
PARTICIPANTS' PAPERS

THE CURRENT SITUATION CONCERNING DRUG RELATED CRIMES AND MONEY LAUNDERING IN ESTONIA

*Aro Siinmaa **

I. INTRODUCTION

Estonia, a former republic of the Soviet Union, only regained its independence in 1991. The rapid transition from one political system to another brought about a situation where it became essential to change the entire legislative basis. Naturally, it was impossible to carry out such an enormous task at once and it could be said that even the so-called transitional period or the period of continual amending of the legislation is not over yet. This in turn has inhibited the formation of a stable practice in all fields of law, especially in criminal and procedural law.

Although Estonia has established working relationships with many international organizations, acceded to international conventions and followed the directives of the European Union, there is still much to do in the building up of our legal system. Currently there are debates going on over the competence of law enforcement authorities, their position in relation to each other and the scope of cooperation.

Today the Estonian justice system has reached a most crucial stage as on September 1, 2002 the new Penal Code entered into force replacing the Criminal Code, which dated back to the Soviet period and had been amended on several occasions. The alteration of the system of provisions of criminal law in the middle of the calendar year is the reason why the statistics dealt with in this report are inaccurate and the review itself incomplete.

The reform of the criminal procedural law is also under way. The Riigikogu (the parliament) passed the Code of Criminal Procedure on February 12, 2003, which will enter into force on July 1, 2004 replacing the old Code dating back to the Soviet regime. The new Code of Criminal Procedure will finally establish the adversarial procedure and will change considerably the competence of the law enforcement authorities. So far pre-trial investigation was carried out by the police or in the case of certain crimes provided by law by other authorities (for example the customs, border guard and tax board). The police also brought charges and referred the matter to the court through the Prosecutor's Office. The Prosecutor's Office exercised supervisory control over the pre-trial investigation and represented public prosecutions.

According to the new Code the Prosecutor's Office will lead the pre-trial investigation. In that way the responsibility of the Prosecutor's Office for the quality and efficiency of the pre-trial investigation will increase considerably and thus cooperation between the Prosecutor's Office and the police in the fields of investigation and surveillance must become more efficient. It is too early to say how it will work out in practice.

Because of the above mentioned reasons it is obvious that at the level of international cooperation, including in matters under review at this time, we have little experience to share with our colleagues from countries whose legal systems have developed undisturbed for decades or even centuries. Our role is

* Prosecutor, Estonia.

125TH INTERNATIONAL TRAINING COURSE PARTICIPANTS' PAPERS

therefore to be attentive and grateful learners.

The lack of practice in matters under review is also the result of the small size of Estonia. The area is only 45,000 square kilometres and the population is approximately 1.5 million, which is many times smaller than that of many cities of other countries, including Tokyo. It must be emphasised that during the last 12 years of independence the criminal groups have also made principal changes in their structure and methods used and found new targets to attack. They have managed to do all that as fast as, or probably faster than, the legislation has developed.

II. CURRENT SITUATION OF ORGANIZED CRIME IN ESTONIA

In the beginning of the 1990s a new organized underworld, which was more orientated towards maximising profit, emerged alongside the old subculture of theft based on the Soviet prison hierarchy. Criminal groups, with notable levels of organization, operating in Estonia were (and still are) of Russian or former Soviet Republics' origin and often operated on behalf of criminal groups there. Estonian criminals had little to say in the criminal world. For example, according to the surveillance agencies, during the first years of independence there was only one competitive criminal group established by Estonians and comprising mainly of Estonians. As is typical with the early days of capitalism organized crime in Estonia was openly violent for a long time focusing on extortion, robbery, arbitrary behaviour, trafficking of timber, organized theft, pimping, trafficking of guns and, to a certain extent, drug trafficking. In time criminals learned to profit from the geographical position of Estonia between Europe and the former Soviet republics.

The so-called "white collar trend" in organized crime has only become more obvious during the last few years. Therefore it must be recognised that investment of money received from, for example, drug trafficking into legal businesses to conceal its origin has not yet been officially detected. It means that not only is there no judicial practice in the form of binding judicial decisions but there are no criminal cases where these connections have been the subject matter of the investigation. Some connections have clearly been detected but as long as no criminal proceedings are commenced the relevant information is available only to surveillance agencies and is not within the competence of the Prosecutor's Office. Therefore, I, as a prosecutor, have no right either to rely on that information or to comment on it.

As from 1996 there was, and is, in the new Penal Code, with certain exceptions, a section in the Criminal Code that states that membership in, or the forming of, criminal organizations or recruiting members thereto or leading such organizations or parts thereof is punishable. During its period of validity there has been only one case where the organiser of a criminal organization and its border guard members were convicted, by virtue of this provision, for smuggling stolen cars into Estonia. Several other criminal proceedings have also commenced and referred to the court but they were all either terminated during the preliminary investigation because they were impossible to prove or the court passed a judgement of acquittal. Therefore it must be admitted that although persons or groups of persons have been convicted for smuggling or handling narcotic substances it has not been proven by a binding decision that such activities were carried out by a criminal organization or, in other words, connections between organized crime and drug trafficking or money laundering have not yet been detected.

We can discuss money laundering as an independently punishable crime only theoretically as, so far, no one has been convicted for this crime. According to the surveillance information criminal organizations are associated with money laundering but in these cases prior crimes are economic or tax related.

