ARTICLE:

Computer forensics and electronic evidence in criminal legal proceedings: Lithuania's experience

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All criminal proceedings depend on evidence to assist the court to decide the guilt or innocence of an accused. Traditionally and historically, evidence has been in a paper or other physical form. Electronic evidence is now derived from electronic devices, such as computers and their peripheral apparatus, computer networks, mobile telephones, digital cameras and other portable equipment, as well as from the internet. The information it contains does not possess an independent physical form. Given its special characteristics, electronic evidence could be defined as any information generated, stored or transmitted in digital form that may later be needed to prove or disprove a fact disputed in legal proceedings.[1]

Since the ultimate objective is to use evidence to prove or disprove disputed facts, electronic evidence must be obtained in compliance with existing legislation and best practice to ensure admissibility at trial.

Admissibility

The admissibility of evidence is one of the most important principles that law enforcement officers and prosecutors must bear in mind throughout the entire criminal proceedings. Although evidence might be gathered successfully during the investigation, if serious mistakes are made in the process, all the work will be severely undermined because it might be difficult to rely on such evidence in subsequent legal proceedings.[2] The assessment of evidence by the court depends on whether the requirements of the law have been complied with during the pre-trial investigation.

Lithuanian law does not classify electronic evidence separately. Electronic evidence, like any other type of evidence in a criminal procedure, is subject to common requirements,[3] as defined by the Code of Criminal Procedure[4] (CCP) as follows:

> 20 straipsnis. Įrodymai
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> 1. Įrodymai baudžiamajame procese yra įstatymų nustatyta tvarka gauti duomenys.
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> 2. Ar gauti duomenys laikytini įrodymais, kiekvienu atveju sprendžia teisėjas ar teismas, kurio žinioje yra byla.
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> 3. Įrodymais gali būti tik tokie duomenys, kurie patvirtina arba paneigia bent vieną aplinkybę, turinčią reikšmės bylai išspręsti teisingai.
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> 4. Įrodymais gali būti tik teisėtais būdais gauti duomenys, kuriuos galima patikrinti šiame Kodekse numatytais proceso veiksmais.
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> 5. Teisėjai įrodymus įvertina pagal savo vidinį įsitikinimą, pagrįstą išsamiu ir nešališku visų bylos aplinkybių išnagrinėjimu, vadovaudamiesi įstatymu.
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> Article 20. Evidence
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> 1. Evidence in a criminal procedure shall be

[1] For more information, see Chapter 2 of Stephen Mason and Daniel Seng, editors, *Electronic Evidence* (4th edition, Institute of Advanced Legal Studies for the SAS Humanities Digital Library, School of Advanced Study, University of London, 2017)); for a definition, see 2.6.

[2] If formalities have not been followed strictly, it does not follow that the evidence is inadmissible and cannot be evaluated by the judge, for which see the Estonian case of TlnRnKo 09.01.2017, 1-15-9051, regarding the MD5 hash function: Circuit Court of Tallinn on the 9 January 2017, case number 1-15-9051. This decision was an appeal by the defendant against the judgment of the Harju County Court on the 13 June 2016 (HMKo 13.06.2016, 1-15-9051), and was later appealed in cassation on other matters by the prosecution to the Supreme Court of Estonia (RKKKo 06.10.2017, 1-15-9051).

[3] See also Vaida Vozgirdaite and Stasys Drazdauskas, 'Lithuania' in Stephen Mason, editor, *International Electronic Evidence* (British Institute of International and Comparative Law, 2008).

[4] Lietuvos Respublikos baudžiamojo proceso kodeksas (patvirtintas 2002 m. kovo 14 d. įstatymu Nr. IX-785).

material obtained in the manner prescribed by law.

2. Admissibility of the material obtained shall be determined in every case by the judge who is in charge of the case.

3. Only such material which proves or disproves at least one circumstance relevant for a fair disposition of the case may be regarded as evidence.

4. Evidence may be only such material that is obtained by lawful means and may be validated by the proceedings laid down in this Code.

5. Judges shall assess the evidence according to their inner conviction based on a scrupulous and objective review of all the circumstances of the case in accordance with the law.

The law establishes the following requirements for evidence (including electronic evidence): it must be obtained in the manner prescribed by law; by lawful means, and such that the evidence can be verified by the proceedings laid down in the CCP. All these requirements together, and each of them separately, speak of the same principle – the admissibility of evidence. These requirements apply without exception to electronic evidence. If data do not meet at least one of these criteria, the court may not consider them as evidence and may not rely on them while addressing the issue of the guilt of the accused.

These requirements are relevant from the first stage of the criminal proceedings – the commencement of the pre-trial investigation. During the pre-trial investigation, police officers and prosecutors must keep in mind the requirements of the law at every step in the process of gathering evidence. If mistakes are made at any stage, this may mean that the case might be undermined.

How evidence must be obtained

The first requirement of law for evidence is that it must be obtained in the manner prescribed by law. This means that the actions taken to obtain electronic evidence must be accurately documented.

The Code of Criminal Procedure primarily governs the obtaining of electronic data, supplemented by the requirements of such laws, such as, but not limited to the Law on Criminal Intelligence, the Law on Police Activities and Financial Crime Investigation Service.[5] Data are usually obtained in the manner laid down by both the Law on Criminal Intelligence and other laws before commencing a pre-trial investigation. After opening the pre-trial investigation, the evidence is collected only in accordance with the CCP. The courts are particularly attentive in checking if evidence gathered under the Law on Criminal Intelligence has been obtained lawfully.

The requirement for evidence to be obtained in the manner prescribed by law is closely related to the requirement that the evidence must be obtained by lawful means. Judges are required to carefully assess whether the evidence has been obtained by legal means: that is, whether the statutory rules for obtaining evidence have been complied with.

Electronic evidence (as well as devices and equipment upon which such evidence is stored) is usually obtained by applying procedurally coercive measures, such as search and seizure, by controlling information transmitted over electronic communications networks. The prosecutor can also exercise their right of access to information. All these actions are considered as procedural coercion measures and must be sanctioned by the court.

Suspects and defence counsel often challenge these procedural coercive measures to deny their legitimacy. Challenges by the defence regarding searches during which electronic evidence sources, such as computers, mobile telephones and other items are seized are frequent.

