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EVALUATIONS OF ENERGY SECURITY MEASURES: EXPERIENCE OF DIFFERENT COUNTRIES IN THE FIGHT UNLAWFUL USE OF ELECTRICITY AND COMPARISON WITH LATVIA

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Abstract. In the modern world it is hard to imagine any field that would not depend to some extent on electric energy resources; however, the use of electricity is not always legal and general information shows that criminal offences in electricity networks are widespread in the world. Instability in the electricity market is a serious threat to energy supply security in every country and it influences economical, social and political welfare. In order to determine solutions to prevent the above mentioned cases, it is useful to study the experience of legal systems and case-law close to Latvia in relation to the above mentioned criminal offences, as well as to examine the existing problems and particularities of the situation. Taking into account foreign experience in developing legislative acts on prevention of criminal offences related to unlawful use of electricity and their application in practice, this research provides an insight into national legislation and case-law in this field in several countries – the Russian Federation, the Federal Republic of Germany, the Republic of Poland, and the Republic of Lithuania. Analysing the results of the research and the real situation, conclusions on the peculiarities of electricity thefts, foreign practice and possible solutions to improve the situation in Latvia can be drawn.

Keywords: unlawful use of electricity, legal framework, case-law.

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1. Introduction

Criminal liability for an offense committed in the field of electricity has been strengthened in almost all countries of the world, but there are different regulations and understanding of electricity as property in a material sense in the world, therefore there are different solutions for regulatory frameworks in connection with the illegal use of electricity.

International experience in combating illegal use of electricity leads to the conclusion that consumers commit these criminal offenses in both household and industry sector, and every year there is a tendency of increasing the share of these offenses (Energosbyt 2011).

Electricity thefts occur in very different ways, but theft cases can be divided into two groups. First group is a public electricity theft – deliberate damaging of electricity meters, open connections to electric power lines and

the like. The second group is a hidden electricity theft - counterfeiting of seals, insertion of special equipment into meters, hidden connections to electric power lines. Instability in the electricity market is a major threat to energy supply safety in every country and it influences significantly economical, social and political welfare (Šincāns 2014).

Electricity is not considered as property in a material sense in Latvia, because it is not a tangible thing, therefore the Criminal Law does not recognize electricity as a subject of property theft, but its illegal consumption and use is an offense with an avaricious intent, which causes real material damage to the owner (Kraštinš 2007).

There is a similar regulation in Spain, Austria, Switzerland, Cuba and Russia; however, there is a broad discussion among legal scholars on whether energy resources should be included into property conception and whether illegal use of electricity should be classified as a subject of property theft (Semenovich 2015).

Whereas in other countries electricity is recognized as a subject of property theft, for example, in the countries with the Anglo-Saxon legal system (for example, USA, United Kingdom) criminal liability for electricity thefts is established. Thus, for example, Article 13 of the Theft Act (the UK) provides criminal liability for electricity theft with imprisonment for a term not exceeding five years. The Criminal Code in the states of the USA, for example, Paragraph 223 of the New York State Penal Code sets similar regulation. Regulatory framework on electricity thefts of the abovementioned countries provides criminal liability even for not switching-off electrical facilities when leaving the workplace and unauthorised switching-on of other persons' electrical facilities. However, it should be noted that electricity thefts in the abovementioned countries with Anglo-Saxon legal system are rare criminal offences. For example, on April 29, 2010 Life News Online announced unauthorized connection to electrical networks, the manager of the energy company described it as an unprecedented, stupid and life-threatening incident.

In the Netherlands electricity is included into the concept of the subject of property rights and in cases, when persons carry out an unauthorised connection to the electricity network, their offence is classified as a theft. Similar legal framework exists also in Germany, Romania, Turkey and Poland.

In Malaysia, in turn, unauthorized operations with commercial accounting meters are defined as a fraud (Thomas B. Smith 2004).

Several European countries have found a solution for criminal offenses in the field of electricity both at the level of legislation, case-law and doctrine much earlier in comparison with Latvia. For example, the author has found the researches of legal scholars in Germany on criminal offences in energy sector which are dated by 1961 (BayObLG, 28.02.1961 - RReg. 3 St 117/60), unfortunately this publication is no longer officially available.

European countries have identified criminal activities in the electricity market already in the 1960s of the twentieth century; therefore it is only natural that Germany has already compiled an extensive practice in these matters.

Taking into account the experience of foreign countries in developing legislation aimed at prevention of criminal offenses in connection with the illegal use of electricity and their application in practice, this research offers an insight into the national laws, as well as case-law in this field in several countries – the Russian Federation, the Federal Republic of Germany, the Republic of Poland, the Republic of Lithuania.

2. Legal framework for unlawful use of electricity in the Russian Federation

Unlike Latvia, in the Russian Federation (hereinafter – RF) unlawful use of electricity is not included in the content of a special criminal offense.

In the practice of Russia, offenders' activities are often qualified according to Article 165 Chapter XXI of the Criminal Code of the RF, where damage to property of the owner or legal beneficiary committed by abuse of trust or by fraud, excluding theft criteria, if it is committed at a large scale, shall be punished by a fine not exceeding 4500 EUR, or with forced labour up to two years with or without restriction of liberty for a term not exceeding one year, or with imprisonment for a term not exceeding two years and a fine not exceeding 1200 EUR, or with imprisonment for a term not exceeding one year. In turn, if this offence is committed in a group of persons with prior agreement or if it is committed at a particularly large scale, shall be punished with forced labour up to five years, with restriction of liberty for a term not exceeding two years, or with imprisonment for a term not exceeding five years and a fine up to 1200 EUR, or with imprisonment for a term not exceeding two years.