III. DRUG RELATED CRIMES

The Estonian Police have the following drug units:

- 1) The Narcotic Crime Department of the Central Criminal Police (a national unit), which comprises a Procedural Division (10 officials) and an Analysis Division (5 officials).
- 2) Narcotic Divisions of local police prefectures and individual officials dealing with narcotic crimes. Larger divisions are located in Tallinn (29 officials), Johvi (9 officials), Tartu (7 officials) and Narva (4 officials); there are also a total of 19 officials in the smaller prefectures. The total number of officials dealing only with narcotic crimes is 84.

Apart from the police there are five officials in the Border Guard and at the end of 2002 a narcotics division was established within the Investigation Department of the Customs Board. Cooperation agreements have been concluded between the different divisions (police-customs, police-border guard, customs-border guard) which enables an exchange of information, organizes training, and helps each other with transportation, etc. There is also a legal basis for cross-usage of the databases but this field needs to be developed. The main aim of cooperation is to prevent illicit trafficking.

The following data was supplied mainly by the Central Criminal Police (CCP) and the Forensic Service Centre (FSC) but, due to the above mentioned transitional difficulties, there might be some discrepancies.

According to the Central Criminal Police, criminal organizations are currently looking for new possibilities to invest their illegally acquired money into legal businesses. Drug trafficking is becoming more intensive every day and, for that purpose, established channels are used and new ones are sought out. Transit of the following narcotic substances and precursors is going on throughout Estonia:

- heroin and lately fentanyl from Russia, mainly to the Nordic Countries (Scandinavia);
- hashish mostly from Spain to the Nordic Countries (Scandinavia);
- ecstasy (MDMA) from the Netherlands and Belgium, mainly to the Nordic Countries;
- cocaine from Venezuela, mainly to the Nordic Countries and Russia.

Heroin, fentanyl and precursors are imported from Russia into Estonia, amphetamine and heroin are exported from Estonia into the Nordic Countries (Scandinavia) and precursors are exported from Estonia mainly to Western Europe. Transit constitutes approximately 70 percent of the drug trafficking while local consumption constitutes 30 percent. In addition to transit and imported narcotic substances drugs are manufactured locally as well. In 2001 no illicit narcotic laboratories were destroyed but in 2002 four laboratories for manufacturing synthetic drugs (amphetamines, ecstasy, GHB and GHB and amphetamines) were found. In 2001, thirteen plantations of cannabis (with a total area of 400 square metres) were destroyed in Estonia, the production of which was meant for the local market. In 2002 seven major plantations of cannabis were found.

According to the Forensic Service Centre altogether 22 expert analyses were conducted which identified the plants as cannabis but these also included cases where only single plants were involved. In 2002 amphetamine constituted 36 percent of the expert analyses, products of cannabis 35 percent, ecstasy 13 percent and heroin 9 percent. The percentage is calculated taking into account only the number of expert analyses carried out, not the quantity of narcotic substances. According to the Central Criminal Police the know-how for manufacturing narcotic substances is spreading rapidly and the manufacturing of amphetamines and ecstasy has become more common. New narcotic substances like GHB and fentanyl have also come onto the market. A very strong drug, fentanyl (a synthetic heroin or the so-called "China White") and one of its counterparts, methylfentanyl, which is even stronger than fentanyl, and which are

125TH INTERNATIONAL TRAINING COURSE PARTICIPANTS' PAPERS

now used instead of heroin, came onto the market at the end of 2001. In 2001 fentanyl was not found but in 2002 it was confiscated in 71 cases. The reason why fentanyl has spread so quickly is probably that it has become more complicated to get heroin and also because of the low quality of the heroin.

It is a significant trend we are up against as in 2001 heroin constituted 90 per cent of the gross turnover of the narcotic business amounting to approximately 900 million kroons. Due to the difficulties in getting heroin, the usage of narcotic substances home-produced from the opium poppy increased considerably. In 2001 39.4 kg of opium poppy bolls, dust and residues of manufacture were confiscated while in 2002 the amount was 102 kg.

Cannabis products are continually popular. In 2000, 72 kg of cannabis plants, parts of plants and marihuana (hashish and cannabis seeds are not included here) were confiscated, in 2001 the amount was 260 kg but in 2002 it dropped to 81 kg.

Since the year 2000 the amount of confiscated cocaine has doubled while the amount of confiscated GHB has also increased massively. One of the acute problems is the production of amphetamines stimulated by the enormous demand of the Nordic market. In 2002 amphetamine and methamphetamine was confiscated in 344 cases amounting to 35.1 kg. One of the facts indicating the wide circulation of narcotic substances is the stabilisation of prices. In 2000, narcotic crimes constituted 2.7 per cent, in 2001 3.9 per cent and in 2002 2.3 per cent of all crimes committed.

The 2002 percentage, however, is debatable as in that year the reform of the criminal law was carried out which brought with it a temporary decrease in statistical numbers. Therefore, there was no actual decrease in narcotic crimes and this is supported by the fact that during the first quarter of 2003 the increase in narcotic offences was 61 per cent when compared to the same period of 2002. These kinds of statistics are actually the least informative as all kinds of narcotic related crimes are taken into account on an equal basis.