The search

The CCP provides that a search can be carried out only by a reasoned decision of a pre-trial judge, in accordance with article 145:

145 straipsnis. Krata

1. Kai yra pagrindas manyti, kad kokioje nors patalpoje ar kitokioje vietoje yra nusikalstamos veikos įrankių, nusikalstamu

[5] Lietuvos Respublikos kriminalinės žvalgybos įstatymas (2012 m. spalio 2 d. Nr. XI-2234); Lietuvos Respublikos policijos įstatymas (2000 m. spalio 17 d. Nr. VIII-2048); Lietuvos Respublikos finansinių nusikaltimų tyrimo tarnybos įstatymas (2002 m. kovo 28 d. Nr. IX-816).

būdu gautų ar įgytų daiktų bei vertybių, taip pat daiktų ar dokumentų, galinčių turėti reikšmės nusikalstamai veikai tirti, arba kad koks nors asmuo jų turi, ikiteisminio tyrimo pareigūnas ar prokuroras jiems surasti ir paimti gali daryti kratą.

2. Krata gali būti daroma ir siekiant surasti ieškomus asmenis, taip pat lavonus.

3. Krata daroma motyvuota ikiteisminio tyrimo teisėjo nutartimi. Nutartyje turi būti nurodyta, kokių iš šio straipsnio 1 ir 2 dalyse nurodytų objektų bus ieškoma.

4. Darant kratą, turi dalyvauti buto, namo ar kitų patalpų, kuriose daroma krata, savininkas, nuomotojas, valdytojas, pilnametis jų šeimos narys ar artimasis giminaitis, o darant kratą įmonėje, įstaigoje ar organizacijoje, – tos įmonės, įstaigos ar organizacijos atstovas. Kai nėra galimybės užtikrinti šių asmenų dalyvavimą, krata daroma kviestinio ar savivaldybės institucijos atstovo akivaizdoje. Prireikus kviestiniai gali būti kviečiami dalyvauti atliekant kratą ir kitais atvejais.

5. Krata žemėje, miške, vandens telkiniuose gali būti daroma ir nedalyvaujant savininkui, nuomotojui ar valdytojui, tačiau šiems asmenims vėliau pranešama raštu apie darytą kratą.

Article 145. Searches.

1. Where there are grounds for believing that a criminal offence has taken place, the investigating officer or the prosecutor may enter any premises that may have significance to the criminal offence to search for tools, objects or documents that may have an effect on the investigation of a criminal offence, or that any person has them.

2. The search can also be done to find wanted persons.

3. A search is made by a reasoned decision of a pre-trial judge. The order shall specify which of the objects referred to in paragraphs 1 and 2 of this article shall be sought.

4. During the search, the owner, the landlord, the manager of the apartment, house or other premises where the search is carried out or their adult member of family or a close relative, and when the search is carried out in a company, the representative of the company, institution or organisation must be present in the search. When it is not possible to ensure participation of such persons, the search must be carried out in the presence of a witness representative or representative of a municipal authority. If necessary, the witness may be invited to be present in a search in other cases as appropriate.

5. A search on the ground, in the forest, or in water bodies can be undertaken without the owner, the landlord or the manager, but these people are to be subsequently informed in writing about the search.

The judge will issue such an order upon the application of the prosecutor. As a general rule, a court order authorizing the search must first be issued, and only then a search may be carried out. However, the law provides for the exception of urgent cases, where a search may be carried out by a decision of a prosecutor or a pre-trial investigation officer without a court's sanction, in accordance with article 160^1(1):

> 160^1 straipsnis. Procesinių prievartos priemonių taikymas neatidėliotinais atvejais
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> 1. Neatidėliotinais atvejais procesinės prievartos priemonės, numatytos šio Kodekso 154, 155, 158, 159 straipsniuose, gali būti taikomos ir prokuroro nutarimu, o procesinės prievartos priemonės, numatytos šio Kodekso 145, 147, 160 straipsniuose – ir prokuroro arba ikiteisminio tyrimo pareigūno nutarimu, tačiau visais šiais atvejais per tris dienas nuo nutarimo priėmimo turi būti gauta ikiteisminio tyrimo teisėjo nutartis, patvirtinanti procesinės prievartos priemonės taikymo teisėtumą. Ši ikiteisminio tyrimo teisėjo nutartis skundžiama šio Kodekso X dalyje nustatyta tvarka. Skundo dėl ikiteisminio tyrimo teisėjo nutarties nepatvirtinti procesinės prievartos priemonės taikymo teisėtumo padavimas sustabdo šios nutarties vykdymą.

Article 160^1. Use of procedural coercive measures in urgent cases

> 1. In cases of urgency, the procedural coercive measures provided for in articles 154, 155, 158, 159 of this Code may also be applied by the Public Prosecutor's Office, and the procedural coercive measures provided for in articles 145, 147, 160 of this Code – also by a Public Prosecutor or pre-trial investigation officer, in all these cases, however, a ruling of the pre-trial judge confirming the lawfulness of the application of the coercive measure must be received within three days of the adoption of the ruling. This order of the pre-trial judge shall be appealed in accordance with Part X of this Code. The filing of an appeal against a decision of a pre-trial judge not to approve the lawfulness of a coercive measure suspends the enforcement of this order.

The law requires that, after such urgent search, by a pre-trial judge must confirm its legitimacy within three days, in accordance with article 160^1(2):

> 2. Jeigu per šio straipsnio 1 dalyje nustatytą terminą nepriimta ikiteisminio tyrimo teisėjo nutartis, prokuroro ar ikiteisminio tyrimo pareigūno nutarimu pradėti veiksmai nedelsiant nutraukiami.
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> 2. If the order of the pre-trial judge has not been adopted within the term specified in paragraph 1 of this article, the actions initiated by the decision of the Public Prosecutor or the pre-trial investigation officer shall be immediately terminated.

Such cases where a search must be carried out as quickly as possible and there is no possibility of obtaining a court sanction are not rare. It is precisely these urgent cases that often give rise to dispute as to whether the search was carried out lawfully. This occurs both in the course of the pre-trial investigation and the trial, and the defence usually emphasize that there was no need to carry out an urgent search.

