the website of the institution – “taking care of the stability of the Latvian financial sector and the protection of the interests of the bank's customers, the FCMC Council on 12 December at an emergency meeting has taken a decision to suspend the provision of financial services to the Baltic International Bank SE. The FCMC has recognised Baltic International Bank SE as a failing or *likely to fail financial institution and has decided not to carry out the resolution of Baltic International Bank SE, i.e. without taking measures to stabilise the bank's operations.*”

### **3.3 Role and actual activities of credit and financial institution**

The EU-wide minimum requirements for AML (*Anti Money Laundering*) are the same, but there is a question of how they are interpreted and applied in Latvia and other EU Member States. According to the author, until 2016 Latvia had a too liberal attitude towards non-resident money and the regulator was not critical enough, but at the moment it is quite the opposite – exaggerated demands are made.

Given that financial and credit institutions, mainly banks, are used as a key tool in the implementation of various money laundering schemes. The regulatory framework in force in Latvia (mainly the Prevention Law) not only imposes a number of strict conditions on institutions regarding the verification of existing and potential customers, but also grants a number of rights that the institution exercises in carrying out the said inspections. Financial institutions

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<sup>42</sup> Financial and Capital Market Commission. <https://www.fktk.lv/klientu-aisardziba/noziedzigi-iegutu-lidzeklu-legalizacija-noversana/>

and credit institutions are required by law to adhere strictly to the so-called “*Know Your Customer*” principle. In order to understand who its clients are, for what specific purposes the clients use or want to use the services, it is necessary to understand the economic essence of the transactions carried out by the clients, as well as in certain cases – to find out the origin of the clients' funds and ascertain its legitimacy. Such a regulatory framework with regard to the obligation for institutions to carry out checks on their customers stems from the EU Directive No.2015/849 aimed at addressing and limiting money laundering and terrorist financing.<sup>43</sup>

In accordance with the requirements of the law, if a suspicious transaction is detected or it is suspected that certain funds have been directly or indirectly obtained as a result of a criminal offence, as well as in cases where false information is provided, the institution is obliged to report the aforementioned money laundering prevention service – FIS<sup>44</sup>. The procedure for reporting by institutions to the FIS is laid down in Cabinet Regulation 17.8.2021.No. 550 “Rules on the procedure and content of suspicious transaction reports and threshold declarations”, which entered into force on 1 October 2021<sup>45</sup>.

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<sup>43</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Regulation (EU) No 684/2012 and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance). Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>

<sup>44</sup> Neiman, L. 2022. Money laundering trends. *Forbes Latvija*. <https://forbesbaltics.com/lv/view/writing/noziedzigi-iegutu-lidzeklu-legalizācijas-tends>

<sup>45</sup> Cabinet of Ministers Regulation No. 665 550 “Provisions concerning the procedure and content of suspicious transaction reports and threshold declarations”. Latvijas Vēstnesis No. 159, 19.08.2021.

On 4 July 2018, at the plenary session of the *Moneyval* Committee of the Council of Europe, the 5th round report on the effectiveness of the Latvian system for the prevention of money laundering and terrorism was approved and published on 23 August 2018. The evaluation of *Moneyval* Round 5 is based on an evaluation of the effectiveness of the money laundering and terrorist financing system based on 11 indicators. The plan was structured according to the internationally recognised methodology of the Financial Action Task Force (FATF) and its lines of action are consistent with the performance indicators of the *Moneyval* rating system<sup>11</sup>, with the following key priorities:

- 1) strengthening risk-based supervision and implementation of preventive measures, including ABLV Bank controlled, transparent and professional liquidation process management;
- 2) effective exchange of information to facilitate investigations, harmonisation of approaches and guidelines;
- 3) the provision of adequate human resources to supervisory, controlling and law enforcement agencies by increasing their analytical capacity and capacity to act;
- 4) implementation of information technology solutions for timely and efficient data management;
- 5) improving the targeted system of financial sanctions by developing a common understanding among partners of the system and the need for its functioning.<sup>46</sup>

In order to ensure the stability of the Latvian financial sector and protect the interests of the bank's clients, the FCMC Council at an extraordinary meeting held on 12 December 2022, adopted a decision to suspend the provision of

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<sup>46</sup> Cabinet of Ministers Regulation No. 665 550 "Provisions concerning the procedure and content of suspicious transaction reports and threshold declarations". Latvijas Vēstnesis No. 159, 19.08.2021.

financial services to Baltic International Bank SE. The FCMC has recognised Baltic International Bank SE as a failing or *likely to fail financial institution and has decided not to carry out the resolution of Baltic International Bank SE*, i.e. without taking measures to stabilise the bank's operations. The FCMC has based its decision to recognise “Baltic International Bank” SE as a financial institution that is or will be in financial difficulties on the fact that the bank has not been able to ensure the implementation of a viable strategy for a long time. The previous business strategy does not correspond to the bank's capabilities and is not feasible, therefore, the bank has not provided a profitable business model for a long time. The Bank also has serious internal governance weaknesses, including in the area of money laundering and the prevention of terrorism and proliferation financing. Despite the FCMC’s efforts to achieve improvements in these areas, the bank has failed to ensure that its activities comply with the requirements of the laws and regulations governing the activities of credit institutions, and it is continuing the existing trend – the bank is operating at a loss, is unable to return to profitability, does not have an adequate internal control system and a stable vision for the future.<sup>47</sup>

The Ombudsman has also addressed the problem of access to financial services, pointing out that the freedom of choice of credit institutions and their potential or existing clients is usually not balanced, since if a credit institution refuses to enter into or continue a business relationship with a person without

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<sup>47</sup> Finanšu un kapitāla tirgus komisija. *Suspension of financial services: the Financial and Capital Market Commission suspends the provision of financial services to Baltic International Bank SE*. <https://www.fktk.lv/jaunumi/fktk-aptur-finansu-pakervice-devsanu-baltic-international-bank-se/>

explanation, other credit institutions of a similar business profile will usually also refuse to provide services to a particular person, which, in turn, leads to the fact that a person does not have access to the necessary financial services on reasonable terms.<sup>48</sup>

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<sup>48</sup> Law Officer of the Republic of Latvia. 26.01.2021. *Is there a problem of retail access to financial services due to the requirements of credit institutions?* <https://www.tiesibsargs.lv/news/lv/vai-pastav-problema-ar-privatperson-piekluvi-finansu-pakalpojumi-sakara-ar-kreditiestazu-prasibam>

## **4 Problem of proof in fight against money laundering**

### **4.1 Evidence in criminal proceedings**

Article 123 of the CPL stipulates that evidence is the act of a person involved in criminal proceedings, in the form of substantiation of the existence or absence of facts included in the subject-matter of evidence by means of evidence<sup>49</sup>. It follows from the foregoing that the evidence as a criminal procedural act includes three concurrent aspects: (1) the person who carries out the act; (2) the content of the act itself; and (3) the legal means used therein.

ARTICLE 124 of the CPL defines what is the object of proof, providing that:

- (1) The object of proof is a set of all circumstances to be proved in the course of criminal proceedings and related facts and ancillary facts.
- (2) The existence or non-existence of the composition of a criminal offence shall be proved in criminal proceedings, as well as other circumstances provided for in the Criminal Law and this Law, which play a role in the fair regulation of the specific criminal legal relations.
- (3) Related facts are not circumstances to be proved in criminal proceedings, but are related to them and give grounds to draw a conclusion regarding the circumstances to be proved.
- (4) The supporting facts shall substantiate the reliability or unreliability of any other evidence, as well as the likelihood or impossibility of using it in proving.

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<sup>49</sup> Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 74 (3232), 11.05.2005.

- (5) Circumstances included in the object of proof shall be deemed to have been proved if any reasonable doubts regarding their existence or absence have been excluded during the course of the proof.
- (6) In criminal proceedings and proceedings regarding criminally acquired property, the circumstances included in the object of proof in relation to the criminal origin of the property shall be considered to be proven if there are grounds to recognise in the course of evidence that the property is likely to have a criminal rather than legal origin.
- (7) In order to prove the laundering of the proceeds of crime, it is not necessary to prove from which specific criminal offence funds have been obtained.<sup>50</sup>

This article addresses issues covered by the theory of proof, such as the subject matter of evidence and the standard of proof (or level of evidence, level of evidence)<sup>51</sup>. The circumstances (facts) to be proved *in* criminal proceedings may be separated from others due to their particular importance in achieving the purpose of criminal proceedings – fair regulation of criminal legal relations. These are the facts on which the final criminal and criminal procedural solution of the case depends directly<sup>52</sup>. The abovementioned article states that the group of facts to be proven in criminal proceedings includes: 1) the composition of the criminal offence; 2) other facts referred to in the CL and the CPL, upon which

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<sup>50</sup> Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 74 (3232), 11.05.2005.

<sup>51</sup> Strada-Rosenberg, K. 2002. *Theory of Evidence in Criminal Proceedings. Vispārīgā daļa*. Riga: Turība University, 64–95. Meikališa, Ā., Strada-Rozenberga, K. 2020. *Criminal proceedings. Posts 2005–2010* This is the first time I've seen it in a long time. 120

<sup>52</sup> Meikališa, Ā., Strada-Rozenberga, K. 2020. *Kriminālprocess. Raksti 2005–2010*. This is the first time I've seen it in a long time. Meikališa, Ā. Strada-Rozenberga K. 2017. *The time of change in criminal proceedings continues – amendments of 2017*. Name of lawyer. (43)

the fair regulation of criminal legal relations depends. In this way, the concept of so-called “fillable”, the content of which can be determined in each specific criminal proceeding, has been used to characterise this group of facts. This approach is to be welcomed as it is suited to the changing circumstances of the practice and to the different situations of the practice.

Section 127 of the Criminal Procedure Law defines evidence by stating that:

- (1) Evidence in criminal proceedings is any information acquired in accordance with the procedures laid down in law and consolidated in a specified procedural form regarding facts which, within the scope of competence of the persons involved in criminal proceedings, are used by the persons involved in the criminal proceedings to substantiate the existence or absence of the circumstances included in the object of evidence.

