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Money Laundering Issues and Recent Trends

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Abstract

The legitimate aim of confiscation of property obtained by crime can be defined as the removal of property obtained by crime from the lawful civil circulation to prevent its further circulation and the commission of further criminal offences and to reduce the financial incentive to commit criminal offences. The author's research into the case law and new trends has led to the conclusion that the qualification of property as criminally acquired requires time and understanding of the application of the relevant rules in practice.

The study examines current issues in money laundering cases and recent trends. In many cases, the evidence presented to prove the legal origin of assets is often considered insufficient by the prosecution. In order to develop an understanding of what the proceeds of crime really are, an appropriate institution should be established with relevant economic expertise and understanding of business structure, to name the few.

It has been often found that property or other assets are confiscated simply due to the lack of understanding or lacking education, knowledge and practical experience, which leads to unjustified decisions. Thus, assets are considered to be criminally acquired and confiscated for the benefit of the State. In this way, the State itself is put at risk, because sooner or later, a claim for compensation will be brought, as human rights violations are also detected.

Keywords: anti-money laundering, money laundering.

Introduction

Increasingly, the opinions of various experts on the seizure of property because it has been declared by some official body to be criminally acquired, rightly or wrongly, are being heard, which leads to controversy. Not only has the law changed between

its adoption and the beginning of 2022, but a number of legislative changes have been in the pipeline, and current issues and trends have been identified. On 22 July, 2017, the Criminal Law was substantially amended, which entered into force on 1 August, 2017, adding Article 70 (*Saeima*, 2022) to the Criminal Law, which regulates the confiscation of criminally acquired property and provides:

> *"(1) Proceeds of crime shall mean any economic benefit which has come into the possession or ownership of a person as a direct or indirect result of the commission of a criminal offence.*
>
> *(11) Indirectly acquired criminal property is any economic benefit which has come into the possession or ownership of a person as a direct result of the further use, including reinvestment or transformation, of property acquired directly through crime, or the proceeds and profits derived from the disposal of such property.*
>
> *(2) Where the value of the property is not proportionate to the lawful income of the person and the person does not prove that the property was lawfully acquired, property belongs to a person who:*
>
> *1) has committed a crime which, by its nature, is aimed at obtaining a material or other benefit, regardless of whether the crime has resulted in a material or other benefit;*
>
> *2) is a member of an organised group;*
>
> *3) has committed a crime related to terrorism.*
>
> *(3) Property in possession of another person who maintains a regular family, economic or other property relationship with a person referred to in paragraph (2) of this Article may also be recognised as criminally acquired property if the value of the property in the possession of that person is not proportionate to his lawful income and if the person does not prove that the property was acquired by lawful means.*
>
> *(4) The property obtained by crime shall be confiscated if it does not have to be returned to the owner or lawful possessor."*

After the addition of this article, in practice, it is observed that in some cases this article and other articles of the law are used for the purpose of formally depriving a person of his property.

Relevance: 1) the issue of the examination period is becoming more and more relevant. There have been cases where a person is asked to provide documents relating to transactions that took place as long as 20 years ago; 2) a difference of opinion in cases where a person has to prove the origin of certain property in accordance with the principle of procedural economy, in which there is lacking uniform and clear understanding of what constitutes clear and reliable evidence and what is the extent of the steps that would have to be taken to prove it.

Methods and methodology: several research methods were used to investigate the question: comparative method, synthesis and analysis method, deductive and inductive method, analytical method. The research also used the methods of interpretation of legal norms, historical, grammatical and teleological, systemic methods, which were used to evaluate and study the content of legal norms and the text. In addition, the study of scientific articles, national and international normative acts was carried out.