Lately the police have paid more attention to serious drug related crimes and the new Penal Code denounced some of the offences classified as crimes during the first half of 2002. Namely, a person who has used narcotic and psychotropic substances repeatedly without a prescription will not be punished as a criminal offender as, according to the Narcotic Drugs and Psychotropic Substances Act, this kind of action is deemed to be a misdemeanour.

The priority of the police is to damage criminal organizations and not to apprehend minor dealers. This is also supported by the statistics, which show that although the total number of criminal cases dealing with the trafficking of narcotics has decreased, the amounts of confiscated substances have increased significantly. For example, the amount of confiscated heroin increased over three times in 2002 compared to the year before, although the number of cases decreased more than three times.

In the field of cooperation, apart from the above mentioned agreements concluded between the police, customs and the border guard, there is a rather active exchange of information between the police and the State Agency of Medicine and between the police and businesses selling chemicals. When talking about combating narcotic crimes at the international level, it is important to mention that Estonia is a member of EUROPOL and participates in regional cooperation projects such as FINESTO (Estonian-Finnish joint working group) and FER (Finnish- Estonian-Russian) which was launched at the end of 2002. Estonia also participates in the project "Gulf of Finland" and the European joint project N-Hero, led by Russia. The aim of the latter is to profile heroin which means that confiscated heroin is analysed and, as a result, a unique characterisation of the batch or "fingerprint" of the batch is compiled. On the basis of the data, the

batch can be compared with other confiscated batches of heroin, similarities can be detected and thus the origin of the batch can be established along with other important factors like place and time of production, persons involved, etc.

In addition to the police representatives of the Finnish and Estonian, border guard and customs have also joined the FINESTO working group. The aim of this working group is to detect and hinder drug trafficking between Estonia and Finland. Since the end of 2000, when the work was commenced, tens of kilos of amphetamine and hashish have been confiscated and tens of criminals apprehended. The Finnish Central Criminal Police has also engaged a Swedish liaison officer in the work of FINESTO. There is a contact person in the Swedish Central Criminal Police who co-ordinates the cooperation. Cooperation between the Estonian and Swedish police is also active and all official communication channels are being used - INTERPOL, EUROPOL and the liaison officer at the Swedish Embassy in Estonia, appointed by the Swedish police.

There is a special unit in the Stockholm Police for combating crime originating from the Baltic States with whom the Estonian Central Criminal Police has good contacts. As Estonia is going to accede to the European Union the narcotic units of the Estonian Police are ready for this - there is an operable national electronic data exchange and in cooperation with our German colleagues we have drawn up a national narcotics strategy based on relevant EU documents.

It is appropriate to start the survey on the legislative basis for combating narcotic crimes with the fact that on June 5, 1996 the Riigikogu voted to ratify the UN 1961 Single Convention on Narcotic Drugs and the UN 1971 Convention on Psychotropic Substances. In 1997 the Narcotic Drugs and Psychotropic Substances Act entered into force and the Minister of Internal Affairs established the procedures for documentation of the delivery and storage of narcotic drugs and psychotropic substances and for storing seized narcotic substances which serve as physical evidence. The same year the Minister of Social Affairs issued a regulation on the Implementation of the Narcotic Drugs and Psychotropic Substances Act which comprised schedules of specific substances the handling of which, without a prescription, is prohibited.

The Government of the Republic has passed the following regulations: "The definitions of small and large quantities of narcotic drugs and psychotropic substances", "The procedure for handling opium poppy and cannabis for the purpose of agricultural production" and "The procedure for handling precursors". On May 31, 2000 the Riigikogu voted to ratify the UN 1998 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. During the reform of penal power in the middle of 2002 the system of provisions regulating the punishment for narcotic crimes was changed to a certain extent. The use of narcotic substances was decriminalised and is now punishable as a misdemeanour pursuant to the Narcotic Drugs and Psychotropic Substances Act. In the systematic classification of legal provisions narcotic crimes are deemed as crimes against public health and not as crimes against public order, as they used to be. An entirely new definition introduced by the new Penal Code was one of corporate liability which, within the meaning of sanctions, is expressed in punishing a legal person (body corporate) for committing a crime by pecuniary punishment or compulsory dissolution.

Illegal handling of narcotic drugs and psychotropic substances in small or large quantities is punishable by different lengths of imprisonment while the handling of large quantities by a group of persons or a criminal organization is punishable by two to ten years imprisonment. It is a criminal offence to induce a person or a minor (a more serious criminal offence) to illegally consume narcotic drugs or psychotropic substances; to prepare for distribution of narcotic drugs or psychotropic substances (which is a rather exceptional provision as the Penal Code has generally decriminalised the preparation of a crime); as well as to violate the requirements for handling precursors and related reporting.

125TH INTERNATIONAL TRAINING COURSE PARTICIPANTS' PAPERS

Illicit international traffic and transit of narcotic substances are not deemed as crimes against public health but are punishable pursuant to section 392 of the Penal Code as smuggling of merchandise that is prohibited or requires a special permit by law, by a pecuniary punishment or by up to five years' imprisonment. The same act, if committed by an official taking advantage of his or her official position, or by a group, is punishable by five to ten years' imprisonment. The court shall confiscate the substance or object which was the direct object of the commission.

