The legal protection of the interests of persons who have not committed criminal offences in the case of criminal procedural infringements – when and where the State draws the lines

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Abstract

The contemporary criminal proceedings are characterised by the fact that increasingly more often alongside the interests of persons directly linked to a criminal offence also the economic interests of other persons are infringed upon, through the expansion of the institution of the so-called mechanism of confiscation of property not based on sentencing, etc. The article focuses on the legal protection of these persons and the relevant issues of it. The article examines the issues of the circle of persons, who due to the infringement on their economic rights have the rights but have not been granted the rights of an active participant of the criminal proceedings, as well as the scope of rights of these persons as participants of criminal proceedings. In difference to deciding on the issue "guilty or innocent", which both on the national and the international level has a relatively strictly enshrined model, in deciding on the so-called "secondary" or "consequential" issues, a strict model like this is absent. Hence, the State should decide on the matter of how to ensure full legal protection to persons if their rights have been restricted. Undeniably, also in this case, the requirements regarding a fair procedure should be met. However, the matter, whether and – if – to what extent various rights should be granted in the framework of criminal proceedings, needs to be discussed. The article, based on the analysis of the Latvian experience, outlines some lines of discussion and provides the authors' assessment of the possible development thereof. The issues that are raised by the Latvian discussion might be useful for creating and developing discussion also in other states.

Keywords*: criminal procedure, infringement on economic interests, legal protection.*

JEL Classification: K14, K29, K41, K42

1. Introduction

The society predominantly associates the words "criminal law" and "criminal procedure" with a criminal offence that has been committed, with a perpetrator who should be found and punished. Personal observations show that for a long time this perception prevailed not only among people unconnected to jurisprudence but also in a large part of lawyers who often have distanced themselves from the field of criminal law believing that it is pronouncedly separate and unrelated to daily life. However, recent developments have brought fast changes into this attitude and the majority of lawyers are becoming aware that criminal law has become an indispensable part of not only of daily but also commercial life. This is clearly confirmed by the rapid development of a new line

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of research in legal science – business criminal law, introduction of new study courses into the study of law[3] and even opening new study directions. This leads to the conclusion that within the framework of this topic both the aspects of substantive law and issues of criminal procedure need to be focused on since both are of almost equal significance. This article, to the extent its scope allows, will outline a number of situations that attract interest, in particular, the issues of criminal procedure and the legal status of those persons whose economic (*inter alia*, business) interests have been infringed upon in the course of criminal proceedings. The first issue to be examined is whether the persons who have been infringed on should or should not be ensured the status of an active participant in the proceedings, and, the second, the scope of rights that the respective persons should be granted.

Diverse methods have been used in preparing this article, which are typical of research in legal science, – analysis and synthesis of legal literature, case law and regulatory enactments in order to reveal the model that is used in Latvia with respect to the legal protection of the so-called "third persons" within the framework of criminal proceedings; the analytical method – the method was used in researching the findings expressed in the legal doctrine and in case law, Latvian and international legal acts, as well as other materials needed to reveal the topic; the inductive and deductive method – the inductive method was used to substantiate the generalised conclusions that were made, in analysing concrete cases from practice. The deductive method, in turn, was used, to reach conclusions, following theoretical guidelines and general findings.

2. The infringement on a person's economic (property) interests as the grounds for the status of a participant in the proceedings. A short insight into the history of Latvian legal regulation

Criminal proceedings are associated with the generally known participants of the proceedings – the possible guilty person (the suspect, the accused, etc.), the victim, witnesses, experts, persons who direct and are responsible for the proceedings, etc. However, in the course of implementing criminal procedure, in view of the diversity of matters that have to be dealt with, other persons may be involved as well. A fair resolution of criminal law relationship comprises not only identification and possible punishment of the perpetrator but also other matters, of which property issues are among the most important in the contemporary world (compensation to the victim for the inflicted harm, collection of procedural costs and handling of criminally acquired property). These issues may pertain not only to

[3] For example, the Faculty of Law of the University of Latvia is planning to offer, beginning with the next study year, a study course "Criminal Law Aspects of Entrepreneurship".

the so-called constant participants of the proceedings, as, for example, the victim and the accused, but also other persons who are not directly linked to the criminal offence. Thus, for instance, pursuant to the Latvian Criminal Procedure Law (hereinafter - CPL)[4]:

- another person, not the one recognised as being guilty, can be imposed the duty to pay compensation (CPL Section 353 provides that the duty to pay compensation may be imposed on the parents of a minor who has committed a criminal offence);
- property belonging to another person, who have not bee found guilty, can be confiscated. In accordance with CPL, this is possible if the property is confiscated as criminally acquired or as "a substitute for criminally acquired property"[5].

Also, an infringement of economic nature (*inter alia*, an infringement on business interests) in the due course of criminal proceedings can be inflicted upon other persons, for instance, persons who, with respect to property to be confiscated, have been a pledgee, etc. It seems valid to advance the question – if the interests of these persons may be infringed upon in the course of proceedings should they not be ensured the status of a participant in the proceedings?

