

Turība University

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SYNOPSIS OF THE DOCTORAL THESIS

**THE PROBLEM OF RENEWAL OF CRIMINAL
PROCEEDINGS IN CONNECTION WITH NEWLY
DISCLOSED CIRCUMSTANCES**

Study program: Law Science

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The doctoral thesis and the synopsis are available for review in the library of Turība University, Riga, Graudu Street 68.

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DESCRIPTION OF THE DOCTORAL THESIS

1. Description of the research, relevance and scientific novelty of the topic, object of the research

Right, as a specific structure of human existence, is undoubtedly created in the pursuit of justice¹. Justice as a fundamental legal requirement in criminal proceedings, is enshrined in the national and supranational law, though it is most often linked to Section 6 of the European Convention on Human Rights, providing for the right of a person to a fair trial.² Truthfulness as well as justice is the basic idea of law – the right was created by justice as a mother, because justice preceded law³. On the other hand, the quality of criminal proceedings in today's circumstances quite often depends on ensuring the right to a fair and open trial in a timely manner in an independent and impartial tribunal established by law⁴.

Even if a ruling has entered into force in the criminal proceedings presumed as not subject to review, but where after its entry into force any new, previously unknown facts are disclosed, any person involved in the criminal proceedings whose rights or legal interests have been adversely affected in the particular criminal proceeding, must have a guaranteed right to a retrial. This means that the right to apply for the initiation of proceedings for newly disclosed circumstances must be guaranteed. In order to initiate such a process, however, there must be a framework of criminal procedure providing for a fair and lawful procedure, respecting well-established human rights standards. Ensuring human rights is a fundamental principle of a democratic state and one of the cornerstones of the rule of law, and these safeguards should also aim at the application of fair rules of criminal procedure, guaranteeing everyone involved in criminal proceedings the right to a fair and lawful decision.

Section 92 of the Satversme (Constitution) of the Republic of Latvia guarantees the right of every person to a fair trial⁵, which means that the scope of this Section also includes the guarantees of a new review of any existing rulings provided for in Chapter 62 of the Criminal Procedure Law⁶

¹ Broks, J. (2004). *Tiesības filosofija. Doktrīnas, koncepcijas, diskursi*. Rīga: SIA Biznesa augstskola Turība, 18 lpp.

² Meikališa, Ā., Strada-Rozenberga, K, (2015). Taisnīgums kriminālprocesā, *Kriminālprocess Raksti 2010 – 2015*, Rīga: Latvijas Vēstnesis 175 lpp.

³ Радбрух, Г. (2004). *Философия права*. Москва Международное отношения с 61

⁴ Kaija, S. (2017). Izmeklēšanas noslēpums procesā par noziedzīgi iegūtu mantu, *SOCRATES, Rīga: Rīgas Stradiņa universitāte* 2 (8), 16 lpp. Iegūts: 07.04.2019. no <http://www.rsu.lv/fakultates/juridiska-fakultate/socrates>

⁵ The Constitution of the Republic of Latvia. Adopted on 15.02.1922. Published in Latvijas Vēstnesis on 01.07.1993. No.43, Last amendments to the law on 04.10.2018.

⁶ Criminal Procedure Law. Adopted on 21.04.2005. Published in Latvijas Vēstnesis on 11.05.2005, No.74 (3232), Last amendments to the law on 27.09.2018.

– reopening of criminal proceedings when newly disclosed circumstances are established. This range of newly disclosed circumstances in criminal procedural regulation is relatively limited in order to ensure both the principle of the legal force of a valid judgement – *res judicata*, and the guarantee of the rights of individuals to a fair trial in the event that new, previously unknown circumstances are disclosed after the judgment has come into force. Section 92 of the Satversme includes not only the right of the accused to a fair trial, but also the right of other persons, including the victim, to defend their rights and legal interests.⁷

The legal institute "renewal of criminal proceedings in connection with newly disclosed circumstances" is a separate procedural stage, which can be applied in practice only when the final decision in the criminal case has already entered into force, but later newly established circumstances have come to light indicating the erroneous nature of the decision taken. It is therefore particularly important that the practical application of this legal institute works smoothly, fully guaranteeing the right of individuals to a fair trial and a fair final decision.

The Doctoral Thesis investigates the legal institute – the renewal of criminal proceedings in connection with newly disclosed circumstances, as introduced in the Latvian Criminal procedural regulation, as well as the development, improvement and problems of its legal regulation, as well as topical issues in its application.

The **research object** of the Doctoral Thesis is the legal relationship in the renewal of criminal proceedings in connection with newly disclosed circumstances.

The **research subject** is the legal framework for the renewal of criminal proceedings in connection with newly disclosed circumstances.

The author has carried out a comparative analysis of the criminal procedural regulation of this legal institute, comparing the criminal procedural regulation established in Latvia with the legislation defined in foreign countries – the Republic of Lithuania, the Republic of Estonia, the Federal Republic of Germany, the Swiss Confederation, the Republic of France, the Republic of Belarus, the Russian Federation, as well as the opinions of rights researchers on the concept of criminal proceedings – the newly disclosed circumstances. The research analyzes the case law and examines the rulings and grounds of the Constitutional Court of the Republic of Latvia and the European Court of Human Rights, and analyzes also the views of legal researchers.

Scientific novelty of the Doctoral Thesis.

⁷ Constitutional Court of the Republic of Latvia, Judgement 05.03.2002. No.2001-10-01

As a first point it should be noted that in Latvia there are only separate monographs, Sections or separate chapters in books about this legal institute (for example, author: P.Gruziņš, “*Development of Criminal Procedures for the Reconsideration of Valid rulings after May 4, 1990*”⁸, S. Kaija “*Role of Prosecutor in Renewal of Criminal Proceedings in connection with Newly Disclosed Circumstances*”⁹, J.Jaunums “*Procedure of Renewal of Criminal Proceedings in Individual Cases Does Not Conform to the Satversme*”¹⁰, G.Kūtris “*Guide for Prosecutors to Criminal Procedure*”¹¹ and “*Guide for Judges in Criminal Procedure*”¹²). There has been no comprehensive research in the past on the legal framework, case law and issues related to the renewal of criminal proceedings in connection with newly disclosed circumstances. There are relatively rare cases in the case-law of the renewal of criminal proceedings in connection with newly disclosed circumstances, but there are nevertheless cases which show that the so-called errors may be introduced in the course of criminal investigations and trials, resulting in a false judgement, and the only way to annulment of false judgments is to reopen the criminal proceedings on the basis of newly disclosed circumstances.

The second aspect is related to the research of the introduction of the legal institute “the renewal of criminal proceedings in connection with newly disclosed circumstances” in the criminal procedural regulation in Latvia and abroad and the development and improvement of the legal framework of this institution, thus also making a certain contribution to the history of law in this respect.

The third aspect is the theoretical research of newly disclosed circumstances in the national, international regulatory frameworks in relation to the legal practices in Latvia, abroad and in the European Court of Human Rights.

The fourth aspect, however, is the author's conclusions and proposals for improving the legal institute – the renewal of criminal proceedings in connection with newly disclosed circumstances, by encouraging the introduction of specific legal provisions or supplementing the existing ones. In practical terms, this will enable the legislator to introduce scientifically sound legal provisions.

⁸ Gruziņš, P. (2015) Spēkā esošu nolēmumu jaunas izskatīšanas kriminālprocesuālā regulējuma attīstība pēc 1990.gada 4.maija, *Kriminālprocesa likumam-10 Pagātnes mācības un nākotnes izaicinājumi*, Latvijas Vēstnesis 409-418 lpp.

⁹ Kaija, S. (2016). Prokurora loma kriminālprocesa atjaunošanā jaunatklātu apstākļu dēļ, *SOCRATES*, Rīga: Rīgas Stradiņa universitāte 2 (5), 17-26 lpp. Iegūts: 24.02.2017. no <http://www.rsu.lv/fakultates/juridiska-fakultate/socrates>

¹⁰ Jaunums, J., (2016). Kriminālprocesa atjaunošanas kārtība atsevišķos gadījumos neatbilst Satversmei. *Jurista Vārds* Nr.19 (922) 10.05.2016. 29 lpp.

¹¹ Kūtris, G. (2010). *Rokasgrāmata kriminālprocesā prokuroriem*. Rīga: Tiesu namu aģentūra. 262 lpp.

¹² Kūtris, G. (2010) *Rokasgrāmata kriminālprocesā tiesnešiem*. Rīga: Tiesu namu aģentūra. 209 lpp.

Theoretical and practical significance of the research.

It follows from the comparative analysis of the legal institute – renewal of criminal proceedings in connection with newly disclosed circumstances in relation to the similar legal norms in the regulation of other Latvian procedural laws, foreign national criminal procedural regulations and international law. The impact of the rulings of the European Court of Human Rights on the national criminal procedural regulation and the procedure of reopening of court proceedings has been analyzed, as well as the direct impact of the judgments of the Constitutional Court of the Republic of Latvia on the improvement of criminal procedural regulation. The definitions of "newly disclosed circumstances" in the legal literature of legal researchers in different countries as well as views on the legal framework of the legal institute have been examined and compared. The case law research has been conducted in specific criminal proceedings where the issue of reopening of cases due to newly disclosed circumstances has been decided.

The conclusions expressed in the Doctoral Thesis may serve for lawyers to develop a broader understanding of the “renewal of criminal proceedings in connection with newly disclosed circumstances”, while the proposals – wording of specific legal norms – may help the legislator to improve the normative regulation of the Criminal Procedure Law.

The **research period** of the Doctoral Thesis covers, in a broader context, the period from the theoretical beginnings of the criminal process of the 2nd to 3rd centuries, i.e., from the "golden age" of the Roman jurisprudence to nowadays, to get an understanding of the historical origins, introduction into the legal norms and development of the legal institute “renewal of criminal proceedings in connection with newly disclosed circumstances”. On the other hand, a more detailed research on the issues of application of the normative regulation of this legal institute has been carried out starting from the time when the Criminal Procedure Law came into force.

