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# Impact of Directives of European Parliament and of Council on Development of Latvian Criminal Procedure Law: General Overview and Procedural Protection of Victims with Specific Protection Needs

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The article is dedicated to the impact of the EU law on development of Latvian criminal procedural law norms. It provides a general insight into importance of the EU criminal procedure law in the development of the Criminal Procedure Law norms, the directives of the European Council and the Parliament, the norms of which have been transposed into the Criminal Procedure Law, and the system of procedural guarantees for the participants of proceedings in need of protection, with particular focus on victims with specific protection needs.

**Keywords:** criminal procedure, directives of the European Parliament and of the Council, procedural guarantees, victims with specific protection needs.

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## Introduction

The year 2005, when the Criminal Procedure Law<sup>1</sup> (hereinafter – CPL) was adopted and entered into force, marked a new page in the development of the criminal procedure law in Latvia. It ended a long and complicated period characterised by working on a new criminal procedural legal regulation. However, the hope to succeed in drafting a law that would be stable and remain, at least for some time, without substantive amendments, did not come true, and CPL has become one of the most frequently amended laws in Latvia. There have been various causes for these amendments. One of the most important among these – transposition of the norms of the Directives of the European Council and the Parliament (hereinafter – the EU Directives). This circumstance has been the basis for introducing substantial amendments to the Part of CPL on the international criminal procedural cooperation, as well as to the CPL norms dedicated to the occurrences in Latvia or the so-called local criminal proceedings. The aim of this article is to reveal, whether and, if yes, then how the EU Directives have influenced the content of CPL norms, focusing, in particular, on the need to identify the participants of proceedings with specific protection needs and the legal regulation on their procedural guarantees. To this end, an objective has been set to identify those EU Directives, the norms of which have been included in the text of CPL, briefly characterise the terms of transposition thereof, identify the thematic lines of the criminal procedural legal regulation, which have been impacted the most by the transposition of the EU Directives, as well as to examine the compliance of these lines – the establishment of the system of procedural guarantees for the participants of criminal proceedings with specific protection needs in Latvia – with the provisions of the EU Directives. For this purpose, the texts of the regulatory sources – the EU Directives and the Latvian laws – have been analysed in depth; likewise, the available literature sources on the development of the Latvian criminal procedure law have been used.

### 1. General Characteristics of Development of Criminal Procedure Law and Implementation of Directives of the European Council and Parliament as One of the Reasons Substantiating Amendments to Criminal Procedure Law

CPL, which is force in Latvia since 1 October 2005, is one of those laws, which, as mentioned above, has been subject to frequent and sizeable amendments. Within fourteen years followings its adoption, the Latvian Parliament (the *Saeima*) has adopted 35 laws on introducing amendments to CPL. There have been different reasons for these amendments, which have been identified in literature already a couple of years and have remained unchanged, *inter alia* 1) implementation of the EU norms, 2) rectifying inaccuracies and shortcomings, 3) responding to relevant issues identified in the practice of applying the law<sup>2</sup>, to which, in the recent years, could be added the need to enforce the judgements of the Latvian Constitutional

<sup>1</sup> Kriminālprocesa likums [Criminal Procedure Law] (21.04.2005). Consolidated version available in Latvian: <https://likumi.lv/doc.php?id=107820>, in English: <https://likumi.lv/ta/en/en/id/107820> [last viewed 10.04.2018].

<sup>2</sup> See for example *Meikališa, Ā.* Kriminālprocesa likumam 10 – fakti, vērtējumi, prognozes [The 10<sup>th</sup> Anniversary of the Criminal Procedure Law – Facts, Assessments, Forecasts]. In: *Meikališa, Ā., Strada-Rozenberga, K.* Kriminālprocess. Raksti 2010–2015. Rīga: Latvijas Vēstnesis, 2015, p. 142.

Court, which has ruled on the incompatibility of CPL norms with the *Satversme* [the Constitution of the Republic of Latvia], as well as following general trends of development (for example, transition to e-addresses, which must be reflected also in the procedural laws, or implementing the law policy position on simplifying, speeding up and intensifying criminal proceedings).