In view of the fact that, presumably, the majority of the readers of this article do not have the knowledge of the Latvian legal provisions, a very brief insight into the history of legal regulation linked to the issue under examination needs to be provided. CPL, which is currently in force in Latvia, was adopted on 1 April 2005 and entered into force on 1 October 2005, thus replacing the Latvian Criminal Procedure Code (hereinafter – LCPC) that was in force prior to it[6]. A comparative analysis of these laws leads to the finding that the amendments to the legal norms that regulate criminal procedure have been substantial and have affected both the basic rules of the procedure, the structure, the general issues, as well as the regulation on particular legal issues. Likewise, the changes in the circle of participants in criminal proceedings, the understanding and legal statuses thereof[7] must also be recognised as being substantial. CPL, in difference to LCPC, has a separate chapter dedicated to the participants of criminal proceedings. However, not all participants of criminal proceedings are included and legally regulated in this chapter. Hence, the regulation on the legal status of a number of

[4] The Criminal Procedure Law: the Law of 1 April 2005. Latvijas Vēstnesis, 2005.gada 11. maijs, nr. 74. Entered into force on 1 October 2005. The document is available online at: https://www.vestnesis.lv/ta/id/107820-kriminalprocesa-likums Consolidated version is available online at: http://likumi.lv/doc.php?id=107820 [accessed on 4 November 2018].

[5] See in greater detail: Smans A., *Legal regulation on handling criminally acquired property and its impact upon business environment – the experience of Latvia*, „Juridical Tribune – Tribuna Juridica", Volume 8, Issue 1, March 2018, pp. 179-200.

[6] The Latvian Criminal Procedure Code; the lLw of the Supreme Soviet of the LSSR of 1961. Void since 1 October 2005. The consolidated version available at: http://likumi.lv/doc.php?id=90971 [accessed on 4 November 2018].

[7] See in greater detail: Meikališa Ā., Strada-Rozenberga K. *Krimināl*process.Raksti 2005-2010. Rīga : Latvijas Vēstnesis, 2010. 68.-111.l pp.

participants in criminal proceedings was and continues to be included sporadically in other chapters of CPL, whereas no procedural status whatsoever has been envisaged for a number of persons whose interests and rights can be infringed upon in the course of proceedings. In a publication of 2005 one of the authors of this article, indicated as the latter also those persons, with respect to whose property criminal procedural decisions could be adopted in the course of resolving property issues but to whom a permanent procedural status had not been established[8].

This situation remained unchanged until the spring of 2009, when with the law of 12 March 2009[9], which entered into force on 1 July 2009, the next amendments were introduced to CPL and a new participant of criminal proceedings was added to the law – "the owner of property infringed during criminal proceedings". The legislator's motivation for introducing this status is not available in the publicly accessible materials that document the adoption of the draft law[10]. The annotation to the respective draft law makes no reference to the necessity for introducing such amendments, which can be explained by the fact they were non-existent in the initial version of the draft law. The amendments were initiated by the Ministry of Justice for the 2nd reading and were accepted. No discussions were held of this matter during the plenary session of the *Saeima* [the Parliament]. Between the 2nd and the 3rd reading amendments are introduced to the proposal by the Ministry of Justice, i.e., during the 2nd reading the respective participant is called "the owner of the property that has been infringed upon in criminal proceedings", whereas during the 3rd reading already the concept "the owner of property infringed during criminal proceedings" appears.

Within the criminal procedure, the legal status of the owner of property infringed during criminal proceedings" is regulated, basically, in the newly adopted CPL Section *111[1]*, which initially was worded very briefly: *"CPL Section 111[1]. Rights of the Owner of Property Infringed during Criminal Proceedings. If the rights to take action with a property of owner or legal possessor have been limited or deprived as a result of procedural activities and if such person does not have the right to defence provided for in this Law, the owner or legal possessor of such property shall have the following rights personally or via mediation of a representative: 1) to express his or her attitude orally or in writing towards decisions taken in respect of the property; 2) to submit applications or complaints regarding conduct or decisions of officials in respect of the property."*

Shortly after the adoption of the respective amendments, we already expressed our critical observations thereof. The further developments show that the criticism had been partially heard and later amendments to CPL were introduced.

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[8] *Ibid.*, 70-71.lpp.

[9] Amendments to the Criminal Procedure Law: the Law of 1 July 2009. Latvijas Vēstnesis, 2009.gada 1. aprīlis, nr. 51. Entered into force on 1 July 2009. Available at: https://www.vestnesis.lv/ta/id/190010-grozijumi-kriminalprocesa-likuma [accessed on 4 November 2018].

[10] Here and henceforward the document related to the adoption of the draft law (annotations, tables of proposals for the 2nd and the 3rd reading) is available online at: http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/webSasaiste?OpenView&restricttocategory=192/Lp9 [accessed on 4 November 2018].

Amendments to CPL Section *111[1]* were introduced in the summer of 2012[11] and in the summer of 2017[12], substantially changing the legal regulation of the property owner infringed upon in criminal proceedings. Currently, CPL Section *111[1]* is in force in the following wording:

"*111.[1] Rights and Duties of the Owner of Property Infringed during Criminal Proceedings*

(1) If the rights to take action with a property of owner or legal possessor have been limited or deprived as a result of procedural activities and if such person does not have the right to defence provided for in this Law, the owner or legal possessor of such property shall have the following rights in the pre-trial criminal proceedings personally or through the intermediation of a representative:

1) to express his or her attitude orally or in writing towards decisions taken in respect of the property;
2) to submit applications or complaints regarding conduct or decisions of officials in respect of the property;
3) to invite an advocate for the receipt of legal assistance.