The first paragraph of that article contains a definition of evidence, which has three aspects: (1) the function of the evidence; (2) the content of the evidence; and (3) the distinction between the terms “evidence” and “means of proof”.<sup>53</sup>

Article 128 OF the CPL, on the other hand, focuses on assessing the reliability of evidence, providing that: “The reliability of evidence is the degree to which a piece of information is established to be true. The reliability of the factual information to be used in evidence shall be assessed by examining all facts obtained during criminal proceedings or information about facts in general

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<sup>53</sup> Strada-Rosenberg, K. 2002. *Theory of Evidence in Criminal Proceedings. Vispārīgā daļa*. Riga: Turība University, 164–174. Meikališa Ā., Strada-Rozenberga K. *Criminal process. Posts 2005-2010* Riga: Latvijas Vēstnesis, 2010, 120.121



and in relation to each other. None of the evidence has a predetermined higher degree of credibility than the rest of the evidence. “<sup>54</sup>

The credibility of evidence is one of the features or characteristics of evidence relating to the content of evidence and, according to the logical order of evaluation of the features of evidence, should be evaluated as the third – the last.

Article 128 of the CPL clarifies that the credibility of evidence is the degree to which the information is established to be true. In other words, only a proof that we are sure of can be used as evidence. False information is unreliable and cannot be used as evidence. In assessing the credibility of the alleged evidence, two essential prerequisites must be taken into account: (1) an assessment of the credibility of the information only in conjunction with other information; and (2) the non-assignment of a predetermined higher degree of credibility to none of the evidence.

Article 129 of the CPL defines the eligibility of evidence. The eligibility of evidence is one of the attributes (properties) of evidence. It refers to the content of the evidence and is evaluated first in the logical order of evaluation of the evidence. It is recognised that eligibility is provable both directly and indirectly. Thus, all the evidence legally used to prove one of the facts falling within the object of proof shall be deemed to be eligible. This fact may be both a fact to be proved in criminal proceedings, and a related fact, as well as an ancillary fact. The evidence shall confirm the fact to be proved in criminal proceedings “directly”, if it is to be used in its proving “without intermediate steps”, that is, in proving without using related facts. The evidence refers to demonstrable circumstances “implicitly”, using related facts from which conclusions can be drawn. Evidence having legal value shall be deemed to be

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<sup>54</sup> Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 74 (3232), 11.05.2005.

eligible. It is the determination of legal imputability that is important in order to exclude from the proceedings anything which is not legally covered by it. Only the objective relationship of the evidence with the subject-matter of the evidence is relevant for the assessment of the appropriateness of the evidence.

ARTICLE 130 of the CPL refers to admissibility of evidence:

- (1) Information regarding facts obtained during criminal proceedings shall be admissible as evidence, if such information has been acquired and procedurally strengthened in accordance with the procedures laid down in this Law.
- (2) Such information regarding facts which have been acquired: 1) by using violence, threats, blackmail, deceit or coercion; 2) in a procedural action performed by a person who, in accordance with this Law, had no right to perform it; 3) by allowing the violations specifically indicated in this Law, which preclude the use of the specific evidence; 4) in violation of the basic principles of criminal proceedings.
- (3) Information regarding facts, which have been acquired by allowing other procedural violations, shall be considered to be limited permissible and may be used in evidence only if the procedural violations allowed are immaterial or can be eliminated, they could not affect the truthfulness of the acquired information or if their reliability is confirmed by other information obtained in the proceedings.
- (4) Evidence obtained in a situation of a conflict of interest shall be admissible only if the prosecutor is able to prove that the conflict of

interest has not affected the objective course of criminal proceedings.<sup>55</sup>

The admissibility of evidence is one of the attributes of evidence, which should be evaluated in the logical order of its evaluation as a second one – after the attribute of credibility and before the attribute of credibility. It is essential that this element of evidence – admissibility of evidence – be limited to the evidence used by the defence. In describing the admissibility requirements, two aspects should be indicated: 1) the information has been obtained in accordance with the procedures laid down in the CPL; 2) the information has been process-strengthened in accordance with the PROCEDURES laid down in the CPL. Thus, Article 130 of the Criminal Procedure Law contains an indication that the information to be used in criminal proceedings can only be obtained and strengthened in accordance with the procedures laid down in the Criminal Procedure Law. Thus, in order to be used as evidence, the information must come from a legal source. The legislator provides for a limited range of actual news sources arising from the types of evidence allowed by law. Each type of evidence has its own possible source, for example, testimony – the person testifying, expert opinion – the expert and the likewise. When assessing the admissibility criterion, it is essential to verify whether the information has been obtained from the person in an appropriate capacity, for example, whether the person has not been interrogated as a witness, but is in fact in a situation where he or she should be granted such a status which provides for the right of defence.

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<sup>55</sup> Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 74 (3232), 11.05.2005.

## **4.2 Problems of evaluation and provision of evidence in criminal proceedings of money laundering**

The explanatory dictionary of criminal procedural terms interprets the term “assessment of evidence” as follows – to assess evidence means to reveal its value and significance in a criminal case. The value and significance of the evidence is revealed in the way of thinking and judgments of the person directing the proceedings. The assessment of evidence takes place at all stages of the criminal proceedings. The law has laid down general requirements for the evaluation of evidence, which are uniform at all stages of the proceedings. Evidence assessment is the process of thinking and judging of the persons directing the proceedings, in which they are assessed freely and according to internal convictions based on comprehensively, completely and objectively examined circumstances of the case in their entirety, based on the law and legal consciousness, without determining a force predetermined for any evidence.

According to Section 5, Paragraph one of the Law on the Prevention of Money Laundering, Terrorism and Proliferation Financing (hereinafter – the PMLFTP Law), money laundering is the following activities:

- 1) in accordance with Section 5, Paragraph one, Clause 1 of the PMLFTP Law – conversion of the proceeds of crime into other values (for example, exchange of cash in another currency, conversion of cash into inheritance, conversion of property into financial assets), change of their location (for example, transfer of financial assets between their accounts, safe deposit), change of ownership (for example, registration of the proceeds of crime in the name of a third party), if these actions are committed with the intention to conceal or disguise the criminal origin of the funds

(create the impression that the funds are legal or any action with these funds as with legal ones) or to help another person involved in the (predicate) criminal offence to avoid legal liability;

- 2) pursuant to Section 5, Paragraph one, Clause 2 of the PMLFTP Law – concealment or disguise of the true nature, origin, location, location, movement, affiliation of the proceeds of crime (any action that makes it difficult to identify the original origin of the proceeds of crime or creates the impression of legal origin), knowing that these proceeds have been obtained criminally;
- 3) in accordance with Section 5, Paragraph one, Clause 3 of the PMLFTP Law – acquisition of the proceeds of crime of another person into ownership, possession or use, or their realisation, knowing that these funds have been acquired criminally.

The perpetrator of the criminal acts provided for in Section 5, Paragraph one, Clauses 1 and 2 of the NILLTFPN Law may be both a person who has committed the predicate criminal offence himself and further performs the laundering of these funds (in the theory of criminal law such a form of laundering is called self-legalisation – self-laundering), as well as a person who performs the laundering of such funds acquired as a result of the criminal offence of another person (in the theory of criminal law such a form of laundering is called *third-party laundering*, including a person who performs the so-called “professional” legalisation.

In practice, both in the FIS reports and in the decisions of the person directing the proceedings in the transaction analysis, reference is made to one of the points of Section 5, Paragraph one of the PMLFTP Law, but the person directing the proceedings has not sufficiently proved the described actions in the investigation, proving the listed link to the crime. The person directing the proceedings must have confidence in their activities and in the correctness of the

results of the investigation. In court, practitioners, based on professional experience and knowledge, are aware when the person directing the proceedings, the prosecutor and also one of the judges is not fully convinced of their assumptions and conclusions.

In 2022, the question arose whether the opinion, report, statement, reference of experts, financial specialist (analyst) is evidence in criminal proceedings. In another category of case, the court noted that: “An expert's opinion is not more reliable than other evidence. The reliability of any evidence, including expert opinion, shall be verified in accordance with the requirements of the second paragraph of Article 128 of the CPL – by examining all facts obtained during criminal proceedings or information about facts in general and in relation to each other “.<sup>56</sup>

### **4.3 Problems of evaluation and provision of evidence in reverse proceedings**

The concept of “evidence” is not uniform in the science of criminal procedure. Given that it is one of the central concepts in the theory of evidence, its understanding is closely related to, and cannot be viewed in isolation from, the understanding and handling of evidence itself. In other words, the understanding of evidence depends on the understanding of evidence as a process, since it is the evidence, in particular, that “works” and is used in the process of evidence. Since the understanding of the process of evidence itself is different, the definition of the concept of evidence also differs in science<sup>57</sup>. It

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<sup>56</sup> Decision of the Department of Criminal Cases of the Senate of 20 January 2022 in case 11380033718, SKK-22/2022. From: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/kriminallietu-departaments/hronologiska-seciba>

<sup>57</sup> Meikališa, Ā., Strada, K. 2000. *Kriminālprocesuālo terminu skaidrojošā vārdnīca*. Rīga: DIGA, 187.

should be noted that such a controversy in the understanding of evidence occurs only in the science of criminal procedure, since the term “evidence” is practically the only legal term included in the theory of evidence, or a term the explanation of which is given in the legislation.<sup>58</sup>

The reverse process of proof in criminal proceedings is understood as a mechanism whereby the person directing the proceedings does not have to prove that the funds are of illegal origin (the subjective assumption of the possible illegal origin of the funds by the person directing the proceedings is sufficient), while the person must prove that the funds are of legal origin by submitting appropriate evidence.

As indicated by the Department of Criminal Cases of the Supreme Court in its decision of 4 October 2018 in case No. 11520035214, the circumstances included in the object of the evidence shall be deemed to be proved if, in the course of the evidence, any reasonable doubt as to their existence or non-existence is excluded. The circumstances included in the object of evidence shall be proved with admissible, applicable, reliable and sufficient evidence which has been obtained, verified and evaluated in accordance with the procedures laid down in the Criminal Procedure Law. The CPL does not provide for any way of evaluating evidence – objective evaluation or establishing objective truth<sup>59</sup>. It follows from such a finding that the Supreme Court notes another characteristic of evidence – sufficiency.