The impact of the EU criminal procedure law on the Latvian national criminal procedure law in the recent decade and even slightly before that no longer can be denied. The amendments to the norms of the Latvian CPL have appeared both by introducing the positions of the EU frameworks decisions and, later, – the norms of the Directives. The norms of the 11<sup>th</sup> Framework Decision were transposed into CPL by adopting six laws on introducing amendments to CPL<sup>3</sup>. The norms of 12 Directives, in turn, were transposed by eight laws on introducing amendments. Hence, at least 14 of 35 laws on amendments to CPL were influenced by the EU norms. However, it must be noted that in all these 14 laws decisions were made simultaneously on amending CPL also due to other reasons. Nevertheless, the share of amendments to CPL influenced by the EU norms generally is not the largest but takes an important place. For example, it must be noted that the impact of the EU norms has varied with respect to different parts of CPL. Hence, the transposition of the EU norms clearly has been the reason for introducing amendments to Part C of CPL dedicated to international cooperation in criminal cases, whereas with respect to Part A (General Provisions) and Part B (Pre-trial Criminal procedure and Court Proceedings in Criminal Cases), which basically apply to the criminal proceedings taking place in Latvia, the share of amendments to the Criminal Procedure Law influenced by the EU law is not the largest but nevertheless takes a sufficiently significant place.

Focusing particularly on the impact of Directives on the development of CPL, which obviously characterises the development of the EU criminal procedural law of the recent years, it must be noted that, currently, legal norms that follow from 12 EU Directives have been included in CPL, and these are as follows:

- 1) Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings<sup>4</sup>;
- 2) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing council framework decision 2002/629/JHA<sup>5</sup>;
- 3) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings<sup>6</sup>;

<sup>3</sup> See for more details in: Meikališa, Ā., Strada-Rozenberga, K. Kriminālprocess. Raksti 2010–2015. [Criminal Procedure. Writings 2010–2015]. Rīga: Latvijas Vēstnesis, 2015, pp. 143–144.

<sup>4</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. *OJ*, L 280, 26.10.2010, p. 1/7. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0064> [last viewed 10.04.2018].

<sup>5</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing council framework decision 2002/629/JHA. *OJ*, L 101, 15.04.2011, p. 1/11. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036> [last viewed 10.04.2018].

<sup>6</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings. *OJ*, L 142, 01.06.2012, p. 1/10. Available: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012L0013> [last viewed 10.04.2018].

- 4) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA<sup>7</sup>;
- 5) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order<sup>8</sup>;
- 6) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA<sup>9</sup>;
- 7) Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty<sup>10</sup>;
- 8) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters<sup>11</sup>;
- 9) Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union<sup>12</sup>;
- 10) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings<sup>13</sup>;

<sup>7</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. *OJ*, L 335, 17.12.2011, p. 1/14. Consolidated version available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02011L0093-20111217> [last viewed 10.04.2018].

<sup>8</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order. *OV*, L 338, 21.12.2011, p. 2/18. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0099> [last viewed 10.04.2018].

<sup>9</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. *OJ*, L 315, 14.11.2012, p. 57/73. Available: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012L0029> [last viewed 10.04.2018].

<sup>10</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. *OJ*, L 294, 06.11.2013. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0048> [last viewed 10.04.2018].

<sup>11</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. *OJ*, L 130, 01.05.2014, pp. 1/36. Consolidated version available: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:02014L0041-20140501> [last viewed 10.04.2018].

<sup>12</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. *OJ*, L 127, 29.04.2014, pp. 39/50. Consolidated version available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0042-20140519> [last viewed 10.04.2018].

<sup>13</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. *OJ*, L 65, 11.03.2016, pp. 1/11. Available: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32016L0343> [last viewed 10.04.2018].

- 11) Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings<sup>14</sup>;
- 12) Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings<sup>15</sup>.

Notably, Latvia has been comparatively well-disciplined in abiding by the terms for transposition, although minor or slightly more significant delays in this respect have occurred. The data included in Table 1 clearly illustrate the timeline of the EU Directives' transposition.

**Table 1**

Directive	Transposition date set in the Directive	Norms of the Directive introduced into CPL
Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings	27.10.2013	23.05.2013 Amendments to the Criminal Procedure Law, entry into force 27.10.2013 <sup>16</sup>
Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing council framework decision 2002/629/JHA	06.04.2013	20.12.2012 Amendments to the Criminal Procedure Law, entry into force 01.04.2013 <sup>17</sup> 23.05.2013 Amendments to the Criminal Procedure Law, entry into force 27.10.2013
Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA	18.12.2013	29.05.2014 Amendments to the Criminal Procedure Law, entry into force 25.06.2014 <sup>18</sup>

<sup>14</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. *OJ*, L 132, 21.05.2016, pp. 1/20. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0800> [last viewed 10.04.2019].

<sup>15</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. *OJ*, L 297, 04.11.2016, pp. 1/8. Consolidated version available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016L1919-20161104> [last viewed 10.04.2019].