(2) In addition to the rights laid down in Paragraph one of this Section the owner of property infringed during criminal proceedings on whose property an attachment is imposed shall have the following rights in a court of first instance:

1) to find out the place and time of the trial in a timely manner;
2) to submit a recusation to the composition of the court, an individual judge, a maintainer of state prosecution, and an expert;
3) to participate himself or herself in examination of a criminal case;
4) to express his or her views regarding origin of the property;
5) to participate in an examination performed directly and orally of each piece of evidence to be examined in court;
6) to submit applications in relation to the property;
7) to speak in court debates in relation to the property;
8) to familiarise himself or herself with a court ruling and the minutes of a court session;
9) to appeal a court ruling regarding a property in accordance with the procedures laid down in the law.

(3) If a ruling of a court of first instance is appealed in the part which affects the rights of the owner of property infringed during criminal proceedings on whose property an attachment is imposed to act with the property, the court that made the ruling shall send him or her copies of received appellate complaints or protests, but an appellate court shall notify of the time, place, and procedures for

[11] Amendments to the Criminal Procedure Law: the Law of 24 May 2012. Latvijas Vēstnesis, 2012.gada 13.jūnijs, no. 92. Entered into force on 1 July 2012. The document is available online at: https://www.vestnesis.lv/ta/id/249047-grozijumi-kriminalprocesa-likuma [accessed on 4 November 2018].

[12] Amendments to the Criminal Procedure Law. the Law of 22 June 2017. /LV, 132 (5959), 05.07.2017, entered into force on 01.08.2017. The document is available online at: https://www.vestnesis.lv/op/2017/132.9 [accessed on 4 November 2018].

the examination of complaints or protests. In an appellate court, the owner of property infringed during criminal proceedings on whose property an attachment is imposed has the same rights as in a court of first instance, as well as the right to maintain and justify his or her complaint, or withdraw such complaint.

(4) If a ruling of an appellate court is appealed in the part which affects the rights of the owner of property infringed during criminal proceedings on whose property an attachment is imposed to act with the property, an appellate court shall send him or her copies of received cassation complaints or protests, but a cassation court shall notify regarding the time, place, and procedures for examination of complaints or protests. In a cassation court, the owner of property infringed during criminal proceedings on whose property an attachment is imposed has the same rights as in an appellate court, as well as the right to submit written objections or views regarding the complaints of other persons, insofar it applies to his or her property.

(5) The owner of a property infringed during criminal proceedings has an obligation, upon a request of the person directing the proceedings, to notify his or her postal or electronic mail address for receipt of consignments in writing, as well as to inform regarding the change thereof. By this notification the owner of a property infringed during criminal proceedings pledges to receive the consignments sent by the official performing criminal proceedings within 24 hours and to arrive without delay upon a summons of the person directing the proceedings or to fulfil other referred to criminal-procedural duties."

3. The status of an active participant of proceedings for a person, whose economic interests are infringed or the infringement is foreseeable, desirability or necessity?

At the moment when Section 111^1 was added to CPL, one of the first critical observations that was made was that "a provision has not been added to CPL [..] that would provide the understanding of the "owner of property infringed during criminal proceedings."[13] The absence of the concept of the owner of property infringed during criminal proceedings as a participant of criminal proceedings remains, which, thus, continues to give grounds for non-homogenous solutions and discussions. A number of aspects are unclear. The content of the first part of CPL Section 111^1 allows recognising that, pursuant to the current wording of the norm, "the owner of property infringed on" could be recognised as being the owner or the legal possessor, who as the result of procedural activities has been restricted in or deprived of activities with the property, if, in the particular proceedings, he is not the person who has the right to defence. Hence, for a status like this to arise, the following pre-requisites must be met:

- existing property

[13] Meikališa Ā., Strada-Rozenberga K. *Krimināl*process.Raksti 2005-2010. Rīga : Latvijas Vēstnesis, 2010. 209.l pp.

- the owner or legal possessor of the property
- actions with the property have already been restricted or deprived of
- the respective person, who owns or legally possesses the respective property, is not the person who has the right to defence in the particular proceedings.

This position has been in force since "the introduction" of the owner of property infringed on, notwithstanding the criticism that was expressed and several amendments to CPL.

Part of the critical comments is related to terminological incoherence, as, for example, the use of the concept "property" (often "property" is applied to situations, where, actually, "property" is not discussed but rather the right to something (receiving benefits, etc.)[14] Alongside terminological, other aspects emerge, which are essential for the very foundations of the institution's existence. Basically, these are linked to the reference that only a person, whose right to handle property already has been restricted or deprived, acquires the status of an owner of property infringed during criminal proceedings. Hence, this norm is applied only to such persons, whose rights to handle property, as the result of procedural activities, already "are restricted" or he "had been deprived" of the rights, although in many situations persons should be involved in the proceedings before such decisions are accepted, so that they could protect their interests already in the process of decision making. Thus, it can be assumed that the existence of a separate status should be envisaged also with respect to persons, whose right to handle their property or possession have not been restricted yet but could be restricted in the course of proceedings or at the conclusion thereof.

