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Court's Ability to Assess Evidence Obtained During Operational Activities

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Abstract

The article discusses the court's ability to assess information of evidence obtained during operational activities. It addresses only the cases where a person is found guilty of a criminal offence and criminal punishment has been imposed by a court judgment, without considering cases where the punishment has been determined by the public prosecutor when drawing up a penal order.

The aim of the study is to examine the possibilities of the court to assess information of evidence about facts obtained in operational activities, to identify legal and practical issues for the court's ability to assess such information, as well as to propose solutions.

Material and methods used in the preparation of the article include analysis and description of regulatory enactments, court judgments, comparative and logical method. These materials and methods help to achieve the goal of the research. Analysing normative acts and court judgments, describing normative acts and court judgments in the article, analysis and description of normative acts and court judgments have been used for the composition of the research. The comparative method has been used to compare provisions of regulatory enactments, while the logical method has been used to draw conclusions. Methods of interpretation of legal norms – grammatical, systemic and teleological method – have also been used in the composition of the study.

Keywords: court, criminal proceedings, evidence.

Introduction

Generally, law in Latvia stipulates that courts in there are adjudicated by district courts, regional courts and the Supreme Court, but in case of war or emergency – also by military courts (Constitution of the Republic of Latvia, 1922, Article 82). This indicates that the function of court adjudication in Latvia is solely for the court.

One of the basic principles enshrined in the Criminal Procedural Law also stipulates that everyone has the right to trial in a fair, impartial and independent court (Criminal Procedural Law, 2005, Article 15).

According to the Criminal Law, only a person who is guilty of committing a criminal offense, that is, who has intentionally or negligently committed an offense provided for in the Criminal Law, who has all the characteristics of a criminal offense, can be held criminally liable and punished. In addition, a person may be found guilty of a criminal offense and criminal penalty may be imposed by a court judgment and in accordance with the law, but in cases prescribed by law, a person shall be found guilty of a criminal offense and punished by a prosecutor (Criminal Law, 1998, Article 1).

In criminal cases, the court imposes the penalty. The court examines and decides the merits of the accusation. The court acquits innocent people or recognises persons as guilty of committing a criminal offense and determines a mandatory enforcement of criminal law relations for state institutions and persons, which, if necessary, shall be enforced (Criminal Procedural Law, 2005, Article 23).

It is for the court to decide whether the accusation against a person is well-founded. In order for the court to decide on the merits of the accusation, one of the duties is to assess the evidence on which the accusation against the person is based.

For a court to find a person guilty of a criminal offense and to impose a criminal penalty in a judgment, one of the integral components is the assessment of evidence. It is the range of evidence gathered in a particular case and the process of evaluating it that gives the court a decision to find a person guilty and to impose a criminal penalty.

There are a number of criteria for assessing evidence in Criminal Procedural Law. The criteria for evaluating evidence are admissibility, relevance, reliability, and sufficiency of evidence. The mentioned criteria are also indicated by the Supreme Court of the Republic of Latvia. In the decision of the Department of Criminal Cases of 4 October 2018 in case No. 11520035214 (Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia, 2018).

The obligation of the court itself to assess evidence can also be seen from the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 22 August 2018 in case No. 11250014115 (Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia, 2018).

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Judicial Evaluation of Factual Information Obtained during Operational Measures as Evidence in Court

The Law on Operational Activities determines legal bases, principles, tasks, objectives and content of operational activities, regulates its process, forms and types, status, rights, duties and responsibilities of officials of the subjects of operational activities, as well as financing, supervision and control of these activities. In addition, the Law on Operational Activities stipulates that operational activities are open and secret legal activities of officials of state institutions specifically authorised by law in accordance with the procedures specified in the Operational Activities Law and aimed at protecting persons' life and health, rights and freedoms, honor, dignity and property to ensure the State's independence (State constitution of Latvia), state equipment, state independence and territorial integrity, state defense, economic, scientific and technical potential and state secrets against external and internal threats (Law on Operational Activities, 1993, Article 1).