2. The aim, tasks and research question of the Doctoral Thesis

The **aim of the Doctoral Thesis**: by the in-depth study of the criminal procedural regulation concerning the renewal of criminal proceedings in connection with the newly disclosed circumstances, to identify the problematic issues, and by identifying the gaps in the legal regulation, to prove the existing mistakes or shortcomings and to develop scientifically based proposals for improvement of the criminal procedural regulation.

In order to achieve the stated aim, the author has set the following **working tasks**:

- 1) To find out the historical origin of the legal institute - “renewal of criminal proceedings in connection with newly disclosed circumstances” and its introduction into the Latvian

Criminal procedural regulation and its improvement as various criminal procedural laws in the country are changing.

- 2) To investigate and compare the ways of reviewing of the existing rulings and their role in the criminal procedural regulation.
- 3) To clarify the understanding, meaning of content and definition of newly disclosed circumstances in the criminal procedural regulation of Latvia, comparing it with other Latvian procedural laws and foreign criminal procedural regulation, as well as to examine the impact of judgments of the Constitutional Court of the Republic of Latvia and the European Court of Human Rights on the renewal of criminal proceedings in connection with newly disclosed circumstances.
- 4) To find out which persons may be the subject of an application for the renewal of criminal proceedings in connection with newly disclosed circumstances, comparing the criminal procedural regulation in Latvia with the regulation established in other countries.
- 5) To investigate the procedural application of the renewal of criminal proceedings in connection with newly disclosed circumstances from the theoretical and practical point of view and to compare the Latvian criminal procedural regulation with the foreign legal regulation.
- 6) Investigate the criminal procedural regulation in Latvia in comparison to foreign legal regulation and in connection with the renewal of terminated criminal proceedings in connection with newly disclosed circumstances.

Research question of the Doctoral Thesis: Does the regulation enshrined in the Criminal Procedure Law – concerning the renewal of criminal proceedings in connection with newly established circumstances – fully guarantee the right to a fair trial for persons whose rights or legal interests have been violated in the criminal proceedings?

3. Research methods and theoretical and methodological basis used in the Doctoral Thesis

The achievement of the tasks set in the Doctoral Thesis is based on the appropriate selection and application of scientific research methods. The following scientific research methods have been used in the research:

- The historical method is used to look at the origins and development of the legal institute over different time periods in the context of historical development. The historical research method allows to understand the content of the regulatory framework and to provide its

characterization by comparing the analyzed legal norms in different periods of development of society and state systems.

- The comparative method is used to analyze the views of authors of different scientific works and legal researchers, as well as to research specific legal norms in comparison with other norms in similar regulatory frameworks. The method has been used to compare the norms of the legal institute “renewal of criminal proceedings in connection with newly disclosed circumstances” with the norms of such institute in foreign law – of the Republic of Lithuania, the Republic of Estonia, the Federal Republic of Germany, the Swiss Confederation, the Republic of France, the Republic of Belarus, the Russian Federation, and the international norms, their interrelationships and differences are compared in order to find the best solution for improving the regulatory framework.
- The analytical method has been used to research, clarify and then evaluate the content of legal principles, terms, legal norms. The method has also been used to analyze court decisions. This method makes it possible to identify the main issues at stake in the content of specific legal provisions and to highlight their novelty, relevance or shortcomings. Through the analytical research, it is possible to make concrete proposals based on logical conclusions in order to achieve the goal set in the Doctoral Thesis.
- Methods of interpreting the legal norms: the grammatical method of interpreting – clarifying the meaning of the specific provisions defining 'renewal of criminal proceedings in connection with newly disclosed circumstances' in terms of the meaning of the words it contains and their interrelationship; a systemic method of interpretation - clarifying the meaning of the definition of a specific legal provision in the context of "renewal of criminal proceedings in connection with newly disclosed circumstances" in conjunction with other legal provisions of the Criminal Procedure Law contained in Chapter 62 et seq. and general principles of law; the historical method of interpretation – clarifying the purpose of a particular legal norm and the will of the legislator, taking into account the circumstances that were the basis for the emergence of the particular interpretable norm, examining amendments to the norms regulating the reopening of criminal proceedings, drafts of laws, tracking the progress of these norms; teleological method of interpretation - by clarifying the meaning and purpose of the specific rules of criminal procedure, which define the "renewal of criminal proceedings in connection with newly disclosed circumstances", to determine whether the legislator's aim coincides with the purpose of the provision in the present circumstances.

Main sources used in the Doctoral Thesis: The research carried out in the Doctoral Thesis is based on the sources of law, comparing the norms of Latvian procedural laws on newly disclosed circumstances, as well as comparing the regulation of the Criminal Procedure Law with foreign criminal procedural regulation. The scientific literature is used, referring mainly to the Latvian authors - P.Gruziņš¹³, S.Kaija¹⁴, J.Jaunums¹⁵, G.Kūtris¹⁶, and authors of other countries – V.Jilkinē¹⁷, author collectives: Kamchatov, K.V., Chashchina, I.V., Velikaia, E. V.¹⁸, as well as the publications by the author of this thesis¹⁹.

The empirical basis of the Doctoral Thesis consists of the rulings of Latvian and foreign courts, as well as rulings of the European Court of Human Rights, statistical reports of the Supreme Court of the Republic of Latvia and the Prosecutor's Office of the Republic of Latvia, as well as specific judgments made in pre-trial criminal proceedings. The extensive research base provided an

¹³ Gruziņš, P. (2015) Spēkā esošu nolēmumu jaunas izskatīšanas kriminālprocesuālā regulējuma attīstība pēc 1990.gada 4.maija, *Kriminālprocesa likumam-10 Pagātnes mācības un nākotnes izaicinājumi*, Latvijas Vēstnesis 409-418 lpp.

¹⁴ Kaija, S. (2016). Prokurora loma kriminālprocesa atjaunošanā jaunatklātu apstākļu dēļ, *SOCRATES*, Rīga: Rīgas Stradiņa universitāte 2 (5), 17-26 lpp. Iegūts: 24.02.2017. no <http://www.rsu.lv/fakultates/juridiska-fakultate/socrates>

¹⁵ Jaunums, J., (2016). Kriminālprocesa atjaunošanas kārtība atsevišķos gadījumos neatbilst Satversmei. *Jurista Vārds* Nr.19 (922) 10.05.2016. 29 lpp.

¹⁶ Kūtris, G. (2010). *Rokasgrāmata kriminālprocesā prokuroriem*. Rīga: Tiesu namu aģentūra. 262 lpp. Kūtris, G. (2010) *Rokasgrāmata kriminālprocesā tiesnešiem*. Rīga: Tiesu namu aģentūra. 209 lpp.

¹⁷ Jilkinē, V. (2016). Position of the European Court on the Implementation of Decisions by National Courts in Latvia and in Finland which are in Legal Force, *SOCRATES*, Rīga: Rīgas Stradiņa universitāte 3 (6), 69-77 lpp., Iegūts: 24.02.2017. no <http://www.rsu.lv/fakultates/juridiska-fakultate/socrates>; Jilkinē, V. (2015). Implementation of International Legal Standards in the Revision of the Judgements that are in Force by Supreme Court of Finland. *SOCRATES*, Rīga: Rīgas Stradiņa universitāte 3 (3), 54-65 lpp. Iegūts: 24.02.2017. no <http://www.rsu.lv/fakultates/juridiska-fakultate/socrates>

¹⁸ Камчатов, К. В., Чашина, И. В., Великая, Е.В. (2016). *Возобновление производства по уголовному делу*, Москва, Россия: Академия генеральной прокуратуры Российской Федерации, 144 с.

¹⁹ Baikovska, I. (2019). Izbeigta kriminālprocesa atjaunošanas sakarā ar jaunatklātiem apstākļiem, tiesiskie aspekti, SIA Biznesa augstskola Turība, *XX starptautiskās zinātniskās konferences "Human values in the digital age" rakstu krājums*. Rīga, 26.04.2019., 15-24.lpp.; Baikovska, I. (2018). Grounds for renewal of criminal proceedings in connection with newly disclosed circumstances, national aspects of the States, *Multidisciplinary scientific conference on social science & arts - SGEM 2018" 19-21 March 2018. Vienna Austria*, "5th International Multidisciplinary scientific conference on social science & arts SGEM 2018" volume 5, issue 1.1. pp. 177-183; Baikovska, I. (2018). Tiesību institūta – kriminālprocesa atjaunošana sakarā ar jaunatklātiem apstākļiem – izcelsme un vēsturiskā attīstība, *SOCRATES, Rīgas Stradiņa Universitāte*, 1(10) 45-55.lpp.; Baikovska, I. (2018) Spēkā esošu nolēmumu kriminālprocesā jaunas izskatīšanas tiesiskā būtība, *Administratīvā un kriminālā justīcija* 3 (84) 4 - 20 lpp.; Baikovska, I. (2018). Jaunatklāti apstākļi – pamats kriminālprocesa atjaunošanai, *Administratīvā un kriminālā justīcija* 1 (82) 14-28 lpp.; Baikovska, I. (2018). Pamats kriminālprocesa atjaunošanai sakarā ar jaunatklātiem apstākļiem, *XIX International scientific conferences Latvia 100: Expectations, Achievements and Challenges*, Rīga, SIA Biznesa augstskola Turība konferences 19.04.2018. rakstu krājums, 15-24 lpp.; Baikovska, I. (2018) Reopening criminal proceedings due to newly disclosed circumstances in the context of the international legal framework and judgements of international courts, *Multidisciplinary scientific conference on social science & arts - SGEM 2018" 26.08. – 01.09.2018. Albena Co., Bulgaria*, "5th International Multidisciplinary scientific conference on social science & arts SGEM 2018" volume 5, issue 1.2. pp. 741-747; Baikovska, I. (2017). Kriminālprocesa atjaunošana jaunatklātu apstākļu dēļ: pieteikuma subjekti un tiesiskā regulējuma problemātika, *SOCRATES, Rīgas Stradiņa Universitāte*, 1(7) 22-31.lpp.; Baikovska, I. (2017). Apzināti nepatiesa liecība – viens no pamatiem kriminālprocesa atjaunošanai sakarā ar jaunatklātiem apstākļiem, *XVIII starptautiskās zinātniskās konferences „Communication in the global village: Interests and influences” rakstu krājums*. Rīga, SIA Biznesa augstskola Turība, 18.05.2017. 18.05.2017., 18 – 27 lpp.

opportunity to gain a broader understanding of the subject under research, achieving thus a comprehensive knowledge of the legal framework of the legal institute “renewal of criminal proceedings in connection with newly disclosed circumstances”. The thesis analyzes in detail the specific criminal cases reviewed by the Supreme Court of the Republic of Latvia in due to newly disclosed circumstances, the individual cases and reasons that led to the erroneous decision, and the specific circumstances that were found to be newly disclosed. The question of persons (subjects) who have the right to apply for reopening of the case due to newly disclosed circumstances has been investigated in the context of particular criminal cases under investigation.

