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The Impact of the Legalization of Criminally Obtained Funds on the Economy of Latvia

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Abstract

The legitimate aim of confiscation of proceeds of crime can be defined as the removal of proceeds of crime from lawful civil circulation in order to prevent its further circulation and the further commission of criminal offences and to reduce the financial incentive to commit criminal offences. The author's research of case law and latest trends has led her to the conclusion that the recognition of property as proceeds of crime requires time and understanding of the application of the respective rules in practice. The paper is second part of previously published article. The paper studies current issues in money laundering cases and latest trends. To prove the legal origin of property, it is often the case that the evidence presented is deemed insufficient by the persons directing the proceedings. In many cases, property or other tangible assets are confiscated simply because of a lack of understanding or adequate education, knowledge and practical experience, which leads to unjustified decisions to declare property as proceeds of crime and to confiscate it for the benefit of the state. This also puts the state itself at risk, as eventually diverse types of claims are brought, including for damage compensation; human rights violations are also identified.

Keywords: stand alone, anti-money laundering, money laundering and related issues.

Introduction

Current article is second part of the research related to legalization of criminally obtained funds on the economy of Latvia (Neimane, 2022). From the adoption of the anti-money laundering law until the beginning of 2022, not only has the law been amended, but case law has also been developed. In this paper the accent will be made on the origins and understanding of the Concept of money laundering, as well as regulatory Acts of

the Republic of Latvia will be analized. The Role of the Supervisory Bodies – the Financial Intelligence Service and the Financial and Capital Market Commission in Preventing Money Laundering will be overwide as well.

It must be noted, that examination of the situation, in conjunction with many other circumstances, raises a question as to whether officials who are endowed with a certain amount of power can really do absurd things to human beings and their right to basic existence. When the person returned to Latvia, he was asked to provide information on the legal origin of the property (purchase of the car) within 45 days of the notification, pursuant to Section 365 of the Criminal Procedure Law. It was done by the person, but the evidence presented was insufficient in the investigator's opinion. In relation to this case, the author returns to the issue of what constitutes sufficient evidence in the investigator's opinion. The article provides the practical issues to solve the legal problems.

Methods and Methodology. Several research methods were used to investigate the issue: comparative method, synthesis and analysis method, deductive and inductive method, analytical method. Methods of interpretation of legal norms, historical, grammatical and teleological, systemic, which were used to evaluate the content of legal norms, as well as the text assessment and exploration methods were applied in the research. In addition, the author carried out research of scientific articles, national and international laws and regulations.

1 Money Laundering – Origins and Understanding of the Concept

Money laundering is the act or set of acts by which funds derived from any illegal activities are channelled through the financial system in such a way so as to give the impression that the funds were obtained through legitimate channels; as a result, the "laundered" money enters the free financial circulation (Financial and Capital Market Commission, Money Laundering Prevention). "Dirty money laundering" is activities aimed at the laundering of proceeds of crime, often proceeds acquired from the sale and trafficking of drugs and smuggling, carried out by the criminal or by intermediaries. The term "money laundering" originated in the USA. The activities were based on the business of criminals and members of different gangs (called gangsters at the time) – extortion, prostitution, gambling and alcohol smuggling. Criminal activities were hidden behind legitimate business activities, such as gambling. Financial activities were carried out by mixing funds obtained through criminal means ("dirty" money) with funds obtained through legitimate means ("clean" money). As a result, 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, using methods that had been used to fight illicit alcoholic drinks.

The first and most important money laundering activities and schemes are linked to the powerful US gangster business in the 1930s. Considering the arrest of the notorious Italian-American criminal Al Capone (Alphonse "Al" Gabriel Capone) in 1931 in the USA for repeated tax evasion, Meir Lansky, another well-known US gangster who committed his criminal activities with Al Capone started transferring the criminally acquired – "laundered" – funds from his flourishing gambling business abroad, namely to bank accounts in Switzerland, in order to avoid possible imprisonment. After 1934, when the Swiss Banking Act came into force, which for the first time included a regulation on banking secrecy, Meir Lansky acquired a bank in Switzerland, to which he transferred his proceeds of crime through complex transaction schemes, including shell companies and offshore companies.

The notion of "money laundering" first appeared in the Watergate scandal in the USA in 1972, when illegal activities with political campaign money took place in the Democratic National Committee headquarters, leading to the resignation of then US President Richard Nixon. These illegal funds were initially sent to Mexico and returned through a Miami-based company.

Money laundering activities were initially associated with the laundering of proceeds from extortion, prostitution, illegal gambling and alcohol smuggling, but drug trafficking and sales and arms smuggling were added to this range of activities in 1980. The concept of terrorist financing emerged in 2001.

Money laundering using the intermediary of the financial system is often an important part of the commission of a larger crime. The persons involved seek to use the services and mechanisms of various international financial institutions to launder the proceeds of crime, which can potentially be further used to commit other larger-scale criminal activities.