1 Amendment, Implementation and Enforcement of Laws

On 1 June, 1998, the Law on the Prevention of Money Laundering entered into force; this law expired with the new regulation of 7 July, 2008 – the Law on the Prevention of Money Laundering and Terrorist Financing, on 29 June, 2019, a number of significant amendments to the law entered into force, the most important of which are: the name of the law was changed to the Law on Prevention of Money Laundering and Terrorist and Proliferation Financing, and the Control Service changed its name to the Financial Intelligence Service. Simultaneously, the law was amended to change the procedure for reporting to the Control Service from the notion of unusual transactions to reporting only suspicious transactions. The amendments also prevented false information about the real beneficiaries of companies. The subjects of the law, such as attorneys-at-law, outsourced accountants, credit institutions and others, were required to report to the Registrar of Companies (RoC) cases in which investigations concluded that the information on the client's beneficial owner did not correspond to that registered with the RoC. The main rationale for the changes to the law is to transpose Directive (EU) 2018/843 of the European Parliament and of the Council, or the so-called AML (anti-money laundering) V Directive, and to implement the recommendations of the Moneyval assessment.

Likewise, amendments to the Criminal Procedure Law were promoted. Following the adoption of the draft law, amendments to the Administrative Offences Code were necessary, providing for liability for failure to provide information to the State Revenue Service (Criminal Procedure Law, 2005). It was also necessary to amend the Law on the State Revenue Service, adding to the tasks of the State Revenue Service and the rights of its officials to enable the State Revenue Service to ensure supervision and control of the non-financial sector, and to re-issue or amend the regulations of the Cabinet of Ministers and the Financial and Capital Market Commission (*Saeima*, 2022). Subsequently, the Criminal Law was also amended several times.

In Latvia, there is no uniform approach and practice to money laundering; the issue can be characterised by adaptation to circumstances and learning from every case. As K. Dreimanis has pointed out, the old European countries have found the fulfilment of the norms through many years of practice, while Latvia adopts good norms, translating them and writing them into law, but there is no practice and experience in adequate application of these norms, which is why strange situations arise. Attention should be drawn to the fact that the Netherlands has gained a great deal of practical experience in combating the laundering of money obtained from selling illegal drugs. Latvia has so far had five Moneyval assessments; the first four were technical (compliance of the law with the Directive), which produced good results, but as soon as the fifth assessment touched on the efficacy of the operation of these norms, the assessment became unsatisfactory (Ķirsons, 2020).

2 Impact of "Overhauls"

The Council of Europe (CoE) Convention on Laundering, also known as the Warsaw Convention, binding from 1 June, 2010, Articles 9(5) and (6), which provide that Member States shall ensure that prior or concurrent convictions, are not a prerequisite for a conviction for laundering and that a person may be convicted of laundering if it is proved that the funds were obtained through the predicate offence without it being necessary to prove precisely which crime the acquisition of the property is linked to. This is how "stand alone" laundering entered the Latvian legal system. Thus, on 1 September, 2018, amendments to Article 124 of the Criminal Procedure Law came into force, which was supplemented by Part 7, which provides that in order to prove money laundering, it is necessary to prove that the funds were criminally obtained, but it is not necessary to prove which offence the funds were obtained from.

The amendments to the Criminal Procedure Law (which entered into force on 1 August, 2017) supplement Article 124 of the Criminal Procedure Law by lowering the standard of proof from the classic "beyond reasonable doubt" to "preponderance of the evidence". The same amendments also shifted the burden of proof from the State to the private party, uncharacteristic of criminal proceedings, by adding a new paragraph 3.1 to Article 126, which now provides that if a person involved in criminal proceedings claims that property should not be considered as criminally acquired, the burden of proving the lawfulness of the origin of the property in question lies with that person.

The annotation to the draft law states that the linguistic construction "in order to prove money laundering, it must be proved that the funds were criminally obtained" is ambiguous, which complicates its application, and such amendments are intended to improve the application of the norm in "stand alone" cases of money laundering.

On 13 February, 2018, the US Treasury Department's FinCEN published a notice on Latvia's AS ABLV Bank (Financial Crimes Enforcement Network, 2018). On 18 February, 2018, the Financial and Capital Market Commission (FCMC), at an extraordinary meeting of its Supervisory Board, acting on the instruction of the European Central Bank (ECB) No ECB-SSM-2018-FCMC-1, decided to temporarily impose payment restrictions on ABLV Bank, prohibiting debit operations on customer accounts in any currency. In fact, this decision meant that the bank was forced to start a self-liquidation process, which resulted in freezing of funds of some non-residents (AS ABLV Bank was the largest bank in Latvia servicing non-residents). Numerous investigations were launched, which were reduced to criminal proceedings.