From the sources of scientific literature 167 works of different authors were used on the researched topic, 43 legal acts, 45 court decisions and 16 different practice materials.

The issues analyzed in the thesis have not been addressed in any legal literature or studies in a consolidated manner. The findings and conclusions of this thesis will help to raise awareness of this legal institute, and the results obtained may serve as a basis for further development of legal norms in the field of criminal procedure.

4. Structure of Doctoral Thesis

The Doctoral Thesis is structured in six chapters with subchapters. 6 tables and 3 schematic pictures have been created in the thesis. The volume of the thesis is 182 pages.

In Chapter One, the author investigates the origins of the legal institute “renewal of criminal proceedings in connection with newly disclosed circumstances” and its historical development both in Latvia and abroad. Special attention has been paid to the strengthening of this legal institute in criminal procedural laws in Latvia in the historical context.

In Chapter Two, the author has conducted a research on the legality of the rulings that have entered into force in criminal proceedings, their inappealability in the interaction between the principle of the right to a fair trial and the possibility of reversing such a ruling. In this chapter, a comparative research has been carried out concerning the re-examination of existing judgments, comparing two legal institutes: "renewal of criminal proceedings in connection with newly disclosed circumstances" and "re-examination of existing judgments for material violations of substantive or procedural law. In concluding the shortcomings of the legal framework in the course of the study, the author calls for concrete amendments to the legal framework. This chapter also analyzes statistical data on the cases considered by the Supreme Court in relation to the two legal institutes under investigation.

In Chapter Three, the author has investigated the understanding of “newly disclosed circumstances” in the views of law researchers, in the regulatory framework in Latvia and abroad. The author has examined the newly disclosed circumstances, which are defined in the Criminal Procedure Law as the basis for the reopening of criminal proceedings. This chapter compares the circumstances defined in the Criminal Procedure Law, which may be recognized as newly disclosed circumstances, with those defined in other Latvian procedural laws and those established in foreign national criminal proceedings. Their common and distinct features, as well as the impact of these newly disclosed circumstances on the decision in criminal proceedings, have been studied. The impact of rulings of the European Court of Human Rights on the renewal of criminal proceedings in connection with newly disclosed circumstances is analyzed. The legal institute is also viewed as an element of the legal principle of "the right to a fair trial". In the course of the research, the author has concluded that the criminal procedural regulation of newly disclosed circumstances has shortcomings and does not cover all possible cases that might occur after the ruling of the case, and the author encourages concrete proposals for improvement of the legal framework.

Chapter Four examines the impact of the legal principle "right to a fair trial" on a valid ruling in conjunction with guarantees of the rights and legitimate interests of persons involved in criminal proceedings. A research has been carried out on the range of subjects for whom the criminal procedural regulation guarantees the right to apply for the renewal of criminal proceedings in connection with newly disclosed circumstances. This chapter compares the Latvian criminal procedural regulation with that of other countries, revealing both common and different features. The author has made specific proposals to establish a framework for criminal proceedings in order to clearly and unambiguously define the persons who are entitled to apply for the initiation of proceedings to investigate newly disclosed circumstances.

In Chapter Five, the author has carried out an in-depth theoretical and practical research of the procedural arrangements for reviewing cases due to newly disclosed circumstances. This chapter examines in various contexts the cases reviewed by the Supreme Court due to newly disclosed circumstances, revealing also the problem of application of regulatory enactments, including those related to the application of Section 657 of the Criminal Procedure Law, following the recent amendments to the law made following the judgment of the Constitutional Court of 29 April 2016 in Case No 2015-19-01. The shortcomings of the normative regulation were identified and motivated proposals were made by improving the specific content of provisions of the Criminal Procedure Law.

Chapter Six explores the feasibility of reopening of a terminated criminal proceeding due to newly disclosed circumstances and the criminal procedural regulation, revealing a number of issues. The regulation defined in the Criminal Procedure Law for the reopening of a terminated criminal proceeding due to newly disclosed circumstances has been compared with the national criminal procedural regulations of other countries. This chapter examines data on terminated criminal proceedings where decisions to terminate them have been cancelled. Having established shortcomings of the specific regulation in the Criminal Procedure Law, the author has made proposals for improvement of this regulation, so that also terminated criminal proceedings could be reopened due to newly established circumstances, giving the right to a fair final decision to the persons involved whose rights or legal interests have been violated in the criminal proceedings.

5. Approbation of the Results of the Thesis

List of scientific publications related to the doctoral thesis

- 1) *“Izbeigta kriminālprocesa atjaunošanas sakarā ar jaunatklātiem apstākļiem, tiesiskie aspekti”* [Legal aspects of the re-opening of terminated criminal proceedings due to newly discovered circumstances], Turība University; XX International Scientific Conference "Human values in the digital age"; Conference Proceedings, 26.04.2019., 15-24 pp. ISSN 1691-6069. http://www.turiba.lv/f/2019/Conference_XX_2019.pdf
- 2) *“Spēkā esošu nolēmumu kriminālprocesā jaunas izskatīšanas tiesiskā būtība”* [Legal nature of the examination de novo of valid rulings in criminal proceedings]; The scientific journal of Rezekne Academy of technologies “Administrative and criminal justice” 2018, no.3(84) 4-20 pp, Print ISSN 1407 2971; Online ISSN 2592 8422. <https://doi.org/10.17770/acj.v3i84.3659> Date basis: Crossref; OpenAIRE EXPLORE; WorldCat
- 3) *„Reopening criminal proceedings due to newly discovered circumstances in the context of the international legal framework and judgements of international courts”* 5th International Multidisciplinary scientific conference on social science & arts SGEM 2018 volume 5, issue 1.2., Bulgaria, Albena Co 26 August – 01 September, 2018. 741 – 747 pp, ISBN 978-619-7408-62-1; ISSN 2367-5659. <https://doi.org/10.5593/sgemsocial2018/1.2/s02.098> Date basis: EBSCOhost; Crossref; SGEM Scientific eLibrary
- 4) *“Tiesību institūta – kriminālprocesa atjaunošana sakarā ar jaunatklātiem apstākļiem – izcelsme un vēsturiskā attīstība”* [Origination and historical development of the legal institution - renewal of criminal proceedings due to newly disclosed circumstances];

SOCRATES, Rīga Stradiņš University Faculty of Law Electronic Scientific Journal of Law, 2018, No.1 (10), 45 - 55 pp. ISSN 2256-0548
https://www.rsu.lv/sites/default/files/imce/Dokumenti/izdevumi/Socrates_10_2018.pdf

- 5) „*Grounds for renewal of criminal proceedings in connection with newly disclosed circumstances, national aspects of the states*” 5th International Multidisciplinary scientific conference on social science & arts SGEM 2018 volume 5, issue 1.1., Austria, Vienna 19 – 21 March, 2018. 177 – 183 pp, ISBN 978-619-7408-30-0; ISSN 2367-5659.
<https://doi.org/10.5593/sgemsocial2018h/11/s02.023> Date basis: EBSCOhost; Crossref; SGEM Scientific eLibrary
- 6) “*Jaunatklāti apstākļi – pamats kriminālprocesa atjaunošanai*” [*Newly disclosed circumstances – grounds for renewal of criminal proceeding*]; The scientific journal of Rezekne Academy of technologies “Administrative and criminal justice” 2018, no.1(82) 14 – 28 pp. Print ISSN 1407 2971; Online ISSN 2592 8422
<https://doi.org/10.17770/acj.v1i82.2850> Date basis:: Crossref; OpenAIRE EXPLORE; WorldCat
- 7) “*Pamats kriminālprocesa atjaunošanai sakarā ar jaunatklātiem apstākļiem*” [*Grounds for renewal of criminal proceedings in connection with newly disclosed circumstances*]; Turība University; XIX International Scientific Conference “Latvia 100: Expecttions achievements and Challenges”, Conference Proceedings, 19.04.2018., 15 – 24 pp. ISSN 1691-6069.
www.turiba.lv/f/2018/XIX_Conference_2018_FINAL.pdf
- 8) “*Kriminālprocesa atjaunošana jaunatklātu apstākļu dēļ: pieteikuma subjekti un tiesiskā regulējuma problemātika*” [*The claim subjects in proceedings in connection with the newly disclosed circumstances, the legal regulation problematic*], SOCRATES, Rīga Stradiņš University Faculty of Law Electronic Scientific Journal of Law, 2017, No.1 (7), 20 – 31 pp. ISSN 2256-0548
https://www.rsu.lv/sites/default/files/imce/Dokumenti/izdevumi/socrates_7_2017.pdf
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http://www.turiba.lv/f/Conference_XVIII_Turiba_18.05.2017.FINAL.pdf

Presentations at scientific conferences

- 1) 26.04.2019. Turība University; XX International Scientific Conference "Human values in the digital age" Topic: *Legal aspects of the re-opening of terminated criminal proceedings due to newly discovered circumstances;*
- 2) 25.04.2018. Rīga Stradiņš University, International scientifically-practical conference "Legal Issues in Centenary of Latvia: Retrospective and Perspective", Topic: *Origination and historical development of the legal institution - renewal of criminal proceedings due to newly disclosed circumstances;*
- 3) 19.04.2018. Turība University; XIX International Scientific Conference "Latvia 100: Expectations achievements and Challenges", Topic: *Grounds for renewal of criminal proceedings in connection with newly disclosed circumstances;*
- 4) 18.05.2017. Turība University; XIX International Scientific Conference „Communication in the global village: Interests and influences”, Topic: *False testimony – grounds for renewal of criminal proceedings in connection with newly disclosed circumstances;*
- 5) 26.04.2017. Rīga Stradiņš University, International scientifically-practical conference "Modernization directions of the legal system: current state and future perspectives", Topic: *The claim subjects in proceedings in connection with the newly disclosed circumstances, the legal regulation problematic*

SUMMARY OF THE THESIS

1. Origins and Historical Development of the Legal institute – Renewal of Criminal Procedure in connection with Newly Disclosed Circumstances

The chapter is structured in two subchapters. In the chapter, the author explores the origins of the legal institute “renewal of criminal proceedings in connection with newly disclosed circumstances”, its consolidation in legal norms abroad and in Latvia in the context of its historical development.