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<sup>58</sup> Meikališa, Ā., Strada, K. 2000. *Kriminālprocesuālo terminu skaidrojošā vārdnīca*. Rīga: DIGA, 187

<sup>59</sup> Decision of the Department of Criminal Cases of the Supreme Court of 4 October 2018 in case No. 11520035214. From: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/kriminallietu-departaments/klasifikators-pec-lietu-kategoriju/kriminalprocesa-likums/9nodala-pieradisana-un-pieradijumi-123-137pant>

Sufficiency means that the evidence eliminates any reasonable doubt as to the existence or non-existence of the facts in the subject-matter of the evidence. This characteristic may not apply to each individual piece of evidence, but to the body of evidence as a whole. For example, a witness's testimony that he or she has seen a suspect commit a criminal offence may not be sufficient to prove the suspect's guilt, but if this testimony is also confirmed by other evidence, such as fingerprints left by the suspect at the crime scene and stolen property found in his or her vicinity, then the totality of the evidence is sufficient for the court to fairly resolve the criminal relationship in this trial.

If none of the parties has requested the examination of evidence in the case, the court, without examining the evidence at the court hearing, must be satisfied that it meets all the above requirements and that the decision not to examine it will not affect the fair settlement of the criminal legal relations. It should also be emphasised that the ECtHR, in its decisions concerning violations of Article 6 of the European Convention on Human Rights, states that the courts must carefully examine and evaluate the evidence and arguments submitted by the parties, objectively addressing the question of the relevance of this evidence to the case. The evidence must be examined by the courts responsible for establishing the facts. Evidence must be evaluated in open court proceedings in the presence of the accused, taking into account the principle of competition.<sup>60</sup>

In this chapter, the author wishes to point out the most important problem of evidence in proceedings regarding criminal property – the Supreme Court does not consider categories of criminal money laundering cases, therefore, the standards of evidence established in the case-law in cases of specific categories are not consolidated, and their observance does not come to the Supreme Court's

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<sup>60</sup> Брянская, Е. В. 2014. Исследование доказательств по уголовным делам в суде первой инстанции. Сибирский юридический вестник п.3 (66), 85–91.



assessment, because the final ruling is already in the second instance of courts – in a regional court.

The ECtHR has held that the application of the standard of proof “beyond reasonable doubt” is not necessary when the property is linked to a criminal offence; on the contrary, the overwhelming weight of the evidence and the overwhelming probability of the illicit origin of the property, as well as the inability of the owner to prove otherwise, are sufficient to confiscate the property. According to the ECtHR, the confiscated property was linked with a criminal offence in a specific case, and therefore, the confiscation is also to be applied to the assets of family members and close relatives, unless the contrary – the lawfulness of the origin of the property – is proved. This type of confiscation, according to the ECtHR, has a twofold nature: compensatory to compensate for the damage caused and preventive, so that the use of property of criminal origin does not give rise to any advantage against the public interest in combating corruption.<sup>61</sup>

Looking at the judgement of the ECtHR, it follows that the ECtHR has held that the application of such a standard of proof for the recognition of the criminal origin of property, which does not require the exclusion of any reasonable doubt, but considers that the reasonable suspicion of the person directing the proceedings as to the origin of the property is sufficient, does not constitute a violation of human rights. Consequently, ECtHR is of the opinion that a lower standard of proof - overwhelming evidence - or even a convincing probability of the illegal origin of the property should be applied when deciding on the criminal origin and confiscation of the property, thus restricting a person's

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<sup>61</sup> Judgment of the European Court of Human Rights of 26 June 2018 in *Telbis and Viziteu v. Romania*. From: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-184058%22%5D%7D>

right to property. Likewise, the inability of the owner to prove otherwise is sufficient to seize the property.

Thus, in proceedings concerning the proceeds of crime, both at first and at second and last instance, it is necessary to take active action and use all the possibilities offered by the legal framework and exhaust all possibilities for submitting evidence and proving the lawful origin of the property in the national proceedings. The question of how much evidence is sufficient to prove the lawful origin of the property has not yet lost its relevance.

## **5 Improvement of property issues in criminal proceedings in relation to proceeds of crime**

### **5.1 Practical significance of providing information on legality of origin of property in criminal proceedings**

On 24 May 2022, on the basis of Section 70.11, Paragraphs one and four of the CL, Section 358, Paragraph one, Section 630, Paragraph one, Section 631, Paragraph one of the CL, the Court of Economic Affairs decided to recognise the seized funds of a person as criminally acquired property, confiscate them and transfer them to the state budget.<sup>62</sup>

In the view of the person directing the proceedings (the investigator), the totality of the evidence leads to the conclusion that the seized funds were obtained from transactions whose economic justification is unclear. In addition, there are a number of inconsistencies between the terms of the transactions and the actual execution. Evidence provided by a person is not sufficient to dispel doubts as to the lawful origin of the funds seized. In the investigator's opinion, the evidence obtained in criminal proceedings provides grounds to believe that a broad, international scheme has been established in which the owner of the damaged property has been involved, the accounts of which have been concealed and disguised of funds of unknown origin, changing their location, with a view to legalising the funds obtained as a result of an unidentified criminal offence. The totality of the evidence obtained during the investigation leads to the conclusion that the funds seized are likely to be of criminal origin.

The court has indicated in the judgement that it finds that the decision of the person directing the proceedings contains information about the facts justifying the criminal origin of the property, as well as indicates what materials

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<sup>62</sup> Decision of the Court of Economic Affairs of 24 May 2022 in criminal proceedings No. 11905002520, not published.

from the criminal proceedings under investigation have been distributed in the proceedings regarding the criminal property. The case contains *prima facie* evidence to support the assumptions of the person directing the proceedings regarding the criminal origin of the property. The court also finds that the investigator's decision in accordance with Section 627, Paragraph two of the CPL specifies the person who is related to a particular property, as well as specifies what action the person directing the proceedings proposes with the criminal property. The decision of the person directing the proceedings proposes to recognise the seized property as having been obtained criminally on the basis of the first paragraph of Article 70.11 of the CL.

The first paragraph of Article 70.11 of the CL stipulates that the property derived from crime is any economic benefit that has come into the possession or possession of a person directly or indirectly as a result of the commission of a criminal offence. The evidence submitted by the investigator has not proved that the property of the owner has been COMING as a result of the committing of a criminal offence, the case-file contains neither direct nor indirect evidence of such an investigator's presumption. It is incomprehensible from the content of the court decision what exactly evidence in the case, in the court's opinion, provides the basis for the presumption of the criminal origin of the property of the person directing the proceedings. General references of the investigator to the criminal proceedings in which an investigation is being conducted regarding the guilt of persons on the basis of the constituent elements of the criminal offence provided for in the third paragraph of Article 195 of the CL, from which the proceedings regarding the proceeds of crime are divided, and without specific reference to the role of the owner of the damaged property in the unlawful actions established in this criminal proceedings, are not sufficient to substantiate the presumption of the criminal origin of the funds.

In the ruling, the court referred to the sixth paragraph of Article 124 of the CPL and indicated that in proceedings regarding the property obtained through crime it is not necessary to prove beyond reasonable doubt the guilt of a person in a criminal offence or to establish the elements of the composition of a particular criminal offence, but to decide only on the possible criminal origin of the property. In order to be recognised as having been acquired criminally, evidence of the origin of the property must be such that the prevalence of probability is indicative of the criminal rather than legal origin of the property. The Court referred to the findings of the Constitutional Court in its judgment of 23 May 2017 in case No. 2016–13–01, in which it is indicated that in the process on the criminally acquired property the fault of the person is not ascertained, but a decision is made on the criminal origin of the property.<sup>63</sup>

Such a conclusion of the court cannot be accepted. The Court has misinterpreted the norms of the CPL, and in particular the sixth paragraph of Article 124, which provides that the circumstances relating to the criminal origin of property included in the proceedings regarding the subject-matter of proof of the proceeds of crime shall be deemed to have been proved if there are grounds for recognising in the course of proof that the property is likely to be of criminal rather than legal origin. The abovementioned norm of the CPL shall be interpreted in such a way that in order for property to be recognised as having been acquired criminally, it is necessary first and foremost, beyond reasonable doubt, to establish the existence of a criminal offence. On the other hand, the link between the offence concerned and the origin of the property must be such

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<sup>63</sup> Judgment of the Constitutional Court of 23 May 2017 in case No. 2016-13-01.  
From: [https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-13-01\\_Spriedums.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2016-13-01_Spriedums.pdf)

that the prevalence of evidence indicates that the property is of a criminal rather than legal origin.<sup>64</sup>

The court has indicated in the ruling that it finds that the cash flow in the affected property owner's account "A" consists of received payments from "Company A" and payments from the affected property owner's account "B". The balance of funds in this account has been arrested within the framework of criminal proceedings. Having assessed explanations and submitted documents of the person related to the property and his or her authorised representatives in conjunction with the materials of the distributed proceedings, the court concludes that the lawful origin of the seized funds has not been proven. The Court finds that the incoming cash flow in the affected property owner's account "B" consists mainly of payments received from six other undertakings.

Such a conclusion of the court cannot be accepted and has no legitimate basis. Similarly, the court has not explained what has been directly assessed in connection with the joint assessment in order to arrive at the conclusion that the funds are not of legitimate origin. In the course of the proceedings, the infringed owner of property and his representatives in the case have submitted reliable and in their opinion sufficient evidence that Company A and the infringed owner of property are not involved in any criminal offence and no conviction has been made against him for committing criminal offences. Similarly, the owner of the property and his representatives in the case have submitted evidence that Company A is operating and still carrying out economic activities. Similarly, the funds received in the "B" account have no connection with the commission of criminal offences, so that they could be recognised as having been acquired criminally, which the injured property owner has proved with the evidence presented in the case.

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<sup>64</sup> Decision of the Court of Economic Affairs of 13 June 2022 in criminal case No. 11112012217, not published.

The court has indicated in the decision that when examining the evidence provided by the owner of the damaged property and its representatives (trust agreement, lease agreements, witness testimony obtained from criminal proceedings terminated in Ukraine, expert-examination) and the explanations provided, the court finds circumstances regarding the non-compliance of the transfers made with the executed transaction documents, on the basis of which it concludes that all offshore companies are likely to form one chain of money laundering. The Court notes that it assessed the evidence submitted by the owner of the infringed property and its representative, and it follows directly from the expert opinion that the payments were based on contracts, but it was not assessed whether these contracts were actually concluded and performed. Similarly, the expert did not have access to the case materials of the distributed process, including the documents for opening accounts, from which it follows that separate contracts could not have been concluded at all on those specified dates. In view of the above, the documents submitted do not prove the lawful origin of the funds seized. The Court notes that the fact that the damaged owner of the property is well materially assured that he has no criminal record and that no criminal proceedings have been initiated against him in Ukraine or Israel and no investigation is taking place does not invalidate the court's conclusions regarding the movement of funds in his accounts under the guise of fictitious transactions, nor does it prove the legal origin of the funds. The conclusions of the court are also not rebutted by the fact that the owner of the property and other persons involved in the proceedings are not included in the sanctions register.