Moreover, it cannot be said that CPL does not envisage such persons as the participants of criminal proceedings already now. Thus, for example, CPL Chapter 59, which regulates the proceedings regarding criminally acquired property[15], does not use the concept of " the owner of property infringed during criminal proceedings" at all but refers to persons "related to the particular property", persons "from whom the property has been seized or on whose property attachment has been imposed", "other person who has right to the particular property", and who, *inter alia*, have been envisaged the right to participate in the proceedings, to submit applications, etc.

Hence, actually, it can be admitted that there are several situations in Latvia regarding the legal status of those persons, whose property (including business) interests could be infringed upon in the course of criminal proceedings –

[14] See in greater detail: Meikališa Ā., *Krimināprocesā aizskartā mantas īpašnieka tiesiskais statuss un aktuālā problemātika. Grām: Juridisko personu publiski tiesiskā atbildība: Aktualitātes, problēmas un iespējamie risinājumi*. Rīga: Latvijas Universitātes akadēmiskais apgāds, 2018., 279-280.lpp.

[15] I.e., in particular, in the type of proceedings, where already in the pre-trial stage of the proceedings the issue of criminally acquired property is separated from the so-called basic proceedings. I.e., during these proceedings the matter that is examined is not the guilt or innocence of a person but only the matter of the criminal origins of property.

in the proceedings implemented in the so-called general procedure 1) they are to be recognised as the owners of the property that has been infringed upon in criminal proceedings and have the rights of an active participant in the proceedings, or 2) they have no procedural status whatsoever, if there is no infringement upon the possessor or the owner of the property and also if the infringement is not yet actual but is only probable. Whereas in the so-called special proceedings regarding criminally acquired property, they are summoned to the proceedings sporadically – only for the examination of the case in court, and are persons who are summoned to the court as persons, who have the right to property, etc. In this case, which persons should be summoned is decided by the person directing the proceedings, who initiated the proceedings regarding criminally acquired property, i.e., the investigator or the prosecutor.

Returning to the understanding of the owner of property infringed on, it can be recognised that the legislator has not supported the idea of expanding the understanding of the so-called owner of property infringed on, by including in it a broader circle of persons. The Ministry of Justice objected to this, noting: "The solution offered in prof. Ā. Meikališa's article comprises a number of aspects that require in-depth discussions. For example, the solution that is offered significantly expands the scope of obligations of the person directing the proceedings. Likewise, the solution should not disproportionally prolong the criminal proceedings, the basic task of which is to resolve the criminal law relationship. Likewise, the range of subjects, whose legal interests in resolving the property issues might be infringed upon, is disproportionally broad"[16]. Consequently, at present, pursuant to CPL Section 111^1, the criminal procedural status still has not been defined for the persons, who are not the owners or legal possessors of the property, for example, the pledgees, etc., as well as for the persons, whose actions with their property have not been restricted yet (i.e., it has not been seized or an attachment has not been imposed on it) but that might happen in the future (for example, by imposing the duty on parents to cover the compensation for the harm inflicted by their minor child). It is worth noting, though, that, notwithstanding the refusal expressed in the annotation to the law, quoted above, to broaden the understanding of the owner of property infringed upon in criminal proceedings, not amending CPL Section 111^1 in this respect, amendments have been introduced to CPL which, in a certain way, partially (only as regards rights) applies the status of "the owner of property infringed in criminal proceedings" to a broader circle of persons. I.e., the new CPL 361^1(2) provides that "In imposing an attachment on property, the owner, possessor, user, or holder of such property shall be notified regarding a prohibition to act with or use, such property, as well as regarding the rights of the owner of property infringed during criminal proceedings." In interconnection with the statement made in the annotation to the draft law that "it has been established in

[16] Likumprojekta Nr. 630/Lp12 "Grozījumi Kriminālprocesa likumā" sākotnējās ietekmes novērtējuma ziņojums (anotācija). The document is available online at: http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/AB2871419A747C7FC2258011002DD2FA? Open Document [accessed on 4 November 2018].

CPL Section 362 that, upon imposing an attachment on property, its owner, possessor, user or holder is informed about the prohibition to act with or use such property, but, if necessary, the property is seized and transferred for storage. Hence, it is ensured, *inter alia*, that the person, on whose property an attachment is imposed, may effectively exercise his procedural rights…", and "it is envisaged to include in Section 15 of the draft law (CPL Section 361^1) a norm that, upon imposing an attachment on property, its owner, possessor, user or holder is informed about the rights of the owner of property infringed during criminal proceedings to ensure that the owner of property infringed during criminal proceedings is informed about all his rights to participate in criminal proceedings and defend his interests", admitting that, irrespectively of not amending CPL Section 111^1, actually, the rights of the owner of property infringed in criminal proceedings have been granted also to the holder and user of the property on which an attachment has been imposed. It is hard to say, whether this has been a deliberate action by the Ministry of Justice and the legislator; however, thus "the scope" of the owner of property infringed during criminal proceedings has been expanded, moreover, in a direction, which, possibly, was less important, if we assess the "legal connection" of the respective persons to the property, on which an attachment has been imposed.