In France, the first Code of Criminal Procedure was adopted in 1808 and had been applied for 150 years, until 1959²⁰. It was recognized that procedural errors often lead to a retrial based on new evidence. The reopening of the process was called the revision and it was introduced around 1890. It provided for the reopening of criminal proceedings when new, previously unknown facts appeared giving rise to doubts about conviction.²¹

In its turn, in the historical development of Russian criminal proceedings, the issue of the reopening of cases due to newly disclosed circumstances has been legally regulated by the 1864 Criminal procedural regulation (*Устав уголовного судопроизводства*²²). Until then, such an institute for reopening cases due to newly disclosed circumstances has not been reflected in any document regulating criminal proceedings²³. With this regulation of 1864 of the Russian Empire, the first testimony of the legal institutes such as "newly disclosed circumstances" and "reopening of the case due to newly disclosed circumstances" appeared in the criminal procedural law. This is seen as a positive development in the development of criminal justice and human rights, which has further promoted the development and application of the principle of the right to a fair trial as a guiding principle in judicial practice.

The general principles of criminal procedure in the Baltics emerged only in the 18th and 19th centuries during the Russian Empire. The Russian government issued the Criminal procedural regulation of the Empire (*Устав уголовного судопроизводства*), which was proclaimed in 1889

²⁰ Гуценко, К. Ф., Головкин, Л. В., Филимонов, Ю. А. (2004). *Уголовный процесс западных государств*, Москва, Зерцало-М, с 9

²¹ Bell, J., Boyron, S., Whittaker, S. (1998). *Principles of French law*. Oxford; New York: Oxford University Press, Pp. 139

²² Russian Empire, Rules of Criminal Procedure (*Устав уголовного судопроизводства*), Adopted on 20.11.1864. Not in force, Available at <https://constitution.garant.ru/history/act1600-1918/3137/>

²³ Камчатова, К. В., Чащина, И. В., Великая, Е.В. (2016). *Возобновление производства по уголовному делу*, Москва, Россия: Академия генеральной прокуратуры Российской Федерации, с 5-6

also in the Baltic provinces²⁴. Consequently, this regulation of Criminal Procedure of the Russian Empire of 1864 was in force in the territory of Latvia since 1889. In criminal cases, it was provided that, in exceptional cases, when newly established circumstances had become known and the court had erred, the prosecution, the victim or his relatives could initiate a review of the court's judgment²⁵.

In Latvia, the first law to regulate the reopening of criminal cases due to newly disclosed circumstances is the Criminal Procedure Laws²⁶ of 1926. Sections 29 to 31 of their General Provisions provide that a case may be reopened if evidence of the innocence of the convicted person or a court error leading to a higher sentence than that the convicted offender deserved. It can be concluded from the definition in the introductory part of these Criminal Procedure Laws that such regulation has been taken from the General Provisions of the Russian Criminal Procedure Law (of November 20, 1864). Likewise, the Criminal Procedure Laws provided for cancellation arrangements of final judgments, where it says in Section 212, that a case may be reopened if newly established circumstances or falsification of evidence have been disclosed upon which a legally valid Magistrate's or District Court's judgment was based. These Criminal Procedure Laws (Section 955) already provide a specific definition of the circumstances that were recognized as legitimate for reopening of cases, but they are quite different from the presently existing criminal procedural regulation.

Although with the historically changing political situation in Latvia, the criminal procedure laws have been changed to suit the political situation, the legal institute providing for reopening of a criminal case on the basis of newly disclosed circumstances has been preserved in the territory of Latvia since 1889. Thus, it can be concluded that this legal institute was firmly established in criminal procedural law as an integral part of criminal procedural laws, strengthening the guarantees of the principle of the right to a fair trial.

On October 1, 2005, the Criminal Procedure Law²⁷ came into force, in which the regulation on the renewal of criminal proceedings in connection with newly disclosed circumstances (Chapter 62) was practically taken over from the previous regulation – the Latvian Criminal Procedure

²⁴ Kalniņš, V. (1972). *Latvijas PSR valsts un tiesību vēsture I*, Rīga: Zvaigzne, 350-351 lpp.

²⁵ Dītrihs, A. L. (2000). *Latvijas tiesību vēsture (1914-2000)*, Rīga: Latvijas vēsture. 32-33 lpp.

²⁶ Criminal Procedure Laws, Saeimas kodifikācijas nodaļa 1926, Not in force, Available at <https://dspace.lu.lv/dspace/handle/7/1284?show=full>

²⁷ Criminal Procedure Law. Adopted on 21.04.2005. Published in *Latvijas Vēstnesis* on 11.05.2005, No.74 (3232), Last amendments to the law on 27.09.2018.

Code²⁸. This regulation has been amended five times²⁹ since the entry into force of the Criminal Procedure Law, and the legal framework has been improved taking into account the need for such criminal procedural regulation that would guarantee the right of persons to a fair trial.

The most significant and extensive amendments to Chapter 62 of the Criminal Procedure Law were adopted on March 30, 2017³⁰, the adoption of which was based on the Constitutional Court judgment of April 29, 2016 in case No. 2015-19-01³¹. The Constitutional Court decided to recognize Section 657 (1), (3) and (5) of the Criminal Procedure Law in so far as they permit the prosecutor, who has conducted investigative activities, supervision of investigations, criminal prosecution or maintained public prosecution, decides on the renewal of criminal proceedings in connection with newly disclosed circumstances as not complying with the first sentence of Section 92 of the Satversme (Constitution) of the Republic of Latvia.

The legal institute “reopening criminal proceedings due to newly disclosed circumstances” has an important role to play in securing the right to a fair trial. However, in the historical context, it is evident that the regulation of this legal institute is being developed according to the need to ensure the full enjoyment of fundamental human rights.

2. The legal nature of the new review of valid rulings in criminal proceedings

The chapter is structured into three subchapters. In this chapter, the author examines and compares the regulation and significance of two legal institutes – the renewal of criminal proceedings in connection with newly disclosed circumstances (Chapter 62 of the Criminal Procedure Law) and the re-examination of existing rulings concerning material violations of substantive or procedural law (Chapter 63 of the Criminal Procedure Law). An important aspect of the re-examination of existing rulings is the issue of the guarantee of the right of individuals to a fair trial and the application of this fundamental principle of law has been discussed by the author in this chapter.

²⁸ Criminal Procedure Code of Latvia. Adopted on 06.01.1961. Augstākā Padome, Not in force

²⁹ Amendments to the Criminal Procedure Law. Adopted on 30.03.2017. Published in Latvijas Vēstnesis on 12.04.2017. No.75 (5902); Amendments to the Criminal Procedure Law. Adopted on 19.12.2013. Published in Latvijas Vēstnesis on 28.12.2013. No.252 (5058); Amendments to the Criminal Procedure Law. Adopted on 20.12.2012. Published in Latvijas Vēstnesis on 09.01.2013. No.6 (4812); Amendments to the Criminal Procedure Law. Adopted on 21.10.2010. Published in Latvijas Vēstnesis on 10.11.2010. No.178 (4370); Amendments to the Criminal Procedure Law. Adopted on 12.03.2009. Published in Latvijas Vēstnesis on 01.04.2009. No.51 (4037)

³⁰ Amendments to the Criminal Procedure Law. Adopted on 30.03.2017. Published in Latvijas Vēstnesis on 12.04.2017. No.75 (5902)

³¹ Constitutional Court of the Republic of Latvia, Judgement 29.04.2016. No.2015-19-01

The right to a fair trial is made up of a number of interrelated elements – the guarantees and principles enshrined in the right to a fair trial, each of which, or taken together, are designed to ensure the fair protection of individual’s rights and legitimate interests before the courts. not only for the hearing of the case, but also for the whole judicial process, including recourse to the courts³².

In order to more clearly reveal the content of the legal regulation of Chapter 62 and Chapter 63 of the Criminal Procedure Law, the author has summarized the main features of these legal institutes in Table 1 “Review of Valid Decisions”, and in Table 2 “Criminal Cases Adjudicated by the Department of Criminal Cases of the Supreme Court in years 2012-2018, in accordance with Section 62 and 63 of the CPL” the author has compiled statistics of the Supreme Court, where there is an increasing tendency in the number of pending cases.

It is important to respect the guarantees of the rights of persons involved in criminal proceedings to reopen the case after the judgment has entered into force and, accordingly, to strike a balance with the rights of individuals to rely on a valid decision that it is final. It is essential that the principle of legal certainty – *res judicata*, is respected, which provides that the final decision in the case is no longer subject to appeal. This aspect is also important for victims of criminal proceedings who are entitled to enforcement of a judgment in the part on compensation of damages. On the other hand, in the case of long proceedings, in particular, where the proceedings are reopened after the judgment has entered into force, the injured party's right to timely compensation is already affected. Where in criminal proceedings the final decision is an acquittal, the respect for the principle of *res judicata* is of paramount importance to the defendant. Conversely, in such a case, the victim's right to a fair trial may be adversely affected, as the victim should also be given an equal opportunity to reconsider the case in specific cases.