This conclusion of the court is also disputed because it is not supported by concrete evidence and arguments. The Court has not indicated what legitimate grounds there are for giving greater credibility to the assumptions of the person directing the proceedings than to the explanations and evidence of the owner of the infringed property and his representatives. It does not follow from

the content of the ruling why the allegations of the person directing the proceedings are credible and prove the criminal origin of the property, but the extensive evidence and explanations submitted by the owner of the damaged property indicate the criminal origin of the property and do not prove its legal origin. In the case-law of proceedings regarding criminally acquired property, the court has indicated that certain shortcomings in the transaction documents are not in themselves a reason to consider a transaction as fictitious. Therefore, the court must examine and consider all evidence and explanations together<sup>65</sup>. There is no sufficient indication in the case that the seized funds have a criminal origin, moreover, the owner of the property has provided a sufficiently large body of evidence proving that the owner of the property and members of his family own the property and they are leased and subleased. This information is confirmed and proved by the evidence submitted by the owner of the damaged property and its representatives (copies of the materials of the criminal proceedings terminated in Ukraine, the conclusion of the complex economic examination of courts, the submitted contracts). It is incomprehensible to justify the conclusion of the court that the transactions established in the proceedings have been documented, the transactions have not actually taken place (cash flow is missing). It is incomprehensible how the court could have assessed, verified and arrived at the conclusion that real transactions have not taken place in another jurisdiction if the infringed owner of the property has indicated the actual existence of the transactions in his explanations, which are proved by the evidence presented.

On 3 October 2022, amendments to the CPL entered into force on 3 November 2022, paragraph 1 of the second paragraph of Article 627 of the CPL being worded as follows: “information on the facts justifying the

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<sup>65</sup> Decision of the Court of Economic Affairs of 13 June 2022 in criminal case No. 11112012217, not published.



connection of the property with the criminal offence or the criminal origin of the property, as well as what case materials justify the presence of such information and are separated from the criminal case of the criminal offence under investigation” .

The fourth paragraph of Article 627 of the Civil Code is worded as follows: “The materials in the case of proceedings regarding the proceeds of crime shall be the secret of investigation. The materials referred to in the decision to initiate proceedings regarding the proceeds of crime, preventing the threat to the fundamental rights of the persons referred to in the evidence, ensuring the protection of public interests and not jeopardizing the achievement of the purpose of the criminal proceedings from which the materials are extracted, may be familiarized to the participants in the case. The person directing the proceedings shall warn in writing regarding non-disclosure of information in accordance with Section 396 of this Law.”; excluding SECTION 627, Paragraph five of the CPL.”<sup>66</sup>

This is not the only reason why judicial decisions are of poor quality and infringe the right to a fair trial. Quality case handling is based on time. The second paragraph of Section 629 of the Civil Code establishes the term of appointment of the court – within 10 days after receipt of the decision of the person directing the proceedings in the court<sup>67</sup>. In practice, it has been established that if the case is large and the underlying transactions (at least 100) need to be analysed, then, of course, a rhetorical question arises as to whether the decision will be of high quality and indeed every argument will be evaluated. In practice, unfortunately, the opposite is observed.

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<sup>66</sup> Amendments to the Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 204, 20.10.2022.

<sup>67</sup> Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 74 (3232), 11.05.2005.

After ambitious announcements only on 21 November 2019, amendments to the law were passed in the Saeima, where the fifth paragraph of Article 356 of the CPL was expressed in the following wording: “If the assumption is made that the property has been acquired criminally or is related to a criminal offence, the person directing the proceedings shall notify the person that this person may, within 45 days from the moment of notification, submit information regarding the legality of the origin of the property in question, as well as inform the person about the consequences of not submitting such information.”<sup>68</sup> As a result of these amendments, Article 125 of the CPL, entitled “Legal presumption of fact”, was amended by adding a third paragraph, stating that: “If the person involved in criminal proceedings is unable to reliably explain the origin of the property which has been the subject of the money laundering activities and the totality of the evidence will give the person directing the proceedings the basis for the presumption that the property is likely to have been obtained criminally, it will be considered to be proven.”<sup>69</sup> The amendments entered into force on 24 December 2019.

As stated in the annotation of the draft law, in 2017, the Saeima, in compliance with the requirements of 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, Recommendation 4 of the Financial Action Task Force (FATF) of the Intergovernmental Organisation “Confiscation and Interim Measures”, as well as several other sources of international law, amended Articles 124 and 126 and 356 of the Criminal Procedure Law with regard to the process for the recognition of property as having been acquired criminally by introducing the lowered

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<sup>68</sup> Amendments to the Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 248A, 10.12.2019.

<sup>69</sup> Ibid.

standard of proof “probability”<sup>70</sup> (draft law “Amendments to the Criminal Procedure Law” No. 630/Lp12). In order to strengthen the detection of money laundering and the prosecution of persons for money laundering (Article 195 of the CL and Article 314 of the CL), namely in order to create an effective mechanism for the detection of the fact of money laundering (the composition of the crime covered by Articles 195 and 314 of the CL), including in cases of “*stand alone*”, the draft law provides for the addition of a third paragraph to Article 125 (Legal Presumption) of the CPL, which defines the legal presumption of new facts. In particular, subject to the fulfilment of essential prerequisites, the person directing the proceedings has collected evidence (*prima facie* evidence) which is sufficient to raise a suspicion or to hold a person criminally liable for money laundering (Article 195 of the CL and Article 314 of the CL) and at the same time has proved the criminal origin of the property (including the proceeds of crime) and the person does not reliably explain or substantiate the legitimate origin of the financial or other property, is considered (presumed) to have proven that the financial or other property is likely to be of criminal origin.

The legal presumption of the new fact applies only to persons who are suspected and subsequently held criminally liable for money laundering. In addition, the purpose of the draft law is also to apply this presumption in cases where a person was initially not recognised as a suspect, but during criminal prosecution the person directing the proceedings (prosecutor) has collected sufficient evidence for such person to be held criminally liable – “If a person is suspected or accused...”.

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<sup>70</sup> Annotation of the draft law “Amendments to the Criminal Procedure Law”. <https://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webSasaiste?OpenView&restricttocategory=630/Lp12>

The norm included in the draft law (Section 125, Paragraph three of the CPL) limits the burden of proof of a person to the property – to explain the lawful origin of the property, that is, in what way a person has been convinced that he or she has received property lawfully acquired in possession, moreover, as an obligation on the part of the state (investigator, prosecutor), the existence of preliminary evidence is also provided for in order to ensure the initiation of a suspicion or prosecution. It is provided that a person who is subject to the effect of this provision may fully exercise his right of defence, he is aware of the suspicions raised or the scope of the charge.

The fifth paragraph of Section 356 of the CPL is specified by a draft law, stating that a person must prove the lawful origin of the property, as well as such an obligation is enforceable within a specified time period, but for failure to fulfil these obligations a person loses the right to receive compensation for the damage caused to him<sup>71</sup>.

In this respect, it can be argued that notices sent in accordance with the procedure laid down in the fifth paragraph of Article 356 of the CPL, by which the persons directing the proceedings are invited to submit within 45 days information on the legality of the origin of the property in question, in most cases do not contain sufficient information to enable the person to fulfil his or her burden of proof effectively and without special difficulties. Therefore, it seems that the assumption contained in the annotation of the amendments to the CPL adopted on 22 June 2017 is too simplistic: if the origin of the property is lawful, its owner should have no difficulty proving it.

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<sup>71</sup> Annotation of the draft law “Amendments to the Criminal Procedure Law”. <http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webAssociation?OpenView&res triccategory=630/Lp12>

There is still no common case-law on the equitable settlement of property issues. In order to develop a common understanding of criminal offences among investigators, prosecutors and courts, the FIS developed methodological material “Typologies and features of money laundering”, which indicates that according to Article 124 (7) of the CPL, money laundering investigations can be conducted independently. In order to prove the laundering of the proceeds of crime, it is not necessary to prove from which specific criminal offence funds have been obtained. This means that the criminal offence provided for in Article 195 of the CL may be investigated “*stand-alone*” or – autonomous or independent money laundering on the basis of indirect evidence indicating the criminal origin of the property, typology, and signs of money laundering, as well as the person's inability to prove the lawful origin of the property.<sup>72</sup>

Article 126 (3) of the CPL provides that if a person involved in criminal proceedings claims that the property is not considered to have been acquired criminally, the obligation to prove the legality of the origin of the property in question rests with that person. If a person fails to provide reliable information on the lawfulness of the origin of the property within the specified time period, such person shall be deprived of the opportunity to receive compensation for the damage caused to him in connection with the restrictions on the handling of such property specified in criminal proceedings<sup>73</sup>. Article 125 of the Criminal Procedure Law (legal presumption of fact) stipulates that it is considered to be proved that the property with which the legalisation activities have been carried out has been acquired criminally, if the person involved in criminal proceedings

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<sup>72</sup> Financial Intelligence Service 2020 *Typologies and features of money laundering: methodological material*. [https://www.FIS.gov.lv/uploads/files/Dokumenti/Vadl%C4%ABnijas%2C%20rekomend%C4%81cijas/FIS\\_Tipologiju\\_materials\\_2020.pdf](https://www.FIS.gov.lv/uploads/files/Dokumenti/Vadl%C4%ABnijas%2C%20rekomend%C4%81cijas/FIS_Tipologiju_materials_2020.pdf)

<sup>73</sup> Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 74 (3232), 11.05.2005.

is unable to reliably explain the legal origin of the property in question and if a set of evidence provides the person directing the proceedings with a basis for the presumption that the property is likely to have a criminal origin.<sup>74</sup>

Until the amendments to the law, the person directing the proceedings, the prosecutor and the court examining the case were allowed to familiarise themselves with the materials in support of Section 627 (4) and (5) of the CPL, while the other participants in the case could familiarise themselves with the materials in the case in the amount determined by the person directing the proceedings. Consequently, the decision of the person directing the proceedings regarding the rejection of the request for acquaintance with the materials of the case may be appealed to the district (city) court, which examines the proceedings regarding the property obtained criminally. The aforementioned procedure was determined by amendments to THE CPL, which entered into force on 1 September 2018 in connection with the Constitutional Court's judgment of 23 May 2017 in case No. 2016-13-01, which entered into force on 25 May 2017 and by which Paragraph five of Article 629 of the CPL, insofar as the court cannot re-evaluate the decision of the person directing the proceedings regarding the right to get acquainted with the lawfulness and validity of the proceedings regarding the materials of the case of criminal assets, was declared incompatible with the first sentence of Article 92 of the Satversme.