Money laundering is generally divided into three stages:

1) placement, when cash or its equivalent is placed in the financial system (currency exchange, denomination change, cash transportation, cash investment);
2) layering, when a series of complex financial transactions is carried out to disguise the origin of the money (shuffling or layering; money transfers, cash withdrawals, cash deposits in another bank, splitting and combining account funds, drawing up sham contracts and invoices); at this stage of structuring, the proceeds of crime are (a) moved and structured away from the source of the funds by staging various transactions, (b) giving the impression that civil transactions are taking place, e.g.:
   - transfers of funds between countries or between several credit institutions or other financial institutions;
   - transferring funds between different accounts within the same financial institution;
   - conversion of funds into financial instruments;

- resale of exclusive goods (jewellery, art objects);
- mediation and use of shell companies;
- activities are based on apparently legal civil transactions – payment for goods, services, loans, repayments, investments (Financial Intelligence Service, Money Laundering Typologies and Features, 2021);

3) integration, where funds are integrated back into the economy in a way that makes it look like they have legitimate origins. The purpose of integration is to create an obvious legal origin for the proceeds of crime (justification) (sham loans, turnover, capital gains, disguising ownership, criminal funds in third-party transactions).

In any case, such a simplified approach does not cover all possible money laundering techniques, as depending on the circumstances, the origin of the funds, the purpose of their subsequent use, one of these stages may be omitted or another mechanism may be used (Financial and Capital Market Commission).

2 Regulatory Acts of the Republic of Latvia

On 18 December 1997, the Saeima adopted the Law on the Prevention of Money Laundering, which entered into force on 1 June 1998, when the Latvian financial intelligence unit – the Anti-Money Laundering Service, started its work. At that time, its other official (abbreviated) name was the Control Service (now the Financial Intelligence Service). The previously mentioned law included legal provisions in line with EU Directives 91/308/EEC and 2001/97/EC. The adopted Law on the Prevention of Money Laundering expired on 13 August 2008 and was replaced by the Law on the Prevention of Money Laundering and Financing of Terrorism (it has had a new title since 29 June 2019 – Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing). Money laundering was criminalised when on 2 April 1998 the Saeima of the Republic of Latvia added a new section to the Latvian Criminal Code – Section 151^4, which provided for criminal liability for money laundering. With the expiry of the Latvian Criminal Code on 1 April 1999 and the entry into force of the Criminal Law, liability for money laundering is currently established by Sections 195, 195^1 and 195^2 of the Criminal Law. It is therefore concluded that since 1 June 1998 the area of prevention and combatting of money laundering and financing of terrorism has been legally regulated in Latvia.

The Latvian regulatory acts on the prevention of money laundering stipulate that the following funds are considered to be proceeds of crime:

1) which are directly or indirectly acquired in a person's property or possession by committing a criminal offence;
2) in other cases stipulated in the Criminal Law.

In addition, funds belonging to or under the direct/indirect control of the following persons are also considered to be proceeds of crime:

1) person included on one of the lists of persons suspected of involvement in terrorist activities or activities related to weapons of mass destruction, drawn up by certain countries or international organisations established by the Cabinet of Ministers;
2) person included on the list of sanctioned entities drawn up by the Cabinet of Ministers on the basis of the Law on International and National Sanctions of the Republic of Latvia for the purpose of combatting terrorist activities and activities related to weapons of mass destruction;
3) person about whom the subjects of operational activity, the investigative authorities, the public prosecutor's office or a court have information which provides sufficient grounds to suspect that person of an offence related to terrorism.

According to the Latvian regulatory acts, the following are considered to be money laundering:

1) converting proceeds of crime into other assets, changing their location or ownership, knowing (being aware) that they are proceeds of crime, or attempting to conceal the true origin of such proceeds; participating in such activities;
2) concealing or disguising the true nature, origin, location, disposition, movement, ownership of the proceeds of crime, knowing (being aware) that such proceeds have been obtained by criminal means;
3) acquiring ownership, possession or use of the proceeds of crime of another person, knowing (being aware) that they are proceeds of crime when these rights arose.

Money laundering also includes the above-mentioned activities where the person knowingly presumed that the funds are proceeds of crime. In addition, money laundering shall also be deemed to be committed when the criminal offence stipulated in the Criminal Law, as a result of which such funds were obtained directly or indirectly, was committed outside the territory of Latvia (Section 4 (1) and (3), Section 5 (1), (1) and (2) of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing; version in force from 01.01.2022).

Under the laws and regulations applicable in Latvia, if money laundering activities are detected, a person is held criminally liable. Pursuant to Section 195 of the Criminal Law, for the laundering of proceeds of crime, including financial assets:

1) the applicable punishment is imprisonment for a period of up to four years or temporary imprisonment, or probationary supervision, or community service, or fine (with or without confiscation of property);
2) if the previously mentioned activities have been committed by a group of persons according to a prior agreement, the applicable punishment is imprisonment for a period of up to five years or temporary imprisonment, or probationary supervision, or community service, or fine (with or without confiscation of property);

3) if the previously mentioned activities have been committed on a large scale, or if they have been committed by an organised group – imprisonment for a period of three years and up to twelve years (with or without confiscation of property) and with or without probationary supervision for a period of up to three years.

In addition to criminal liability for money laundering under the Criminal Law, there is also criminal liability for a failure to provide information or providing false information regarding the ownership of the funds and/or their beneficial owner. The provision of knowingly false information to a natural or legal person authorised by law to request information about a transaction and the true owner or true beneficiary of the property or other assets involved in it, as well as the failure to provide information about the true beneficiary as required by law or the provision of knowingly false information to a state institution or legal person shall be punishable:

1) the applicable punishment is imprisonment for a period of up to one year or temporary imprisonment, or probationary supervision, or community service, or fine;
2) if such acts cause substantial damage – the applicable punishment is imprisonment for a period of up to two years or temporary imprisonment, or probationary supervision, or community service, or a fine.