Likewise, it is equally important to note that the legislator, to a certain extent, appreciated also the efforts made by the Latvian Association of Commercial Banks, and, although the status of the owner of property infringed during criminal proceedings was not applied to mortgage loan providers, nevertheless, such amendments were introduced to CPL by which the following reference was included in CPL: "If in relation to property on which an attachment is being imposed a mortgage or commercial pledge has been registered, the person directing the proceedings shall inform the mortgage creditor or commercial pledgee about the taken decision. Upon receipt of information regarding imposing of an attachment on a property, a mortgage creditor or commercial pledgee have the right to submit documents regarding the origin of property." Hence, actually, in criminal proceedings another possible participating person is created, who has been granted some, although pronouncedly restricted, rights, – the mortgage creditor and the commercial pledgee.

Most likely, the discussion on the understanding of the owner of property infringed in criminal proceedings has not been concluded yet, and also the legislator will have to revisit it, possibly, both expanding the circle of persons vested with procedural rights and narrowing it, excluding the persons who do not have significant/permanent legal interest in the property, the handling of which is/will be restricted during the proceedings. In this respect, also the position expressed in the European

Directive of 3 April 2014 of the European Parliament and of the Council No. 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds

of crime in the European Union[17] is important with respect to the need to ensure effective procedural protection to persons, whose interests are infringed in the course of confiscating property[18].

Recognising the legislator's right to define the circle of persons involved in criminal proceedings and the degree of their legal safeguards, we, nevertheless, continue supporting the view that in the interests of ensuring a fair procedure the circle of persons, which enjoy procedural rights in connection with a probable infringement on their economic interests, should be expanded. It can be assumed that the failure to grant active rights in these situations (at least with respect to the right to appeal a decision, to submit applications, requests, etc. in the course of enforcing the ruling) is incompatible with the requirements of a fair procedure with respect to these persons. This status should be applicable to all persons, whose lawful economic interests are directly infringed on or might be infringed on during criminal proceedings. Possibly, references to concrete legal statuses like "owner", "possessor", etc. should be avoided, as they might cause problems related to the understanding of these terms, in applying these terms in particular cases, etc. It is proposed to substitute these by more "general" formulations that would allow a more flexible solution, more appropriate for each particular situation. This participant could be called, for example, "a person interested in the solution of the property issues". It could be expected that this status would be applicable to all persons, whose economic interests have been directly infringed or could be infringed in the course of resolving property issues. Since the legal status of "already infringed upon" can be rather easily established (for example, property has been seized, an attachment has been imposed) but "could be infringed" cannot be so "tangibly" established, a legal mechanism should be set up for involving this participant in the criminal proceedings. In this case, the similarity with the status of third persons in civil procedure could be used[19]. Those persons, who already have the statuses of participants interested in the proceedings, would not require this additional status, i.e., persons, who have the right to defence (already envisaged in CPL Section 111^1) or the victims. Likewise, this status should not be treated too broadly but should be applied only to those persons, whose economic interests are "directly" infringed on by decisions or actions in the particular criminal proceedings. Thus, for example, this status should not be available to, for example,

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[17] Directive of 3 April 2014 of the European Parliament and of the Council No. 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union / OV L 127, 29.4.2014., 39./50. lpp..: http://eur-lex.europa.eu/legal-content/LV/TXT/?uri=OJ:L:2014:127:TOC [accessed on 4 November 2018].

[18] See also: Strada-Rozenberga K., Smans A., *Opinion on the questions asked in the application by the Latvian Association of Commercial Banks of 13 October 2016, on Providing Assessment* (prepared at the Centre of Continuing Legal Education and Development of the Faculty of Law, the University of Latvia). The document is available online at: http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webSasaiste?OpenView&restricttocategory=630/Lp12 [accessed on 4 November 2018.

[19] The Civil Procedure Law: the Law of 14 October 1998. Entered into force on 1 March 1999. Consolidated version is available online at: http://likumi.lv/doc.php?id=50500 [accessed on 4 November 2018].

the children of the accused, whose material provisions, probably, will deteriorate if their father is convicted to an actual prison sentence. However, this status should be granted to the children of the accused or partners in economic activities, if the matter of applying special confiscation to their own property is discussed in accordance with CPL Chapter 7^2.

A uniform understanding of the particular participant is of decisive importance to continue improving its legal status. Otherwise, the efforts to improve the regulation on rights and obligations might fail, unless the circle of persons, to whom the respective status is applied, is identified in full.