In accordance with Section 627, Paragraph two, Clause 1 of the Civil Procedure Law, the person directing the proceedings shall further specify in the decision to initiate proceedings regarding the proceeds of crime and to transfer the materials regarding the proceeds of crime to the court for deciding what materials of the case substantiate the information regarding the existence of the property's relationship with the criminal offence or the criminal origin of the

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<sup>74</sup> Criminal Procedure Law: Law of the Republic of Latvia. Latvijas Vēstnesis No. 74 (3232), 11.05.2005.

property and shall be separated from the criminal case regarding the criminal offence under investigation. It must be indicated which materials in the case substantiate the specific information on the origin of the property. Accordingly, in accordance with Paragraph four of the aforementioned Section, with the materials referred to in the decision to initiate proceedings regarding the proceeds of crime, ensuring the prevention of the threat to the fundamental rights of the persons referred to in the evidence, protection of public interests and without jeopardizing the achievement of the purpose of the criminal proceedings from which the materials are distributed, participants in the case may become acquainted. Thus, all the materials of the case are available to the participants in the case, which are transferred to the court, ensuring the achievement of the purpose of criminal proceedings, protection of fundamental rights of persons and public interests, for example, anonymizing the personal data of witnesses if necessary. It follows that the person directing the proceedings may, for objective reasons only, that is to say, because the interests referred to in that article are threatened, be deprived of access to certain documents in the file. In addition, the need to include such materials in the separate case must be carefully assessed, since in order to ensure the right of a person, including the owner of the infringed property, to a fair trial and equality of the parties, it is not permissible for the court to decide on the recognition of the property as having been acquired criminally on the basis of evidence that is not available to the parties. The right to equality of the parties in criminal matters means that each party should be able to examine and explain the comments and evidence submitted by the other party. However, irrespective of the method chosen to ensure compliance with this requirement within the national legal order, it must ensure that the other party

becomes aware of the explanations provided and that party is given a real opportunity to submit its explanations thereon.<sup>75</sup>

The amendments to Section 629 (4) of the CPL provided for a limitation of the time during which evidence must be submitted to the court in respect of the property. The amendments stipulate that the parties have the right to submit evidence only to the district (city) court. This will ensure that both the district (city) court and the regional court will assess the same evidence in the event of a complaint, ensuring a fair and impartial examination of the case. It should be noted that according to Section 626, Paragraph one, Clause 1 of the CPL, an investigator, with the consent of the supervising prosecutor or the prosecutor, has the right to separate from the criminal case the materials regarding the criminal property and to initiate proceedings if the totality of the evidence gives grounds to believe that the property removed or seized has been criminalised or associated with a criminal offence. Thus, evidence in the criminal case file must be collected until the process on the separation of the proceeds of crime. In accordance with Article 356 of the CPL, if it is presumed that property has been acquired criminally or is related to a criminal offence, the person directing the proceedings shall notify the person that such person may, within 45 days from the moment of notification, submit information on the legality of the origin of the property in question, as well as inform the person about the consequences of failure to submit such information. In addition, a person has the right to submit evidence of the origin of the property in the pre-trial proceedings even after the expiry of the aforementioned 45-day period, i.e. as long as the property has a valid attachment. The right to submit evidence after the transfer of the proceedings to the court is also retained until the district (city) court adopts one of the decisions specified in Section 630 of the CPL. Thus, it is also possible for

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<sup>75</sup> Judgment of the European Court of Human Rights of 28 August 1991 in *Brandstetter v. Austria*.



the owner of the property to submit evidence of the origin of the property in a timely manner until the examination of the case in the regional court. In view of the above, and in order to ensure the right to a fair trial, including an effective appeal against the decision on the proceeds of crime, it was necessary to limit the submission of new evidence to the district (city) court.

The amendments TO Article 630 of the CPL, supplemented by the fourth paragraph, provided for the addition of another basis for the termination of proceedings concerning the proceeds of crime. Pursuant to the first paragraph of Article 626 of the CPL, proceedings regarding criminal property shall be excluded from criminal proceedings only in cases where it is necessary to ensure timely resolution of property issues arising in criminal proceedings and interests of economy of proceedings, i.e. in cases where the criminal case is still in the stage of investigation or prosecution and it is not possible to direct it immediately to the court, but it is necessary to solve property issues as soon as possible, for example, if the period of imposition of arrest is approaching. However, there may be situations when a criminal case is referred to a court, but the proceedings regarding the criminal property have not yet been considered. Taking into account the purpose of the proceedings regarding criminally acquired property, there are no grounds to continue to examine this issue separately, because in this case the property issues are to be resolved by a final court ruling in a criminal case. Thus, it was necessary to provide that if the criminal case from which the materials were distributed was transferred to the court, the court would take a decision to terminate the proceedings on the criminal assets. At the same time, it should be noted that all the arrests imposed on the property continue in the criminal case from which the materials are extracted, and no new decision on the attachment of the property should be taken.

The amendments TO Article 631 of the CPL, supplementing it with the fourth paragraph, provide for the establishment of another action of a regional court when examining a complaint or protest. In the event that the district (city) court has not complied with all the conditions referred to in Section 630, Paragraphs one and two of the CPL when taking a decision on the termination of the criminal property or case, the regional court may revoke the decision of the court and send the material for a new examination. Thus, the right of a person to examine an issue on the merits in at least two instances is ensured, ensuring fair proceedings. For example, at present, if the district (city) court has not evaluated the evidence when taking a decision, the regional court may take only two decisions – to recognise the property as having been acquired criminally or to terminate the proceedings, creating situations where the case is evaluated in one instance only by its merits. In order to remedy this situation, it was necessary to make amendments by imposing another action on the regional court, examining the complaint or protest, thus ensuring fair proceedings.

“Legalisation is a process that can be simpler or more complex, but there is a constant goal in this process, firstly, to hide the criminal origin of these proceeds and secondly, to get rid of the attention of law enforcement agencies” as stated by scientist Juris Juriss. Thus, the very concept of “legalisation” already indicates a person's desire – the intention to create a misconception about the origin of the legalizable funds or to make the legalizable funds seem legal... The name of the crime and the word “legalisation” used in the disposition of the article clearly indicate the purpose of the person to make the illegal become legal (lawful)”.<sup>76</sup>

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<sup>76</sup> Juriss, J. 2012. *Money laundering: doctoral thesis*. Riga: University of Latvia, 118th [https://dspace.lu.lv/dspace/bitstream/handle/7/5198/33657-juris\\_juriss\\_2013.pdf?sequence=1](https://dspace.lu.lv/dspace/bitstream/handle/7/5198/33657-juris_juriss_2013.pdf?sequence=1)

## 5.2 Confiscation mechanism and problematic nature of property

In the Republic of Latvia, criminal proceedings shall be conducted by an authorised official in accordance with the procedures laid down in the CPL. Over time, the CPL has been constantly amended, trying to improve it in order to make it seem easier to use, however, in practice, one has to face the fact that the law has become more complicated and the work of the person directing the process is not facilitated, not being able to track the frequent changes in the CPL.

Criminal proceedings consist of three stages: investigation (the person directing the proceedings is an investigator or, exceptionally, a prosecutor); prosecution (the person directing the proceedings is a prosecutor); trial (judge, composition of the court).

In proceedings concerning the proceeds of crime, it is the decision to initiate proceedings that is in fact the most important document indicating the circumstances and the grounds why the person directing the proceedings claims that the proceeds of crime have been acquired. The content of the decision depends on whether the rights of the person related to the property will not be violated and whether the person will have a real and not a perceived opportunity to exercise his or her rights and protect his or her interests. In proceedings concerning the proceeds of crime, the rights of the participants in the case must be fairly balanced, ensuring that the person related to the property knows the circumstances why the person directing the proceedings claims that the property has been acquired criminally.<sup>77 78</sup>

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<sup>77</sup> Stukāns, J. 2014. Evidence and its examination in court – development of criminal law policy. Legal policy for the development of society. Theses of the International Scientific Conference (Riga, 23 April 2014). Riga: RSU, 44.

<sup>78</sup> Ovey, C. White, R. Jacobs and White. 2006. *The European Convention on Human Rights. Fourth Edition*. Oxford: Oxford University Press, 176, 35.

It may be necessary to evaluate changes in the CPL in order to reduce as much as possible the burden of the person directing the proceedings, the court with a number of appeals, enabling the person to participate, proving the legal origin of the funds. The person receiving the order does not understand with what specific transactions the bank has abstained from transactions. In order to ensure the right of defence as quickly and effectively as possible, as is the case in other EU countries, a person shall provide a non-disclosure certificate and provide the documents requested by the investigator. For the most part, an order containing only information that there are grounds for a presumption of a possible criminal offence is not sufficient and understandable to the person. In the author's opinion, the seizure of the entire amount of money in the bank account, declaring the amount of money as possible criminally obtained funds, unreasonably and disproportionately violates the rights of a person, and it is necessary to make such changes to the law that would provide an opportunity for a person to understand exactly what transactions of a person have been performed, how long ago transactions have been performed and for what amounts are evaluated. In addition, in the author's opinion, in the context of money laundering, there is no basis for evaluating such transactions that were carried out 10 or more years ago, inter alia, on the basis of the principle of procedural economy and the fact that the amount of money received in the bank account 10 years ago is unlikely to be in this bank account anymore.

On 25 April 2022, the Court of Economic Affairs adopted a decision to recognise a vehicle registered in the ownership of a person as criminally acquired property, confiscate it and transfer the acquired financial resources to the State budget of Latvia<sup>79</sup>. By the decision of the Riga Regional Court College of

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<sup>79</sup> Decision of the Court of Economic Affairs of 25 April 2022 in criminal case No. 11513000720, not published.