The subject of the above-mentioned criminal offence is material values – usually these are cash, payment for electricity and other services (Kruglikov 1997).

The object of the criminal offence is damage to property of the victim; it is objectively expressed as causing material harm by abuse of trust or by fraud. Causing damage to property is expressed in such a way that a perpetrator deceives the victim causing damage to property of the latter (avoiding to pay for electricity, gas or other utilities and the like). The subject of criminal offence is not determined in the Criminal Code of the RF, and it is considered as an exceptional case when the legislator characterizing the content of a particular criminal offence determines it as a subject. Russian legal scholar N. I. Panov characterizes the subject of the above-mentioned criminal offence depending on material harm as material benefits intended for transfer or the value of property used without authorization (Rozencaiga 2012).

Abuse of trust means that a person uses contractual or other legal relationships, which are based upon mutual trust, with intention to gain benefit and, as a result, the perpetrator uses victim's trust in contrary to his interests. Transfer of property interests to the offender voluntarily, by fraud or abuse of trust is the main difference which allows dissociating this criminal offence from a theft, where there is no conscious and voluntary transfer. A criminal offence is committed in a group of persons with prior agreement, if at least two persons, before committing criminal offence, have agreed to commit it together and have done it. The subject of criminal offence is any natural person of sound mind who until the day of committing a crime has reached sixteen years of age. Subjective attitude of the perpetrator to the offence is expressed as a direct intent – he or she is aware of illegality of his or her actions, intends to cause material harm to the victim and wishes to gain profit from illegally obtained material benefit. The value of large scale damage to property exceeds 3700 EUR, whilst the value of a particularly large scale damage exceeds 15 000 EUR. The author has determined that there is a disaffection among the Russian scholars concerning the amount of damage set by the legislator in Article 165 of the Criminal Code, as in a similar Article 159 of the Criminal Code (fraud) liability is defined for an item of property with value exceeding just 150 EUR. The scholars see likeness between Article 159 and 165 of the Criminal Code and propose to state Article 159 in the following way: "For acquisition of other persons' property or rights to such property or derivation of material benefits by abuse of trust or fraud". Thus, Article 165 of the Criminal Code of the RF includes reference to the subject of criminal offence (damage to property) like in Germany, Switzerland and Austria.

If according to the Criminal Code of the RF, the Criminal Law of Germany, Austria and Switzerland a person should be punished for fraud if he or she has achieved that the victim of fraud does not use civil liability claim, then according to the Criminal Law of Latvia such crime is not punishable under criminal law, as with such actions a person gains neither property, nor rights to property, but avoids to fulfil obligations (payment for electricity). It should be noted that reference to the subject of criminal offence (property/rights to property) was not included in the Penal Law 1993 of Latvia and formulation of fraud (Leja 2010).

It should be noted that Article 92 of the Criminal Code of the Latvian Soviet Socialist Republic of January 6, 1961 contained a rule of law which is analogical in content to the valid rule of law in Article 165 of the Criminal Code of the RF.

The Law No. 261-FZ “On energy efficiency and necessity for legislation amendments” of the Russian Federation of November 23, 2009 states that manipulation with unauthorized use of electricity undermine national economical and energy security; therefore there has been a discussion on reinforcement of sanctions for damaging electrical energy networks and for unauthorized connections, increasing the time of imprisonment up to five years and a fine up to 7500 EUR; however, if these activities will lead to person’s death or cause emergency, disaster or other serious consequences, it is punishable by imprisonment for a term from five to eight years. In general, reinforced control is paid to combating unauthorized use of electric energy in Russia and liability with actual imprisonment is provided for these actions.

Statistical data on criminal offences defined by Article 165 of the Criminal Code of the RF show that 10784 criminal offences were registered in 2010, while in 2011 – 8567 (Rozencaig 2012).

Approximately 10 % of the total electric energy is stolen every year in the Russian Federation, and, in comparison with European indicators where this amount does not exceed 3 %, this indicator negatively influences the economic growth of the Russian Federation. The injury margin for the Russian Federation is interpreted as a debt and its amount can be calculated for a period up to three years. The largest number of cases of illegal use of electricity was reported in Sochi.

Illegal use of electricity in Russia is manifested in unauthorized actions of natural and legal persons by installing hidden connections, by connecting to electric energy networks without authorization and deliberately distorting accounting.

In the Russian Federation there are widespread cases when after expropriation of objects new owners do not re-conclude legal relationships. If such relations are found, in Russia, in contrary to Latvia, it is allowed to carry out a recalculation of the unaccounted electricity.

According to summary carried out in the Russian Federation, most of the criminal offences according to Article 165 of the Criminal Code are qualified as minor criminal offences; the following punishments are imposed in most of the cases: forced labour and conviction on probation. For example, in 2010 the court of Irkutsk heard 18 cases according to Article 165 of the Criminal Code and the court mainly determined liability connected to the imprisonment for a term not exceeding six months imposing conviction on probation. Making such judgments the court takes into account the nature of the crime, perpetrator’s personality, caused damage and other circumstances of the case. Perpetrators, in turn, often mention the lack of money and its need for children’s education, and undertake to compensate the damage suffered.