In the Penal Code smuggling is classified in the division of tax frauds in the chapter of economic offences. Although, theoretically it is not impossible to charge a person with illicit trafficking as well as jeopardising public health, with regard to the same batch of narcotic substances, judicial practice has shown that if there are features of illicit traffic a person is punished only for that crime. When talking about combating narcotic crimes we cannot ignore certain problems involved. Officials assigned to deal with narcotic crimes in prefectures often lack professional training and experience, even on the management level. As the dealers operating in the territory of a county are active not only all over the republic but also abroad, relevant information should be gathered and disseminated but local police authorities do not have the resources. Surveillance information on narcotic crimes is received randomly.

The solutions to this problem proposed by the Central Criminal Police are continuous training, surveillance and analysis. Duplicating each others' work must be avoided, information must be accessible to all officials working in this field and the Central Criminal Police, local prefectures and the Prosecutor's Office must enhance cooperation when introducing a single practice. Educational institutions offering police oriented education must include in their curriculum basic and in-service training in the field of narcotic offences. I, myself, may add that prosecutors and judges also need this kind of training, especially when bearing in mind that, as of next year, the role of the Prosecutor's Office in preliminary investigation and adversarial procedure will increase considerably.

IV. MONEY LAUNDERING

Money laundering became a criminal offence in Estonia as of July 1, 1999 when the Money Laundering Prevention Act, passed by the Riigikogu on November 25, 1998 entered into force. In the Republic of Estonia money laundering is defined as the conversion or transfer of, or the performance of legal acts with, property acquired as a direct result of an act punishable pursuant to criminal law, the purpose or consequence of which is the concealment of the actual owner or the illicit origin of the property.

Two new paragraphs were entered into The Criminal Code that were titled "Money Laundering" and "Failure To Follow The Requirements of the Money Laundering Prevention Act". In the new Penal Code the regulation is similar: paragraph 394 is titled "Money Laundering" and according to that money laundering is punishable by pecuniary punishment or by up to five years imprisonment. If money laundering is committed by a group of persons or by a criminal organization, repeatedly (at least twice) or on a large scale the punishment is two to ten years imprisonment. If such a crime is committed by a legal person the sanction is either pecuniary punishment or compulsory dissolution. The court shall confiscate the direct object of the commission. Failure to comply with the identification requirement, failure to notify suspicions of money laundering to the financial intelligence unit by the head or a contact person of a financial institution or an entrepreneur or the submission of untrue information are separately criminalised and punished by pecuniary punishment or up to one year imprisonment.

On June 25, 1999 Estonia signed, and on March 8, 2000, ratified the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. According to article 6 of the Convention, Member States may establish which intentionally committed offences shall be deemed as crimes:

- the conversion or transfer of property, knowing that such property is proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds of crime;
- the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds of crime;
- participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

According to the Convention Member States may also establish whether:

- a predicate offence shall be considered as a criminal offence;
- the above mentioned offences committed by a person who has committed a predicate offence shall be considered criminal or not;
- knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

The Republic of Estonia has established that predicate actions must be separately punishable as criminal offences and that it is also possible to punish a person for money laundering when he/she has himself committed the predicate offence.

In practice, no criminal cases concerning money laundering have reached court judgement. Two cases have been referred to the court and several cases are still under investigation. So far none of the money laundering cases has been connected with illicit trafficking in narcotic substances. Predicate offences are mainly of an economic nature: misuse by an official of his or her official position, tax offences and cases of bankruptcy, where owners attempt to maintain control over assets that belonged to the bankrupt enterprises and were at their disposal.

Example One

A moratorium was declared on a bank and without the consent of the moratorium administrator the former leaders of the bank could not conduct any transactions. But they learned that it was most likely that bankruptcy proceedings would be commenced and so they sold the assets of the subsidiaries of the bank for a very low price to other companies which sold them on. These companies were in fact controlled by the former bank leaders and the leaders of the companies were only ‘puppets’ following their orders.

125TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

Example Two

Another bankruptcy case, where just before the commencement of the bankruptcy proceedings company assets were transferred to another company to cover a fictitious debt. The company, in turn, sold the assets on trying to make it look as if they had acquired them in good faith.

These two criminal cases are currently being heard in court but there is no judicial decision yet.

Example Three

A preliminary investigation is currently being conducted into a case where, during the years 1998 to 2000, a company owned by a real estate businessman received more than 44 million kroons through offshore companies. To that end money received allegedly from the timber business was transferred to the accounts of so-called "shelf companies" (companies that are not actually economically active). Cash was drawn from the accounts and delivered to the office of the real estate company. Fictitious loan agreements were then concluded with offshore companies to legalise this cash in the vaults of the real estate company.

A. Effective Investigation Methods for Gathering Evidence in Cases of Money Laundering and Drug Related Crimes

Effective investigation methods for gathering evidence in cases of money laundering and narcotic crimes are to a large extent the same as those used for investigating organized crime in every field of activity. The admissibility of evidence and methods for gathering the evidence depends on the compatibility with requirements established by the Code of Criminal procedure and the Surveillance Act.