On 23 February, 2018, the Bank adopted a decision on non-availability of deposits in AS ABLV Bank (hereinafter – the Company). In order to maximally protect the interests of customers and creditors, on 26 February 2018, the shareholders of AS ABLV Bank at an extraordinary meeting adopted a resolution on the bank's self-liquidation, which was formally approved by the FCMC by its decision of 12 June, 2018. The Company's self-liquidation initiated a self-liquidation process unprecedented not only in Latvia, but also in

Europe. The aim of the self-liquidation was to satisfy the claims of the Company's creditors in full, unless there were legal obstacles to doing so. The Company's assets exceeded its liabilities, which was the most important precondition for the regulators (the European Central Bank and the FCMC) to approve the self-liquidation process.

In practice, there are cases where a series of transactions, even nine years old, are analysed in the context of a proposed case, in isolation from all other material in the case. Such a fragmented approach prevents the possibility to fully provide the defence and the attorney – representation. In this regard, several applications have been submitted to the Constitutional Court with a request to assess the right to get acquainted with the case materials, since according to Section 627(4) of the Criminal Procedure Law, the materials contained in the case on criminally acquired property are investigative secrets and may be consulted by the proceeding director, the prosecutor and the court hearing the case. The persons referred to in Section 628 of the Criminal Procedure Law may have access to the materials in the case with the permission of the proceeding director and to the extent determined by them. Section 627(5) of the Criminal Procedure Law provides that the decision of the proceeding director to reject a request for access to the case file may be appealed against to the district (city) court hearing the proceedings on proceeds of crime. The court shall decide whether or not to uphold or reject the appeal in whole or in part. The decision is not subject to appeal. In order for the court to decide whether the access to the case file endangers the fundamental rights of other persons, the interests of society or hinders the achievement of the aim of the criminal proceedings, the court may request and inspect the criminal case file.

There are cases where the person has no status, no perpetrator has been identified, and there is only a probability that the funds (property) were obtained through criminal means. This raises doubts as to whether this is indeed sufficient grounds for declaring the funds (property) to have been obtained by crime. In the author's opinion, the problem is caused by the role of the "universal policeman", which is currently operating within the pilot project (LSM.lv News, 2021). The idea itself may be good, but aiming for quality cases, it is unlikely that an operative officer will be a good investigator of economic cases.

This is not the only reason why court decisions are not always sufficient. A quality case is based on time. Section 629(2) of the Criminal Procedure Law sets the time limit for the court's appointment – within 10 days of the decision of the proceeding director being received by the court. In practice, it has been found that if a case is large and the transactions in it (at least 100) have to be analysed, a rhetorical question remains whether the decision will be of high quality and whether every argument will be really considered; the practice shows the opposite.

After loud announcements, only on 21 November, 2019, the *Saeima* adopted amendments to the law, where the fifth paragraph of Section 356 of the Criminal Procedure Law was amended to read as follows: "*If it is alleged that property has been criminally acquired or is connected with a criminal offence, the proceeding director shall notify that*

person that within 45 days from the date of notification he/she may submit information on the legality of the origin of the property concerned, and shall inform the person of the consequences of failure to submit such information."

With such amendments, Article 125 of the Criminal Procedure Law "Legal Presumption of Fact" was amended (the amendments entered into force on 24 December, 2019, those proved effective at the beginning of 2020) by adding a third paragraph, which states: "*If a person involved in criminal proceedings is unable to explain reliably of the origin of the property with which the laundering activities have been carried out, and the totality of the evidence gives the proceeding director grounds for presuming that the property was most likely criminally acquired, this shall be presumed to be proven*."