The Constitutional Court has indicated that the requirements that the concept of a fair trial imposes on the criminal proceedings as a whole include the principle of equal opportunity, which requires equal opportunity for all parties to the proceedings to set out the circumstances of the case and prevents conferring any party substantial advantages over an opponent³³.

The criminal procedural regulation must be such as to ensure that the convicted or acquitted person and the victim have equal opportunity to apply for the renewal of criminal proceedings in connection with newly disclosed circumstances or for a new review of an existing decision because of a material violation of the material or procedural laws.

³² Ziemele, I (2000) *Cilvēktiesības pasaulē un Latvijā*. Rīga: Izglītības soļi, 74 lpp.

³³ Constitutional Court of the Republic of Latvia, Judgement 05.03.2002. No.2001-10-01 (7)

One of the main differences between the two legal institutes governing the re-examination of valid rulings is the range of persons entitled to apply for renewal of criminal proceedings in connection with newly disclosed circumstances or for re-examination of judgments for material violations of substantive or procedural law. As defined in Section 657, Paragraph one of the Criminal Procedure Law, an application for the reopening of proceedings for examination of newly disclosed circumstances can be submitted by a person involved in the criminal proceedings whose rights or legal interests have been violated in the criminal proceedings or his representative. However, it should be concluded that at the time when the judgment in the criminal matter has entered into force, the persons whose rights or legal interests have been violated in the criminal proceedings are the convicted or acquitted person; the victim or his representative; the owner of the property involved in the criminal proceedings.

The regulatory framework regarding the range of persons to whom the right to apply for a review of a court decision due to a material violation of substantive or procedural law is relatively limited. Section 663 of the Criminal Procedure Law states that such an application may be filed only by a lawyer and also on behalf of the convicted and acquitted person or on behalf of a person against whom the criminal proceedings have been terminated.

In the author's opinion, the regulation specified in Section 663, Paragraph one of the Criminal Procedure Law restricts the rights or legitimate interests of other persons involved in the criminal proceedings that were violated in the particular criminal proceedings. The victim or the owner of the property injured in criminal proceedings, either by himself or through a lawyer (by assignment), is not guaranteed the right to apply for a review of an existing judgment for a material violation of substantive or procedural laws which does not comply with the guarantees of fundamental human rights, furthermore, the above regulation contradicts the provisions of Section 8 of the Criminal Procedure Law that the Criminal Procedure Law establishes a uniform procedure for all persons involved in criminal proceedings. The first sentence of Section 92 of the Satversme also provides that everyone may defend his or her rights and lawful interests in a fair trial³⁴. Consequently, everyone involved in criminal proceedings should have the right to a fair trial and access to justice.

The other significant difference in the criminal procedural regulation of the two institutes concerned is the enforcement of a decision in force. Namely, if the Supreme Court has accepted an

³⁴ The Constitution of the Republic of Latvia. Adopted on 15.02.1922. Published in Latvijas Vēstnesis on 01.07.1993. No.43, Last amendments to the law on 04.10.2018.

application or a prosecutor's objection to a new review of valid rulings for a material violation of substantive or procedural law, it has the right (but not the obligation) to suspend enforcement of the judgment or decision (Section 669 of the Criminal Procedure Law). However, the procedural rules do not provide for suspension of the execution of a judgment or a decision in the event of an application for the renewal of criminal proceedings in connection with newly disclosed circumstances.

If the application initiates proceedings for examination of newly disclosed circumstances in a particular criminal proceeding and the prosecutor has determined that there is a reason to decide on the annulment of a valid ruling, then the issue of suspension of the execution of that valid ruling would be decided. This would ensure a unified approach to criminal proceedings in the review of valid rulings and, above all, safeguard the legal interests of persons who may have been unduly convicted.

3. Criminal procedural regulation of newly disclosed circumstances

The chapter is structured into seven subchapters. In this chapter, the author analyzes the views of legal theorists on the understanding of newly disclosed circumstances, as well as compares the various national criminal procedural regulation on circumstances that may be found to be newly disclosed and which may serve as a basis for reopening criminal proceedings once the final decision has entered into force.

It is defined that newly disclosed circumstances (*newly-found circumstances*) are legal facts or other relevant circumstances that were unknown to the court but existed during the investigation of the case and were found (revealed) after the court judgment or decision became lawful³⁵.

Researching the views of legal theorists, the author concludes that there is a difference of opinion, with some assuming that all circumstances that emerge after the entry into force of a criminal judgment are to be regarded as "newly disclosed circumstances", while others believe that they are "new and newly disclosed circumstances", thus dividing these circumstances into two more groups – new and newly disclosed. Namely, newly disclosed circumstances are criminal offenses, on the basis of which a court judgment (called - *falsa*) has been issued, including such acts as falsification of documents, deliberate testimony of witnesses, victims or experts, etc. On the other hand, new facts or evidence (called - *nova*), which were not known during the pre-trial investigation

³⁵ Apinis, M. (2002). *Latviešu-angļu, angļu-latviešu juridisko terminu vārdnīca*. Rīga: Kamene, 75 lpp.

or the court's decision, but which are not criminal, are considered newly established circumstances.³⁶

A new hearing in which a judgment or decision has become final due to newly disclosed circumstances is a separate procedural stage governed by Chapter 62 of the Criminal Procedure Law³⁷. In order to be recognized as a newly disclosed circumstance under Section 655 (2) of the Criminal Procedure Law, which was not known to the court or prosecutor when making the ruling, it must primarily contain facts that could influence the content of the final decision in the particular criminal proceedings. This means that if these facts had been known to the court or prosecutor, the ruling would have been different. Moreover, this ruling could have been either more favorable to the convicted person or, on the contrary, less favorable.

The Constitutional Court has pointed out that the balance between the principle of *res judicata* and a fair judgment can be ensured if the criminal proceedings due to newly disclosed circumstances are reopened only if there is a legal basis for them, and only such effective judgments can be cancelled due to newly disclosed circumstances that do not meet the criteria of a fair judgment.³⁸

The author in this chapter also analyzes the regulation on newly disclosed circumstances defined in Section 655, Paragraph two of the Criminal Procedure Law, which may serve as a basis for reopening of the criminal proceedings, upon finding deficiencies in the said regulation, proposals for their elimination are made.

The issue of the legal institute – the auditor and its opinion (the framework set out in Sections 35 and 132 of the Criminal Procedure Law) is addressed. It is clear from the definition in Section 132 of the Criminal Procedure Law that both the expert and the auditor have the right to give an opinion as evidence in a particular criminal proceeding. It is argued that an expert's opinion in a case is appropriate when special knowledge is required to establish any factual information which may subsequently be used as evidence³⁹. Consequently, the auditor, when giving his opinion, is required to meet these necessary specific knowledge requirements. Accordingly, if this auditor's opinion has been intentionally false, the person who has prepared it is liable under Section 300 of

³⁶ Шредер, Ф.К., Феррел, Т (2016) *Уголовно-процессуальное право Германии. 5-е издание*. Москва, Россия: Инфотропик Медиа. 241-242 с.

³⁷ Criminal Procedure Law. Adopted on 21.04.2005. Published in *Latvijas Vēstnesis* on 11.05.2005, No.74 (3232), Last amendments to the law on 27.09.2018.

³⁸ Constitutional Court of the Republic of Latvia, Judgement 29.04.2016. No.2015-19-01

³⁹ Strada-Rozenberga, K. (2002) *Pierādīšanas teorija kriminālprocesā. Vispārīgā daļa*. Rīga: SIA Biznesa augstskola Turība, 182 lpp.

the Criminal Law. Consequently, even in cases where the auditor has deliberately made a false statement and a court judgment or a prosecutor's penal order has entered into force, this case should also be considered as a newly disclosed circumstance. The author proposes to redefine Section 655, Paragraph two, Clause 1 of the Criminal Procedure Law, including a definition of the auditor's opinion.

Section 655, Paragraph two, Clause 2 of the Criminal Procedure Law provides that a newly disclosed circumstance may be recognized as a criminal maliciousness by a judge, prosecutor, or investigator that has been the grounds for the making of an unlawful ruling recognised by a valid court judgment or prosecutor's penal order. However, as defined in Sections 30 and 31 of the Criminal Procedure Law, a member of the investigative group and the direct supervisor of the investigator also have a certain power to perform procedural acts and to make certain decisions in criminal proceedings. Accordingly, there is a risk of intentional abuse on the part of those officials, which would adversely affect the content of the final decision in the criminal proceedings in question. The author proposes to supplement the definition of Section 655, Paragraph two, Clause 2 of the Criminal Procedure Law with – "member of the investigative group" and "direct supervisor of the investigator".

Other circumstances within the meaning of Section 655, Paragraph two, Clause 3 of the Criminal Procedure Law may also be considered as newly disclosed circumstances that influenced the decision in the case, but only in cases where the case has been adjudicated in cassation and violation of procedural rules during the trial took place but was not disclosed or found. In such a case, the criminal proceedings shall be reopened due to newly disclosed circumstances, based on the other circumstances specified in Section 655, Paragraph two, Clause 3 of the Criminal Procedure Law. In its turn, if the case has not been adjudicated in cassation order, the ruling in criminal proceedings shall be reviewed in accordance with the regulation established in Chapter 63 of the Criminal Procedure Law, when a material violation of procedural law norms has been found.

The definition of the circumstances specified in Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law "findings of the Constitutional Court" and "findings of an international court institution" is a bad wording and does not comply with the legal regulation, as both the Constitutional Court and the international court institution, including the European Court of Human Rights, is taking a ruling in the case, not findings. The definition contained in a provision must be precise and comprehensible. The Constitutional Court Law provides that the Constitutional

Court may take a decision or a judgment⁴⁰ (so, a ruling) in a case. The author proposes to establish appropriate criminal procedural regulation and make amendments in Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law, replacing the word “findings” with the word “ruling”.

The chapter deals with the question of the effect of knowingly false testimony on the establishment of facts and circumstances to be proved in criminal proceedings. If the content of such knowingly false testimony is material, it may also affect the final decision in the case, which may result in the innocent person being found guilty, unjustifiably punished, or, on the contrary, acquitted or a less severe punishment imposed than actually following the content of the offence would be applicable. Consequently, knowingly false evidence may have an impact on the fair settlement of criminal relations.