<sup>16</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (23.05.2013). *LV*, 112(4918), 12.06.2013. Entry into force 27.10.2013. Available: <https://www.vestnesis.lv/ta/id/257425-grozijumi-kriminalprocesa-likuma> [last viewed 10.04.2018].

<sup>17</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (20.12.2012). *LV*, 6(4812), 09.01.2013. Entry into force 01.04.2013. Available: <https://www.vestnesis.lv/ta/id/253953-grozijumi-kriminalprocesa-likuma> [last viewed 10.04.2019].

<sup>18</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (29.05.2014). *LV*, 113(5173), 11.06.2014. Entry into force 25.06.2014. Available: <https://www.vestnesis.lv/ta/id/266815-grozijumi-kriminalprocesa-likuma> [last viewed 10.04.2019].

Directive	Transposition date set in the Directive	Norms of the Directive introduced into CPL
Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order	11.01.2015	29.01.2015 Amendments to the Criminal Procedure Law, entry into force 25.02.2015 <sup>19</sup>
Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings	02.06.2014	23.05.2013 Amendments to the Criminal Procedure Law, entry into force 27.10.2013
Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA	16.11.2015	18.02.2016 Amendments to the Criminal Procedure Law, entry into force 23.03.2016 <sup>20</sup>
Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty	27.11.2016	18.02.2016 Amendments to the Criminal Procedure Law, entry into force 23.03.2016
Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters	22.05.2017	30.03.2017 Amendments to the Criminal Procedure Law, entry into force 12.04.2017 <sup>21</sup>
Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union	04.10.2016	22.06.2017 Amendments to the Criminal Procedure Law, entry into force 01.08.2017 <sup>22</sup>

<sup>19</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (29.01.2015). LV, 29(5347), 11.02.2015. Entry into force 25.02.2015. Available: <https://www.vestnesis.lv/ta/id/272127-grozijumi-kriminalprocesa-likuma> [last viewed 10.04.2019].

<sup>20</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (18.02.2016). LV, 48(5620), 09.03.2016. Entry into force 23.03.2016. Available: <https://www.vestnesis.lv/ta/id/280784-grozijumi-kriminalprocesa-likuma> [last viewed 10.04.2019].

<sup>21</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (30.03.2017). LV, 75(5902), 12.04.2017. Entry into force 26.04.2017. Available: <https://www.vestnesis.lv/op/2017/75.5> [last viewed 10.04.2019].

<sup>22</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (22.06.2017). LV, 132(5959), 05.07.2017. Entry into force 01.08.2017. Available: <https://www.vestnesis.lv/op/2017/132.9> [last viewed 10.04.2019].



Directive	Transposition date set in the Directive	Norms of the Directive introduced into CPL
Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings	01.04.2018	27.09.2018 Amendments to the Criminal Procedure Law, entry into force 25.10.2018 <sup>23</sup>
Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings	11.06.2019	27.09.2018 Amendments to the Criminal Procedure Law, entry into force 25.10.2018
Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.	05.05.2019	27.09.2018 Amendments to the Criminal Procedure Law, entry into force 25.10.2018

## 2. General Characteristics of Impact of EU Directives on Content Development of CPL Norms

Characterising the trends in the content of the EU Directives, it must be noted, as indicated in previous publications that the EU's activities in regulating issues of criminal procedure could be, conditionally, split into two directions – the area of legal cooperation and influencing procedural order and form of the so-called 'national' criminal proceedings, by setting the minimum standards for criminal procedural guarantees or rules<sup>24</sup>. In the area of legal cooperation, the work, basically, is aimed at making the legal cooperation between the EU Member States more effective, by introducing and reinforcing instruments of cooperation based on the so-called principle of mutual recognition. This line was particularly active in the EU, when the different framework decisions on matters of cooperation were adopted, whereas in the Member States – when these decisions were implemented<sup>25</sup>. Currently, this line of work, perhaps, is less intensive, yet still on-going, in introducing both new instruments that are based on the

<sup>23</sup> Grozījumi Kriminālprocesa likumā [Amendments to the Criminal Procedure Law] (27.09.2018). LV, 201(6287), 11.10.2018. Entry into force 25.10.2018. Available: <https://www.vestnesis.lv/op/2018/201.2> [last viewed 10.04.2019].

<sup>24</sup> See for example *Strada-Rozenberga, K.* EU Criminal Justice – Development Trends and Impact in Latvia. In: Collection of research papers in conjunction with the International Scientific Conference “The Quality of Legal Acts and its importance in Contemporary Legal Space”, 4–5 October, 2012. Riga: University of Latvia, 2012, pp. 423–435.