4. The rights of the owner of property infringed in criminal proceedings and related problems

As the wording of CPL Section 111^1, included in the text above, shows, at present in Latvia, actually, two groups of the so-called owner of property infringed in criminal proceedings can be discerned: – 1) the owners of property infringed in criminal proceedings, on whose property an attachment has not been imposed, and 2) those owners of property infringed in criminal proceedings, on whose property an attachment has been imposed. The amendments to CPL of 22.06.2017 significantly expand the range of owners of property infringed in criminal proceedings. However, this "expansion" applies only to those owners of property infringed in criminal proceedings, on whose property an attachment has been imposed. The Ministry of Justice provided the following substantiation to the expansion of rights only of those owners of property infringed during criminal proceedings, on whose property attachment had been imposed: "*The draft law envisages substantial expansion of the scope of rights with respect to participation in court for those owners of property infringed during criminal proceedings, on whose property an attachment has been imposed. At the same time, for the persons, whose property has been seized as factual evidence, the rights of the owner of property infringed during criminal proceedings should be retained in pre-trial criminal proceedings. CPL (including the planned amendments to CPL Section 240) provides that the factual evidence, which is not owned by the perpetrator of the criminal offence, must be returned to the owners or legal possessors thereof. Moreover, CPL and the Cabinet Regulation of 27 December 2011 No. 1025 "Regulation on Handling Factual Evidence and Property on which an Attachment has been Imposed" provides that in cases, where the factual evidence must be returned to its owner or legal possessor but that is impossible, the owner is compensated by an object of the same kind and quality or is paid its value that exists on the day of compensation. Thus, no jeopardy to the right of a person, whose property has been seized in the framework of criminal proceedings as factual evidence, can be discerned."* Even if this substantiation is upheld, it is not clear why the status should be retained during the pre-trial proceedings, since factual evidence must be returned always upon completing the proceedings, irrespectively of whether it happens during the pre-trial proceedings or at the end

of judicial proceedings, the rights of the owner of property infringed during criminal proceedings, on whose property an attachment has not been imposed, that prior to the amendments were applicable to the whole duration of the proceedings, following the amendments will apply only to the pre-trial proceedings. No rights are envisaged to these persons after the completion of the pre-trial proceedings. Whereas those owners of property infringed during criminal proceedings, on whose property an attachment has been imposed, will have in the pre-trial proceedings the rights, which prior to the amendments were applicable to the whole duration of the proceedings, and, in addition to that, an extensive range of rights has been envisaged to them both in the court of first and appellate instance, and in the cassation court.

The rights of the owner of property infringed in criminal proceedings (both an owner, on whose property an attachment has been imposed and on whose property an attachment has not been imposed) in the pre-trial proceedings have been defined in the first part of CPL Section 111^1, quoted above. It can be presumed that these are obviously insufficient for the effective protection of rights. Presumably, the respective participants are characterised by the following general rights:

- to obtain the respective procedural status;
- to be informed about the development of proceedings in matters that pertain or might pertain to his interests;
- to participate in the proceedings in accordance with the peculiarities of each stage in the proceedings, including the right to be heard, as well as to participate in proving with respect to matters pertaining to his interests;
- the right to legal assistance;
- the right to an objective course of the proceedings;
- the right to appeal against decisions by officials, who are authorised to implement criminal proceedings, that affect his interests;
- the right to the conclusion of proceedings within a reasonable term.

Clearly, to a large extent, the rights indicated above belong to the requirements of "a fair procedure". It is also no surprise at all, because, although this participant of the proceedings is not a person who has the right to defence, in view of the existing or potential infringement on his interests, there are grounds to recognise that he enjoys the right to "a fair procedure", insofar it applies to him due to the peculiarities of his status.[20] Further on in the article, we shall focus on, in our opinion, the most relevant aspects of the rights of the respective participant in the proceedings.

[20] See, for example, Meikališa Ā. Strada-Rozenberga K. *Tainīgums kriminālprocesā*. Jurista vārds 2011, no. 48. The document is available online at: http://www.juristavards.lv/doc/240165-btaisnigumsb-kriminalprocesa/ [accessed on 4 November 2018], Directive of 3 April 2014 of the European Parliament and of the Council No. 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union / OV L 127, 29.4.2014., 39./50. lpp.: http://eur-lex.europa.eu/legal-content/LV/TXT/?uri=OJ:L:2014:127:TOC [accessed on 4 November 2018].

It can be assumed that the respective participant of the proceedings definitely should be granted the right to be informed about the course of proceedings in those matters that affect or could affect his interests. Thus, for example, a person, from whom property has been seized should have the right to known what is happening to it – has it been recognised as being factual evidence, has an attachment been imposed on it, etc. Likewise, this applies to persons, the probable infringement on whose rights is only to be expected. For example, a person, on whom it is planned to impose the duty to pay compensation, should have the right to know about the initiation of this matter so that in the cases, where he wants to, he could become involved in the proceedings in due time. Similarly, these persons should have the right to know how the proceedings are developing, insofar it pertains to the infringement upon their rights. Hence, the persons should be informed both about the specific solutions to the property issues and about the general course of proceedings (the proceedings are directed towards the next stage; the proceedings have been suspended; the proceedings have been terminated, etc.).