For instance, a regional court was examining a complaint in which the suspect submitted that a search was unlawful because there was no pre-trial judge's order authorizing the search.[6] The court rejected the complaint of the suspect on these grounds:

> Kratos procesinis veiksmas atliekamas, esant faktiniam ir procesiniam pagrindui kratai daryti. Krata laikoma padaryta teisėtai, tik jeigu jos darymas pagrįstas abiem pagrindais. Kratos darymo faktinis pagrindas yra baudžiamosios bylos duomenys, kuriais remiantis galima pagrįstai manyti, jog kurioje nors vietoje arba pas kurį nors asmenį yra nusikalstamai veikai tirti reikšmingi daiktai, dokumentai ar kiti objektai. Nors T. M. skunde teigia, kad teismas, sankcionuodamas kratas, nemotyvavo kratos atlikimo pagrįstumo, tačiau iš skundžiamos nutarties matyti, kad teismas, prieš priimdamas sprendimą patvirtinti atliktų kratų teisėtumą, susipažino su ikiteisminio tyrimo byloje esančiais duomenimis, nurodė, kad kratos turėjo būti atliktos neatidėliojant, motyvavo, jog atliekant kratas buvo pakankamas pagrindas manyti, kad kol bus gautas teismo sprendimas kratoms, gali būti paslėpti ar sunaikinti tyrimui reikšmingi daiktai ir dokumentai. Taigi egzistavo faktinis kratos pagrindas – ikiteisminio tyrimo duomenys, kuriais remiantis buvo galima pagrįstai manyti, jog tam tikroje vietoje (automobiliuose ar patalpose) yra tyrimui reikšmingi daiktai. Šie daiktai, turintys reikšmės nusikalstamai veikai tirti, atsižvelgiant į kilusią situaciją – nustačius kratos buvimo faktinį pagrindą, turėjo būti paimti nedelsiant, t. y. buvo ir kratos neatidėliotinumo pagrindas. Procesinis pagrindas atlikti kratą – ikiteisminio tyrimo pareigūno nutarimas - buvo priimtas. Aukštesnysis teismas pažymi, kad ikiteisminio tyrimo pareigūno nutarimuose atlikti kratą nėra nurodyti kratos darymo neatidėliotinimo motyvai ir tai pripažintina šių nutarimų trūkumu, nes įstatymas reikalauja motyvuotų sprendimų, tačiau tai savaime nėra pagrindas pripažinti kratą neteisėta.

Search proceedings are carried out on the basis of factual and procedural grounds for a search. A search is considered to be lawful only if it is based on both grounds. The actual basis of the search is the data of the criminal case on the basis of which one can reasonably assume that there can be objects, documents

[6] Klaipėdos apygardos teismo nutartis (ikiteisminio tyrimo bylos numeris 06-1-02039-14) 2015 m. sausio 6 d (Order of Klaipėda Regional Court (pre-trial investigation case number 06-1-02039-14) January 6).

> or other objects which are relevant for investigation of the crime in a particular place or within possession of particular person. Although T.M. claims that the court did not substantiate the validity of the search when sanctioning the search, it is apparent from the order under appeal that the court, prior to taking the decision to confirm the lawfulness of the searches carried out, was aware of the data contained in the pre-trial investigation, and stated that the searches should have been carried out without delay; it also reasoned that the search was a reasonable ground for believing that with pending court order sanctioning the search, the items and documents could have been hidden or destroyed. Thus, there was a factual basis for the search, i.e. data of pre-trial investigation on the basis of which it was reasonable to assume that there were items relevant to the investigation in a particular location (cars or premises). Considering the circumstances existing at that time, i.e. in the presence of factual grounds for a search, these items having relevance to the investigation of the criminal offence had to be seized immediately after, which means there was also the basis for the urgency of the search. Also, there was the procedural ground for the search, as decision of the pre-trial investigation officer has been adopted. The superior court notes that decisions of the pre-trial investigation officer to conduct the search did not provide for the reasons for the urgency of search, and thus this is a deficiency of these decisions, because the law requires reasoned decisions, but this is not in itself a ground for declaring the search illegal.

In this investigation, there was an authorized search of the premises, but the investigators went on to search another premises because of the change in knowledge during the conduct of the search. The suspect's computer was kept in an adjacent apartment, other than the one indicated in the court order authorizing the search. The search was carried out in the apartment upon the decision of an investigating officer, because the search had to be carried out urgently and it was impossible to get a court order immediately. During the search, the suspect's computer was seized, in which correspondence relating to the investigation was found. When examining the suspect's complaint, the court carefully assessed whether there was indeed a situation in which the search had to be carried out immediately, and where there was no possibility of a prior court order. In this case, the court ruled that the investigator's decision to carry out the search at another address was considered acceptable in the event of an emergency, since the suspect had been aware of the search before another address was found, and failing to carry out an urgent search would have given rise to the risk of losing the evidence.

In February of 2019 searches were carried out on nine suspects who organized multiple DDoS attacks against Lithuanian information systems. The searches warrants were prepared in advance, and the judges' orders were obtained for their execution. However, after commencing the searches, it transpired that three of the suspects kept their computers in premises other than in their place of residence, which the court authorized. It was not possible to apply immediately to court for new orders. After the search, the court decided that failing to carry out a search promptly would have given rise to the risk of the loss of evidence, and retrospectively authorized the search. (This is an active investigation (case number 01-1-55474-18). The citing of the pre-trial decision of the judge is possible, providing the data related to the suspect is depersonalised.) Below is the judgment considering the prosecutor's request to confirm the legitimacy of a search which was carried out in the case of emergency upon the decision of the pre-trial investigator:

> Prokurorės prašymas tenkintinas. Pagal baudžiamojo proceso įstatymą, kai yra pagrindas manyti, kad kokioje nors patalpoje ar kitokioje vietoje yra nusikalstamos veikos įrankių, nusikalstamu būdu gautų ar įgytų daiktų bei vertybių, taip pat daiktų ar dokumentų, galinčių turėti reikšmės nusikalstamai veikai tirti, arba kad koks nors asmuo jų turi, ikiteisminio tyrimo pareigūnas ar prokuroras jiems surasti ir paimti gali daryti kratą (Lietuvos Respublikos baudžiamojo proceso kodekso (toliau- BPK) 145 straipsnio 1 dalis). Kadangi krata kaip procesinė prievartos priemonė suvaržo žmogaus teisę į privatų gyvenimą ir būsto neliečiamybę, ji gali būti daroma tik motyvuota ikiteisminio tyrimo teisėjo nutartimi (BPK 145 straipsnio 3 dalis). Vadovaujantis BPK 160^1 straipsnio nuostatomis, krata be ikiteisminio tyrimo

teisėjo nutarties galima neatidėliotinais atvejais, t. y. tada kai pavėlavus atlikti kratą nusikalstamos veikos tyrimui gali atsirasti rimtų kliūčių. Neatidėliotinais atvejais yra laikomi atvejai, kai faktinis pagrindas kratai atsiranda tuojau pat po nusikalstamos veikos padarymo, gauta duomenų, kad asmuo, pas kurį yra svarbūs tyrimui daiktai, dokumentai, vertybės ar kiti objektai, rengiasi juos sunaikinti: sulaikant ar suimant asmenį, kai yra pakankamas pagrindas manyti, kad darant kratą, joje dalyvaujantis asmuo slepia prie savęs daiktus ar dokumentus, galinčius turėti reikšmės nusikalstamai veikai tirti.