The author of the study can agree with the above-mentioned that there is still no uniform case law on the fair settlement of property issues. In order to create a common understanding of criminal offences among investigators, prosecutors and the courts, the Financial Intelligence Service (FIU) developed a methodological material "Typologies and characteristics of money laundering", which states *"According to Article 124(7) of the Criminal Procedure Law, the investigation of money laundering (ML) can be carried out independently, i.e. to prove ML, it is not necessary to prove specifically from which criminal offence the funds were obtained. This means that the offence under Article 195 of the Criminal Law may be investigated as a stand-alone or independent money laundering offence based on circumstantial evidence indicating the criminal origin of the property, typologies and characteristics of money laundering offences, as well as the failure of persons to prove the lawful origin of the property*" (Financial Intelligence Service Methodological Material on Typologies and Characteristics of Money Laundering, 2020).

Both globally and in Latvia, at the end of 2021, a new trend of "stand-alone" or the so-called autonomous or independent fight against money laundering emerged with the changes to the Criminal Procedure and Criminal Law already mentioned above. This crime was the subject of an international symposium (Ministry of the Interior of the Republic of Latvia) for law enforcement authorities on "Current trends and future challenges in combating money laundering". The proposals and insights presented at the conference can be used to improve stand-alone money laundering investigations, which would create a common understanding between law enforcement authorities in the investigation and prosecution of such crimes (Iekšlietu ministrija, 06.10.2021).

Corruption is recognised as one of the main crimes generating "dirty money" worldwide. It is unrealistic to prove every case of corruption, but it is very realistic to get the dirty money out. Corruption is also predominantly what constitutes the autonomous offence, or this so-called "stand-alone".

Section 126(3)[1] of the Criminal Procedure Law provides that if a person involved in criminal proceedings claims that property should not be considered as criminally acquired, the burden of proving the lawfulness of the origin of the property in question lies with that person. If a person fails to provide reliable information on the lawfulness of the origin of the property within the prescribed time limit, that person shall be deprived

of the possibility to obtain compensation for the damage caused to him/her in connection with the restrictions imposed in the criminal proceedings on the disposal of that property. Article 125 of the Criminal Law (legal presumption of fact) provides that it shall be presumed that the property laundered has been criminally acquired if the person involved in the criminal proceedings is unable to provide a reliable explanation of the lawful origin of the property and if the totality of the evidence gives the proceeding director reason to believe that the property is likely to have criminal origin.

3 Understanding and Weighing Evidence

In practice, the question of what constitutes sufficient evidence of the lawful origin of the property in question on the part of the investigator, the prosecutor and the court is a matter of debate.

For example, a person is gainfully employed and receives a salary. Criminal proceedings are initiated against that person without the person even knowing it. This fact came to light when, during a vacation, the person went outside the borders of the Republic of Latvia to visit their relatives in another country. At the border, the person was stopped and told that the car had been declared stolen and that they should leave the car at the border of the other country and continue on their own. At the border, the person tried to prove that they were both the owner and the keeper of the car and that it was impossible for them to steal the car themselves. The arguments did not help, as the fact that the car was internationally wanted as stolen was substantially enough. The person was left without a car at the border and without a means of subsistence at the same time, because when the person contacted the investigator the next day, their bank accounts were blocked, which prevented them from paying with a payment card. It was only after their return to Latvia that the reason for the blocking of the bank accounts became clear, which the person was only able to resolve on their arrival in Latvia.

Looking at the situation in conjunction with many other circumstances, one wonders whether officials who are endowed with a certain level of power can really do implausible things to a person and their right to a basic existence. On their return to Latvia, they were asked, in accordance with Article 365 of the Criminal Procedure Law, to provide information on the legality of the origin of the property in question (the purchase of the car) within 45 days of the notification. The person did so, but the evidence provided was insufficient in the opinion of the investigator.

Upon analysing this case, the author of the study returns to the question of what the investigator considers to be sufficient evidence, whether bank statements of income and the amount of a previous sale of a car received by a non-cash transfer are insufficient evidence. It is often found that a threshold is crossed in the examination of sufficient evidence, which escalates into an invasion of a person's privacy. The author is confronted with many different cases in practice, each one is different and the analogy is not applicable, but investigators and prosecutors are of different opinion.