However, there are situations in practice when clients who are using electricity without authorization, attack controllers of power supply companies. Thus, for example, drawing up the act for illegal use, the controller was attacked with an axe by a resident of Buryatia who caused bodily injuries; thus the offender committed two criminal offences, currently the investigation process is carried out.

The author has analyzed and generally supports the experience of the Russian Federation in situations when information on devices which allow decreasing meter readings by using unauthorised actions is spread in the internet. Thus, for example, with Staroyuryevsky District Court judgment of October 7, 2016 the court satisfied prosecutor’s claim on information withdrawal from the portal <https://www.youtube.com/watch?v=fx6ELgHgZ78>. The court stated that dissemination of information undermines the operation of power supply companies, violates persons’ rights and does not comply with principles and goals specified in legislation.

The summarization of case-law allows formulating the following conclusions (Russkova 2014):

- the lack of technical knowledge of clients and witnesses cannot affect credibility of the act concerning illegal use of electricity, for they verify the fact of drawing-up the act, existence / non-existence of the subscriber or conditions for client's refusal to sign the act (case No. A33-13220/2012);
- the lack of proof that the client was informed of the act concerning illegal use of electricity indicates the drawing up of the act, ignoring the procedure (case No. A33-2341/2012);
- the act which was drawn up ignoring the set procedure cannot form the basis for a calculation of illegal use of electricity and restrict the client's rights to receive the service (case No. 33-11622/2012). In the abovementioned case the court found unlawful the act which was based only on statements of witnesses about illegal use of electricity, but the power supply company did not inspect the object and did not check the actual condition of electrical facilities;
- the fact of the lack of a seal on a commercial accounting meter gives rights to the power supply company to calculate unaccounted electric energy; moreover, the lack of the fact about damages of a commercial accounting meter do not affect these rights (case No. A33-7729/2012);
- the local municipality is obliged to pay for electricity in objects with ownerless status which are located in the territory of the municipality (case No. A69-1089/2012).

The peculiarities of legal responsibility for illegal use of electricity, which is strengthened in the legal framework of Russia, clearly indicate a tendency for the specialization of a legal regime to ensure effective liability for illegal use of electricity (Svirkov 2013).

Having examined the researches carried out in the Russian Federation and analysed case-law situations on illegal use of electricity, several conclusions can be drawn:

- In the Russian federation, as in Latvia, the peculiarities of illegal use of electricity are widespread and there is a necessity to improve the situation.
- the discussion of Russian legal scholars on the inclusion of energy resources in the concept of property and, consequently, qualification of illegal use of electricity as a subject of property theft, is to be supported;
- there is a similarity between Article 159 and Article 165 of the Criminal Code of the RF, and the proposition of legal scholars to state Article 159 in the following way: "For acquisition of other persons' property or rights to such property or derivation of material benefits by abuse of trust or fraud" is to be supported;
- the position of the Russian Federation that the injury margin is interpreted as a debt and its amount can be calculated for a period up to three years is to be supported.

3. Legal framework for unlawful use of electricity in the Federal Republic of Germany

The history of the Criminal Code ("Strafgesetzbuch", StGB) of the Federal Republic of Germany (hereinafter – Germany) is a history with endless reforms. Criminal law of Germany with 130 years long traditions and approximately 200 more or less substantial legislative amendments is a direct confirmation of changes that criminal law can face.

In Germany, criminal liability for electricity theft as a criminal offence against property was determined and, consequently, electricity was recognized as property, already in 1990 (Ennekcerus 1950). Therefore, electricity theft is criminalized in Germany already for more than 100 years (Loffelmann 2012).

The current Criminal Code of Germany was adopted on May 15, 1971. Criminal offences against property were included into Section XIX. The first part of Paragraph 248.c of the Criminal Code of Germany states that anyone who uses other persons' electric energy with intent of appropriation is responsible for his or her offence with imprisonment for a term not exceeding five years or a fine. The second part of the abovementioned article states that an attempt to appropriate another person's electric energy is punishable, in turn, in the fourth part it is stated that in case of the appropriation, mentioned in the first part, with intent to cause damage to other persons, imprisonment for a term not exceeding two years or a fine is imposed. The necessary condition of the rule of law – criminal proceedings are instituted only on the base of the injured party's application.

Thus, the formulation of electricity theft in Germany is determined as a deliberate, unlawful take of electricity from other natural or legal persons' property without compensation with intent of illegal consumption or use for own or another person's benefit that causes actual material damage to the owner or holder of property. Electricity theft is considered as completed with the moment unlawful action is committed. The subjective attitude of the perpetrator to the offence – unjust enrichment at the expense of another person. The damage is done to the interests of the victim starting from the moment when property is unlawfully taken from his or her possession. It should be noted that an attempt to appropriate another person's electric energy is punishable under criminal law. This condition indicates that jeopardized property interests of power supply companies in Germany have primary character. In Germany criminal liability is provided also in the case if electricity theft is connected with the intent to cause damage to other persons.

The lower age limit of criminal liability for theft subjects in Germany is 14 years. Criminal liability can be imposed upon subjects from 14 to 18 years only on the condition that they commit theft with a deliberate intent and are aware of unlawfulness of their actions. It is necessary to note that corrective educational measures in compliance with the law "On juvenile judicature" (Jugendgerichtsgesetz – JGG) are imposed upon the above-mentioned subjects, therefore the legal framework in relation to minors in Germany is concentrated on education of these young people.