Prokurorės prašyme nurodytos aplinkybės ir ikiteisminio tyrimo teisėjai pateikti ikiteisminio tyrimo metu surinkti duomenys leidžia pagrįstai manyti, kad 2019-03-05 tyrėjo nutarimu paskirtą procesinę prievartos priemonę reikėjo taikyti neatidėliotinai, delsimas atlikti kratą faktinėje D. S. gyvenamojoje vietoje galėjo pakenkti ikiteisminio tyrimo sėkmei, kadangi egzistavo tikimybė, jog ieškomi daiktai galėjo būti paslėpti ar sunaikinti. Krata atlikta iš karto po to, kai atliekant procesines prievartos priemones paaiškėjo D. S. faktinė gyvenamoji vieta, kas patvirtina aplinkybę, kad nebuvo galimybės kreiptis į ikiteisminio tyrimo teisėją nutarties. Įvertinus pateiktus duomenis, darytina išvada, kad krata buvo atlikta teisėtai, Lietuvos Respublikos baudžiamojo proceso kodekso 145, 149 straipsniuose nustatyta tvarka, nepažeidžiant įstatyme numatytų reikalavimų, prokurorė į ikiteisminio tyrimo teisėją kreipėsi, nepraleidusi įstatymo numatyto termino, todėl jos prašymas tvirtinti procesinės prievartos priemonės teisėtumą tenkintinas.

The prosecutor's request is satisfactory. According to the Criminal Procedure Law, in cases where there are grounds for assuming that there are, in some premises or in any other place or in the possession of some person, instruments of a crime, tangible objects and valuables that were obtained or acquired in a criminal way, or certain things or documents which might be relevant to the investigation of the criminal offence, a pre-trial investigation officer or a prosecutor may conduct search for the purposes of discovering and seizing them (article 145 (1) of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter 'CCP')). Since the search as a procedural coercive measure restricts a person's right to private life and the inviolability of the dwelling, it can only be done by reasoned order of a pre-trial judge (article 145 (3) CCP). In accordance with provisions of article 160^1 of the Code of Criminal Procedure, it is possible to conduct a search without a pre-trial judge's order in urgent cases, i.e. when delayed search may have negative effect on the course of investigation. It is considered that a case is urgent when the factual basis for the search occurs immediately after commission of the criminal offence, and there is information showing that the person who is possession of the objects, documents, valuables or other objects having relevance to the investigation is planning to destroy them; a person is arrested or detained when there are sufficient grounds to believe that during the search this person is hiding objects or documents that may be relevant to the investigation of a criminal offence.

Such examples show that it is very important to properly formalize procedural coercive measures and obtain necessary court decisions. Article 160^1(3) of the CCP stipulates that if the rules are not followed when applying procedural coercive measures (whether it was a search or seizure), the objects taken must be returned to the persons from whom they were taken. Article 160^1 of the CCP clearly establishes that in these cases, the results of application of procedural coercive measures may not be relied on when proving the guilt of the suspect.

The collection of electronic evidence

There are many different aspects to be addressed when collecting electronic evidence, such as limitations related to a particular profession, such as legal professional privilege.

For example, a court examined a case[7] in which the prosecution relied on evidence relating to smuggling

[7] Number 2K-281/2006.

on the basis of his telephone conversations, which were intercepted and recorded, and electronic correspondence with a lawyer. The court of first instance and the appellate court held that this evidence was obtained in breach of the immunity of communication of information between a lawyer and his client, as established by the Law on the Bar.[8] However, the prosecutor argued at appeal in cassation that legal immunity is not absolute and may be applied only if the lawyer performs her professional duties. The Supreme Court agreed. The Supreme Court argued that the law provides for an absolute prohibition on the control of communication between a lawyer performing their professional duties and their client, and not on the communication between a lawyer and other persons. In the present case, the lawyer did not represent the suspect, and there was no agreement on legal assistance between the suspect and the lawyer, therefore the Supreme Court considered that telephone calls and electronic correspondence were appropriate and the evidence was held to be admissible.

In the above mentioned case, the Supreme Court of Lithuania ruled as follows:

> Abiejų instancijų teismai, motyvuodami tuo, kad telefoninių pokalbių tarp V. K. ir J. K. įrašai gauti pažeidžiant Advokatūros įstatyme nustatytą advokato ir kliento susižinojimo informacijos imunitetą, juose esančių duomenų nelaikė įrodymais. Kasaciniame skunde prokuroras teigia, kad pagal advokato ir kliento susižinojimo imunitetą J. K. inkriminuotų veikų padarymo metu reglamentavusius teisės aktus šis imunitetas nėra absoliutus ir gali būti taikomas tik tuo atveju, kai advokatas vykdo savo profesines pareigas. Šie kasacinio skundo argumentai yra pagrįsti.
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> Apeliacinės instancijos teismo nuosprendyje teisingai konstatuota, kad, nors BPK norma, tiesiogiai draudžianti klausytis gynėjo telefoninių pokalbių su įtariamuoju ar kaltinamuoju, kontroliuoti kitą telekomunikacijų tinklais tarp jų perduodamą informaciją ar daryti jos įrašus, įsigaliojo vėliau, nei buvo padaryti V. K. ir J. K. telefoninių pokalbių įrašai (beje, nuosprendyje neteisingai nurodytas aptariamos BPK normos įsigaliojimo laikas), tačiau šių įrašų darymo metu tarp Advokatūros įstatymo 40 straipsnyje (1998 m. birželio 25 d. įstatymo Nr. VIII-811 redakcija) įtvirtintų advokato garantijų buvo draudimas tikrinti advokato korespondenciją ir kitokias duomenų laikmenas, kas apima ir telekomunikacijų tinklais perduodamą informaciją. Išvadą apie tai, kad V. K. ir V. K. bendravimas yra advokato ir kliento santykiai, teismai padarė įvertinę 2002 m. balandžio 26 d. sutartį tarp V. K. ir J. K. dėl teisinės pagalbos bei telefoninių pokalbių tarp jų įrašų turinį. Telefoninių pokalbių įrašai iš tikrųjų patvirtina, kad J. K. veikė V. K. pavedimu: rinko informaciją apie 2002 m. liepos 5 d. sulaikyto 2 448 800 Lt vertės cigarečių "Sovereign Classic" krovinio kontrabandos tyrimo eigą ir perduodavo ją V. K., teikė konsultacijas, patarimus. Tačiau 2002 m. balandžio 26 d. sutartis tarp V. K. ir J. K. dėl teisinės pagalbos be pagrindo pripažinta sutartimi dėl V.K. gynybos kontrabandos byloje.
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> Advokatūros įstatymo 42 straipsnio 3 dalyje (1998 m. birželio 25 d. įstatymo Nr. VIII-811 redakcija) buvo numatyta, kad klientas su advokatu susitaria pasirašydami sutartį. 2002 m. balandžio 26 d. sutartyje tarp V. K. ir J. K. dėl teisinės pagalbos numatyta, kad J. K. įsipareigoja teikti konsultacijas bei advokato pagalbą pagal atskirus susitarimus bei pavedimus. Ši sutartis vertintina kaip preliminarus susitarimas, kad, prireikus advokato pagalbos, V. K. kreipsis, o J. K. ją suteiks, tačiau, jokiu būdu, ne sutartis dėl gynybos minėtoje kontrabandos byloje, nes sutarties sudarymo momentu nusikaltimas dar nebuvo padarytas. Įstatymai užtikrina absoliutų draudimą kontroliuoti profesines pareigas atliekančio advokato ir jo kliento susižinojimą, o ne advokato aplamai ir kitų asmenų susižinojimą. Teisinė pagalba visada teikiama konkrečiu klausimu, reikalaujančiu teisinių žinių, todėl būtina advokato ir kliento sutarties dėl teisinės pagalbos sąlyga yra konkretūs klausimai, dėl kurių teikiama teisinė pagalba, arba, bent jau, tam tikra veiklos sritis, kurioje tokia pagalba teikiama. Tik pagal tokią sutartį, kurioje nurodyta konkreti veiklos sfera, dirbančio advokato ir jo kliento susižinojimą kontroliuoti draudžiama. Taigi, nors tarp V. K.

