



# Latvia: The System of Criminal Justice

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**LATVIA:**  
**THE SYSTEM OF CRIMINAL JUSTICE**

*Abstract*

*Heavily amended Soviet system of criminal justice is currently in force in Latvia. The stages of the system are the pre-trial proceedings, trial, appeal and review. A court, procurator, investigator, and defense counsel are main participants of the criminal process. The investigative powers of the police are regulated by the law. Facing the organized crime and corruption as major threats to the national security, a new Criminal Code and a new Code of Criminal Procedure being drafted.*

**Introduction**

Even though the total de-Sovietization is the main feature of the current Latvian politics, the basis of criminal legislation as well as legislation on criminal procedure remain valid since the Soviet era.

On August 29, 1991, the Supreme Soviet of Latvia (then the Parliament) passed a Resolution on the Use of Legislative Acts on the Territory of the Republic of Latvia. In accordance with this Resolution, the CRIMINAL CODE and the CODE OF CRIMINAL PROCEDURE OF THE LATVIAN SOVIET SOCIALIST REPUBLIC remain in force until the passage of new documents. These Laws which were passed in 1968, reflect the traditional inquisitorial procedural model of continental Europe and are very different from the adversarial model. Latvian laws have been subject to frequent amendments since Latvia proclaimed its independence in 1990. The amendments reflect two diverse tendencies: to make the criminal proceedings more democratic and more respectful of the basic civil rights of the accused, and the introduction of more effective procedural institutions because of the rise in crime. Both, a new CRIMINAL CODE and a new CODE OF CRIMINAL PROCEDURE are presently being drafted by the Parliament and are expected to be adopted in the beginning of 1999.

**Jurisdiction**

The Latvian judiciary is a three-level system comprising District (city) Courts, Regional Courts, and the Supreme Court. All levels of the Latvian judiciary have original jurisdiction. The CODE OF CRIMINAL PROCEDURE provides that district (city) courts (courts of the first instance) have jurisdiction over all cases except those reserved to the higher courts and military tribunals which are vested with jurisdiction over cases arising under specified articles of the CRIMINAL CODE (most serious criminal offenses which may carry capital punishment) or the Law on Military Crimes. The Supreme Court always has jurisdiction at first instance over any case within a lower court's jurisdiction. Also, the Supreme Court serves as an appeal court and supervises district and regional courts. Territorial jurisdiction is based in the place where the crime was committed; or, if this is impossible to determine, the place where the preliminary investigation or inquiry is completed.

## **Preliminary investigation**

The preliminary investigation is a stage in criminal proceedings which follows the initiation of a criminal case. It is obligatory in most criminal cases except for relatively minor offenses, such as petty theft, defamation, etc. The investigation is conducted by an official called an investigator who is subordinated to the General Prosecution Office or to one of its district branches, the Latvian National Security Service or the Ministry of Internal Affairs. The type of crime involved determines which investigating officer is competent. Complex cases may be accepted by several investigators. Investigators must be law graduates.

During the course of the preliminary investigation, the investigator conducts various investigative actions. If sufficient evidence exists, the investigator renders a decision to prosecute the person as accused. The investigator may also conduct search and seizure, detain the accused, and interrogate the accused and witnesses. Search and seizure should be conducted only with the sanction of the prosecutor. In instances not permitting delay, a search may be conducted without the accused sanction, but he must be informed within 24 hours after the search.

The investigator is also empowered to detain the accused with the sanction of the prosecutor. The term of detention is fixed at two months, although it may be extended to a period of not more than nine months, if the case is complicated. The investigator is obliged to interrogate the accused immediately after the decision to prosecute him as an accused. When the accused is not detained, he can be summoned before the investigator. If he fails to appear without reasonable grounds, he may be subjected to compulsory appearance.

The accused is not obliged to give a statement and may remain silent. The record of interrogation should be drawn up and signed by the accused, but he may refuse to do so. In most cases the defense counsel retained by the accused enters the case at this point of the proceedings after the first interrogation. The accused or his counsel may request further investigation, which must be granted or reasonable refusal given.

If the investigator feels that the evidence gathered is sufficient to indict, he formulates a conclusion to indict and sends it to the prosecutor for approval. If he comes to a conclusion that the accused did not commit the offense or that the offense did not take place at all, he renders a decision to terminate the case. Under the Law, the investigator is empowered to take all the decisions in the course of preliminary investigation independently, except in cases when the Law provides otherwise.

## **Role of a prosecutor**

The role of a prosecutor in the system of criminal justice is determined by the Latvian Law on Procuracy (prosecution office) passed by the Parliament (*Saejmas*) of the Republic of Latvia on June 2, 1994<sup>1</sup>. The role of the procurator in the criminal procedure is not so much that of a state attorney. Under the Law, the prosecution carries out the supreme supervision over the exact and uniform implementation of laws and regulations in Latvia. The Procuracy is organized on a clearly centralist basis, and its subordination is hierarchical from the bottom upwards. Any local and other prosecution bodies are subordinated only to the Prosecutor General. In accordance with the Latvian Constitution, the Prosecutor General is responsible to the Parliament.

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<sup>1</sup> LR SAEJMAS ZINOTĀJS, official gazette, 1994, No. 12, Item 65.