The right to participate in the proceedings in accordance with the particularities of each stage in the proceedings is essential, including the right to be heard, the right to participate in proving with respect to matters affecting his interests. Thus, the last amendments have significantly improved the situation in the course of adjudicating the case, where CPL provisions include references to the participation of the owner of property infringed upon. However, currently there are certain difficulties in exercising this right and it is restricted during the pre-trial criminal proceedings. The Latvian legislator still has avoided envisaging a person's right to express his opinion before the decision with respect to property is adopted. On the other hand, it is not systemically clear, what is the legal significance of expressing one's opinion, either orally or in writing, about the decision that already has been adopted. Hearing of a person before adopting the decision on how to handle the property is of particular importance now, when, with the introduction of amendments, the prosecutor also has the right to decide on the confiscation or property already during the pre-trial proceedings. The right to familiarise oneself with the materials of the case, on the basis of which a ruling is adopted regarding the property already during the pre-trial proceedings, is not envisaged. This would be important during the pre-trial proceedings, so that a person might decide on appealing the ruling, etc. Neither is familiarising oneself with the materials of criminal proceedings envisaged after the pre-trial proceedings have ended and the criminal proceedings are transferred to court for adjudication. The fact that this has been a deliberate action is confirmed by the statement in the annotation to the draft law: "The Ministry of Justice notes that the third persons, with respect to whose property an assumption has been made that it should be recognised as being criminally acquired, CPL does not envisage the right to familiarise themselves with the materials, because a third person's right and obligation is only to prove the legal origins of the property and not to rebut the prosecutor's assumption, providing counter-arguments or proving innocence in the criminal offence. In the particular case, it is not a matter of recognising a person guilty of committing a

criminal offence (when a person should be given the right to familiarise himself with all materials in the criminal case) but a matter of the origin of the property." The validity of this statements seems contestable. Nobody, presumably, doubts that accessibility of the case materials is an essential part of the fair procedure. The significance of this aspect has been recognised even during an uncompleted pre-trial procedure[21]. There are no objective grounds for not presenting the case materials upon completing the pre-trial procedure. However, valid objections can be made regarding obstacles for properly preparing for adjudication. Moreover, this prohibition, in fact, is meaningless since with the amendments to CPL the owner of property infringed during criminal proceedings has been envisaged active rights to participate in the examination of the case in court, for example, to participate a in direct and oral examination of each piece of evidence. This situation, where materials are not presented but the right to participate in the examination thereof has been granted, can only prolong the proceedings when, for example, a decision has to be taken regarding reading or not reading a particular document, etc.

The right of "persons interested in resolution of property issues" to appeal the rulings by officials, who have been authorised to implement criminal proceedings affecting their interests should be seen as particularly important. This fundamental right is important *per se* but even greater importance derives from the current situation, where during the pre-trial proceedings "persons interested in resolution of property issues" have not been ensured the right to active participation in the proceedings. The finding that the infringed person should have the right to protect his interests, *inter alia*, where applicable, to appeal against actions and rulings, is so obvious that it seems inappropriate to quote regulatory enactments of international and local scope, innumerable theoretical findings, etc. that recognise this.

Recognising the right of "persons interested in resolution of property issues" to submit complaints, the issue should be proposed for discussion regarding the extent to which this right to appeal can be exercised. Currently, CPL Section 111^1provides for the general right to complain and that general provisions are to be applied to submission and examination of these complaints, insofar a special procedure has not been established. The general procedure provides that the rulings adopted by and actions taken by an investigator and a prosecutor during the pre-trial proceedings can be appealed against to a supervising or a higher-standing prosecutor, it also defines the maximum number of the appellate degrees (see CPL Section 337). Neither the control of the investigative judge nor the court has been envisaged over the actions and decisions by an investigator or a prosecutor regarding property issues. Whereas the rulings adopted during adjudication are to be contested in the appellate and cassation procedure. CPL Section 239 (5) currently envisages a procedure that differs from the general procedure, envisaging

[21] Judgement of 23 May 2017 by the Constitutional Court in Case No. 2016-13-01 "*On Compliance of the Fifth Part of Section 629 of the Criminal Procedure Law with the First Sentence of Article 92 of the Satversme of the Republic of Latvia*". https://likumi.lv/ doc.php?id=290983 [accessed on 4 November 2018].

that some decisions adopted in pre-trial criminal proceedings with respect to disposing of or destroying factual evidence can be appealed before the investigating judge, whose decision is not subject to appeal. Likewise, a special procedure has been envisaged in the proceedings regarding criminally acquired property, regulated in CPL Chapter 59. Pursuant to CPL Section 631, the court's decision on criminally acquired property is appealed against before the regional court, which examines this complaint within the same terms and in the same procedure as it was examined in the district court, and its decision is not subject to appeal.

The above observations give the grounds for proposing a number of issues for discussion. The first – can a differential treatment of persons in comparable situations be discerned? Thus, for example, if a person's property is confiscated as such that has been criminally acquired in proceedings directed in general procedure, the person can submit both an appellate and, later, also cassation complaint. Whereas if this is done in the procedure established by CPL Section 59 the possibilities of appeal are restricted by only one degree. The Constitutional Court of the Republic of Latvia has reviewed the constitutionality of this issue, the Court, though, has decided that a violation of equal treatment cannot not be discerned[22]. We cannot uphold this assessment by the Latvian Constitutional Court. Arguably, irrespectively of the type of criminal proceedings, in the framework of which an issue is decided on, if the issue is not different and if there are no significant differences also in other procedural circumstances, differential treatment in defining the degrees and limits of appeal should be inadmissible.