[8] Lietuvos Respublikos advokatūros įstatymas (2004 m. kovo 18 d. Nr. IX-2066).

ir J. K. buvo sudarytas preliminarus susitarimas, nors pagal atliktos veiklos pobūdį J. K. buvo faktiniu V. K. gynėju, tačiau J. K. dirbo be sutarties su V. K. teikti teisinę pagalbą 2002 m. liepos 5 d. sulaikyto 2 448 800 Lt vertės cigarečių "Sovereign Classic" krovinio kontrabandos byloje, todėl negalima daryti išvados, kad buvo V. K. gynėju ir todėl turi būti taikomos advokato ir kliento susižinojimo slaptumą užtikrinančios teisės normos. Dėl šios priežasties teismų išvados dėl to, kad telefoninių pokalbių tarp V. K. ir J. K. įrašai buvo padaryti neteisėtai ir todėl neatitinka BPK 20 straipsnio 4 dalyje numatytų reikalavimų, yra nepagrįstos.

Stating that records of telephone conversations between V.K. and J.K. were received in violation of the immunity of communication between the lawyer and client as established by the Law on the Bar Association, the courts of both instances did not accept the data contained in such records as evidence. In his cassation appeal the prosecutor states that, under the law governing the immunity of a lawyer and a client which was valid at the time of the offence which is incriminated against J.K., this immunity is not absolute and can be applied only where the lawyer carries out his professional duties. These cassation arguments are founded.

The judgment of the Court of Appeal rightly held that although the CCP provision which directly prohibits interception of telephone conversations between the lawyer and the suspect or defendant, as well as control or recording of other information transmitted via telecommunication networks became effective after the records of telephone conversations between V.K. and J.K. were made (by the way, the judgement incorrectly stated the date when the provision of the CCP in question became effective), still at the time of these records were made, article 40 of the Law on the Bar Association (wording of Law No. VIII-811 of 25 June 1998) forbid to inspect the lawyer's correspondence and other data media, which also includes information transmitted over telecommunication networks. The conclusion that the communication between J.K. and V.K. was a relationship between a lawyer and a client was made by the courts after they have assessed the wording of 26 April 2002 agreement on legal aid signed by V.K. and J.K. and the content of the records of telephone conversations between them. The records of the telephone conversations actually confirm that V.K. acted on behalf of J.K., because he was collecting information on investigation into smuggling of "Sovereign Classic" cigarettes of the value of LTL 2 448 800 which were seized on 5 July 2002 and was informing accordingly V.K., was providing advice and consultations. However, the 26 April 2002 agreement on legal aid between V.K. and J.K. was unduly recognized as agreement regarding defence of V.K. in the smuggling case.

Paragraph 3 of article 42 of the Law on the Bar Association (wording of Law No. VIII-811 of 25 June 1998) provided that a client and a lawyer shall agree by signing an agreement. 26 April 2002 agreement on legal aid between V.K. and J.K. provides that J.K. undertakes to provide advice and assistance as a lawyer on the basis of individual agreements and requests. This agreement is to be regarded as a preliminary agreement meaning that if necessary V.K. will ask for assistance of a lawyer, and J.K. will provide such assistance. But in no case it can be considered an agreement regarding defence in the said smuggling case, because at the time that agreement was concluded, the crime was not committed yet. The laws provide for an absolute prohibition to control communication between a lawyer performing his professional duties and his client, but not general communication between the lawyer and other persons. Legal advice is always given on a specific issue that requires legal expertise. Thus, an agreement on legal aid between the lawyer and his client must provide for specific issues related to legal assistance or at least define the activity field in which the legal assistance will be provided. Client confidentiality is only covered when such an agreement exists between lawyer and client specifying the particular legal advice

> requested. Thus, although a preliminary agreement was concluded between V.K. and J.K., and considering the nature of the activity carried out J.K. was the actual defence lawyer of V.K., still there was no agreement providing for assistance to be provided by J.K. to V.K. in the smuggling case concerning the shipment of "Sovereign Classic" cigarettes of the value of LTL 2 448 800 which was seized on 5 July 2002. Therefore, it cannot be concluded that V.K. was a defence lawyer meaning that legal regulations providing for confidentiality of lawyer and his client must be applied. As a result, the findings of the courts stating that records of the telephone conversations between V.K. and J.K. were made unlawfully and therefore do not meet the requirements of article 20 (4) of the CCP are unfounded.

In other words, this decision shows that, for the purposes of finding and taking evidence (whether physical or electronic), it is necessary in each case to comply not only with the restrictions governing the means of gathering evidence, but also with the limitations associated with the entities from which the evidence is obtained.

