

ARTICLE:

ELECTRONIC EVIDENCE IN LATVIA: A GENERAL OVERVIEW

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Types of evidence

The Latvian legal system provides for a wide classification of evidence, such as direct and indirect; primary and secondary; real and personal evidence.² According to section 92 of the Civil Procedure Law,³ evidence is information on the basis of which a court determines the existence or non-existence of such facts that are significant in adjudicating the matter. Section 127 of the Criminal Procedure Law⁴ stipulates that evidence in criminal proceedings is any information acquired in accordance with the procedure provided for in the law, and fixed in a specific procedural form, regarding facts that persons involved in the criminal proceedings use, in the framework of their competence, in order to justify the existence or non-existence of conditions included in an object of evidence. In turn, section 149 of the Administrative Procedure Law⁵ provides that evidence in an administrative matter is information regarding facts upon which the claims and objections of participants in the administrative proceeding are based, and information regarding other facts that are significant in the adjudicating of the matter.

As far as electronic evidence is concerned, only the Criminal Procedure Law clearly distinguishes between electronic evidence and other means of evidence, providing in section 136 that evidence in criminal proceedings may be information regarding facts in the form of electronic information that has been processed, stored or broadcasted with automated data-processing

devices or systems.

In the Civil Procedure Law and the Administrative Procedure Law, the concept of electronic evidence has been included in a general definition of documentary evidence in writing, provided that the documentary evidence is information regarding facts relevant to the matter, and that the information is recorded by letters, figures or other written symbols or the use of technical means in documents, in other written or printed matter, or in other relevant recording media, such as audio, video tapes, floppy disks, compact discs, digital video discs and such like (section 110 of the Civil Procedure Law; section 167 of the Administrative Procedure Law).

This means that any information that is significant to the proceedings and which is stored in electronic form, irrespective of the electronic data carrier, may be used as documentary evidence. Moreover, the laws do not indicate that it is necessary to transform such information from the digital form to any other form, such as a print-out, although in practice, most evidence in digital format is printed out. As pointed out by professor Torgāns, when assessing the information which is recorded in some types of information carrier, the court should evaluate the authenticity of such information and, amongst other things, consider the time and circumstances of the creation of the information and the object carrying it; the mode of recording the information; whether the information recorded is precise and what its relation is to the facts that need to be confirmed by that information; the

1 This is an up-date of a chapter written by the authors entitled 'Latvia' included in Stephen Mason, general editor, *International Electronic Evidence* (British Institute of International and Comparative Law, 2008). The up-date has been completed by Agris Repšs.

2 Professor K. Torgāns, editor, *Civilprocesa likuma komentāri*, (Third edition, Rīga, Tiesu namu agentūra, 2006), pp. 170-174, (in English: *Commentary to the Civil Procedure Law*) hereinafter – 'the Commentary'.

3 *Civil Procedure Law* (in Latvian: *Civilprocesa likums*). Official publication: "Latvijas Vēstnesis",

No. 326/330 (1387/1391), 03.11.1998; "Ziņotājs", No. 23, 03.12.1998., in force as of 1 March 1999. Available on the internet (in Latvian) at <http://www.likumi.lv/doc.php?id=50500>, with amendments.

4 *Criminal Procedure Law* (in Latvian: *Kriminālprocesa likums*). Official publication: "Latvijas Vēstnesis", No.74 (3232), 11.05.2005; "Ziņotājs", No.11, 09.06.2005, in force as of 1 October 2005. Available on the internet at <http://www.likumi.lv/doc.php?id=107820> (in Latvian) and http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Criminal_Procedure_La

w.doc (in English), with amendments.

5 *The Administrative Procedure Law* (in Latvian: *Administratīvā procesa likums*). Official publication: "Latvijas Vēstnesis", No.164 (2551), 14.11.2001; "Ziņotājs", No. 23, 13.12.2001, in force as of 1 February 2004. Available on the internet (in Latvian) at <http://www.likumi.lv/doc.php?id=55567>, with amendments. Also available (in English) at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (without amendments).

relation of this evidence to other evidence in the case and the circumstances of the case overall.⁶

It is very likely that a court would order an expert report to determine the authenticity of the digital evidence or to confirm whether the information contained in a carrier of digital information is authentic and has not been manipulated. For example, it may be necessary to establish whether an e-mail printed out and submitted to the court was sent out at the time indicated, and whether there is a record confirming the source of the e-mail from a particular company's server. A court may also need an opinion of an expert in copyright disputes concerning software. The court might request an expert opinion to determine whether the particular software of the defendant is written by the same person who has written the source code of the software submitted to the court by the plaintiff. The latter question arose in a case at the Riga Regional Court, but the case was not heard on its merits, since the parties reached a settlement. Terms of the settlement, however, are not public.⁷

Admissibility

Only evidence that is legally obtained, procedurally fixed and allowed is admissible.⁸ Section 130 of the Criminal Procedure Law explicitly stipulates that evidence that has been acquired using violence, threats, blackmail, fraud, or duress or in a procedural action that was performed by a person who did not have the right to perform such action, or violating the fundamental principles of procedural laws, is inadmissible and cannot be used.