<sup>25</sup> See for example *Strada-Rozenberga, K.* Savstarpējās atzišanas princips starptautiskajā krimināl-procesuālajā sadarbībā Eiropas Savienības telpā – teorija un prakse [Principle of Mutual Recognition in International Criminal Proceedings in the European Union – Theory and Practice]. In: Eiropas Savienība un tiesiska valsts: Latvijas pieredze. Rakstu krājums. Rīga: Rīga Graduate School of Law, 2009, pp. 159–173; *Melnace, I.* Top apjomīgi grozījumi Kriminālprocesa likuma C daļā [Work is underway on major amendments to Part C of the Criminal Procedure Law]. *Jurista Vārds*, No. 7(706), 2012. Available: <http://www.juristavards.lv/index.php?menu=DOC&id=243967> [last viewed 10.04.2019].

principle of mutual recognition and reinforcing the existing ones. Thus, out of 12 EU Directives, the norms derived from which were introduced into CPL, two envisage new instruments based on the principle of mutual recognition – European Protection Order (Directive 2011/99/EU) and European Investigation Order (Directive 2014/41/EU). A number of Directives could be recognised as such that are not intended for introducing a new instrument but rather for improving the effectiveness of the existing ones. A good example of this is Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

Whereas changes in the legal regulation on the so-called ‘national’ criminal procedure, which follow from the need to transpose the norms included in the EU Directives, take various directions. One of these – application of the minimum procedural guarantees to certain participants of the proceedings. These requirements follow both from those EU Directives, which have been adopted for the purpose of reinforcing the principle of mutual recognition, as, for example, Directives 2010/64/EU, 2012/13/EU, 2012/29/EU, (EU) 2016/1919, (EU) 2016/343, (EU) 2016/800, as well as those aimed at effectively combatting certain offences and the need for specific protection for the victims of these offences, as Directives 2011/36/EU and 2011/92/EU. The reinforcement of the procedural guarantees, predominantly, applies to two groups of persons – persons, who have the right to defence, and victims.

Another direction in the EU’s activities that has influenced amendments to the CPL norms is making some institutions of criminal law more effective and, in particular, legal regulation on freezing and confiscation of the proceeds of crime, instrumentalities of criminal offences, etc., as well as ensuring the interests of persons linked to these matters. Undeniably, the aim of making criminal proceedings regarding certain types of offences more effective has also been in the focus of other Directives (for example, Directive 2011/36/EU or Directive 2011/92/EU), for instance, envisaging that criminal proceedings with respect to certain types of crimes should be conducted irrespectively of the victim’s wishes and even if he withdraws his application. However, the norms of these Directives cannot be considered as being such that have influenced the development of CPL since they did not require amendments to CPL, the previous provisions of which coincided with those of the Directives.

In view of the wish to focus, in this article, on the procedural guarantees for the participants of criminal proceedings, in particular, their rights and ensuring of these rights, hereinafter the focus will be on those EU Directives, which have been adopted and transposed into the national law for this purpose. I hold that the norms of the EU Directives, which are aimed at ensuring and reinforcing the minimum rights of the participants of criminal proceedings, could be divided into two groups – 1) those, which are applicable to any participant of criminal proceedings who complies with the respective status, for example, a victim of a criminal offence or a suspect, the accused person, and 2) those that are applicable to a specially singled out group of participants of the proceedings, which due to certain characteristics (a set of characteristics) require specific protection.

Directives 2010/64/EU, 2012/13/EU, 2013/48/EU, (EU) 2016/343, (EU) 2016/1919 can be mentioned as an example of those EU Directives that are applicable to all participants of criminal proceedings, who have obtained the respective status; these apply to any person, with respect to which competent officials have made



an assumption that they have committed a criminal offence, as well as Directive 2012/29/EU, which defines the minimum standards regarding the rights, support and protection of victims of a criminal offence.

In assessing the changes made in the Latvian laws by transposing the norms of these Directives with respect to all persons having the respective procedural statuses, it can be recognised that these changes should not be deemed as being fundamental, since, basically, the respective statuses and the fundamental rights typical of these were envisaged in CPL even before the respective EU Directives were adopted. Some amendments were needed to specify some matters, to expand the understanding of some rights, etc.<sup>26</sup> These aspects will not be examined in detail here in view of the fact that the most substantial amendments to CPL are linked to ensuring the rights of the so-called participants of criminal proceedings in need of specific protection.

