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TENDENCIES OF THE DEVELOPMENT OF THE LITHUANIAN CRIMINAL PROCEDURE LAW

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Abstract. *The tendencies of the development of the Lithuanian criminal procedure within the recent twenty years, after Lithuania has regained its independence, are analyzed in the present article. The main factors which influence lawmaking in the sphere of criminal procedure as well as in the application of the criminal procedure norms are discussed. The constitutional imperatives and the human rights, fixed in international and the European Union agreements as the main factors determining the evolution of the law of criminal procedure are reviewed. It is stated that earlier, while amending or supplementing the Code of Criminal Procedure, the utmost attention used to the drawn to the legal tradition of the state, whereas the legal norms of the modern criminal procedure must be subordinated to the principles fixed in the Constitution. After having briefly reviewed the main tendencies of the development of criminal procedure, i.e. the constitutionalization and internationalization-europeization, the following conclusion is drawn: the mentioned tendencies have been producing a significant impact on the evolution of the Lithuanian criminal procedure after the restoration of independence and accession to the international treaties. However, the systemic and critical viewpoint towards the impact of the European Union law on the national law of criminal procedure is still missing.*

Keywords*: criminal procedure, tendencies of the evolution of criminal procedure, constitutionalization of criminal procedure, internationalization of criminal procedure, europeization of criminal procedure.*

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Introduction

After the restoration of independence of Lithuania, the reform of the legal system served as one of the challenges for the young state. It is natural that the Code of Criminal Procedure (hereinafter referred to as the CCP) as well as other codes which were adopted in the middle of the twentieth century remained to exist but constantly supplemented and amended. However, the majority of the researchers of criminal procedure perceive that if social reality changes, the attitude towards criminal deeds and the procedure of their investigation and hearing, for the regulation of which new criminal laws and criminal procedure laws are necessary, will change as well. In spite of the fact that the majority of the criminal procedure institutions were already reformed in the course of the validity of the old CCP (for example, regulation of the application of procedural compulsory measures, particularly, the arrest and of the accused person's legal status used to be coordinated in compliance with international standards) and the new legal regulation (for example, the appeal and the cassation, the judicial control of the pre-trial investigation) was created, the adoption and the entry into force of the new CCP can be considered as the end of a certain stage of the development of the law of criminal procedure of Lithuania and as the beginning of the next stage. The creation of the law of criminal procedure has not only ceased with the adoption of the new CCP[1], but has, actually, started because the decisions of individual nature (including the ones which are adopted in the course of the implementation of criminal procedure) activate the provisions of the primary sources of law, i.e. hitherto, the corresponding norms or principles used to be formally in force, while at present they also operate, namely, they are provided with possibilities for implementation.[2] As the legal regulation of criminal procedure changes and new institutions or norms of criminal procedure appear, it is usually presumed that they are subordinated according to the principles of criminal procedure; the latter, in their turn, must be interpreted to assist in the single-minded striving for the assignment of criminal procedure. The assignment and aims of the positive criminal procedure, in their turn, are dynamic and are influenced by certain tendencies of the development of law. Several main tendencies which influence the evolution of criminal procedure will be analyzed in this article. Herein, the following tendencies of the development of criminal procedure are analyzed by applying the method of systemic analysis, the historical and comparative methods as well as the method of analysis of jurisprudence, i.e. constitutionalization, internationalization and europeization as well as differentiation.[3]

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1 Code of Criminal Procedure of the Republic of Lithuania. *Official Gazette.* 2002, No. 37-1341.

2 Kūris, E. Konstituciniai principai ir konstitucijos tekstas [The Constitutional Principles and the Text of the Constitution]. *Jurisprudencija.* 2002, 23(15): 48. Not only practice of the application of the CCP is being formed, but the law itself is being altered, supplemented and improved. See Ancelis, P. