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Priekšvārds

Tiesību zinātņu speciālistiem un interesentiem ir iespēja iepazīties ar *Socrates* 2022. gada noslēdzošo izdevumu, kas ir sagatavots laikā, kad notiek agresīvās Krievijas kara darbība Ukrainā. Krājumā iekļautajos rakstos specifiskajiem ģeopolitiskajiem faktoriem tiek pievērsta īpaša uzmanība. Tie tieši vai netieši caurvij pētījumu kopējo tematiku.

Ukrainas tiesību zinātnieki – *Dr. iur.* profesors ***Oleksijs Ļitvinovs*** (*O. Lytvynov*), *Dr. iur.* profesore ***Hanna Spicina*** (*H. Spitsyna*) un tiesību zinātnieks ***Viktors Butenko*** – analizē samērā modernu un inovatīvu skatījumu noziedzības novēršanā, kas balstīts uz sistēmisku pieeju. Autoru definētā pieeja ļauj iezīmēt noteikto subjektu vietu un lomu kopējā noziedzības novēršanas struktūrā, apzināt to funkcionālās sakarības, kā arī piedāvā risinājumus, kā pārvarēt iespējamo funkciju dublēšanos. Atzinīgi ir vērtējams tas, ka noziedzības novēršanas sistēmā ir noteikta arī iedzīvotāju iesaistīšanās, kas ir atkarīga no mainīgajiem sociālajiem un politiskajiem apstākļiem.

Līdzīgas tēmas izpētei ir pievērsies arī tiesību zinātņu doktors ***Aleksandrs Matvejevs***, analizējot soda nozīmi noziedzības prevencē. Viņš skata jautājumu par noziedzības kontroles modeli, kas vērsts uz efektīvas sistēmas izveidi, kuras svarīgākā funkcija ir kontrolēt noziedzību, lai nodrošinātu sabiedrības drošību un sabiedrisko kārtību. Var piekrist, ka diskutabli ir noziedzības novēršanas tiesiskajos un politiskajos diskursos izmantotie termini. Pozitīvi var vērtēt rakstā analizētos noziedzības novēršanas principus un interpretācijas iespējas.

Viena no mūsdienu globalizācijas iezīmēm ir nosacīta vienota transnacionāla tiesiskā vide. It īpaši tas ir raksturīgs faktiski neierobežotajai kibertelpai. Zinātniskā doktora grāda pretendente politoloģijā ***Laura Done*** skata starptautisko tiesību piemērojamību kibertelpā no Igaunijas un Latvijas pozīcijas atbilstoši šo valstu nacionālajām kiberdrošības stratēģijām. Autore akcentē uzmanību uz to, ka nepieciešams veicināt izpratni par starptautisko tiesību piemērošanu kibertelpā. Tiek secināts, ka Igaunija savas oficiālās pozīcijas noteikšanā par starptautisko tiesību piemērojamību kibertelpā un tās popularizēšanu ir bijusi aktīvāka nekā Latvija.

Neapšaubāmi, ka viena no aktuālākajām starptautiskajām un nacionālajām krimināltiesiska rakstura parādībām ir noziedzīgi iegūto līdzekļu legalizācijas novēršana un apkarošana. Jaunā tiesību zinātniece ***Liene Neimane*** ir izpētījusi tiesu praksi, atsedzot jaunākās tendences un problēmas naudas atmazgāšanas jomā. Pētījumā ir secināts, ka atsevišķos gadījumos manta vai citi īpašumi tiek konfiscēti nepamatoti,

kas varētu būt saistīts ar situācijas izpratnes trūkumu, nepietiekamu praktisko pieredzi vai zināšanām. Nepamatotas konfiskācijas gadījumos var noteikt nodarītā kaitējuma kompensāciju.

Pieredzes bagātais tiesību zinātnieks advokāts ***Jānis Zelmenis*** ar mērķi noteikt tiesību jēdzienu un kritērijus nodokļu plānošanas sfērā analizē pašreizējo un pagātnes Eiropas Kopienu Tiesas (EKT) judikatūru nodokļu strīdu jomā, pamatojoties uz mūsdienu ES valstu tiesisko regulējumu. J. Zelmenis ir veicis padziļinātu *Cadbury Schweppes* lietas izpēti saistībā ar EKT (2006) lēmumu. Šis lēmums lika pamatu jaunai koncepcijai par nodokļu strīdu izskatīšanu un interpretāciju pēc būtības.

Tiesību zinātņu grāda pretendents ***Mārtiņš Jansons*** analizē maz pētītu problēmu, kas ir saistīta ar piespiedu līdzekļu piemērošanu krimināprocesā juridiskām personām. Autors atzīst, ka krimināltiesiskā regulējuma nepilnības minētajā jomā joprojām praksē liedz efektīvi vērsties pret juridiskām personām, piemērojot tām piespiedu ietekmēšanas līdzekļus. Problēmas aktualitāte ir saistīta ar nelielo uzsākto procesu skaitu par piespiedu ietekmēšanas līdzekļu piemērošanu juridiskām personām. Turklāt tiesiskajā regulējumā nav precīzi noteikti konkrēti kritēriji piespiedu līdzekļu piemērošanai.

Tiesību zinātņu maģistri un doktora zinātniskā grāda pretendenti ***Marina Loseviča*** un ***Aigars Laizāns*** un *Dr. iur.* ***Inga Kudeikina*** ir pētījuši līgumattiecības veselības aprūpes sistēmā, kas skar ārstniecības personu ētisko pienākumu un juridiskās atbildības apjomu un ierobežojumus profesionālajās un pacienta attiecībās. Ārsta un pacienta attiecības ir vērtējamas kā līgumslēdzēju privāttiesību tiesiskais pamats, tās ir saistītas ar šo personu īpašo rīcībspēju un brīvo gribu. Autori pievērš uzmanību tam, ka medicīnas speciālisti ir ētiski un juridiski neaizsargāti un ka viņiem ir nepieciešama tiesiska aizsardzība. Pētījumā tiek identificētas tiesiskā regulējuma un ētikas principu nepilnības un piedāvāti šīs problēmas risinājumi.

Vienas no būtiskākajām tiesību problēmām ir saistītas ar īpašuma tiesībām. Tām ir ne tikai valsts vai civiltiesiskie, bet arī krimināltiesiskie aspekti. Zinātnes doktora grāda pretendente ***Jekaterina Sredņakova*** un *Dr. iur.* ***Marina Sumbarova*** padziļināti skata problēmjautājumus, kas saistīti ar īpašuma tiesībām krimināprocesā. Autores aplūko mantiska rakstura jautājumus par noziedzīgi nodarīto zaudējumu atlīdzināšanu, izmantojot noziedzīgi iegūtas mantas disponēšanu, kā arī procesuālos izdevumus un to atlīdzināšanu. Pētījuma tēmas aktualitāte sakņojas tajā, ka praksē nav vienotas izpratnes par īpašuma jautājumu tiesiski precīzu risināšanu krimināprocesa ietvarā.

Tiesību zinātnieks ***Kristaps Zariņš*** sniedz ieskatu visai specifiskā tiesību filozofijas jomā – Maksa Vēbera reliģijas socioloģiskajos aspektos juridiskās doktrīnas kontekstā. Autors analizē M. Vēbera uzskatus par valsts sociāli vēsturisko ģenēzi, kanoniskajām tiesībām un to būtību. Rakstā tiek pievērsta uzmanība baznīcas tiesību sociālās vides analīzei, balstoties uz izcilā sociologa lietotajiem jēdzieniem. Elektroniskajā žurnālā *Socrates* reti tiek publicēti raksti tiesību filozofijas jomā, un K. Zariņa raksts zināmā mērā šo nepilnību novērš.

Realizējot Latvijas–Ukrainas pārrobežu projektu "Attālinātais izglītības resurss: kriminālistika kā zinātne", projekta pētnieku grupa – ***Aelita Zīle***, ***Andrejs Vilks*** un ***Antons Poljanskis*** – ir sagatavojusi rakstu par digitālās kriminālistikas un krimināl-politikas aktualitātēm Latvijā un Ukrainā.

Visticamāk, ka turpmākie gadi būs trauksmaini un izaicinājumu pilni. Neapšaubāmi, ka tas skars arī tiesību jomu gan akadēmiskā, gan praktiskā aspektā. Minētais attiecas arī uz pētniecību un jaunām pieejām komplicēto sociāli politisko un tiesisko procesu izziņā.

Andrejs Vilks,
Rīgas Stradiņa universitātes
Juridiskās fakultātes profesors

Introduction

Legal specialists and interested parties have the opportunity to familiarise themselves with the 2022 final edition of *Socrates*, which has been prepared in the context of aggressive Russian military action in Ukraine. In the articles included in the collection, special attention is paid to specific geopolitical factors. They directly or indirectly permeate the general theme of the articles.

In their article, Ukrainian legal scientists *Dr. iur.*, Professor ***Oleksii Lytvynov***, *Dr. iur.*, Professor ***Hanna Spitsyna*** and legal scientist ***Viktor Butenko*** analyse a fairly modern and innovative view of crime prevention based on a systemic approach. The approach defined by the authors allows them to mark the place and role of the determined subjects in the overall crime prevention structure, to identify their functional relationships, as well as to offer solutions to overcome the possible duplication of performed functions. It is commendable that the crime prevention system also includes citizens' involvement and is attributable to the changing social and political conditions.

Doctor of Law ***Aleksandrs Matvejevs*** has focused on the study of a similar topic. The author has touched on the importance of punishment in crime prevention. The article examines the issue of the crime control model aimed at creating an effective system, the most important function of which is to control crime in order to ensure public safety and public order. It can be agreed that the terms used in the legal and political discourses of crime prevention are debatable. The principles of crime prevention analysed in the article and the possibilities of interpretation can be evaluated positively.

One of the features of modern globalisation is a conditional, transnational, unified legal environment. This is especially inherent in an actually unlimited cyberspace. ***Laura Done***, doctoral candidate in political science, examines the applicability of international law in cyberspace from Estonia and Latvia according to the national cyber security strategies of these countries. The author emphasises the need to promote awareness of the application of international law in cyberspace. It is concluded that Estonia has been more active than Latvia in determining and popularising its official position on the applicability of international law in cyberspace.

Undoubtedly, one of the most relevant international and national criminal law phenomena is the prevention and combatting of money laundering. The young legal scientist ***Liene Neimane*** has studied case law, uncovering the latest trends and problems in the field of money laundering. In the study, it has been concluded that there are cases where property or other assets are confiscated without justification, which could be due to a lack of situational awareness, as well as insufficient practical

experience or knowledge. Unjustified confiscations may determine compensation for the damage caused.

The experienced legal scientist and attorney ***Jānis Zelmenis*** analyses the current and past case law of the European Court of Justice (ECJ) in the field of tax disputes, based on the legal framework of modern EU countries, with the aim of determining the concept and criteria of law in the field of tax planning. The article provides an in-depth study of the Cadbury Schweppes case on the decision of the ECJ (2006). This laid the foundation for a new concept in the examination and interpretation of tax disputes on the merits.

Mārtiņš Jansons, doctoral candidate in Law, analyses in his article the little-studied problem related to the application of coercive measures in criminal proceedings to legal entities. The author acknowledges that the shortcomings of the criminal law regulation in the mentioned area still prevent effective action against legal entities by applying coercive measures to them in practice. The relevance of the problem is related to the small number of initiated proceedings on the application of coercive measures to legal entities. In addition, the legal framework does not precisely define the specific criteria for the application of coercive measures.

Masters of Law and doctoral candidates, ***Marina Loseviča*** and ***Aigars Laizāns***, and *Dr. iur.* ***Inga Kudeikina*** have focused on researching the extent and limitations of the ethical obligations and legal responsibility of medical personnel within the framework of the professional and patient relationship, which affects contractual relations in the health care system. The doctor-patient relationship should be evaluated as the legal basis of the private rights of the contracting parties, which are related to the special legal capacity and free will of these persons. The authors draw attention to the fact that medical specialists are ethically and legally vulnerable and need legal protection. The article identifies the shortcomings of the legal framework and ethical principles, offering their solutions.

One of the most important legal problems is related to property rights. They not only have state or civil law aspects, but also criminal law aspects. Doctoral candidate ***Jekaterina Sredniakova***, and *Dr. iur.* ***Marina Sumbarova*** take an in-depth look at problematic issues related to property rights in criminal proceedings. In the article, the authors consider issues of a property nature, which are related to the compensation of criminally caused damages, the disposal of criminally acquired property, as well as procedural expenses and their compensation. The relevance of the research topic is determined by the fact that in practice there is no common understanding of the legally accurate resolution of property issues within the framework of criminal proceedings.

Legal scientist ***Kristaps Zariņš*** provides an insight into a very specific field of legal philosophy – the sociological aspects of Max Weber's religion in the context of legal doctrine. The author analyses M. Weber's views on the socio-historical genesis of the state and canonical rights, as well as their essence. The article focuses on the analysis of the social environment of law and church law, based on the concepts created by the outstanding

sociologist. The electronic journal *Socrates* rarely publishes articles in the field of legal philosophy. K. Zariņa's article, to some extent, eliminates this shortcoming.

In the frame of the Latvian–Ukrainian cross-border project "*Open Educational Resource: Forensic Science*" the research group (***Aelita Zīle***, ***Andrejs Vilks*** and ***Anton Polianskyi***) of the project has prepared an article on related to Digital forensics and Criminal Policy in Latvia and Ukraine.

The following years are expected to cause anxiety and be full of challenges. Undoubtedly, it will also affect the field of law in academic and practical areas. This also applies to research and new approaches in the understanding of complicated socio-political and legal processes.

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Modern View of System of Crime Prevention Subjects

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Abstract

The article carries out a system-structural analysis of crime prevention subjects as a basic criminological category. The main scientific approaches to the definition of crime prevention subjects have been defined and analysed: as a collection of crime prevention subjects and as a corresponding system of these subjects. Expediency of subjects' consideration operating in the sphere of crime prevention as a socially determined hierarchical system has been argued. It has been proved that systematic approach to solving this issue allows to determine the place and role of the specified subjects in the general structure of crime prevention, to outline their functional connections, overcome the possible duplication of performed functions and if it is necessary to strengthen the influence on a certain segment of criminogenic factors. The role of citizens as autonomous subjects of crime prevention has been analysed. Expediency of including citizens in the system of crime prevention subjects through the category of citizenship, which in the studied aspect is proposed to be understood as the internal conscientious attitude of a person to the fulfillment of their civic duty in the field of crime prevention, has been determined.

The article develops the author's understanding of the concepts of the subject of crime prevention and the system of crime prevention subjects.

The aim of the article is to develop one's own understanding of the concepts of crime prevention subjects and the system of crime prevention subjects that meet today's needs.

Set of general scientific and special scientific methods of cognition was used for achieving the goal and objectives. The starting point was the dialectical method, according to which all the problematic issues that will be addressed in this article are presented in the form of unity of their content and legal form. The logical and semantic method was used for defining and deepening the conceptual apparatus; sociological (study of official, scientific and bibliographic sources) – while collecting and accumulating scientific information about the object and subject of the research; logical and legal – while developing scientifically substantiated proposals for improvement of current legislation, etc.

Keywords: citizens, citizen control, civic duty, crime prevention, subject of crime prevention, system of crime prevention subjects.

Introduction

The current period of development of legal science in Ukraine is associated with the need to solve several problems, among which a significant place is occupied by issues of study and creative analysis of scientific developments, ways to use scientific and technical achievements, identifying promising areas of research and more. Consideration of these issues is impossible without deep, unbiased study of the history of science in general and its separate fields. This is especially true of applied sciences, where the results of scientific research can be relatively quickly implemented in specific practical activities. General theoretical and applied sciences include criminology that are designed to provide their recommendations for the practice of combating crime.

Scientific achievements not only enrich theoretical achievements of science, but also determine further path of development of practice, provide scientific principles for optimising such activities. In law enforcement, theoretical understanding of ways to improve practice is particularly important because the possibilities for experimentation, as a form of theoretical forecasting verification are very limited. This is especially true of preventive activity that is a general term and covers all types of impact on crime (Filipenko & Spitsyna, 2020).

By general prevention the authors mean one of the areas of social management which is to prevent and stop specific crimes and crime itself as a social phenomenon. In other words, crime as an integral part of development and functioning of society, develops, professes and implements its own interests, generates latest properties that come into conflict with values protected by law. There can be no compromises in this confrontation because, in the event of a loss, the state and society self-destruct. Professional legal

sources have repeatedly expressed the opinion that fight against crime is a special kind of interaction between two opposing parties of social life.

Crime prevention is a complex socially determined activity aimed at ensuring integrity of the state, strengthening the law and order in society, and protecting the rights and freedoms of a person and a citizen. As O. M. Lytvynov rightly points, crime prevention is not just a "human" function, but the one demanded by man and society (Lytvynov, 2010). Its implementation is designed to ensure safety of society, its members and social entities, as well as to provide conditions for successful operation of all social mechanisms, to strengthen the moral and patriotic foundations of society, provide favourable conditions for the development of the economy, production, and effective functioning of civil society institutions. In connection with the stated rather broad understanding of the functions and, accordingly, social significance of crime prevention, the authors consider it expedient to carry out a system-structural analysis of the subjects of crime prevention as a basic criminological category.

As experts rightly noted in this regard, preventive activities cover three areas:

1) general organisation of such activities: set of organisational (accounting, registration), management (forecasting, planning, coordination, definition of strategy and tactics), preventive (implementation of programmes and plans, implementation of preventive measures), control (study of practice, crime trends) actions of various bodies and institutions that interact with each other to achieve common results;
2) law enforcement activity consisting of implementation by specially authorized state bodies of measures provided by law to prevent development of criminal intent in previous stages of crime, identify signs of crimes, identify those who committed them, bring these people to justice, restore violated rights, freedoms and legitimate interests of the people and compensation of damages from criminal acts;
3) crime prevention, which means implementation of economic, political, ideological, educational, legal and other measures to combat crime, is the activity to identify and eliminate causes of crime, certain types and groups of crimes, specific crimes to prevent completion of crimes at different stages development of criminal behaviour (Filipenko & Spitsyna, 2020).

Another major factor influencing the course and effectiveness of preventive activities is the problem of timely recording and initiation of criminal cases or misdemeanors based on available information. Vagueness and complexity of disguised crimes, impossibility of identifying perpetrators, shortcomings of the regulatory framework of law enforcement agencies, greatly affect the preventive activities and their efficiency in modern conditions.

Considering the state of the scientific research, in domestic science, a significant number of researchers have devoted their works to the issue of crime prevention. Among them, the works of O. M. Bandurka, V. M. Beschastnyi, V. V. Holin, L. M. Davydenko,

I. M. Danshyn, O. M. Dzhuzha, E. A. Didorenko, N. Ye. Filipenko, A. E. Zhalynskyi, A. P. Zakaliuka, A. F. Zelinskyi, O. M. Ihnatov, O. H. Kalman, Ya. Yu. Kondratiev, O. M. Lytvak, O. M. Lytvynov, F. A. Lopushanskyi, M. I. Melnyk, S. H. Mishchenko, P. P. Mykhailenko, O. O. Stepanchenko, N. O. Yarmysh and other scientists should be noted. Among foreign researchers who have devoted their works to planning, ways and methods of crime prevention, special attention should be paid to the works of H. A. Avanesov, A. I. Aleksieiev, Yu. M. Antonian, O. V. Bokov, S. Ye. Vitsyn, A. I. Dolhova, V. M. Kudriavtsev, N. F. Kuznietsova, I. I. Karpets, R. Klark, N. Kristi, V. V. Lunieiev, P. Parker, O. B. Sakharov, L. Sihel, V. M. Somin, V. Foks, E. Shura, etc. Despite the significant contribution to the development of the doctrine of the basics of prevention and the accumulated knowledge of expert warning, the scientific works of these scientists have not exhausted this problem, but, on the contrary, raised a number of new issues.

In the context of the analysis of complex issues of crime prevention, the works of the above-mentioned researchers generalise or specifically reveal various aspects of the subjects' activities of crime prevention, considering peculiarities of the existence of society in a certain period of time and space. Given the qualitative transformations in Ukrainian society, as well as the global trends in the development of law enforcement, the authors believe it to be necessary to consider the existing views on the concept and system of subjects of crime prevention.

The aim of the article is to develop one's own understanding of the concepts of crime prevention subjects and the system of crime prevention subjects that meet today's needs.

Methods. Set of general scientific and special scientific methods of cognition was used for achieving the goal and objectives. The starting point was the dialectical method, according to which all the problematic issues that will be addressed in this article are presented in the form of unity of their content and legal form. The logical and semantic method was used for defining and deepening the conceptual apparatus; sociological (study of official, scientific and bibliographic sources) – while collecting and accumulating scientific information about the object and subject of research; logical and legal – while developing scientifically substantiated proposals for improvement of current legislation, etc.

Main Content Presentation

Nature of the knowledge of each science is determined solely by its subject matter as part of the objective reality that a particular science studies. The use of knowledge of other sciences does not change their topic, this knowledge is only adapted to solve the tasks assigned to this science. While developing theoretical foundations and corresponding recommendations addressed to practice, theory of Criminology uses the so-called "specific expertise" and transforms them into legal knowledge, which optimises implementation of special knowledge in legal proceedings (Filipenko & Spitsyna, 2020).

Analysing scientific approaches to definition of subjects of counteraction to crime (prevention of crimes (criminal offenses)), it should be noted that researchers consider it in different ways: as a separate criminological category, and through a simple list of subjects of prevention, depending on their functions, level of functioning and other features; both as a set of relevant subjects, united by the nature of the performed social function, and systemically, that is, as a socially conditioned hierarchical system. The first group of scientists considers the subjects of crime prevention as a certain set of state bodies, public and private institutions, individuals who, within the limits of their competence or the rights granted to them, exert influence on criminally illegal manifestations in order to reduce their intensity, eliminate the causes and conditions of crime. Thus, for example, Ye. V. Avsieienko defines the concept of subjects of influence on crime, provides their classification but does not define their list. Among the methods of intensification of activities of the subjects of influence on crime, the researcher points out integration of the specified subjects into systems and macrosystems (Avseenko, 2001), which he notes as a potential, not an existing feature of the specified subjects.

V. V. Vasilevich (Vasylevich, 2020), A. P. Zakaliuk (Zakaliuk, 2007), M. O. Svirin (Svirin, 2017) and H. V. Foros (Foros, 2012) indicate that there are currently no grounds to consider a set of subjects countering and crime prevention as a system, given the incomplete legislative regulation, imperfect organisation and direct implementation of preventive measures, absence of support and executive measures and means. Therefore, as the researchers note, subjects of this activity are classified as such, not so much considering real systematic performance of preventive functions by them, but how the latter are defined in regulatory acts. The mentioned scientists provide a description of individual types of subjects of counteraction (prevention) of crime depending on the functions they perform.

Unification of crime prevention subjects, using a functional approach without uniting them into a single system, can be found, in particular, in the works of A. M. Babenko, O. Yu. Busol and others (Babenko et al., 2018), Yu. V. Aleksandrov, A. P. Hel and H. S. Semakov (Aleksandrov et al., 2002), O. M. Dzhuzha, A. V. Kyryliuk (Dzhuzha et al., 2020). Scientists define the subjects of crime prevention only because of the specifics of functions they perform in the specified field, often without even giving them a definition or classifying them.

The second group of scientists considers the subjects of crime prevention not only in their totality, which can be determined through the functions they perform in the specified field but as a systemic entity that has the appropriate qualitative characteristics. For exampe, V. V. Holina defines subjects of crime prevention as state bodies, public organisations, social groups, officials or citizens who direct their activities to development and implementation of measures related to prevention, limitation, elimination of criminogenic phenomena and processes that give rise to crime and crimes, as well as their prevention at various criminal stages, in connection with which they have rights, duties and bear responsibility (Holina et al., 2014). The scientist points that "the system

of crime prevention entities should be understood as a set of entities united by a single goal, which exercise their powers in a relationship and according to coordination in time and space" (Malkova, 2006).

V. K. Zvyrbul also considers activities of subjects performing crime prevention as a system. The researcher indicates that the mentioned subjects do not act in isolation but in interaction with each other, and in the system itself there are both horizontal and hierarchical vertical relationships, depending on the level of the tasks they solve (Kudryavtseva, 1997).

O. M. Bandurka and O. M. Lytvynov also define the concept of the subject of crime prevention within the system approach, based on the concept of functioning of social systems. The scientists define the subject of crime prevention as any systemic entity that exists within the framework of a single system of crime prevention and implements one of the following tasks in this area: determination of leading directions, tasks, forms and methods of activity, implementation of information and analytical support, identification of criminogenic factors and implementation of measures to prevent crime (Bandurka & Lytvynov, 2011).

Regarding scientific dichotomy about the description of crime prevention subjects as their totality compared to (*versus*) their description as a system of relevant entities and individuals, it should noted that a systematic approach to their description and characteristics of their real functioning is the most successful in general and acceptable for a comprehensive analysis of crime prevention subjects. A systematic approach to solving this issue allows to determine the place and role of the specified subjects in the general structure of combating crime, determine their functional relationships, overcome possible duplication of performed functions or, on the contrary, if necessary, strengthen the influence on a certain segment of criminogenic factors, thus ensuring vector compensatory influence. Moreover, the authors of this study believe that systematic organisation of crime-prevention entities allows to solve both the tasks of crime-prevention within Ukraine and bring the activities of domestic crime-prevention entities as close as possible to and integrate with the relevant bodies and institutions of other countries and institutions operating on international stage levels, borrowing the most modern approaches in the specified field.

Thus, N. Ye. Filipenko and O. V. Sharapova claim that an exceptional place in the system of subjects of preventive activity is held by judicial and expert institutions of Ukraine playing the role of guarantor of personal legal rights and freedoms, steadfast observance of the rule of law. Describing the role of forensic institutions in the process of preventive activity, it should be noted that this process requires further regulation in order to increase efficiency. Analysis of the application of preventive activity of forensic science institutions of Ukraine shows a close contact of concepts and principles of legality, observance of human and citizen rights and freedoms, professional activity and professional ethics of experts that seems relevant. Among the various subsystems of forensic prevention and diversity of subjects implementing certain areas of preventive activity, there is

forensic prevention, which is understood as a complex systemic formation, the basis of which is the activity of experts on rooted in their specific knowledge, which will identify circumstances that contributed to the crime. Identification of such circumstances can be carried out as the main expert task for which the examination was intended, or it may be an attendant product of expert activity that appears when solving other expert tasks that did not aim to identify criminogenic factors. It is also permissible to identify criminogenic factors and circumstances contributing to commission of a crime, in the course of generalisation of expert practice in a particular forensic institution during its accumulation or in the preparation of relevant reviews, reports and analytical reports. Similar information can also be obtained in the case of generalisations of forensic activities throughout the Ministry. In all such cases, detection of criminogenic factors is the basis for development of preventive recommendations aimed at their eliminating or minimising. Peculiarity of these recommendations is their specificity, because they are obtained when using expert knowledge and skills that make up the content of this particular forensic examination (Filipenko & Sharapova, 2019).

V. D. Malkov also considers the subjects of crime prevention as a system, dividing it into subjects of state crime prevention system and subjects participating in crime prevention within their competence. The researcher refers to the latter: local self-government bodies; bodies and institutions of health care, education, social protection of the population; enterprises, institutions, organisations regardless of the form of ownership; social and religious organisations, associations, foundations; security services, private deduction and security companies; law enforcement oriented public associations; individual citizens and their associations; media (Criminology, 2006). The authors of this study support Malkov regarding inclusion of a wide range of non-state subjects in the crime prevention system, because the activity of each of them is an important component of the crime prevention system. In addition, considering that in recent years there has been a rapid increase in the role of citizens in maintaining public order, countering corruption, spread of alcoholism and drug addiction, preventing socially dangerous manifestations in other spheres of public life, the authors of the current study consider it appropriate to include the latter as an autonomous subject of the countermeasure system crime. Specified transformation of the status of citizens in the process of implementing functions of crime prevention should be carried out by granting them corresponding rights and duties. However, these duties should not be based on the principles of legal responsibility for its violation, which a person instinctively tries to avoid, but on the basis of voluntary involvement of citizens in crime prevention as a form of fulfilling their civic duty. In scientific sources, specified moral and legal category is known by the term citizenship, that is, the internal conscientious attitude of a person to the fulfillment of his civic duty. V. Klimovych points that citizenship consolidates such concepts as civic duty, activity, patriotism, responsibility, social innovation, unity of rights and duties (Klimovych, 2014). Accordingly, sense of civic duty or citizenship, developed in most members of society, can be recognised as the basis for including citizens in the system of subjects of crime prevention.

An important aspect of inclusion of persons with an active civic position in the system of crime prevention subjects is the prospect of ensuring effective citizen control over activities of the state apparatus in the field of crime prevention. O. M. Lytvynov and Ye. O. Hladkova point that during the years of independence, part of the state apparatus seemed to "privatise" the functions of its departments and institutions and began to use the rights granted to them in their own selfish interests and for the benefit of organisations, among other – criminal, from which they were in direct or indirect contact. These transformations led to acquisition by state law enforcement agencies of the features of law enforcement corporations. Scientists emphasise that in order to overcome the indicated negative corporate influence, it is necessary to legislatively ensure information transparency of the decision-making process of authorities, their use of budget funds, among other things, through access to financial documents of state bodies by non-state organisations and mass media, to put into effect mechanisms of public influence on activities of departments, including functioning of feedback (Lytvynov & Gladkova, 2019). Delegation of functions to the citizenship in the field of crime prevention, including those of control, stimulation of public activity in crime prevention issues will have a positive impact not only on the state of crime prevention in the conditions of hybridisation of criminal threats but will also provide a positive impetus for renewal and development of the crime prevention system as a whole.

In the matter of defining the concept of the system of crime prevention subjects, it should be assumed that the crime prevention system is, first of all, a type of social system. M. Bandurka and O. M. Lytvynov indicate that the crime prevention system is a structured object of a social nature, characterised by a system of relations and functions, and which, in turn, is a combination of relatively independent subsystems that function on the basis of identical patterns (Bandurka & Lytvynov, 2011). The indicated subsystems of crime prevention subjects represent plurality of social entities pluralistic in the sphere of social activity and level of functioning and individuals participating in crime prevention. The main constitutive features that unite the mentioned separate subjects into a single system of subjects of crime prevention are their common goal – targeted influence on criminally illegal manifestations with the aim of reducing their intensity, eliminating the causes and conditions of crime – and presence of stable structural and functional connections between individual links of this system, based on the principles of hierarchy and interdependence of its structural elements. Vertical (subordination) connections are established between links belonging to different levels of management in such a system; horizontal (coordinating) connections established between links that belong to the same level of management (Beschastnyi, 2017). Accordingly, the system of crime prevention subjects acquires characteristics of not only formally established organisational completeness, which in the most general sense is understood as the order caused by the correct, systematic arrangement and mutual connection of parts of something (Large explanatory dictionary of the modern Ukrainian language, 2005) but also internal functionally structured organisation. Thus, the system-structural approach

to the definition of crime prevention subjects considers the level structure and mutual location of crime prevention subjects and consolidates the content of vertical and horizontal connections between various links of this system, which is a prerequisite for its harmonious functioning and a guarantee of the potential to self-regulation and self-improvement.

Conclusions

Based on the analysis of scientific views on the definition and content of crime prevention subjects, the authors of the study propose understanding crime prevention subjects as state bodies, state and non-state institutions and organisations, individuals who carry out measures determined by their competence, rights or civic duty regarding the organisation of crime prevention, stopping or preventing criminal offenses. Taking into account the qualitative transformations that have taken place in Ukrainian society in recent years under the system of subjects of crime prevention, it is proposed to understand a set of subjects, united by functional and structural features, which exert a purposeful, coordinated influence, aimed at reducing intensity of criminally illegal manifestations, eliminating causes and conditions of crime. The specified basic criminological categories can become methodological basis for classification of crime prevention subjects, analysis of their legal status, and interaction in the process of activities in the field of crime prevention.

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Concept, System and Principles of Crime Prevention

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Abstract

This article raises two main questions. The first concerns the current idea that punishment – conceived as the loss of liberty – has an effect in preventing unlawful behaviour. It can be shown that, in general, sanctions have a poor individual preventive effect. As to general prevention, punishment may be expected to have a deterrent effect when the unlawful behaviour is the result of a rational decision, that is, a decision based on a cost-benefit analysis. However, a wide variety of factors, from group support to situational and systemic factors, may very well counteract the threatening effect of the sanction. The second question concerns the crime control model focusing on having an efficient system, with the most important function control crime to ensure that society is safe and there is public order. Under this model, controlling crime is more important to individual freedom. This model is a more conservative perspective to protect society and make sure individuals feel free from the threat of crime.

The results of this research underline the necessity for new concepts, including situational crime prevention, that must be accommodated within the academic and political discourses on crime control.

Keywords: public order, crime prevention, crime control.

Introduction

The most important problem of the research question is that until now the term "fighting against crime" has been used far. The fact is that the stated phrase "fight against crime" traditionally belongs to the Soviet period thus reflecting decades-old approach in the definition of goals and tasks set in the criminal policy, reflecting approach that is based on a naive belief that the crime can be "combated", "defeated", "eliminated" or

"eradicated". Besides, the problem is that the principles of preventive (criminological) policy should be reintroduced in the norms of the industry of preventive legislation. So far, these norms have not become a separate system within the framework of an independent source of law but are concentrated mainly in normative sources related to other branches of law, the principles of which extend their action to these norms.

Considering the above, the aim of the study is to summarise and study the principles of crime prevention and clarify possibilities of their interpretation. To achieve the goal, the following research tasks must be performed: examination of the principles of crime prevention, explanation of those. The following scientific research methods were used to achieve the goal of the study: analytical method to analyse the nature of the principles of crime prevention; inductive and deductive method to draw conclusions about the principles of crime prevention and the need for their improvement. The scientific novelty of the research is related to the fact that by analysing the principles of crime prevention, problems will be identified, and proposals put forward.

1 Crime Prevention and Crime Control

Such terms as "fighting against crime "should be abandoned and replaced by the term "crime control". The fact is that the mentioned phrase "fight against crime" traditionally belong to the Soviet period thus reflecting decades-old approach in the definition of goals and tasks set in the criminal policy, reflecting approach that is based on a naive belief that crime can be "combated", "defeated", "eliminated" or "eradicated".

Historical experience shows when criminal policy is based on the formula "fighting against crime", sooner or later criminal justice system is transformed into an instrument of societal oppression, which inevitably leads to the establishment of a totalitarian regime. Therefore, traditionally to the Soviet period belonging phrase "fighting against crime" under the influence of Western criminology and sociology are gradually being replaced by the concept of "crime control".

Unlike "fighting against crime" the result of which should be fulfilled idea of crime eradication, crime control is considered to be a tool in crime limitation at an objectively possible level.

In the Soviet legal literature, crime control doctrine and its nature and basic features were characterised a form of critical position limited by the ideological framework. Independent analysis of this doctrine has a major significance in the evolution of opinions about the problems of maintaining the legal order, the activity of the law enforcement bodies of the European and other countries, including the police. The practice of the former USSR whose influence is still felt today evidences that the government authorities were tended to the protection of the interests of the state, enforcement of legislative provisions, but not to the protection of human rights.

The crime control doctrine emerged in the early 1960s. At the time it became evident to the Western, particularly American lawyers and political scientists that worsening

of the criminal situation is a permanent trend and may have unpredictable consequences in the future. The doctrine of due legal procedure, which originated as a means of protection of an individual from illegal acts by the state in the early period of development of democracy in the late 17th century and placed the interests of an individual above the interests of the state and emphasised the protection of the accused against the formal power, did not meet the interests of the society. Supporters of legal sociology G. Pecker, A. Goldstein, R. Pound, among others believed that this obstructs an adequate reaction of the criminal justice system to the increase of crime. Therefore, the authors of the crime control doctrine and their followers saw the main and decisive importance of the theory "in the protection of the interests of the state as a whole from perpetrators". The latter were to be put under "a heavy control of the police and the judicial institutions" whose primary aim was social prevention of illegal actions (Roberts & McMahon, 2007).

This theoretic approach became one of determinant factors of the development of the legal policy in the USA, Canada, and the Western Europe, and later, in other parts of the world. Many scholars and lawyers who rightfully deplore excessive punishments in our system of criminal justice – excessive in both length and cruelty – place the blame for this excess on the influence of retribution and what they view as vile emotions of anger, hatred, and vengeance that drive retribution. This understanding of retribution is totally mistaken and the best corrective for the evils in our present system of punishment is to be found in retribution properly understood. This means that retribution will be seen as grounded not in vengeance but in respect for human dignity and a concept of desert grounded in human dignity (Luna, 2017).

In practice, principles of the crime control doctrine and the following concepts of legality manifesting themselves in abolishment or mitigation of sanctions for the criminals who repented their acts and/or cooperated with investigators. In these cases, criminal liability was substituted with administrative one for petty thefts, possession of a small amount of marihuana, prostitution, distribution of pornography, traffic offences and others (Simons & Kenneth, 2008). Thus, the crime control problem cannot be solved by law enforcement alone.

Police law scientists believe that governments have to intensify efforts in prevention of the most significant criminogenic factors by implementing reforms in social and economic spheres. Therefore, they have to develop and implement measures for harmonisation of urban development, improve legal education, establish special agencies for division and registration of labour force in those regions that are targets for large numbers of job-seekers from other countries, and improve police officer training, etc.

It is considered that crime can be better prevented with special programmes that are implemented jointly by the police, other government agencies, local authorities and the community. This approach is widespread in the USA where there are many crime combating programmes that can be subdivided into two types:

1) crime control programmes based on special prevention, detection and investigation of crimes and other offences against the law;

2) comprehensive crime prevention programmes that are realised by both the police (usually in cooperation with the population) and the community forces and means.

The first type of programmes is performed at all levels of government – federal, state and local; the second one includes mostly local programmes. However, the federal government and national organisations and foundations render advisory, financial, managerial and operational assistance.

Federal crime control programmes are extremely varied. They are approved by the Congress, i.e. they have the force of law. They may be either complex or special. The special programmes are aimed at concrete crime aspects. In the last decades, a series of such programmes – laws have been adopted (Prevention programmes and policies, 2016).

One of the police's tasks is to prevent criminal offences and other violations of law (Law on Police of Latvia 1991, Section, 3). The idea of prevention is the core of the police law, as police activity is related to prevention of criminal offenses and other violations of law, guaranteeing safety of individuals and society, protecting public order and other interests (Matvejevs, 2017).

Crime control is an activity that encompasses crime prevention, latent crime awareness, crime detection and investigation (Kavalieris, 2007).

Theory of control over crime is based on the doctrine that crime is a social phenomenon that eternally exists in a society with which it is impossible and inexpedient to fight, and which should only be controlled so that it does not go beyond certain limits. The modern world is characterised by an increase in diversity of manifestations of deviance – types of behaviour that violate norms established by the state (law) or worked out by society (morality). There is a blurring boundary between "deviant" and "normal" behaviour. Simultaneously, there is a "crisis of punishment" – ineffectiveness of traditional forms of social control over criminal (generally deviant) behaviour. In these conditions, development of strategy and tactics of social control over crime is gaining importance (Matvejevs, 2018).

There is a point of view that criminology is a part of criminal law or sociology. Sociology, typically aims to look for social causes of the phenomena. Criminology is one of the largest and fastest-growing subfields of sociology, and criminologists focus on sociological explanations for causes of crime. They also take a sociological view of how the criminal justice system, including police, prosecutors, and judges, responds to victims and offenders. Criminologists do not ignore individual causes of crime, such as personality and psychological characteristics, but they are especially interested in factors related to the larger world in which individuals live (Roberts, 2017).

In Latvia, according to the Cabinet Regulation No 49 of 23 January 2018 "Regulation on Latvian Science Sectors and Sub-sectors" criminology is recognised as one of the law sub-sectors. Majority of Latvian criminologists, according to their education, are specialists in the field of criminal law. It has advantages as well as some disadvantages. One

of the disadvantages of criminal justice education is that all types of crime prevention activities are traditionally divided into two unequal parts:

1) criminal repression, e.g., prevention carried out within the framework of criminal justice;
2) prevention which includes all types of anti-criminogenic effects that do not fall within the scope of criminal justice.

To some extent, this "inequality" is understandable, as it is the criminal law that defines parameters for the concept of "criminal offense", while the concept of "crime" is explained as a set of criminal offenses in a certain territory. Crime is essential in the definition of the subject of criminology.

What is paradoxical, however, is that considering the importance of crime prevention to criminal repression, this form of prevention is excluded from the scope of the subject of criminology and, judging by the majority of textbooks, its preventive potential has not been studied by criminologists. Prevention of crime by the means provided for in the criminal law should be considered in criminology alongside and in connection with others. Consequently, it is not necessary to study criminal law dogma issues which is the subject of the science of criminal law but the issues of criminalisation and decriminalisation, preventive effectiveness of the means used in criminal law.

The statement that effectiveness of criminal law norms/standards is a matter of study for sociology of criminal law or criminal policy calls for little difference. The study of various problems of administrative punishment, disciplinary liability or economic incentives in relevant branches of sociology do not preclude their study as a means of crime prevention but within the framework of criminology.

It may be concluded that there is no reason to exclude criminal law effect from the crime prevention system. One of the criminal punishment goals is to "to achieve that the convicted person and other persons comply with the law and refrain from committing criminal offences" (Criminal Law of Latvia, 1998, Section 35). Criminological theory of crime prevention is thus a doctrine of totality of legal ways, forms, means and methods of crime prevention and control, irrespective of which sub-sector of law they are intended for.

2 Principles of Crime Prevention

One of the rules on which there is no dispute in criminology is the thesis that crime prevention is a specific form of social governance. It follows that crime prevention measures must meet all requirements of social governance. In the light of the framework of crime prevention measures, a distinction can be made between object, subject and prevention measures. Crime prevention, like any other type of meaningful purposeful activity, is built based on certain general, universal ideas that reflect the objective laws of social development and are designated in science by the term "principles" (from Latin *principium* – base, beginning).

Until now, principles of crime prevention in the legal literature have been considered only fragmentarily and have not received an unambiguous classification and meaningful interpretation. Specificity of crime prevention measures is such that a significant

part of them involve coercion, interference with privacy, restriction of the individual's constitutional rights and freedoms. This mandatory part must be strictly regulated by law. It follows that, in addition to the principles of social governance (goal setting, systemicity, impartiality and effectiveness), crime prevention must comply with the principles of law, the most important of which is the principle of legality.

The principle of goal setting is most important in highlighting crime prevention as a specific form of social governance. It is the goal in crime prevention that is the unifying system-forming principle, which allows to refer subjects, objects and measures of influence to this particular specific activity. The goal is in the centre of a subject, and its achievement serves as a measure of quality and effectiveness of prevention work. However, the systemicity principle involves considering crime prevention as an interaction between a subject (control subsystem) and an object (control subsystem), and crime prevention measures as a governance relationship.

The principle of objectivity requires maximum correlation of control activities with patterns and trends in social processes. In the context of crime prevention, this means that preventive action cannot be taken without knowledge of, and consideration for, the functioning patterns of the object and society. Preventing crime through "campaign-type" actions does more harm than good. Nevertheless, the principle of efficiency is about achieving the best result in the shortest time with the least effort and expenditure of material and financial resources. In prevention of crime, this principle is limited by the principle of legality, according to which all preventive measures must be taken within the framework of the law and no desire for efficiency can justify its violation.

3 National Level Changes and Institutionalisation of Community Policing

In democratically oriented countries, the police law scientists usually give policing definitions with overall social tint. The legal status of police institutions is determined not only and not so much by types of political regimes but the nation's attitude to the state as such (Pārskats par tautas attīstību, 2002/2003).

The most commonly used framework links changes in policing to changes in societal contexts. The police change because the societies in which they operate change. For example, changes in the ideologies and practices of policing throughout American history (the political, progressive/professional, and community policing models (Goldstein, 1980; Hahn, 1998)) resulted from factors such as public and intellectual disillusionment with the performance of prior models, leading to delegitimation of policing by large segments of society and the rise of reform advocacy in policing circles; emergence of new politically influential civic society interest groups demanding change and greater accountability; changes in crime and disorder perceived as warranting a different formal and more effective control response; shifts in legal norms and conceptions of justice as these are applied to the police; and technological innovations in information processing and communication. Police cannot remain aloof from the changing societal contexts within which they

work if they wish to remain legitimate. Therefore, in the USA, Canada, Japan and most Eastern European countries, there is the concept of "community policing". Its essence is establishment of a partnership between the police and the community (Moving forward with community policing in Europe, 2004).

Community policing promises that closer alliances between the police and the community will help reduce citizen fear of crime, improve police-community relations, and facilitate more effective responses to community problems. More responsive policing better meets community needs, therefore improving overarching state-society relationship and strengthening the state.

According to the European Code of Police Ethics, the main purposes of the police in a democratic society governed by the rule of law are:

1) to maintain public tranquility and order in society;
2) to protect and respect the individual's fundamental rights and freedoms as enshrined;
3) to prevent crime;
4) to detect crime;
5) to provide assistance and service functions to the public.

Doubtlessly, development of policing in Latvia must be advanced in close contact with the European Code of Police Ethics and other legislations of the European Union. It is necessary not only to introduce European Union legislation in Latvia, but also to educate state and self-government officials, in particular police officers and individuals in contemporary understanding about police tasks, duties, accountability, possibilities of control, etc. The Law on Police of the Republic of Latvia was accepted in 1991 and was based on an analogous Soviet normative act and seems unconformable in anent of modern European theory of law. Many amendments of the Law on Police have been made since 1991, and in addition, numerous are on the preparation stage.

It seems that there are three ways of development of policing legislation in Latvia. Firstly, it is possible to continue the process of transformation of the Latvian police legislation from Soviet to European in the way that was started in 1991. It implies a comparatively slow advancement and can be compared with "delusion in the dark" because there is lack of scientific research in this area in Latvia. On the other hand, legislation of Latvia includes some specificity regarding national distinctions; therefore, implementation of foreign legislation without scientific analysis is not advisable. However, this way of development is dominating currently in Latvia (Melnis, Garonskis, & Matvejevs, 2006).

Conclusions

Principles of preventive (criminological) policy should be reflected in the norms of the emerging industry of preventive legislation. So far, these norms have not become a separate system within the framework of an independent source of law but are concentrated mainly in normative sources related to other branches of law, the principles of which, obviously, extend their action to these norms.

The crime control model focuses on having an efficient system, with the most important function control crime to ensure that society is safe and there is public order. Under this model, controlling crime is more important to individual freedom. This model is a more conservative perspective to protect society and make sure individuals feel free from the threat of crime.

Crime prevention is, therefore, a specific form of social governance aimed at reducing the likelihood of criminal behaviour, for which the subject, using the full range of legal means of influence (including coercive means), stimulates integration of the subject into the system of socially useful relations and limits its negative ties.

Understanding that crime is a complex social phenomenon is gradually emerging. Just as all diseases cannot be cured, there is no simple, universal and cardinal remedy for crime. The crime prevention system nowadays is becoming more and more complex and needs to be altered constantly. The general theory of crime prevention is the doctrine of the scope of legal ways, forms, means and methods of reducing crime level, irrespective of the branch of law to which they are designed for.

As crime prevention is a specific form of social governance, it combines principles of social governance with principles of legal regulation. The crime prevention system comprises objects, subjects and prevention measures. Successful crime prevention activity requires correct solution of the problems of normative, material, financial, organisational, personnel, informative analytical and scientific methodical support.

It is typical of developed countries that they have national and regional programmes for the police activity encompassing juridical, organising, administrative and other interconnected measures; these programmes have a sufficient financial support. Creative use of this practice can be very interesting, but the research of these problems – very perspective. However, these may be just prospects because the relevant programmes function where the social economic and political conditions are rather stable and there are vast financial opportunities for their implementation. The stated must be kept in mind during theoretical and practical analysis of any experience elements of the policing in democratic countries and must be considered when developing recommendations for their practical application.

Crime prevention involves activities that seek to prevent crime and offence before it occurs. It includes activities which address fear of crime. Prevention of crime requires individuals, communities, businesses, community organisations and all levels of government to work together. Crime prevention can reduce the long-term costs associated with the criminal justice system and costs of crime, both economic and social, and can achieve a significant return on investment in terms of savings in justice, welfare, health care, and protection of social and human capital. Safe and secure society is an important foundation for the delivery of other key services. Community safety and security is a prerequisite for sound economic growth through continuing business investment as well as community well-being and cohesion.

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Applicability of International Law in Cyberspace: Positions by Estonia and Latvia

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Abstract

The study focuses on applicability of international law in cyberspace, particularly on the global processes at the United Nations Committee on Disarmament and International Security and analyses whether and how Estonia and Latvia understand and explain the application of international law to the states' conduct in cyberspace.

The aim of the study is to provide qualitative and comparative analysis on what national positions Estonia and Latvia have on applicability of international law in cyberspace and how these opinions are reflected in their national cybersecurity strategies and national statements. The article assesses the efforts by Estonia and Latvia to promote understanding on how international law applies in cyberspace. These efforts are analysed from foreign policy perspective. The article also argues why it is crucial to promote such an understanding; however, it does not discuss or interpret legal concepts.

The article concludes with a comparison of the cases of Estonia and Latvia. The result of the research indicates that Estonia has been more active than Latvia in terms of defining and promoting its official position on applicability of international law in cyberspace. Latvia has not yet provided detailed positions on applicability of international law in cyberspace.

Keywords: cybersecurity, cyberspace, international law, international security, international society.

Introduction

With the constant development of information and communication technologies (ICTs), the issue of their application and related security risks is also becoming relevant. Although ICTs and a range of other emerging and revolutionary technologies bring

significant benefits to individuals and societies, for instance, in terms of communication, access to services and business, they also play an essential, and sometimes negative, role in international relations.

The use of ICTs by states for military purposes and the increase of state-sponsored cyber-attacks for espionage, theft of intellectual property and other malicious and disruptive activities raise serious concerns not only about the protection and resilience of ICTs systems, but also about the irresponsible state behaviour in cyberspace. Some states are using cyber-attacks as part of a wider hybrid warfare to influence an adversary. Such malicious and disruptive cyber-activities orchestrated by one state against another can threaten international peace and security. At the global level, states are increasingly discussing international cybersecurity issues, including international law, norms and principles states should adhere to when using ICTs.

In the United Nations (UN) Committee on Disarmament and International Security (also known as the First Committee), states have been discussing ICTs issues in the context of international security since 2004 when the UN Group of Governmental Experts (UN GGE) began its work. Such discussions, but in the framework of a new expert group, namely UN Open-Ended Working Group (UN OEWG), are expected to continue until 2025. Since 2004, states have been actively working together to understand whether and how the international law applies to cyberspace, including when states are using ICTs (the behaviour of states in cyberspace). In less than twenty years, progress has been made in recognising the application of existing international law in cyberspace, including the UN Charter and human rights principles, as well as various other non-binding rules and principles. The attempts to reach a common understanding of applicability of international law in cyberspace have been only partially successful.

For example, different views over the aspects of countermeasures, self-defence and application of international humanitarian law still exist. Moreover, there are attempts by some states to review the decisions once made by the UN General Assembly on the applicability of international law in cyberspace. Authoritarian states do not fully share the view that existing international law is applicable in cyberspace and persistently suggest that there is a need for a new, binding international treaty that would regulate the states' conduct in cyberspace. Democratic states do not share such a view and keep promoting and strengthening the concept of applicability of already existing international law in cyberspace. Democratic states have concerns that through such a new, binding international treaty authoritarian states will restrict free flow of information and the governance model of cyberspace will become state centric, not human centric (Rosenbach & Chong, 2019). Democratic and like-minded states need to promote the concept that international law applies in cyberspace and take global discussions further in order to answer the question how it is applied.

The aim of the article is to examine how one of the most important outcomes of the work of UN GGE, notably stating that international law is applicable in cyberspace and is crucial to maintaining peace and stability (UN GGE, 2013), is reflected in current

national cybersecurity strategies and national statements of Estonia and Latvia at relevant UN GGE and UN OEWG meetings. The article provides qualitative, comparative, and, to a very limited degree, also legal analysis on Estonia's and Latvia's contributions on understanding on whether and how international law applies to the use of ICTs by the state. The qualitative analysis is performed by interpreting and analysing national cybersecurity strategies and national statements. The core issues of the article are analysed through foreign policy perspective. The article does not discuss or interpret legal concepts. The result of the research indicates that Estonia has been more active than Latvia in terms of defining and promoting its official position on applicability of international law in cyberspace. Latvia has not yet provided detailed positions on applicability of international law in cyberspace which may indicate lack of expertise and/or lack of human resources. If Latvia provided such an analysis and position, it would contribute to strengthening the understanding of the international community on the applicability of international law in cyberspace.

The article explains the global processes at the UN Committee on Disarmament and International Security in relation to responsible state behaviour in cyberspace and security of and in the use of information and communications technologies. The article examines Estonia's and Latvia's understandings of applicability of international law in cyberspace. It concludes with a comparison of the cases of Estonia and Latvia providing final conclusions.

1 Main Outcomes of UN GGE reports (2013–2021)

Early concerns that the misuse of ICTs could endanger international stability and security, rose in 1998, when Russia introduced a UN resolution on "Developments in the field of information and telecommunications in the context of international security" (UN doc. A/RES/53/70, 1999). Discussions on norms and laws which should govern the use of cyberspace became more prominent when the UN GGE was established in 2004.

The mandate of UN GGE has evolved over the years. For instance, in 2004 the group's mandate was:

> "*Requests the Secretary-General to consider existing and potential threats in the sphere of information security and possible cooperative measures to address them, and to conduct a study on the concepts referred to in paragraph 2 of the present resolution, with the assistance of a group of governmental experts [..].*" (UN doc. A/RES/58/32, 2003)

The latest UN GGE group in 2018 was mandated to:

> "*[..] to continue to study, with a view to promoting common understandings and effective implementation, possible cooperative measures to address existing and potential threats in the sphere of information security, including norms, rules and principles of responsible behaviour of States, confidence-building measures and capacity-building, as well as how international law applies to the use of information and communications technologies by States [..].*" (UN doc. A/RES/73/266, 2018)

Adjustments and evolutions of the mandate are in line with the findings and recommendations of the UN GGE reports in 2013, 2015 and 2021.

Until now there have been six UN GGE. Usually, the group works for two years, it has at least 2 working sessions per year. The groups have consisted of 15–25 experts. The main outcome of working sessions is consensus reports which include findings and, most importantly, recommendations for states to guide their conduct in cyberspace. The recommendations are non-binding, but, mostly, have been well recognised by the UN member states and some of them even adopted by consensus. In total, the groups have produced four reports. The most prominent and fundamental findings and recommendations are included in 2013 and 2015 reports. (UN, 2021)

In 2013, the UN GGE report concluded that international law applies in cyberspace; state sovereignty applies to State conduct of ICTs; human rights and fundamental freedoms must be respected in cyberspace:

> "*19. International law, and in particular the Charter of the United Nations, is applicable and is essential to maintaining peace and stability and promoting an open, secure, peaceful and accessible ICT environment.*
> *20. State sovereignty and international norms and principles that flow from sovereignty apply to State conduct of ICT-related activities, and to their jurisdiction over ICT infrastructure within their territory.*
> *21. State efforts to address the security of ICTs must go hand-in-hand with respect for human rights and fundamental freedoms set forth in the Universal Declaration of Human Rights and other international instruments."* (UN doc. A/68/98*, 2013)

After the report in 2013, the UN GGE continued its work, building upon work that had been done previously and concluded its work with a new consensus report in 2015. The report of UN GGE in 2015, among other things, offers eleven key recommendations for voluntary, non-binding norms, rules or principles of responsible behaviour in cyberspace (UN doc. A/70/174).

One of the key recommendations is:

> "*States should not knowingly allow their territory to be used for internationally wrongful acts using ICTs.*" (UN doc. A/70/174, 2015)

Recommendations suggest that states should not conduct or knowingly support malicious ICT activities and such activities should be mitigated if emanating from their territory and are directed against another state (UN doc. A/70/174, 2015). The report also provides deeper insights on how international law applies to states' conduct in cyberspace. Mainly, it reflects discussions on sovereignty, confirming that:

> "*States have jurisdiction over the ICT infrastructure located within their territory.*" (UN doc. A/70/174, 2015)

The group concluded that there is a need for continued discussions to improve the understanding of how international law applies in cyberspace, including on countermeasures which states can implement according to the UN Charter. The report also highlights the challenges of attribution.

In 2017, UN GGE failed to agree on a consensus report because of different views over the aspects of countermeasures, self-defence, due diligence, application of international humanitarian law and sovereignty (Tikk & Kerttunen, 2017). The group resumed the work in 2019 and provided a consensus report in 2021. The report addresses the issue with the application of international humanitarian law, noting that IHL is applicable in cyberspace but only during an armed conflict (UN doc. A/76/135, 2021). Normative clarifications regarding due diligence and sovereignty still need to be addressed.

There is a separate document accompanying UN GEE report 2021:

> "*Official compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies by States submitted by participating governmental experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly resolution 73/266*".

This compendium consists of national views on how international law applies to states' conduct in cyberspace submitted by UN GEE participating states. Apart from the Compendium 2021, since the establishment of UN GEE, UN member states are regularly invited by resolutions to inform the UN Secretary General of their opinions and positions on concepts covered by the UN GGE recommendations. It also refers to states' views and assessments of how international law applies in cyberspace.

UN Resolution A/RES/73/27 in 2018 introduced a new group called Open-ended Working Group (UN OEWG) with almost the same mandate as UN GGE. UN OEWG is a Russian led initiative, open to all UN member states, while UN GGE members are selected based on candidatures. The group concluded its first report in 2021 and is expected to continue its work till 2025. The report does not contribute meaningful, new recommendations on how international law applies in cyberspace. Nevertheless, it was crucial that the UN OEWG reaffirmed the work done by UN GGE in 2013 and 2015 (UN doc. A/AC.290/2021/CRP.2, 2021). The report is accompanied by "Compendium of statements in explanation of position on the final report" which reflects detailed positions of states on different issues, including controversial ones.

Although a lot has been achieved at the global level in terms of building norms and laws which should govern the use of ICTs by states in cyberspace, states must continue to discuss and to develop common understanding on how international law applies in cyberspace.