Moreover, the Law on Operational Activities defines tasks of operational activities, namely, protection of persons against criminal threats; prevention and detection of criminal offenses, identification of persons who have committed criminal offenses and sources of evidence; search for persons who are suspected, accused or convicted of committing a criminal offense in accordance with the procedures prescribed by law; search of criminally obtained property, as well as other such property (including financial resources) which may be subject to seizure in connection with the commission of a criminal offense. In addition, searches for persons who have suddenly and without obvious reason left their place of residence or temporary stay do not respect their normal way of life and are not possible to contact them, as well as for minors and persons whose age, physical, mental condition or illness are in need of care but have left their homes, medical institutions or other places of residence (missing persons); identification and prevention of state independence, constitutional structure, territorial integrity, economic sovereignty, military potential, as well as other threats to state or public security; protection of state secrets; obtaining information about specific persons, if the issue of access to state secrets, classified information of the North Atlantic Treaty Organization,

the European Union or foreign institutions or the right of persons to such occupation or position in respect of which the law provides for state security or public order and providing the opinion of security authorities; in the cases specified by law – ensuring the special protection of persons (Law on Operational Activities, 1993, Article 2).

Consequently, operational activity and its tasks are different from tasks and objectives of criminal proceedings, from which it must be understood that the operational activity cannot be performed in itself in order to obtain evidence in the criminal proceedings. In order to obtain evidence in criminal proceedings, it is necessary to perform criminal procedural actions in accordance with the procedures specified in the Criminal Procedural Law. Facts obtained during operational activities may be used as evidence in criminal proceedings, but this is not the purpose and task of these activities.

The study on the problems of the legal regulation of operative activity concluded that, after entry of the Law on Operative Activity into force, the population learned what operative activity is, how it is performed, its legal bases, principles, tasks, goals and content, process, forms and types, status, rights, duties and responsibilities of the officials of the subjects of operational activities, as well as financing, supervision and control of these activities (Matvejevs, 2017, 86). Such a statement indicates openness of the nature of an operational activity to the public.

According to the Criminal Procedural Law, evidence in criminal proceedings is any information obtained in accordance with the law and confirmed in a certain procedural form on facts used by persons involved in criminal proceedings within their competence to substantiate existence or absence of evidence (Criminal Procedural Law, 2005, Article 127).

The Criminal Procedural Law also stipulates that persons involved in criminal proceedings may use only reliable, relevant and admissible facts as evidence (Criminal Procedural Law, 2005, Article 127).

Regarding factual information obtained in operational activities, the Criminal Procedural Law stipulates that this factual information may be used as evidence only if it is possible to verify it in accordance with the procedural procedures specified in the Criminal Procedural Law. If the factual information obtained during operational measures is used as evidence in a criminal case, then an indication of which authority, when and for what period of time has accepted the taking of the operational measures must be attached. The person conducting the inquiry process must be issued by the head of the authority which approved the operational measure or by an official authorised by them (Criminal Procedural Law, 2005, Article 127).

Thus, the information on the facts obtained in operational activities can be used as evidence in criminal proceedings, observing certain criminal procedures. The above also indicates that the persons involved in criminal proceedings may, within the scope of their competence, use the information on facts obtained in operational activities to substantiate existence or absence of circumstances included in the subject of evidence, observing the procedures specified in the Criminal Procedural Law. In essence, there

are two preconditions – an attached reference and the possibility of an inspection in accordance with the procedures specified in the Criminal Procedure Law.

The Criminal Procedural Law clearly defines the content of the information to be attached, the institution, when and for what period of time, has accepted the performance of operational activities.

When clarifying the content of the second precondition, thus, a possible inspection in accordance with the procedure specified in the Criminal Procedural Law, it should be noted that the content of this precondition is more uncertain, much broader than the first precondition.

Inspection in accordance with the procedures specified in the Criminal Procedural Law imposes an obligation to ascertain relevance, admissibility and reliability of the information. If this requirement cannot be met, the information may not be used to prove the criminal proceedings (Strada-Rozenberga, 2019, 430–435).

The content of reliability, relevancy and credibility is clearly disclosed in the Criminal Procedural Law. The reliability of evidence is the degree to which a piece of information is established. The reliability of factual information used in evidence shall be assessed by looking at all facts obtained during the criminal proceedings or the information on the facts as a whole and in relation to each other. None of the evidence has a higher degree of certainty than the other evidence (Criminal Procedural Law, 2005, Article 128).

Evidence is relevant to a particular criminal proceeding if facts of the case directly or indirectly confirm existence or absence of circumstances to be proved in the criminal proceedings, as well as the reliability or unreliability of other evidence, its possibility or impossibility (Criminal Procedural Law, 2005, Article 129).

Information on facts obtained during criminal proceedings may be used as evidence if they have been obtained and procedurally confirmed in accordance with the procedures specified in the Criminal Procedural Law. Information on facts obtained through violence, threats, blackmail, deception or coercion obtained in the course of proceedings performed by a person who was not entitled to do so under the Criminal Procedural Law, including information obtained by allowing in particular the specified violations that prohibit use of the specific evidence, as well as in violation of the basic principles of criminal proceedings. Information on facts obtained through other procedural irregularities shall be deemed to be of limited admissibility and may be used in evidence only if the procedural irregularities are insignificant or can be remedied, could not affect veracity of the information obtained or are corroborated by other news. Accordingly, evidence obtained in a situation of conflict of interest is admissible only if the prosecutor is able to prove that the conflict of interest has not affected the objective conduct of the criminal proceedings (Criminal Procedural Law, 2005, Article 130).

Although the content of the above-mentioned verification criteria is clear from the disclosure of the mentioned verification criteria, it must be concluded that verification by criteria requires detailed examination which is not limited to establishing existence of a specific information claim, as in the accompanying note.

Such criteria apply both to the possibility of an examination and to the assessment of the evidence by the court. In essence, the criteria reveal feasibility of the test and the test process itself.

Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia of 30 November 2018, case No. 15830009812, states that a court decision based on evidence that has not been assessed in accordance with the evidence assessment criteria specified in the Criminal Procedural Law, namely, cannot be recognised as legal and justified (Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia, 2018).

In addition, already the decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia of October 12, 2006 in case No. 11511003104 stated when to adjudicate a case, evaluated evidence in accordance with the above requirements of the Criminal Procedural Law and in the judgment indicated what evidence relates to existence or absence of a criminal offense, analysed and evaluated all evidence examined in the case (Decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia, 2006).

The Criminal Procedure Law clearly stipulates that, if in a criminal case the information obtained by the possibility of operative activity is used as evidence, only a court may, at the motivation request of a prosecutor, victim, accused or his or her deputy, get acquainted with it, stating in the case file and in the decision that these materials have been evaluated (Criminal Procedural Law, 2005, Article 500).

Consequently, the court does not always assess the information obtained in an operational measure as evidence, it does so only upon a motivated request of a particular person. Such a situation is inadmissible. It indicates an unequal assessment of the evidence in the event that the court has not received a motivated contract from the persons concerned.

Limits of the Court's Ability in Assessing Information as Evidence on Facts Obtained in Operational Measures

When in a criminal case, the court has to assess information of evidence about the facts obtained during operational measures, the court must ascertain existence of the already mentioned reference. In essence, no problem situation can be seen in establishing existence of a reference and existence of the necessary content, because, as indicated above, the necessity and the necessary content of a reference are specifically defined in the Criminal Procedural Law.

According to the decision of the Department of Criminal Cases of the Senate of the Republic of Latvia of October 7, 2020 in case No. 11815007317, it can be seen that the court in its decision reflected existence and content of the reference (Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia, 2020).

Moreover, in the judgment of the European Court of Human Rights, *Oderovs vs. Latvia* No. 21979/08, reflects existence and content of the reference (European Court of Human Rights, 2017).

In the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 27 November 2014 in case No. 11095016806, the court regarding the reference has stated that in case reference is not attached when the case is being considered in court, the court as the person conducting the proceedings must request such reference (Decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia, 2014).

It is clear from the mentioned judgments that when adjudicating criminal cases, courts establish existence or absence of a reference. The courts also establish deadlines for the relevant activities indicated in references, the content of other references. In essence, the courts must do so in order to determine whether, in general, the act performed as a result of which the information used in the evidence is obtained has been carried out lawfully, that is to say, in accordance with the procedure laid down by law.

Discussion is triggered by the factual information obtained in the operational measures itself as an opportunity to assess the evidence against the criteria. That is, an examination of relevance, reliability and admissibility of the factual information.

According to the Law on Operational Activities, the method of operational activities is a set of operational activities, means and tactics, sequence and procedure for their performance, for the performance of specific operational tasks and objectives referred to in the Operational Activities Law. The methods of operative activity are developed based on the legal basis specified in the Law on Operational Activities. Organisation, methodology and tactics of operational activities are a state secret (Law on Operational Activities, 1993, Article 8).

It should also be noted that the Law on Operational Activities clearly defines operational activities. Those include operational investigation, operational observation (tracking), operational inspection, operational sampling and operational research, operational operative examination of a person, operational intervention, operational experiment, controlled delivery, operational detective action, operational supervision of transactions in a credit institution's or financial institution's customer account, correspondence control, operative acquisition of the content of information expressed or stored by a person from technical means, operative wiretapping, operative video surveillance of a place inaccessible to the public (Law on Operational Activities, 1993, Article 8).