Procurators are empowered to initiate the investigation. They act on their own initiative or upon a signal from outside. The Law requires that the Procuracy supervises the compliance with Law by investigation authorities and by courts in each criminal and civil case. To enable the Procuracy to fulfill these duties, the Law provides the procurator with a number of specific control functions over the investigators in a criminal case. The Procurator appears in the courts as the state prosecutor in most criminal cases. Also, he supervises the legality of the proceedings. He appeals to the appropriate courts against any judgement or sentence which is contrary to the laws or not based on law. Another duty of the procurator is to supervise the observance of laws in places of confinement.

### **Investigative techniques**

All techniques used by Latvian investigative authorities are determined by the Latvian Law on Operative Activities adopted by the national Parliament on December 16, 1993<sup>2</sup>. In accordance with the Law, authorized agencies are allowed to use open and hidden techniques for fulfillment of operative activities within their competence with the purpose to detect, prevent, stop, and investigate criminal offenses, and to provide a search for wanted persons.

The law prescribes the following investigative methods:

- questioning of citizens and receiving of references;
- observation and surveillance;
- collecting of samples;
- examination of subjects and documents;
- undercover inspections;
- search of buildings, offices, territories, motor vehicles and other premises;
- control over mail shipments;
- control over the letter exchange in prisons;
- wiretapping of the telephone and recording of other conversations; and
- receiving of information from existing technical channels of communication.

This list is complete and may be amended by the Law. Undercover operations are not prohibited by the Law and may be performed within limits of prescribed activities. The Law permits investigators to use any technical means for operative and investigative activities if they do not harm the health of people and the environment. Principles of investigative activities and conditions under which these activities should be performed are regulated by the Law.

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<sup>2</sup> *Id.*, 1994, No.1, Item 3.

## **Appeal procedures**

There is normally a seven days' period during which one may file an appeal. A full right to appeal is granted to the person standing trial, his defense counsel, the procurator and the victim. Regional courts and the Supreme Court serve as the appellate courts and cases shall be heard by the panel of three judges. The examination on appeal is not bound by the terms of the appeal. The appellate court may not increase the penalty. Once the possibilities for appeal have been exhausted, the judgment takes legal effect and must be executed.

## **CRIMINAL CODE**

The CRIMINAL CODE OF THE REPUBLIC OF LATVIA is the major document which determines tasks and principles of the criminal law, stipulates such definitions as *crime* and *punishment*. Imposition of the penalty and excuse from criminal responsibility and release from punishment are regulated by the CODE. Also, the CODE specifies the criminal responsibility of minors and compulsory measures of a medical character.

A special part of the CODE consists of the list of offenses which are considered as crimes under Latvian legislation and prescribes related punishments. These include: state crimes, crimes against property, crimes against life and health, crimes against political, labor and other rights of the individual, crimes in the sphere of economic activity, crimes against justice, crimes against the military service, and crimes against public security and public order.

## **Trends in crime**

Major crimes which threaten the national security of Latvia are organized crime, corruption, drug trafficking, smuggling and killings for hire. In the opinion of European Union experts, one-third of the turnover of goods and services in Latvia is controlled by criminal groups, and 50% of the profits obtained by criminal means go toward bribing state officials. Analyzing the situation with organized crime in Latvia, EU experts came to the conclusion that all of it is tied with Russia, even businesses in which only citizens of Latvia may engage according to Latvian laws, for example, pharmacology, and detective activities were associated with Russian criminals. The largest domestic sources for illegally obtained capital are smuggling of foodstuffs into Latvia, and smuggling of oil, gas, gasoline, ferrous and non-ferrous metals, narcotics, and weapons through Latvia. It was estimated that the ratio of legal and contraband gasoline brought into Latvia was 1:6. The same could be said about alcohol<sup>3</sup>.

Another problem which became crucial is the prevention of legalization of illegally obtained monetary means and other income (money laundering). The creation of fictitious firms; use of nonbank financial institutions; a link between laundered money and representatives of banking circles, especially from free-tax zones; use of gambling institutions and trade in antiques; use of electronic messages and the transport of cash by couriers have become traditional methods for money laundering. In order to comply with the EC directive, new legal restrictions were implemented. They include the

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<sup>3</sup> Tatyana Fast, *International Mafia: The Baltic Corridor*. LITERATURNAYA GAZETA, 1997, No. 9, at 13, in Russian, translated by the FBIS-SOV-97-071, April 15, 1997.

identification of the client at the start of contract obligations, and keeping information on a client for at least five years after contract relations have been terminated<sup>4</sup>.

Even though in 1996, the Parliament adopted a Law on Anticorruption Activity, its essence comes down merely to the fact that high-level officials do not have the right to hold management positions in commercial entities, so as not to lobby for their own businesses. The Organized Crime Prevention Office was recently created under the Latvian Ministry of Internal Affairs, and the National Crime Prevention Center is subordinated directly to the President of the Republic. However, in his 1998 New Year's address, the Prime Minister of Latvia suggested that the emphasis in the struggle against crime should be placed on attempts to detect the major and most serious crimes rather than on catching all criminals. Bilateral agreements on cooperation in combating organized crime are signed with all neighboring countries and several countries of the European Union.

Prepared by Peter Roudik  
Eastern Law Division  
Law Library of Congress  
Washington D.C.  
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<sup>4</sup> *Supra*, note 1, 1997, No. 23, Item 748