2 Applicability of International Law in Cyberspace: Cases of Estonia and Latvia

This section analyses national cybersecurity strategies. These are important policy documents which reflect what positions states have on different issues and also determine strategic guidelines. Additionally, national contributions to both compendiums (in the frameworks of UN GGE and UN OEWG 2021 reports) will be analysed, in order

to identify contributions of Estonia and Latvia. For the UN OEWG 2021 Compendium all UN member states were able to submit their positions, explaining their views on different issues expressed in UN OEWG report 2021. For the UN GGE 2021 Compendium only those states participating in the group were invited to submit their national views. Estonia is the only Baltics state which participated in the UN GGE 2019–2021. Latvia's contribution is not expected in the UN GGE Compendium. National statements expressed at relevant UN GGE and UN OEWG meetings will also be discussed.

Estonia

Estonia's current cybersecurity strategy (2019–2022) is a comprehensive document which defines strategic objectives of national cybersecurity policy. The document displays main areas of activities, including raising cyber awareness of society, promoting public and private partnerships, developing digital society, supporting research and development (Strategy, 2019–2022). Among these areas, there is a section dedicated to Estonia's role in the processes of shaping international law for cyberspace. Estonia sees herself as a credible and strong partner in this field at the global level. According to the current cybersecurity strategy (Strategy), cyber is part of Estonia's foreign policy, especially international cooperation on cyber norms and international law. The state also acknowledges that discussions on the application of international law in cyberspace are essential and complicated ones at the global level (Strategy, 2019–2022). In its Strategy, Estonia demonstrates readiness to be involved in cooperation regarding UN GGE and UN OEWG unresolved issues, for instance, attribution of attacks and countermeasures (Strategy, 2019–2022). In Strategy, Estonia has expressed intentions to create an international cyber law centre in order to develop even more competency, particularly on the civilian side of international law (Strategy, 2019–2022). The Strategy concludes that there is a need to achieve a consensus on how international law applies in cyberspace. The Strategy also defines that Estonia must continue its active participation in the UN cyber processes. In the Strategy, Estonia emphasizes its role in the fact that the number of states that recognise the applicability of international law in cyberspace has increased (Strategy, 2019–2022).

Estonia has been a regular UN GGE participant and with its expertise has contributed to all four consensus reports. Estonia sees UN GGE as a global, high-level forum for cyber norms discussions and participation in the UNGGE is one of the foreign policy priorities (Kaljurand, 2016). Estonia decided to apply for UN GGE membership only in 2008 (Kaljurand, 2016), and not in 2003, potentially because of experienced cyber-attacks to its government websites and online services in 2007.

Estonia has extensively contributed to the UN GGE Report 2021 annex: "*Compendium of voluntary national contributions on the subject of how international law applies to the use of information and communications technologies [..]*". In its position, Estonia reaffirms its view that existing international law applies in cyberspace and that there is no need for new, binding treaties. In its position Estonia provides explicit views on pressing issues like sovereignty, due diligence, attribution, countermeasures, international humanitarian law etc. (UN GGE Compendium, 2021)

For example, regarding due diligence it is still unclear whether it is a legal obligation or not (Kaljurand, 2016), but in its position Estonia justifies that:

> "*The due diligence obligation of a state not to knowingly allow its territory to be used for acts that adversely affect the rights of other states has its legal basis in existing international law and applies as such in cyberspace.*" (UN GGE Compendium, 2021)

And:

> "*Without this obligation international law would leave injured states defenceless in the face of malicious cyber activity that emanates from other states' territories.*" (UN GGE Compendium, 2021)

Such a detailed national position helps to improve the understanding of the applicability of international law in cyberspace for those states that lack expertise in legal aspects of cybersecurity. To a number of states (so-called Non-Aligned Movement states) it is not yet clear which of the positions and approaches to choose, meaning to support or object the notion that international law is applicable in cyberspace. In order to persuade such states to support one position or another, diplomatic activities are implemented by authoritarian states and democratic and like-minded states. Given the conflicting ideological visions of how cyberspace should be governed, the diplomacy chosen and pursued by countries is important in resolving conflicting issues.

Estonia has also contributed to the UN OEWG Report 2021 annex: "*Compendium of statements in explanation of position on the final report".* The statement contains some of already expressed positions and is more oriented on sharing the views on the UN OEWG final report. In its statement it reaffirms the applicability of international law in cyberspace:

> "*This includes the Charter of the United Nations in its entirety, customary international law, human rights law and international humanitarian law, all of which apply in cyberspace.*" (UN OEWG Compendium, 2021)

Estonia urges for further in-depth discussions on the applicability of international law in cyberspace. Estonia also encourages states to develop their national positions on how exactly existing international law applies in cyberspace (UN OEWG Compendium, 2021).

Estonia has been developing its position on the applicability of international law in cyberspace gradually at least since 2014 (Estonia's Contributions to the GGE, 2014). Estonia considers that it is crucial to continue to develop a common understanding of how international law applies in cyberspace (UN GGE Compendium, UN OEWG Compendium, 2021).

Latvia

Latvia's current cybersecurity strategy (2019–2022) defines vision, objectives, priorities, and fundamental principles of national cybersecurity policy. It describes functions and responsibilities of state institutions. In the case of Latvia, cybersecurity is part of

comprehensive national defence (Strategy of Latvia, 2019–2022). The document presents main areas of activities: promoting cybersecurity; strengthening resilience of ICTs; raising public awareness; supporting education and research; strengthening international cooperation; ensuring rule of law in cyberspace etc. (Strategy of Latvia, 2019–2022). The Strategy states that it is necessary to deepen cooperation with partners to achieve common understanding of cyberspace in general. The section of international cooperation, which is the only one which includes reference to international law, mainly focuses on the EU and NATO aspects.

Latvia acknowledges that there are challenges towards building a common understanding of cyberspace. The Strategy determines that:

> "*Together with like-minded countries, Latvia should try to promote shared and common global understanding of cyberspace and how international treaties apply to it.*" (Strategy of Latvia, 2019–2022)

In the Strategy's Latvian version the term "international norms" is used instead of "international treaties", which can be confusing. The Strategy supports the notion that existing international rules are applicable to both physical and virtual domains. The Strategy neither clearly expresses the position of applicability of international law in cyberspace, nor it expresses the views on the UN GGE processes. The English version uses vague terminology.

Latvia has not been a member of the UN GGE processes, which means that the state has not applied for membership or its candidature has been rejected by the UN Secretariat. The UN GGE is composed on the basis of equitable geographical distribution (The Digital Watch, 2021) which would mean competition with Estonia. Latvia was a participant of the UN OEWG 2019–2021, the group which is open to all UN member states.

Latvia has provided a contribution (statement) on the Zero and First draft of the UN OEWG report. Regarding international law, it states:

> *"[..] it is necessary to particularly emphasize the applicability of the UN Charter in its entirety since Charter is binding for all UN Member States and is essential to maintain peace, stability and promotion of open, secure and peaceful ICT environment."* (Statement by Latvia, UN OEWG, 2021)

In its statement, Latvia clearly affirms applicability of international law in cyberspace. In addition, it also urges further discussions on applicability of international law in cyberspace and reaffirms UN GGE report 2015 (Statement by Latvia, UN OEWG, 2021).

Conclusions

Establishment of laws, norms and principles governing the use of ICTs in cyberspace is still ongoing. The processes at the UN are highly politicised. There are two diverging visions on how cyberspace should be governed and by what laws states should be guided in use of ICTs in cyberspace. The UN General Assembly has affirmed that international

law applies in cyberspace. Remaining question is: how does it apply? Meanwhile, there are attempts by some states to review the decisions made by the UN GA and proposals to create new, binding treaties which would regulate cyberspace. Democratic states consider that through such proposals authoritarian states intend to restrict free flow of information, and the governance model of cyberspace would become state centric, not human centric.

Research shows that Estonia and Latvia both affirm and support the notion that international law is applicable in cyberspace, but Estonia has been more active than Latvia in terms of defining and promoting its official position on applicability of international law in cyberspace. Estonia has developed a detailed national position, addressing the most pressing and controversial concepts discussed at the UN GGE. Such a contribution helps to improve understanding of the applicability of international law in cyberspace for those states that lack expertise in legal aspects of cybersecurity, thus increasing support for the concept that international law is applicable in cyberspace. Overall, such a contribution helps to improve general understanding of the normative framework (norms, laws and principles) applicable in cyberspace. The ongoing processes at the UN level also have an implication for other international organisations, and a clear understanding of the violation of the normative framework is essential.

Estonia has been a regular UN GGE participant and with its expertise has contributed to all four consensus reports. Latvia has not been a member of the UN GGE processes but participated in the UN OEWG 2019–2021. In the case of Latvia, there is significantly fewer public materials and data to analyse. Latvia has not yet provided detailed positions on applicability of international law in cyberspace, even though it is encouraged by the UN Secretary General to do so. This may indicate a lack of expertise and/or a lack of human resources responsible for developing detailed positions on international cybersecurity policies. If Latvia provided such an analysis and position, it would contribute to strengthening the understanding of the international community on the applicability of international law in cyberspace. Although Latvia and Estonia are similar in terms of geography, military, economics, and territorial size, the role of cybersecurity in their foreign policies is fundamentally different. In the case of Estonia, cyber is part of its foreign policy, especially international cooperation on cyber norms and international law. The membership of the UN GGE has been a goal. Estonia promotes itself as the leading nation in the field and is keen to strengthen its expertise further. Estonia's ambitious cyber foreign policy and strong expertise have been developed since it suffered from state-sponsored cyber-attacks against its government websites and online services in 2007.

In-depth discussions are needed at the UN level to continue to build a common understanding of how international law applies in cyberspace.

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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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Factors Affecting Modern Entrepreneurship and Tax Planning

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Abstract

One of the guiding principles of the European Union is freedom of establishment. At the same time, due to the possibility of abuse of rights, restrictions are possible. The objective of the study is to analyse cases regarding state intervention in commercial activities of antreprenierus imposing restrictions on rights and freedoms, in order to prevent companies from abusing the principles of free establishment. The author provides justification and cases for imposing restrictions, in particular, if there is a suspicion that tax evasion, unlawful reduction of the taxable amount has taken place instead of lawful tax planning, based on which businesses are required to provide information on true beneficiaries of companies, the goals and nature of transactions, as well as discusses the acceptable depth of such restriction by regulation. Several research methods have been used in this study: historical method, analytical method and inductive method.

Keywords: freedom of establishment, notion of economic substance, tax disputes, tax planning, tax evasion, anti-money laundering (AML), sanctions, legislation on "whistleblowers".

Introduction

The perception of legitimacy and validity in reducing the amount of taxes paid through the use of tax planning depends on the interpretation of the subjects of law and commercial activity of the relevant legislation, as well as upon the actions themselves to optimise the payment of taxes. The author has previously analysed the legislation of the EU Member States and practical cases of the EU Court of Justice (ECJ) in relation to determining the legitimacy of tax planning. In particular, based on the analysis of the Cadbury Schweppes case (Cadbury Schweppes and Cadbury Schweppes Overseas,

2006) and principle of freedom of the establishment of companies within the EU, the concept, content and criteria of legal tax planning have been derived as the basis for the economic activity of European companies.

In this paper, the author continues to explore the topic of tax planning and analyses the principles of freedom of enterprises in the EU, including the freedom of establishment enshrined in a Treaty on the Functioning of the European Union, and their compatibility with tax planning. Reference is also made to "markers" that allow one to distinguish between legitimate tax planning and tax evasion, and what companies should take into account when planning their business activities. At the same time, in this article, the author expands the list and analyses factors influencing modern entrepreneurial activity and tax planning. In particular, it refers to the potential of legal restriction of constitutional rights and freedoms, including freedom of establishment, if there is a suspicion that an illegal reduction has occurred in the taxable amount instead of legitimate tax planning, on the basis of which companies are required to provide information about the true beneficiaries of companies, purposes and the nature of transactions (AML).

The article also analyses other factors affecting commercial activity – the presence of sanctions legislation of the EU, the USA and other countries, which limits the feasibility of tax planning; exceptions that allow and even require the disclosure of commercial information to detect serious crimes in the public interest. When analysing these factors on the basis of practical cases, the author raises the question of the permissible degree of influence of these factors on the commercial activity, on the one hand, and the need for a regulatory definition of tax planning to prevent companies from abusing the fundamental basis for the functioning of the European economic space on the other hand.

1 The Principle of Freedom of Establishment in the EU and Its Compatibility with Tax Planning. The Concept and Criteria of Determining the Legitimacy of Tax Planning

The process of integration in the EU is encouraged by the measures for the creation of common markets (goods, capital, services, labour) and special regulations aimed at the provision of freedom of enterprise. In this respect one can conclude that freedom of enterprise is the main aspect encouraging the beginning of organisation of the free economic development of the EU, providing its unhindered coordination and interaction of its Member States.

Freedom of enterprise, in turn, is characterised by the following principles: principle of free movement of goods, principle of free movement of people, principle of free provision of services, principle of free movement of capital, freedom of establishment.

There is no doubt that for the purpose of cross-border business structure optimisation, the free movement of the "personality" of the legal entity, i.e., freedom of its establishment, is required. Freedom of establishment – this is the right of the independent establishment of undertakings, to manage them, in particular, businesses and companies,

in accordance with the terms set forth by the law of the nation where such a right is granted to its own citizens and in compliance with the rules governing capital.

Article 49 of the Treaty on the Functioning of the European Union (TFEU) (Treaty on Functioning of the European Union, 2012) establishes the freedom and prohibits the restriction of freedom of establishment to citizens of any Member State in the territory of another one. This prohibition also applies to restrictions regarding the establishment of representative offices, subsidiaries and daughter companies by citizens of any Member State which have established their business in any Member State.

The ECJ in the Cadbury Schweppes case (2006), which has been analysed before by the author in his article The Definition of Tax Planning in the Case-law of the Court of Justice of the EU (ECJ) (Zelmenis, 2022), is based on the decision on the principle of freedom of establishment. And on the basis of this principle, in this case, the competent opinion of a supervisory nature has been provided and tax planning has been interpreted by the court.

In this case the Court has been addressed by the question of the freedom of establishment of undertakings and benefitting from tax benefits in the European Union. The group Cadbury Schweppes and Cadbury Schweppes Overseas Limited have stated that the legislation of the United Kingdom regarding controlled foreign companies is contrary to the provisions of TFEU regarding the free movement of capital.

As a result of hearing the case, the ECJ has supported the side of the company by establishing that the provisions of the EU Member State (in this case, the United Kingdom) cannot be enforced and restrict the rights and freedoms of the company having founded a foreign controlled subsidiary if it follows all the circumstances of the case that, irrespective of enjoying tax advantages, this company is engaged in actual economic operations in any EU Member State.

Having heard the case on its merits, the ECJ has drawn the conclusion that if the provisions of national legislation restrict the operation of the principle of freedom of establishment and performance of economic activity, as well as the operation of the principle of free movement of capital, the actions of companies which may cause doubts for tax authorities are unavoidable consequences of any other restrictions on freedom of establishment and performance of economic activities.

In its ruling the ECJ has explained that the establishment of a company in the EU Member State for the purpose of gaining a profit in compliance with the legislation providing for tax benefits does not in itself suffice to constitute abuse of that freedom and, accordingly, is not a violation. Article 43 of TFEU provides that freedom of establishment and performance of economic activities allow one to engage in economic activities, found and manage undertakings according to the conditions stipulated by the legislation, including legal entities founded in the relevant EU Member State. Furthermore, the ECJ has emphasised that the fact that a resident company establishes a subsidiary in another EU Member State does not create the general presumption of tax evasion and a compromise cannot be made to exercise the fundamental freedoms guaranteed under TFEU.

Therefore, the ECJ has established a law that freedom of establishment and performance of economic activity within the scope of TFEU provides the performance of an economic activity by means of actual and effective establishment for an unrestricted term in any EU Member State for the purpose of performing true (and not fictitious) economic activity.

The concepts interpreted and presented in the argumentation part of the rulings of the ECJ: entirely artificial arrangements; abusive practice; objective and subjective criteria/factors; "mailbox companies"; bogus company – are the key ones for this ruling; they form the basis of the methodology for the evaluation of the legitimacy of tax manoeuvres of companies by the ECJ.

In the case of Cadbury Schweppes in particular, the ECJ addresses the concept "wholly artificial arrangements", and points out that the national legal provisions, providing restrictions on exercising freedom of establishment, may be justified in the case that they are aimed at fighting wholly artificial arrangements which are used by companies and aimed at circumventing the national legislation.

The next important concept, applied by the ECJ in resolving tax disputes, is the term "abusive practice". It can be concluded that two criteria should be considered when determining abusive practice: (1) an objective non-compatibility of the goal of the legislation with the results achieved by the company as a result of the implementation of specific types of economic activity, and (2) the subjective intentions of the company manifested as an abusive practice to receive advantages.

In the case of Cadbury Schweppes, the ECJ is addressing the terms – a "mailbox company" and a "bogus company". The instructions and recommendations of the ECJ mean that the size of premises, the number of personnel, and the quantity of equipment cannot be determined without taking into account the type of business activity the company performs.

Finally, it can be concluded that the case has established the position that all of the indicators of illegal tax planning are described by just one aspect of the business and tax planning known as a "substance". The notion known as "substance" is what allows for the examination of a company's operation from the perspective of actual economic activity and commercial independence.

The following should be taken into consideration when engaging in tax planning as a focused lawful activity of the taxpayer with the goal of minimising its expenses for paying taxes, duties, fees, and other necessary payments. Freedom of establishment, along with the aforementioned principles, is the primary cornerstone of how the entire European economic space functions, which makes it easier for business subjects to abuse them.

However, the rights provided by the Constitution and international documents, e.g., Article 17 of the Charter of Fundamental Rights of the European Union (2016) – the right to protection of property, Article 16 – freedom of business, Article 45 – freedom of movement, Article 48 – the presumption of innocence, Article 1 of the Additional Protocol to the Convention on the Protection of Human Rights and Fundamental

Freedoms – protection of the right of ownership, Article 2 (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950) – freedom of movement and Article 45, 49 of the TFEU, can be restricted and are not absolute; therefore, for the purpose of reduction of the risk of money laundering it is possible to impose restrictions on the right of individual entities; however, in this case the proportionality of imposed restrictions should be maintained and there should be an option to appeal against the resolution on the application of such measures. Further the article discusses measures developed by states to limit the conditions of the business to abuse by the principles mentioned above and the practice of their application.

2 Anti-Money Laundering (AML) Legislation, Its Constitutionality and Practice of Implementation

In compliance with the case law of the European Court of Justice (ECJ), confirmed, for example, in *Ordre des Barreaux* (*Ordre des barreaux francophones et germanophone and Others v Conseil des ministers*), irrespective of the criticism of this practice in the legal literature, the AML regulation restricts the fundamental rights and freedoms of the person provided by the national constitutions of the EU Member States, including the right to privacy and the right to access justice.

For example, in the decision of the ECJ of 26 June 2007 No. C-305/05 it is concluded that the right to a fair trial is not infringed by the imposition on lawyers of the obligations to inform and cooperate with the authorities responsible for combatting money laundering when participating in certain financial transactions with no link to judicial proceedings. Such obligations are justified by the need to combat money laundering effectively (*Ordre des barreaux francophones et germanophone and Others v Conseil des ministers*, 2007); it is concluded that services provided by attorneys are not exempt from Value Added Tax and that the application of this tax does not violate the right to an effective judicial defence and the principle of equality of parties guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

In its ruling of 25 April 2013 in case No. C-212/11, the ECJ recognises that freedom of establishment is not restricted by the provision according to which the undertaking (its subdivisions) should provide information requested by the Member State represented by state authorities – the Financial Intelligence Unit.

In this ruling, the main case of Jyske Bank, the Danish subsidiary of the Danish bank NS Jyske Bank, has acted, based on the conditions of freedom of provision of services (without establishing a company in Spain); however, the Spanish tax authority has provided notification regarding this, unless it appoints a representative for communication with this authority, to examine the organisational structure of Jyske, as well as AML procedures in relation to its services. As a result, it is determined that compliance with the AML provisions is in the public interest. Accordingly, fundamental rights, such as freedom of establishment, may be restricted to ensure that the legislation's intended goal

is met. Compliance with the AML provisions should be monitored without going beyond what is necessary and without applying the rules in a non-discriminatory manner. (Jyske Bank Gibraltar Ltd. v. Administración del Estado, 2013)

On the other side, in the opinion of the Advocate General in case C-78/18 (the ruling of EC is not available when drafting the thesis) concerning the Hungarian national system of AML provisions and the provisions of Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union regarding the free movement of capital, confidentiality and protection of personal data, and regarding the right to freedom of association, it is concluded that there should not be discriminatory regulation of restrictions in the AML field for foreign entities, differing from domestic companies. In this situation the Hungarian national legislation has required foreign (other) donors, where donations exceeded the set amount, to submit an additional declaration on the origin of funds in the situation when this is not required from resident donors (EU Commission v. Hungary, 2020).

The European Court of Human Rights has dealt with the conflict between the AML regulation and fundamental rights in the case of Mihoid v. France. In this case the French lawyer demands the rules provided by three AML directives, adopted by the EU, requiring attorneys to report on suspicious transactions to be additionally clarified in an internal resolution of the National Council of Attorneys on the approval of internal AML procedures for attorneys. However, the European Court of Human Rights in its case has concluded that provisions concerning the fight of money laundering as the legitimate interest allow the attorney's obligation to perform due examination and to report on suspicious transactions to the anti-money laundering authorities of the respective Member State (Michaud v. France, 2013).

3 Sanctions Legislation of the USA, EU and Several Other Countries

The Resolution of the Council of European Union dated 22 November 1996 and Regulation No. 2271/96 contain provisions according to which decisions and resolutions of administrative authorities, issued beyond the EU borders, are not recognised and enforced (Article 4), as well as citizens and residents of the EU Member States, legal entities established in the EU are not obliged to respond to such foreign acts and actions of authorities having issued such acts (Article 5), and resolutions of such foreign authorities and courts, based on a range of sanctions of the United States introduced in relation to Cuba, Iran and Syria in the Annex to this Regulation (the list is replaced with the list in the Annex to Delegated Resolution of the Commission No. 2018/1100 (Council Regulation (EU) 2018/1100 amending the Annex to Council Regulation (EC) No. 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, 2018)).

Additional sanctions are provided by other regulatory enactments for 33 countries (EU sanctions map, 2020), for example, sanctions applicable to the Korea People's Democratic Republic (Council Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation, 2017) introducing financial restrictions, restrictions on the movement of goods and other sanctions based on the resolutions of the Council, which, in turn, are based on the restrictive measures of the United Nations (United Nations Security Council Consolidated List, 2020). The sanctions of the UN and EU restrict the feasibility of tax planning for the countries which are not EU and UN Member States or which are convicted by the UN of any actions.

In addition to sanctions, it is worth mentioning the so-called EU "black list" of tax jurisdictions including the countries which do not implement the automated exchange of financial information with the tax authorities of EU Member States (for example, Fiji, the Cayman Islands, Panama, Seychelles) (Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes 2020/C 64/03, 2020) and the "grey list" comprising the countries tending to demonstrate visible improvements in the automated exchange of financial information as on 31 December 2020 (Turkey, Bosnia and Herzegovina, Jordan, Thailand, Morocco, etc.).

Countries included on the above lists do not ensure transparency, fair tax competition and conformity of their legislation with the OECD strategies of fighting tax base erosion and profit shifting (BEPS), which are aimed at reducing the scales of tax planning strategies by using so-called "gaps" in the tax legislation of various countries.

Considering the fact that 137 global countries are members of BEPS (BEPS member state list, OECD, 2019) and there are very few countries which have not assumed the obligations or actually do not follow BEPS strategies developed for preventing tax evasion and reduction of taxes (the so-called "black list"), such measures restrict practicability for unlawful tax evasion through "tax havens" and "bogus" companies, taking into account the obligation of the automated exchange of information among countries. However, it should be noted that in the legal literature there are doubts regarding the EU lists of "tax havens" by underlining that the biggest tax havens in the USA (like the state of Delaware, South Dakota and Florida) are not included on these lists due to political reasons (Akhtar & Grondona, 2019).

Furthermore, a reference should be made to the list of countries which do not cooperate with other countries in fighting against money laundering, including with the FATF. The list of FATF includes countries like Cyprus, the Russian Federation, Israel and Liechtenstein, as well as some other countries (FATF, 2000).

However, this regulation does not exclude the possibility of lawful tax planning by choosing the most favourable tax regime for the taxable entity, where the tax rate is lower (or the tax base is lower), as well as by using legal benefits and discounts available on the national level of countries which are not included on these lists.

When tax havens from the end of the 1990s disappeared and tax relations improved, some Western countries started playing an important role in tax planning and are named as the new tax havens, like the Netherlands, Ireland, Belgium, Switzerland and others.

For example, following a violation by Luxembourg, the Netherlands and Belgium, concerning selective benefits for large groups of companies, like Fiat, Amazon, Starbucks and Apple, which allowed them to pay lower taxes, the Commission has also resolved to investigate the situation of taxes and the state aid of the company IKEA (European Union Commission, 2017). In the case of IKEA, the Commission of the European Union also resolved that tax evasion had been found for a period of 6 years on account of the restructuring of groups and licence fees for the intellectual property, and that the unlawfully received Dutch state aid was provided as tax benefits (EC Possible State aid in favour of IKEA. No. SA.46470 (2017/NN), 2017).

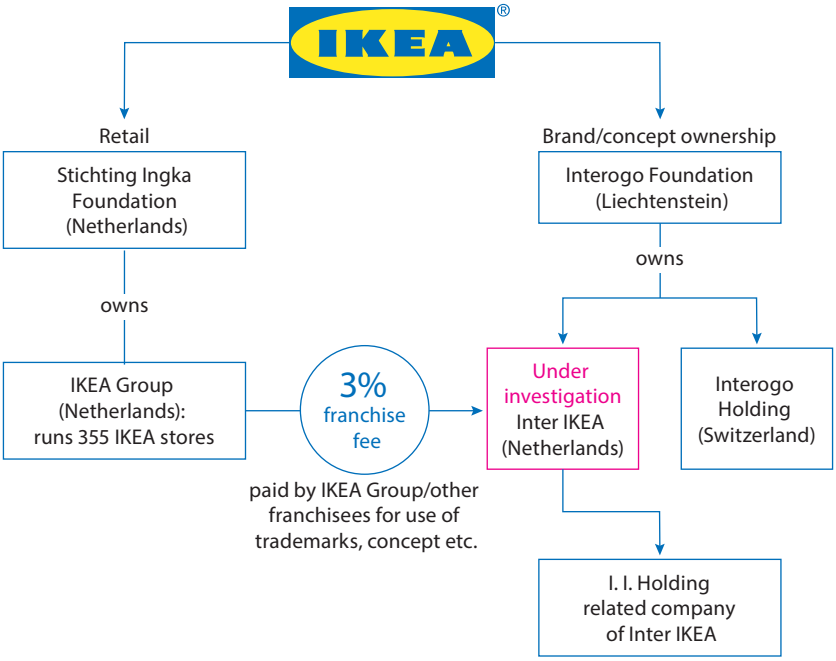
In the above referred Commission`s case, IKEA was divided into two separate groups in 1980: Inter IKEA and Ingka; the group Inter IKEA purchased the right of the intellectual property that provided the right to use the trademark IKEA by other dealers and producers of IKEA, while the group Ingka dealt directly with trade, i.e., stores.

Inter IKEA is owned by the Fund Interogo, established in Liechtenstein, Systems – the company of the group Inter IKEA, established in the Netherlands, owns the concept of the franchise IKEA, and Systems is owned by the Dutch company Inter IKEA Systems Holding BV, that, in turn, is owned by a Luxembourg company Inter IKEA Holding SA (IIHSA). Systems has signed agreements with 11 franchise groups in 49 countries, the majority of which are owned by Ingka Group.

The Dutch tax authorities and Systems have concluded an agreement concerning the amount of taxable franchise licences regarding the other company Inter IKEA in Luxembourg, I. I. Holding C.A. (Holding) for licence fees of the franchise which should be paid to Systems, while Holding has signed a licence agreement with Systems allowing Systems to use the intellectual property of the company for the development of the franchise concept IKEA, providing for the payment of the licence fee. The licence fee reduces the taxable income of Systems by the transfer of a considerable part of its income to the holding, which, in turn, is exempt from payment of tax of the relevant amount according to the tax rules of the holding valid in Luxembourg at that time.

Thus, IKEA manages to reduce its taxable income on account of restructuring the group and licence fees for the use of intellectual property, which finally deprives Luxembourg of the relevant part of income. The Commission of the European Union considers that the payment for the transfer of this intellectual property right does not correspond to the actual price, and thus the company has not assessed the correct tax amount for the income of the group and incorrectly receives state aid as a tax exemption of companies of the group IKEA.

This opinion concerning tax planning and state aid is shared by the ECJ, for example, in its ruling of 24 September 2019 in the case Grand Duchy of Luxembourg v. European Commission concerning state aid provided to Fiat Chrysler Finance Europe (European Union Commission, 2014, No. SA.38375 (2014/NN).