Criminal Cases of 31 August 2022, it was decided to leave the decision of the Economic Cases Court of 25 April 2022 unchanged.<sup>80</sup>

The case has been examined in two instances, and both in the first and second instance the court has not assessed the essence of transactions and cash flow from the beginning to the end, but has only examined the suspect's financial possibilities to purchase a vehicle and a specific transaction for the purchase of a vehicle. The court has not assessed the defendant's claim that the money received by the suspect from a person who in turn received money from Switzerland may have a link with that country and legally receive income from that country has a legal origin.

That case is relevant for a number of reasons.

On May 6, 2020, a person was detained, stating in the detention report the motive of detention: to prevent the avoidance of investigation and the commission of new criminal offences. The person was arrested for allegedly stealing an apartment. The person was detained with a vehicle in his possession. Subsequently, on 28 February 2022, that criminal proceedings against the person were terminated. It is important to note that criminal proceedings for possible money laundering were established a day earlier before a person was arrested in another criminal proceedings on 5 May 2020. Analysing the materials of the particular case, the author came to the conclusion that the terminated case in other criminal proceedings was the basis for initiating a case against a person regarding money laundering and the legal confiscation of property.

On 8 May 2020, following the first paragraph of Article 195 of the Criminal Law on the possible money laundering, which was established on 5 May 2020, criminal proceedings No. 11513000720.

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<sup>80</sup> Decision of the Riga Regional Court College of Criminal Cases of 31 August 2022 in criminal case No. 11513000720, not published.

Criminal proceedings Nr. 11513000720 was based on a report by a SP employee without further verification. Only on 27 January 2022 the person was questioned as a person against whom criminal proceedings were initiated, providing his or her explanation of the legal origin of the property. At the same time, personal replies are also provided about the person's relationship with other persons and about making his/her contributions to the “shop and treatment”. When a person was in custody, his state of health deteriorated dramatically and funds were needed for the purchase of medicines, treatment and the purchase of special food. As a result, friends and acquaintances were asked to contribute to the treatment of the person. In response to a person's request, a deposit was made to the relevant bank account. After consulting the issued account statements, it could be concluded that the last payment received from Switzerland was on 19 March 2018. It was also found from the bank account statements that the funds transferred from Switzerland were not the only funds received by a person, payments were also made by other persons. The payments found did not give rise to a presumption that the funds received from Switzerland had been obtained criminally. There was also no indication in the file that the origin of the funds used in incoming payments to a person was in any way related to criminal offences.

It is essential to note that a person had previously had the right to a passive role in the process of criminal property – namely, the burden of proof was only exercised by the person directing the proceedings for less than two years, and only when the procedural deadline for the removal of the seized property came, the person directing the proceedings on 11 February 2022 took the decision to recognise the person as a suspect and on 15 February 2022 took the decision to initiate the proceedings regarding the criminal property and the process of transferring the criminal property to a court for decision. Only when the case of the person directing the proceedings was transferred to the court, a notification

was sent to the person requesting an explanation of the legal origin of the property within 45 days, although the person directing the proceedings had received two testimonies from the person directing the proceedings in different proceedings and evidence of the legal origin of the property. It is noteworthy that the person directing the proceedings had not ascertained the actual circumstances of the case within two years, had not asked the person to provide explanations. From this it can be concluded that a person was deprived of the right to submit evidence of the legal origin of the property within two years.

According to the first paragraph of Article 389 of the Civil Code, at the pre-trial stage of criminal proceedings, the time limit for seizure of property may reach thirty-one months, and this time limit is suspended after the case has been referred to the court, i.e. from the person's point of view and the seizure of property of the actual situation is extended for the duration of the legal proceedings, which makes the total time limit for seizure indefinitely long. The inadmissibility of restricting the right of indefinite duration to property has been pointed out by the ECtHR in criminal proceedings, stressing that arrest as a means of temporary security should be limited in time.<sup>81</sup>

Professor Ā. Meikališa and K. Strada-Rozenberga of the Faculty of Law of the University of Latvia commented on the amendments of 2017, which included the additional right to extend the term of the seizure of property imposed in Section 389 (2) of the CPL, pointed out that: “[...] such a trend of extending the maximum terms, which is recently characteristic, is not supported and only contributes to the lengthening of the process and legalises the results caused by insufficient/unprofessional practical organisation/unprofessionalism of the persons involved, etc. The question is not how to speed up processes, how

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<sup>81</sup> Judgment of the European Court of Human Rights of 21 October 2020 in *Benet Czech, Spol. S R. O. v Czech Republic*.

to improve their regulation and practical application in a qualitative way, etc., but how to legally “justify” the inability to carry out the tasks assigned to them.<sup>82</sup>

The author shares the opinion of legal scientists, because until the hearing of the case nothing had changed, legally “justifying” the delay in the process, not being able to perform the tasks assigned by the state in a timely manner.

Pursuant to the fifth paragraph of Article 124 of the CPL, the circumstances in the subject-matter of the evidence are to be regarded as established if any reasonable doubt as to their existence or non-existence is excluded in the course of the evidence. In accordance with the sixth paragraph of Article 124 of the CPL, the circumstances relating to the criminal origin of the property included in the proceedings regarding the subject-matter of proof of the property obtained by crime shall be deemed to have been proved if there are grounds for recognising in the course of proof that the property is likely to have a criminal rather than a legal origin. So, in order for property to be criminalised, it is first necessary, beyond reasonable doubt, to establish the existence of a criminal offence. On the other hand, the link between the offence concerned and the origin of the property must be such that the prevalence of evidence indicates that the property is of a criminal rather than legal origin.

When the case came to court, it was found that in the particular case and at the time the duties of assistant judge were performed by the person directing the proceedings, who had initially initiated criminal proceedings against a person for allegedly the fact of theft, later on for money laundering. The findings provided sufficient grounds for believing that, in particular, the person concerned would have had a negative decision in the proceedings, as was the case in both court instances. No court wanted to assess significant nuances in the

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<sup>82</sup> Meikališa, Ā., Strada-Rozenberga, K. 2017. The time of change in criminal proceedings continues – amendments of 2017. *Name of lawyer*. (43)



case, and by its decisions allowed, possibly, unfair application of legal norms and display of power by legally depriving property.

When examining the specific legal proceedings regarding the criminal property acquired in two instances, it appears that everything that is indicated by representatives of law enforcement institutions – is recognised as justified and proven, while everything that is indicated and proven by the suspect and his or her representative – is unfounded and insufficient to refute the findings in the case. In view of this, a question arises which, in the opinion of the law enforcement agencies, is “sufficient evidence”. Evidence specified in Section 124, Paragraph one of the CPL in criminal proceedings is any information obtained in accordance with the procedures laid down by law and consolidated in a certain procedural form regarding facts which are used by persons involved in criminal proceedings within the scope of their competence to substantiate the existence or absence of the circumstances included in the object of evidence. Paragraph two of the said Section provides that persons involved in criminal proceedings may use only reliable, relevant and admissible information about facts as evidence. Paragraph three of that Section provides that information obtained in operational measures regarding facts, including information indicating a criminal offence committed by another person, as well as information recorded by technical means, may be used as evidence only if it is possible to verify it in accordance with the procedural procedures laid down in this Law. But Paragraph four provides, if the information referred to in Paragraph three of this Section is used as evidence in a criminal case, it shall be accompanied by a reference as to which institution, when and for what period of time has accepted the taking of operational measures. A reference to the person directing the proceedings shall be issued by the head of the institution which has accepted the performance of an operational measure or by an official authorised

by him. This article focuses on issues covered by the theory of proof, such as the subject matter of the evidence and the standard of proof, or the level of evidence.

The article to be commented includes one of the accepted concepts of proof in theory, which views the subject of proof broadly, it includes three groups of facts: circumstances (facts) to be proved in criminal proceedings; related facts and supporting facts. In this order, the subject-matter of the evidence is not designed to attach decisive importance to the facts of all three groups in the final outcome of the proceedings, but to emphasise that all these facts, if they are relevant in one way or another to the process of evidence, must be proved. They cannot remain in the form of an assumption, but must be supported by evidence. The only facts that are relevant to criminal proceedings but may not be proven in the course of criminal proceedings are those specified in the law as true without additional procedural actions.<sup>83</sup>

Taking into account the fact that the investigator has special knowledge of the said level of evidence in criminal proceedings, while the owner of the infringed property mostly does not have legal education and relevant knowledge in criminal proceedings, there are grounds to doubt whether the above-mentioned standards of evidence can be applied to the so-called “reverse” process of proof. The owner of the property, who has no knowledge of the standards of proof in criminal proceedings, has difficulty in understanding what amount of evidence is considered sufficient to prove the lawful origin of the funds, thus the owner of the property is placed in an unequal position with the state in the process of “reversing” the proof. Moreover, it is not clear what will strengthen the evidence in order to be considered credible, assuming that the person proves the origin of these means.

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<sup>83</sup> Strada-Rosenberg, K. 2002. *Theory of Evidence in Criminal Proceedings. Vispārīgā daļa*. Riga: Turība University, 64–71.

The analysis of the case-law indicates that the cause of the situation discussed above may be the lack of knowledge of the persons directing the proceedings in the field of economic issues, as well as the fear of taking responsibility for the recognition of property as lawful. This observation leads to the conclusion that Article 195 of the CPL is an effective means of confiscating property from a person, but whether or not the decision is justified and weighed will certainly be assessed by the ECHR in the future.