Recently, this trend has become more and more frequent in practice: persons submit all the documents on the lawful origin of the property in question, but the proceeding director considers that the evidence submitted is insufficient. The impression is given that the prosecutor does not have sufficient knowledge and understanding of the economic substance of the transactions, so a decision is taken to declare the property as the proceeds of crime and the cases are referred to court for adjudication. The observation shows that the process promoters have insufficient knowledge of economic issues, as well as fear of taking responsibility for declaring the property as legitimate. As a result of such behaviour, it can be concluded that Article 195 of the Criminal Code is an effective means of depriving a person of their property, whether the decision is justified and weighty will certainly be assessed by the European Court of Human Rights in the future.

Article 105 of the *Satversme* of the Republic of Latvia guarantees the right to own property. The Constitutional Court of the Republic of Latvia, in describing Article 105, has indicated that this Article, on the one hand, provides for the State's obligation to promote and support property rights, i.e., to adopt such laws as would ensure the protection of these rights; on the other hand, the State also has the right to interfere in the exercise of property rights within a certain scope and procedure (Constitutional Court's judgment, 2005).

On 31 March, 2021, the specialised Economic Court started its work. The main objective of the establishment of the specialised court was to ensure high quality and rapid handling of complex commercial disputes, economic and financial crimes, as well as corruption cases, ensuring efficient and rational use of state budget funds. The Economic Court has jurisdiction over specific commercial disputes and criminal cases of particularly serious and serious crimes that cause significant damage to the business environment and development of economy (Latvian Courts, 2021).

The Economic Court has jurisdiction over the offence of money laundering (Criminal Code, 2017, Art. 195). It also hears cases which are distinguished and heard under Chapter 59 of the Criminal Procedure Law – proceedings for proceeds of crime (Criminal Procedure Law, 2005).

The proceedings for criminal property provided for in Chapter 59 of the Criminal Procedure Law correspond to the doctrine-recognised term for such special proceedings – "proceedings in rem" or "proceedings against the thing" (Ķirsons, 2020).

Following the amendments to the mentioned laws and the establishment of the Economic Court, a wave of criminal proceedings and numerous decisions on the seizure of assets (including cash accounts) was initiated, which were later referred to court under Chapter 59 of the Criminal Procedure Law.

Despite the long history, persons (non-residents) have to prove the origin of funds for events going back 10 or even 20 years. Importantly, the different legal frameworks in different jurisdictions often lead to confusion as to why certain proof is required when a different legal framework had been in force at the time in the country where the transaction took place. In practice, the author of the study has found that, when

assessing events in court dating 10 or 20 years back, both the court and investigation assess transactions and documents supporting them, not according to the law in force at the time of the investigation, which has no retroactive effect, but already according to the law in force at the time the case is being examined.

It is also a coincidence that a large number of criminal proceedings were initiated between one and five months after the entry into force of Article 365 of the Criminal Procedure Law and the amendments to Article 125 of the Criminal Law. Moreover, almost all persons against, whom criminal proceedings have been initiated, are customers of LAS ABLV and other banks. Whether this is coincidence or contingency remains an open question.

Prosecutor General J. Stukāns expressed the opinion that "[...] *with current understanding one cannot judge 5 or even 10 and 20 year-old events of the past* [...], *although confiscation of property will not be applied for events that took place in the distant past* [...]."

He also believes that the competence of officials – investigators, prosecutors and judges – is the most important factor in this situation. Currently, the easiest way is for the authorities to initiate criminal proceedings and seize the account with the money, so that the money can be "held" for two years, but the investigation should actively work on the grounds. This is a misunderstanding, because before the state seizes and charges something, it has to collect evidence that shows the money is linked to a criminal offence or criminal origin (Ķirsons, 2020).

4 Impact of Legislative Changes on National Law

The European Court of Human Rights has recognised that there are common European and international legal standards that encourage the confiscation of property related to serious criminal offences such as corruption, money laundering and drug trafficking offences (Telbis and Viziteu vs. Romania, 2018).