Graph of the European Commission in IKEA proceedings, No. SA.46470 (2017/NN) (Milne, R., Toplensky, R. 18.12.2017. IKEA's complicated tax-driven structure faces EU scrutiny)

In this case Fiat Chrysler Finance Europe (Fiat) applied to the tax authorities of Luxembourg for an early tax decision; the tax authorities of Luxembourg adopted the early tax decision by agreeing that the transfer would be analysed in compliance with the circular letter concerning the approval of the method of distribution of the profit within the group Fiat Chrysler, and which allowed Fiat Chrysler Finance Europe to define the amount of its corporate tax payable in the Grand Duchy of Luxembourg annually and which provided that transactions among companies within the same group should be paid for as if they were performed by independent companies by transfers according to comparable conditions with non-related parties, and it was explained how the remuneration of non-related parties should be defined, in particular, in relation to financial transactions of the group of companies. However, the European Commission initiated an investigation of the state aid (reduction of the payable tax) of the Grand Duchy of Luxembourg (Grand Duchy of Luxembourg v. Ireland, 2019).

Thus, it can be concluded that even in cases where legal tax planning is carried out using state-defined tax benefits or exemptions, the Commission of the European Union may declare those benefits or exemptions to be incompatible with EU law and unjustified state aid, as well as declare the group's tax planning to be tax evasion and

illegal tax planning, and require it to pay the associated costs. However, in the situation with McDonald's Europe, for example, the European Commission concluded that there was no tax evasion and that the Grand Duchy of Luxembourg did not provide unlawful state aid. In this case, McDonald's Europe Franchising is the subsidiary of McDonald's Corporation based in the USA. The company is a tax resident of Luxembourg and has two subsidiaries where one is in the United States and the other in Switzerland (European Union Commission, 2018. Decision State Aid – Luxembourg. Possible State aid in favour of McDonald's Europe, No. SA.38945 (2015/NN)).

McDonald's stated that, although in compliance with the tax legislation of the USA, the subsidiary in the USA was not the "permanent representative office; in compliance with the tax legislation of Luxembourg it was the "permanent representative office". As a result, income from the royalty should be exempt from taxation in compliance with the legislation on the corporate tax of Luxembourg. Thus, the tax authorities of Luxembourg concluded that the company did not have to pay the corporate tax in Luxembourg, as the profit would be taxed in the United States. Thus, in this case, McDonald's part of income in Luxembourg was exempt from taxes.

The Commission of the European Union concluded that the Grand Duchy of Luxembourg provided lawful state aid and that the company did not evade taxes, as the state authorities of Luxembourg applied the treaty for avoiding double taxation between Luxembourg and the USA by exempting the income of the American division from the corporate taxation of Luxembourg.

Thus, the author of the Thesis points out that tax benefits or benefits granted by the state within the scope of corporate tax planning are not always recognised by the European Commission as not allowed state aid, and lawful tax planning without sanctions by the EU is still possible.

4 Business Secret, the Role of Mass Media and Legislation on "Whistleblowers"

In tax legislation the role of business secret, mass media and whistleblowers is important in relation to tax evasion by large and important companies (Leaked Documents Expose Global Companies' Secret Tax Deals in Luxembourg, 2014). Without mass media that fully understands the difference, lawful tax planning is often mixed with tax evasion, causing public scandals and harming the reputation of corporations.

Such scandals can also be caused by staff or internal service providers (accountants, advisers, etc.), who have "leaked" the companies` documents to the broader public (tax leaks) concerning payable taxes and their amounts, or reports on possible violations of firms to state tax authorities (whistleblowers).

Examples of such scandals involving tax leaks are the so-called "Panama papers" (These are the Paradise Papers. *Suddetutche Zeitung*, 2020), "Mauritius leaks" (Treasure Island: Leak Reveals How Mauritius Siphons Tax from Poor Nations to Benefit Elites.

International Consortium of Investigative Journalists, 2019). "Luanda leaks" (How Africa's Richest Woman Exploited Family Ties, Shell Companies and Inside Deals to Build an Empire. *International Consortium of Investigative Journalists*, 2020) as well as tax leaks of the US President Donald Tramp and other tax scandals (Repeated leaks and revelations are chipping away at Trump's attempts to keep his tax records secret from the American public. *Business Insider*, 2019).

In such cases, records of company income are, as a rule, protected by business secret, that does not allow their publication in full scope; however, their protection is not applicable to an investigation performed by the state authorities concerning possible administrative or criminal offences.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (freedom of expression) (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950), as well as Directive of the European Parliament and Council No. 2019/1937 of 23 October 2019 (Council Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, 2019) provide for the protection of whistleblowers in cases when the provided information is made public for the public interest to find serious violations (Former PwC employees face trial over role in LuxLeaks scandal. *The Guardian*, 2020). However, whistleblowers are often subject to court prosecution due to the abuse of business secret, such as in the scandal with the Luxembourg leaks; irrespective of this, the Bonus of the European Parliament is granted for such reports.

Protection of a business secret is regulated by Directive No. 2016/943 of 8 June 2016 (implemented in the national legislation of the EU Member States), that provides for the protection of information under the status of business secret against its unlawful gaining, use and disclosure, as well as specifies that a business secret is information (all the criteria should be satisfied) that is usually not known or not accessible to a broad range of persons equally to the range of persons who usually use this information, has commercial value, as this information is secret and is subject to reasonable measures of security under relevant circumstances as adopted by the person in lawful control of this information (Article 2).

However, national legislation contains exceptions regarding the freedom of expression of opinions and information. The supplement to exemptions from the Directive provides that the Directive is not applicable to the disclosure of business secrets for the public interest and disclosure of information to state authorities or national state authorities (freedom of expression). However, in the resolution of 15 March 2017 in the criminal case LuxLeaks, the Appeal Court of Luxembourg resolved that Antuan Deltour, the employee of Price Waterhouse Coopers, who participated in tax leaks in Luxembourg, was declared guilty of stealing information within the country and gaining access to the data base by fraud, as well as the unlawful possession of this information, and he was sentenced to conditional imprisonment for 6 months and a fine of EUR 1500 was applied to him. However, later in 2018, the cassation court cancelled the judgment.

At the same time another employee Raphael Halet was declared guilty of stealing business information within the country and gaining access to the data base by fraud and laundering of money received as a result of the criminal offence, as well as possession of the subject of the theft within the country, as well as a violation of the obligation to maintain a business secret, and according to the court's conclusion, the exemption of the whistleblower did not apply to the accused person, however, mitigating conditions were applied - his motivation and the lack of criminal intentions; these circumstances were taken into account when setting the penalty, thus imprisonment was not applied and he had to pay the fine of EUR 1000. Still, both persons faced a potential civil charge for the damage caused. However, the journalist Eduard Perren who published the materials received from Deltour was acquitted and no charges were imposed on him (Summary translation of the Court of Appeal of Luxembourg judgment, 2017).

Thus, it is necessary to underline that in situations when large companies are involved in potential tax fraud (or tax planning or state aid are wrongly viewed as tax fraud), irrespective of the national and supra-national regulation of protection of whistleblowers who do not have sufficient protection, as it has been mentioned in mass media on several cases - in the situation of Wikileaks and Edward Snowden, as well as in relation to other reporters (Declassified: From Snowden to WikiLeaks to Crypto AG, these are the biggest leaks of the past decade and what we've learnt from them. *Business Insider*, 2020).

Conclusions

Peculiarities of tax legislation, its interaction with legal anti-money laundering provisions, provisions of so-called whistleblowers, as well as sanctions determine the complexity of the approach for defining tax planning, its distinction from tax evasion/tax avoidance, and factors that businesses should take into consideration when conducting their tax planning. Businesses should be aware that this issue cannot be resolved on the basis of a single system of legal sources when conducting business. Without ignoring US and EU sanction provisions, international treaties, policies adopted by a certain range of countries, the approach of the ECJ and the role of its rulings, it is necessary to determine the factors influencing business and tax planning using national legislative acts and supranational EU law as the basis.

Furthermore, it should be considered that the practice of adoption of decisions by competent tax authorities varies from country to country, which leads to submitting disputes to the ECJ for resolution. It is the practice of the ECJ to determine the approach to the interpretation and distinction between legitimate and illegitimate tax planning and establish several core concepts, based on which it is possible to judge the lawfulness of tax planning: the concept of abusive practice, the concept of the use of wholly artificial arrangements, and the use of substance has also been become increasingly meaningful during the last few years (Cadbury Schweppes case).

In the decision, described in the article, the court emphasises the importance and inviolability of the principle of freedom of establishment, which is fundamental to the existence of the EU.

The ECJ also emphasises the importance of conducting an assessment of the behaviour of the taxable entity, while paying particular attention to the goals, objectives and reasons behind the disputed regulation. It concerns the goal set by subjects of business operations, implementing the principle of freedom of establishment, and the essence is to allow EU Member States entities to establish subsidiaries and other "secondary" organisations in other EU Member States for the purpose of performing operations, and thus encouraging economic and social integration within the EU.

Considering the fact that in the European Union business operations are based on the principles of business activities and freedom of establishment, special legislation, legislation of the so-called extra territorial sanctions law (US taking the leading role in this field) shall be involved in the interpretation of the law on tax planning. Among the issues are bilateral sanctions, and the non-acceptance of such provisions by the UNDP or other organisations, however, affecting other countries and the business operations of their entities with the target country subject to US sanctions.

In the USA, transactions in US dollars are prohibited if a company or individual violates or is suspected of violating anti-money laundering regulations. Tax planning and global business operations are both affected by this issue and such risks should not be ignored.

Commercial secrets and client confidentiality are also factors that affect commercial activity.

Lawyers are also required to participate in the system of notifying suspicious transactions and operations, except for when providing legal advice in criminal and administrative cases involving money laundering.

The peculiar aspect of modern tax planning is that it assumes that the "authors" of such tax planning (lawyers, accountants, auditors, or tax advisors) are required to notify the appropriate authorities of legal violations. This is directly related to the special legislation on "whistleblowers" and information providers, which completely alters the approach to tax planning and to the fundamental concepts, such as business or confidential information.

It is possible to impose restrictions on people's and businesses' rights in order to lower the risk of tax evasion; however, in this scenario, the proportionality of the imposed restrictive measures must be observed, and it must be possible to challenge the decision to impose such measures.

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Topicalities in Coercive Measures Application Process to Legal Entities in Criminal Proceedings in the Republic of Latvia

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Abstract

Under conditions of the Covid-19 pandemic and the military operations carried out by the Russian Federation in Ukraine, including the tension between the Western countries and the Russian Federation, the application of coercive means of influence to legal entities in criminal proceedings and peculiarities and problems of the criminal legal regulation related to their application, which hinder or even prevent, have become especially relevant to achieve the goal of the criminal process and lead it to a fair settlement of criminal legal relations.

Criminal legal regulation regarding the application of coercive measures to legal entities is periodically improved in order to make the application of coercive measures more effective; however, shortcomings of the criminal legal framework still prevent effective action against legal entities by applying coercive measures to them in practice, as evidenced by the small number of initiated processes on the application of coercive measures for legal entities, which is also indicated by international organisations. The legislator has already started the process of improving the criminal legal framework; however, according to the author, there are a number of gaps in the criminal legal framework that hinder or even prevent application of means of coercive influence on legal entities in criminal proceedings.

The purpose of the article is to research national and international criminal law regulation of legal entities criminal liability and identify and analyse problems of the criminal law regulation in the Republic of Latvia at various stages of the process of applying coercive measures to legal entities.

General methods of scientific research and methods of legal interpretation have been used in the research.

Keywords: legal entities, security measure, coercive measures.

Introduction

Under conditions of the Covid-19 pandemic and the hostilities carried out by the Russian Federation in Ukraine, the world is increasingly facing new challenges in the process of applying coercive measures to legal entities. With the development of the criminal world and tactics and methods of committing criminal offenses implemented by it, especially using legal entities to commit criminal offenses in order for natural persons to avoid responsibility (Kolomijceva, 2009), the application of coercive measures to legal entities in criminal proceedings and specificities and problems of the criminal law regulation related to their application have become particularly relevant, which hinders or even prevents achievement of the goal of the criminal process and leads it to a fair resolution of criminal legal relations.

In the light of the Covid-19 pandemic, state support measures have opened opportunities not only for legal entities to receive state support in crisis conditions, but also for natural persons to embezzle significant amounts of funds from the state budget in the interests of legal entities, as a result of good or inadequate supervision and control.

However, state support measures related to overcoming of the Covid-19 pandemic are not the only existing and foreseeable threats of the moment for which legal entities could be increasingly subject to the means of coercive influence, because after the invasion of Ukraine by the Russian Federation, with the increase in the volume of international and national sanctions against the Russian Federation, the number of criminal proceedings initiated under Article 84 of the Criminal Law (violation of sanctions established by international organisations and the Republic of Latvia) is also increasing significantly, and it is predicted that for this reason the number of proceedings on the application of coercive influence measures to legal entities could also increase in the future, as well as challenges related to the application of the criminal law regulation in the process of applying means of coercive influence to legal entities have become particularly relevant.

Already on September 29, 2003, the United Nations Convention against Transnational Organised Crime of November 15, 2000, entered into force in the Republic of Latvia (hereinafter – the Convention). Article 10 of the Convention "Liability of Legal Entities" stipulates that each Member State shall take the necessary measures in accordance with its legal principles to determine liability of legal entities for participation in serious crimes involving an organised criminal group and for those criminal offenses defined in Articles 5, 6, 8 and 23 of the Convention. In compliance with the legal principles of the Member State, liability of legal entities may be criminal, civil or administrative. This liability does not limit the criminal liability of natural persons who have committed the relevant criminal offences. Each Member State shall ensure that those legal entities prosecuted in accordance with the provisions of this Article are subject to effective, proportionate and dissuasive criminal and other sanctions, including fines.

On April 21, 2005, the Republic of Latvia, by adopting the Criminal Procedure Law, which entered into force on October 1, 2005, and the version of the Criminal Law of May 5, 2005, which entered into force on October 1, 2005, has implemented Article 10 of the Convention into the national legal framework as specified in Article, subjecting legal entities to criminal sanctions for criminal offenses committed by natural persons as a result of good or improper control or supervision in their interests.

The criminal legal regulation regarding application of coercive measures to legal entities is being improved so that the application of coercive measures becomes more effective; however, shortcomings of the criminal legal framework still prevent effective action against legal entities by applying coercive measures to them, as evidenced by the small number of initiated processes on the application of coercive measures to legal entities, which is also pointed out by international organisations.

The purpose of the article is to research national and international criminal law regulation of legal entities criminal liability and identify and analyse the problems of the criminal law regulation in the Republic of Latvia at various stages of the process of applying coercive measures to legal entities.

The article has three chapters and a conclusion. The first chapter of the article examines topicalities in the process of applying means of coercive influence to legal entities, the second chapter analyses the legal framework, while the third chapter examines problematic issues in the process of applying the legal framework.

In the preparation of the article, generally recognised scientific research methods, special legal interpretation methods were used.

1 Current Actualities in Coercive Measures Application Process

In October 2019, the Working Group of the Organisation for Economic Cooperation and Development (hereinafter referred to as OECD) Combating Bribery in International Business Transactions (hereinafter referred to as the Working Group) approved Latvia's 3rd phase assessment report (hereinafter referred to as the 3rd phase report) on compliance of Latvian regulatory acts with OECD 1997, the requirements of the November 21st Convention on Combating Bribery of Foreign Officials in International Business Transactions and related recommendations, as well as on fulfilment of the established requirements regarding combating bribery of foreign officials in international business transactions, abilities of investigative, prosecutorial and judicial authorities to investigate and try such criminal offenses, about the level of awareness of officials and the public about the negative consequences of bribing foreign officials and about the work done in preventing and combating legalisation of criminally obtained funds.

One of the issues raised by the Working Group in the 3rd Phase report is the effective application of the legal framework of liability of legal entities for criminal offenses, with special emphasis on jurisdictional aspects regarding those criminal offenses committed

by a natural person for the benefit, in the interests of a legal entity or as a result of its improper supervision or control of a person. The working group, evaluating investigation of cases of bribery of foreign officials in Latvia, found several shortcomings in the application of the norms of the Criminal Law and the Criminal Procedure Law. Namely, in several cases, the criminal jurisdiction of Latvia was not determined either based on the territorial principle or the principle of nationality, as a result of which, in several cases of bribery of foreign officials, in which, according to foreign judgments, Latvian financial institutions and shell companies registered in Latvia supported bribery of foreign officials, acting as an intermediary in the transfer of the bribe, they were not prosecuted in Latvia. In addition, the Working Group found that in two cases in Latvia, application of coercive measures to a legal entity was initiated only after the natural person who had committed the criminal offense in its interest was convicted abroad (OECD report, 2019).

Latvia has joined a series of international legal acts (conventions and directives of the European Union), which in the field of criminal law provide for the obligation to determine responsibility of legal entities for a criminal offense committed in the interests of, for the benefit of, or due to a lack of supervision or control of a legal entity, for example: the Council of Europe Convention on the Proceeds of Crime prevention, search, seizure and confiscation of funds, the Council of Europe Convention on Combating Trafficking in Human Beings, the Council of Europe Convention on Cybercrime, the Council of Europe Criminal Law Anti-Corruption Convention, the Council of Europe Convention on Offenses Related to Cultural Property, the Directive of the European Parliament and the Council (EU) 2008/99/EC (November 19, 2008) on the criminal protection of the environment, Directive 2014/62/EU of the European Parliament and of the Council (May 15, 2014) on the criminal protection of the euro and other currencies against counterfeiting and which replaced the Council Framework Decision 2000/383/TI, Directive (EU) 2017/1371 of the European Parliament and of the Council (July 5, 2017) on combating fraud affecting the financial interests of the Union by means of criminal law, Directive (EU) of the European Parliament and of the Council 2018/ 1673 (October 23, 2018) on combating money laundering with criminal law), etc., as well as partially implemented it in the national criminal legal framework by including in the Criminal Law and the Criminal Procedure Law both material and procedural legal norms applicable in the process of applying coercive means of influence to legal entities.

Article 70.[1] of the Criminal Law stipulates that for a criminal offense provided for in the special part of this law to a legal person under private law, including a state or local government capital company, as well as a partnership, the court or in the cases provided for by law, the prosecutor may apply coercive measures, if the offense is in the interest of the legal person, these persons for the good or as a result of its improper supervision or control committed by a natural person, acting individually or as a member of the collegial body of the relevant legal entity: (1) based on the right to represent the legal entity or to act on its behalf, (2) based on the right to make decisions on behalf of the legal entity, (3) implementing control within the legal entity.

Thus, it can be established that the legal norms, which provide for the prosecution of legal entities for criminal offenses committed by a natural person on their behalf, as well as when lack of supervision or control has allowed a natural person to commit a criminal offense, are standard legal norms of European Council's conventions and directives, which stipulate the obligation to criminalise certain offenses and provide for the liability of legal entities for them, which has also been introduced in the national criminal law regulation. However, according to the author, the current Criminal law regulation is incomplete. Inadequacies in the criminal legal framework are related to initiation of the process of applying means of coercive influence to a legal entity, problematic application of presumptions, absence of security or security measures, impossibility of applying means of coercive influence to certain legal entities, absence of criteria for the application of means of coercive influence, as well as shortcomings of the legal framework that allow legal persons to avoid application of means of coercive influence, etc.

The author's opinion about shortcomings in the criminal law regulation and the problems of its application is also confirmed by the fact that the Working Group has concluded that there is very little judicial practice in Latvia regarding application of means of coercive influence to legal entities. A similar conclusion was made in 2018 by the Council of Europe's Committee of Experts on Anti-Money Laundering and Terrorist Financing (Moneyval) in the 5th evaluation report of Latvia on the technical adequacy of the anti-money laundering and terrorist financing system of the Financial Action Task Force FATF) recommendations, as well as on effectiveness of the mentioned system. The Moneyval report concluded that lack of processes for applying coercive measures to legal entities for legalisation of proceeds of crime indicates that Latvia has achieved mediocre efficiency in this area and significant improvements are needed (Moneyval report, 2018).

Although there are no publicly available statistics on the application of coercive measures to legal entities, the information provided by the Ministry of Justice shows that in the period from October 2019 to May 25, 2021, coercive measures were applied to 25 legal entities, in 17 cases coercive measures were used as applicable for the criminal offense provided for in Article 218 (tax evasion) of the Criminal Law. For two legal entities, the means of coercive influence have been applied for the criminal offense provided for in Article 195 (money loundering) of the Criminal Law, and for other two legal entities, the means of coercive influence have been applied for the criminal offense provided for in Article 323 (bribery) of the Criminal Law.

2 Legal Framework

As a result of the research, it can be established that there are at least 5 directives of the Council of Europe, 1 OECD, 1 UN and 4 directives of the European Parliament and the Council, which impose the obligation to provide legal entities with criminal,

civil or administrative liability for a criminal offense committed by a natural person in the interests, for the benefit of the legal entity, or as a result of inadequate control or supervision, namely:

- United Nations Convention against Transnational Organised Crime (Anti-organised crime convention, 2000);
- Convention on Combating Bribery of Foreign Officials in International Business Transactions (Anti-bribery convention, 1997);
- Council of Europe Convention on Prevention, Search, Seizure and Confiscation of Money Laundering (Anti-money loundering convention, 1990);
- Council of Europe Convention on Combating Trafficking in Human Beings (Anti-human trafficking convention, 2005);
- Council of Europe Convention on cybercrimes (Anti-cybercrimes convention, 2001);
- Council of Europe Criminal Law Anti-Corruption Convention (Anti-corruption convention, 1999);
- Council of Europe Convention on criminal offenses related to cultural values (Convention against criminal offenses related to cultural values, 2017);
- European Parliament and Council Directive (EU) 2008/99/EC (November 19, 2008) on criminal protection of the environment (Directive on criminal protection of the environment, 2008);
- Directive 2014/62/EU of the European Parliament and of the Council (May 15, 2014) on the criminal protection of the euro and other currencies against counterfeiting and which replaces the Framework Decision of the Council 2000/383/TI (Directive against counterfeiting, 2014);
- Directive (EU) 2017/1371 of the European Parliament and of the Council (July 5, 2017) on combating fraud affecting the financial interests of the Union by means of criminal law (Anti-fraud directive, 2017);
- Directive (EU) 2018/1673 of the European Parliament and of the Council (October 23, 2018) on combating money laundering through criminal law (Anti-money loundering directive, 2018).

Common in all these legal acts is that no legal act imposes an obligation to provide criminal liability directly to a legal entity, but rather gives a free choice to choose which liability, providing that the national legislature has the right to choose to provide effective means for punishing legal entities in a certain branch of law.

In fact, all conventions and directives indicated above contain a provision on the liability of legal entities, which requires each Member State to take the necessary measures to ensure that legal entities can be prosecuted for violations provided for in them.

They provide that the Member States ensure that the legal person becomes liable for the actions that are committed for the benefit of the said person, acting individually or as a member of the body of the legal person, by a person who occupies a leading position in the structure of the legal person, based on the authority to represent the legal person

or the authority to make decisions on behalf of the legal entity, or to have the authority to internally control the legal entity, as well as for involvement in the commission of such an offense as an accomplice or instigator. This legislation also contains an indication of applicable penalties, namely that each Member State shall take the necessary measures to ensure that effective, proportionate and dissuasive sanctions, including fines as a criminal or other type of penalty, are applicable to a legal person who is prosecuted and may include other penalties.

It must be said that in 2005 the Republic of Latvia chose to follow the path of not providing legal entities with criminal liability, but with coercive measures, because the above-mentioned international legal acts do not set specific requirements for the criminal liability of legal entities; however, in order for Latvia to fulfil the requirements of international law, the normative Acts in Latvia were amended, providing that for criminal offenses committed by natural persons in the interests of legal entities, as a result of good or improper control or supervision, coercive measures can be applied to legal entities, without providing for bringing the legal entity to criminal liability in the same way as a natural person.

It must be indicated that the subject in this process is a legal entity under private law, including state or local government capital companies, as well as partnerships; therefore, law enforcers have the opportunity to apply means of coercive influence to all types of legal entities, except for the state, municipalities and other public law legal entities, but in any case, a connection between the perpetrator of a criminal offense – a natural person and a legal entity can be established, and the investigation will determine whether a natural person has committed a criminal offense, acting individually or as a member of the collegial institution of the relevant legal entity, based on the right to represent the legal entity or to act on its behalf, usually those are members of the board or any of their authorised persons, also based on the right to make decisions on behalf of the legal entity or exercising control within the legal entity.

Currently, the legal regulation of the liability of legal entities in the Criminal Law (Criminal Law, 1998) states that the legal entity does not and cannot have a subjective attitude towards the committed criminal offense, so in this case it is impossible to talk about the guilt of the legal entity.

Among some Latvian legal scholars, there is an opinion that recognising a legal entity as the subject of a criminal offense and convicting them criminally, the principle of guilt in criminal law would be deformed (Krastins, 2002).

However, in several European Union countries, the criminal liability of legal entities is directly provided for. In addition, legal entities are prosecuted regardless of whether the specific natural person who committed the crime is also prosecuted.

In the author's opinion, it would be very useful in Latvia as well, especially when talking about money laundering in credit institutions, as well as tax evasion, because it is often impossible to find out exactly which natural person has committed the crime, and to detect it, the state needs to invest huge resources; however, the evidence base

regarding the fact that a criminal offense has been committed in the interest of a legal entity has already been collected.

According to the Criminal Law, a means of coercive influence is applied to a legal entity, if the fault of a natural person is found guilty of committing a criminal offense, a connection between the natural person and the legal entity must be established.

It should also be added that the concept of influencing a legal entity within the framework of criminal law included in the Criminal Law, the means of coercive measures applied to legal entities cannot be considered a criminal penalty and in fact the process against legal entities takes place within the framework of the criminal process, it is like a process included in the process.

In Latvia, there are no restrictions regarding which criminal offense committed by a natural person, a legal entity should be subject to coercive influence, it can be applied to any criminal offense provided for in the Special Part of the Criminal Law, which can be evaluated positively.

3 Issues of Application of Legal Framework

In order to apply the means of coercive influence to a legal entity, it is necessary to establish the connection of the legal entity and the criminal offense committed by a natural person provided for in the Special Part of the Criminal Law, and the investigation must clarify whether the criminal offense was committed in the interests of the legal person, for good or as a result of improper supervision or control.

It must be said that, in practice, the separation of the concepts "in the interests of the legal entity" and "for the benefit of the legal entity" as well as "improper supervision" and "improper control" creates problems.

The concept "in the interests of a legal entity" is broader than "for the benefit of a legal entity", as it is actually not limited to obtaining a certain benefit, as a legal entity does not necessarily have to benefit from a criminal offense, but, for example, an employee of a company can give a bribe to an official, to accelerate, for example, the speed of issuing a building permit, which does not directly bring economic benefit to the company, but in fact it was in the company's interest to start construction as soon as possible.

In the law, the concept in the interests of a legal entity was included, due to the fact that it is provided for by the requirements established in international norms and, in fact, to form a wider circle of connection with the criminal offense committed by a natural person.

On the other hand, in the case when criminal offense is committed for the benefit of a legal entity, it means that the result of such an offense must be beneficial to the company, but not always the company in question must receive direct material benefit from the offense, as it may seem at first, but the benefit can also be in a different way, for example, if a company employee gives a bribe to a government official to prevent a competitor from entering the market, in this case the benefit is also detectable.

So, in fact, the concept of "in the interests of a legal entity" is broader than the concept of "for the benefit of a legal entity", and it covers situations in which the committed criminal offense is in the interests of the legal entity, but it does not benefit directly or indirectly from the committed criminal offense, while the concept "for the benefit of the legal entity" covers situations where the legal entity has benefited from the committed criminal offense, but it is not a mandatory condition that it has actually benefited from it.

Regarding distinction between the concepts of improper supervision and control, The author would like to point out that the concept of "improper supervision" covers cases when an employee in a managerial position improperly supervises the activities of his subordinate, while the concept of "improper control" covers cases when the legal entity has not provided an adequate internal control system activity. In practice, these situations may overlap, for example, if a legal entity does not provide an internal control system, as a result of which a subordinate employee who is in a managerial position commits a criminal offense due to the inaction of an employee in a managerial position.

However, attention should be drawn to the fact that these two situations may overlap, that is, if the legal entity does not provide an internal control system, the subordinate employee commits a criminal offense due to the inaction of the employee in a managerial position.

It must be said that in practice there is also a problem that when starting a criminal trial, it is not clear which presumption included in the law to choose to start a trial against a legal entity. In the author's point of view, the decision to start the process, especially if it is started almost simultaneously with the start of the criminal process, should indicate that a criminal offense was committed in the interests of a legal entity, because in fact it covers these possible cases, although it must be admitted that it sounds a little vague, but it would be appropriate for the level of detail of the decision required for the initial stage of the process, and then already at a later stage of the process, when additional evidence is obtained, the decision can be clarified.

From the point of view of practice, it is very important to start proceedings against a legal entity immediately after the initiation of criminal proceedings, in order to be able to seize the property of the legal entity in time and not to have it expropriated or re-registered or actually turned into a shell without any assets, as is sometimes the case in practice also happens if the process against the legal entity is started at a later stage after the initiation of the criminal process. Natural persons, however, already know about the existence of the criminal process and they can avoid responsibility even by legal means, assuming that a process for the application of coercive measures can be started against them.

With regard to current events related to means of coercive influence and their application, attention should be drawn to the fact that the Criminal Law defines that money collection is a forced collection, which, according to the severity of the criminal offense and the financial status of the legal entity, can be determined in the amount of one to ten thousand of the minimum monthly wages established in the Republic of Latvia

at the time of judgment. Collection of money imposed on a legal entity shall be paid from the funds of the legal entity for the benefit of the state.