Under the Criminal Law, evading a cash declaration is also a criminal offence for which a person can be held criminally liable. The Criminal Law stipulates that the evasion or false declaration of large sums of cash brought in or out of the territory of Latvia when crossing the internal border of the country, if a cash declaration in accordance with the procedure established by law is requested by an official of the competent authority, is punishable:

1) the applicable punishment is imprisonment for a period of up to one year or temporary imprisonment, or community service, or a fine;
2) if the previously mentioned acts have been conducted by bringing substantial amounts of cash into the territory of Latvia – the applicable punishment is imprisonment for up to three years or temporary imprisonment, or community service, or a fine.

The main condition for any form of criminal prosecution is that a person has been found guilty of a criminal offence. Section 1 of the Criminal Law stipulates that only a person who is guilty of committing a criminal offence, that is, one who deliberately or through negligence has committed an offence which is set out in this Law, and which has all the constituent elements of a criminal offence, may be held criminally liable and punished. Being found guilty of committing a criminal offence and imposing of a criminal punishment may be done by a judgment of a court and in accordance with law (Section 1(1) (2) of the Criminal Law). Evidence confirming that a criminal offence has been committed plays a significant role in finding a person guilty of a criminal offence. The Criminal Procedure Law stipulates that proving is an activity of a person

involved in criminal proceedings that is expressed as the justification, using evidence, of the existence or non-existence of facts included in an object of evidence (Section 123 of the Criminal Procedure Law, amending law in force from 01.08.2022). Criminal liability is also established for forgery of evidence according to the Criminal Law (Section 289 of the Criminal Procedure Law, amending the law in force).

The provisions included in the Latvian regulatory framework regarding the prevention of money laundering arise from and comply with the recommendations "International standards to prevent money laundering and the financing of terrorism and proliferation of weapons of mass destruction" prepared by an intergovernmental organisation Financial Action Task Force, which contain internationally recognised standards in this area (Financial and Capital Market Commission).

3 Obligations and Rights of Financial and Credit Institutions

Considering the fact that financial and credit institutions, mostly banks, are used as the main tool in various money laundering schemes, the existing regulatory framework in Latvia (mainly the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing) not only stipulates a number of strict conditions for institutions to screen existing and potential customers, but also grants a number of rights to be exercised by the institution when carrying out the aforesaid verifications. The law requires financial and credit institutions to strictly comply with the so-called "Know Your Customer" principle in order to understand who their customers are, the specific purposes for which they use or wish to use their services, to understand the economic substance of their customers' transactions and, in certain cases, to verify the origin and legitimacy of their customers' funds. This regulatory framework on the obligation for institutions to conduct customer due diligence arises from European Union Directive 2015/849, which aims to prevent and combat money laundering and terrorist financing.

When exercising their legal duties, financial and credit institutions ask various questions to their customers, request explanations and provide documentary evidence to prove the veracity of the information provided in order to identify their customers and their intended transactions and to clarify the level of risk of a particular customer in relation to money laundering attempts. Customer transactions are monitored to ensure that the transactions entered into by the customer under the business relations are conducted in accordance with the information available to the institution about the customer's profile and its business activities. The law accordingly obliges the customer to provide truthful information about the activity, and the planned transactions. The customer is obliged to provide truthful, comprehensible and verifiable information at the request of the institution. If the authorities identify a customer as being at risk, they are entitled to conduct due diligence by requesting a variety of additional information, documents

and explanations, both about the customer and about the transactions carried out by the customer and their origin.

There are often cases in practice where the customer is confused about the purpose of the information requested from the institution and the legitimacy of the request. There are also cases where a customer is requested to provide information on the use of funds unrelated to a specific transaction, which customers tend to be confused about. In order to comply with the requirements of the law, financial institutions and credit institutions are entitled to know how a customer's funds are being used – even in cases where it is not related to the transaction being executed at the time or on the directly existing business relationship between the institution and the customer.

According to 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, or if false information was provided, the institution is obliged to report it to the anti-money laundering service – the Financial Intelligence Service (Neimane, 2022). The procedure for the submission of reports by institutions to the Financial Intelligence Service is stipulated in Cabinet Regulation No. 550 adopted on 17 August 2021 "Regulations on the Procedure and Content of Submission of Suspicious Transaction Reports and Threshold Declarations" (entered into force on 1 October 2021) (Cabinet Regulation No. 550 "Regulations on the Procedure and Content of Submission of Suspicious Transaction Reports and Threshold Declarations").

4 The Role of the Supervisory Bodies – the Financial Intelligence Service and the Financial and Capital Market Commission – in Preventing Money Laundering

Financial Intelligence Service

The Financial Intelligence Service is an independent body under the supervision of the Cabinet of Ministers and is the lead and supervisory authority in money laundering prevention. Its main objective is to take action to prevent the Latvian financial system from being used for money laundering and the financing of terrorism and proliferation. The main task of the service is to collect and analyse financial data when reports of suspicious transactions are received, so that the information can be passed on to the relevant law enforcement authorities to investigate the cases of money laundering, terrorism and proliferation financing (Financial Intelligence Service). According to the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing, the Financial Intelligence Service has the right to issue an order on the freezing of funds to the subject of the law or the national information system administrator if there are reasonable grounds to suspect that a criminal offence, including money laundering, financing of terrorism and proliferation, or an attempt to commit such criminal offences, is being or has been committed (Section 32^1 of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing).