Article 3(1) of the Warsaw Convention obliges Council of Europe Member States to adopt such laws, regulations and other measures as may be necessary to enable them to confiscate the instrumentalities and proceeds of crime or property the value of which corresponds to the value of the proceeds of crime and the laundered property. Similarly, Article 12((1)a) of the Palermo Convention obliges its Contracting Parties to take the necessary measures, to the greatest extent possible under their domestic legal systems, to enable them to confiscate the proceeds of crime, i.e. the proceeds of the offences covered by this Convention, or property the value of which corresponds to the value of those proceeds.

Article 5(1) of the Vienna Convention obliges States to take the necessary measures to confiscate the proceeds of the offences referred to in Article 3(1) of the Convention. Recommendation 4 of the Financial Action Task Force, which develops and promotes policy frameworks, including frameworks to protect the global financial system against money laundering on confiscation and provisional measures, also states that States

should consider establishing measures whereby the proceeds or instrumentalities of crime can be confiscated without criminal conviction (Confiscation of Cash and Property in Bribery, 2018).

In the Republic of Latvia, there is a right to appeal against a decision on confiscation of property taken by a regional court in accordance with Chapter 59 of the Criminal Procedure Law, if the district (city) court has taken a decision to terminate the proceedings for proceeds of crime as provided in Section 630(2) of the Criminal Procedure Law, in conjunction with the provisions of Directive 2014/42/EU.

There are different views on 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 from crime in the European Union) in the application of the Criminal Procedure Law.

Chapter 59 of the Criminal Procedure Law "Proceedings on Criminally Acquired Property", currently provides for a two-stage trial. The first instance is the Court of Economic Affairs, the second instance is the Riga Regional Court, whose decision is final and cannot be appealed. The current procedure does not comply with paragraphs 6 and 8 of Directive 2014/42/EU of the European Parliament and of the Council of 3 April, 2014, which states that the current system is incomplete due to differences in laws of the Member States (Directive 2014/42/EU).

On 4 December, 2020, the Ombudsman's Office announced the initiation of a review case on the alleged violation of Article 92 and Article 105 of the *Satversme* of the Republic of Latvia in relation to the right to appeal in court against a court decision, which was the first and only decision on confiscation of property in a case.

On 8 December, 2020, a submission was made to the Subcommittee on Criminal Justice Policy of the Legal Affairs Committee of the *Saeima* of the Republic of Latvia, outlining the circumstances of the opening of an investigation case against the Latvian Ombudsman. On 26 January, 2021, a meeting of the Subcommittee on Criminal Law Policy of the Law Commission of the *Saeima* was held, the agenda of which was "Chapter 59 of the Law on Criminal Procedure – Proceedings for Proceeds of Crime". The participants of the session – MPs and professionals, including the Prosecutor General, representatives of the Supreme Court, representatives of the Ministry of Justice, representatives of the Ministry of the Interior, prosecutors, sworn advocates – each expressed their vision on the possible directions for improvement of the procedure provided for in Chapter 59 of the Criminal Procedure Law. However, due to the limited time allocated for the meeting, the problems identified by the advocate were not fully discussed and debated (*Saeima*, 2021).

Given that the Criminal Procedure Law does not provide for the right to appeal against a decision of a regional court in proceedings for criminal property, even if it is the first and only decision on confiscation of a private person's property in the case, a complaint was lodged with the European Commission on 20 August, 2020 for infringement of European Union law on the ground that the Republic of Latvia has not correctly

implemented Article 8(6) of Directive 2014/42/EU pursuant to Article 288, third paragraph, of the Treaty on the Functioning of the European Union. According to a notification dated 9 September, 2020, the European Commission has registered the complaint.