Practical problems of obtaining evidence

New technologies have been developed to greatly assist people on the one hand, but at the same time they make it more difficult for law enforcement to gather evidence. Unfortunately, the law does not always keep up with the rapidly evolving technologies, consequently the gathering of evidence faces challenges, as the law may not necessarily set out the necessary rules. At present, devices protected by unique personal biometric data are common. Unique personal biometric data (facial features, finger and palm prints, palm shape, eye iris and retina, voice timbre, ear shape, etc.) are used in automatic person recognition (identification) procedures, for example, for unlocking a mobile telephone. However, a question arises whether it is legitimate to force a person to unlock the device, which is protected by biometric data, and whether the electronic evidence obtained in this way would be considered to have been obtained lawfully.[9]

A recent US decision, *Matter of Residence in Oakland, California*,[10] on this issue has recently been widely debated. Previously US judges had ruled that the police were allowed to force users to unlock devices such as Apple's iPhones with biometrics, such as fingerprints, faces or irises. In that case, the government applied for a search and seizure warrant to seize various items presumed to be located at a residence, including electronic devices connected to two named suspects, and sought the authority to compel any individual present at the time of the search to press a finger or utilize other biometric features, such as facial or iris recognition, for the purposes of unlocking any digital devices found during the search to permit a search of the contents, as authorized by the search warrant. At issue was whether the act of forcing a finger to unlock a device was testimonial in nature. On this point, Kandis A. Westmore, Magistrate Judge, stated, at 6, that: 'If a person cannot be compelled to provide a passcode because it is a testimonial communication, a person cannot be compelled to provide one's finger, thumb, iris, face, or other biometric feature to unlock that same device'.

The position in Lithuania is covered by article 156 of the CCP:

> 156 straipsnis. Fotografavimas, filmavimas, matavimas, rankų atspaudų ir pavyzdžio genetinei daktiloskopijai paėmimas
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> 1. Ikiteisminio tyrimo pareigūno ar prokuroro nutarimu įtariamasis, o teismo nutartimi kaltinamasis, nors jie tam ir prieštarautų, gali būti fotografuojami, filmuojami, matuojami, gali būti paimami jų rankų atspaudai ir pavyzdžiai genetinei daktiloskopijai.
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> 2. Kai atsiranda su tyrimu susijusi būtinybė, šio straipsnio 1 dalyje nurodyti veiksmai gali būti atliekami ir kitiems asmenims. Jei tokie asmenys nesutinka, kad jiems būtų atliekami tokie veiksmai, šiuos veiksmus galima atlikti

[9] The investigating authorities can force a person's finger against a device in Norway: Ingvild Bruce, 'Forced biometric authentication – on a recent amendment in the Norwegian Code of Criminal Procedure', 14 *Digital Evidence and Electronic Signature Law Review* (2017) 26 – 30.

[10] 354 F.Supp.3d 1010 (2019); for other US case examples, see *Electronic Evidence* 8.61 – 8.65; also see Fern L. Kletter, J.D., 'Construction and Application of "Foregone Conclusion" Exception to Fifth Amendment Privilege against Self-Incrimination', 25 A.L.R. Fed. 3d Art. 10; Laurent Sacharoff, 'What Am I Really Saying When I Open My Smartphone?:A Response to Orin S. Kerr', 97 Tex. L. Rev. Online 63.

priverstiniu būdu, bet tik tuo atveju, kai yra prokuroro nutarimas.

Article 156. Taking photographs, filming, measuring, taking hand prints and sample genetic dactyloscopy

1. By decision of a pre-trial investigation officer or a prosecutor, a suspect and a defendant (in the latter's case a court ruling must be passed), despite their objections, may be photographed, filmed, measured, and their hand prints may be taken and samples of genetic dactyloscopy may be taken.

2. When it is necessary in the investigation, the actions referred to in paragraph 1 may be carried out to other persons as well. If such persons do not agree that such actions are carried out, they can be carried out by force, but only if there is a prosecutor's decision.

In this way, it is possible to obtain some personal biometric data and use them for the purpose of obtaining evidence during criminal proceedings. However, I am not aware of any case in Lithuania where it has attempted to date. At the same time, it is difficult to predict how Lithuanian courts would assess the admissibility of evidence obtained in such manner.

Another very important aspect of the admissibility of electronic evidence is the receipt of such evidence from foreign countries.[11] If electronic evidence is outside the state (usually this is the case), it must be obtained in the manner prescribed by law. The issue of jurisdiction is significant. Some judges, having received a prosecutor's request to allow procedurally coercive measures in foreign states, do not sanction such actions. However, when prosecutors appeal against these decisions to higher courts, it is recognized that such actions may be carried out, as in a decision of a pre-trial judge rejecting the prosecutor's request to confirm the prosecutor's decision to become familiarised with information:[12]

> Prokurorė prašo leisti susipažinti su informacija apie buvusius telekomunikacijų įvykius (registracijos metu pateiktą informaciją (vardas, pavardė, gimimo metai, telefono numeris, kita kontaktinė informacija ir registracijos metu sistemos užfiksuotas IP adresas, iš kurio buvo atlikta registracija) bei srauto duomenis (informacija apie prisijungimo prie paskyrų IP adresus, data, laikas) už laikotarpį nuo 2017-09-01 iki nutarimo įvykdymo dienos. Subjektas, disponuojantis dokumentais ar informacija, su kuriais reikalinga susipažinti elektroninio pašto paslaugą 'GMAIL' administruojanti kompanija "Google Inc", esanti 1600 Amphitheatre Parkway Mountain View, CA, 94043, JAV. Prašyme nurodė, kad Kauno apskrities VPK KP NNTV 1-ame skyriuje atliekamas ikiteisminis tyrimas Nr. 01-1-60614-17, pagal Lietuvos Respublikos BK 182 str. 1 d., dėl sukčiavimo, nes gautas pranešimas, jog Lietuvoje yra registruota internetinė svetainė http://paskolusprendimai.lt/, kurios pagalba apgaule iš žmonių yra išviliojami pinigai. Pranešime teigiama, kad nurodytoje svetainėje yra skelbiama informacija apie tarpininkavimą gaunant paskolas t.y. tarpininkai už 9 Eur mokestį suveda paskolos prašytoją su kreditoriumi, o šie, apgaule, už įvairias tariamas paskolos administravimo išlaidas, paprašo per 'Western Union' persiųsti pinigus į Benino Respubliką (Vakarų Afrika). Pinigus pervedę asmenys jokios paskolos negauna, pervesti pinigai nėra grąžinami. Ikiteisminio tyrimo metu nustatyta, jog asmenys apgaule pažadėję suteikti kreditus su nukentėjusiaisiais bendravo elektroniniu paštu šiais adresais: (depersonalised) ...@gmail.com, ...gmail.com, ...@gmail.com. 'Gmail' paskyrą administruoja Jungtinėse Amerikos Valstijose (toliau – JAV) įkurta bendrovė „Google.Inc", 1600 Amphitheatre Parkway, Mountain in View, CA 94043, JAV.
>
> Prašymas atmestinas.
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> Lietuvos Respublikos teismas, įskaitant ir ikiteisminio tyrimo teisėją, taip pat jokie kiti Lietuvos pareigūnai ar institucijos neturi teisės (nuspręsti) taikyti prievartos priemonių užsienyje, t.y. už Lietuvos Respublikos, atitinkamai ir baudžiamojo proceso įstatymo galiojimo bei teisėsaugos institucijos jurisdikcijos ribų. Taigi, ikiteisminio tyrimo

[11] As a matter of interest, note the Draft Convention on Electronic Evidence, 13 *Digital Evidence and Electronic Signature Law Review* (2016) S1 – S11 at http://journals.sas.ac.uk/deeslr/article/view/2321 .