There are no particular rules on the admissibility of electronic evidence, although it is very likely that there may be occasions when it is necessary to examine the authenticity of the electronic evidence more closely than for other forms of evidence. Thus even if the data carrier (a computer hard drive or a floppy disk) has been admitted as real evidence in the proceedings, the information contained in the storage device may be examined by an expert and only used together with the original carrier of the information.⁹ If the carrier cannot be examined, but is admitted as real evidence, the data

may serve as indirect evidence, providing that it is corroborated by some other form of evidence. It follows from the general principle that a court will assess the evidence in accordance with its own convictions, which should be based on evidence as has been thoroughly, completely and objectively examined, and in accordance with judicial consciousness based on the principles of logic, scientific findings and observations drawn from every-day experience.¹⁰ It has been well established by academics and the courts that the latter principle also means that all the evidence in the particular case should be assessed as a whole.¹¹ This principle is explicitly stipulated in section 128 (2) of the Criminal Procedure Law, which states that the reliability of the information regarding facts that is to be used in proof, must be assessed by considering all of the facts, or information regarding facts, acquired during criminal proceedings as a whole and as they relate each to other.

Pursuant to section 3 (2) of the Electronic Documents Law,¹² an electronic document is considered to have been signed by hand if a secure electronic signature has been affixed. According to section 1 subparagraph 9 of the EDL, a secure electronic signature is linked only to the signatory,¹³ it ensures the personal identification of the signatory, it is created with secure electronic signature-creation devices which may be controlled only by the signatory, it is linked to a signed electronic document so that later changes in the electronic document are detectable, and is certified by a qualified certificate.¹⁴ Thus, the presumption under the EDL is that the person whose secure electronic signature the document has is the actual signatory of this document. Accordingly, if the document has a secure electronic signature, there is no necessity to assess the authenticity of the document.

Burden of proof and standard of proof

Under the provisions of the Civil Procedure Law, each party has the burden of proving the facts upon which it bases its claims or objections. As prescribed in section 96 (5) of the Civil Procedure Law, a party need not prove facts, which in accordance with the procedures set out in the Civil Procedure Law, have not been disputed by

⁶ *The Commentary*, p. 199.

⁷ *Judgment of the Riga Regional Court of 18 December 2007 in Case No. Co4288807 (unpublished)*.

⁸ *See sections 94 and 95 of the Civil Procedure Law; sections 129 and 130 of the Criminal Procedure Law; sections 151 and 152 of the Administrative Procedure Law.*

⁹ *The Commentary*, p. 203.

¹⁰ *See section 97 of the Civil Procedure Law. Section*

154 (1) of the Administrative Procedure Law refers to 'principles of justice', rather than 'every-day experience'.

¹¹ *The Commentary*, p. 183.

¹² *Electronic Documents Law (in Latvian: Elektronisko dokumentu likums). Official publication: "Latvijas Vēstnesis", No. 169 (2744), 20.11.2002; "Ziņotājs", No. 23, 12.12.2002, in force as of 1 January 2003. Available on the internet at <http://www.likumi.lv/>*

doc.php?id=68521 (in Latvian), with amendments, hereinafter – the EDL.

¹³ *For an discussion at to why no form of electronic signature can conform to this characteristic, see Stephen Mason, Electronic Signatures in Law, 4-9 and Lorna Brazell, Electronic Signatures in Law and Regulation (Sweet & Maxwell, 2004), 5-46.*

¹⁴ *See Section 1, subparagraph 2 of the EDL.*

the other party. In practice it means that if it is not evident from the written submissions of the party whether it admits or denies certain facts or circumstances that the other party has referred to in its claim or in answer to the claim, the court should try to ascertain this in the oral hearing by asking questions of that party. If the party does not answer or avoids giving precise answers about certain factual circumstances or facts, the court may assume that the party does not dispute these facts or circumstances.¹⁵ Not disputing the fact should be distinguished from confirmation (or recognition) of the fact. If a party does not dispute the fact, it releases the other party from proving the fact (burden of proof) but it does not necessarily allow the fact to be established or proven in the case. On the other hand, confirmation (or recognition) of the fact by a party is a basis upon which the court may deem the fact to be proven.¹⁶ It follows that the defendant cannot adduce evidence to rebut claims that the plaintiff has not proven where the defendant failed to challenge the plaintiff before trial. If either party discovers, at a late stage, that claims made by the other party can be challenged, but they were only aware that the claims that were made might be false at a very late moment in the proceedings, it is still possible to submit additional evidence to the court at a later stage. It must be noted, however, that the court has certain discretion in admitting evidence that has not been submitted by the time determined in Law:

Evidence must be submitted not later than seven days before a court sitting, unless the judge has set another time period within which evidence is to be submitted. During the adjudication of the matter, evidence may be submitted at the reasoned request of the party or other participants in the matter if it does not impede the adjudication of the matter or the court finds the reasons for untimely submission of evidence justified, or the evidence concerns facts which have become known during the adjudication of the matter. A decision by the court to refuse acceptance of evidence may not be appealed, but objections regarding such may be expressed in an appellate or cassation complaint.¹⁷

Facts that the court acknowledges to be universally known and facts that in accordance with the law are

deemed to be established, need not be proven. Facts established pursuant to a judgment that has come into lawful force in one civil matter need not be proved again in adjudication of other civil matters involving the same parties.¹⁸ A court judgment in a criminal matter which has come into lawful effect or a prosecutor's statement on the sanction, or a decision to terminate criminal proceedings without justification, is binding upon a court adjudicating a matter regarding the civil legal liability of the person regarding whom the judgment was made in the criminal matter, but only with respect to the issues of whether a criminal act, or failure to act, occurred and whether such has been committed, or respectively been allowed, by the same person.

As far as criminal proceedings are concerned, a person directing the pre-trial investigation has the duty of collecting evidence in pre-trial criminal proceedings. The prosecutor has a duty of burden of proof to the court. If a person involved in criminal proceedings considers that the facts presumed by the prosecutor are not true, the person involved in the proceedings who makes such an assertion has the duty to indicate evidence rebutting the fact alleged. A person who has the right to assistance of defence counsel in connection with the investigation of an offence is required to indicate circumstances that exclude criminal liability, as well as indicate if they have an alibi if such information has not already been acquired during the investigation. If the person does not provide an indication of such circumstances or an alibi, the prosecution does not have a duty to prove that such facts did not exist, and the court is not required to assess the failure to address this in the judgment.¹⁹

Pursuant to provisions of the Civil Procedure Law, no evidence has a predetermined effect as to being binding upon the court, and no item of evidence has a previously specified degree of reliability higher than other items of evidence. Under section 97 (3) of the Civil Procedure Law, the court is obliged to explain in its judgment as to why it has given preference to one body of evidence in comparison to another, and has found certain facts as proven, but others as not proven.

Electronic signatures

European Directive 1999/93/EC of 13 December 1999 on a Community framework for electronic signatures (Directive)²⁰ was transposed into Latvian law through

¹⁵ *The Commentary*, p. 182.

¹⁶ *The Commentary*, p. 182.

¹⁷ Section 93 (3) of the Civil Procedure Law.

¹⁸ Section 96 of the Civil Procedure Law.

¹⁹ Section 126 of the Criminal Procedure Law.

²⁰ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L13, 19.01.2000, p.12, hereinafter – the Directive.

the EDL, which was adopted on 31 October 2002 and became effective as of 1 January 2003. To date, the EDL has been amended five times; the amendments have concerned the process of providing more precise definitions of the terms “electronic document” and “qualified electronic signature”, data protection and certification issues. The most important amendments so far, regarding qualified certificates and trusted certification service providers, became effective as of 7 July 2006. These were adopted due to the introduction of a qualified electronic signature in Latvia in September 2006. The EDL was implemented with the passing of Regulations No. 473 of the Cabinet of Ministers “Procedures for the Preparation, Drawing Up, Storage and Circulation of Electronic Documents in State and Local Government Institutions, and the Procedures by which Electronic Documents are Circulated between State and Local Government Institutions, or Between These Institutions and Natural Persons and Legal Persons”, which were adopted on 28 June 2005.²¹

The definitions of an electronic signature and a qualified electronic signature in the EDL correspond to their definitions in the Directive. The EDL does not provide for an advanced electronic signature, but contains provisions for a qualified electronic signature. In September 2006, the first trusted certification service provider – a State joint stock company *Latvijas Pasts* – started to provide qualified electronic signatures for natural and legal persons. In accordance with the EDL and the Regulations, all State and municipal authorities, as well as private entities, must accept documents signed by a qualified electronic signature issued by *Latvijas Pasts*.²²

In accordance with the provisions of section 3 (4) of the EDL, an electronic signature is considered to be legal evidence, and the submission of an electronic document as evidence to competent institutions has no restrictions, as noted by Judge L. Konošonoka in her judgment of 19 April 2011 of the Administrative District Court in case No. A42738909, in which she noted that an electronic document is admissible, even if it does not

have a secure electronic signature.²³

Forms of electronic signature that are regarded as electronic signatures include a PIN, and an authentication procedure for internet banking transactions, which usually consists of an ID and password to log into the bank account, and a specific code which is used to effect bank transactions. The special code is usually obtained from a code calculator or code card. The methods of authentication procedure for internet banking may vary from bank to bank.