1. Criminal Intelligence

In any organized crime related criminal case (I am talking about cases based on surveillance, which means that proceedings are commenced on the initiative of a law enforcement authority and not because of a complaint) formalising the evidence must be preceded by the gathering of information and analysis. So far systemised analysis has been conducted mostly by the Central Criminal Police but we should not underestimate the contribution of the local prefectures. Information is being gathered on the sources and channels of large-scale narcotic crimes, on the persons involved as well as on the activities, structure and dynamics of criminal organizations. In the field of economics, surveillance is used for checking suspicious transactions and companies whose actual activities and financial status do not correspond either to the officially registered fields of activity or to their documented financial status. Criminal intelligence may result in commencing actual criminal proceedings but also information gathered, but not actually used, might prove to be useful in the future. Surveillance information is formalised as evidence by a report accompanied, if necessary, by database extracts proving the use of the means of communication, sound or video recordings and their transcripts. In certain cases statements of police officers may be used but so far this area has been poorly regulated and the courts have neither common practice nor serious precedents.

2. Surveillance

According to the Surveillance Act, surveillance activities are divided into special and exceptional surveillance activities. The police may conduct the following special activities without applying for the permission of the court: covert collection of information by persons who are engaged in surveillance activities or recruited for such; covert collection of comparative samples, and the covert examination and initial examination of documents and objects; and covert surveillance and covert identification. Exceptional surveillance activities that require the permission of the court are: covert entry for the

purpose of collecting and recording information and installing the necessary technical appliances; covert examination of postal items; wire tapping and recording of messages and other information forwarded by technical communication channels; and staging of criminal offences. In cases of urgency, court permission for declaring activities justified may be applied for after the commencement of the activities, but not later than on the next working day. If the court refuses to issue a permit the activities must be terminated promptly. It is pointless to emphasise how effective these measures are but, due to the current legal regulations and additional bureaucratic rules within the agencies, the commencement of exceptional surveillance activities is a painstaking process, and therefore, often lags behind the quick and persistent operation of criminals.

3. Undercover Operations

Undercover operations are something that might be effective in cases of economic and narcotic crimes but their implementation in Estonia is problematic. So far short-term undercover operations have been exercised particularly in the fields of combating narcotics, illegal alcohol and cigarettes as well as in revealing gun trafficking and cases where officials are taking bribes. In cases of undercover operations where the activities of an undercover agent are qualified as criminal (for example when an agent sells a gun or offers a bribe) permission for staging a criminal offence must be applied for from the court as the action is considered to be an exceptional surveillance activity. Undercover operations related to narcotics are also based on the provisions of the Narcotic Drugs and Psychotropic Substances Act, which permits the handling of narcotic drugs and psychotropic substances for preventing, detecting and combating narcotic crimes. In undercover operations agents over the years have played all kinds of roles: as buyers, sellers, deliverers, suppliers, retailers, financers and corrupt officials. In many cases during the staging of a crime an agent has offered a bribe or a deal of some kind to an official suspected of corruption. Undercover work in Estonia is problematic because of the smallness of the country - people know each other or have been in contact at some time or another. Therefore, instead of police officials ordinary citizens or former criminals willing to co-operate have been recruited as temporary undercover agents. But there are certain risks involved. Of all kinds of undercover work short-term operations are most commonly used because in the case of deep undercover assignments the risk of being exposed is great. Undercover store fronts are also seldom used because of the lack of resources and the risk of exposure due to the smallness of the country.

4. Immunity

Immunity from liability for crimes committed is not applied in Estonia as it is precluded by law. Unless the crime has been committed on the basis of the permission issued by the court to imitate a crime, the person is held liable for his/her actions. Prior to September 1, 2002 section 501 of the Criminal Code was valid, on the basis of which the court or the prosecutor could release the convicted offender from punishment if important evidence provided by him/her resulted in the finding out of the truth and the conviction in a criminal case of another person/persons. This meant that in order to release a person from punishment it was necessary for: a) the person to be found guilty of all the crimes committed by him/herself; b) the case in which the person rendered assistance being closed after the final judicial decision; c) the prosecutor agreeing to submit an application for the release of the person from punishment; and d) the court being willing to comply with this. Assessing the extent of assistance was a totally subjective criterion and was not thoroughly regulated. The new Penal Code does not provide for the release of a person from punishment and the only tools in the hands of police/prosecutors are: the imposition of minor preventive measures such as a signed undertaking not to leave their place of residence, probation or bail instead of holding a person in custody or assistance in premature release of the person.

125TH INTERNATIONAL TRAINING COURSE PARTICIPANTS' PAPERS

5. Protection of Witnesses

A witness protection system is still being set up. Currently negotiations are being held with other Baltic countries and Finland to establish a joint witness protection programme. The geographic position and small area of Estonia, its language and financial situation does not enable us to implement a classical model of witness protection where a key witness is given a new identity and gets a new place to live as well as a new job. However, in Estonia a witness is allowed to remain anonymous if he/she has a justified reason to be afraid for him/herself or the well-being of his/her relatives. The interrogation record of an anonymous witness is enclosed in the criminal file under a fictitious name. A sealed envelope with information concerning the name and contact information of the witness declared anonymous is safely located in the vault of the investigator and later in that of the court. Interrogation of an anonymous witness in the court is conducted separately, in the presence of only the panel of the court. The defence attorney and the prosecutor may question the witness in writing through the court. There have been many problems implementing the anonymous witness system and currently higher courts are trying to limit the exploitation of anonymous witnesses relying on the precedents of the European Court of Human Rights.

6. Controlled Delivery

The definition of controlled delivery is used in the Customs Act but the requirements of the Code of Criminal Procedure and the Surveillance Act must be adhered to as the controlled delivery method comprises several investigative surveillance actions. The controlled delivery method could serve as an effective means for detecting a chain of narcotic crimes. It requires, however, cooperation between the police, customs and the border guard as the custom authorities have no right to commence exceptional surveillance activities and the customs frontier usually runs along the state border. It is also important to co-operate with other countries as the above mentioned method must be authorised in every state the parcel crosses (in practise there have been problems with the Netherlands when monitoring the route of narcotics to Germany). It would be practical to conclude relevant agreements with other countries similar to the one Estonia has concluded with Finland.

B. The Creation of a System of Notification of Suspicious Transactions and the Establishment and Operation of the Financial Intelligence Unit (FIU); Cooperation with Banks and other Financial Institutions

With the adoption of the Money Laundering Prevention Act the Financial Intelligence Unit was established. The FIU verifies information relating to suspicious transactions pursuant to the procedure provided for in the Code of Criminal Procedure takes the necessary measures to preserve property and, if elements of a criminal offence are detected, sends material to a pre-trial investigation authority for a decision to be made on the commencement of criminal proceedings. The Financial Intelligence Unit is a structural unit of the Police Board within the administrative area of the Ministry of Internal Affairs. Currently seven persons work in the Unit: One chief superintendent, three leading police inspectors and three senior officials.

The functions of the Financial Intelligence Unit are:

- to collect, register, process and analyse the information received. In the course of these activities, the significance of the information submitted to the Financial Intelligence Unit for the prevention, establishment or investigation of money laundering and criminal offences related thereto is assessed and a decision is made on the use of the information;
- to inform persons who submit information to the Financial Intelligence Unit of the use of the information in the prevention, establishment or investigation of money laundering and criminal offences related thereto, with the aim of improving the performance of the notification obligation;

- to conduct investigations into money laundering, improve the prevention and establishment of money laundering and inform the public thereof;
- to co-operate with credit and financial institutions, entrepreneurs and police authorities in the prevention of money laundering; and
- to organize foreign relations and the exchange of information.

The Financial Intelligence Unit maintains a database which includes information received in notices submitted by credit and financial institutions and other relevant undertakings on transactions about which there is a suspicion of money laundering, all suspicious and unusual transactions and acts, as well as additional information on transactions, their participants and other circumstances related to the transactions which are collected in cases provided by law.

According to the current Money Laundering Prevention Act it is mandatory for credit and financial institutions to identify all persons or representatives of persons who carry out non-cash transactions involving sums of more than 200 000 kroons or cash transactions involving sums of more than 100 000 kroons.

Credit or financial institutions are also required to identify any person about whom there is a suspicion that the money which is the object of the transaction is derived from criminal activity.

According to the Money Laundering Prevention Act insurers, insurance agents, insurance brokers, investment funds and professional securities market participants are considered to be financial institutions. However, provisions of this Act extend also to those undertakings which are not credit or financial institutions but which can be used for money-laundering purposes:

- 1) undertakings the principal or permanent activity of which are transactions involving real estate or the organization of gambling or lotteries, and undertakings which operate as intermediaries in such areas of activity;
- 2) other undertakings which carry out, or act as intermediaries for, transactions during which they receive, act as intermediaries for or pay out more than 100 000 kroons in cash, more than 200 000 kroons in the event of a non-cash settlement, or more than 200 000 kroons in total as cash and non-cash payments in the event of both a cash and non-cash settlement for a transaction or for transactions which are clearly interconnected.

According to section 10 of the Act it is prohibited to carry out the transaction if it is impossible to identify the person on whose behalf, or for whose account, another person is acting. The credit or financial institution or the relevant undertaking is also required to inform the Financial Intelligence Unit immediately of an expression of intent by the person to carry out a transaction, or of a transaction which has already been carried out by the person.

The Money Laundering Act also provides that a credit or financial institution has the right to refuse to carry out a transaction if a person does not submit documents certifying the legality of the source of the money or other property which is the object of the transaction despite a corresponding demand having been made.

According to section 13 of the above-mentioned Act the head of a credit or financial institution has to appoint a person to be a contact for the Financial Intelligence Unit. The duties of the contact person are:

- to monitor compliance with money laundering prevention requirements in the credit or financial institution;
- to forward information to the Financial Intelligence Unit in the event of a suspicious transaction; and

125TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

- to inform the head of the credit or financial institution in writing of deficiencies in compliance with the internal audit rules.

In addition to the general identification requirement, credit and financial institutions are required to notify the Financial Intelligence Unit immediately about any suspicion of money laundering. In the event of justified suspicion of money laundering, the Financial Intelligence Unit may suspend a transaction or impose restrictions on the use of money in an account for up to two working days from the first attempt to carry out the transaction.

According to section 17 of the said Act credit and financial institutions and undertakings and employees thereof and persons acting on their behalf are not liable for damages which result from failure to carry out a transaction, or from failure to carry out a transaction within the given term and which is caused to a client in connection with informing the Financial Intelligence Unit of a suspicious transaction, nor can they be accused of a breach of a confidentiality requirement imposed on them by law or contract.

The Money Laundering Prevention Act provides for the following liability for committing a misdemeanour in the event of institutions/undertakings and their employees who do not perform their obligations:

Section 26¹ Violation of requirement to register and preserve data

- (1) Violation of the requirement to register and preserve data provided for in the Money Laundering Prevention Act is punishable by a fine of up to 100 fine units (a fine unit in Estonia presently is 60 kroons).
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 20 000 kroons.