Money collection according to the severity of the criminal offense is applicable in monetary terms to a legal entity from EUR 2,500 up to EUR 50,000,000. Nevertheless, the application criteria are very general and can be freely interpreted, putting the burden on the shoulders of the prosecutor and the court to evaluate the financial position and size of the legal entity, which in the author's view is not quite correct and also often does not ensure the achievement of the purpose of the means of coercive influence.

A better example can be found in Latvia in connection with violations of the Competition Law (Competition law, 2001). For example, the regulations of the Cabinet of Ministers (Regulations of the Cabinet of Ministers, 2016), which provide for the imposition of penalties on legal entities for competition violations in the administrative process, specify relatively more specific criteria for the application of penalties, considering severity, duration, mitigating and aggravating circumstances of the violation committed by the legal entity, when determining the fine as a percentage of the net turnover of the last reporting year, and it can be up to 7 percent of the annual net turnover. The author proposes going in this direction in the processes of applying coercive measures, linking the collection of money with the annual net turnover.

One of the important issues is the absence of security or security measures in the process of applying coercive measures to legal entities. The Law on Criminal Procedure currently does not provide for the possibility of applying security measures to legal entities, however, amendments to the Law on Criminal Procedure (Amendments in Criminal procedure law, 2022) have already been submitted, which provide for determination of three means of security applicable to legal entities, if there is opposition to the achievement of the goal of the criminal process, or if the procedural obligations set out in the law are not fulfilled, or if there is reason to believe that the progress of the process will be delayed or a natural person will commit a new criminal offense in the interests of a legal entity.

These three provided means of security are – prohibition of certain activities, with this means of security it will be possible to restrict a certain type of business or other activity if a criminal offense is related to the performance of the mentioned activity. It is also planned to introduce a security measure – a ban on making changes in the Enterprise Register for reorganisation, liquidation, change of officers, members and shareholders or registration or amendment of a commercial pledge, as well as other changes, without the permission of the person directing the proceedings, indicating to the person directing the proceedings exactly what prohibition it applies. It is also possible to prohibit the transfer of the company or its part to the ownership of another person, effectively prohibiting its expropriation without the consent of the person in charge of the process.

Decisions on the application of security measures can be taken by the person directing the proceedings, who is an investigator or prosecutor in pre-trial criminal proceedings. Therefore, this problematic issue is already being solved in fact, and from January 1, 2023, it is likely that such security measures will also be able to be applied.

Likewise, the Law on Criminal Procedure is supposed to be supplemented with the possibility of applying coercive money to a legal entity that interferes with the procedures established in criminal proceedings or does not comply with the security measures applied. Forced money can be set up to 50,000 EUR. The enforcement money will be applied by the court.

With the amendments, it is also planned to provide for the possibility to change the circumstances found during the trial in the process of applying the means of coercive influence, which the law did not foresee until now.

It must be said that a solution has not yet been found to the problem related to the inability to initiate the process of applying coercive measures to a legal entity without initiating criminal proceedings if a natural person has committed a criminal offense in a foreign country. At the moment, in fact, for a criminal offense committed by a natural person in a foreign country, criminal proceedings must also be formally initiated in Latvia, in order to be able to initiate proceedings against the legal entity, separate it, and then the criminal proceedings must be terminated again.

Conclusions

The Law on Criminal Procedure does not provide for the possibility of starting a process against a legal entity without starting a criminal process. Absence of specific criteria for the application of coercive measures remains relevant, that is, the criteria are very general with a huge amplitude for money extortion.

The most important problem currently is the inability to apply coercive measures to legal entities if the natural person who committed the criminal offense has not actually been identified. In the author's view, at least in certain categories of cases, such as cases related to tax evasion, bribery, large-scale fraud and money laundering, this would be a significant development and facilitate the possibility of applying coercive measures, especially in these categories of cases related to money laundering in credit institutions and large companies, where it is difficult to identify the guilty natural person in a short time.

The Republic of Latvia implements the requirements set forth by international organisations and is gradually improving the criminal law regulation in this area, however, there are still a number of gaps in the legal regulation that need to be resolved.

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Aspects of Contractual Relations in Healthcare

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Abstract

The article aims to determine the scope and limitations of ethical duties and legal responsibilities of the medical practitioner within the professional-patient relationship (PPR), identify shortcomings of the legal framework and gaps in ethical principles, and propose solutions to them.

It argues that in private law the healthcare shares many similarities with contractual law; therefore, the legal basis for physician-patient relationship is the special legal capacity of the contract parties and their free will, but ethical basis – their good faith.

One important finding is that physician right and obligation to refuse is an aspect of patient safety and quality of healthcare and has to be acknowledged by ethics and stipulated by law. In addition, it detects that medical professionals are ethically and legally vulnerable and need special protection. All this calls to carving out the proper place of medical practitioners' professional autonomy and freedom in current legal regulation.

Used materials include literature and scientific publications on clinical and research bioethics, contractual and medical law, regulatory enactments, court judgments. Methods

used in the study include descriptive, analysis, synthesis, dogmatic, induction and deduction; legal interpretation methods such as grammatical and systemic.

Keywords: patient's rights, physician's rights, physician's autonomy, professional-patient relationship, right to refuse, medical liability.

Introduction

Delivering safe and qualitative healthcare currently faces unprecedented challenges globally. There is a rising involvement of the criminal law in investigation of medical cases. On the ground of the medical litigation pandemic the informed consent doctrine has thriven; nevertheless, physicians face enormous pressure in fear of being sued or prosecuted. Attempts to share responsibility for the treatment outcome and to ameliorate the litigation burden led to the development of ethically ambiguous patient contracts (e.g. suicide prevention contracts, contracts promising not to litigate or post defamatory comments on the Internet).

While the patients as vulnerable party enjoy the widespread protection of their rights, the protection of physicians is not developed yet; that has resulted in them being "captive helpers". Deception and abuse of the professional by the malingers seems to be *terra incognita* to ethicists, as well as delivering healthcare in conflicting legal realtionship.

Definition of the legal nature of the professional-patient relationship (PPR) varies: some bioethicists hold that it is a contractual or fiduciary relationship, while others believe that it is a relationship based on the patient's autonomy (Hu, 2016).

When taking PPR as a contract, a set of certain elements of a legally enforceable contract has to be established – the object is legal, the parties have the capacity to enter into a contract, the participants express their intent that originated from their own free will, the agreement on the object is achieved.

According to the doctrine and the Cilvil Law of Latvia, rights shall be exercised and duties performed in good faith (Civil Law, Section 1). In order for a transaction to have legal force, it is necessary that the parties to the transaction have legal capacity and the capacity to act for making such transaction; otherwise the transaction is void (Section 1405). For a lawful transaction to be in force it shall not suffice for the participants to express their intent, but it is also necessary for the intent to originate from their own free will, without mistake, fraud or duress (Section 1440).

To determine the scope and limitations of ethical duties and legal responsibilities of the medical practitioner, the authors scrutinise the PPR from the civil law perspective.

Used materials include literature and scientific publications on clinical and research bioethics, contractual and medical law, regulatory enactments, court judgments. Methods used in the study include descriptive, analysis, synthesis, dogmatic, induction and deduction; legal interpretation methods such as grammatical and systemic.

1 Professional-Patient Relationship as Legally Forceable Contractual Relationship – Object of the Contract, Parties, Their Will, Duties and Rights

In the case of medical treatment, the object of the contract is healthcare (the process of the application of health technologies) to assess, maintain or restore the patient's state of health. The Court of Justice of the European Union (CJEU) in *Christoph-Dornier* judgment provides a definition of the medical care – services have as its purpose the diagnosis, treatment, and, in so far as possible, cure of diseases or health disorders (CJEU, 2003, Case C-45/01).

Not every health-related intervention is concidered to be healthcare – according to the CJEU judgment in line with the EU VAT law, aesthetic medicine services (plastic surgery or cosmetic treatment) without a purpose to diagnose, treat or cure diseases or health disorders or to protect, maintain or restore human health are not "medical care" (CJEU Judgment, Case C-91/12, 2013). Services consisting of medical examinations and the drafting of expert medical reports and certificates do not provide medical care in terms of EU VAT law as well (CJEU Judgment, Case C-212/01, 2003).

Healthcare professionals or practitioners and medical institutions are subjects of private law – natural persons and legal entities. They possess a special legal capacity – the right to engage in medical treatment and provide healthcare services (they are qualified to do so after registration in the state medical intstitutions' and practitioner's registers). The obligation to adhere to a certain standard of care is ensured by the formal recognition via licensing and accreditation of healthcare professionals and healthcare institutions in almost all EU countries (European Commission, 2018). Medical practitioners are obliged to check patients' capacity – decisional and performative or executive capacity (Naik et al., 2009) – before initiation of treatment, during the treatment and at termination of PPR.

Only competent patient can be an active participant of the treatment process, otherwise the informed consent must be obtained from the surrogate decision maker (Grisso & Appelbaum, 1998). In the opinion of the authors of this study, it shares similarities with the contractual competency assessment in contract law, required in certain types of transactions. Excluding emergency situations, failure to obtain a patient's valid consent constitutes criminal assault or battery; resp., treatment without consent is a criminal assault (Russell, 2009). Duty to inform and assess the patient's competency and, if needed, to involve a representative is stipulated by the Law on the Rights of Patients (1) part of Section 7 (Right of Another Person to Agree to Medical Treatment or to Refuse from It). Thus, in healthcare one of the contract parties – namely, the professionals – is legally obliged to ensure legality of the contract-to-be; otherwise, the contract has to be postponed and efforts to restore or improve the patient capacity have to be taken (Grisso & Appelbaum, 1998).

However, zero harm in healthcare is still a goal, pitfalls and unfavourable treatment outcomes do happen and that is where the so-called duty of candour becomes relevant, ensuring that patients harmed by a healthcare service are informed of the fact, and that an appropriate remedy is offered whether or not a complaint has been made or a question asked about it (Francis, 2013).

The concept of candour is mainly based on the foundational virtue of honesty or truthfulness (Gardiner & al, 2022). The duty of candour has been enacted at the legislative level in England and Wales. In November 2014, Regulation 20: Duty of Candour of the Health and Social Care Act 2008 (Regulated Activities) came into effect and it was the first legislation of its kind in the world (Wijesuriya & Walker, 2017). In the EU, the principles of candour and patient right to qualitative healthcare are enacted via the European Parliament resolution on safer healthcare in Europe 2014/2207(INI), among other things, through developing reporting and learning systems. In Latvia, every medical institution is ought to establish and maintain an internal patient safety reporting-learning system that provides the collection and analysis of on patient safety incidents to prevent their recurrence (Cabinet Regulations "Regarding Mandatory Requirements for Medical Treatment Institutions and Their Structural Units", 2009). For the time being, this innovation is far from being successful.

Physicians possess their professional rights also:

> "*In order to advise and act, the doctor must have full professional freedom and the technical and moral conditions allowing him or her to act with complete independence. The patient must be informed if these conditions have not been fulfilled.*" (Principles of European medical ethics, 1987)

> "*Physicians must have the professional freedom to care for their patients without interference. The exercise of the physician's professional judgment and discretion in making clinical and ethical decisions in the care and treatment of patients must be preserved and protected. Physicians must have the professional independence to represent and defend the health needs of patients against all who would deny or restrict needed care for those who are sick or injured.*" (Declaration of physician independence and professional freedom, 1986)

> "*A physician has the right to the legal protection of his professional independence, both in times of war and peace.*" (Principles of European medical ethics, 1987)

The law of Latvia comprises a statement on the professional freedom of a physician:

> "*A doctor shall be independent in his or her professional activities. All doctors have the right to provide an opinion on the state of health and treatment of a patient.*" (Medical Treatment Law, Section 38, 1997)

The concept of physician autonomy, independence, its scope and protection is not well developed. In the field of legislation, this protection most often arises in the context of abortion and medical assistance in dying (the right of a physicians to assert their

own self-determination interest by refusing to provide requested care – the so-called conscientious objection) (Wicclair, 2016).

Professional autonomy is a concept with many meanings, interpretations, and applications (Dupuis, 2000). The main concept of individual professional clinical independence stands for the freedom of physicians to deliver healthcare according to their own clinical judgment and ethics, without interference by public authority, insurance companies, policymakers, society, etc. In terms of contractual law, professional autonomy stands for the free access to resources (information, equipment, time, advice – generally speaking, "technical conditions") and psychological conditions ("moral conditions") essential to execute the contract – to construct a judgment and conclusion, and to proceed with a treatment plan proposal.

It corresponds the statement of André Tunc, Professor at the Faculty of Law and Economic Sciences of the University of Paris, who emphasised that the assessment of circumstances and resources is essential to establish the fact of negligence:

> "*.. for such specific circumstances as the urgency of the situation, the impossibility of transportation to a hospital, the scantiness or complete lack of drugs, instruments or disinfectants, and even the physician's frame of mind as affected by the pressure and other stress conditions. Only in the light of all these specific circumstances can it be determined whether or not negligence exists*." (Tunc, 1973)

Hence, professional autonomy can be divided into technical and moral one. To the opinion of the authors of current study, the concept of moral professional autonomy shares many similarities with the free will of the contractors in civil law. The conditions and situations, that preclude a physician from exercising their duties and fulfilling the contractual obligations, are: patient aggression (verbal, physical, defamation), clash of values, competing legal relationship, conflict of interests, injured physicians' legal consciousness and confidence in legal certainty. It is well known that physicians should avoid conflict of interests (financial or other) that can influence their clinical judgment, prescribing, and treatment decisions (or, if inevitable, at least to disclose it to the patient and colleagues) (Xie & Cong, 2016).

Competing legal relationship (existing or previous) is a reasonable cause to refuse to establish PPR or to terminate it (in a case of necessity the continuity of care has to be provided). For instance, the person directing the criminal proceedings applies for a physician who is a participant in this proceedings soon after the search at a physician's homeplace has been performed and shortly before the interrogation date. As the principle of nonmaleficience can not be guaranteed, it is beneficial for the potential patient to be redirected to another physician.

Describing clash of values, allows to refer to the recent history: during the pandemic a physician's duty to provide care to patients came into conflict with their obligations to protect their families, and their right to protect their own health and refuse to work in hazardous conditions (Davies & Shaul, 2010).

For the time being, the circumstances that exclude criminal liability (e.g., extreme necessity, justifiable professional risk) are not well described in healthcare cases, which can affect legal consciousness of professionals to reduce their legal certainty, discourage them from action in case of necessity, and practice the so-called defensive medicine.

The abovementioned conditions are so common in practice, that it justifies discussion about physician vulnerability (Delgado, 2021). Medical practitioners' professional activity brings their rights at constant violation risk, but their autonomy – at risk of constriction (inability to defence symmetrically in case of claim or defamation, probability to act under extreme necessity condition or undertake justifiable professional risk, act under the condition with the clash of values, conflict of interest or competing legal relationship, candour under the risk of criminal liability).

Therefore, physicians have a right to enjoy their professional autonomy and freedom; it ensures their ability to perform within the PPR and fulfill the contractual obligations. This merits closer attention in medical negligence cases, as only an autonomous and free professional can provide qualitative care and be fully accountable for the performance.

According to the Medical Treatment Law of Latvia, a patient is "*…a person who receives health care services or seeks them*" (Section 1, point 11). The definition of "*health care services*" is not provided, but it can be derived from other definitions, e.g.: "*medical treatment – professional and individual prophylaxis, diagnosis and medical treatment of diseases, medical rehabilitation, and care of patients*" (Section 1, point 1), "*care of patients – part of health care which is directly or indirectly related to the maintenance, promotion, protection and recovery of health of the public, a family or a person*" (Section 1, point 12).

According to the Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, a patient "*…means any natural person who seeks to receive or receives healthcare…*"; while healthcare "*…means health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices*". The Directive 2001/83/EC on the Community code relating to medicinal products for human use provides us a notion that those who are non-patients may receive healthcare as well: *"A clinical trial is any systematic study of medicinal products in human subjects whether in patients or non-patient volunteers…"*

Therefore, not everyone, who receives health-related interventions, is a patient – it is determined by the purpose of application of health services and characteristics of a natural person:

1) patients have medical needs that arise from their medically recognised disorder or condition (including medically unexplained symptoms and need for prevention);
2) non-patients – do not have medical needs, do not have the intent to assess, maintain or restore their state of health (their main intent is to contribute to science or other social need).

Thus, it is proposed to detect the patient's (as a natural person) characteristics – objective or external and subjective or internal features (in line with criminal law) and to classify those who apply to medical institutions.

A patient – a person with medical needs who receives the corresponding healthcare or applies for it. This includes both licenced and non-licenced treatment, examination or prevention. The patient enjoys all patients' rights in full and owns patient duties. The physicians own him or her legal and ethical duties. The healthcare is delivered for the patient within the contractual obligations – a contract can be either expressed or implied. Establishing the fact and time of entering into the transaction and therefore iniciation of PPR is crucial in medical negligence claims.

Ethics provides the following definition of the physician-patient relationship fact: "*A patient-physician relationship exists when a physician serves a patient's medical needs*" (American Medical Association [AMA], 2016) and name the patient-physician relationship as "*a relationship of medical need and provision of care*" (Beauchamp & Childress, 2012). Hence, the definition of PPR emphasises that the patient has to possess some medical needs (not financial or social ones). The PPR are not established while assisting those undergoing emergencies in the streets (life-saving care requires just common sense and a reasonable level of skill, not the application of health technologies, regardless of the education of the stranger). After entering the PPR, the patient qualifies his or her patient rights, duties, and responsibilities.

There is a different approach in terms of legally defining and implementing patients' rights in European Union. They can be classiffied:

1) basic individual rights or classic patient rights to self-determination and confidentiality (the rights to consent, right to privacy, information and accessing medical records);
2) consumer based rights – right to choice (second opinion, choice of the provider, quality/safety/timeliness, information about treatment options);
3) procedural rights – right to complain, right to redress, right to participate in clinical decision-making (European Commission, 2018).

Implicitly, after entering into PPR, the patient can enjoy the rest of his or her rights on maternity and sickness insurance (sickness benefit), social services, etc.

There is little consensus among schoolars on definition and scope of patient duties and responsibilities; in general, the moral component of it is "honesty" – by providing a complete medical history to the extent possible, to give the most complete and correct information about health, to cooperate with the treatment plan. As Dan C. English, M.D., from the Center for Clinical Bioethics at Georgetown University, stated, "*Honesty is inarguable. Active engagement in PPR is a reasonable duty…*" (English, 2005).

The authors of the current study understand "active engagement in PPR" as activities that contribute to achieving the goals of care – e.g., adherence to treatment plan, self care, reporting side effects, etc. In Latvia, the patient's duties and responsibilities are listed in the Medical Treatment Law, Section 5, and the Law on the Rights of Patients,

Section 15 (Obligations of Patient). The prohibition of abuse of patient rights is not specially emphasised. In terms of civil law, in a case of unfaurable treatment outcome, the breach of patient obligations can be considered as the concept of contributory negligence (English, 2005). The patient receives healthcare within the treatment process that is constructed according to their medical needs (medical needs is the objective patient's feature), and within the contractual relationship, they perform with the implied covenant of good faith (subjective patient feature – an intent to accomplish the goal of treatment), provides correct and complete information about their health and past medical history.

Healthcare is guided (the appropriate healthcare services and medical technologies are selected and applied) by healthcare professional; but the treatment plan is constructed in order to achieve the patient-set goals. The professional duties in constructing and guiding the treatment process are fiduciary and have to be exercised with good faith, loyalty, care, and bearing in mind vulnerability of the beneficiary (Hall, 2019). On the other hand, it must be admited that in contagious diseases and psychiatric emergencies, the individual goals (subjective patient features) may contradict with the public safety requirements. In these cases, duties of health professionals are guided by public law and deserve a special notion that is beyond the scope of the current article.

The patients are vulnerable – in ethical (Delgado, 2021) and someones in the legal aspect as well (Salm, 2016) – so they enjoy special legal protection. Vulnerability of patients is not a prerequisite, and it does not mean that they cannot be negligent and contribute significantly to bad health outcomes; relative vulnerability does not confer inability to do wrong (Draper & Sorell, 2002); e.g., to malinger, to abuse the right to compensation, etc.

1. A volunteer – a person without medical needs who submit themselves to medical interventions (not healthcare) due to psychological or social reasons: receives plastic surgery or other aesthetical interventions that are not reconstructive or corrective ones; participates in clinical research as a healthy volunteer; undergoes gender reassignment therapy. Before the interventions, the decision making capacity assessment (like risk-weighting and long-term outcome prediction ability) has to be performed with special care (e.g. to minimise regret rates after gender reassignment therapy iniciated in adolescence) and the intent of the person has to be clear.

2. An expertee / evaluee / assessee – the person who receives health check (for administrative puproses or within criminal proceedings, in person or *in absentia*, including *post mortem* examination), as a result of that the eligibilty for certain legal criteria is detected. These health checks are conducted by the request of third parties (state or insurance company) or are the prerequisite for exercising other rights (e.g. right to privilege to drive), the informed consent is not applicable (in criminal proceedings informed refusal of the accused person is even dismissable). During the health check expert-expertee (or evaluator-evaluee) relationship are established (Appelbaum,1997); rights and duties of both parties are limited and strict; the application of healthcare

services is determined by the methodology of the health check procedure. The relationship is ruled by the public law.

3. A client or customer – a person who has medical needs and receives healthcare service or medical interventions that is not part of the treatment plan in the specific institution (e.g., test for vitamin D level, chest Xrays). The person remains in PPR with their general practitioner (GP) or with the referring specialist. The client mainly enjoys their consumer rights (e.g., for safe product). While delivering the service, the professionals also own a client or customer a duty not to do harm by act or omission.

To demonstrate this type of relationship, for the purpose of the curent study, the folllowng cases have been used for reference: M.D. donated blood at The State Blood Donor centre blood donation site at P. Stradins Clinical University Hospital. The screening test turned positive for hepatitis C infection, but M.D. was not informed about it (nor the hospital, neither the State social health agency, which received the notification about the possible reportable disease case, approached M.D.). Some years later, M.D. discovered he had C hepatitis and had subjected his family to the risk of contracting the infection for years. M.D. and his family sued the hospital and the agency (Senāta Administratīvo lietu departamenta spriedums 26.06.2008. lietā nr. SKA-155/2008). As at the moment of blood donation M.D. was not in PPR with any of the hospital staff, the court faced difficulties to detect the legal entity responsible for informing him about test results and treatment opportunities. As a client of the hospital within the private law, at the moment of medical encounter, M.D. had a medical need for a safe blood sampling procedure and precise screening tests. After the screening tests turned positive, M.D. qualified a right not to be harmed with inaction (omission) within the public law on epidemiologic safety. The case demonstrantes the duty of a responsible entity not to harm a person with inaction (omission).

4. A visitor – these are relatives and friends, support persons, stakeholder representatives, journalists, malingers. Persons who approach their GP or psychiatrist for non-healthcare advice or social support are also considered to be visitors. Visitors do not possess medical needs (in the context of the current encounter), their intent is not to reach medical treatment goals or solve personal medically-related issues, but receive some other benefits. It can be concluded that a person, applying to a GP for a disability and work capacity assessment solely, does not request healthcare as such and has to be considered a visitor.

The issue of malingers deserves special attention. Determining that a patient is acting in bad faith is difficult (especially if not falsification, but exaggeration of the existing disorder is performed; in these cases it has to be distinguished from abuse of patient rights) and there is no clear ethical guidance on malinger management since they are identified (Bishop & Chau, 2011). A malinger does not posess patient objective and subjective features (although they can have medical concerns and suffer from psychological discomfort) but has a guilty mental state (*mens rea*).

In a case of malingering, the PPR is not established: a malinger's intent is to receive benefits illegally (seeking drugs, avoiding trial, faked disability-related financial support); they provide false information about their health, intentionally misdirect the contractor about the purpose of the transaction to make the professional use healthcare services and medical technologies; as a contract party their intent is not to achieve the goals of medical treatment – in terms of contract law, authenticity of intent is lacking; according to the law, such a transaction is not in force.

It is extremely challenging to identify malingering in clinical practice – it requires additional tests, prolonged direct observation and obtaining objective data from third parties (the tools normally used by experts); some of the information is not subject to scrutiny (e.g., pain, nausea, anxiety, drug intolerance). On the other hand, detecting malingering brings a risk of potential liability for professionals and institutions (Weiss & Landon, 2017). Hereby, identifying malingering is not a physician's duty. On the contrary, in such situation professional autonomy of the physician is violated and the psysician can not restore it by their own efforts. Hence, in this assymetrical legal situation, the professionals' vulnerability and need for legal protection is evident.

2 Right to Refuse

Under the concept of two-component physician autonomy and vulnerability, obligation of non-maleficence and beneficence, issue of a physician right to refuse to treat a patient, deny access to certain medical services, or even obligation to do it can be discussed. According to medical professor Sarah C. Hull, physicians can ethically refuse to treat patients who are abusive when such treatment falls outside their scope of practice, and when a patient's care comes into conflict with the physician's duties (Hull, 2019).

The authors of the current study partially agree with – if patient autonomy and self-determination rights come into conflict with the physician duty to avoid doing harm, the physician is justified to uphold physician duties by withdrawing certain kinds of medical interventions only, in line with patient medical needs (e.g., refuse to prescribe antibiotics for viral disease), without termination of PPR as such (e.g., continue palliative treatment after denial of medically assisted suicide). In turn, recommendation to apply to another practitioner for specific treatment is not a refuse to treat; in this case, the physician makes their clinical judgment, and referral is part of the proposed treatment plan (or it ensures continuity of care); in some cases and circumstances the situation corresponds the advice in contract law. The authors of this study support professor Hull's statement on violent patients – when physician professional duties and rights come into conflict with the situation and patient demand for care. It is seen as a conflict of interests or moral conditions that violates physician autonomy.

However, the law in Latvia does not provide for the physician a right to refuse elective treatment for other conditions than abortion (conscientious objection) – even

a full load (and therefore a predictable shortage of resources and deteriorated quality of care) does not justify a general practitioner (GP) to refuse registration for a new patient, whether they live in the corresponding district or are next of kin or spouse of the existing patient (Cabinet Regulation No. 555 Procedures for the Organisation of and Payment for Health Care Services, 2018). Only the patient severely abusing their duties to themselves can be excluded from the list of patients of a GP (Medical Treatment Law, Section 42, 1997). Breach of other patient duties is not provided in the law, as well as conflict of interests and other ethical reasons. Thus, the state constricts GPs' technical autonomy and does not provide for the right to protect their moral autonomy.

3 Practical Application of Ethical and Legal Issues – a Case Study

A public electronic mass media journalist A. decided to elucidate the issue of how easy it is to fake disease and receive a sick leave from a GP. He conducted an experiment – approached five GPs in Latvia, complained about back pain, headache and leg weakness, reported problems at work, requested a sick leave, offered a bribe and made audio-recordings without a doctor's consent. Doctors refused the bribe, performed the clinical examination, issued a short-term sick leave, and referred to additional examinations (for a lumbar spine Xrays or to a neurologist).

After broadcasting on national TV in January 2015, the Health Inspectorate performed scrutiny and found violations of the Cabinet Regulation on Procedures for Issuance of Sick-Leave Certificates, as the clinical examinations were not performed in adherence to the "Recommendations for General Practitioners on diagnosis and treatment of low back pain" (2001). Based on the Health Inspectorate's judgment and fines, the National Health Service terminated contractual relations with the GPs involved (as they lost credibility) which led to closure of their surgeries (Rēzeknes tiesu nams, Administratīvā rajona tiesa, 2016. gada 18. februāra spriedums, Lietas Nr. A420250815; Latgales apgabaltiesa, anonimizēts 2015. gada 21. septembra spriedums, Lietas Nr. 112015515; Daugavpils tiesa, 2015. gada 5. jūnija sprieduma noraksts, Lietas Nr. 112015515, Lietas arhīva Nr. 1-0155-15/14).

Legal pitfalls in these cases are obvious: quality of the healthcare assessment was doubtful; as it is well known, in most modern legal systems, criterion of negligence is objective. The standard is that of the "prudent and competent physician" – a physician must not only exercise reasonable care but also attain the standard of a reasonably competent practitioner (Cruz, 2001). In other words, what the conduct of a prudent and competent GP in the given circumstances would have been (the anatomical features, clinical and radiological findings and complaints of the malingerer). The court ignored the principles of contract law as well. The intent of the journalist was to conduct an experiment with GPs without informing study participants. Naturally, such exeperiment shall be considered to be the illegal object of the contract.

Thus, the encounter between journalist A. and GPs lacked elements of lawful contract: the patient was not a patient but a visitor (a malinger, conducting an experiment), the object of the contract was illegal, the contracting parties have not agreed on the object, the physicians were mistaken about the object of the contract and were involved in the contract by fraudulent misrepresentation.

According to the Civil Law of Latvia, "*An impermissible or indecent action, the purpose of which is contrary to religion, laws or moral principles, or which is intended to circumvent the law, may not be the subject-matter of a lawful transaction; such a transaction is void*" (Section 1415) and "*Fraud is the illegal deception of another person for the purpose of inducing him or her to perform acts in contravention to his or her interests or to refrain from such acts*" (Section 1459). Therefore, contracts between journalist A and GPs were void starting from the time it was created (since A has been registered for the appointment). The PPR was not formed, and healthcare was not initiated. All legal effects, which arise from the contract, are void or null: the sick-leave certificates shall be canceled, as well as the Health Inspectorate's judgments and fines.