As to regards to the use of consumer’s charge card, as a general rule, if a consumer’s charge card has been illegally utilised, he or she has the right to request the charge service provider, which has issued the charge card to the consumer, to revoke the relevant charge or to repay the illegally debited amount. If the consumer asserts that he or she has not authorized the executed charge and that his or her charge card has been illegally utilised, and if the payment service provider that issued the charge card to the consumer cannot prove that the relevant charge was verified with an identification code or that the consumer has acted on purpose (intentionally), it must repay the illegally debited amount. The charge service provider, which has issued the charge card to the consumer, is liable for bad faith, as well as negligence, which it has allowed in providing services in relation to the charge card issued to the consumer.²⁴ Although these provisions were incorporated in the CRPL in August 2005, there is no case law on the applicability of these legal norms. In March 2010 the Payment Services and Electronic Money Law entered into force,²⁵ however, there is also no case law regarding the application of the provisions of this law, and no case law regarding the application of Chapter XI “Payment Authorisation” of the PSEML.

For a long time the courts have been reluctant to accept e-mail correspondence as evidence. Nowadays, the attitude of the courts towards e-mail correspondence as evidence has improved, although judges still try to avoid situations where e-mail correspondence is the only evidence in case. It has been

21 *Order of the Cabinet of Ministers No. 473 “Procedures for the Preparation, Drawing Up, Storage and Circulation of Electronic Documents in State and Local Government Institutions, and the Procedures by which Electronic Documents are Circulated between State and Local Government Institutions, or Between These Institutions and Natural Persons and Legal Persons”*. Official publication: “*Latvijas Vēstnesis*”, No. 102 (3260), 01.07.2005., hereinafter – the Regulations. Available on the internet at <http://www.likumi.lv/doc.php?id=111613&from=off> (in Latvian), with amendments.

22 For instance, see section 1 of the Transitional Provisions of the EDL which states that “State and local government institutions have a duty to accept electronic documents from natural persons and legal persons no later than 1 January 2004”.

23 A translation into English is on pp 238-241, it is available on the internet in Latvian at http://www.tiesas.lv/files/AL/2011/04_2011/19_04_2011/AL_1904_raj_A-00422-11_16.pdf.

24 Section 31.1 of the Consumer Rights Protection Law (in Latvian: *Patērētāju tiesību aizsardzības likums*). Official publication: “*Latvijas Vēstnesis*”, No. 104/105 (1564/1565), 01.04.1999; “*Zīpotājs*”,

No. 9, 06.05.1999, in force as of 15 April 1999, hereinafter the CRPL. Available on the internet in Latvian at http://www.likumi.lv/doc.php?id=23309&version_date=24.12.2009, with amendments.

25 *The Payment Services and Electronic Money Law* (in Latvian: *Maksājumu pakalpojumu un elektroniskās naudas likums*). Official publication: “*Latvijas Vēstnesis*”, No. 43 (4235), 17.03.2010, in force as of 31 March 2010, hereinafter the PSEML. Available on the internet in Latvian at <http://www.likumi.lv/doc.php?id=206634>, with amendments.

admitted among practising lawyers that e-mails will be accepted where they have not been encrypted as evidence if other evidence also proves the facts demonstrated by the particular e-mail. In practice lawyers rely on e-mail correspondence as evidence, and judges tend not to dismiss such forms of evidence, as illustrated in judgment of 15 October 2008 of the Administrative District Court in case No. A42446507.²⁶ Nevertheless, the judges are reluctant to refer to e-mails as a form of evidence, and the decisions tend not to explicitly refer to e-mails. Where the authenticity of an e-mail is challenged, it will be for the court to determine its admissibility. Although the general principle is that the party alleging a fact or putting forward an argument has the burden of proof, it is likely that the court will reverse the burden of proof and request the party relying on the e-mail to prove its authenticity if it had some doubts about the authenticity of the e-mail in question. However, there is no publicly available case law regarding this assertion.

The EDL provides a presumption of validity for an electronic signature, which is a generic definition under the law as opposed to a technology specific definition of a secure electronic signature. The EDL defines an electronic signature as electronic data, which are connected to the electronic document or are logically related to it, and provides for the authenticity of the document and the identity of the signatory. There is no authoritative interpretation or court practice establishing that an e-mail address as signature complies with this definition. A secure electronic signature must comply with the requirements set out in section 1(2) of the EDL.

On the other hand, there are some indications in the law that any electronic document could be accepted as evidence. For example, section 492 of the Civil Procedure Law provides that an arbitration agreement will be considered in written form if it was concluded by the exchange of facsimile transmission, telegram or by using other means of telecommunications that provides a record of the intention of the parties to submit the dispute or potential dispute to arbitration. The above rule should include e-mail, however, there is no case law regarding this issue. At the time of writing, courts widely accept messages sent by facsimile transmission as evidence, unless the validity of a signature on the

transmission is contested by any of the parties (see Judgment of 19 June 2008 of the Supreme Court in case No. C27157102).²⁷ In such a case a party could request the signed original if such is available.

Computer-Generated animations and simulations

It is not certain that computer-generated animations and simulations could be used as evidence. It is also not known whether such instruments have been accepted in courts as evidence. If a party intended to use a computer-generated simulation of an accident involving a car, for instance, it would be for the judge to admit it as evidence, subject to hearing any objections from the other party.

Videotape and security camera evidence

Analogue evidence such as videotapes and security camera evidence is accepted into legal proceedings.²⁸ There are no exact rules on the need to examine the authenticity of such evidence before being adduced into evidence.

Taking evidence abroad

Litigants in foreign jurisdictions can obtain witness statements from nationals of Latvia in accordance with the rules of the Convention of the Taking Evidence Abroad in Civil or Commercial Matters.²⁹ There are no specific restrictions concerning electronic evidence when providing witness statements abroad.

The role of experts

An expert opinion is one of the means of evidence in civil proceedings by which an expert provides a description of the research performed in order to answer the questions raised by the court. Pursuant to the provisions of the Civil Procedure Law, an expert is required to provide an objective and reasoned opinion, in his own name, and is personally liable for his opinion. An expert can face criminal liability where he refuses to perform the duty without justified cause, or for knowingly providing a false opinion. A court expert is a person with special knowledge and experience in a sector of science, technology, art, or craftsmanship. As to regards to forensic experts, only State forensic experts and State recognised private forensic experts are entitled to perform a forensic expert examination

²⁶ Available on the internet at http://www.tiesas.lv/files/AL/2008/10_2008/15_10_2008/AL_1510_raj_A-4465-07_12.pdf (in Latvian).

²⁷ Available in Latvian on the internet at http://www.tiesas.lv/files/AL/2008/06_2008/19_0

[6_2008/AL_1906_AT_SKA-0265_2008.pdf](http://www.tiesas.lv/files/AL/2008/06_2008/19_06_2008/AL_1906_AT_SKA-0265_2008.pdf).

²⁸ In particular, in administrative cases regarding traffic violations, for which see Judgment of 12 January 2011 of the Administrative Circuit Court in case No.A42797709, available on the internet in Latvian at <http://www.tiesas.lv/files/AL/>

[2011/01_2011/12_01_2011/AL_1201_apg_AA43-0126-11_17.pdf](http://www.tiesas.lv/files/AL/2011/01_2011/12_01_2011/AL_1201_apg_AA43-0126-11_17.pdf).

²⁹ Convention of the Taking Evidence Abroad in Civil or Commercial Matters, ratified by Latvia on 28 March 1995, entered into force on 27 May 1995.

pursuant to their competence.³⁰ Information regarding all forensic experts operating in Latvia is collected in the Register of Forensic Experts, which is established and maintained by the Ministry of Justice.

A court can order an expert examination in a civil matter at the request of a party, or where the clarification of facts relevant to the matter requires a specific form of knowledge in science, technology, art or any other field. If necessary, the court may order several such examinations (section 121 of the Civil Procedure Law). The court assesses the expert opinion in accordance with the general rules on the assessment of evidence. If the expert opinion is not clear enough or is incomplete, the court may order a supplementary expert examination from the same expert, or to appoint another expert (section 125 of the Civil Procedure Law). The parties may propose an expert to the judge, but it is the judge who appoints the expert. If a party invites a specialist to assist in digital evidence issues, the person will be regarded as a representative of the party and his explanations will be regarded as party explanations, not as specialist opinion. In practice, however, it might be crucial for a party to have a specialist to provide explanations in technical matters relating to digital evidence. Each party may involve a digital evidence specialist, and each party pays its own costs. If digital evidence is challenged by a party, any party can request the court to appoint an expert, and the court can also determine an expert examination on its own initiative. The parties can submit questions to the court that they would like the expert to answer or to provide an explanation for. If the court refuses a question by the party, it must provide a reason for such a decision. One procedural document is normally issued, in which the court states the need for an expert in the particular case, appoints the expert and lists questions that the expert must answer within the time limit set out.

In criminal proceedings, the opinion of an expert regarding facts and circumstances may be used as a means of evidence. The expert can provide explanations in the form of testimony regarding an opinion or provide information on the circumstances of the case. An expert examination is considered in cases where it is thought necessary to conduct a study where special knowledge of a sector of science, technology, art, or craftsmanship is to be used in order to ascertain matters that are

relevant to criminal proceedings. Pursuant to section 193 of the Criminal Procedure Law, in criminal proceedings the expert examination is an investigative operation performed by one or several experts under the assignment of a person directing the proceedings, and the content of which is the study of objects submitted for examination for the purpose of ascertaining facts and circumstances significant to the criminal proceedings. Defendants can view the case file and become acquainted with the evidence once the investigation is over and the case is prepared for submission to the court for trial.