The following can be singled out as groups in need of specific protection, the minimum rights of which, in accordance with the regulation of the EU Directives, require special attention: 1) victims of criminal offences who enjoy specific protection, taking into account the criminal offence that they have been the target of, and / or their special condition, etc. 2) children with various procedural statuses, and 3) persons, who have been deprived of liberty during the proceedings. Considering the scope of this topic and the limit set for the size of this article, the focus will remain on the procedural safeguarding of victims in need of specific protection.

### 3. Victims with Specific Protection Needs and Reinforcing Protection of Their Interests

Reinforcing the protection of the victims of criminal offences has been in the centre of EU law policy over a long period of time, which is proven by the comparatively vast range of regulatory enactments on this issue. Admittedly, neither the existence of a victim's status *per se* nor the possibilities of these persons to participate actively in the criminal proceedings are new for the Latvian criminal procedure because the victim as an active participant of the criminal proceedings has been known in Latvia for decades. At the same time, it cannot be denied that the category of victims in need of specific protections was not too well-known in

<sup>26</sup> See for more details *Dundurs, Z.* Eiropas Savienības procesuālās tiesības kriminālprocesā [European Union Procedural Rights in Criminal Proceedings]. *Jurista Vārds*, No. 33(680), 2011. Available: <http://www.juristavards.lv/index.php?menu=DOC&id=234351> [last viewed 10.04.2019]; *Strada-Rozenberga, K.* EU Criminal Justice – Development Trends and Impact in Latvia. In: Collection of research papers in conjunction with the International Scientific Conference “The Quality of Legal Acts and its importance in Contemporary Legal Space”, 4–5 October, 2012. Rīga: University of Latvia, 2012, pp. 423–435; *Meikališa, Ā.* Jaunas vēsmas cietušo aizsardzībā – ES direktīva par cietušā tiesību minimālajiem standartiem un tās iespējamā ietekme uz kriminālprocesu Latvijā [New Trends in Victim Protection – the EU Directive on the Minimum Standards in the Victims' Rights and its Possible Impact upon Criminal Procedure in Latvia]. In: LU 71. konferences rakstu krājums “Tiesību interpretācija un tiesību jaunrade”. Rīga: University of Latvia Press, 2013, pp. 140–146; *Meikališa, Ā.* Victims in Criminal Procedure: A Review of Latvian Criminal Procedure Norms through the Prism of Minimal EU Standards. *Journal of the University of Latvia. Law*. Rīga: University of Latvia, No. 6, 2014, pp. 4–19; *Strada-Rozenberga, K.* Victims and their Criminal Procedure Status and Law Enforcement Practices in Latvia. *Journal of the University of Latvia. Law*. Rīga: University of Latvia, No. 6, 2014, pp. 51–90.

the Latvian CPL, therefore, the transposition of the norms from the EU directives pertaining to this aspect brought innovations<sup>27</sup>.

The following EU Directives define the specific procedural requirements with respect to victims belonging to special groups: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing council framework decision 2002/629/JHA and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, as well as Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

The examination of these Directives in their interconnection allows singling out the following groups of victims in need of specific protection:

- 1) Children (Directive 2011/36/EU, article 15, 2011/92/EU, 2012/29/EU, article 22–24);
- 2) Victims of trafficking in human beings (Directive 2011/36/EU);
- 3) Victims recognised as being in need of specific protection in accordance with Directive 2012/29/EU, article 22.

In view of the fact that children are a special category of victims allotted the highest level of protection, they have all the rights that other groups of victims in need of specific protection have and, additionally, rights that are typical only of children, there is a good reason to begin the overview with other groups of victims.

The following can be indicated as the most significant additional guarantees, envisaged by Directive 2011/36/EU for adult victims of trafficking in human beings:

- access without delay to legal counselling and legal representation, which must be provided free of charge to the persons who do not have sufficient financial resources (article 12(2));
- individual risk assessment (article 12(3));
- particularities in conducting investigatory activities, for example, avoiding unnecessary repetition of interviews, avoiding visual contact between victims and defendants, unnecessary questioning concerning the victim's private life, etc.) (article 12(4));
- non-prosecution and non-application of penalties to the victims for the offences that they have committed while being victims of trafficking in human beings (article 8).

Notwithstanding the diversity of peculiarities in conducting the proceedings with victims of trafficking in human beings, envisaged in Directive 2011/36/EU, when it was transposed into the CPL norms, only a couple of amendments were made, the most important of which – aligned with the Criminal Law<sup>28</sup> – was the possibility that was introduced to release from criminal liability a person, who had committed a criminal offence at the time when he has been subject to trafficking in

<sup>27</sup> See for example *Meikališa, Ā. Victims in Criminal Procedure: A Review of Latvian Criminal Procedure Norms through the Prism of Minimal EU Standards. Journal of the University of Latvia. Law.* Riga: University of Latvia, No. 6, 2014, pp. 4–19.