In 2021, The Financial Intelligence Service issued a methodological material entitled "Money Laundering Typologies and Features" (2nd updated version), in which the authority drew up a list of the main money laundering schemes, detailing their key features (Financial Intelligence Service, Money Laundering Typologies and Features (methodological material), 2nd updated version, 2021).

Financial and Capital Market Commission

The Financial and Capital Market Commission is a fully-fledged autonomous state institution that regulates and supervises the activities of Latvian credit and financial institutions, private pension funds, participants of the financial instruments market and other financial entities. The objective of the institution is to safeguard public interests by regulating and supervising the activities of participants of the financial and capital markets, promoting the protection of the interests of investors and depositors and the development and sound functioning of the financial and capital markets.

In order to ensure the protection of the interests of financial and capital market participants, the institution also reviews various applications submitted by customers of financial and credit institutions in cases where a financial institution or credit institution suddenly informs a customer of its intention not to continue cooperation with the customer or refuses to establish new cooperation (Neimane, 2022).

The Financial and Capital Market Commission has also prepared methodological materials on anti-money laundering, participating in their development and regulatory acts.

What Bank Customers Need to Know

In recent years, it has become increasingly common in Latvia for banks to terminate their cooperation with customers on the basis of the bank's policy, without giving the customer specific reasons.

A bank is not obliged to notify its customer of the specific grounds for the termination of business relations – the bank-customer relations are based on the principle of private autonomy, so a credit institution may choose the customers it enters into business relations with, on what terms, while ensuring that these terms are non-discriminatory.

There are cases where criminal proceedings are initiated against a person, a law enforcement authority requests information from a credit institution, a pre-trial investigation takes place, a person is found not guilty by a court ruling, but the bank ends cooperation with the customer and other banks also refuse to cooperate with the person. In this case, when a person is suspected of committing a criminal offence (the suspect) and the bank refuses to continue cooperation, even though the offence has nothing to do with finance or the credit institution in question, the question arises – where can the person get, e.g., a salary, a pension, or how can they use other financial services? Should a person use the services of credit institutions outside Latvia when it would be

more difficult for Latvian law enforcement authorities to obtain data about the person and, if necessary, to monitor and control the person?

Although it is not widely discussed in public, the use of foreign credit institutions by people with something to hide is becoming more common.

The Ombudsman also addressed the issue of financial service accessibility and pointed out that the freedom of choice between credit institutions and their potential or existing customers tends to be unbalanced, since if one credit institution refuses to enter into or continue business relations with a person without explanation, other credit institutions with a similar business profile most often also refuse to provide services to that person, which leads to the person not having access to the financial services that they need on reasonable terms (Ombudsman of the Republic of Latvia, 26.01.2021).

If the bank provides information about its intention not to continue cooperation with the customer or refuses new cooperation, the person may apply to the bank with a request to review its decision, and the FCMC, which supervises the activities of Latvian banks, ensures the protection of customers' interests, and takes care of public interests.

In addition, under General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)), a person has the right to control their personal data and, if personal data are no longer necessary for the purpose for which they were initially collected or there is no legal basis for their processing, the person has the right to have their data erased.

Not only the aforesaid Regulation, but also Section 4 of the Law on Processing of Personal Data in the Criminal Proceedings and Administrative Offence Proceedings establishes the principles of processing personal data; personal data shall be:

1) processed lawfully and fairly;
2) collected for specified, explicit and legitimate purposes, and not processed in a manner that is incompatible with the above-mentioned purposes;
3) processed so that they would conform to the purpose for the processing of personal data laid down in Section 2 of this Law and would not be excessive, having regard to the purpose for which they are processed;
4) processed so that they would be accurate and up to date – the controller shall ensure that inaccurate personal data, having regard to the purpose for which they are processed, are erased or rectified without delay;
5) kept in a form which permits the identification of data subjects for no longer than it is necessary for the purposes of the processing of personal data;
6) processed by using appropriate technical or organisational measures in a manner that ensures appropriate security of personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.

Section 13 of the Law regulates the right to request the rectification, erasure of personal data or restriction of the processing of personal data, which, inter alia, stipulates the cases in which the controller shall not erase personal:

1) the data subject contests the accuracy of his or her personal data, but it is not possible to ascertain the accuracy or inaccuracy thereof. In such case the controller shall inform the data subject before revocation of the restriction of the processing of personal data;
2) it is necessary to maintain the personal data for the purposes of evidence.

Credit institutions are known to assess a person's reputation reflected on the internet and in the media. As it can be concluded based on the professional experience, people working in public administration and politics sometimes misuse social networks and the media, even specially organised campaigns, to spread false or unverified information about a person. In this case, a person's reputation is negatively affected and, although many people forget false information about a person after a while, in the age of technology it can be difficult to erase it from the internet, including social networks. Moreover, it should be noted that not everyone who has heard or read false or unverified information about a person subsequently receives information that restores or improves their reputation. Certain regulatory acts related to the protection of personal data (i.e., any information relating to a data subject) have already been mentioned.