Civil proceedings

Pre-trial

Search and seizure

It is the right of a party to civil proceedings to obtain urgent search and seizure orders either in the form of interim relief or for the provision of evidence. The interim relief is a set of procedural actions provided by the law that is based on the application of the plaintiff to the court and is directed to the successful execution of a court judgment where the claim is regarded as legitimate. An application for interim relief requires the following preconditions to be fulfilled: the claim is of a financial nature; the plaintiff has filed an originating application; the means of interim relief have been indicated; and the appropriate fee has been paid. It is the prerogative of the plaintiff to choose how to file an application for interim relief. It can be included in the application or prepared as a separate document, which can be filed at any stage of the proceedings, as well as prior to the filing of an application to initiate the action (section 137 of the Civil Procedure Law).

If the plaintiff has applied for the interim relief prior to bringing the claim, the plaintiff has to prove, amongst other things, that the party against whom the action is intended, knowingly avoids or performs actions that indicate that it does not act in good faith or acts in an arbitrary manner. Interim relief is mainly aimed at securing the enforcement of a potential judgment by seizing assets and restricting the defendant from certain activities. For this reason it is not usually used to secure electronic evidence.

³⁰ *Law on Forensic Experts (in Latvian: Tiesu ekspertu likums)*. Official publication: "Latvijas Vēstnesis", Nr. 57 (3525), 03.10.2006; "Ziņotājs", Nr. 20, 26.10.2006, in force as of 1 July 2007. Available on the internet in Latvian at <http://www.likumi.lv/doc.php?id=144788&from=off> (with amendments).

Preservation of evidence

It is possible to request a court to order the preservation of evidence when a person has a cause to believe that the submission of the necessary evidence on his behalf may be impossible or problematic because the other party might destroy the evidence, or because of the natural characteristics of the evidence, it might perish. Applications to secure evidence may be submitted before court proceedings are initiated, as well as during the adjudication of the matter. An application to secure evidence is decided by the court where the applicant and the potential participants in the matter are summoned to appear. As stipulated in section 100 (3) of the Civil Procedure Law, it is possible to require a party to preserve evidence without summoning the potential participants in the matter in a case of emergency, including violations or possible violations of intellectual property rights and in cases where it cannot be specified who the parties might be in the matter.

Disclosure

Under Latvian law, there is no concept of disclosure and there are also no specific rules with regard to the preservation of evidence for the purposes of disclosure. The parties are obliged to submit all evidence to the court not later than seven days before the hearing in civil matters (section 93 (3) of the Civil Procedure Law) unless the court has determined another date for submission of the evidence. If a party is not able to obtain some forms of evidence, the court can order the provision of certain evidence upon a reasoned request of the party. Before the hearing, the parties are free to become acquainted with the court file where all the evidence and procedural documents are stored.

There are no rules on how a party examines electronic evidence in a file, such as how it can view analogue evidence in form of videotapes, or see content of a digital information carrier. The parties might need to view this evidence in the court's premises at their own cost. Evidence can also be admitted during a court hearing, but only if it does not impede the trial and the court considers the reasons for late submission to be justified or, alternatively, if the evidence only became available during the hearing (section 93 of the Civil Procedure Law). Moreover, if the court considers that some of the facts in the case are not proven, it can provide additional time for the submission of evidence

to prove the facts that court deems insufficiently proven. If either a party or an employee of a party destroys evidence, the court will only take into account the evidence that has survived and is presented before the court. The party that suffered from the deletion of electronic evidence would have a right to request the court to organise an expertise on the evidence that has been deleted in order to recover data from the data carrier. In civil cases, pursuant to section 120 of the CPL, if a court has not been notified that the required documentary or real evidence cannot be submitted or has not been submitted for reasons that the court has found to be unjustified, the court may impose a fine, not exceeding twenty-five lats, upon the person at fault. Payment of the fine does not release such person from the duty to submit the evidence required by the court.

In criminal cases, section 306 of the Criminal Procedure Law makes it an offence for a person who, not being detained, is a person against whom criminal proceedings have been commenced, or is a suspect, or an accused, intentionally withholds objects, documents or other materials which may be significant as evidence concerning a criminal matter.

Trial

The court can summon a witness or a person who has knowledge of facts. Testimony based on information from unknown sources, or on information obtained from other persons, unless such persons have been examined in the court hearing, is not admissible as evidence. If a party wishes to challenge the authenticity of digital evidence, it could argue the inadmissibility of such evidence and challenge its authenticity by requesting the court to order an expert report to verify the authenticity of the evidence in question.

Costs

Section 33 of the Civil Procedure Law provides that the costs of adjudication are court costs and costs related to conducting a matter. The court costs constitute State fees, office fees and costs related to adjudicating a matter. The costs relating to conducting a matter are costs related to assistance of advocates, costs related to attending court sittings and costs related to gathering of evidence. The party in whose favour a judgment is made may recover all its costs from the opposite party. If the claim has been satisfied in part, the recovery will be in proportion to the extent of the claims accepted by the court, whereas the defendant is

reimbursed in proportion to the part of the claims dismissed in the action. State fees for applications regarding the renewal of court proceedings and adjudicating the matter afresh in a matter where a default judgment has been rendered, are not recompensed.