Article 8(6) of Directive 2014/42/EU requires Member States to ensure that persons subjected to confiscation have an effective opportunity to appeal against such confiscation orders. The Directive analyses the concept of confiscation, which is the definitive deprivation of property ordered by a court in relation to a criminal offence. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders defines what constitutes a confiscation order. It is a final penalty or measure imposed by a court in connection with a criminal proceeding for an offence or offences, which provides for the definitive confiscation of property. It is clear from this definition that the decision on confiscation of property can only be court-ordered, emphasised Mr Voronko (Voroņko, 2021).

Special confiscation of property is the compulsory forfeiture to the State of property obtained by crime or the object of the commission of a crime, or property related to a crime (Criminal Law, 1999) without compensation. Special confiscation of property under Article 70 of the Criminal Case is not a criminal sanction, but an independent criminal law institute, which in criminal law theory is counted among other criminal law coercive measures. Unlike a criminal penalty, special confiscation of property is not imposed on a person for a specific criminal offence committed by them but is nevertheless related to the criminal offence committed by them and may also be imposed on other persons (both natural and legal persons) in cases provided for by law. The legal doctrine has expressed the opinion, which has been shared by the Criminal Cases Department of the Senate of the Supreme Court in Case No. SKK-234/2012, that confiscation of criminally acquired property, unlike confiscation of property, cannot be recognised as punishment in the classical sense, because confiscation of criminally acquired property results in forfeiture of benefits that are not due to the person at all (Criminal Case No. SKK-234/2012).

The Warsaw Convention states in its preamble that the fight against serious crime, which has become a growing international problem, must be fought at international level using modern and effective methods. One of these methods is to deprive criminals of the proceeds and instrumentalities of crime. The preamble to the Directive also states that the most effective way of combating organised crime is to provide for strict legal consequences for the commission of such crimes and for the effective detection, freezing and confiscation of the instrumentalities of a crime and the proceeds of a crime. The legitimate aim of confiscation of property obtained by crime can thus be defined as the removal of property obtained by criminal means from the legal civil circulation in order to prevent its further circulation and the commission of further criminal offences and to reduce the financial incentive to commit criminal offences.

In the Palermo Convention, the Vienna Convention and the Directive, "confiscation" means seizure of property pursuant to a decision of a court or other competent

authority. Under the Warsaw Convention, "confiscation" means a penalty or measure imposed by a court following proceedings in respect of an offence or offences and resulting in deprivation of property. The substantive rules on special confiscation of property are regulated in Chapter VIII "Special Confiscation of Property" of the Criminal Case, which were incorporated into the Criminal Case by the Law "Amendments to the Criminal Law", which entered into force on 1 August, 2017 (Criminal Case No. SKK-234/2012).

It follows from Article 70 of the Criminal Law that the essence of confiscation of property obtained by crime, the object of the commission of a criminal offence or property connected with a criminal offence is the compulsory forfeiture of the property to the State for no consideration. The decision to declare property as criminally acquired may be taken by an investigator during a pre-trial investigation, by a prosecutor at the conclusion of criminal proceedings, or by a court with a final decision in a criminal case, when considering the merits of the case. The proceedings for criminally acquired property are characterised by the fact that in these proceedings the guilt of a person is not established, but the criminal origin of the property or its connection with a criminal offence is decided (Constitutional Court's judgment, Case No. 2016-13-01, 2017).

From the findings, the author of the study can conclude that there are problems in the development of uniform case law, in understanding of what exactly criminally acquired property is and in which cases it should be confiscated and when it should be returned to the owner. There is a lack of understanding of the meaning of Chapter 59 of the Criminal Procedure Law and its application in practice. In order to bridge the gap between the divergent practices of the Member States and to reduce future claims against the Latvian State for unjustified confiscation of property based on poor understanding of the application of criminal procedural rules, it is necessary to establish a working group of EU Member States to develop guidelines on the precise application of these rules in practice.