A standard of proof is a concept that is used to describe at what level, at what level, a fact must be supported by evidence in order to be considered as evidence in criminal proceedings (the so-called level of evidence of a fact). The term “*standard of proof*” refers to the level or degree of implementation of the burden of proof. This is the level of certainty or probability that evidence must give rise to in the minds of the adjudicators of the fact; it is the standard by which the adjudicator of the fact must be persuaded by evidence from the party to the dispute to whom the burden of proof lies. The minimum requirements to be met by the legislator when establishing the criminal procedural framework for the standard of proof are included in the presumption of innocence. However, the content of the presumption of innocence as a universal principle may differ from one legal system to another. For example, it is not necessary to prove a person's guilt “beyond reasonable doubt” everywhere. In general, the presumption of innocence implies a prohibition on convicting a person on suspicion. This principle is accepted and applied everywhere.<sup>84</sup>

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<sup>84</sup> Stukan, J. 2022. Issues of separation of the standard of proof: “beyond reasonable doubt” and “overriding likelihood”. *Name of lawyer*. 49 (1263). <https://m.juristavards.lv/doc/282425-pieradisanas-standarta-noskirsanas-jautajumi-arpus-sapratigam-saubam-un-iespejamibas-parsvars/>

### 5.3 Rights and obligations of a person, if their property is found to be criminally acquired

A person shall have a legal ground to request compensation for the damage caused to him in accordance with the procedures laid down in the Prevention Law also in a situation where the action of the FIS has been unfounded. In accordance with Section 64, Paragraph two of the Prevention Law, “The action of the Financial Intelligence Service shall be unjustified if it has acted in accordance with the provisions of this Law, but later one of the legal grounds for compensation of losses laid down in Section 68 of this Law has arisen.” To justify an unjustified action, it is necessary to prove that any of the legal grounds for compensation of losses laid down in Section 68 of the Prevention Law has occurred. For example, a decision of the Prosecutor General or a specially authorised prosecutor annulling the FIS order, etc., has been issued.<sup>85</sup>

In several EU Member States, the liability of a financial intelligence authority for damage is applicable if it is proved that an act or omission has been committed in *bad faith* or contrary to good faith. For example, under Article<sup>86</sup> 17 of the Maltese Law on the Prevention of Money Laundering, the Financial Intelligence Analysis Unit, its officers and employees shall not be liable for damages for acts or omissions in the performance of any function under this Law, unless it is proved that the acts or omissions were committed in *bad faith* or contrary to good faith.

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<sup>85</sup> This is the first time I've seen it in a long time. 2020 *Summary of case-law. Case law in damages cases. Comparison of European Union law and case law 4. Money laundering 4.2. Area of civil law 2013.–2020. year* [https://www.at.gov.lv/files/uploads/files/6\\_Judikatura/Tiesu\\_practices\\_apollections/2021/4\\_2%20Crime-lidzeklu-legaliz\\_civilties\\_Kaklins\\_2020.pdf](https://www.at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_practices_apollections/2021/4_2%20Crime-lidzeklu-legaliz_civilties_Kaklins_2020.pdf)

<sup>86</sup> Chapter 373, Prevention of money laundering act. <https://legislation.mt/eli/cap/373/eng>

The practice of EU Member States regarding the right of third parties to claim damages from the subject of the law in the field of prevention of money laundering is not unambiguous. Only the laws and regulations of certain EU Member States directly or indirectly define the person entitled to claim compensation for damage. Looking at the regulatory framework of these countries, it is evident that the regulatory framework of several EU Member States implicitly also recognises the right of third parties to claim compensation for damage. For example, under Section<sup>87</sup> 77 (2) (c) of the Croatian Law on the Prevention of Money Laundering and Financing of Terrorism, the reporting person (the subject of the law) and its employees shall not be liable for damage caused to customers or third parties, if it is in good faith (*bona fides*) and in accordance with the provisions of this Law, and the provisions adopted on the basis of this Law shall be enforced by an order of the Office for the Prevention of Money Laundering regarding the suspension of suspicious payment (transaction). A different approach to the person entitled to claim damages is provided for in the Estonian regulatory framework. Section<sup>88</sup> 52 of the Estonian Law on the Prevention of Money Laundering and Terrorism Financing provides for a number of exceptions from the application of the liability of the subject of the law for damage caused to a person or client who participates in a payment (transaction) made in economic or professional activity, performing a professional activity or providing a professional service, if the responsible entity, its employee, representative and a person acting on its behalf have fulfilled the duties of this law in good faith. The liability of the subject of the law

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<sup>87</sup> Anti-money laundering and terrorist financing law  
[https://www.legislationline.org/download/id/8465/file/Croatia\\_antimoney\\_laundering\\_terrorist\\_financing\\_law\\_2017\\_en.pdf](https://www.legislationline.org/download/id/8465/file/Croatia_antimoney_laundering_terrorist_financing_law_2017_en.pdf)

<sup>88</sup> Money Laundering and Terrorist Financing Prevention Act  
<https://www.riigiteataja.ee/en/eli/517112017003/consolide>

in relation to third parties who do not participate in the relevant payment (transaction) is not described in this Law.

The purpose of the Remuneration Law is to ensure the right specified in the Satversme for an individual to appropriate compensation for loss and non-pecuniary damage caused to him in criminal proceedings or in administrative violation proceedings due to unlawful or unjustified actions of an institution, prosecutor's office or a court<sup>89</sup>. In accordance with Article 14 of the Law, compensation for non-natural damage is determined up to EUR 7 000, as well as up to EUR 10 000 in the case of serious non-natural damage to a person and up to EUR 30 000 in the case of damage to life or particularly serious damage to health.<sup>90</sup>

In accordance with Section 18, Paragraph one of the Remuneration Law, a private person shall submit a written application regarding compensation for harm caused in criminal proceedings to the deciding authority in accordance with the competence referred to in Section 17, Paragraph one of the Law, taking into account the deadline for submission of the application specified in the law (within 6 months from the occurrence of the circumstances specified in the law) and the content<sup>91</sup>. As regards the amount of the compensation for reputational damage, the last worrying case is the decision taken by the Prosecutor General's Office to compensate public officials for non-pecuniary damage in connection with the commenced and subsequently terminated criminal proceedings –

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<sup>89</sup> Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offences: Law of the Republic of Latvia. Latvijas Vēstnesis No. 252, 19.12.2017.

<sup>90</sup> Ibid.

<sup>91</sup> Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offences: Law of the Republic of Latvia. Latvijas Vēstnesis No. 252, 19.12.2017.

32 EUR each<sup>92</sup>. In the author's opinion, such amount of compensation shall not be considered proportionate and appropriate to the offence committed, which has adversely affected the reputation of the person.

If a person considers that he or she has not been awarded adequate compensation for the damage, he or she may appeal against the decision of the adjudicating entity on compensation for the damage in accordance with the Administrative Procedure Law in accordance with Section 23 of the Remuneration Law.<sup>93</sup>

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<sup>92</sup> The Independent Morning Newspaper. 27.12.2021. <https://nra.lv/latvija/367551-robezardzes-prieksniekam-par-izbeigto-kriminalprocesu-apologies-and-costs-32-eiro-kompensaciju.htm>

<sup>93</sup> Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offences: Law of the Republic of Latvia. Latvijas Vēstnesis No. 252, 19.12.2017.

## Conclusions

1. The mechanism for preventing money laundering in the national legal system has been introduced quickly and hastily, in an effort to ensure the rapid integration of international norms into national legal acts. However, as a result of the rapid implementation of the resolution of the mechanism, problems have arisen in its application in practice: a) the Law on the Prevention of Money Laundering and Financing of Terrorism and Proliferation has been amended several times; b) several petitions have been submitted to the Constitutional Court; c) the Court of the European Union has been requested to issue a preliminary ruling on the conformity of the fourth and fifth paragraphs of Article 627 of the Law on Criminal Procedure with the first sentence of Article 92 of the Constitution of the Republic of Latvia.
2. In order to solve the problem of the practice of the anti-money laundering mechanism, it is necessary to amend the national legislation, ensuring not only rapid confiscation of funds and property, but also the establishment of an effective legal mechanism, discouraging individuals from the desire to launder money obtained through criminal activities.
3. The court, when taking a decision to declare property criminal, often bases its decision on the methodology “Typologies and signs of money laundering” developed by the Financial Intelligence Service. Considering that the procedure for recognising property as criminally acquired is regulated by the Criminal Procedure Law and the Criminal Law, while the methodology, as a series of methods and techniques of scientific research rigour, is to be considered only as a research aid, which cannot be granted a higher legal force over the law, the justification of the decision by the methodology is not allowed. The decision must be based on the rules of procedural and substantive law.



4. The amendments made to the Criminal Procedure Law (which entered into force on 3 November 2022) regarding the reversed evidentiary mechanism do not comply with Directive 2014/42/EU of the European Parliament and of the Council (03.04.2014). The freezing and confiscation of instrumentalities and proceeds of crime in the European Union, by imposing on a person a disproportionate or even unenforceable burden of proof, which is, inter alia, inconsistent with the fundamental principles of a state governed by the rule of law.
5. When analysing court rulings in cases of money laundering, it has been established that the categories of these cases are examined in a two-tier court, i.e. in two instances, in addition, the appellate instance court shall make a ruling in written proceedings. Money laundering cases have a reversed evidentiary mechanism, shifting the burden of proof from investigating authority to person. Taking into account the aforementioned, the consideration of money laundering cases with the reversed evidentiary mechanism in only two court instances deprives a person of the right to a fair trial – in order to implement the principle of competition in a criminal case and to effectively exercise his or her right to participate in the trial of a case and to be heard in oral proceedings.
6. There is no uniform case-law on what is considered to be criminally acquired property, in which cases it is to be confiscated and in which cases it is to be returned to the owner, as a result of which the judicial power and executive power have not also developed a common understanding of the admissibility and appropriateness of evidence in pre-trial investigation in accordance with the procedures of Chapter 59 of the Criminal Procedure Law.

7. As part of the verification of evidence, when determining whether funds have not been criminally obtained, not only the income of a person for a specific period of time and amount is examined, but also other transactions performed by a person that do not relate to the origin of the funds to be verified, thus unjustifiably interfering with the life of a person and violating the right to inviolability of private life and correspondence, as established in Article 96 of the Satversme.
8. Pursuant to the obligation imposed on the State by Recommendation 4 of the Financial Action Task Force (FATF) entitled “Confiscation and provisional measures” to identify predicate offences in the course of legalisation in order to presume that money laundering has occurred, it is necessary to ascertain and prove, within the framework of criminal proceedings, which criminal offence (predicate) has resulted in the proceeds.
9. The court and the person directing the proceedings, when assessing ten-year old transactions and the documents substantiating them, do not comply with the provisions of Section 5 (force at the time), Paragraph one of the Criminal Law, by incorrectly applying the legal norms in force at the moment of taking the decision, although the legal norms in force at the moment of concluding the transaction are applicable. Thus, the court and the person directing the proceedings do not have a common understanding of the application and interpretation of legal provisions in practice.
10. Section 627, Paragraph four of the Criminal Procedure Law provides that the materials in the case of proceedings regarding the proceeds of crime are the secret of investigation. Case materials shall be that set of documents which is submitted to the court, however, the minutes and the audio recording of the court hearing shall not be considered as case materials within the meaning of this Section. Thus, regardless of the application of

the secrecy of the formal investigation, the provider of legal aid who is a participant in the case may not be denied access to the audio recording of the court hearing and the minutes of the court hearing, which are not to be considered as case materials within the meaning of Section 627, Paragraph four of the Criminal Procedure Law.