There are no special rules on how the costs of providing electronic documents are dealt with by the courts. Nevertheless, the costs for gathering evidence are subject to reimbursement by the losing party. For instance, if a party claims that it has incurred costs to recover e-mails from a back-up tape, the losing party could be required to reimburse this cost. The party that incurred the costs needs to substantiate the costs with relevant evidence (invoice, payment documents). However, there are no guidelines or publicly available case law relating to the costs of digital evidence. Thus, if the costs relating to electronic evidence are proven by the respective party, the court will accept them and adjudge a recovery of all such costs.

Criminal proceedings

Pre-trial

There is a wide range of general and special investigative operations that are directed towards the acquisition of information or the examination of information that has already been acquired in criminal proceedings. General investigative operations include interrogation, questioning, inspection, examination, investigative experiment, on-site examination of testimonies, and presentation for identification, search, seizure and expert examination. Special investigative operations include the control of legal correspondence; the means of communication; data in a digital information system; the content of transmitted data; audio control of a site or a person; video control of a site; the surveillance and tracking of a person and an object; a special investigative experiment; the acquisition in a special manner of the samples necessary for a comparative study, and the control of a criminal activity.

Search and seizure

The seizure of evidence is an investigative operation, the content of which is the removal of objects or documents significant to the case, if the performer of the investigative operation knows where or by whom the particular object or document is located and a

search for such an object or document is not necessary, or such object or document is located in a public place. The person directing the proceedings (a police inspector carrying out the investigation or a prosecutor supervising the investigation) authorizes the seizure of evidence. If a person refuses to provide the object to be seized, or if the object or document to be seized cannot be found in the location as indicated, and there is a reason to believe that the object or document is located elsewhere, it is possible to seek a decision regarding the conduct of a search. A decision regarding the search is made by a judge upon the request of a police investigator or prosecutor. In practice, if the evidence is in electronic format, in criminal proceeding the carrier of the information is always seized. If the object to be seized is too large, the premises where the object is located may be sealed. As a practical matter, the police also use security surveillance to protect the sealed premises.

There have been situations in practice where police officials have sealed or seized computers of companies, thus interrupting their normal course of business. The company is entitled to file a submission arguing that the particular decision significantly influences the company's ability to operate, and such submission will be satisfied, if it promotes the rights and lawful interests of persons involved in the proceedings and other persons (section 335 (1) of the Criminal Procedure Law). Pursuant to section 235 (2) of the Criminal Procedure law the seized or sealed computers will be released or returned to the owner if:

1. it has been established in subsequent proceedings that the relevant objects and documents do not have the significance of evidence in criminal proceedings; or
2. the necessary investigative actions involving the relevant objects and documents have been performed and the return thereof to the owner or lawful possessor does not harm subsequent criminal proceedings.

The person directing the proceedings is entitled to request from a natural or legal person, in writing, for the delivery of objects and documents that are significant to the criminal proceedings. If the natural or legal persons do not submit the objects and documents requested by a person directing the proceedings during the time

period specified, the police officer or prosecutor may conduct a search and seizure in accordance with the procedures set out in the Criminal Procedure Law (sections 179–188).

The members of the management board of a legal entity have a duty to perform a documentary audit, inventory or departmental or service examination within the framework of their competence and on the basis of a request from a person directing the proceedings, and to submit the documents within a specific time period together with any relevant additions regarding the request to be fulfilled (section 190 (3) of the Criminal Procedure Law).

Pursuant to the provisions of section 191 of the Criminal Procedure Law, a person directing the proceedings may require the owner, possessor or keeper of an electronic information system (that is, a natural or legal person who processes, stores or transmits data via electronic information systems, including a merchant of electronic communications) to immediately ensure the storage, in an unchanged state, of the totality of the specific data (the retention of which is not specified by law) necessary for the needs of criminal proceedings that is located in their possession, and prevent other users of the system from gaining access to the data. The duty to store the data may be specified for a time period of up to 30 days, but this may be extended, if necessary, by an investigating judge by a term of up to 30 days.

During the pre-trial criminal proceedings, an investigator with the consent of a public prosecutor or a data subject, and a public prosecutor with the consent of a higher-ranking prosecutor or a data subject, may request that the merchant of an electronic information system to disclose and issue the data to be stored in the information system in accordance with the procedures specified in the Electronic Communications Law.³¹ Also during the pre-trial criminal proceedings, the person directing the proceedings may request in writing, based on a decision of an investigating judge or with the consent of a data subject, that the owner, possessor or keeper of an electronic information system disclose and issue the data stored in accordance with the procedures provided for in section 191 of the Criminal Procedure Law.