[12] 2018-01-29 Kauno apylinkės teismo nutartis (case number 01-1-60614-17).

teisėjas nėra kompetentingas sankcionuoti procesinių veiksmų atlikimo užsienyje. Esant šioms aplinkybėms, prašymas negali būti tenkinamas.

The prosecutor asks for access to information on past telecommunications events (information provided at the time of registration (name, surname, year of birth, telephone number, other contact information, and the IP address registered at the time of registration) and traffic data (login details) to the IP Addresses, Date, Time of the Accounts for the Period from 2016-09-01 to the day of execution of the ruling. The entity that holds the documents or information required to access Google Inc, the company administering the GMAIL email service, is 1600 Amphitheater Parkway Mountain View, CA, 94043, U.S.A. The application stated that a pre-trial investigation No. 01-1-60614-17 was conducted in Kaunas County DAC KP NNTV Chapter 1, according to article 182 (1) CC of the Republic of Lithuania, for a message was received that in Lithuania there is a registered website http://paskolusprendimai.lt/, which helps trick people into thinking they will make money. The report states that information on brokering loans is published on the website indicated, i.e. intermediaries charge a borrower with a creditor for a fee of EUR 9, which, by deceiving the various alleged administration costs of the loan, asks Western Union to send money to the Republic of Benin (West Africa). Money transfers do not receive any loans, the money transferred is not returned. During the pre-trial investigation it was found that persons who were deceived to give credit to the victims communicated by e-mail to the following addresses: (depersonalised) ... @ gmail.com, ... gmail.com, ... @ gmail.com. The Gmail account is managed by Google.Inc, a United States (US), 1600 Amphitheater Parkway, Mountain in View, CA 94043, USA.

The request must be rejected. The court of the Republic of Lithuania, including the pre-trial judge, as well as any other Lithuanian officials or institutions, has no right (to decide) to apply coercive measures abroad, i.e. outside the Republic of Lithuania, respectively the validity of the Criminal Procedure Law and the jurisdiction of the law enforcement institution. Thus, the pre-trial judge is not competent to authorize the conduct of proceedings abroad. In these circumstances, the request cannot be met.

An example from a specific case helps to illustrate the point.[13] A pre-trial investigation into fraud was conducted. In this case, the victim got acquainted via Facebook and interacted with a person who introduced himself as Phill G Wallace. He defrauded the victim of US$150,000. At the request of the suspect, the victim transferred the money in various amounts to bank accounts in Spain, USA and Turkey. The prosecutor requested the court for permission to get acquainted with information administered by Facebook, such as the contact details of the person who created the Facebook account and the IP addresses from which the account was viewed. However, the court refused the request. The reasons were as follows: the Lithuanian court as well as other institutions are not entitled to apply coercive measures abroad, that is, outside the limits of law of the Republic of Lithuania and the jurisdiction of law enforcement authorities. Thus, the court found that it could not authorize the performance of procedural actions abroad. Below is the ruling:

> Prokurorė prašo taikyti procesinę prievartos priemonę – leisti susipažinti su informacija, kuri turi būti vykdoma ne Lietuvos Respublikos teritorijoje. Šiame kontekste pažymėtina, kad Lietuvos Respublikos teismas, įskaitant ikiteisminio tyrimo teisėją, taip pat jokie kiti Lietuvos pareigūnai ar institucijos neturi teisės (nuspręsti) taikyti prievartos priemonių užsienyje, t .y. už Lietuvos Respublikos, atitinkamai, ir baudžiamojo proceso įstatymo galiojimo bei teisėsaugos institucijų jurisdikcijos ribų. BPK 4 straipsnyje įtvirtinta nuostata, jog proceso tvarką nustato Lietuvos Respublikos baudžiamojo proceso kodeksas, galiojantis proceso veiksmų atlikimo metu, ir nesvarbu kur padaryta nusikalstama veika, baudžiamasis procesas Lietuvos Respublikos teritorijoje vyksta pagal Lietuvos Respublikos baudžiamojo proceso kodeksą, taigi

[13] 2018-03-05 Kauno apylinkės teismo nutartis (bylos Nr. 01-1-10024-18).

ikiteisminio tyrimo teisėjo nutartis, leidžianti atlikti vienokį ar kitokį proceso veiksmą, susijusį su prievartos priemonių taikymu, be apribojimų gali būti vykdoma tik Lietuvos Respublikos teritorijoje, o jos vykdymui užsienio valstybėje jokio pagrindo nėra, kadangi kiekvienu atveju tam turi būti gautas kompetentingos, dažniausiai teisminės, institucijos patvirtinimas. Taigi, ikiteisminio tyrimo teisėjas nėra kompetentingas sankcionuoti procesinių veiksmų atlikimo užsienyje. Pripažinus būtinybę (tiek teisinį, tiek ir faktinį pagrindą) užsienio valstybėje taikyti kurią nors iš Lietuvos Respublikos baudžiamojo proceso kodekso XII skyriuje numatytų procesinių prievartos priemonių, procesinį veiksmą inicijuojantis subjektas (prokuroras) privalo veikti atitinkamo tarpusavio teisinės pagalbos ir tarptautinio bendradarbiavimo ribose, tačiau ne prašyti savo valstybės teismo tokią procesinės prievartos priemonę sankcionuoti.

The prosecutor request to allow using a procedural coercive measure i.e. getting access to information, that must be carried out outside the territory of the Republic of Lithuania. In this context it should be noted that the court of the Republic of Lithuania, including the pre-trial judge, as well as any other Lithuanian officials or institutions, has no right (to decide) to apply coercive measures abroad, i.e. outside the territory of the Republic of Lithuania and beyond the validity of Lithuanian Criminal Procedure Law and outside the jurisdiction of Lithuanian law enforcement institutions. Article 4 of the CCP establishes that the procedure of the proceedings shall be established by the Code of Criminal Procedure of the Republic of Lithuania, which is in force at the time of conducting the proceedings, and disregarding where the criminal act has been committed, the criminal proceedings in the territory of the Republic of Lithuania shall be conducted pursuant to the Code of Criminal Procedure of the Republic of Lithuania. Thus, pre-trial judge's order allowing to carry out one or another procedural action related with application of coercive measures may be executed without restriction in the territory of the Republic of Lithuania only, whereas there is no basis to execute such court order in a foreign state, as in each case it must be approved by a competent authority, usually judicial one. In other words, pre-trial judge is not competent to authorize the conduct of proceedings in a foreign state. Having recognized the necessity (both legal and factual basis) to apply any of the procedural coercive measures provided for in Chapter XII of the Code of Criminal Procedure in a foreign state, the initiator of the procedural act (prosecutor) must act within the scope of relevant mutual legal assistance and international cooperation, but not request the court of his native state to authorize such procedural coercive measure.