Section 26² Failure to submit or late submission of mandatory information

An employee of a credit or financial institution who fails to submit, or does not submit on time, mandatory information provided for in the Money Laundering Prevention Act to the contact person or head of the institution shall be punished by a fine of up to 200 fine units.

Section 26³ Failure to implement internal security measures

The head of a credit or financial institution who fails to implement the internal security measures provided for in the Money Laundering Prevention Act shall be punished by a fine of up to 200 fine units.

Section 26⁴ Illegal notification of information submitted to the Financial Intelligence Unit

The head, contact person or another employee of a credit or financial institution who unlawfully notifies a person whose activities involve a suspicious transaction, or a third person, of information submitted to the Financial Intelligence Unit shall be punished by a fine of up to 300 fine units.

Section 26⁵ Failure to comply with the identification requirement

An employee of an undertaking specified in subsection 5 (1) of the Money Laundering Prevention Act who fails to comply with the identification requirement provided by law shall be punished by a fine of up to 300 fine units.

Extra-judicial proceedings concerning these misdemeanours shall be conducted either by police prefectures or the Financial Supervision Authority.

In addition to the above-mentioned Act the Governor of Eesti Pank (The Bank of Estonia) has adopted a Decree on the Procedure for the Internal Security Measures of Credit Institutions for the

Prevention of Money Laundering and a List of Suspicious and Unusual Transactions. According to this Decree in order to decide whether a transaction or operation is suspicious or unusual, credit institutions must pay special attention to:

- the content and extent of the economic activity of the client and a good knowledge thereof (due diligence); and
- clarification of the background to transactions and operations that have the features stipulated in section 6 of the Money Laundering Prevention Act.

Such transactions and operations of clients that lack a definite economic or legal justification and differ from the ordinary economic activity of clients shall be considered as suspicious. Also cases where the credit institution has reason to suspect the illicit origin of the assets that are the objects of such transactions.

The Decree includes a list specifying suspicious and unusual transactions and operations or transactions linked to each other such as:

- depositing an extraordinarily large amount of cash by a client who usually uses cheques and other similar instruments in his/her business activities;
- a considerable increase in cash payments to the client's account without any obvious reason, especially if the amounts paid to the accounts are deposited in the account for a short period of time or the next beneficiary of the transfer of such amounts cannot be linked to the ordinary activities of the client;
- numerous accounts of the client that are individually small and inconsiderable as to their amount but which, when summarised, form the amount stipulated in Article 6 of the Money Laundering Prevention Act;
- cash transactions of legal persons, cash deposits as well as cash withdrawals, in case normal activities would provide for non-cash transactions;
- constant cash payments to the client's account in order to make money transfers and pay invoices or for other financial instruments;
- clients' transactions with the aim of exchanging large amounts in notes of small denominations for notes of bigger denominations;
- consistent exchange of cash for foreign currency;
- depositing transactions in cases where counterfeit money or any other similar forged instruments are discovered;
- large deposit transactions performed through ATMs;
- circulation of the client's funds (money) between various banks and offices without any economic grounds;
- investment transactions of the client in foreign currency or securities, when the sources of the foreign currency or securities are unknown or do not comply with the potential of the client or the usual economic operations of the client;
- trading in securities without an understandable reason or in an unusual situation;
- payments made by a large number of persons to the same account without providing sufficient payment details;
- payments to the client's account that are received from the accounts with banks or finance institutions of foreign countries where evidently active drug trading is performed;
- routine or frequent payment to the client's account (or from the account) exceeding the threshold amount stipulated in Article 6 of the Money Laundering Prevention Act from countries (or to the countries) where evidently active drug trading is performed;
- frequent transactions in traveller's checks without obvious economic or legal justification;
- unexpected repayment of a problematic or bad loan;
- suggestions of lending against such securities, the sources of which are unclear or unknown;

125TH INTERNATIONAL TRAINING COURSE PARTICIPANTS' PAPERS

- investments in objects or instruments that have no logical connection to the previous business activity of the client;
- turnover of the client's account is out of proportion to its normal economic activity;
- short-term deposits of a client who is a foreign resident if, upon the expiry of the deposit term, the money is withdrawn from the account;
- a deposit transaction made from a foreign country to the account of a local client if this is followed by withdrawal of the funds from the account.

The Minister of Internal Affairs has adopted a regulation which establishes the requirements and contents of the notices submitted to the Financial Intelligence Unit. The FIU must examine notices immediately after their submission and if no features of money laundering are detected issue written permission for the performance of the transaction.

C. Freezing of Assets, Confiscation, Seizure and Recovery of Legal Expenses

Section 146¹ of the Code of Criminal Procedure provides for the freezing of assets in case of suspicion of money laundering. Property, which is the object of suspicion of money laundering, is frozen by the preliminary investigator conducting the proceedings in the criminal offence of money laundering in order to secure a request for international legal assistance, seizure or civil matter if other measures are exhausted.

The difference compared with an ordinary freeze of property is in the fact that, in this case, the property can be frozen only with the consent of a judge (a prosecutor's sanction is not enough).