What to Consider if a Law Enforcement Authority Suspects That Funds or Other Property is Proceeds of Crime

In the Republic of Latvia, criminal proceedings are conducted by an official authorised to do so according to the procedure established by the Criminal Procedure Law (hereinafter referred to as CPL). The CPL has been continuously amended over time in an attempt to improve it, to make it easier to apply, but in practice, unfortunately, the law has become more complex and the work of the person directing the proceedings is not made easier, as sometimes the person directing the proceedings is unable to keep track of the frequent amendments to the CPL. Criminal proceedings consist of three stages: investigation (the investigator or, in exceptional cases, the prosecutor is the person directing the proceedings); prosecution (the prosecutor is the person directing the proceedings); trial (the judge, composition of the court). According to Section 356(1) of the CPL, property may only be recognised as criminally acquired by a court decision that has entered into force or by a prosecutor's decision that criminal proceedings have been completed.

Part 5 of the aforesaid section stipulates that if an assumption is expressed that the property is criminally acquired or 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 relevant property, and shall also inform the person of consequences for a failure to submit such information. The person must therefore comply with the obligation under the CPL and provide all the information in their possession within 45 days.

In the case of the incorrect application of the provisions of the law, the persons directing the proceedings imposed a disproportionate obligation on the owners of the property affected to submit documents (evidence) or certified translations in the state language within the 45-day time limit stipulated in Section 356 of the CPL, basing the claim on Section 11 of the CPL and Paragraphs 48-51 of Cabinet Regulation No. 558 adopted 4 September 2018 "Procedure for Preparation and Execution of Documents". In the conclusion in inspection case No. 2020-48-4AD dated 9 July 2021, the ombudsman urged the State Police and the General Prosecutor's Office to change the practice and prevent the cases when the rights guaranteed in the first sentence of Section 92 of the Constitution are unjustifiably restricted to the owners of the property affected in criminal proceedings – everyone can defend their rights and legal interests before a fair tribunal) – justifying it by referring to the ruling of the Constitutional Court of 12 December 2014 in Case No. 2013-21-02, in which the Court recognised that if a restriction of fundamental rights is not established by law, then it does not conform to the Constitution (Ombudsman in the conclusion in inspection case No. 2020-48-4AD, 09.07.2021).

If the person directing the proceedings (i.e., the investigator with the consent of the supervising prosecutor or the prosecutor) decides to initiate proceedings for the proceeds of crime, the decision shall contain clear and detailed information on the facts that are the basis for the conclusion that the property is connected to a criminal offence or has a criminal origin, so that the person connected to the property (i.e., the person from whom the property was seized or arrested, if any, or another person who has a right to the property in question (Section 628 of the Criminal Procedure Law)), may provide an explanation thereof in order to refute the allegations of the person directing the proceedings.

In proceedings for the proceeds of crime, the decision to initiate proceedings is in fact the most important document, indicating the circumstances and the grounds on which the person directing the proceedings claims that the property has been criminally acquired. The content of the decision determines whether the rights of the person related to the property will be violated and whether the person will have a real rather than a perceived opportunity to exercise their rights and protect their interests. In proceedings for proceeds of crime, the rights of the parties must be fairly balanced, ensuring that the person related to the property knows the circumstances in which the person directing the proceedings claims that the property is proceeds of crime (Stukāns, 2014).

The law stipulates that a copy of the decision to initiate proceedings for proceeds of crime adopted by the person directing the proceedings shall be sent to the person related to the property, but it should be noted that the case file of such proceedings is an investigative secret and may be inspected by the person directing the proceedings, the prosecutor and the court hearing the case, while the person related to the property may inspect the case file with permission and to the extent determined by the person directing the proceedings (Section 628, Section 627(4) of the Criminal Procedure Law).

Pursuant to Section 629 of the CPL, the judge, having received a decision to initiate proceedings on proceeds of crime, shall set a court hearing within 10 days after the receipt of said decision, while the absence of persons invited to the hearing, including a person related to the property, shall not prevent the adoption of a decision on proceeds of crime.

One of the most fundamental human rights is the right to a fair trial, which is also understood to include the right to have evidence presented in court examined (Stukāns, 2014).

Section 630 of the CPL stipulates that in examining materials regarding criminally acquired property, a court shall decide: whether the property is criminally acquired or related to a criminal offence; whether there is information regarding the owner or lawful possessor of the property; whether a person has lawful rights to the property; actions with the criminally acquired property.

In most cases, the reliability of the information included in the decision of the person directing the proceedings determines the court's decision on the origin of the property.

If the court finds that the connection of the property to a criminal offence has not been proven or that the property did not originate from a criminal offence, it decides to terminate the proceedings for the proceeds of crime.

The termination of proceedings for proceeds of crime does not preclude the continuation of the pre-trial investigation, reapplying to court with a motion to acknowledge the property as proceeds of crime and proceeding to a general criminal trial (Ovey, White, 2006).