The prosecutor appealed against this decision to a higher court.[14] The higher court stated that the judgment was unfounded and it was revoked. The higher court noted that the Supreme Court of Lithuania has clarified that a pre-trial investigation judge has the right to issue an order on the application of procedural coercive measures in foreign states and such order serves the basis for applying to a foreign state for the application of procedural coercive measures in that state. The higher court also emphasized that, in the absence of a judge's order for the application of procedurally coercive measures, there would be a reasonable question to be asked, that is, whether the data obtained during these procedural actions were lawfully obtained.

Lietuvos Aukščiausiojo Teismo išaiškinta, kad ikiteisminio tyrimo teisėjas turi teisę priimti nutartį dėl procesinių prievartos priemonių taikymo užsienio valstybėse ir tokia nutartis yra pagrindas kreiptis į užsienio valstybę dėl procesinių prievartos priemonių taikymo toje valstybėje. Kai nėra teisėjo nutarties dėl procesinių prievartos priemonių taikymo, kils pagrįstas klausimas, ar šių procesinių veiksmų metu gauti duomenys buvo gauti teisėtu būdu (BPK 20 straipsnio 1 ir 4 dalys).

The Supreme Court of Lithuania has clarified that a pre-trial investigation judge has the right to make a ruling on the application of procedural coercive measures in foreign

[14] 2018-03-30 Kauno apygardos teismo nutartis, kuria patenkintas prokuroro skundas (2018-03-30 Kaunas District Court Order Satisfying the Prosecutor's Complaint).

states, and such a ruling is a reason to apply to a foreign state for the application of procedural coercive measures in that country. In the absence of a judge's ruling on the application of procedural coercive measures, there will be a reasonable question as to whether the data obtained during these proceedings were lawfully obtained (article 20(1) and (4) of the CCP).

There are not many cases where judges refuse to allow procedural coercive measures in foreign states during the pre-trial investigation, but they occur.[15] Such decisions greatly complicate the investigation, extend their duration, and often electronic evidence can, in general, can be lost as a result of time passing.

Analysis of electronic evidence

Once evidence in electronic form has been obtained from a device, the next phase of the investigation is to extract the important elements from the data that has been seized. The common principles for obtaining the data also apply in the analysis phase. They are all the more important during analysis, as it is here that data will be established as legally admissible evidence. Digital forensics examinations or specialist examinations are conducted in almost every case where the suspect's fault is based on electronic evidence.

Digital examination in Lithuania is carried out at three levels:

1. Pre-trial investigation institutions employ trained officers who can carry out simple examinations – such an officer (investigator) usually works with standard IT examination cases. He or she performs an overview of standard IT devices (computers, mobile telephones) and draws up an overview protocol recording the progress and results of the examination.

2. Second level – an IT specialist in the police. IT specialists work in the major police units of all counties. They have special knowledge in the field of digital examination and work with various IT examination cases depending on the specialization in IT field. Specialists of this level record the progress and results of the examination in the report of the digital evidence professional according to the questions formulated in a task of a prosecutor or pre-trial investigation officer.

3. Third Level – digital forensic examinations. They are performed by the Forensic Science Centre of Lithuania (FSCL). FSCL is an institution acting under the Ministry of Justice. In the Centre, the Digital Information Examination Department was established in 1995 and it employs 12 digital evidence professionals. The main task of the IT Department is to carry out forensic examinations required by courts, pre-trial investigation institutions and other state agencies. These experts have special knowledge of IT and work with various IT examination cases in his specialization. All experts are included into the list of forensic experts. They formalize the process and results of the examination by drawing up an examination report.

The level at which the digital examination will be performed depends on the complexity of the examination. The most complex examinations are carried out by FSCL digital evidence professionals.

For example, digital examinations of drones and smart TVs have been performed. Recently, an interesting and complex examination of the satellite TV receiver GM Germany Sperk Reloaded has been conducted, in which a digital evidence professional identified and explained to the court the entire mechanism of the illegal broadcasting of satellite TV channels. The accused was prosecuted for gross violations of intellectual property rights. FSCL digital evidence professionals are currently preparing to understand cloud computing and data stored by a user in motor vehicles (media devices). The work of the FSCL digital

[15] For which see the well-known Belgian *Yahoo!* case: Corr. Dendermonde 2 maart 2009, onuitg. (Rechtbank van Eerste Aanleg te Dendermonde (The Court of First Instance in Dendermonde)), by Johan Vandendriessche, 8 *Digital Evidence and Electronic Signature Law Review* (2011) 196 – 207; Gent 30 juni 2010, onuitg. (Hof van Beroep (The Court of Appeal in Ghent, third chamber, sitting in criminal matters)), by Johan Vandendriessche, 8 *Digital Evidence and Electronic Signature Law Review* (2011) 208 – 215; Cass. 18 januari 2011, nr. P.10.1347.N (Hof van Cassatie (Court of Cassation of Belgium)), by John Vandendriessche, 8 *Digital Evidence and Electronic Signature Law Review* (2011) 216 – 218; Brussel 12 oktober 2011, onuitg, Hof van Beroep te Brussel (The Court of Appeal in Brussels, thirteenth chamber, sitting in criminal matters), by Johan Vandendriessche, 9 *Digital Evidence and Electronic Signature Law Review* (2012) 102 – 105; P. 11.1906.N/1, commentary by Johan Vandendriessche, 10 *Digital Evidence and Electronic Signature Law Review* (2013) 155 – 157; Antwerpen 20 november 2013, 2012/CO/1054 Yahoo! Inc., translated by Johan Vandendriessche, 11 *Digital Evidence and Electronic Signature Law Review* (2014) 137 – 143; Nr. P.13.2082.N, 1 December 2015, translated by Johan Vandendriessche, 13 *Digital Evidence and Electronic Signature Law Review* (2016) 156 – 158.

evidence professionals is very satisfactory. In 2018, they participated in the inter-laboratory test on identification of passwords organized by the ENFSI working group FIT-WG (Forensic information technology working group) and took 9th place among 23 participants.

There are cases where digital evidence professionals are invited to court to explain the examination. However, I have not encountered cases where the examination (its contents and conclusions) by a digital evidence professional was quashed in court. We usually face procedural challenges when the accused persons and defence attempt to challenge the admissibility of an examination report as evidence by using arguments pertaining to the formalities of the appointment and performance of the examination.

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