The second should be linked to the issues, whether sufficient procedural safeguards are ensured to a person, whose interests have been infringed by actions or rulings in the pre-trial proceedings. Significant rulings with respect to property can be adopted in the stage of pre-trial proceedings, also after introducing amendments to CPL, also – to confiscate property that should not be registered in a public register. This allows assuming that the current procedure of appeals, which does not envisage a possibility of appeal outside the institution of investigation and its supervisory institution, cannot always be recognised as being effective. Arguably, in the case of serious infringements, the control of a court or at least of an investigative judge over deciding on this matter should be envisaged.

Finally, the matter should be foregrounded as to the procedure, in which losses should be compensated to a person, who has incurred them due to the infringement on his economic (property) interests in criminal proceedings if it is later recognised that the actions taken against him (his property) should be recognised as unlawful or ungrounded. Currently, the regulation on compensation for damages in Latvia is pronouncedly deficient. I.e., currently in Latvia the

[22] Judgement of 11 October 2017 by the Constitutional Court in Case No. 2017-10-01 "*On Compliance of Section 629 (5) of Criminal Procedure Law with the First Sentence of Article 92 of the Satversme of the Republic of Latvia and on Compliance of the Second Sentence of Section 631 (3) of Criminal Procedure Law with the First Sentence of Article 91 of the Satversme*". Available at: https://www.vestnesis.lv/op/2017/204.16 [accessed on 4 November 2018].

simplified procedure, in which the State compensates for the damage inflicted on a person unlawfully or ungroundedly during criminal proceedings is defined in the law "The Law on Compensating for Damages Inflicted in Criminal Proceedings and the Record-keeping of Administrative Violations"[23]. In this law only one reference can be applicable to the situation described, i.e., that one of the cases, where a natural person has the right to compensation for damages is, when, by a decision of a person authorised in criminal proceedings, an infringement in the course of procedural actions can be established, resulting in destruction of or disproportionate damage to property. A legal person, in turn, has the grounds to receive compensation from the State only if the right to compensation for damages arise, if a ruling has entered into force on terminating the proceedings in full or in the part regarding application of a coercive measure to this person, without establishing the grounds defined in the Criminal Law for applying the coercive measure to the particular person. It is obvious that all these cases have little bearing to all those possible situations, where the economic interests of a person are infringed on during criminal proceedings and later the infringement has been recognised as being ungrounded or unlawful. It can be assumed to be disproportionate, and in a situation, where the State has expanded the possibilities, within the course of criminal proceedings, to infringe upon the interests of the so-called third persons, including their economic interests, it should be able to assume responsibility in situations, where the infringement had been unlawful or unnecessary. Afterwards, in compensating for the damage, a procedure should be ensured that would be as simple as possible and would save, to the extent possible, the resources of a person, whose rights had been infringed on unlawfully or without grounds.

5. Conclusion

A. In the course of criminal proceedings, the economic (including business) interests can be significantly infringed on of persons, who are not the so-called constant participants of proceedings. The State has to decide, what kind of model of legal protection to ensure to these persons, *inter alia*, whether to establish a separate status of a participant in the proceedings and what rights to grant to him. The human rights requirements point to the need for ensuring a fair trial and lawful interests; however, this can be reached in different ways. The State may "draw the line", whether to ensure the protection and, if yes, the degree to which the protection must be implemented in the framework of criminal proceedings.

B. The Latvian experience shows that, notwithstanding the amendments introduced over the period exceeding 10 years, which have brought significant

[23] The Law on Compensating for Damages Inflicted in Criminal Proceedings and the Record-keeping of Administrative Violations: the Law of 30.11.2017. "Latvijas Vēstnesis", 252 (6079), 19.12.2017. // Entered into force on: 01.03.2018. Available: https://likumi. lv/ta/id/295926-kriminalprocesa-un-administrativo-parkapumu-lietvediba-nodarita-kaitejuma-atlidzinasanas-likums [accessed on 4 November 2018].

improvements, still the legal regulation cannot be recognised as being compatible with the purpose of criminal procedure – fair regulation of criminal law relationships without unjustified interference into a person's life.

C. To ensure full protection of those persons, whose interests might be infringed on in the course of resolving property issues, a participant of criminal proceedings should be established that would comprise a rather extensive range of participants. It could be called, for example, "a person interested in resolution of the property issues". This person should be granted the rights that ensure the fairness of the procedure towards him. Whereas in imposing duties on these persons, the prohibition of ungrounded and disproportional interference into persons' lives should be kept in mind.

D. In view of the interesting status of this participant in criminal proceedings – on the one hand, he is neither a suspect nor the accused, etc., thus, does not enjoy the privileges granted to these persons, on the other hand – the outcome of criminal proceedings may be pronouncedly negative for him – thus, the procedural legal treatment of this participant of proceedings should "respect" this interesting situation. This applies both to the improvement of procedural legal norms and deliberated and appropriate application thereof in practice.

E. In the course of criminal proceedings, unjustified differential treatment of persons who are in comparable circumstances is inadmissible.

F. These persons should be granted such a range of rights that guarantee that the requirements of a fair procedure are met with respect to them.

G. In the case of unlawful or unjustified infringement on rights, an effective mechanism for providing compensation from the State must be set up.

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