5 Analysis of Case Law

Criminal Proceeding, Case No. 15850000518

On 20 May 2021, Riga City Vidzeme District Court adopted a decision to terminate the proceedings for proceeds of crime on the property seized from the suspect N. F. The decision states that the evidence obtained in the criminal proceedings indicates that N. F. financed the organisation of large-scale smuggling and acquired and used SIA G for the commission of the crime, concealing its true ownership. Sandis Brasla, prosecutor of the Latgale Judicial Region Prosecution Office, confirmed, by way of a resolution, the decisions dated 17 October 2018 on the seizure of the real estate, a vehicle owned by N. F. and the money seized during the search. Having assessed the information collected during the investigation, it is suspected that money laundering has taken place; as a result, the funds derived from illegal activities were channelled through the financial system in such a way so as to give the impression that the funds were obtained from legitimate sources. The totality of the evidence in criminal proceedings No. 15850000518 and audit of the natural persons' taxes indicate that N. F. could not have sufficient legal financial means to cover loan obligations, purchase movable property during his activities from 01.01.2004 to 31.12.2018. The cash movements in N. F.'s bank accounts indicate that

N. F. most likely had proceeds of crime at his disposal, which had not been declared to the SRS and on which no tax payments had been made. N. F. provided explanations on the sources of revenues and amount of income.

The totality of the information and evidence obtained in the criminal proceedings leads one to the conclusion that the real estate, the money seized during the search and the vehicles were criminally acquired, and that all income derived from these properties, including in the form of rent, should be considered proceeds of crime. The value of the above assets of N. F. is not commensurate with his legal income. During the criminal proceedings, N. F. was unable to credibly explain the lawful origin of the previously mentioned property. The totality of the evidence shows that the proceeds of crime were converted into N. F.'s property, including the construction of a residential house, and used to repay a loan taken from a credit institution. Considering the fact that the totality of the evidence gives reason to believe that the real estate was criminally obtained, the money received in the form of rent must be considered to be proceeds of crime, since any other benefits and gains derived from proceeds of crime must also be considered as proceeds of crime.

G. D., representative of the suspect N. F., explained that he disagreed with the opinion of the investigator and the prosecutor that the property seized from N. F. was proceeds of crime and should therefore be confiscated. He explained that the evidence obtained in the case did not prove the criminal origin of the property and that the property seized from N. F. was not related to the smuggling of which N. F. was suspected. He explained that the case proved that the smuggled cigarettes, which were the subject of criminal proceedings in which N. F. was suspected, did not come into circulation but were seized, and that the cigarettes were planned to be destroyed. He explained that there were no other criminal proceedings against N. F. to prove his criminal record. He pointed out that the evidence in the case was aimed at assessing N. F.'s financial situation, but it did not prove the criminal origin of the seized property. He asked for the proceedings to be dismissed as unfounded.

During the examination of the case, the Court noted that, when considering a case on money laundering, it was necessary to establish whether there was evidence in the case to support the investigator's allegation, first, whether and what criminal activities had taken place in the past and, second, whether the proceeds of those criminal activities had been laundered by converting them into seized property belonging to N. F.

The Court found that the evidence in the case did not establish that the property seized from N. F. constituted proceeds of crime in connection with the criminal proceedings for smuggling initiated on 30 August 2018, as the smuggled goods – cigarettes – were seized in the criminal proceedings, i.e., they were not put into circulation and no financial resources were obtained as a result of their sale. The evidence in the case does not indicate that the property seized from N. F. was in any other way linked to the smuggling committed on 30 August 2018, so that the property could be regarded as proceeds of crime.

The Court concluded that the assessment of the financial situation, the source of the income during the lifetime and its use did not prove that there had been any criminal activity at all, the proceeds of which had been laundered and converted into seizable property owned by N. F. In order to claim that money laundering occurred, there must be evidence of the existence of any criminal activities leading to the proceeds, as only proceeds that were criminally obtained can be laundered. It cannot be considered that money laundering has taken place if it has not been established and proven that any criminal activities leading to the proceeds of crime took place. It follows from the above that it must be established that a criminal activity first took place, resulting in the acquisition of funds which were then laundered. In this case, it was established that a criminal activity (cigarette smuggling) took place in 2018, but no funds were obtained and consequently no money was laundered. The fact that a person cannot provide documentation on the origin of the money before a criminal act which was committed in 2018 does not make the funds acquired in 2018 illegal.

Evidence (natural person's tax audit) that N. F.'s financial situation does not correspond to his lifetime income suggests that N. F. may not have declared and paid all taxes on his lifetime income to the state. However, the evidence of the assessment of N. F.'s financial situation does not prove that this income is criminal, nor does it show whether and what criminal acts N. F. committed during his lifetime in order to claim that the funds were proceeds of crime which were channelled through the financial system (converted into immovable and movable property, cash) in such a way so as to give the impression that the funds were obtained from legitimate sources.

In order for property to be declared proceeds of crime pursuant to Article 70^{11}(1) of the Criminal Law, the burden of proving the criminal origin of the property rests with the prosecution, in this case the investigator, pursuant to Section 124(6) and Section 126(2) of the Criminal Procedure Law.