As it was elucidated above, the law of Latvia does not provide a right to refuse to treat a patient due to conflict of interest, clash of values, or inability to guarantee not doing harm; so physicians remain in the "captive helpers" position and, hypothetically, the victim GPs would be obliged to provide care for journalist A in future (although it would be in A's interests to receive care somewhere else).

Conclusions

Physician-patient relationship share many similarities with civil law (contractual and commertial law). The legal basis for physician-patient relationship as the contractors within the private law is their special legal capacity and their free will, but ethical basis – their good faith.

To fulfill the obligations and to be fully accountable for the outcome, medical practitioners have to enjoy their right to professional autonomy and freedom. Physician right and obligation to refuse is an aspect of patient safety and quality of healthcare and has to be acknowledged by ethics and stipulated by law. Medical profesionals are ethically and legally vulnerable and need legal protection.

Proposal

Amend the Law on the Rights of Patients (2) part of Section 15 (Obligations of Patient) as follows: "If the state of health of the patient allows it, he or she has an obligation to actively participate in medical treatment and to provide the attending physician with *accurate and complete* information within the limits of his or her abilities and knowledge: …".

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Problems of Solving Property Issues in Criminal Proceedings in Latvia

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Abstract

The need to achieve a fair settlement of criminal law relations in criminal proceedings quite often requires provision of a solution to property issues. Property issues affecting a person's property, possession and unsufruct rights are also relevant within the framework of criminal proceedings.

Property issues in criminal proceedings and related actions are regulated by the Criminal Procedure Law, to which the sixth section of the Law is devoted, entitled "Property issues in criminal proceedings". Turning to the content chapter, it deals with property issues related to compensation for damage caused by criminal offences, disposition of property obtained by crime, institute for ensuring resolution of property issues, as well as procedural expenses and their reimbursement.

The aim of the article is to research regulation of property issues in pre-trial investigations within the framework of the Criminal Procedure Law and in relation to other regulatory enactments and to evaluate application of the regulation established by law in practice and the problems related to application of the existing regulation. Within the framework of the research, such main methods were used as the analytical method and the comparative method. As the result of the research, an existing problem has been identified, suggestions and insights have been provided in the field of settlement of property issues.

Keywords: Criminal Procedure Law, criminal proceedings, protection of property, resolution of property issues in criminal proceedings, seizure of property.

Introduction

30,923 criminal offences were registered in Latvia in 2021; therefore, there is a reason to believe that in Latvia every year there are several tens of thousands of cases when the person directing the proceedings in criminal proceedings have to decide upon the concerns related to the resolution of property issues, including those related to ensuring solution of property issues (Report on work done by the Prosecutor's Office in 2021, and priorities for activities in 2022).

The right to property is nowadays considered one of the fundamental human rights. In accordance with the Article 105 of the Constitution of the Republic of Latvia, everyone has the right to property. Property must not be used against the public interest. Property rights may be restricted only in accordance with the law (Law of the Republic of Latvia: Satversme of the Republic of Latvia, Latvijas Vēstnesis No. 43, 01.07.1993).

The sixth section of the Criminal Procedure Law "Property issues in criminal proceedings" regulates a number of institutes of property issues. Property issues affecting a person's property, possession and unsufruct rights are also relevant within the framework of criminal proceedings because, when conducting an investigation and later in the trial of a criminal case, the person directing the proceedings needs to decide on a number of issues related to the action with the property acquired within the framework of criminal proceedings. Property depends on the circumstances of its acquisition, individual characteristics, necessity within the framework of the investigation and other circumstances referred to in the Criminal Procedure Law, has a different procedural position and also different possible patterns of action related to it.

The topic of research is relevant because in practise there is no common understanding of the correct resolution of property issues. Moreover, it is often heard that persons directing the proceedings within the framework of criminal proceedings do not apply correctly or do not apply the institute of property issues at all in situations where it would be necessary.

The aim of the research is to examine regulation of property issues in pre-trial investigations within the framework of the Criminal Procedure Law and to evaluate application of statutory regulation in practice and issues related to the application of the existing regulation.

Within the framework of the research, the analytical method, the comparative method, the method of dialectical cognition, the legal-comparative method, logical and legal method and, in particular, the sociological method have been used in the research.

1 Compensation for Damage Caused by a Criminal Offence

Compensation for damage caused by a criminal offence is regulated by Section 26 of the Criminal Procedure Law. As one of the types of property issues in criminal proceedings is compensation for damages to the victim. The right to the compensation

is also enshrined in the form of the principle of criminal proceedings in Article 22 of the Criminal Procedure Law.

Compensation is an element of the settlement of criminal legal relations. Part one of Article 350 of the Criminal Procedure Law contains a definition and explanation of compensation. The term "compensation" is understood as the pecuniary payment made to the victim by the person who caused the damage by the criminal offence, as satisfaction for moral damages, physical suffering and property loss. For example, from English, compensation is understood as the money payable to a person who has suffered a loss or injury because something they once owned has been damaged. (Bullion, 2002)

Comparing the concept and content of "compensation" in civil law, there the goal of this institute is to compensate to the injured party for the damages incurred as a result of the offence, restoring legal position of the injured party as it had been before the offence was committed. It must be admitted that the concept of "compensation" contained in the Criminal Procedure Law is short and concise.

In the decision of the Senate of the Supreme Court of 5 November 2010 (Case SKK-508/2010), the Senate has indicated that compensation for damages determined by the court, regardless of its amount, is the resolution of property issues in accordance with the procedures laid down in the Criminal Procedure Law and is not considered either as a punishment within the meaning of Section 35 of the Criminal Law or as a double penalty within the meaning of Section 25 of the Criminal Procedure Law.

The Compensation institute is a mechanism provided for in the Criminal Procedure Law to achieve one of the objectives enshrined in Article 1 of the Criminal Procedure Law – to establish a criminal procedure that ensures effective application of provisions of the Criminal Law and the fair settlement of criminal law relations without unjustified interference in a person's life.

In accordance with Article 22 of the Criminal Procedure Law, a person who has been harmed by criminal offence, considering moral damages and physical suffering, is guaranteed procedural possibilities for applying for and receiving moral compensation. Thus, the legislator has provided for a person a special procedure and conditions for applying for compensation. However, attention should be paid to what is *de facto* meant by the concept of "person" contained in Article 22 and Article 350 of the Criminal Procedure Law.

Regarding the subject of compensation, this issue can be dealt with in two ways. The entity may be the person on whom the obligation to pay the compensation has been imposed, or the entity entitled to apply for compensation. Compensation for damage claimed by a person who has suffered damage is related to the status of the victim in criminal proceedings. As for the sum of compensation, Article 352 of the Criminal Procedure Law states that the court determines the amount of compensation by assessing the victim's application. In accordance with Article 351 of the Criminal Procedure Law, application must justify the amount of compensation claimed for material damage, but only indicate the sum for moral damage and physical suffering.

In accordance with Article 351 Part 1 and 2 of the Criminal Procedure Law, the victim has the right to apply for compensation for damages at any stage of the criminal proceedings until initiation of a judicial investigation with the court of first instance. This may be done either by submitting a written application for damages or by expressing it orally, which is recorded in the minutes of the questioning by the person directing the proceedings. As a rule, the victim applies for compensation for property damage in the value of property stolen, medical costs, etc, by submitting relevant documents to prove the amount applied for – a purchase receipt indicating the value of the property, documents confirming the cost of medical treatment.

Fulfilling their official duties, subject to the conditions laid down by the law, the person directing the proceedings must in practice face the preparation of a statement to the legal aid administration in order for the victim to receive the intended material damage. In practice of the authors of the current study, there are cases where pre-trial investigation manages to reach a final resolution of the compensation issue. This is most often the case when the injured party applies for compensation and the suspect has the opportunity to compensate for damage suffered.

When assessing victim's applications for compensation, it should be noted that persons often reapply for compensation even though they have actually suffered one of the types of damage. This is usually the case in circumstances of family conflicts or when the damage caused to the legal entity does not seem significant.

In general, the authors of the study conclude that the definition of "compensation" contained in the Criminal Procedure Law is exhaustive. In other words, compensation is a benefit, in the form of a material value in monetary terms, which is entitled to claim by a person who has been identified as a victim.

2 Dealing with Criminally Acquired Property

The institute of criminally acquired property has existed in criminal proceedings since the moment of adoption of the Criminal Procedure Law, namely, on April 21, 2005. Section 27 of the Criminal Procedure Law contains regulation of criminally acquired property and what action is possible with it. Existence of the institute of criminally acquired property has been evaluated quite controversial in the Criminal Procedure Law. There is an opinion among legal scholars that confusions and discussions are caused by the understanding of the concept of "property".

A characteristic feature of modern criminal proceedings is the potential infringement of property interests, which can occur both in the course of criminal proceedings and as a result of it, and also affect persons who are not directly related to the criminal offence (Meikališa & Strada-Rozenberga, 2021). The procedure (form and content) of criminal proceedings regulated by the CPL must be such as to ensure the achievement of an appropriate material result, while avoiding disproportionate procedural restrictions. Property, as defined in Directive 91/308/EEK of the Council of the European Communities

"On prevention of the use of the financial system for the purpose of money laundering", is corporeal or incorporeal property, as well as legal documents evidencing the ownership of property or rights relating to such property.

In practice, understanding and dealing with criminally acquired property is difficult. It is impossible to combat and completely destroy people's tendency to commit crimes; therefore, in criminal proceedings, especially, in economic crimes, the question of what to do with the property, if there is any, of persons having the right to a defence, is always relevant. It is important that property issues in the criminal procedure law are interpreted correctly and do not cause problems in the course of criminal proceedings.

The institute of criminally acquired property is one of the most sensitive issues in criminal proceedings, as it is the property obtained by criminal means that can significantly hurt interests of other people, not at all unrelated to criminal proceedings. Professor Sandra Kaija points out that the achievement of the goal of the Criminal Procedure Law presupposes provision of conditions for the effective application of the provisions of the Criminal Law and that Criminal Law relations must be fairly regulated without unjustified interference in a person's life. An awful threat to a person involved in criminal proceedings shall be considered as a threat to implementation of criminal proceedings. In case of an unlawful threat to a person, harm is caused not only to the interests of the individual, but also to society and the state. (Krimināl procesa likuma komentāri, 2019, p. 109).

Confiscation of criminally acquired property is only one way of dealing with property in criminal proceedings. The second way of dealing with criminally acquired property is for it to be returned to its rightful owner or lawful possessor. The Criminal Procedure Law provides for a number of options for when and in what order the criminal proceeds can be confiscated. Everyone must be aware of traditional criminal confiscation at the end of the criminal proceedings when the guilt of the person accountable of the offence has been proven. This is provided for in the first Part of Article 356: "Property may be declared as criminally acquired by a court ruling that has entered into force or by a decision of the prosecutor to complete criminal proceedings". This decision may include confiscation of both proven and presumed criminally acquired property.

Sections 27 and 59 of the Criminal Procedure Law regulate the procedure by which property is recognised as criminally acquired in criminal proceedings. In turn, Part 2 of Article 356 of the Criminal Procedure Law stipulates that during pre-trial criminal proceedings, property may also be recognised as criminally acquired by a decision of a district (city) court in accordance with the procedure set out in Section 59 of this Law, and by a decision of the person directing the proceedings, if during the pre-trial criminal proceedings, property has been found or seized from the suspect, accused person or a third party in respect of which its owner or lawful possessor had previously claimed the loss of property and, after finding it, proved their rights by removing doubts.

The stated norm provides for two different procedures for declaring property as criminally acquired, namely: (1) by a decision of a district (city) court and (2) by a decision of the person directing the proceedings.

Article 356, Part 2, Paragraph 2 of the Criminal Procedure Law stipulates that a decision on the recognition of property as criminally acquired may be taken by the person directing the proceedings. As known, pre-trial criminal proceedings consist of stages of investigation and prosecution. At each of these stages, there is its own person directing the proceedings, that is, the official who directs the criminal proceedings.

Article 256, Part 2, Paragraph 2 of the Criminal Procedure Law stipulates that property may have been found and seized from the alleged perpetrator of the criminal offence, as well as from a third party. A third party in this case could be any person both the person to whom the property came, knowing that the property was criminally acquired and the *bona fide* acquirer of the property. However, even, if the person acquires property without knowing and without any possibility of knowing that property has been lost by its owner because of crime it cannot be regarded that for the purchaser such acquisition would create a property right.

In order for the person directing the proceedings to be able to recognise the property as criminally acquired in accordance with Article 356, Part 2, Paragraph 2 of the Criminal Procedure Law, two preconditions must be fulfilled, namely: (1) the owner or lawful possessor of the property must apply for the loss of the property in advance and (2) after finding it, by removing reasonable doubts, must prove their rights.

If the owner or lawful possessor had claimed the loss of property, they must prove their rights by removing reasonable doubts. It should be noted here that the obligation to prove lies on the owner or lawful possessor of the property, but that obligation does not concern the proof of the criminal origin of the property but the proof of a person's right to the property in question. In addition, the standard of proof in this case corresponds to the standard of "elimination of reasonable doubts", which primarily applies in criminal proceedings to the person directing the proceedings in pre-trial criminal proceedings and the prosecuting attorney in court. This is due to the fact that recognition of property as criminally acquired in pre-trial proceedings should be regarded as an exception to the general principle that property is recognised as criminally acquired by a court decision or a decision of the prosecutor to complete criminal proceedings.

The fourth part of Article 356 of the Criminal Procedure Law stipulates that during pre-trial criminal proceedings or after termination of criminal proceedings on the basis of non-exoneration of a person in the case referred to in part two, Paragraph 2 of this Article, property on the right registered in the public register and the entry in this register has been amended after committing a criminal offence may be recognised as criminally acquired only by a decision of a district (city) court in accordance with the procedure laid down in Section 59 of this Law. Consequently, it is considered that the legislator has solved the mentioned problematic situations, but simultaneously

limited the powers of the person directing the pre-trial criminal proceedings in certain cases to decide on the recognition of property as criminally acquired, leaving it to the discretion of the court and accordingly expanding the scope of application of the special procedure.

Regarding disposition of property, which in pre-trial criminal proceedings is recognised as criminally acquired by a decision of the person directing the proceedings, it must be said that Article 356, Part 2, Paragraph 2 of the Criminal Procedure Law provides only for the return of property as disposition of criminally obtained property, which is regulated in Articles 367 and 360 of the Criminal Procedure Law. It should be noted that if the property is found in the possession of a third party and returned to the owner or lawful possessor, the third party who was the *bona fide* acquirer of this property, in accordance with Article 360, Part 2 of the Criminal Procedure Law, has the right to file a claim for damages in civil proceedings, including against the accused or convicted person. In turn, a third party runs the risk of not receiving damages in cases where the penetrator of the criminal offence has died or does not have property to which recovery can be directed. Everyone should carefully assess the potential risks before entering transactions.

The case of application of Article 356, Part 2, Paragraph 2 of the Criminal Procedure Law differs slightly in terms of the burden of proof imposed on participants in proceedings and the standard of proof from other cases of recognition of property as criminally acquired. It can be distinguished as a separate type of criminally acquired property, since in this case the person directing the proceedings can make a decision only on such property: (1) in respect of which its owner or lawful possessor had previously claimed the loss of property and (2) after finding it, having eliminated reasonable doubts, proved their rights. Consequently, this concerns the property claimed by a person, and the burden of proving the rights lies, beyond reasonable doubts, on the owner or lawful possessor. In turn, that property cannot be one to which the right is registered in the public register and the entry in that register has been amended after the commission of the criminal offence.

Article 356, Part three of the Criminal Procedure Law provides that after termination of criminal proceedings based on non-exoneration of a person, property may be recognised as criminally acquired by a decision of a district (city) court in accordance with the procedure laid down in Part 59 of this Law. In turn, Article 380 of the Criminal Procedure Law, mentions those cases when it is considered that criminal proceedings are terminated by a decision that does not exonerate a person. It should be noted that not only the investigator or prosecutor but also the court can terminate criminal proceedings on the basis of non-exoneration of a person. In turn, the wording of Article 356, Part three of the Criminal Procedure Law seems to also cover the possibility of applying the procedure of Part 59 procedure in cases where the court has terminated the criminal proceedings.

3 Seizure of Property

The institute of seizure of property is one of the most controversial issues in criminal proceedings as the seizure of property can sometimes even significantly restrict the fundamental rights of a person. The Criminal Procedure Law provides for a separate institution – the seizure of property – as a means of resolving property issues.

Section 28 of the Criminal Procedure Law regulates the procedure by which a solution to property issues may be ensured. That is, in the course of criminal proceedings, it is necessary or may reasonably arise, to take action against a person's property, the proceedings (the person directing the proceedings) must ensure that this property is preserved until the relevant property issue has been decided. This security in criminal proceedings is called the seizure of property. In the legal literature there is an opinion that the seizure of property is one of the types of procedural coercive measures.

In order to identify the institution of application of the seizure of property, it is necessary to focus on the purposes of the seizure of property in accordance with Article 361 of the Criminal Procedure Law, that is to ensure:

1) resolution of property issues;
2) confiscation of property;
3) recovery of money in proceedings of applying coercive measures to legal entities;
4) recovery of the value of the instrument of the criminal offence to be confiscated if the tool belongs to another person;
5) liquidation in the proceedings of applying coercive measures to legal entities;
6) storage or destruction of criminally acquired property or property related to criminal proceedings held by other persons.

Several Latvian legal scholars, such as professors Kristīne Strada-Rozenberga, Ārija Meikališa and others, have for a long time pointed out various significant shortcomings in the legal framework regarding the seizure of property in criminal proceedings. Although the Criminal Procedure Law has been amended several times in relation to the institute of seizure of property, there are still problems regarding the application of the seizure of property in criminal proceedings.

Neither the Criminal Procedure Law nor other regulations provide a legal definition of seizure of property. The seizure of property is, by its very nature, a criminal procedural act, i.e., act regulated by the Criminal Procedure Law. Performance of any procedural action must be justified, aimed at achieving the specific goal. Seizure of property is made not only for the purpose of ensuring the execution of a possible confiscation sentence but also for the purpose of ensuring the confiscation of proceeds of crime, as well as the instrument and proceeds of committing the crime.

According to the authors, the person directing the proceedings does not have any discretion in imposing the seizure of property but must state the circumstances established by law. The content of the seizure of property must be such as to ensure its purpose – preservation of the immutability and belonging of the property. Such an objective

can be achieved only by imposing restrictions on the disposal of property. The content of a particular restriction depends on the property to be seized – whether the property is registered in a public register, it is a movable item, or whether it is corporeal or incorporeal.

One of the issues that concerns the property to be seized, or even rather its amount, is at what point the amount of property is to be determined. Nowhere is it determined at what point in time the amount of the confiscated property is to be determined in the event of a criminal penalty – confiscation of property – at the time of commission of the offence, at the time of the final decision, or at some other point in time.

According to the authors, when imposing an arrest to ensure the possible confiscation, the amount of property to seizure must be determined by the person directing the proceedings objectively and proportionately to how serious the criminal offence is, the characteristics of the criminal offence committed, the identity data of the person against whom the criminal proceedings are continuing. Persons whose property is seized may have a different procedural status in criminal proceedings. First, an arrest may be imposed on the property of a person who has the right to a defence in particular criminal proceedings. These may be persons with the following procedural statuses: a person against whom criminal proceedings have been initiated; detainee; suspect; the accused; a person against whom the proceedings for the determination of coercive measures of a medical nature is underway; a person against whom proceedings are pending for the application of coercive measures to a legal person.

When examining the issue of who may impose seizure of property, it follows from Article 361, Part 3 of the Criminal Procedure Law that in pre-trial proceedings the seizure of property is imposed by a decision of the person directing the proceedings, who has been approved by the investigating judge, but during the trial the decision is taken by the court. This provision immediately makes a clear distinction from the procedural order inherent in investigative measures or procedural coercive measures, which require the consent of the investigating judge for the measure to be taken or the measure to be applied. An investigative act – search – in accordance with Article 180 of the Criminal Procedure Law, or a security measure – detention – in accordance with Article 271 of the Criminal Procedure Law, a decision shall be taken by the investigating judge in pre-trial criminal proceedings on the basis of a proposal of the person directing the proceedings and the attached materials. In turn, in the case of seizure of property in pre-trial criminal proceedings, the decision is taken by the person directing the proceedings, having received the approval of the investigating judge.

In accordance with Article 318, Part three of the Criminal Procedure Law, if the investigating judge takes a decision within the scope of their competence, it must be motivated. The regulation of the seizure of property cannot be regarded as special, but Article 318 is general in this case. Existing regulation hinders implementation of the principle of equivalence of procedural powers provided for in Article 18 of the Criminal Procedure Law. Based on this principle, the rights and obligations of persons involved

in criminal proceedings are those that ensure equivalent implementation of the tasks and rights specified in regulatory enactments. A person affected by the decision to seizure property has limited possibilities to appeal against this decision, as the investigating judge's motivation for upholding such a decision is unknown, except as stated by the person directing the proceedings in their decision. In addition, balance of these rights and obligations upset by the fact that the person directing the proceedings is obliged to make and motivate a decision that significantly affects the constitutional right of a person to property. Search of the investigative activity requires a decision of the investigating judge, which is based on the arguments chosen by the judge themselves. According to the authors, there is no reason to establish a different procedure in the regulation of the seizure of property since this leads to unreasonably unequal regulation. It is necessary to consider that decisions on the seizure of property are briefly drawn up, indicating only the property to be seized and the purpose for which someone needs to arrest it.

To facilitate the control of the investigating judge over respect of human rights, the authors of the current study suggest amending Part three of Article 361 of the Criminal Procedure Law, to read as follows: "*In pre-trial proceedings, the seizure of property shall be imposed by a decision of the investigating judge*".

Section 28 of the Criminal Procedure Law "Ensuring the resolution of property issues" does not specify the procedure for appeal of the decision to seizure the property. Having analysed the regulatory framework, the authors consider that the different regulation of the seizure of property from other procedural actions (which require a decision of the investigating judge) leaves room for different interpretations of the norms regarding the procedure for appealing the decision. Part 2 of Article 337 of the Criminal Procedure Law determines to whom the complaint is to be referred for decision. It may seem that the decision to seizure property in reality equals two decisions – the decision of the person directing the proceedings and the decision of the investigating judge when it comes to pre-trial criminal proceedings. It follows that in accordance with part two, Paragraph 2 of Article 337 of the Criminal Procedure Law, a complaint regarding the investigator's decision shall be referred to the supervising prosecutor for decision. Nevertheless, in accordance with Paragraph 4, the complaint regarding the decision of the investigating judge shall be referred to a higher court for decision. With this interpretation of the rules, it is not clear who is dealing with a complaint against a decision to seizure property – the supervising prosecutor or a higher court. The investigating judge and the prosecutor belong to the judiciary. In turn, it follows from the criminal procedure system that the court and the investigating judge are in superior "in hierarchy" than the prosecutor, as apparent from the fact that the prosecutor is approached only in the cases of urgency and, likewise, the investigating judge has the final word (special investigative actions). Often investigating judges require indicating in the decision a certain appeal procedure.

It is most often encountered that the following appeal procedure shall be indicated in the decision – the decision shall be appealed to a higher-level court in accordance with Part 2, Paragraph 4 of Article 337 of the Criminal Procedure Law. According to

the authors, in order not to have different interpretations of the provisions, it is possible to include amendments to Section 28 of the Criminal Procedure Law. Namely, to provide that decision to seize property is appealed to the highest court. The establishment of a precise appeal procedure will exclude the possibility of different interpretations of the provisions of the Criminal Procedure Law.

The provisions of the Criminal Procedure Law on the seizure of property do not regulate the issue of the content or actual form of seizure of property – movable or immovable, obligations, rights and other things that may be considered as property subject to seizure within the meaning of the Criminal Procedure Law. The content of the seizure of property must be such as to ensure the purpose of preserving the immutability and belonging of the property. Such an objective can be achieved only by imposing restrictions on the disposal of property.

In 2017, significant amendments were made to the Criminal Procedure Law. Almost all articles included in Section 28 of the Criminal Procedure Law devoted to the seizure of property have been amended. In turn, the Criminal Procedure Law was supplemented by a new Article 361.[1] which, among other things, defines the content of seizure of capital shares (shares) and cooperative shares, as well as cash deposits, financial instruments and capital shares (shares) held in credit institutions or investment brokerage firms.

Seizure of capital shares (shares) and cooperative shares, property took the form of a prohibition to alienate them and encumber them with other rights of property or obligations. In addition, capital company or cooperative society, capital shares (shares) or cooperative shares of which have been seized, have an obligation to transfer all funds due to the relevant person from the capital company or cooperative society to the bank account indicated by the person directing the proceedings (institution, Treasure or in the account of the person subject to the seizure). By contrast, cash deposits, financial instruments and capital shares (shares) held in credit institutions or investment brokerage firms will be subject of suspension of expenditure operations in the event of seizure.

Conclusions

1. If money is recovered from perpetrator in favour of the victim, it is not necessary to compare it with the punishment. The institute of "Compensation" is a mechanism provided for in the Criminal Procedure Law, to achieve one of the objectives enshrined in Article 1 of the Criminal Procedure Law – fair settlement of criminal law relations without unjustified interference in a person's life.
2. Although the institute of seizure of property is included in a separate Criminal Procedure Section, by its very nature it constitutes procedural coercive measures. There are three prerequisites without which the seizure of a person's property in criminal proceedings is not permissible – purpose, grounds and reason.

3. In 2017, amendments were made to Section 28 of the Criminal Procedure Law, which included in Article 361.[1], because the Criminal Procedure Law clearly defined the content of seizure of share capital (shares), and cooperative shares, as well as cash deposits, financial instruments and capital shares (shares) held in credit institutions or investment brokerage firms. It is also positive that the Criminal Procedure Law clearly defines that the fruits that a person derives or is entitled to from the seized property are also considered to be seized.
4. The procedure for making a decision on the seizure of property in pre-trial criminal proceedings is unreasonably different from the procedure for making other decisions that require control of the investigating judge. In order to facilitate the investigating judge's control over respect of human rights, the authors suggest amending Part three of Article 361 of the Criminal Procedure Law, and to read as follows: "In pre-trial proceedings, seizure of property shall be imposed by a decision of the investigating judge".
5. Latvia has a sufficient legal and regulatory framework that allows pre-trial investigation institutions to take procedural measures to ensure resolution of property issues.

According to the authors, the research includes relevant issues regarding the problem of solving property issues in criminal proceedings in Latvia. The research puts forward suggestions for improvement of the Criminal Procedure Law to promote respect for the rights of participants in criminal proceedings, as well as respect for human rights.

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Legal Doctrine of Max Weber's Sociology of Religion

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Abstract

Belatedly, this work is dedicated to prof. Max Weber's (hereinafter – Weber) commemoration day of the centenary and focuses on the sociological understanding of the state and canon law. In order to better examine Weber's views on the economic ethics of religion, human rights will also be examined in comparison – as a factor of interaction between opposites and sets of views – as they better identify Weber's asceticism about the spirit of norm Protestantism. On the other hand, in a conventional discourse and a review of the theory of social stratification, through the so-called theory of degrees and directions of rejection, the essence of Weber's idea will be best understood by examining how religion influenced formation of contemporary law and approach to contemporary law comparing it with the constitutional system of Latvia, among others. The article has been designed with a view that, by observing peculiarities of the era of Weber's lifetime, the work would have a more modern character.

Wherever in this study it is referred to purely legal dogmatic problems, the author has relied on the literature on the history of the church and law and to some extent on the past of the dogmas formed by it. Furthermore, the author mostly relies on materials obtained from Weber's law sociological argumentation and comparative perspective, which serves to clarify the typology of the sociology of religion. To the extent possible, the author also delves into the primary sources of the history of law; due to their linguistically specific style of expression and peculiarities, in accordance with the objective to study Weber's views on the socio-historical genesis of the state and canon law and their nature, which includes looking into canonical norms for the sociological understanding of law, textual identification of primary sources is not examined in more detail. However, the most important ideas expressed in Weber's works are compared with those of other prominent representatives of this field.

Therefore, in the part of normative analysis of law codification, the author focuses on analysis of the social environment of law and church law, instead of their general scope, and the work is mainly based on the ideas of the outstanding sociologist Weber and theses of the concepts created by him, preserving the style of thought expressed in Weber's main text and means of expression. For those who are familiar with the most important works of canon law, including church law, the part of the material analysis of the norms could be new precisely from the point of view of this work, and the specifics of the analysis included, namely, this legal discipline is examined through Weber's studies, works of other researchers and novelties about law as well as the place of sociology of religion found in these works.

Keywords: church, sociology of religion, canon law, sociology of law, religious law, legal norm, ideal norm, legal phenomenon, iure divinum, lex nature, conventional norms, commandment, Calvinism, Puritanism.