Illegal use of electricity deliberately distorting accounting or adjusting special devices to decrease the consumption of electricity is regulated by Paragraph 265.a of the Criminal Code of Germany. In the first part it is stated that anyone, who mechanically carries out secret actions or adjusts devices with intent to avoid payment for the service, is responsible with imprisonment for a term not exceeding one year or a fine. The second part of the abovementioned paragraph states that an attempt to carry out such actions is punishable under criminal law.

Having studied case-law of Germany, the author has found that, for example, on December 7, 2012, the court of Germany sentenced 50593 EUR, 86 compensation in the case No. Az. 19 U 69/11 from the person for unlawful use of electricity for 3 years. The person has illegally manipulated with the electricity meter to conceal growing of marihuana. The perpetrator was renting a flat since July 15, 2007 and was involved in growing of marihuana; the police, in turn, revealed the illegal production on August 15, 2009. The compensation was calculated for that period; however, the perpetrator tried to challenge the claim, indicating that representatives of the power supply company tested the commercial accounting in January 2008 and failed to established marihuana plantation. The court stated that the fact of testing commercial accounting does not indicate that a person is not involved in growing marihuana; it was proved by photos and witnesses' testimonies.

It should be noted that there are similar cases of illegal use of electricity in Latvia; however, instead of growing marihuana production of moonshine has been organized. For example, in the personal experience of the author, possible perpetrators tried to maintain that during the testing of commercial accounting illegal actions were not established, not taking into account that testing of commercial accounting readings and testing of commercial accounting meters is not the same.

Justice of the recovered compensation from the perpetrator is explained in the court judgment No. Az. VI ZR 186/91 of January 14, 1992. It is stated in the judgment that compensation is calculated according to the regulations of Paragraph 18 of the Civil Code of Germany (Bürgerliches Gesetzbuch, BGB) on unjust enrichment, established case-law and Paragraph 9 of the Federal Regulations on Electricity Tariffs (Bundestarifordnung Elektrizität (BTOElt)) on electrical load of objects. Compensation is calculated according to cross section of inlet protection device or conductor, by with connection is installed, set up at the electric installation entry. In accordance with the general regulations in Germany, calculation period of compensation for damage for users' supplies and back-up power supply from low voltage networks is limited with three years of limitation period.

The author has determined that in Germany there are relatively spread such cases when persons use unauthorized connections to the sources in common areas. On June 3, 1996 the court with its judgment in the case No. B 24/96 punished a person according to Paragraph 248.c of the Criminal Code by a fine for unauthorized con-

nection to lighting in common area while renting a flat.

It is positive that in Germany the landlord has the right to unilaterally terminate rental relationships with the tenant if the latter is illegally using electricity. It was recognized by the court judgment in case No. AG-Wedding 11-C-10314 of August 21, 2016.

Applying Paragraph 248.c of the Criminal Code of Germany in case-law, in most of the cases the perpetrator is punished by a fine and a record in the register of infringements (Bundeszentralregister) is additionally applied for perpetrators.

On the basis of Paragraph 242 of the Criminal Code of Germany, a theft up to 100 EUR is to be considered a minor theft; however, in case-law of Germany there are cases where the amount of electricity theft is just 1,8 euro cents. Thus, for example, on September 2, 2010 the court of Germany heard the case LG Hamm Sa 260/10 concerning the fact that an employee charged his electric motorised scooter at the workplace. Damages, which were caused by this electricity theft, constituted 1,8 euro cents. The court declared that employee's dismissal in this case was invalid.

In a similar situation an employee was dismissed for electricity theft for charging his mobile phone at the workplace. The value of the stolen electricity was just 0,014 euro cents. After long discussions and arguments between the parties, the employee was reinstated.

In general, it can be concluded that Germany is the first country which defined electricity as property and determined criminal liability for electricity theft as an act giving rise to criminal proceedings. It is likely that experience and practice in combating electricity thefts of Germany as a country with Romano-Germanic legal system is useful for the other European countries, including Latvia.

4. Legal framework for unlawful use of electricity in the Republic of Poland

In accordance with the legal framework of Poland, civil, administrative and criminal liability can be distinguished for illegal use of electricity. Criminal liability is the most common, as it includes illegal activity against continuous electricity supply in a form of interference, by stealing or destroying energy infrastructure.

Polish society believed that more serious penalties would improve the criminogenic situation in the country, therefore Poland's government adopted amendments to the Criminal Code of Poland (Kodeks karny) in 2001 and thereby the Criminal Code of Poland became the most severe in the whole Europe, in the interview to Polish public television first channel said the representative of Polish People's Party Alexander Bentkovsky.

Electricity theft is established in Section XXXV of the Criminal Code of Poland (Kodeks karny) as crime against property. In accordance with the first part of Article 278, a theft of another person's movable property is punished by imprisonment for a term from 3 months to 5 years.

In Poland, similarly as in Germany, the legislator has not given for the term "theft" (of electricity) other meaning than the term "appropriation"; both these terms are equivalent (Sokolowski Maciej M 2016).