<sup>28</sup> Krimināllikums [Criminal Law] (17.06.1998). Consolidated version available in Latvian: <https://likumi.lv/doc.php?id=88966>, in English: <https://likumi.lv/ta/en/en/id/88966> [last viewed 10.04.2018].

human beings and forced to commit it (see CPL, para. 5 of section 379(1)). Other peculiarities were not directly transposed into CPL; apparently, the legislator accepted the approach that these peculiarities were already observed in the Latvian criminal procedure, by applying appropriately the CPL norms of general nature (for example, on inviolability of private life, conducting investigatory activities according to need and by interfering into person's life as little as possible, etc.). Likewise, the fact that the Directive's style of expression is rather 'soft' should be taken into account, it leaves the enforcement of many requirements (for example, avoiding giving of testimony at an open court hearing) at the Member States' discretion. Notably, in later years, the Latvian legislator took a more detailed approach to the transposition of Directives and included in CPL references to more peculiarities that must be complied with in the treatment of victims belonging to certain groups. This, in particular, applies to the transposition of Directive 2012/29/EU.

Beginning the overview of Directive 2012/29/EU, it should be noted that article 22 provides that Member States must ensure that victims receive a timely and individual assessment to identify specific protection needs. It must be noted that until then the individual assessment of victims was not included in CPL. Article 96<sup>1</sup> "Specially Protected Victim" was included in CPL as an alternative, providing that without conducting any special assessment, the following victims had to be specially protected: 1) a child victim; 2) a person who is not able to completely exercise his or her procedural rights due to a mental or other health deficiencies; 3) a person who has suffered from a criminal offence directed against the morality or sexual inviolability of a person, or from human trafficking; 4) a person who has suffered from a criminal offence related to violence or threat of violence and committed by a member of the immediate family, former spouse of the victim or by a person with whom the victim was in constant intimate relationship; 5) a person who, as a result of a criminal offence, has been, possibly, inflicted serious bodily injuries or mental impairments; 6) a person who has suffered from a criminal offence, possibly, committed due to racial, national, ethnic, or religious reasons. Besides, by a decision of the person directing the proceedings also a victim who is not referred to above, but who, due to the harm inflicted as a result of a criminal offence, is particularly vulnerable and is not protected from repeated threat, intimidation, or revenge, has to be recognised as a specially protected victim. Hence, the institution of victims' individual assessment has not been introduced in Latvia<sup>29</sup>, at the same time automatic granting of the status of a victim in need of specific protection has been granted to victims of certain criminal offences, as well as to persons, who are recognised as being in need of specific protection by the official in charge of the proceedings, on the basis of a case-by-case assessment. Assumedly, the official in charge of the proceedings, in deciding on granting the status of a victim in need of specific procedural protection, on the basis of a case-by-case assessment, must take into account the circumstances defined in article 22(3) of Directive 2012/29/EU, article 22(3) and the explanation provided in Recital (57–58) of this Directive.

In transposing the procedural peculiarities in working with victims in need of specific protection defined in Directive 2012/29/EU, the following additional rights were added to CPL, which are not characteristic of other persons recognised as being victims:

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<sup>29</sup> An individual assessment, meeting the requirements of Directive (EU) 2016/800, was included into CPL only with respect to minors enjoying the right to defence.

- participation in procedural activities, with permission of the person directing the proceedings, together with the trusted person, unless it is a person against whom criminal proceedings have been initiated, a detained, a suspect, or an accused;
- right to request and receive information regarding release or escape of such arrested or convicted person from a place of imprisonment or a place of temporary detention who has inflicted harm to him or her, if there is a threat to the victim and there is no risk of harm to the arrested or convicted person;
- right to request that his or her participation and hearing in a court session takes place using technical means;
- peculiarities in interrogation – interrogation of a specially protected victim is performed in a separate room appropriate for such purposes or without the presence of persons not related to the particular procedural action. Interrogation of such person who has been recognised as a victim of violence committed by a person upon whom the victim is dependent financially or otherwise, a victim of human trafficking, or a criminal offence directed against morality or sexual inviolability of the person, must be conducted by a performer of an investigative action of the same gender. The abovementioned condition need not be conformed to, if the victim himself or herself or his or her representative agrees thereto. If the victim of a criminal offence directed against morality or sexual inviolability of a person and the person who has the right to defence is of the same gender and if it is requested by the victim or his or her representative, the interrogation must be performed by a performer of an investigative action of the opposite gender.