Problems also include cases where it is established that a minor who is under the age of criminal responsibility has given knowingly false testimony that has significantly influenced the outcome of the criminal proceedings against the convicted person; it is not possible presently to re-establish criminal proceedings due to newly disclosed circumstances, since the Criminal Procedure Law does not provide for this with newly disclosed circumstances, as the Criminal Procedure Law does not provide for it. In order to improve the criminal law regulation, the author proposes to supplement the third part of Section 655 of the Criminal Procedure Law with the following provision - "the person who would be held criminally responsible has not reached the age of criminal liability".

The chapter examines and compares newly disclosed circumstances as defined in the Criminal Procedure Law with those defined in other Latvian procedural laws, finding that they do not have a uniform definition of what should be considered as newly disclosed circumstances. The newly disclosed circumstances defined in Section 479⁴¹ of the Civil Procedure Law and Section 353⁴² of the Administrative Procedure Law are to a large extent similar to those set out in the Criminal Procedure Law, however, they have shortcomings. In the course of the development of the rules of criminal procedure, a new punishment institute – the prosecutor’s penal order – has the same legal force as a court judgment. The aforementioned norms of the Civil Procedure Law and

⁴⁰ Constitutional Court Law. Adopted on 05.06.1996. Published in Latvijas Vēstnesis on, 14.06.1996. No.103 (588) Last amendments to the law on 16.03.2017. (29., 30.)

⁴¹ Civil Procedure Law. Adopted on 14.10.1998. Published in Latvijas Vēstnesis on 30.11.1998. No.26/330, Last amendments to the law on 28.02.2019. (479)

⁴² Administrative Procedure Law. Adopted on 25.10.2001. Published in Latvijas Vēstnesis on 14.11.2001. No.164, Last amendments to the law on 02.02.2017. (353)

the Administrative Procedure Law are outdated and do not correspond to the legal situation as they do not include the legal institute "prosecutor's penal order". In order to improve the legal framework, it is necessary to determine the legal framework by supplementing the regulation of the Civil Procedure Law and the Administrative Procedure Law, specifying the particular legal norms.

In this chapter the author compares the definition of newly disclosed circumstances in the Latvian Criminal Procedure Law with the criminal procedural regulation of the Republic of Lithuania, the Republic of Estonia, the Federal Republic of Germany, the Swiss Confederation and the Russian Federation. The author concludes that these countries have introduced similar and different rules in their national criminal procedure laws for the definition of newly disclosed circumstances. However, while there are some differences, the newly disclosed circumstances are defined in such a way as to ensure the guarantees of the "right to a fair trial" and human rights.

The rulings of the European Court of Human Rights are evaluated at national level as newly disclosed circumstances, and the validity of such assessment is also confirmed in Section 655, Paragraph two, Clause 5 of the Criminal Procedure Law. This chapter analyzes the impact of the judgments of the European Court of Human Rights on the renewal of criminal proceedings in connection with a newly disclosed circumstance both in Latvia and abroad. It is argued that it is for the national court to assess on a case-by-case basis whether it appears from the content of the ruling of the European Court of Human Rights that proceedings should be reopened in the case and it is recognised that the European Court of Human Rights is not obliged to indicate directly in the ruling whether the national court should reopen the case or not⁴³. Thus, not in all cases where a ruling of an international judicial body that a final decision in a criminal proceeding does not comply with international regulatory enactments binding upon Latvia, the criminal proceedings would have to be renewed. In this case, it is particularly important to consider whether the renewal of the criminal proceedings and the reopening of the case will result in a different ruling from the original one and whether the mistakes made can be corrected. This means that if it is obvious from the outset that the outcome of the case – the ruling will not change, there is no reason to renew the criminal proceedings and re-examine the case. In this case, the principle of legal stability will prevail.

⁴³ Torgāns. K. (2012). *Civilprocesa likuma komentāri II daļa*, Rīga: Tiesu namu aģentūra, 881 lpp.

4. Applicants for the renewal of criminal proceedings in connection with newly disclosed circumstances

The chapter has four subdivisions. In this chapter, the author focuses on issues relating to persons involved in criminal proceedings – the subjects, who are entitled to submit an application on the renewal of criminal proceedings in connection with newly disclosed circumstances, or who are denied such rights.

The renewal of criminal proceedings in connection with newly disclosed circumstances is a legal institute designed as an additional guarantee of the right to a fair trial in the event prescribed by law. The Constitutional Court has recognized that the function of the renewal of criminal proceedings in connection with newly disclosed circumstances is to resolve the conflict between the principles of justice and legal stability. The purpose of the legal institute “renewal of criminal proceedings in connection with newly disclosed circumstances” is to strike a balance between the content of the two elements of a fair trial – the principle of *res judicata* and that of a fair judgment – in case they are conflicting.⁴⁴ When reopening criminal proceedings due to newly disclosed circumstances, the state needs to take steps to restore the person to the position he was in before the violation of his rights (*restitutio in integrum*), and what matters is not the reversal of the previous ruling, but the renewal of the person's previous position⁴⁵.

Section 657, Paragraph one, Clause 1 of the Criminal Procedure Law specifies that the reason on which proceedings for investigation of newly disclosed circumstances may be commenced is the application by the person involved in the criminal proceedings, whose rights or legitimate interests have been violated in the criminal proceedings, or by his lawyer. Such regulation is too vague as the term "persons involved in criminal proceedings" is broad and is defined in the first section of the Criminal Procedure Law, "Persons involved in criminal proceedings". Analyzing the norms of the Criminal Procedure Law systematically, it can be concluded that not all persons involved in criminal proceedings may submit an application due to newly disclosed circumstances. In order to avoid divergent interpretations of the provision and to promote legal certainty, the Criminal Procedure Law should give a precise list of persons entitled to apply for the renewal of criminal proceedings in connection with newly disclosed circumstances.

⁴⁴ Constitutional Court of the Republic of Latvia, Judgement 29.04.2016. No.2015-19-01 (15)

⁴⁵ Kaija S. (2016). Prokurora loma kriminālprocesa atjaunošanā jaunatklātu apstākļu dēļ, *SOCRATES*, Rīga: Rīgas Stradiņa universitāte 2 (5), 25 lpp

The author proposes to specify in Section 657 (1) of the Criminal Procedure Law a particular range of persons involved in criminal proceedings who have the right to apply for the initiation of proceedings for the investigation of newly disclosed circumstances.

Section 656 (4) of the Criminal Procedure Law states that the death of the sentenced person is not an obstacle to the renewal of criminal proceedings in the case in order to rehabilitate that person. However, the Criminal Procedure Law does not specify which persons may submit such an application. It could be concluded that the relatives of the deceased are entitled to make such an application as defined in Section 610 (1) of the Criminal Procedure Law (applicants for the continuation of criminal proceedings for the rehabilitation of the deceased). However, the author admits that the wording of the first paragraph of Section 657 of the Criminal Procedure Law does not indicate that the relatives of the deceased convict would have such a right, on the contrary, they cannot make such an application because the Criminal Procedure Law does not provide for it. Consequently, the author proposes that the Criminal Procedure Law should provide that the relatives of the deceased convict have the right to apply for the initiation of proceedings to investigate newly disclosed circumstances in order to rehabilitate the deceased.

In this chapter, the author compares the criminal procedural regulations of Latvia and other countries (the Republic of Lithuania, the Republic of Estonia, the Federal Republic of Germany, the Swiss Confederation, the Russian Federation) regarding the range of subjects entitled to apply for the renewal of criminal proceedings in connection with newly disclosed circumstances. The author concludes that in countries where criminal procedural regulation states that not only the convicted or acquitted person but also the victim may apply for the renewal of criminal proceedings in connection with newly disclosed circumstances, the aim is to guarantee the principle of equality and the right to a fair trial for every person involved in criminal proceedings. Such regulation is in line with the right to a fair trial as enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms.

5. Procedures for dealing with newly disclosed circumstances

The chapter has four subdivisions. The issues addressed in this section concern procedural time limits, the procedure for investigating newly disclosed circumstances, and the procedure for hearing a case where the prosecutor has recognised that the circumstances in question are to be recognised as newly disclosed. The Latvian criminal procedural regulation is compared with the criminal procedural regulation of other countries.

Looking at the first and second paragraphs of Section 656 of the Criminal Procedure Law, the author concludes that both of these provisions are intended to aggravate the situation of the convicted person, in the event that after the entry into force of the ruling any new circumstances are disclosed that may affect the decision. However, if the first paragraph of this Section defines that the reopening of criminal proceedings shall be permitted within one year from the date of the discovery of the newly established circumstances, the second paragraph no longer imposes such a time limit. In the opinion of the author, such regulation of the second paragraph of the Section allows to worsen the position of the convicted person, which is contrary to the principle of legal certainty. Section 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms states that no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same state for a criminal offense for which he has already been finally acquitted or convicted.⁴⁶ The Constitutional Court has recognized that the aforementioned Section (Section 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms) is aimed at the protection of the accused or convicted person against the state, and it is established that its purpose is to strictly limit the cases where it is possible to restore proceedings in the case of a bad case to an acquitted or convicted person.⁴⁷ In the author's view, in the event of a conviction, if the newly disclosed circumstances indicate that the person has committed a more serious criminal offense than the one for which the person was convicted or was subject to the prosecutor's penal order, that is to say, which testifies to be bad for the convicted person, in such case, it should also be specified that the time limit for the renewal of criminal proceedings is limited, as specified in Section 656, Paragraph one of the Criminal Procedure Law, that a new examination of criminal proceedings is allowed not later than one year from the date of the determination of new circumstances. This would ensure the right of a person to legal stability.