11. By imposing an obligation on a person to prove that property has a legal origin, the legislator indirectly violates the principle of presumption of innocence laid down in Section 19 of the Criminal Procedure Law, which states that no person is considered guilty until his guilt in committing a criminal offence is established in accordance with the procedures laid down in this Law.
12. The proportion of latent crimes dominates over the initiated criminal proceedings and the verified cases included within them. In criminal proceedings, there is a disproportionate severity towards the owners of the property, investigative authorities spend disproportionate amount of resources on examining specific circumstances, in criminal cases the existing evidence is evaluated in connection with general and non-specific information about the situation in financial transactions. In the above-mentioned cases, the rate of confiscation of criminally obtained funds does not compensate for the extent of the damage caused to the economy, the state and private individuals by the registered criminal activities committed.
13. Court decisions use the indication “it is recognised with a preponderance of probability that the seized property is most likely of criminal origin”, however, such an indication cannot be considered as a sufficient basis for concluding that the property was obtained criminally. The decision must be based on relevant legal norms, its motive part must contain a reference to the law and justified conclusions, as stipulated in the fourth paragraph of Article 320 of the Law on Criminal Procedure.

14. The analysis of court decisions and personal work experience leads to the conclusion that after the amendments to the Criminal Procedure Law, which entered into force on 24 December 2019, shifting the burden of proof from the executive power to the subject, a new trend can be observed in the practice of the legalisation of the proceeds of crime – criminal proceedings are initiated “automatically” without an objective assessment of the reason and basis for initiating criminal proceedings. A situation where, due to the lack of knowledge (appropriate methodological knowledge), no evidence is considered reliable and everything is considered criminally obtained.
15. Guided by the practice of other European Union Member States, such as the Netherlands, if circumstances are found which indicate that the funds were obtained by criminal means, criminal proceedings are not always initiated, namely – the person is given the opportunity to submit evidence of the money the origin of the funds within 30 days. If the person proves that the funds are of legitimate origin, the funds are returned to the person. On the other hand, if the person is unable to prove the origin of the funds, administrative proceedings are initiated against the person, and the funds are transferred to the state budget, thus not only relieving the executive and the judicial authorities from burden but also saving state resources.
16. In order to ensure the fairness of criminal proceedings and the provision of a quality and comprehensive defence, the legislations of some Member States of the European Union, such as Germany and the Netherlands, provide for the lawyer’s right to get acquainted with all case materials, including those containing investigative secrets. When getting acquainted with the secrecy of the investigation, the lawyer is aware that this information and documents cannot be disclosed to the person in whose

interests the defence is provided. Contrary to the legal framework of the Member States of the European Union, the Law on Criminal Procedure in Latvia does not provide for the right of a lawyer to get acquainted with all case materials.

## Proposals

1. In order to solve the problem of the practice of applying the anti-money laundering mechanism introduced in a hasty manner into the national legal system: 1) to amend the national legislation by improving the confiscation mechanism; 2) in anti-money laundering cases at the level of the Member States of the European Union, common guidelines should be developed for the development of common investigative standards for the application of anti-money laundering legislation, including by setting a threshold of proof, thus also creating a common case-law of the Member States of the European Union.
2. Taking into account the fact that categories of money laundering cases are examined in a two-tier court in order to make the proceedings more efficient and to ensure the right of a person to a fair trial, to make amendments to Section 631, Paragraph four of the Criminal Procedure Law, expressing it in a new wording:

*Article 631 Appeal against the Court's decision on the proceeds of crime*  
*(4) When examining a complaint or a protest, a court shall revoke a decision of a district (city) court and send materials for a new examination if it finds any violation of this Law which the court cannot prevent itself. The decision shall be subject to appeal to the regional court by way of a protest."*

3. In order to ensure the right to a fair trial, to a comprehensive and quality defence and possibly also to promote the equality of the judiciary, taking into account that sworn advocates are persons belonging to the judicial system and also provide other legal assistance in accordance with the procedures laid down by law, it is necessary to make amendments to Section 86, Paragraph one, Clause 1 of the Criminal Procedure Law, expressing it in the following wording:

*(1) A defence counsel shall have all the rights that his or her defence counsel has in the relevant proceedings, as well as the rights: 1) in accordance with the procedures laid down in laws and regulations, to request and receive information necessary for the defence of a person and to get acquainted with all the materials in the case.*

4. In order to improve the effectiveness of the anti-money laundering mechanism, a specialised body should be established in the national legal system: 1) which would employ specialists with analytical skills and specialised knowledge in the field of anti-money laundering; 2) the main purpose of such structure is to evaluate the decisions taken in the pre-trial investigation regarding the initiation of criminal proceedings for the laundering of criminal funds or for the recognition of property as criminal assets, and giving instructions to the person directing the proceedings regarding the violations of procedural and substantive legal norms during the pre-trial investigation, including unjustified initiation of criminal proceedings. The establishment of such a structure would ensure the fundamental principles of a law governed state, and the implementation of 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.
5. In order to reduce unjustified interference in a person's private life, it is necessary to specify what transactions and for what period of time are permissible in cases of money laundering. The Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing establishes exact time limit for transaction verification: in cases of money laundering – 5 years (for the last five years from the date of conclusion of the transaction), but in the possible case of terrorism – 10 years (for the last ten years from the date of the last financed transaction).

6. When deciding whether money laundering has taken place, the person directing the proceedings must be guided by the obligation imposed on the State to identify the predicate offence in the process of legalisation contained in Recommendation 4 “Confiscation and provisional measures” of the Financial Action Task Force (FATF), i.e., initially ascertaining and proving exactly what criminal offence resulted in the proceeds, which in turn gives grounds for recognising them as criminally obtained, otherwise not initiating criminal proceedings.
7. The court and the person directing the proceedings, when assessing transactions and the documents supporting them in cases of money laundering, in accordance with Section 5 (force at the time), Paragraph one of the Criminal Law, must apply the legal provisions that were in force at the moment of conclusion of the transaction.
8. In order to ensure that the person directing the proceedings does not have any reason not to hand over the case-file, formally under the pretext of investigative secrecy, it is time for Latvia, guided by the practice of other countries, to amend the legal acts by granting the advocate wider powers to get acquainted with the case-file, including the investigative secret, within the framework of CPL, thus ensuring a qualitative defence in cases of money laundering as well as other criminal proceedings in accordance with European Union law.
9. The Criminal Procedure Law does not specify the time limit for setting a date for a regional court session following receipt of a procedural complaint or a protest of a prosecutor to a regional court. When analysing court rulings in practice, it can be found that, upon receiving a procedural complaint or a protest of a prosecutor, the regional court schedules a hearing



in about a year. In order to speed up the examination of money laundering cases, Section 629, Paragraph two of the Criminal Procedure Law should be amended to read as follows:

*Article 629 Proceedings in respect of proceeds of crime*

*(2) A court hearing shall take place within 10 days after receipt of the decision of the person directing the proceedings to a court. The hearing shall take place within 90 days of receipt of a procedural complaint or a protest of a prosecutor to a regional court.”*

10. It follows from the regulation contained in the CPL, including Section 629, Paragraph four of the CPL, that in court proceedings regarding the persons involved in the criminal acquisition of property, evidence must be submitted only to the district (city) court, the existing CPL regulation does not provide for the possibility to submit evidence to the appellate instance court. Money laundering cases are examined only in two court instances (two-tier examination of the case) and the appellate instance court makes a final ruling in criminal proceedings. In order to ensure the right of the owner of the infringed property to a fair trial – giving an opportunity to effectively defend his or her rights and submit evidence also to the appellate instance court, which is the last instance of courts, which makes a final ruling in the proceedings regarding criminally acquired property, it is necessary to make changes to the existing regulation of the CPL, providing that in the proceedings regarding criminally acquired property, evidence may also be submitted to the appellate instance court.
11. At the same time, it is necessary to develop a legal framework in order to have an opportunity to retain the means of arrest until the trial of the criminal case on the merits, because in several separate criminal proceedings, the retention of the arrest is essential for the assessment of the existence of a possible criminal offence, in accordance with the provisions

of the Criminal Procedure Law, which provide for the termination of the criminal proceedings on a rehabilitative basis: 1) Paragraph 1 of Article 377 of the CPL – no criminal offence has occurred; 2) Paragraph 2 of Article 377 of the CPL – no criminal offence has been committed in the criminal offence committed; 3) Paragraph 1 of Article 519 of the CPL – no criminal offence has occurred or there is no criminal offence in the offence committed by the accused; 4) Paragraph 2 of Article 519 of the CPL – the participation of the accused in the criminal offence has not been proved.

12. According to the practice of other Member States of the European Union, such as the Netherlands, when circumstances are found which show that funds have been obtained by criminal means, the criminal proceedings are not always initiated, i.e. a person is given the opportunity to submit evidence of the origin of the funds within 30 days. If the person proves that the funds are of legitimate origin, they are returned to the person, but in case if the person is unable to prove the origin of the funds – administrative proceedings are initiated against the person, the funds are transferred to the state budget, thus not only relieving the executive and judicial authorities from burden but also saving state resources. In line with the Dutch practice, a similar mechanism to the Administrative Liability Act should also be integrated into the national legislation, providing responsibility for the legalisation of criminally obtained property and determining the procedure for the confiscation of criminally obtained property.
13. Further develop the anti-money laundering mechanism by integrating international legislation into the national legal system, providing training in accordance with the experience and practice of the Member States of the European Union, establishing an independent, specialised anti-money

laundering supervisory body, thus ensuring that the anti-money laundering mechanism not only ensures the rapid and effective confiscation of criminal proceeds, but also protects the legal interests of the person, thus ensuring a balance between the national and personal legal interests.

## **List of publications, reports and patents on topic of Doctoral Thesis**

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1. Neimane, L. Can we identify the problem of the application of the Criminal Procedure Law in the course of investigative actions when the person is in Latvia and when the person is in a foreign country within the time period of COVID-19. International Scientific Conference on COVID-19. Riga, 2022 28–29 April.

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