It can be concluded that the majority of the additional requirements that Directive 2012/29/EU sets for working with victims in need of specific protection have been transposed into CPL. To enforce some requirements, no amendments were necessary. Thus, for example, the measure envisaged in article 13(3a) of Directive 2012/29/EU to avoid unnecessary questioning of the victim about his private life, was already included in a number of the CPL norms, whereas the requirement to include measures for hearing the case at a closed court hearing can be met by abiding by the CPL norm, that a court may decide, on the basis of a reasoned decision, decide to hold a closed court hearing “to ensure the protection of persons involved in criminal proceedings”.

As noted above, children are a special group of victims in need of specific protection, which is characterised by all the procedural guarantees referred to above, and, additionally, those that have been set specifically for children. Children as a category of victims in need of specific protection have been envisaged in all three EU Directives dedicated to victims – articles 19–20 of Directive 2011/92/EU, articles 15–16 of Directive 2011/36/EU, and article 24 of Directive 2012/29/EU, respectively, focus on the protection thereof.

The general analysis of these norms leads to the conclusion that all Directives share the same understanding of the concept ‘child’, which is applied to a person below the age of 18. This opinion is fully aligned with the CPL provision on granting the status of a victim in need of specific protection to a minor, i.e., a person who has not reached the age of 18. Although Latvian laws provide for the possibility, in some cases, to obtain civil law age of majority from the age of 16, the peculiarities of the criminal procedure that are typical of ‘a child’ are applicable to all persons below the

age of 18<sup>30</sup>. In this respect, it seems that there are grounds to initiate a discussion on, whether and, if yes, for how long the procedural peculiarities should be applicable to a person, who had become a victim while being a child and reached majority during the proceedings. A proposal would be to apply rules equal to the ones provided by Directive (EU) 2016/800 with respect to children, who are suspects or accused persons. Otherwise, at present no objective grounds can be discerned for the entitlement of additional procedural guarantees for the suspects or accused persons, who committed the offence while being children but reached the age of 18 during the proceedings, whereas the victims of the same age are not entitled to them<sup>31</sup>. As a response to an objection that can be anticipated that those who have reached the age of 18 could be recognised as being victims in need of specific protection on the basis of other characteristics, it can be noted that the scope of procedural guarantees for child victims is larger than that of other victims in need of specific protection.

Examining the content of procedural guarantees envisaged for child victims, it can be recognised that articles 19–20 of Directive 2011/92/EU, articles 15–16 of Directive 2011/36/EU, actually, define the same peculiarities (additional procedural guarantees) for working with children who have become victims of trafficking in human beings, sexual abuse and sexual exploitation and child pornography. The following can be mentioned as the main ones: the right to representation and legal assistance free of charge; peculiarities of interrogation (*inter alia*, special premises, prohibition of unfounded delay, the same person conducting the interrogation, making an audio-visual recording of the interview and subsequent use of this recording). As mentioned above and can be reiterated here, the transposition of these directives into the CPL norms was done ‘minimally’. Thus, for example, the majority of interrogation peculiarities at the time were not included and, actually, were added to the text of CPL significantly later – when the norms of Directive 2012/29/EU were transposed.

The norms of Directive 2012/29/EU, which are characteristic of victims in need of specific procedural protection, including children, already were examined. Additional peculiarities, typical of the procedural measures for child victims, envisaged by this Directive is the audio-visual recording of the interviews and the use of these recordings, the existence of a special representative and ensuring legal assistance (see article 24).

The general review of the transposition of the examined Directives in the Latvian CPL allows concluding that, presently, all requirements, in fact, have been met – a child victim is ensured appropriate representation, mandatory legal assistance free of charge, a trusted person may participate in the proceedings, and CPL comprises also all the peculiarities included in the Directives regarding interrogation, making an audio-visual recording of interrogations, and also provides that a case, involving a child, is heard at closed court hearing. The transposition of Directives has resulted in a significant increase in the peculiarities in working with child victims, which previously were linked only to representation and some peculiarities of interrogation.

<sup>30</sup> Bērnu tiesību aizsardzības likums [Law on the Protection of the Children’s Rights] (19.06.1998). Consolidated version available in Latvian: <https://likumi.lv/ta/id/49096-bernu-tiesibu-aizsardzibas-likums>, in English: <https://likumi.lv/ta/en/en/id/49096> [last viewed 10.04.2018].

<sup>31</sup> However, it must be noted that currently, although Directive (EU) 2016/800 is indicated as transposed, CPL contains no disclaimer stating that the procedural peculiarities envisaged with respect to a minor who enjoys the right to defence should be applied to him also after he has come of age.