In the judgment of the Supreme Court of Poland in criminal case No. IV KK 73/10 of September 1, 2010, it is stated that terms „theft” and „illegal use of electricity” can be interpreted as the same action.

Electricity theft is characterized by illegality. In the case of theft electricity is used without compensation. The objective side of electricity theft is expressed as unlawful use of electricity to gain own benefit.

A precise estimation of the amount of damage is problematic and in this context there is no common practice in Poland's case-law. At the moment there are no effective tools to determine how long a person has illegally used

electricity and at what amounts, therefore also what is a precise amount of damage (Żurawik 2016).

This opinion is substantiated by the Appellate Court of Krakow on June 20, 2000, which stated that a special function of judges is to estimate the level of social damage within the framework of crime, to determine legal qualification and to apply appropriate penalty. Estimation cannot be carried out on general conditions and assumptions, therefore appropriate and special criteria should be established. The lack of convincing conclusions in this case can cause legal defects in determination of the perpetrator, and thereby setting aside the judgment of the court of first instance.

In turn, in the judgment of the Supreme Court of Poland in the criminal case No. III CZP 107-09 of December 10, 2009, despite the arguments of cassation appellants that they have not actually used electricity, it was determined that the calculation of electricity theft amount for a term from November 24, 2003 till February 7, 2006 meets the requirements of Article 57 of Polish Energy Law (*Pravo energetyczne*). In accordance with this legal provision, if a power supply company detects illegal use of electricity, it has the right to calculate the amount of damage according to general principles. Calculation period is identical to Germany – up to three years since the moment the fact was established.

Estimation and determination of damages in connection with illegal use of electricity is very important from the perspective of proof. The author has established that Polish legal scholars had a lot of discussions at the conferences concerning the abovementioned problems and several solutions were proposed, for example, to carry out calculation of damages taking into account the existing tariffs, cross section and carrying capacity of the illegally connected wire, object's maximal load, as well as the existing case-law.

On the basis of article 10 of the Criminal Code of Poland, the subject of electricity theft is any natural person of sound mind which until the day of committing a criminal offence has reached seventeen years of age.

Article 39 (5) of the Criminal Code of Poland provides for a duty to compensate for damage which is one of the possible penalties. This duty concerns both damages (*damnum emergens*) and the profit lost (*lucrum cessans*) caused to the victim. Civil claim for compensation for damage against the offender is a separate issue. A rule that a person, who is guilty for causing damages to another person, is obliged to compensate these damages (Article 415 of the Civil Code) is a general rule.

Article 415 (6) of the Criminal Code of Poland provides that if the respondent is sentenced or legal proceedings are conditionally terminated in the cases provide by the law, the court shall decide on additional payment or impose obligation to compensate for damages. Article 415 (5) assigns even more opportunities to the court: if the respondent is sentenced or legal proceedings are conditionally terminated, the court may decide also *ex officio* on compensation for damages to the victim. As it can be seen, the aim of the legislator in Poland is to settle the conflicts which aroused as a result of crime. If the victim and the offender come to reconciliation or the damages are compensated, or the victim and the offender agrees upon the way of compensation, the court may decide on extraordinary mitigation of punishment. Even if the court refuses to give judgment, it can issue a criminal order for compensation, if thus the aim can be achieved.

In accordance with Article 12 of the Code of Criminal Procedure of Poland claims of a criminal offence can be recovered either in civil proceedings, or in criminal proceedings in cases provided for in the law (i.e. the Code of Criminal Procedure). Unilateral process, which is equivalent to the French "*partie civile*" process, is an instrument of criminal proceedings and acts in accordance with the Code of Criminal Procedure, its goal is to decide on the civil claims of the civil party against the respondent. Submission of a civil claim in criminal proceedings, in contrary to the Civil Procedure Law of Latvia, causes a pending lawsuit situation (*lis pendens*) and is a condition that does not allow civil procedure. And vice versa, pending lawsuit in civil court constitutes an obstacle to civil claim in criminal proceedings, therefore the matter will not be heard or will be dismissed. The same, judgment of the court on victim's claims in criminal proceedings causes *res judicata* situation, which means that the matter cannot be raised again and is a condition that denies reconsideration of a matter in civil proceedings. However, if the imposed compensation for damage does not cover all damages or recompense the

offence, the victim can claim additional compensation for damage in civil proceedings (Article 415 of the Code of Criminal Procedure), which is permitted in principle also by the legal framework in Latvia.

Having analyzed the judgments on the cases and methods of illegal use of electricity, available at Poland's Court portal, the author has found similar cases to previously described situations in Germany.

Thus, for example, with Wrocław Department of Criminal District Court judgment in the criminal case No. II AKa 99/16 of May 19, 2016 it was established that perpetrators prepared for sale a remarkable amount of drugs – marijuana and amphetamine – consuming electricity without commercial accounting and causing damage to the power supply company at the amount of 522,21 EUR.

In turn, with Częstochowa Department of Criminal District Court judgment in the criminal case No. VII Ka 293/16 of May 13, 2016 it was established that the perpetrator illegally connected to the staircase lighting in a multihousehold building. Similar situation was noted in Poznań Department of Criminal District Court judgment in the criminal case No. XVII Ka 704/16 of 8 September 2016.