Introduction

As researchers of the field, such as Russell Sandberg, point out – to ignore and not be guided by the sophisticated analysis of theologians and their work over the centuries would be too "conceiting"; therefore, noteworthy is Weber's idea of tolerance, or tolerantly positive criticism, in regards of how he chooses to compare the three dimensions of relations – spiritual (religion), social (society) and legal environment. In particular, the study will focus, among other articles, on the following works of Weber: *Sociology of Religion* by somewhat dissonating it with his own work *The Protestant Ethic and the Spirit of Capitalism*; in comparison, attention must be paid to the relatively widely discussed antagonism in the Pierre Bourdieu's work *Practical Reason* whose adaptive nature begins the era of modern thinking.

Such a relatively new aspect as religious law and church law, similar to how it was once discovered and later used for social argumentation by Weber, helps to clarify some, mostly essential, questions of the canon law of European countries, which are considered from the angle of the history of law – naturally standing far from the topics discussed in theological works; due to the particularities of their origin and past, they clearly have a consistent legal nature and character. Moreover, depth of this field of law lies in the fact that it is a direct and still living heir of Latin law.

Study, as a sociological material of law, outlines the structure of the work and is the social understanding of the norms of canon law, which is reflected in the practical law, law that makes the different and common foundation and structure of the state law and canon law. Due to the limited space, not all studies of the field are mentioned, but only those works that are highlighted by Weber in his studies, specifically in the work *Sociology of Religion*, on which the directly quoted materials of the corresponding text are based, or where a literal transfer of thought was necessary, as well as those which serve as a support for precise analysis of the legal discipline and its transfer in accordance with a contemporary perspective of law.

1 Historical Discourse of Canon Law

Works of various well known canon law authors are examined to identify particularities of canons and their place and role in other legal disciplines. It appears that the author does not want to bring forward thesis that the religious peculiarity is the one that dictates law or creates law, instead he tries to reflect the legal ideology arising from it, as well as the collision of material and spiritual values and interests created by it. No matter how deeply economically and politically conditioned social influence of law on religious ethics may be in some cases, its core features and texts can always be found in religious sources, their messages, promises and writings. (Weber, 1949)

Due to the Judaic laconism of Roman law, it is necessary to provide explanation that *ius gentium* – spiritually and mentally similar laws of Roman peoples – is nothing more than a formal maintenance of traditions, where the traditions themselves have little to do with any religious principle of ethics. For example, as prof. Osipova describes in her work *Prehistory of the European Law. Laws of Ancient Egypt, Mesopotamia, Israel, Greece*: "(..) *each society (tribe, nation) initially determined its laws casuistically, based on religion*", in addition to which the European identity and culture of European countries are formed by "(..) *Roman law, Greek philosophy and Jewish morality. Jewish scriptures, which also contain legal norms, such as the Old Testament, are binding for Christians.*" (Osipova, 2017)

Weber views the structure of religious law, or, as he puts it – the "entity", as a systematic religious "typology", and also places the burden of historical research on this discipline. Contrary to what Weber says about the importance of rank, class and economy in law, the author also talks about the social phenomenon of religious law as an object of canon law, by looking at it in conjunction with the idea of church law. However, when looking from the point of view of Weber's "typology", or as Weber says, since recognition and coexistence of religion and law is necessary, these main ideas expressed by Weber are typological, as far as it is considered that these different types of ethical law are historically and typically significantly related to social reality and the great contrasts between the scope of church and state law.

The author does not intend to provide a completely justified description of the canon law under examination, and in terms of the scope of the work, the objective is not to delve into the details of Roman law, which in spite of being a very good work itself, is too voluminous but the history of Europe, which is formed by the "continent of nations", in the creation of a unified national space has repeatedly failed: "*However, in terms of legal culture, unity exists because it is historically ensured by the Christian faith through canon law and Roman civil law.*" (Osipova, 2017) Such a vision is quite close to Weber's idea that one of the signs of maturity of law is precisely the aspect of recognition of religion (although he mentions church with its canon norms), because how else could the clearly simple, yet for centuries carried along as mandatory and simultaneously the constantly necessary thesis that the church is separated from the state, be understood. However,

Weber formed a thesis at this point that in fact such a constant reminder rather suggests that the state is separated from the moral paradigms that the era imposes on it, but otherwise the state is the same autonomous church.

For better illustration, it is necessary to highlight those features of canon law, which are opposite or different from those of the law of the Roman peoples, by which modern civil legal process is understood, or which are different in a socio-atheistic state system, and, in addition, Weber pays great attention to their relationship with ethical norms mentioned in Christianity, such as sources of law, and their manifestations and influence in the culture of social jurisprudence. Weber says that a study of the sociology of religion, in which the main attention would not be devoted to these particularly important moments, perhaps by softening them, or by sometimes adding to them other, more categorical than possible aspects, would indicate that, of course, all the contradictions and realities of qualitative systematics can be perceived as purely quantitative differences in certain legal issues, but they cannot be softened by reflecting common and different features of law and religion, where a rule of law, an obedient servant of the law, speaks on behalf of both the state and the church. (Weber, 1949)

Reiterating this obviousness and duality of religion and law would not be fruitful. Therefore, in response to the call of the great sociologist, it is clearly necessary to mention the quintessence of the qualitative and quantitative analysis of legal research considering which of these prisms of legal values is more vital and which should be foremost highlighted more than the others and how to correctly compare them from a historical point of view with the insights expressed by social reality and values. The following conclusion deserves recognition and seems appropriate: "*Those legal historians whose studies of the history of European law are based on the development of canon law and its influence on secular law, start their research with ancient Jewish law and then continue by analysing the experience of the Ancient Greeks and Romans.*" (Osipova, 2017). Therefore, it can be concluded that the typology of religion and law discussed in Weber's works also carries with it a general doctrinal understanding of the genesis of the general principles law with those written (proclaimed) sources of law that are very close or similar to religious texts (messages) and also contain knowledge of the philosophers' golden age, which is firstly successfully contained in storages of morals and then in storages of beliefs and knowledge, but less successfully, with various defects and shortcomings that are hidden by interpretation, in laws.

2 Genesis of the Idea of Church, State and Human Rights

The state, as an institution of law, and the connection between religion and the Christian doctrine of precondemnation, by its very nature excludes the possibility that the state could support religion by showing intolerance, as it happens in various aspects of human rights, where there is wide pluralism and man is the absolute embodiment

of these rights. If the divine rights cultivated by the Christian faith, which in reality manifested as infallibility of the church, merge or completely disappear in front of man as a phenomenon of creation, and if it is presumed that man is absolute and unique, then his rights are also unquestionable and as absolute as the man himself. (Harold, 2010, *16*)

However, the church denies this idea, because it recognises only divine authority in everything, including laws, because they have emerged from God, for example, such sources as the Old Testament, the books of Moses, etc. The spirit of canon law and its substance clearly speak of it. Therefore, the state, when analysed from the point of view of the doctrine of Christian texts, cannot be "doomed" because it is itself a form of perfection and true embodiment of the social environment of the society, but the Christian society, or even a smaller entity of the state – a citizen of the state, from a perspective of the Christian scriptures, which anyway constitute the main sources of customary law, such as the 10 Commandments, is eternally sinful and condemned and therefore seeks forgiveness of eternal sin, even more so – not in this life, which would be absurd from the point of view of legal principles, because it would mean that the guilt of a person is presumed from birth, and also the guilt can be redeemed (compensated) only in a specific, truly sacred way – through a religious institute intended for forgiveness of sins. This guilt characterises any member of society despite the fact that there is no such form of presumption of guilt in law, it would be an abstract and utopian idea even for the most fanatical advocates of legal absolutism.

Thus, attention should be paid to the role of religion in the most legally important document of the state – the constitution, similarly as for the role of the church – to the source of its religion, the Bible. The only difference is that while the clauses established in the constitution do not directly and individually affect matters of faith, morality and conscience, judgments contained in the texts of the holy scriptures and values, such as in the Bible (Old Testament and New Testament), are the source of law and morality (condition of what is good, what is happiness and what is the right action). For example, in the context of comparative international constitutional law, this religious aspect is well established in the constitutions of different countries, including Latvia (see, for example, "*God bless Latvia*" contained in the preamble to the Constitution of the Republic of Latvia, as well as Article 6 of the Constitution and the 1st Amendment of the Bill of Rights of the United States of America and 2nd amendment of Bill of Rights of the United Kingdom). Moreover, the social and legal aspect of religion can also be seen in other main documents of the state, the most important laws and customs, such as oath, national anthem, inauguration, which despite being symbolic are an essential condition for existence of the state.

The origin and phenomenon of law may have begun with the emergence of social consciousness of society and usurpation of the power of some authority over it, but later resulted in strengthening of the individual's autonomous rights, in the absolute element and form of human rights. Nevertheless, as Weber points out, law perhaps has a dimension of Christian values which manifests itself in the form of divine verticality through

the fact that the basic moral legitimation of law can be found in religious texts and its first and main cause is God (*ius Divinum*) as its primary source and which proves that there is a successive *homo religiosus* in the light of *imago Dei* (man as the image of God). According to the sociologist of civilisation Weber, this would indicate that law, despite its general nature, must be legitimate and generally recognised; the element of recognition is common for both law and religion, and it is a prerequisite of their existence, because it is based on the idea of religion and on moral principles. On the other hand, the *lex* does not have such a "craving" for moral and religious precepts at all, because its task is not to "speak" and argue in the language of morality and religion (Weber, 1949).

Several other philosophers have already mentioned *homo religiosus* as a method of research phenomenology, such as Edmund Husserl, modern times' Martin Heidegger and Jean-Paul Sartre, who mention as a contrast to *homo religiousus* the existence of *homo saecularis* who lives in the present without any remainder, the only difference between these two is that contrary to a sworn secularist, *homo religiosus* does not allow himself to be blinded by the fleeting brilliance of the present moment because he remains in the shadow of the *ulpa Dei Maxima* (God's wrath), thus turning every moment of his life into a reflection of eternity, which is brilliantly paraphrased by Immanuel Kant in his work *The Metaphysics of Ethics*, thus creating the so-called highest moral criteria (Kant's Moral Philosophy, 2022).

Similarly comparable would be social and religious norms, where the former are secular and practical to the extent possible, as opposed to the objective rational values expressed in religious texts as a source of law. For example, Romans, when coming to conclusion that ethical elements can be found in every legal system, defined law as the art of good and just (*ars boni et aequi*); therefore, law is associated with the art of morality and virtue. It is precisely the idea of Roman law which is expressed in the Institutions, part 3 of the codification *Corpus Iuris Civilis* of the Eastern Roman Emperor Justinian I, and which is based on the idea that all men are born free and, therefore, have the *lex nature* prerogative to be free that discredits through times biblical moral principles, not to mention the existence of a single national morality.

On the other hand, in the early Middle Ages, this fundamental idea, interpreted by theologian and scholastic Thomas Aquinas, transformed into a dimension of biblical values, creating ideal law in an ideal state that is under the authority of the church (similar to Plato's utopian state), but with the rise of humanist ideas and their spread in Western Europe, the same law became more specific and evolved into subjective (natural) human rights, even providing for respect for human dignity.

As Otfried Hoffe aptly points out in his work *Justice*, in the legislative giant *Corpus Iuris Civilis* (collection of civil, non-ecclesiastical law), which is the most important compilation of Western law, at the beginning of the prominent Digests all legal claims are formulated in form of three basic principles. For centuries they were associated with the Roman jurist Ulpian (*Domitius Ulpianus*). The aforementioned corresponds well with the legal tradition started by the Romans, namely, the great jurist Ulpian expresses

a seemingly eternal truth at the very beginning of the Digests in *Corpus Iuris Civilis*: "*Juris praecepta sunt haec: honeste vivare, alterum non laedere, suum cuique tribuare*" or "*The precepts of the law are these: to live honestly, to injure no one, and to give every man his due*" (Hoffe, 2006), which is completely incompatible with Christian values, the biblical view, especially the Old Testament, and the idea expressed by Weber about the *Protestant type and the spirit of capital* as a social dilemma, because it is denied both by the religious approach of the infinite and eternal humility and by capitalism's equally eternal servitude to property or material values.

In comparison, while Cicero writes in his work *On the Republic* (*De re publica*) that the state or Republic must always and everywhere be placed in the first place – "*to place the good of the fatherland before all else*" (Cicerons, 2009, *73*), capitalism requires the idea of property (*dominium*) to be placed above everything and to serve only for it (in the name of increasing capital), but one must keep in mind that, speaking in parables, as it is stated by the introductory part of the Digests in *Corpus Iuris Civilis*, the ruler (the state) shall humbly bow before God, that is, before the Pope, because the final settlement (..) will be made only on the day of reckoning. With such a motto, the collapse of the ancient world began, and also began the "quiet revolution", where the state no longer holds its power and power is not its only goal any more, because the state begins to obey in every aspect its guardian – the church, which according to the canon of the church is capable of exempting from God's punishment the sinful and therefore infinitely guilty citizen, nation or even a ruler. It creates also a division between the antiquity and renaissance, or such was the huge social convergence of the time, because the ancient Greeks have no religion, instead there are various cults, but the "sacred" (*hieros*) world is separated from the "profane" (*hosisos*) world. In other words, God has his world, but man's world is in his own hands, i.e., "political" life is completely "desacralized" (Weber, 1919; Vēbers, 1999).

In his views, Weber goes even further and considers that modern political technology is characterised by the fact that religion itself is also transformed and as a result the capitalistic "spirit" is formed, that is, through brutal dualism the main objective of the corpus of law is incorporated – to look at the *body, soul and spirit* (*corpus, animus, spiritus*), because it cannot be any other way when talking about the state affairs. Weber follows Foucault's insight, where he proposes a cult of the ethical continuity (doom) of the church, an imperfect (therefore, immoral) person and equally imperfect and punishable actions resulting from the idea of sin, which follows the command: "*Go get slaughtered, and we promise you a long and pleasant life*" (the central motto of the church and the state during Middle Ages, fighting against decay of obedience), in contrast to the "rule of law", a concept established by Albert Dickey of the Enlightenment: the basis of legality and justice is precisely the sinful person. Moreover, in search for a legal state concept (*Rechtsstaat*), religion was noticeably replaced with other paradigms (Weber, 1919; Vēbers, 1999).

For example, Viennese doctor Johann Peter Frank in his 1779 essay *A System of Complete Medical Police* no longer sees the presence of religion and God in the state

affairs, as he writes: "*The general object of police science is public order*". Weber emphasises, referring to Shakespeare's Hamlet, by calling such public order a "prison". According to him, this ensures formation of individuals who "*become nervous and soft if this order is disturbed for a moment, and helpless if they are taken out of their complete adaptation to this order*". On the other hand, national socialist Roland Freisler, considering Weber's "*ruthless insight into the realities of life*", after Weber's death, in the 1930s, found a generally accepted definition and it reads as follows: *"A state governed by the rule of law is an organized form of national life that embraces all national life forces to ensure the right to life internally and externally*" (Weber, 1919; Vēbers, 1999).

It is clear that the church and religion are generally ignored and its quintessence is lost, but it took several hundred years before some of the most prominent critics of the unity of church and state from the early Renaissance and decadence, Thomas Hobbes with his brutal ethics, and John Locke, by seeing the essence of happiness in the state affairs (law), could arrive to such a remarkable "forgetfulness" of church and religion in the field of state and law.

However, returning to the systematic aspect of the church, when looking at the socio-legal issues of religion and views based on human rights where everyone can be an atheist or a believer in regard to their personal beliefs, but in the common public legal space they all certainly meet some sort of religious ceremony, it must be concluded that the influence of religion is felt in traditions, as well in law, which is based on the values derived from them. This is especially evident in the culture of the Western Europe and in the deeply rooted traditions these nations, and in general everywhere where the beliefs of the Christian faith prevail.

A culture based on religious values and a culture based on human rights form their belief system. In the background of the traditions of the Christian worldview, purely religious holidays are widely accepted and celebrated in the form of positive norms – official holidays celebrate several thousand-year-old events that are purely religious in nature and have no connection with the secular world at all (birth of the prophet, resurrection); an official anthem of religious content is sung, which even contains an indication of how it is an official prayer (in the case of the National Athem of Latvia – the solemn prayer of the people, Law on the National Anthem of Latvia, Article 2). Thus solemn (symbolic) oaths are taken (e.g. on the Bible or on the constitution) and, finally, these religious texts and manifestos stemming from them are carefully enshrined at the constitutional level in an otherwise profane world, and as a result atheistic beliefs and traditions remain in the minority against such a background. Besides, the institution of the oath is a purely moral paradigm, an ethical standard for a certain action, it is not an ordinary material legal norm, since its origins are purely religious, symbolic and ceremonial.

The question arises what the sources of such a discipline of cultural law, a religious law are, seen as a form of expression of traditions, which cannot be measured the same as pure canon law, and how such wide recognition can be found, even among people completely unrelated to faith. Further question include what the basic source of

the moral expression of these values is – whether those are Greek and Roman century-long philosophical reflections, or widely known unwritten moral views of natural rights, or religious texts in the reflections of law (similarly, as a reflection of ideas in Plato's allegory of the cave) which form the legal opinion and consensus of the last millennia basic source codes.

In response, Weber concluded that in contrast to the Roman school of law, in no other culture in the world, except in the West, where pragmatism is rooted from the time of Thucydides and its prehistory is used, there is nothing that would indicate a rational legal theory. In other earlier civilisations, in prehistory, there are no strict legal systems and forms of legal thinking that characterise Roman law and Western law, which is based on the former. Such a phenomenon as canon law is also known only in the West. (Vēbers, 2004)

Thus, for example, Roman law was deeply rooted in the Catholic lands of Southern Europe and later also in entire Western Europe. Rationalisation of private law, if it is interpreted as simplification of legal concepts and division of legal material, reached its highest development in the Roman law of late antiquity and, on the contrary, was the least developed in the countries that reached the highest degree of rationalisation, including England, where the renaissance of Roman law failed. (Franklin, [1736] 1904; Weber, 2004)

Weber quite well captures the "*image of American culture*" created by Benjamin Franklin, leader of the American independence movement – "*from cattle you get fat, from people – money*", or as Weber says it in his work: "*The merchant may conduct himself without sin but cannot be pleasing to God*." (Franklin, [1736] 1904). This translates well in conjunction with the statute transferred to the canon law on "*Deo placere vix potest*", which refers to actions of merchants and, the same as the evangelical text about usury and other "misfortunes" of law and morality, was considered real and therefore an important source of knowledge of socio-legal nature (Vēbers, 2004).

Calvinists, on the other hand, saw a form of ideal norm in the law, which is impossible to achieve but must be constantly striven for (Journal of Law and Religion, 2006). Regarding Calvinism, the views expressed by Thomas Aquinas in his work *Summa Theologica* must be also mentioned – cognitive theory and its religious character which aim at settlement and concreteness of the status of social law, but only by religion one may dictate the scepter of state power (The Western Australian Jurist, C. Y. Lee). However, in Luther's teachings, the opposite is found – liberation from following the written letter of the law as a divine privilege of believers (Vēbers, 2004).

Explaining the statements of the Bible as "*paragraphs of the book of laws*" is an old and relatively clear interpretation of the cultural tradition of Roman law, although not always casuistically accurate citation of the Bible, but more as a revelation of legitimate source of moral law in the primordial scope of its existence which leads to the same goal that gave rise to canon law. Notably, "*For the Reformers, the Commandment appears to be an ideal norm, while the Lutherans, on the other hand, find the Commandment oppressive as an unattainable norm*." Lutherans condemned the reformers for "*slavish servitude*

to the law" (Muller, 1892). Therefore, the Decalogue, as a codification of natural moral laws, remains the norm of human behaviour. From the average point of view of canon law, morality free from laws and rational asceticism oriented to the Commandment were also excluded; the Commandment remained as the structure and the "ideal norm", but the law has only "discrete" character (Vēbers, 2004).

3 Phenomenon of Law and Religion

Observance of such a principle "*extra ecclesiam nulla sallus*" (Adair-Toteff, 2015) cannot be ensured by the state in its social reality. In other words, inability of any state to ensure functioning of the norm (both law and religion), because the mentioned principle literally means: "(..) *there is no salvation outside the church*". The state was unable to save the believers with it, but the concern for God's glory forced the church, a "*believers' Church*" (Adair-Toteff, 2015), to look for basis in legal norms, which were created by heretics and unbelieving Romans or legal scholars until the early Middle Ages.

Over time, it became impossible for the state to intervene in various matters, such as appointment and transfer of clerical positions, which, on the contrary, was described in detail by the norms of canon law. Thus, the leader of the English revolution, Oliver Cromwell, together with John Brown, constituted the church as a socio-legal unit (Landow, 2005), or even a phenomenon. He was an advocate for universal religious freedom, but his concept of "holy parliament" – the separation of church and state where they (the people of faith) were pietists for positive religious motives and represented influence of that, similarly as Roger Williams, guided by the same considerations, advocated unconditional, unrestricted religious toleration and separation of church and state, where the state has no resemblance to the church, contrary to what, from the point of view of public law, had been accepted since the early decadence of Roman law (Vēbers, 2004). For example, in the resolution of the English Baptists of Amsterdam (in 1612 or 1613), the demand for freedom of conscience as a defense of one's positive rights appeared for the first time from the state (Schluchter, 2017). It reads: "*The magistrate is not to middle with religion or matters of conscience* (..) *because Christ is the King and lawgiver of the Church and conscience*."

During the Hellenistic era, in the Roman Empire, also in Islamic lands, religious tolerance prevailed for a long time, limited only by considerations of public order, which were based on laws, even if they were not always compatible with the texts of canon law. As, for example, Philipp Jakob Spener points out, it is about the fundamental rights of Christians, which were guaranteed by the apostles when they formed the first Christian congregations. Also, the Puritan opinion developed about the place of individual people in the church and about the legal sphere of their activity, which derives from *jure divino* and is, therefore, an inalienable and unshakeable right. No matter how ahistorical the positivist (philistine) critique of the idea of "fundamental rights" may be, no matter how trivial it sounds, in the words of Spener, one must ultimately be grateful for everything,

even what the fiercest modern "reactionary" considers to be his individual freedoms and minimum rights (Spener, 2019).

The Arminian erastic position of the idea of extending state sovereignty to church affairs was represented by the monopoly of autonomously created state sovereignty, which corresponds with the political interests of the law of that time, which were pragmatically but tendentiously rooted already in the church law culture of the Renaissance. In addition, an ardent follower of the idea of Arminianism, or prof. Jacob Arminius (*Arminius*, 1560–1609) of Leiden, was the great philosopher of law and lawyer, *Dr. iur.* Hugo Grotius (*Huig van Groot*, 1583–1645) who in his most remarkable work *De iure belli ac pacis* (1625) expresses, among other things, the idea that war is a crime if it is not a means of protecting law. It was Grotius who distinguished law from religion and emphasised the principles of natural law, which are immanent in the nature of man who is a social being (Latvian Dictionary of Conversation, 1927).

It is also known that Nietzsche's supporters, based on fundamentally similar reasons, have attributed a positive ethical meaning to the idea of eternal return, leaving the church in the background, compared to the formation of the state. Erasmus (1466–1536), a Dutch humanist who declared the dogmatic "*law of mind*", which is based on characteristics of humanism and man as a sovereign being who is able to decide and determine his own rights, contrary to the church's divine law policy, points out that the collision is created exactly in this aspect of interaction between religion and law (Latvian Dictionary of Conversation, 1927). It must be noted that relationship between church and state in the first centuries was seen as ideal by the *Quakers*. This idea was strongly represented by Robert Barclay with his idea of "*Inward Light*", because for them, as well as for many pietists, in terms of purity doubts were not created by the church as an institutional formation because it drew its sources from the works of dogmatists tested for hundreds of years (Graves, 1992).

However, within the framework of an unbelieving state or under the influence of "*under the cross*" of an institutional church, other defenders of Christian values and rights, such as Calvinists *faute de mieux* (from Latin – for lack of something better) were also forced to engage in separation of church and state, similarly as it was done by the Catholic Church in analogous cases (Hoffmann, 1902). Rules of the church do not affect the civil society and its relations, but initially in the first formations the congregations and later in the church, there was a living principle which resulted from the fact that a prohibition was established to enter into any, even business, relations with people excluded from the church. Puritan legal formalism leads to completely adequate consequences – complete trust in law, and the law not only as a norm but also as a social need, or: "*In civil actions it is good to be as the many, in religious, to be as the best.*" (Adams, 2011).

Of course, consistent implementation of principle "*Natural reason knows nothing about God*" in reality was impossible, because of "*Moral and perpetual statutes acknowledged by all Christians*" (Barclay a.a. O.p.). It was the ethnicity of cultures or peoples that preserved religious traditions in all its vastness, thus trying to close the gap that simple

state power or domination dictated by the state apparatus could not provide. Law, without doubt, also contains ethical provisions, through which, if one can say so, the Christian ethical-legal maxim and the embodiment of the moral spirit permeates the principle: "*Do unto others only as you would have them do to you*" (Kant's Moral Philosophy, 2022), which is also a moral law for any atheist (Vēbers, 2004).

Thus, the place that Protestant teaching intended to give to the "*lex nature*" (natural law) is shifting. Existence of "general rules" and a moral code became fundamentally unavailable because everyone has an individual right to a God-given conscience. The formalism of Puritan ethics is a clear consequence of trust in the law, since legal order is reduced to formal legality, in the same way that "truthfulness" (*Redlichkeit*) or "righteousness" (*Uprightnes*) for nations with a Puritan past does not mean the German "honesty" (*Ehrlichkeit*) but something specific and completely different – formally and reflectively transformed consolidation of rights in the form of laws, as was carefully practised by the pioneers of Roman law from the times of Ulpian (Vēbers, 2004).

However, the Puritan understanding of "legality" as a test of "*chosenness*" without doubt created more important motives for positive action than the Jewish understanding of legality as keeping the commandments, because of internal and external ethical considerations and the relationship to tradition in observing social norms and determining legality was more like unscriptural law, a principle regarding the laws that are not based on the precepts of Judaism, and that everywhere else can be "*permitted what is forbidden*" and the only positive and true law is the one that derives from the Old Testament for these two components of internal and external ethics.

4 Rule of Law and Legitimate Violence (Sermon on the Mount)

Christianity, which was originally the teaching of wandering artisans, in contrast to Judaism, in the early Middle Ages, and later under the influence of Puritanism, paid much attention to the fact that ethical norms should be replaced by Christian norms and that these in turn should be carefully collected (codified) and declared through written laws, such as laws of the church or even laws of the state. This approach with such interpretation of law often encountered a problem that a happy person in the sense of law is rarely satisfied with this fact of obtaining happiness itself. He also wants to be happy in the sense of law, and, moreover, by referring to the thesis that the law must ensure "happiness", he wants to be sure that he deserves it – first of all, in comparison with others, he wants to believe that the less fortunate received it by merit and that happiness itself is "legitimate" and he aspires to be "legitimate" together with it (Vēbers, 2004).

The rational need for elements of the theodicy of suffering and death, such as death penalty as a legally enforceable form of punishment, was clearly expressed in law. In regard to this, any hierocratic church fights it with virtuosic religiosity and ethical dogmas, i.e., it, in the form of an institution, organises a community of "grace" of moral

forgiveness, which has nothing to do with state laws. Theodicy (from Greek – *Dikaios*) – a righteous ruler, organiser and seeker of truth and justice who acts with philosophical and religious considerations which, according to the doctrine of "*The Justification of God*", belong to those views that see and explain the foresight of the norms given by God, which cannot be solved by law but only by religion (Latvian Dictionary of Conversation, 1940). Hierocratic power, in this context, is understood as the power of the church, which, according to the Greek *hieros kratein* (sacred ruling), tried to gain supremacy over the secular state power.

Weber says that the church, as a legitimate institution, seeks to replace the acts of state power with its own monopolised but supposedly democratic means of salvation. However, provided that it is a universal institution of "grace", the Christian values preach is as recognised, and obedience to its authority is based on its religious texts and law derived from them and which has a direct connection with articles of faith included in religious texts. However, in the field of ideas of general law, the church remains solely and exclusively faithful to the legal order established by the state.

Weber states that from the sociological point of view of law, one can see a complete parallel with the struggle of bureaucracy against order, the political rights of the aristocracy, and the forms of state and church rule of law in the political sphere of law. "Rational", as a belief in some important "canon", was the highest artistic ideal of the Renaissance; rational, as a rejection of all traditional ties and belief in the power of *naturalis ratio* (natural reason), was also a vision of the world of the legal order of this period, despite the features of Platonic mysticism and the preachers of the Christian faith supported by the church (Weber, 1949).

The nature of church disciplines and canon law through the religious nature of worldly asceticism, as Weber called it, linking it also to various elements, such as professional ethics and professional jurisprudence, brings along a problem that has been little studied until now, one of the reasons being because the effect of church discipline is not always spread uniformly. Therefore, the police control of the lives of the faithful in a way that borders along the lines of inquisition is realised in the domain of the state church. In a hierocratic union – in the church, the shepherds (pastors) of its congregations represent a certain "competence", which is determined by the regulations. Church leadership or pontificate is, in its true sense, the same as the service established since the pontificate of Innocent III, where the separation of the position of *ex cathedra* (rank) from the circle of private law is the same as any other bureaucratic technique that is not "revolutionary" connected with the jurisprudence of all existing earlier forms of Roman law, because it is guided by the dual character of the principle: "*it is written – but I tell you* (..)", or it represents the highest threshold of the competence of infallibility – to interpret anything that can be interpreted at all (Weber, 2004). This idea is based on the following considerations, which, among other things, are based on Weber's widely described concepts of dominion or ruling and their types.