In conclusion, it has to be recognised that the EU Directives have had an important role in improving the CPL norms, in particular, in relation to the procedural guarantees of a victim in need of specific protection, *inter alia*, a child. Prior to the transposition thereof, only children were seen as a special group of victims, whereas now the category of victims in need of specific protection is significantly broader. Hence, the procedural peculiarities are applicable also to such persons, the proceedings with respect to which were conducted without any peculiarities. The range of procedural peculiarities in working with children is much more extensive. Hence, the legal instruments have been created, it only remains to apply these successfully in practice.

## Summary

1. The need to transpose the EU legal norms has been a significant cause of amendments to the Criminal Procedure Law. Out of 35 laws on amendments to the Criminal Procedure Law, at least 14 followed from, *inter alia*, the need to transpose the EU norms.
2. In assessing not only the numeric impact on the amendments to the Criminal Procedure Law by the transposition of the EU norms but also their significance content-wise, it must be recognised that it had been the decisive cause for introducing amendments to the norms of Part C of the Criminal Procedure Law “International Cooperation in the Criminal-legal Field”. Whereas with respect to Part A (General Provisions) and Part B (Pre-trial Criminal Proceedings and Court Proceedings in Criminal Cases) of the Criminal Procedure Law, which, basically, apply to the criminal proceedings conducted in Latvia, the share of the CPL norms influenced by the EU norms is smaller but these, nevertheless, are significant.
3. Currently, the Criminal Procedure Law comprises norms that follow from 12 EU Directives.
4. Latvia has been rather well-disciplined in meeting the terms for transposing the EU Directives, although minor and slightly more significant delays have occurred.
5. The EU Directives have influenced the development of the CPL norms in two segments – regulation of the criminal law cooperation in the framework of the EU and the legal model of the so-called “local” criminal proceedings. With respect to the latter, two trends in development can be discerned – setting minimum procedural guarantees for persons involved in criminal proceedings and making some instruments of criminal procedure more effective.
6. The norms of EU Directives aimed at ensuring the minimum rights of the participants of criminal proceedings, can be divided into groups – 1) those, which are applicable to any participant of criminal proceedings who complies with the respective status, for example, a victim of a criminal offence or a suspect, the accused person, and 2) those that are applicable to a specially singled out group of participants of the proceedings, which due to a certain characteristics (set of characteristics) require specific protection.
7. The following can be singled out as groups in need of specific protection, whose minimum rights have been the focus of special attention, in accordance with the regulation of the EU Directives: 1) victims of criminal offences who enjoy specific protection, taking into account the criminal offence that they have been



- the target of and / or they special condition, etc.; 2) persons, who have been deprived of liberty during the proceedings; 3) children with various procedural statuses, and
8. Although the examined EU Directives envisage the need of an individual assessment in all cases, where there could be grounds for granting the status of needing specific protection to any participant of the criminal proceedings (to the victim or the possible perpetrator), the Criminal Procedure Law provides for such an assessment only for a person, who enjoys a minor's right to defence. An individual assessment has not been introduced with respect to other victims, however, a broad range of cases is envisaged, where the granting of this status to a person is mandatory, it is also envisaged that the official in charge of the proceedings may grant it also in any other instance, when he deems it to be necessary. In deciding on this issue, the person in charge of the proceedings should abide by the considerations indicated in Directive 2012/29/EU.
  9. Children, i.e., persons below the age of 18, are a special category of victims in need of protection. Neither the texts of Directives nor CPL provide *expressis verbis* that the procedural guarantees that are typical of a child victim should be applied to him also if he has come of age during the proceedings. Assumedly, in such a situation, a solution analogue to the provisions of Directive (EU) 2016/800 should be introduced, and these peculiarities or, at least, a part thereof should be applicable to the victim for some time, later on retaining the procedural guarantees of a victim in need of specific protection but not those of a child.
  10. Basically, the requirements of Directives regarding work with victims in need of specific protection, *inter alia*, children, have been transposed. Predominantly, this has been done by transposing into the Criminal Procedure Law the norms of Directive 2012/29/EU.
  11. The transposition of the norms of the EU Directives has played a significant role in improving the CPL provisions regarding the procedural guarantees for a victim in need of specific protection, *inter alia*, children. Prior to the transposition thereof, only children were seen as a special group of victims, whereas now the category of victims in need of specific protection is significantly broader. Hence, the procedural peculiarities are applicable also to such persons, the proceedings with respect to which were conducted without any peculiarities. The range of procedural peculiarities in working with children is much more extensive.

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