On 21 June 2021, the Chamber of Criminal Cases of Riga Regional Court adopted a decision to uphold the decision of Riga City Vidzeme District Court of 20 May 2021. Riga Regional Court upheld the decision of the court of first instance on the basis of substantive rules, agreeing with the opinion of the court of first instance. The Chamber of Criminal Cases of Riga Regional Court indicated that Section 70^{11}(2) of the Criminal Law contained a criminal presumption that property is criminally obtained, which stipulates: If the value of the property is not proportionate to the legitimate income of the person and the person does not prove that the property is acquired in a legitimate way, as criminally acquired property can also be recognised as property that belongs to a person: 1) who has committed a crime which, in its nature, is focused on the gaining of property or other kind of benefit regardless of whether any property or other kind of benefit has been gained as a result of the crime; 2) who is a member of an organised group; 3) who has committed a crime related to terrorism. The application of the presumption stipulated in Section 70^{11}(2) of the Criminal Law is linked to the crime committed by a person. As it clearly arises from Section 70^{11}(2) of the Criminal Law, in order to apply

the criminal presumption, including the assessment of the financial situation, imposing the obligation on the person to prove that the property was lawfully acquired, it must first be established that the person has committed a crime which by its nature is aimed at obtaining financial or other benefit, or is a member of or supports an organised group, or is associated with terrorism.

Considering the above and in the absence of evidence of the criminal origin of the seized property, there are no grounds under Section 70^{11}(1) of the Criminal Law to declare the seized property to be proceeds of crime.

Criminal Proceedings, Case No. 11112012217

On 13 June 2022, the Economic Court issued a decision terminating the proceeding for the proceeds of crime in respect of the funds held in the accounts opened with the credit institution.

The criminal proceedings have established that between 16 November 2016 and 30 May 2018, payments in the amount of EUR 7,000,000 were received from the company SUPER PARTNERIS (hereinafter referred to as SUPER PARTNERIS) to account No. LV03LAPB of SUPER UZŅĒMUMS (hereinafter referred to as SUPER UZŅĒMUMS) in the Latvian credit institution AS LPB Bank. SUPER UZŅĒMUMS had two other accounts in the credit institution AS LPB Bank No. LV15LAPBX and No. LV49LAPB, where the funds from account No. LV03LAPB were transferred. SUPER PARTNERIS is virtually the only person that transferred funds to account No. LV03LAPB of SUPER UZŅĒMUMS. [1.2] According to the documents submitted by SUPER UZŅĒMUMS to AS LPB Bank, SUPER PARTNERIS pays SUPER UZŅĒMUMS for equipment with almost four times the extra charges. It was additionally noted that the Main Investigation Department of the Security Service of Ukraine was investigating criminal case No. X and the Prosecutor General's Office of Belarus had initiated criminal case No. Z.

The Prosecutor General's Office of Belarus initiated a criminal case against the OAO P director who, in July-October 2015, without getting approval for his actions from the Council of Directors, illegally instructed subordinate employees to issue repair and design documents for a helicopter and its modifications to SUPER PARTNERIS representatives free of charge, thus causing damage equal to the base value of the specified documents.

According to the evidence, SUPER UZŅĒMUMS provided the following information to the bank: country of registration: Switzerland and the actual address is Ukraine. E. P., beneficial owner of the company, born on 2 October 1959, who actually resides in Kharkiv, Ukraine, but the representative of the company (director) is D. A., born on 13 April 1958, residing in the USA. This indicates that SUPER UZŅĒMUMS does not conduct any economic activities in the country of registration. SUPER UZŅĒMUMS does not conduct any economic activities in the Republic of Latvia.

The prosecutor considers that SUPER UZŅĒMUMS has signs of a shell company, since the accounts opened with a Latvian credit institution are not linked to the foreign

country in which the economic activities are allegedly carried out, it is not possible to identify the territory of which country they are carried out, and the real beneficiaries are not Latvian citizens or permanent residents. The transactions conducted correspond to the layering or structuring stage, where the proceeds of crime are moved and structured away from the source of the proceeds, simulating various transactions, and giving the appearance of civil transactions.

The prosecutor considers that SUPER UZŅĒMUMS does not conduct any economic activities in Latvia but has provided different information to the bank about its cooperation with Latvian cargo and air carriers, so it is not clear why the account is used in Latvia. Transactions with Latvian companies could not be found. The purpose of the transactions in question is to reduce the value of the company SUPER PARTNERIS, as evidenced by the difference in the amounts. Although the contract between SUPER UZŅĒMUMS and SUPER PARTNERIS was concluded for EUR 3 million, EUR 8 million has actually been transferred. Funds were withdrawn in cash, spent on travel, health and other personal expenses, not used for ensuring economic activities. The main argument on which the person directing the proceedings bases their presumption of the criminal origin of the seized funds is that SUPER PARTNERIS allegedly purchased the equipment from SUPER UZŅĒMUMS at an inflated price.

The representatives of SUPER UZŅĒMUMS oppose this presumption by submitting diverse types of evidence and relevant explanations of SUPER UZŅĒMUMS economic activities. The representative of SUPER UZŅĒMUMS explained that the company's business activities include the preparation of drawings, submitting tender applications, management, and it has its own website. Travel expenses are normal expenses of economic activities. There is a contradiction, as the prosecutor claims that nothing was delivered, while at the same time referring to evidence that the goods were transported across the border between Slovakia and Ukraine. No requests for legal assistance have been sent to the Italian authorities to verify whether SUPER VEIKALS transactions had taken place. The Transcarpathian Court of Ukraine cancelled the decision to seize the property of SUPER UZŅĒMUMS. The equipment had been supplied under a national programme in Ukraine, which exempts the equipment from import duties.