The Code of Criminal Procedure imposes, upon judgement for conviction, compensation of the value of the proceeds on convicted offenders. Legal costs, which a convicted offender has to meet consist of amounts collected for the benefit of witnesses, victims, experts or, in connection with expert assessment, for the benefit of state forensic institutions, other agencies or legal persons, and amounts paid or payable to specialists and impartial observers of investigative activities; amounts spent on the storage, forwarding and investigation of physical evidence; amounts payable for the participation of sworn advocates and; bailiff's fees and other costs which are borne by a preliminary investigation authority or a court in connection with the proceedings in a criminal matter.

Thus, for example, the costs related to the extradition of a person from a foreign state have been reclaimed from a convicted offender.

Section 83 of the Penal Code allows the court to apply confiscation of the objects used to commit an intentional offence and of the assets acquired through the offence, if these belong to the offender at the time of the making of the judgement. In the absence of the permission necessary for the possession of a substance, object or organism (firearm, drugs, etc.), such substance, object or organism shall certainly be confiscated.

As regards drugs, the Chapter of the Penal Code on Offences against Public Health includes a provision which allows the court to confiscate an object or substance, which was the direct object of the commission of the offence, or an object used for the preparation of such an offence.

If the property gained by criminal means has been transferred or used, or if its confiscation is not possible for some other reason, the court may reclaim the payment of the sum which equals the value of the property to be confiscated.

The state shall acquire the ownership of confiscated property or, in cases stipulated in international

agreements, it shall be returned to another state.

D. Shifting the Burden of Proof to the Defendant

As mentioned before, no judicial decision on money laundering has ever been made in Estonia. Therefore there is no court practice related to the burden of proof in this area. However, in judgements concerning tax offences judges have been of the opinion that in certain cases the burden of proof lies with the accused at trial.

For example: a pre-trial investigation proved that a person managed a company which offered services and/or sold goods and added VAT (value added tax) to the services/goods. Therefore, he had to pay VAT to the state withholding the sum which the company had paid for purchased services/goods to other companies. The investigation also proved that the company did not pay VAT and that it had not bought any services/goods from other companies liable to value added tax i.e. the company had no right to recalculate VAT. The accused at trial claimed that the company had bought goods/services from other companies i.e. it had expenses. However, he could not specify from whom, or what amount of goods/services, the company had bought. Neither could he submit any account of charges. With regard to a situation like this Estonian courts have come to the opinion that an accused at trial must be able to prove that the company had incurred such expenses - oral claims are not enough. The accused has to actively defend him/herself (submit the necessary documents or offer the court, or a prosecutor, an actual chance to check his/her claims).

E. State of Affairs and Problems Concerning International Cooperation

1. Mutual Assistance

Mutual assistance in criminal matters is carried out on the basis of the 1959 European Convention on Mutual Assistance in Criminal Matters according to which the Ministry of Justice is the national central authority responsible for the co-ordination of international relations concerning legal assistance. Several bilateral and multilateral agreements, based on the above-mentioned Convention, concluded by the Republic of Estonia also regulate certain aspects of mutual legal assistance. Such agreements have been concluded with Latvia, Lithuania, Finland, Ukraine, Poland, the USA and the Russian Federation. On the basis of these agreements the Public Prosecutor's Office may also act as a central authority co-ordinating legal assistance.

International police cooperation is carried out with the assistance of the International Criminal Police Organization, Interpol, the European Police Office, Europol, and the International Criminal Intelligence Department of the Central Criminal Police, which acts as their national unit in Estonia. In order to make police cooperation more efficient Interpol has been included as an entitled subject in several international treaties and conventions. Cooperation between the Republic of Estonia and Europol is regulated by an agreement of cooperation. Through the International Criminal Intelligence Department of the Central Criminal Police it is possible to submit inquiries and applications for professional assistance to the law enforcement authorities of foreign countries which are members of Interpol.

Through the International Criminal Intelligence Department of the Central Criminal Police it is also possible to exchange surveillance information with other countries and to co-ordinate cross-border surveillance, carried out with the help of liaison officers representing European Union member states and cooperation partners of Europol who are located at the Europol Headquarters in The Hague.

125TH INTERNATIONAL TRAINING COURSE PARTICIPANTS' PAPERS

The slowness of the procedures related to legal assistance is the biggest problem hindering international cooperation.

2. Extradition

With regard to extradition, Estonia follows the 1957 European Convention on Extradition which Estonia signed on 4 November 1993 and ratified on 19 February 1997.

According to the said Convention the Contracting Parties undertake to surrender to each other all persons against whom the competent authorities of the requesting Party are preceding against for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

Extradition shall be granted in respect of offences punishable under the laws of both the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year, or by a more severe penalty. Where a conviction and prison sentence have occurred, or a detention order has been made in the territory of the requesting Party, the punishment given must be for a period of at least four months.

If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but some of which do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.

The Government of the Republic of Estonia decides whether to extradite its citizens to other countries. In 2001 Estonia extradited 23 persons and the same number of persons was extradited to Estonia. In 2002 Estonian extradited 17 persons and 38 persons were extradited to Estonia by other states.

To sum up, I would like to say that despite the fact that the Estonian authorities are well-aware of the problem of drug trafficking, as well as money laundering, and try to take all possible measures to prevent them and to bring offenders to justice, the criminal world has a head start and in order to avoid the worst we need all the help we can get from countries and authorities who have long-term experience, the necessary know-how and means to tackle such crime.