In Section 656, Paragraph five of the Criminal Procedure Law, it is precisely defined that, in the cases provided for in Section 655, Paragraph two, Clauses 1 and 2 of the Criminal Procedure Law, the date of identification newly disclosed circumstances should be considered the date when the relevant ruling has entered into force, and in the cases provided for in Section 655, Paragraph two, Clause 3 of the Criminal Procedure Law – the date, when the public prosecutor has taken a decision regarding the initiation of proceedings for the investigation of newly disclosed

⁴⁶ Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Adopted on 22.11.1984. In force in the Republic of Latvia 27.06.1997., Published in Latvijas Vēstnesis on, 13.06.1997. No.143/144 (858/859) (4)

⁴⁷ Constitutional Court of the Republic of Latvia, Judgement 05.03.2002. No.2001-10-01 (6)

circumstances. On the other hand, the Criminal Procedure Law does not define the date of identification of newly disclosed circumstances in relation to the circumstances specified in Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law (findings of the Constitutional Court and the international judicial authority). In the author's view, the criminal procedural regulation, in particular the rules setting out procedural time limits, must be such as to permit a precise indication of the starting and ending moments of the relevant time limit. The author proposes to supplement Section 565, Paragraph five of the Criminal Procedure Law by setting an exact time limit also for the cases provided for in Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law.

Summarizing provisions of Section 657 of the Criminal Procedure Law on the process of investigation of newly disclosed circumstances, the author has prepared for the review a schematic Figure 1 "Process of investigating newly disclosed circumstances", illustrating the progress of the case following the receipt of an application by a person interested in proceedings to the prosecutor's office, the procedures for examining it and possible decisions.

The regulation of the Criminal Procedure Law (Section 660), which refers to a decision of the Supreme Court in a case on newly disclosed circumstances, does not specify whether or not such a decision is subject to appeal. According to the author, this is considered to be a deficiency in the criminal procedural regulation. It is acknowledged that, for the sake of clarity of the rules of the Criminal Procedure Law, the same approach should nevertheless be followed and, in the case of non-appealable decisions, it should be clearly stated "not subject to appeal"⁴⁸. In the author's opinion, in order to avoid a different interpretation of procedural norms, it is necessary to specify in Section 660 of the Criminal Procedure Law that such a court decision is not subject to appeal and comes into effect at the moment of its pronouncement.

The practical application of the rules of criminal procedure relating to the handling of cases in the light of newly disclosed circumstances may reveal possible flaws or possible shortcomings of that regulation. Pursuant to Section 62 of the Criminal Procedure Law, the Supreme Court hears cases due to newly disclosed circumstances. Between 2011 and 2018, the Supreme Court of the Republic of Latvia has heard 12 criminal cases for newly disclosed circumstances. In this chapter, the author examines and analyzes case law in cases heard at the Supreme Court under Chapter 62 of the Criminal Procedure Law. For an idea of trends, the data for these cases are summarized in 3 tables and 1 graphical image.

⁴⁸ Meikališa, Ā. (2010) Nolēmumu likumības un pamatotības kontrole pirmstiesas procesā. *Kriminālprocess Raksti 2005 – 2010*, Rīga: Latvijas Vēstnesis, 611 lpp.

6. Legal aspects of the renewal of terminated criminal proceedings following newly disclosed circumstances

The chapter has three sub-chapters, 1 graphical image "Prosecutor's decisions to reopen closed criminal proceedings", which compiles statistics for the period from 2010 to 2018.

Section 393, Paragraph one of the Criminal Procedure Law provides that a procedurally authorised person may renew terminated criminal proceedings, or terminated criminal prosecution against a person, by revoking a decision on termination, if new circumstances have been disclosed that were unknown to the person directing the proceedings at the moment of the taking of the decision, and which have substantial significance in the taking of the decision⁴⁹. Unlike the detailed regulation of Chapter 62 of the Criminal Procedure Law on the renewal of criminal proceedings in connection with newly disclosed circumstances in the case of terminated criminal proceedings, there is no defined procedure for such decision to be reviewed and renewed in criminal proceedings. This is considered to be a shortcoming in the criminal procedural regulation and, according to the author, it is necessary to eliminate these shortcomings and develop a comprehensive regulatory framework. However, the question is whether these norms should be included in Chapters 62, 63 of the Criminal Procedure Law or in Chapter 31 "General Provisions of Pre-trial Criminal Proceedings", which already regulates the reopening of terminated criminal proceedings and prosecution – Section 393. The author is of the opinion that it is necessary to supplement Chapter 31 of the Criminal Procedure Law with the norms regulating the procedure, the time limits for the renewal of terminated criminal proceedings, as well as regulating the range of the subjects entitled to apply for the renewal of terminated criminal proceedings. The author makes concrete proposals to supplement the Criminal Procedure Law with new norms.

In a comparative context, the chapter deals with the criminal procedural regulation of other countries (the Republic of Lithuania, the Republic of Belarus, the Russian Federation) regarding the renewal of terminated criminal proceedings, if the decision has come into force. The author concludes that in other countries as well as in Latvia the issue of renewal of terminated criminal proceedings in connection with newly disclosed circumstances has been unjustifiably paid too little attention and the regulation of criminal procedure is not sufficient to clearly understand the procedure of renewal of terminated criminal proceedings.

⁴⁹ Criminal Procedure Law. Adopted on 21.04.2005. Published in *Latvijas Vēstnesis* on 11.05.2005, No.74 (3232), Last amendments to the law on 27.09.2018. (393.1.)

Section 393 Paragraph one of the Criminal Procedure Law provides that a terminated criminal proceeding may be renewed by a procedurally authorized officer by revoking a decision on termination. However, cases relating to newly disclosed circumstances must be specifically examined and evaluated as to whether and how the newly established circumstances affected the decision in the case. The presumption of the veracity of a valid decision in force, which runs counter to the requirement of justice and the renewal of the case, to which the ruling entered into force, if newly established circumstances subsequently emerge, is an important consideration for this issue to be assessed by a competent and independent official. Consequently, such an application for the renewal of terminated criminal proceedings in connection with newly disclosed circumstances would have to be considered by the prosecutor's office according to the original location of the pre-trial criminal proceedings. Namely, such an application would have to be examined by the prosecutor's office where supervision of the investigation of the particular criminal proceedings, prosecution or other functions prescribed by the Criminal Procedure Law were exercised. The issue that is worthy of discussion, in the author's opinion, is whether such an application can be examined by the same prosecutor who supervised, or by the prosecutor who led the criminal proceedings, or only by a prosecutor not previously involved in the particular criminal proceedings. Here too, the common approach to the regulation of criminal procedure should be taken into account. Because, for example, Section 657 (2) of the Criminal Procedure Law states that proceedings for the investigation of newly disclosed circumstances may not be carried out by a prosecutor who has carried out investigative activities, supervision of investigation, prosecution or participated in the consideration of the criminal case in any court. Consequently, the prosecutor examining the application for the renewal of terminated criminal proceedings should, in the event of newly established circumstances, be neutral, someone who has not previously been involved in the criminal proceedings in question.

Section 393 (2) of the Criminal Procedure Law provides that pre-trial criminal proceedings or prosecutions may be renewed if the criminal liability has not expired⁵⁰. Such regulation is incomplete and does not fully guarantee the persons involved in the proceedings a fair final decision. Namely, if criminal proceedings have been terminated on a non-rehabilitating basis, then under such procedural regulation the criminal proceedings cannot be restored to rehabilitate the person, even though new circumstances have been disclosed for the benefit of that person. The

⁵⁰ Criminal Procedure Law. Adopted on 21.04.2005. Published in Latvijas Vēstnesis on 11.05.2005, No.74 (3232), Last amendments to the law on 27.09.2018. (393.2.)

author proposes that the renewal of terminated criminal proceedings in cases terminated for non-rehabilitative circumstances should be subject to similar regulation as in Section 656 (3) of the Criminal Procedure Law, which provides for a new review of a conviction or prosecutor's penal order in connection with newly disclosed circumstances. in favour of the convicted person is not limited in time. This would also lead to a unified criminal procedure on similar issues and would ensure the guarantees of the persons involved in the criminal proceedings for a fair final decision.

CONCLUSIONS AND PROPOSALS

By carrying out the research, the author has achieved the set target and obtained answers to the research question. The author has concluded that the regulation established in the Criminal Procedure Law – renewal of criminal proceedings in connection with newly disclosed circumstances – is incomplete and does not fully guarantee the right to a fair trial of persons involved in criminal proceedings whose rights or legal interests have been violated in criminal proceedings. By revealing the issues of legal regulation, the author has identified shortcomings in the criminal procedural regulation and at the same time has offered solutions to eliminate these shortcomings by submitting proposals in the form of specific legal provisions.

Conclusions and proposals of the author:

1. If proceedings for newly disclosed circumstances in a particular criminal proceeding are initiated and prosecutor has recognised that there are grounds for deciding on the annulment of an existing decision, on which a decision has been taken, then the question of suspending the enforcement of the decision in force would also be decided, as defined in Section 669 of Chapter 63 of the Criminal Procedure Law.

Proposal:

To supplement the Criminal Procedure Law with a new Section - “*Section 657. ¹ Suspension of enforcement of judgments*” as follows:

"If the Supreme Court or the Prosecutor General's Office has taken a decision of a public prosecutor for consideration, by which it has been recognised that there are grounds for deciding on annulment of a ruling entered into force in criminal proceedings, it may suspend the execution of the ruling until the hearing the case in connection with newly disclosed circumstances."

2. Section 655, Paragraph two, Clauses 1 and 2 of the Criminal Procedure Law are incomplete because it does not cover all cases where any person involved in criminal proceedings could knowingly give false information/facts in a case that would influence the content of the final decision of the criminal proceeding. Legal institutes such as "auditor's opinion", "member of the investigative group", "direct supervisor of the investigator" have not been defined. To improve the legal framework, it is necessary to supplement the existing legal framework in the Criminal Procedure Law by specifying particular legal norms.

Proposal:

1) To express Section 655, Paragraph two, Clause 1 of the Criminal Procedure Law as follows:

"(1) knowingly false testimonies provided by a victim or witness, knowingly false opinion or a translation by an expert or an auditor, a falsification of material evidence, investigation or court records or decisions, as well as forgery of other evidence which formed the grounds for making an unlawful ruling, have been recognized by a valid court judgment or a prosecutor's penal order."