During the examination of the case, the Court assessed the documents on file, namely the contracts, statements of account, invoices and the technical specification, in this case for the supply of the equipment. The Court established that the transactions had actually taken place, the invoices and contracts had been concluded and corresponded to actual cash flow. The court also assessed the possible income of SUPER UZŅĒMUMS; the Court did not find any confirmation of the fact that the prices for the supply of the equipment had been unduly inflated and did not state a criminal offence.

As concerns the signs of a shell company, the Court indicated that the mere formal identification of certain typological features did not mean that money laundering had occurred – it is only a clue that may signal a possible criminal offence, but it may just as

well have a logical explanation, which therefore requires an assessment of the specific circumstances of the case. In this case, the analysis of the previously mentioned evidence conducted by the Court indicates real economic activities, therefore the references of the person directing the proceedings to the typology features of money laundering are in fact refuted. The Court found that the transactions had actually taken place, the Court agreed with the opinion of the company and noted that the opening of the account in Latvia (fluency in Russian and English of the bank's employees, the existence of deposit protection regulation and the ease of networking between customers from Western and Eastern Europe) was fully credible and legitimate.

The Court additionally concluded that, having assessed all the circumstances with reference to each other, the consideration that SUPER UZŅĒMUMS had not provided the bank with fully accurate information on this point was by no means sufficient to consider that the account had been used for the circulation of proceeds of crime.

The funds in the accounts of SUPER UZŅĒMUMS had also been used for D. A.'s private expenses, including health. However, the Court considers that the only question in this respect can be whether it is allowed by the accountancy regulating laws of Switzerland (country of registration of SUPER UZŅĒMUMS). In the absence of proper evidence of the criminal origin of these funds, their use is irrelevant to the present case.

What You Need to Know if You Have Suffered Damages in Criminal Proceedings as a Result of an Act by a Law Enforcement Authority

False accusation is hurtful, unfair and is an infringement of rights. The purpose of the Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offence Proceedings (hereinafter also referred to as the Compensation Law) is to ensure the right of a natural person established in the Constitution of the Republic of Latvia to adequate compensation for losses and non-property damage caused to them in criminal proceedings or administrative offence proceedings due to the unlawful or unjustified actions of an institution, prosecutor's office or court. According to Section 14 of the Law, compensation for non-material damage is determined in the amount of up to EUR 7,000, as well as up to EUR 10,000 in the case of severe non-material damage and up to EUR 30,000 in the case of damage to life or especially severe damage to health.

Pursuant to Section 18(1) of the Compensation Law, a written application on compensation for damage caused in criminal proceedings shall be submitted by a natural person to the decision-making authority within the competence stipulated in Section 17(1) of the Law, observing the time limit for submission of the application (within six months from the occurrence of the circumstances prescribed by the Law) and the content.

As regards the amount of compensation for injury to reputation, the most recent worrying case is when the Prosecutor General's Office decided to compensate public

officials for non-material damages related to criminal proceedings initiated and subsequently discontinued by paying EUR 32 to each person (NRA, 27.12.2021). The question arises as to whether the offence against a public body, inter alia by adversely affecting a person's reputation, has been adequately established.

If a person considers that they have not been adequately compensated for damages, they may, pursuant to Section 23 of the Compensation Law, appeal against the decision of the decision-making body on compensation for damages to a court in accordance with the Administrative Procedure Law.

Conclusions

It follows from the above that, even if there are indications of a suspicious transaction, this does not suggest the existence of a criminal activity, the proceeds of which have been laundered. The deficiencies in the accounting records do not prove that criminal activities have been conducted which have resulted in the receipt of illegal funds.

Examination of the situation, in conjunction with many other circumstances, raises a question as to whether officials who are endowed with a certain amount of power can really do absurd things to human beings and their right to basic existence. When the person returned to Latvia, he was asked to provide information on the legal origin of the property (purchase of the car) within 45 days of the notification, pursuant to Section 365 of the Criminal Procedure Law. It was done by the person, but the evidence presented was insufficient in the investigator's opinion. In relation to this case, the author returns to the issue of what constitutes sufficient evidence in the investigator's opinion.

It is often found that the threshold for verifying sufficient evidence is crossed, which becomes an invasion of a person's privacy. In this example, it is significant that the basis for initiating criminal proceedings was information about a stolen car, the handling of which falls within the jurisdiction of a specific national police department, but information about another section of the law, namely money laundering, becomes available later. It took several months to find out that for which the person was being prosecuted exactly.

It can be concluded from the case law analysed that:

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 single system for assessing evidence.
2. The expedience of criminal proceedings should be assessed in detail before they are initiated, but if they are, they should probably be discontinued, as is the case in other countries.
3. In conclusion, we can state that this may be a new trend in initiating criminal proceedings, but whether it is well-grounded is another matter. The author has dealt with many different cases in practice, each of which is different, and an analogy does not apply here, but investigators and prosecutors think differently.

4. In order to have grounds for the initiation of criminal proceedings, the scope of evidence required, as well as its credibility and validity must be clearly and comprehensibly defined. It is unacceptable where, due to a lack of knowledge, no evidence is considered reliable, and everything is considered to have been obtained criminally. It is time to have a professional understanding of cases and to be able to assess the facts, which can also be sufficient grounds for closing a case.

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