There are the following methods of illegal use of electricity in Poland:

- unauthorized connections to electric lines to use electricity without commercial accounting meter;
- hidden cable connections to the object's electrical installations without commercial accounting meter;
- creating a connection to incoming phase wire of electricity meter for a terminal before meter to a post measuring fuse;
- making a phase wire bridge under meter's circuit terminal cap;
- adjusting special devices which allows illegal use of electricity.

Hidden connections which are made during construction of objects are problematic. It is very difficult to detect them, as it requires special knowledge and equipment. When they are detected, perpetrators try to avoid responsibility stating that they did not know about the existence of these connections as they inherited the object or the object came into their possession as a result of expropriation. In this matter the author supports case-law of Latvia, namely, that it does not matter, who installed the illegal connection, as the fact that such connection existed is important and the fact that the user of the object gained profit from this illegal connection. Thus, there are no problems to recover damages in civil proceedings.

Having analyzed the judgments of Poland's courts on illegal use of electricity, the author found that the amount of caused damages ranges from 22,73 EUR to 5324,80 EUR. In case-law applying Article 278 of the Criminal Code of Poland the perpetrator in most of the cases is obliged to compensate for damages and pay a fine. The author considers this sanction as very effective and believes that similar regulation is necessary in Latvia, as well. In Poland there are also cases when imprisonment for a term up to 6 months with an obligation to carry out work for social objectives for 20 hours per months and fines are imposed.

At the same time, there are rules of law in the Criminal Code of Poland that concern not only damages which are caused to energy companies as a result of illegal action. Article 254 of the Criminal Code is one of them, which states that "a person who damages, destroys, causes damages or makes an element of electric energy networks unusable shall be punished by imprisonment for a term from 6 months to 8 years", as well as the first part of Article 165 (3) which states that "a person who poses threat to human's life and health or causes a large scale harm to property, shall be punished by imprisonment for a term from 6 months to 8 years".

Regulations of the legal system of Poland in the field of electricity supply protection indicate increasing interest and necessity to regulate the energy sector in Poland. Overall, it can be concluded that electricity thefts are widespread in Poland and Poland's legislators pay serious attention to protection of energy sector.

5. Legal framework for unlawful use of electricity in the Republic of Lithuania

The development of criminal law and law of criminal procedure in Lithuania in the 20th century, the same as in Latvia, was influenced by legislative acts adopted in Russia and later during Soviet times. Russian Penal Law of 1903 was implemented in Lithuania, as in Latvia, in 1918, which remained in force after the declaration of independence of Lithuania. In 1940 the Criminal Code of RSFSR was implemented in the territory of Lithuania. In turn, the Criminal Code of Lithuanian SSR of 1961 did not differ substantially from the criminal codes of other socialist republics. This Criminal Code, which was amended several times, remained in force until the end of 2002. The Criminal Code of Lithuania was approved by a special law of September 26, 2000, and came into force on January 1, 2003.

The Criminal Code of Lithuania (*Baudžiamasis kodeksas*), identically to the Criminal Law of Latvia, consists of General and Special part. Section XXVIII of the Special part provides criminal offences against property. Illegal use of energy, including electricity and communication services, is found in Article 179 of the Criminal Code of Lithuania. According the first part of Article 179 of the Criminal Code, a person, who connects to electricity or communication networks or storages without authorization, counterfeiting commercial accounting, or with other methods unlawfully uses energy, telecommunication or other objects of economic value, causing material damage to another person, shall be punished by forced labour or a fine, or restriction of liberty, or imprisonment for a term not exceeding two years.

The author has found that in contrary to Article 182 of the Criminal Law of Latvia, the first part of Article 179 of the Criminal Code of Lithuania does not provide causing of serious material damage for unauthorized consumption of electricity, which, according to the author's opinion, is a very effective punishment and it doubtlessly disciplines Lithuanian energy consumers.

The object of the offence is another person's property interests. The objective side of the offence is expressed as unlawful use of energy resources and telecommunications. Unlawful use means that a person, who is using energy resources or telecommunications, does it without payment for the accounted amount, for example, by illegal connection to energy resources or distorting the readings of commercial accounting meters.

Energy resources in Lithuania, as well as in Latvia, are not considered as property in a material sense, therefore energy resources are not considered as a subject of property theft in the Criminal Code of Lithuania; however, illegal use of these resources is an offence with an avaricious intent which causes actual material damage to its owner. In accordance with Article 13 of the Criminal Code of Lithuania, the subject of criminal offence is any natural person of sound mind which until the day of committing a criminal offence has reached sixteen years of age. The perpetrator, being aware of unlawfulness of his or her actions, intends to cause damage to the owner of energy and wishes to gain profit from the use of these resources, therefore the actions are carried out with deliberate intent.

In contrary to Latvia, where there are still arguments about the criminal liability of a legal person, the legislator of Lithuania has solved the problem providing opportunity in the Criminal Code to impose criminal penalty not only on natural persons, but also organizations. Legal persons can be held criminally liable only in cases provided for in the Special part of the Criminal Code of Lithuania; moreover, if it is established that a natural person has acted in a legal person's interests or for its benefit. A legal person can also be held criminally liable if its employee or authorized person has committed an offence in a legal person's interests or for its benefit without being sufficiently controlled or supervised by the legal person. The Criminal Code emphasizes that criminal liability of a legal person does not eliminate the liability of a natural person for breach of prohibitions stated in the criminal law (Judins 2003).