Namely, Weber compares a clergyman and its "competence" with an official, who is also a representative of power, yet only secular. Neither exercises this power as their own rights but always on behalf of an impersonal "institution", in the interests of people's coexistence subject to some normatively formulated regulations, regardless of whether they are determined or not, but ascertained according to criteria corresponding to the regulations. A clergyman, who is subordinate to the hierarchy of "superiors" in clarifying and identifying legal issues, turns to the church administration "by instances". Thus, religious communities (including church) belong to a union of dominion, an hierocratic association, i.e., whose power is based on giving or refusing grace. It answers the question: "*What legitimate justifications does the power claim?*" This means that "power" is like a "command", which is not a personal authority but a consequence of an impersonal norm, and the very act of the command is following a norm (Vēbers, 2004). In other words, as Weber puts it: "(..) *regarding power, the legitimacy of commands is based on rationally formalised, agreed upon or authorized* (authorise – impose by force; to unilaterally determine or issue, for example, a constitution authorised by a monarch means that he has unilaterally issued and declared it (Latvian Dictionary of Conversation, 1927)) *regulations, but the legitimacy of the formulation of these regulations, in turn, depends on a rationally formulated or interpreted 'constitution'*" (Weber, 1949).

Even more, it is the process of traditionalism and long-term domination or ruling based on a charismatic leader and an organisation followed by the community, its disciples and followers who would firstly become officials and only then priests (Weber, 1949). The church, as a unique institution, which is just as relevant to its local regulations of social life and their subordination to internal canon norms, as opposed to a bureaucratic apparatus of state power, which does not consist in any part of canon norms, is a proof that the modern Western "state", with the triumph of formalistic legal rationalism in it, as well as the emergence of the Western Church, was in large part work of lawyers, the main, though not the only, form of which was *bureaucratic* rule.

Among the representatives of this domination structure are state officials, its pastors and laymen. In addition, submission takes place for legitimacy of one's rights, an impersonal *duty of service*, which, similarly as the right to power, as Weber points out, is a "competence" that is determined by rationally adopted norms (laws, basic texts, regulations) in such a way that legitimacy of domination manifests itself in the legality of general, purposefully thought-out, correctly formulated and announced regulations. (Vēbers, 2004)

In legislation of Western countries, when viewed in the context of the church, the end result tends to the ratio of coercive force with which legal ruling or domination can be exercised through legislation, and it is not based on ethical "rights", even if their objective criteria could be clarified, but on the "state", which has a monopoly on "legitimate violence". For example, in the Sermon on the Mount: "(..) *do not resist an evil person*" (Matthew 5, 39) its opposite will be: "*You must promote the execution of law, even by force, and you will be responsible for illegal actions*" (Vēbers, 2004).

Because the entire process of the internal political functions of the state apparatus in the field of law and administration is ultimately regulated pragmatically, based on objective state considerations, with an absolute end in itself, that is, law serves the existence of the state which is a completely meaningless position in religion because canon norms do not require preserving or transforming the internal or external division of power but determine only traditions established from religious sources in the law.

5 *Sine ira et studio homo politicus*

Sine ira et studio homo politicus and the bureaucratic apparatus of the state, just like the clerics, carry out their tasks in a purely businesslike manner without hatred and impose punishment for violations of the law, following the violently established ideal of rational norms of the state, as a functionally impersonal institution, but in the canon law traditions established in the administration of the church are implemented as submission to the hierarchal clerical administration which referred to the administrative order established by the prophets (Goldman, 1992).

According to Weber, this sinful empirical system can be contrasted with absolutely divine "*natural law*" where obedience to God is more important than obedience to man, which is implemented according to the apostolic law and becomes the religious duty of the state. This obligation, throughout the centuries, especially in the process of formation of medieval legal thought and order, has always been the subject of disagreements about which has more ethical considerations for the formation of legally established values: the postulates of religion or the state's social need for legally established public safety and order. Puritan statements about separation of state and church, or laws and canons, are especially close to these views.

Law, which is in general related to existence of a coercive group (legal coercion) that influences the regulations of a system so that they are implemented in society, may be relevant because coercive means themselves are relevant. Virtue has a voluntary character, where no one demands its observance, in contrast to law, where there is a certain sanctioned, legitimate and significant all-encompassing character. As Weber points out, between "virtue" and "law" there are many higher acts of religiosity that are incomprehensible to those for whom they do not exist as values, just as incomprehensible, for example, the teaching of human rights is to those who reject this teaching altogether. (Edward, 1949)

To understand social action (*soziales Handeln*), behaviour (*Verbalten*) and the sense (*Sin*) associated with it has always been the right, true and significant element and intellectual task both in terms of virtue, law and religion to the extent that they are internally justified, successive, in society, state and church, which form a single emotional bond, a single identity and a substance of values (Spencer, 1979). That is why Christian values, traditionally shaped natural rights and quintessence of the Renaissance and Reformation perfection – human rights – stand out as highly important.

On the one hand, canon law could be labelled as *Leges imperfectae* (from Latin – imperfect laws) if it was characterised as the heir of Latin law, which tries to resolve the relationship between law, convention and ethics, because it explains the norm of clerical action as a specific evaluative rational *faith*, which in moral and religious terms uses the "good" predicate. Moreover, it is religion that guarantees observance of norms. (Henderson, Persons, 1964)

However, as Weber points out, not all legally guaranteed systems, including conventional norms, claim ethical character, and legal norms, which in some cases are purely goal-oriented in nature, claim it even less than religious and conventional norms. Moreover, the church exercises moral coercion to guarantee the moral norms of religious ethics. (Weber, 2004)

Therefore, law can be hierocratic and guaranteed by the authority – the head of the church, while the statutes of the community association, i.e. canonic norms, are subject to both value-rational traditions and religious texts, which at the same time serve as a source of law for them, just as they serve as a regulation of secular administration. Canon norms, among other norms, are not more significant from the point of view of respect for traditions, nor are they more universal than other norms, perhaps due to their religious nature which are based on prophetically sanctioned and sacred customs.

As Weber writes: *"Fear of magical evil reinforces the psychic barrier against any lasting change in habits of conduct, which, oriented toward obedience to an established order, work to maintain it."* Therefore, traditions of canon norms *ultima ratio* serve the church in a hierocratic way to legitimately create monopoly of pressure where the power of the church aspires; due to its concept and mission, according to the usual and purposeful use of language, it is characterised by the nature of institutions (state administrations, Weber also uses the term *"enterprise"*) and claims to monopolistic dominion manifested in the form of church administration and order (Mommsen, 1984).

The question of how the church acquires these monopoly claims, if they can be called as such at all in the domain of domination or ruling, is unclear because the church, as an institution to which, as Weber points out, membership is acquired "by birth", while the circumstance of "institution" separates it from other associations of power, according to its position and status, there is a hierocratic domination of the domain and it has a paroxysmal territorial division, so that a specific hologram of introverted power would be more than understandable and legally correct in its many angles of application of canon law norms. (Vēbers, 2004)

It is precisely the observance of canon law which means that it is law founded on distinction or custom, for example, also on stricter forms of regulation, as well as observance of religious customs (Hiršs, 2008), and the assumption of autocephaly established within it suggests a certain legal succession which is referred to in spiritual texts and, above all, in the holy writings, or the Bible, similar to how it is summarised in the collection of dogmatic, religious, ethical and legal principles of Judaism, or the Talmud

(Georg, 1889). The autocephalous aspect of the habits and customs of this principle (from ancient Greek *autos* – self and *kephale* – head) is the relatively high autonomy and organisational independence in all aspects of law such as the promulgation of norms, laws, in a certain order and in a certain, strictly sanctioned, way of expressing power. However, the main aspect of heterocephaly (from ancient Greek *heteros* – other, different; *kephale* – head) is in the organisational dependence of the church association, namely, in the fact that its leadership is appointed from the outside, which is not related to the state, but more to the prescriptions determined by religious texts by some providence party or God.

Therefore, this characteristic is the governing circumstance of the church's autonomy, organisational and office independence (for example, regarding bishops), and they are not subject to any higher church official, since they form the sanctioned law *Themis* (*ius forma abstracta*) excluded from the order of outside world legality. (Hiršs, 2008) The external declaration of norms and independence from other, otherwise pragmatic, considerations illustrate Weber's proposal of creating and managing modern life, which can be described as "vocational equivalent of war". Thus, Weber presupposes this autocephalous nature of the church which he contrasts with the conjuncture of the state's political law, which according to him is violent. Namely, Weber says that: "*All political formations are violent formations*", and he agrees to a certain extent with the expression of Thomas Hobbes cited in "*Leviathan*" (1651) – *homo homini lupus est* (a man is a wolf to another man). It is rooted in the ancient and distant belief that in Christianity man is endowed with a deplorable set of rights because it, in its original form, is formed as a culture of beaten, a culture of lamentation and mourning, man is the one who cries (*is qui luget*); only later was established the idea that man is something more and the source of law is God himself, that man is treated as God's image (Vēbers, 1999).

To escape from the state of domination and come to true "humility", which will eliminate this turmoil, the way of thinking itself and approach to it must be transformed, which is said to be done by creating a special kind of domination, types of power, namely pastoral power. Pastoral power means training in the execution of the orders of superiors, while submission and humility must become a human virtue

Weber devotes his reflections as much to views based on ancient culture, as well as to contrasts between law and religion, and searches for the causes of their conflict and forms of radical manifestations, as only this can identify and clarify the influence of typical and consistent religious norms of the church in the domain of law. Therefore, in Weber's works, certain parallels can be drawn with the collapse of the golden age of philosophy, the invasion of barbarians and the spread of Christianity, and thus, church dogmatics. He draws great attention to culture, spirit of capitalism, social environment and their typology, as well as tries to form an opinion on the seemingly incompatible or, on the contrary, model of inseparable church-state relations. Weber highlights an idea that the slave of the ancient world and the thinking of the modern social proletarian can

understand each other as little as a European can understand a Chinese. Nevertheless, Weber admits that these capitalist relations cannot be viewed separately from other social vicissitudes and must be seen in the context of cultural phenomena, in this case together with the rules of church law, in their sense of canon law.

Conclusions

Weber links the church doctrine of canon law with the state, and politics with church. Law is viewed as an "objective force" driven by the spirit of the age, church dogmas, as religious pathos, are seen in acts sanctioned by state power, in their legitimacy. Following this, it can be found that there is no alternative to legal thinking in sociological sense. Whether we think as clerics, laymen or lawyers, it does not matter how but the legal regulation of the specified content is either significant or not, from which the legal relationship either exists or does not exist. Likewise, Roman (code) and Greek (philosophy) way of thinking is close to the lexicon of Christianity, only the form of their expression and understanding is different.

It is understood to be common for this religious-legal consciousness because it is the prophetic component of God's recognition that also forces us to recognise the ethically rational side of action, that is, domination from both the state and the church. Therefore, this highly important component of legal legitimacy can be guaranteed only internally – religiously with the hope of blessing and salvation of faith to preserve the legal order in question. In contrast, the religious component which is purely and practically maintained by the church, guarantees both internal and external order. Weber concludes that this order is quite close to law because it internally guarantees the pressure (moral or physical) exerted by a special state, unlike the church, as an apparatus whose direct functions include safeguarding of order and prevention of violations by force, but they always are and remain as *leges imperfectae* (imperfect laws).

Simultaneously, in the *Sermon on the Mount*, Weber sees the source of the legitimate violence of the state, which consequently creates the problem to submit oneself to God (as an absolute and universal concept) or to man (the state), or, in other words, Weber draws parallels as what comes first – faith in religion or law. In his works, Weber concludes regarding social teachings of the Christian church and groups where he reveals the profile of two ideal types – the capitalist spirit and the Protestant ethic, with special emphasis on Calvinism. He considers this in connection with the already quoted cosmopolitan statement of Benjamin Franklin, but it could be fruitful to illustrate it again together with another highlight used by Weber which reads something like this: "*Remember, time is money (..) remember, credit is money!*", which is used as the opposite to the church's otherwise internal religious asceticism against temporal benefit. Only then, by discarding this component of benefit, we have come to the essence of law. (Vēbers, 1999)

Weber's sociology of religion interweaves with sociology of domination, which is confirmed through the idea expressed by Weber and often mentioned by those who

study Weber's works on the conjuncture of the power economy and are interested in the religious and legal foundations of world asceticism as "political theology": "*Whoever wants to engage in world politics must be free from illusions about all things and must recognize a fundamental fact – the inevitable struggle of one man with another man in the world, as it in reality happens*". (Weber, 1919) Therefore, Weber recognises the patterns of interaction between asceticism and capital: *sovereign and subordinated or elite and mass*. Nevertheless, Weber does not base his reflections only on secularised concepts of theology and is not an adherent of the ideology of *Monitor and punish*, although, as already indicated, he values the worldly benefits quite similarly, as Kant describes it in his treatise of *Perpetual Peace*, in contrast to his predecessor Karl von Clausewitz who stated that: "*War is not a simple political act, but a real political instrument, a political continuation of traffic, its implementation by other means* (..)". Therefore, many institutions derive from the economic ethics of world religions but with more focus on the fact that law arises as a result of war, or more precisely "(..) *from a life and death struggle.*" (Vēbers, 1999)

When analysing the institutional church, Weber describes the structure of canon law as a "shading" of sociology of religion. According to this approach, modern state is something like the papal curia which can better prevent various conflicts with the help of priestly lordships or domination. This means that the church is an administration that is characterised by the following features which, in addition, coincide with the features of the state:

1) differentiated administration rank, as an institutional and legal structure;
2) rationalisation of cult and dogma, as a form of application of the norm;
3) claim and universal domination, as claims of atheists about general law;
4) creation of a rational system and successive rule, as a set of human rights elements;
5) relationship of loyalty between those who serve and those who rule, as a sovereign who serves the social consensus of power and religion.

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Digital Forensics and Criminal Policy: Latvian–Ukrainian perspective

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Abstract

Digital forensics and criminal policy are undergoing transformational processes related to technological development. In order to speed up the development of relevant knowledge and skills, a training process is intensively planned, which is characterised by a flexible approach to learning information. Learning digital forensics has certain challenges that both practising experts and future experts face. Therefore, in order to promote the development of this knowledge, it is important to offer international experience and knowledge transfer, including using open educational resources. The aforementioned would allow interested parties to gain in-depth knowledge in the field of digital forensics using the approach of different countries both in theory and in practice. The purpose of the article is to outline the role of digital forensics in modern life, as well as to emphasise its connection with the implementation of criminal policy. The article will examine the point of view of both Latvia and Ukraine on the development of digital forensics in interaction with the creation of forensics.

Keywords: digital forensic, open education, science.

Introduction

Scientific and technological progress in countering crime as well as the general digitalisation of all social spheres are closely linked to the development of a new field of forensic knowledge – digital forensics and the use of digital evidence in the process of obtaining proof. An important trend of criminology is the integration of knowledge, offering the latest, innovative developments of science aimed at solving the tasks of combatting crime (Shepitko, 2019).

Digital forensics and criminal policy is a component of science that has been widely used in the development of technological progress around the world. Both in theory and in practice, digital forensics and criminal policy are specific and the scope of their knowledge and skills depends on several factors (Margot, 2017).

Modern society is also called digital society. Essentially, it is a parallel and virtual world, creating new realities and precisely identifiable identities that are not always comprehensible. Digital technologies are gradually beginning to cover ever wider fields and areas of activity. As a result of the influence of objective and subjective factors, public life is moving towards the electronic environment, where our existential future is also possible. The legal field is not an exception either, in which digital legal proceedings and record keeping are successively included, also using electronic evidence. Digital forensics is interesting and promising, where innovative technologies are used to analyse the state of crime, predict its trends and develop proactive measures to prevent it.

Modern criminality increasingly uses modern technologies, including remote digital ones, which significantly expands the income of criminal organisations and makes it difficult to detect relevant crimes. In this context, the creation and improvement of new technological approaches in the detection of criminal offences is particularly effective.

Therefore, 21st century forensics must be methodologically and innovatively different from the crime detection processes of the last century, which are based on new technologies and innovative methodologies. The law enforcement system, following the process of transformation of criminal structures, creates and determines the development of *digital forensics*, which is a sub-branch of legal science regarding finding, taking and using possible evidence, in accordance with the provisions of the Criminal Procedure Law, as well as about the scientific research of objects of a criminal nature, using a new methodology. It can be recognised that the emerging digital forensics is a branch of forensic technique and methodology that deals with the acquisition of possible elements of a criminal nature on digital devices, their identification and the performance of investigative activities (expertise) in connection with cybercrimes. Originally, the term "digital forensics" was used as a synonym for computer forensics. By its very nature, digital forensics is the process of recording, identifying, preserving, analysing and documenting digital evidence, with the aim of adding relevant evidence to criminal cases, or using it in civil or administrative proceedings.

One of the known early cybercriminals is Kevin David Mitnick. In 1979, at the age of 16, K. Mitnick gained unauthorised access to a computer network for the first time. He broke into the DEC computer network and copied their software. DEC spent USD 160,000 on eliminating the consequences. Only in 1988 was he convicted of this crime. The conviction was based on digital evidence that proved K. Mitnick's unauthorised access to the DEC computer system. He was sentenced to 12 months in prison and three years of supervised probation. At the end of his probation, K. Mitnick still committed cybercrimes for which he was wanted. By the time of his arrest in 1995, he had become the most wanted computer criminal in the United States. It must be admitted that the cybercrimes committed by K. Mitnick and others contributed to the development of digital forensics.

Digital forensics is traditionally used in the activities of law enforcement agencies, recording possible criminal offences against users of digital technologies, unauthorised (illegal) intrusion into computer networks, illegal use of a wireless network, unauthorised access to restricted or private databases, development and use of malicious software, hacking of e-mails, theft of electronic identity data or its use, etc. It is traditionally associated with criminal proceedings where evidence is collected. Digital forensics is often part of a larger investigation that spans multiple disciplines. In some cases, the collected data is used as operational information for purposes other than legal proceedings (e.g., to detect, identify or stop other crimes).

Digital forensics in the current conditions, which is related to the socio-political order and the specific development trend of society, significantly overcomes the new boundaries. Forensic and security technologies are broader than the framework of forensic science.

Also worth noting are the main challenges facing digital investigation:

1) the sharp increase in the number of computers and other digital technologies, as well as the widespread and intensive use of internet access;
2) availability of simple hacking tools;
3) a specific process of taking and analysing digital material evidence, which often complicates criminal prosecution;
4) a large amount of disk space in terabytes, which makes this research work difficult;
5) any technological changes require updates or changes in solutions;
6) electronic records are extremely expensive to produce and store;
7) lawyers must have extensive and sufficient computer knowledge;
8) in the investigative process and in the courts, reliable and convincing evidence must be presented;
9) if the tool used for digital forensics does not meet the set standards, then the evidence in court can be rejected by the judge;
10) the lack of technical knowledge of the investigator may not have the desired result;

11) digital investigation has *new specific capabilities*;
12) new technologies provide additional opportunities to gather sensitive information when computer systems or networks are compromised;
13) cybercriminals can be effectively tracked from anywhere in the world;
14) help protect the material resources of digital technology users;
15) enable the obtaining, processing and interpreting of accurate digital evidence that proves the guilt of defendants in court.

1 Digital Forensics Is Used in the Learning Process

Digital forensics is also used in the process of learning forensics. In this process, there are opportunities to perform a virtual inspection of the scene, and the creation of a simulated scene. Modelling virtual situations and creating an appropriate training complex is useful for future investigators, operational officers, and law students.

The interactive training system allows one to simulate virtual forensic landfills, including accident sites, and to create training scene viewing scenarios. Situations can be used to practise qualitative investigative activities using specific forensic techniques (Kummer, Delémont, Voisard, & Weyermann, 2022).

Digital forensics can be used by comparing the nature of the criminal offence, and the means to be used, in order to record the coincidence of the specific crime with violations of an analogous nature in operational mode. Thus, the New York Police Department has developed artificial intelligence crime recognition computer software called *Patternizr*. The software, which is available in the unified intelligence database, allows each of the department's 77 police stations to compare robberies, thefts, murders or attempted murders with hundreds of thousands of crimes recorded in the New York Police Department's information system. So, for example, the software made it possible to detect two thefts, which were carried out in different regions, by identifying the suspect where a drill was used to break into the property. The person responsible was arrested and found guilty of theft as well as violent assault.

Currently, counterfeiting of Covid vaccine and testing certificates is increasing. There is an increase in the number of relevant service offers. So, in the UK, more than 1,200 fake sellers operating around the world have been caught offering fake documents with a negative Covid test result for £ 25. By March 2021, digital forensics researchers identified more than 1,200 respective service providers. Only certain software can be accessed on the respective internet network. Encrypted messages are available on the platforms WhatsApp, Telegram and Jabber.

2 European Union Criminal Law Policy in the Field of Digital Forensics

The European Union's security strategy aims to improve cross-border access to electronic evidence in criminal investigations. Electronic information and evidence is required in approximately 85% of serious crime investigations, while 65% of all requests are sent to service providers based in another jurisdiction. The EU can help law enforcement agencies develop the necessary capabilities to identify, secure and read data needed to investigate crimes and use that data as evidence in court. The Commission will explore measures to improve law enforcement's digital investigative capabilities, identifying how best to use research and the development of new technologies to create new tools for law enforcement, and how training can offer the right skill set for law enforcement and the judiciary.

Due to the intense development of cybercrime, the EC Council has created a certified forensic investigation programme (Council's Certified Hacking Forensic Investigator (CHFI)). EC Council Certified Hacker Forensic Investigator is the only comprehensive ANSI-accredited programme that provides organisation, vendor-neutral training in digital forensics. CHFI provides a rigorous understanding of digital forensics, introducing a detailed and methodological approach to digital forensics and evidence investigation based on the Dark Web, IoT and Cloud Forensics information analysis. The tools and techniques included in this programme focus on an innovative approach to digital investigations for trainees using revolutionary digital forensics technologies. The programme is designed for IT professionals involved in information systems security, computer forensics and incident response. Such a new approach will help strengthen the applied knowledge of digital researchers in digital forensics, cybercrime investigators, forensic analysts, incident responders, and security executives. But in this case there are also challenges related to data protection during the provision of the process (Verma & Ramanathan, 2022).

3 Digital Forensics Is Developing in Ukraine

Digital forensics is developing fairly rapidly in Ukraine. Its development is enhanced by new challenges caused by aggression from the Russian Federation and the need to develop new remote electronic tools for searching, collecting, recording and investigating traces of criminal offences (Kriminalistika ir teismo ekspertologija: mokslas, studijo, 2022).

The development of digital criminology takes place in three main directions:

1) the formation of a separate scientific field in criminology;
2) application of special knowledge when working with digital evidence;
3) conducting forensic examinations (in particular, computer and technical examination) (Shepitko, 2021).

Due to the accelerated forming of digital forensics, different definitions of it have been given by Ukrainian scientists. Mykhailo Dumchykov offers to define "digital forensics" as a new science dedicated to the issues of working with specific information traces, developing modern technologies to optimise the activity of the investigator, expanding the possibilities of interaction of various law enforcement agencies, expert institutions in the investigation of crimes (Dumcikov, 2020). Anna Kolodina and Tetyana Fedorova marked out "digital forensics" as an applied science of solving crimes related to computer information, researching digital evidence, methods of finding, obtaining and securing such evidence (Kolodina & Fedorova, 2022). There is also a more succinct definition of "digital forensics": applied science, the main purpose of which is the analysis and investigation of cybercrimes (Rudyy, Senyk, Rudyy, & Senyk, 2018).

In Ukraine, the understanding of Digital forensics is related to international definitions. Nevertheless, in practice these definitions are broader than the national understanding of digital forensics.

Definitions similar to these are offered by other researchers. Marie-Helen Maras in her book "Computer Forensic: Cybercriminals, Laws, and Evidence" says: "*Digital forensics is a branch of forensic science that focuses on criminal procedure law and evidence as applied to computers and related devices*" (Maras, 2014). According to Ademuyiwa Sanya-Isijola "digital forensics" is the collection, preservation, analysis and presentation of digital evidence extracted from any source of digital evidence that can be used to identify criminal activities or other activity that constitutes a violation" (Sanya-Isijola, 2009). Some scientists divide "computer forensics" from "digital forensics" like Talib M. Jawad Abbas did: "*Computer forensics focuses on extracting evidence from a particular platform (Computer), digital forensic covers extracting evidence from all forms of digital evidence*" (Jawad Abbas, 2013).

Common to all definitions is the application of the provisions of digital forensics in the investigation of offences committed in "cyberspace" and with the use of certain devices.

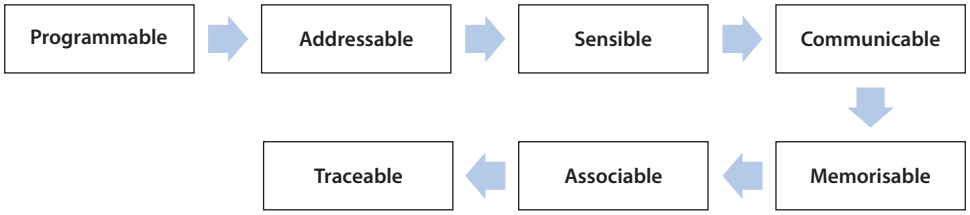
"Cyberspace" is defined in Ukrainian legislation by forensic scientists and lawyers, whose definitions are mainly common and similar in content.

According to the Law of Ukraine "On the Basic Principles of Cybersecurity in Ukraine" (2017) cyberspace – an environment (virtual space) that provides opportunities for communication and/or the realisation of social relations, resulting from the operation of shared (interconnected) communication systems and the provision of electronic communications using the internet and/or other global data transmission networks. Dmytro Dubov interprets it as an environment created by an organised set of information processes on the basis of information, telecommunication and information-telecommunication systems united by general principles and rules, regardless of the form of ownership (Dubov, 2014).

Cyberspace is an environment, where digital traces of cybercrimes are left. Digital traces – technical devices or devices designed to receive and process information in digital

form using digital technologies (Avdejeva, 2018). As with other types of evidence, digital traces can be characterised by specific properties.

Specific properties of digital traces are as follows. There is another list of digital traces properties given by Jonas Hedman, Nikhil Srinivasan and Rikard Lindgren (Hedman, Srinivasan & Lindgren, 2013). They describe digital traces as:



Here we can see that both lists of marked out properties relate to digital traces as a result of the criminal's influence on digital information by accessing it, and constitute any changes related to the crime.

The subcommittee on standardisation in the field of information technology security of the International Organization for Standardization and the International Electrotechnical Commission (ISO/IEC JTC 1/SC 27 "IT Security techniques") of the Joint Technical Committee on Information Technology (ISO/IEC JTC 1 "Information technology") made the first attempt to regulate work with digital evidence by publishing the first international standard – ISO/IEC 27037:2012 "Information technology. Security techniques. Guidelines for the identification, collection, acquisition and preservation of digital evidence". Currently, this standard has been harmonised in Ukraine by being translated, and from 1 January 2019, it entered into force as the National Standard of DSTU ISO/IES 27037:2017 (ISO/IES 27037:2012, IDT) "Information technologies. Protection methods. Guidelines for the identification, collection, acquisition and preservation of digital evidence" (Nakaz Ukrainim, 2017; Nacionalnij Standart Ukraini, 2019).

3 Cases of Using Special Software in Ukraine

Computer systems in the field of forensic research include, for example, the "Rikoset" ballistic system. Foreign systems "Balex" used in the examination of firearms, "Kortyk" examination of cold weapons, "Avtoeks" investigation of vehicle collisions with pedestrians and many others (Ivanov, Ivanov, Karasjuk, 2010).

Also, among the programs for automating examinations, the following can be distinguished: "Pocerk", "Oldman", "Left", "AGE. SEX"; for portrait examination – "BARSPortret", "Portret-Poisk"; for examination of video and sound recordings – "PINGUIN – IP", "EXPAD", "Signal Viewer"; for the research of materials, substances and products – "Provoloka", "Spirt", "Farm", for explosion research – programme for

determining the power of an explosive charge "Руїна" (Hahanoskij, 2011). In Ukraine, statements and notifications about offences or events can be sent to the "102" unit using various types of communication, the integration of which with the "Information Portal of the National Police of Ukraine" system is allowed by the National Police of Ukraine, in particular: in the form of short text messages (SMS messages); by e-mail; from mobile applications; other specialised software and technical means (Rudyy, Senyk, 2018).

Conclusions

There is a growing interest in digital forensics, which is indicated both by the lack of experts at the national level, and also by the number of crimes based on offences committed in the digital environment, or offences that require digital skills for their detection. Accordingly, the demand for specialists is also increasing, but there are several obstacles to meeting the demand, related to both national-level policy planning and international regulation, which limit educational opportunities.

It is important to define the scope of digital forensics from a scientific perspective and study its impact on forensic science as a whole.

There is a clear lack of standardisation and structure in both existing educational programmes and those developing new digital forensics programmes. Proper exchange of information between educational and professional institutions, and an expanded educational base with cross-border practice is not established.

The field of digital forensics and its various sub-fields such as mobile devices, cloud, network and vehicle forensics have continuously attracted academic interest and attention.

Improving the quality of digital forensics can be achieved using open educational resources created based on requirements at the national level, but at the same time not limited to national expertise, but involving cross-border partners.

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