In addition, the Law on Operational Activities stipulates that the content of operational activities are measures of operational activities and methods of their implementation (Law on Operational Activities, 1993, Article 6).

This indicates that operational activity is in itself inseparable from operational activities and methods of their implementation. Thus, in order to speak of an operational activity, it must be concluded that this activity is both a measure and a method. Although,

according to the Law on Operational Activities, operational measures are clearly defined, the methods are still in a state of secret.

In order for the court to be able to assess factual information obtained in operative activity measures as evidence, it must assess the measure itself and its method, because according to the Law on Operational Activities, the two elements are indivisible.

The Law "On State Secrets" stipulates that in order to obtain the right to get acquainted with the object of a state secret, a special permit is required, which has a special procedure for obtaining it (Law On State Secrets, 1996, Article 9).

It can be concluded that the court, when assessing information about the facts obtained in the activities of operational activities as evidence, needs a special permit to get acquainted with the object of a state secret in order to be able to perform a full assessment. So, to be able to evaluate the measure itself and its methods. The court cannot assess information about the facts obtained during the operational measures as evidence, if the information obtained about the facts is not assessed in connection with the methods of obtaining it, it is required by the above-mentioned criteria – reliability, relevance, admissibility.

In assessing factual information obtained during measures of inquiry as evidence, the court must, although assessed according to the same criteria as any other evidence in criminal proceedings obtained in the ordinary course of criminal proceedings, be regarded as a whole set of measures requiring intensified examination. already according to the provisions of the Criminal Procedural Law, because it contains both information about the facts and evaluation of the extraction methods, which is undeniably of significant importance.

In the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 28 December 2015 in case No. 11903022711, the court has stated that it is not permissible to use information as evidence about the facts obtained by police officers actually carrying out an operational measure without complying with the requirements of the Operational Law (Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia, 2015). This indicates that the court must evaluate the information on the facts obtained during the operative activity measures, but it cannot be used; therefore, it can also be assessed without considering requirements specified in the Law on Operational Activities.

Examining judgments of the Supreme Court, which reflect evaluation of factual information obtained during operative measures as evidence, it can be concluded that in practice the courts evaluate this factual information; moreover, evaluate according to the mentioned criteria.

The lawyer Jānis Baumanis has stated that sciences of Criminal Law today are in a continuous process of modernisation, which is determined by economic, political, organisational and scientific development of society, the change in values in people's legal consciousness, as well as other factors (Baumanis, 2017, 260). Agreeing with Baumanis, it should be noted that the issue addressed in the study is also relevant in modern criminal proceedings, it is subject to continuous process of modernisation, since with simple

criminal procedural methods, it is increasingly difficult to obtain evidence to prosecute a person. Facts in criminal proceedings play a key role in proving that the use and assessment of that information must be such that the legal framework for its preconditions is perfectly clear and that it can be used unambiguously in practice without creating a significant degree of complexity in the assessment.

When the court has to assess factual information obtained during operative measures as evidence, it must be assessed on an equal footing with other evidence in the particular criminal proceedings, as required by the criterion of reliability. However, when assessing factual information obtained during operational measures as evidence, the court itself must have a precondition, special permission to fully assess this factual information as evidence.

Conclusions

1. In the norms of Criminal Procedural Law, there are specific criteria for assessment of evidence which are applicable in conjunction, without the possibility to exclude any criterion from the assessment process.
2. In practice, the court also has to assess information obtained during operational measures as evidence, which is fully possible by evaluating methods of operational measures, which are the object of state secrecy. This circumstance gives grounds to consider that the court must have a special requirement – the right of access the object of a state secret in order to be able to fully assess such information as evidence. This circumstance gives a special status to the information obtained during operational measures as evidence in criminal proceedings, makes an additional claim.
3. In cases where the court has to assess factual information obtained during operational measures as evidence, there can be no additional requirement for the court itself, as this makes the evidence itself unequal as the object of assessment in the specific criminal proceedings. The existence of a permit for a court cannot be a precondition for assessment of factual information obtained during an operational activity.

The authors suggest that whenever information obtained during operational measures is used as evidence in a criminal case, the court should examine operational materials that are not attached to the criminal case and that relate to the subject matter of the evidence, indicating in the case file and ruling that these materials have been evaluated.

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