The energy supply entrepreneur, whom damage has been caused to, has the right to raise a civil claim against the suspected person or the respondent during criminal proceedings. Such claims will be considered by the Lithuanian court together with the criminal case. However, if a person has not raised a civil claim during crimi-

nal proceedings, it has the right to raise a claim according to civil procedure. Written evidence shall be submitted justifying the amount of damage caused (bills for illegal use verifying expenditures; documents approving the established fact, etc.). Claims for damages caused by a criminal offence should be submitted within three years starting from the day when the crime was committed, except those cases when the deadline is expired due to specific reasons.

Having analyzed the judgments on application of Article 179 of the Criminal Code of Lithuania, available at Lithuanian Court portal, the author has found similar cases to Latvia.

On October 28, 2012, Kupishkio district Panevezys Department of Lithuanian Police initiated investigation in accordance with the first part of Article 179 of the Criminal Code on illegal use of electricity in gardening cooperative partnership "Šepetos Žalgiris". During investigation it was found that casing of a commercial accounting meter was broken which allowed distortion of accounting readings and illegal use of electricity in the amount of 2199,88 EUR. The members of gardening cooperative partnership used electricity, but paid for it less. Since a relatively large amount was stolen within one month, someone was able to "save" hundreds of euro; however, the perpetrator has not been determined, therefore the criminal case was dismissed, but the victim raised a claim for civil proceedings. Consequently, in the judgment of Kupishkio District Court in a civil case No. Byla 2-478-783/2014 it was concluded that it does not matter who created illegal connection, as the fact that gardening cooperative partnership gained benefit from it was important, thus the victim's claim was satisfied.

As in Latvia, cases when a person illegally uses electricity sever times in a row are widespread in Lithuania. Thus, for example, in accordance with the judgment in the criminal case No. Byla 1-150-799/2012 it was established that a person V., who on November 2, 2005 and August 9, 2006 was already punished according to the first part of Article 179 of the Criminal Code of Lithuania, within the period from June 13, 2011 till June 13, 2012 for more than a year once again unlawfully used electricity by unauthorized connection to the networks of energy supply company AB "Lesto" causing damages of 1145,54 EUR. AB "Lesto" established illegal connections on May 29, 2012, June 5, 2012 and June 13, 2012. The court found the person V. guilty according to the first part of Article 179 of the Criminal Code and imposed imprisonment for 10 (ten) months, on the basis of paragraph 1 and 7 of the second part of Article 75 of the Criminal Code, imposing conviction on probation, ban to leave the place of residence for a year without a permit from supervisory authority and to compensate for damage to the victim.

According to the second part of Article 179 of the Criminal Code of Lithuania, for same actions, if those have caused serious harm, a person shall be punished by imprisonment for a term not exceeding six years. This rule of law, similarly to Article 182 of the Criminal Law of Latvia, is not effective, because only in rare cases both in Lithuania and in Latvia illegal use of electricity causes serious harm, therefore case-law in this aspect is very rare.

In turn, the third part of Article 179 of the Criminal Code of Lithuania provides that for the same actions, if those have caused minor harm, a person is punished by forced labour or a fine, or imprisonment or arrest is imposed. Case-law of Lithuania in the field of illegal use of electricity is more connected to the application of this rule of law.

On December 13, 2011 Kedainiai District Court, hearing the criminal case No. Byla 1-331-736/2011, established that perpetrator R. J. connected his residential object, which was previously disconnected due to debt, to the neighbour's apartment and used electricity without authorization, thus causing damage to the neighbour at the amount of 107, 12 EUR. Taking into account that small scale damages were caused, the offence was qualified according to the third part of Article 179 of the Criminal Code and the perpetrator was punished by restriction of liberty on probation for a five months term with obligation to compensate for damages and work or register at employment agency.

In contrary to Lithuania, the Criminal Law of Latvia provides no punishment that would impose restriction of liberty. Some analogy with conviction on probation can be found, but in Latvia it is not considered as a type of penalty. Restriction of liberty in Lithuania can be imposed for a term from three months to two years. A person

imposed to restriction of liberty is under a ban to change the place of residence without the agreement of supervisory authority, is a subject of obligation imposed by the judgment and must observe the imposed prohibitions, as well as report on fulfilment of obligations according to procedure provided for (Judins 2003).

In Latvia there are also cases when persons have connected to electricity networks of other persons' property. They are using electricity, but the owner of the property pays for it. The author believes that residents must install electrical power networks in such a way that would prevent the cases of unauthorized connections. However, the most widespread cases of illegal use of electricity both in Latvia and Lithuania are connections to electrical power networks of energy supply enterprises.

On January 6, 2010, Ignalina District Court heard the criminal case No. Byla 1-6-242/2010 concerning unauthorized connection of the respondent Y to the electrical power network of joint stock company RST, thus illegally using electricity from December 6, 2008 till July 17, 2009 and causing small scale damages to the victim – 77,14 EUR. The actions of the respondent were qualified according to the third part of Article 179 of the Criminal Code, however, taking into account the fact that the respondent has compensated for damages and the parties have achieved reconciliation, the court on the basis of Article 38 of the Criminal Code decided to release the respondent from criminal liability.

The author, taking into account the fact that in Lithuania, in contrary to Latvia, criminal liability is provided for illegal use of electricity at large scale, assumes that similar legal framework is necessary also in Latvia. Article 55 of the Criminal Code of Lithuania, which states that, imposing penalty on a person who has committed less serious crime for the first time, the court should choose a penalty which is not connected to restriction of liberty.