Surveillance

The Criminal Procedure Law prescribes the order for the

conducting of special investigative operations, which, amongst others, include video and audio surveillance of information systems, persons, telephone conversations and correspondence (sections 210–230). It is possible to intercept communications as part of a special investigative operation without the knowledge of those taking part in the conversation, or the sender and recipient of the information. It is for the investigating judge to issue an order for the interception of communications if there are grounds for believing that the conversation or the information may contain information regarding facts included in circumstances to be proven, and if the acquisition of the information is not possible without such an operation. One of the persons that take part in a telephone conversation or communicate by any other means may provide written consent to have the communication monitored and recorded if there are grounds for believing that a criminal offence may be directed against such persons or their relatives, or if such a person is involved in or may be encouraged to commit a criminal offence.

The investigating judge may order the search of an information system (or part of an information system), and the data stored in the system, or the environment in which the data is stored without the permission of the owner, possessor, or maintainer of the system or data, if there are grounds for believing that the information located in the particular information system is likely to contain information regarding the investigation. No new search warrant is necessary where there are grounds to believe that the data sought is being stored in a system that is located in another territory of Latvia, and the data can be viewed in an authorized manner by using the system that is the subject of the original warrant. A person directing the proceedings may request, at the commencement of an investigative operation, that the person who oversees the functioning of a system or performs duties connected with data processing, storage, or the transmission of data, provides all necessary information relevant to the investigation, and the person so directed will not be permitted to disclose the fact that the investigation took place. In performing control of data in an information system under the assignment of a person directing the proceedings, the employee responsible for the system has a duty to take over or otherwise ensure the system, or any part of the system, prepare copies of data, preserve unchanged essential stored data, ensure the entirety of information

³¹ *Electronic Communications Law (in Latvian: Elektronisko sakaru likums)*. Official publication: "Latvijas Vēstnesis", No.183 (3131), 17.11.2004; "Ziņotājs", No. 23, 09.12.2004, in force as of 1

December 2004. Available on the internet (in Latvian) at <http://www.likumi.lv/doc.php?id=96611>.

resources located in the system, and prevent other users from obtaining access to the data, or prohibit the performance of other actions with such data. The interception, collection and recording of data transmitted with the assistance of an information system using communication devices located in the territory of Latvia without the permission of the owner, possessor, or the maintainer of such a system may be performed, based on a decision of an investigating judge, if there are grounds for believing that the information obtained from the data transmission may contain information regarding facts relevant to the case. The surveillance and interception of data from a private location without the permission of the owner, occupier and visitors of such a site may be undertaken with the permission of the investigating judge if there are grounds for believing that the conversations, other sounds, or occurrences taking place at the site may reveal evidence relevant to the case under investigation. The audio control or video control of a private location may only be undertaken if the acquisition of the information is not possible without such an operation taking place.

Disclosure

Upon completion of the investigation, and if it results in a decision of the prosecutor to bring criminal charges against a person, the prosecutor must arrange for the individual charged and his defence attorney to be able to acquaint themselves with the case material and all the evidence gathered during the investigation. At the same time, the prosecutor must inform the individual and his defence attorney that they have the right to indicate which witnesses they would like to invite and question in the court, and whether the case shall be heard with or without the examination of all or part of the evidence in the open hearing (section 412 of the Criminal Procedure Law). The prosecutor is to ensure that copies of the case material are provided to the individual charged. If the case contains audio or video material, the individual has the right to view and hear it. The list of documents and tangible evidence as well as the list of the persons that the prosecution and defence want to invite to the hearing and question must be attached to the case file upon sending it to the court by the prosecutor (section 412 of the Criminal Procedure Law). There are no special rules on how a disclosure of

electronic evidence is undertaken in situations, such as where a person is accused of having abusive images of children on his computer.

Trial

There are no special rules on how the digital evidence is verified at the court hearing. Before starting to verify the evidence and hear witnesses, the defence or prosecution may submit a request to the court on how the evidence should be examined (section 500 of the Criminal Procedure Law). Also, at any time during the proceedings the defence may submit requests, which can include requests regarding the admissibility of certain evidence and the collection of additional evidence. Moreover, the defence may request and the court can order a digital evidence specialist to verify the digital evidence. There are no special rules on challenging electronic evidence in criminal proceedings. The judge will usually verify the admissibility of the evidence and relevance of the evidence as well as whether the evidence was obtained pursuant to the procedural requirements. If the procedure as described above has not been followed, the judge may decide that certain evidence is not admissible.

Evidence from other jurisdictions

As prescribed in section 676 of the Criminal Procedure Law, evidence that has been acquired as a result of international cooperation and in accordance with the criminal procedure specified in a foreign state is considered to be equivalent to the evidence acquired in accordance with the procedures provided for in the Criminal Procedure Law of the Republic of Latvia.

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