2) To express Section 655, Paragraph two, Clause 2 of the Criminal Procedure Law as follows:

"(2) criminal maliciousness by a judge, prosecutor, or investigator, member of the investigative group, direct supervisor of the investigator that has been the grounds for the making of an unlawful ruling has been recognised by a valid court judgment or prosecutor's penal order."

3. The definition of newly disclosed circumstances referred to in Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law - "findings of the Constitutional Court" and "findings of an international judicial authority" does not comply with the legal regulation, because both the Constitutional Court and the international judicial authority take a ruling in a case, and not findings. The definition contained in the provision must be precise and comprehensible.

Proposal:

To make amendments to Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law by replacing the word "findings" with the word "ruling", expressing Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law as follows:

"4) ruling of the Constitutional Court regarding the non-conformity of legal norms, or an interpretation thereof, to the Constitution, on the basis of which a ruling has entered into effect;

5) the ruling of an international judicial authority regarding the fact that a ruling of Latvia that has entered into effect does not comply with the international laws and regulations binding to Latvia."

4. Section 655 of the Criminal Procedure Law regulates the conditions for the renewal of criminal proceedings in connection with newly disclosed circumstances. As one of the grounds (a newly disclosed circumstance) it is stated that a knowingly false testimony by a victim or a witness is recognized by a final judgment or by a prosecutor's penal order. The

third paragraph of the Section does not provide for complete regulation, since it provides that, where it is not possible for a judgment to be rendered due to the fact that a limitation period has entered into effect, an act of amnesty has been issued, individual persons have been granted clemency, or an accused has died, the existence of the newly disclosed circumstances referred to in Clauses 1 and 2 of that Section shall be determined by an investigation. There is no indication of action in circumstances where a person (witness or victim) who is under the age of criminal responsibility has knowingly given false testimony. Also in the above paragraph, there is no reference to the prosecutor's penal order, which may be an alternative ruling to a court judgment.

Proposal:

Express Section 655, Paragraph three of the Criminal Procedure Law in the following wording:

“If the rendering of a judgment or a prosecutor’s penal order is not possible due to the fact that a limitation period has entered into effect, an act of amnesty has been issued, individual persons have been granted clemency, or an accused has died, or a person that should be held criminally liable has not reached the age of criminal liability, the existence of the newly disclosed circumstances referred to in Paragraph two, Clauses 1 and 2 of this Section shall be determined by an investigation, which shall be performed in accordance with the procedures provided for in this Section.”

5. Section 657 Paragraph one of the Criminal Procedure Law does not give a precise definition of the persons entitled to make an application on newly disclosed circumstances. The Criminal Procedure Law also states that the death of a sentenced person is not an obstacle to the renewal of criminal proceedings in the case for the rehabilitation of that person, but the Criminal Procedure Law does not specify the persons entitled to make such an application due to newly disclosed circumstances. In order to promote legal certainty, the Criminal Procedure Law should give a precise list of persons entitled to apply for the renewal of criminal proceedings in connection with newly disclosed circumstances. The author proposes to amend Section 657 Paragraph one of the Criminal Procedure Law by specifying the particular range of persons involved in criminal proceedings who have the right to make an application on newly disclosed circumstances, stating that the application can be made by a convicted or acquitted person, the property owner injured in criminal proceedings, the victim or his or her representative and, if the sentenced person is dead, the application may be made by his or her relatives.

Proposal:

Amend Section 657, Paragraph one of the Criminal Procedure Law, wording as follows:

“(1) The reason for commencement of proceedings for the investigation of newly disclosed circumstances shall be the application which may be submitted by: the convicted or acquitted person, the property owner injured in criminal proceedings, the victim or his representative. If the convicted person is dead, an application can be filed by his or her relatives. Information obtained in the course of other criminal proceedings may also be a reason for initiating proceedings if the grounds specified in Section 655, Paragraph two of this Law are present. The application shall be submitted to an Office of the Prosecutor according to the location of examination of the initial criminal proceedings.”

6. By reopening criminal proceedings within the meaning of Section 656 (1) and (2) of the Criminal Procedure Law, it is intended that the condition of the sentenced person be worsened if, after the entry into force of the ruling, newly established circumstances are disclosed that may affect the decision. However, if the first paragraph of Section 656 defines a review of the acquittal or of the decision to terminate the criminal proceedings within one year from the date of the determination of newly disclosed circumstances (but within the limitation period of the criminal liability), the second paragraph of Section 656 provides: If criminal proceedings have been terminated with a judgment of conviction, then, in disclosing circumstances that indicate that a specific person has committed a more serious criminal offence than the offence regarding which such person has been convicted, criminal proceedings may be renewed during the limitation period specified for the more serious criminal offence. In the event of a conviction, if the newly disclosed circumstances indicate that the person has committed a more serious criminal offense than the person convicted, or has been subject to a prosecutor’s penal order which testifies to be bad for the convicted person, then the time limit for reopening the criminal proceedings should be determined, similar to that set forth in Section 656 (1) of the Criminal Procedure Law (in the case of an acquittal), that is, one year from the date of determination of newly disclosed circumstances.

Proposal:

To supplement Section 656 Paragraph two of the Criminal Procedure Law with a new sentence as follows:

"A new hearing of the criminal procedure shall be permitted not later than one year from the date of the determination of the newly disclosed circumstances."

7. Section 656 of the Criminal Procedure Law does not regulate the procedural time limit regarding the day of determination of newly disclosed circumstances defined in the Criminal Procedure Law – for the circumstances specified in Section 655, Paragraph two, Clauses 4 and 5 of the Criminal Procedure Law. The criminal procedural regulation, in particular the norms governing procedural time-limits, must be such as to make it possible to determine directly the beginning and the end of the period in question. At present, the criminal procedural regulation does not provide a direct indication of the date of the determination of newly disclosed circumstances, if these newly disclosed circumstances are a ruling of the Constitutional Court and a ruling of an international judicial authority.

Proposal:

To supplement Section 656 Paragraph 5 of the Criminal Procedure Law with the following wording:

"(3) in the cases provided for in Section 655, Paragraph two, Clauses 4 and 5 of this Law - the date on which the relevant ruling has come into force."

8. In the event that the prosecutor, following an investigation into the newly established circumstances of the proceedings, has taken a decision refusing the application or transferring the case to the Supreme Court or the Prosecutor General's Office, the applicant should have access to the case file obtained during the investigation. However, the regulation of the Criminal Procedure Law does not provide for it, which is considered to be a significant deficiency in the criminal procedural regulation. It denies the right of certain persons involved in criminal proceedings to a fair trial within the meaning of Section 15 of the Criminal Procedure Law and Section 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Proposal:

To supplement the second sentence of the Paragraph seven of Section 657 of the Criminal Procedure Law with the phrase “to inspect the material obtained during the investigation of newly disclosed circumstances” and to express the second sentence of the Paragraph seventh of that Section as follows:

"The prosecutor shall send a copy of the decision to the applicant, explaining to him or her, within 10 days of its receipt, the right to inspect the material obtained during the investigation of the newly disclosed circumstances and to appeal to the district (city) court or, but if a prosecutor's penal order has been applied to the person – to a higher-ranking prosecutor. "

To supplement the sixth paragraph of Section 657 of the Criminal Procedure Law with a new second sentence as follows:

"The prosecutor shall send a copy of the decision to the applicant, explaining to him or her the right of access to the material obtained from the investigation of the newly disclosed circumstances."

The second sentence of the sixth paragraph of Section 657 of the Criminal Procedure Law shall be regarded as the third sentence.

9. The regulation of Section 660 of the Criminal Procedure Law, which refers to the decision of the Supreme Court when reviewing a case on newly disclosed circumstances, does not specify whether or not such a decision of the court is subject to appeal. For the sake of clarity of the rules of criminal procedure law, the same approach should be followed and, in the case of non-appealable decisions, it should be clearly stated as "not subject to appeal"

Proposal:

To supplement Section 660 of the Criminal Procedure Law with the Paragraph five worded as follows: *"The judgment shall not be subject to appeal and shall come into force at the time of its delivery."*

10. The criminal procedural regulation defining the procedure for renewal of a terminated criminal proceeding is incomplete and does not guarantee the persons involved in the criminal proceedings the right to a fair final decision in a particular criminal proceeding, in the event of its termination, but subsequently to the disclosure of new facts which would materially affect the substance of that final decision. The Criminal Procedure Law does not regulate under what new circumstances a decision on terminated criminal proceedings may be revoked, nor does it regulate which persons are entitled to submit such an application and who examines the application. It is necessary to improve the criminal procedural regulation with appropriate norms.

Proposal:

To supplement Section 393 of the Criminal Procedure Law with Paragraphs three and four, worded as follows:

"(3) The circumstances specified in Section 655, Paragraph two of this Law shall be deemed to be newly disclosed circumstances that may be the basis for the renewal of criminal proceedings.";

"(4) An application for the renewal of terminated criminal proceedings in connection with newly disclosed circumstances may be submitted by the person involved in the criminal

proceedings whose rights or legal interests have been adversely affected by the criminal proceedings or their representative or counsel at the initial pre-trial venue. An application for the renewal of terminated criminal proceedings may be dealt with by a prosecutor who has not supervised the investigation, investigated, prosecuted or participated in the criminal proceedings."

11. Section 393 Paragraph two of the Criminal Procedure Law provides that pre-trial criminal proceedings or prosecutions may be renewed if the criminal liability has not expired. This framework is incomplete and does not fully guarantee the parties involved in the proceedings a fair final decision. If a criminal proceeding is terminated on a non-rehabilitative basis, then such procedural regulation, even though newly established circumstances appearing that favor that person, may not be renewed to rehabilitate the individual. In order to ensure the right of persons whose criminal proceedings or prosecution have been terminated to non-rehabilitative circumstances of a person to be rehabilitated, it is necessary to establish appropriate criminal procedural regulation.

Proposal:

To add a new sentence to of Section 393 Paragraph two of the Criminal Procedure Law, worded as follows:

“The renewal of criminal proceedings or criminal proceedings which have been terminated under non-rehabilitating circumstances shall not be subject to time limits.”

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Riga, October 10, 2019

Inese Baikovska