In turn, the specialists of Latvian energy companies should take into account the experience of safety services of Lithuanian energy companies, carrying out constant inspections in those objects where electricity supply is disconnected. That leads to a positive result as such preventive inspections can considerably eliminate illegal connections. Thus, for example, on January 25, 2010 an expert of the department of safety and prevention of the joint stock company RST during inspection established that a person V. installed an unauthorized connection to electrical power network with 4mm copper wire. On August 3, 2010 Ignalina District Court heard the criminal case No. Byla 1-6-242/2010 concerning unauthorized connection of the respondent Y to the electrical power network of the joint stock company RST, thus illegally using electricity from January 25, 2009 till January 25, 2010 and causing small scale damages to the victim – 93,33 EUR. The actions of the respondent were qualified according to the third part of Article 179 of the Criminal Code and he was punished by forced labour for a four months term with obligation to work on unpaid public works for thirty hours per month. A civil claim of the victim was satisfied by the court's judgment. Examination of the legal framework, case-law and the methods of illegal use of electricity in Lithuania leads to the conclusion that they are almost similar with a difference that in Lithuania criminal liability is provided for illegal use of electricity at a small scale. In general, it can be concluded that such approach is safe and effective; therefore, the author assumes that a similar legal framework should be implemented in Latvia. In reality, most of the cases of illegal use of electricity occur at a small scale and establishment of criminal liability will motivate the society not to steal electricity. The rule of law as a regulation does not order or prohibit. It just indicates the "intended" direction of action and the "idea" of the law (Esser 1970).

In the author's opinion, the establishment of criminal liability is not and cannot be an aim in itself, but it should include information on the type of action and create motivation for a person's action, providing certain responsibility. In the author's work experience, in most situations where criminal liability for illegal use of electricity was provided, the perpetrators have regretted their actions, achieved reconciliation, compensated for damage and are not involved in illegal activities any more.

Conclusions

Having analysed the experience of other countries from Western Europe (Germany) to Eastern Europe (Poland, Lithuania, Russia) in comparison with Latvia in combating illegal use of electricity, it was found that there are different number of these cases, different legal framework, diversity of opinions, understanding and solutions:

Having analysed court rulings, it was found that in Germany illegal use of electricity is not widespread, whereas in the East (Poland, Lithuania, Latvia, Russia) it is a serious problem and there is a tendency of increase in the overall share of these cases. Having analysed the experience of Germany and taking into account the fact that Germany has influenced Latvia to a large extent in the field of the development of legal system, it should be recognized that experience of Germany can help to understand more quickly, precisely and effectively the desired tendencies in combating illegal use of electricity in Latvia, including the issues on considering electricity as a property in a material sense to enable qualifying electricity as a subject of property theft.

In the foreign criminal law theory there are different opinions on subjects of illegal use of electricity and the age of criminal liability; thus, in Germany criminal liability is imposed at the age of 14, in Lithuania, Latvia and Russia at the age of 16, in Poland at the age of 17. In contrary to Latvia, where admission of guilt dominates at criminal proceedings, in Germany, Poland and Lithuania there are possibilities to impose criminal penalties not only on natural persons, but also on legal persons.

The authors welcome the practice in Lithuania when imposing punishment on a person, who has committed a small crime for the first time, the court should impose punishment that is not connected with the restriction of liberty. Thus, correction can be achieved with less repressive, but effective means.

The authors believe that the experience of Lithuania in establishing criminal liability for illegal use of electricity at a small scale would be important and effective for Latvia.

The authors consider the fines imposed in Germany and a record in the register of infringements, as well as the obligation to compensate for damages established in Poland, to be effective penalties. These can settle the conflict aroused in the result of a crime. The precise estimation of compensation causes problems in all the countries, the laws of physics are applied to calculate the amount of compensation, defining the period of illegal use for a term up to three years since the moment the fact was established; however, in practice calculation is applied for a term not exceeding one year. The authors believe that the disputes on the amount of compensation should be settled in civil proceedings, and the authors support the experience of Lithuania, which allow submission of a civil claim during criminal proceedings that facilitates quick and just handling of the case.

In Latvian case-law there is no uniform understanding on the notion of damage caused by illegal use of electricity, as sometimes it is interpreted as a debt, and sometimes as losses. The authors support the case-law in Germany and Poland, where these are considered as losses, and suggest that in Latvia the damage caused should be interpreted as losses as well.

Summarizing the specifics of the cases in the above-mentioned countries, it can be concluded that the methods of illegal use of electricity are similar, those differ depending on place, time and conditions. It was found that the cases when persons engage in illegal use of electricity several times in a row are widespread in Lithuania and Latvia. The authors recommend paying attention to establishing and recording of facts, it should be done professionally in order to fix and preserve evidences, which will be crucial for hearing the case. Therefore, the authors support the practice of Lithuania where the specialists of energy supply companies carry out inspections of objects with the assistance of security services with professional experience in detection and recording of illegal cases in order to prevent the possibility of challenging or putting into question the methods used for unlawful connection. The authors believe that it is important to use verified measuring apparatus and instruments to detect and determine these cases.

In order to combat illegal use of electricity and to ensure economic stability and observance of law, it is important for Latvia to use the research findings concerning the experience of the referred countries.

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