Article 73 of the German Criminal Code provides for the confiscation of criminal assets for the benefit of the State. Nevertheless, the confiscation of criminal property for the benefit of the State is limited to what is necessary to compensate the victims. Where the offence has been committed in the interests of other persons and those other persons have benefited financially from the offence in question, the confiscation of the proceeds of crime shall be directed against the property of those other persons. Germany also provides for the possibility to recover from the perpetrator the monetary equivalent of the value of the proceeds of crime if confiscation of the object in question is not possible. According to Article 76 of the German Criminal Code, in cases where it is not possible to prosecute or convict a particular person for a punishable offence, it is also possible to decide separately on the confiscation of the object or its value (German Criminal Code, 1998).

Conclusions

Pursuant to Article 5 of the Law on the Bar of the Republic of Latvia, advocates are persons belonging to the judicial system for conducting cases in any court of the Republic of Latvia and pre-trial investigation institutions of the choice of the parties, the accused and other participants (clients) in the case and on their behalf, as well as in cases prescribed by law on behalf of court presidents, heads of pre-trial investigation institutions and the Latvian Council of Sworn Advocates. Lawyers also provide other legal assistance in accordance with the procedure established by law. If lawyers are persons belonging to the judicial system, it is reasonable for a lawyer to also have the possibility to get acquainted with all the case materials in a given case, and not merely with the randomised case materials at the discretion of the instigator of the proceedings. Such an approach would ensure the right to a fair trial, full and high-quality defence and possibly promote uniform case law.

It should be noted that, pursuant to Articles 6, 10 and 48 of the Law on Advocacy of the Republic of Latvia, an advocate is granted the right to access restricted information necessary for the full and *timely* protection of the legal interests of the client *at any stage of the proceedings*. A legitimate question then arises as to why the lawyer is denied access to all the case files, thereby denying the right to information and to the full and timely protection of the client's legal interests. For example, in Germany, the Netherlands and other EU Member States, a lawyer has every right to inspect the case files, including the secrets of the investigation, in order to ensure that the law of criminal procedure is applied fairly and to ensure a high-quality and complete defence. It is noteworthy that a lawyer who is familiar with the investigation secret is aware that this information and documents cannot be disclosed to the client. It is possible that the introduction of such a system in the laws and regulations of the Republic of Latvia would contribute to the quality of criminal proceedings, ensuring their compliance with the purpose of the law.

1. There is no uniform practice and approach in analysing, assessing and reviewing cases of alleged money laundering and proceeds of crime. There is no uniform evaluation of evidence.
2. Events that are five, ten or twenty years old are judged by the law currently in force, not by the law in force at the time the transaction was concluded.
3. A recurring problem in many cases before the courts is the setting of an examination period, which is often not set at all or is arbitrarily extended.
4. Expediency of seizure of property is important before taking evidence of illegal origin of money.
5. The current procedure (two-tier court) does not comply with Article 8(6) of Directive 2014/42/EU of the European Parliament and the Council of 3 April, 2014.
6. The instigators of the proceedings must communicate with the owners of the property affected. A person cannot fully prepare for a trial if no questions

have been asked by the moving party for two years, and questions are raised at the hearing that have never been mentioned in any procedural document before.

7. Procedures, time limits and thresholds of proof should be laid down for the duration of the retention of documents, taking into account the country in which the transactions took place. The personality of the owner of the property affected, the time period in question, the type of business must be considered, as in many countries accounting documents are kept for 3–5 years, while the proceeding director asks for explanations of transactions and evidence for transactions as far as 9 years back.
8. If the owner of the affected property has to explain the lawful acquisition of the property, he or she needs to understand which transactions are rising suspicions in order to be able to fully defend their affected interests.
9. It is not legal to investigate the case and seek evidence from unofficial sources (various websites). Evidence must be established in accordance with the Criminal Procedure Act.
10. Denying full access to the case file denies the rights of the defence, as it is impossible to defend against what is not known.
11. When analysing confiscation options in other countries, there is no single "formula", due to different judicial systems, laws and values.

In order to have grounds for criminal proceedings, submission of the necessary information and its acceptance as reliable and substantiated must be clearly and comprehensibly defined. Such cases where, due to lack of knowledge, no evidence is reliable and everything is obtained criminally must be eradicated. It is high time to understand cases and be able to assess the facts, which may serve as sufficient grounds for closing a case.

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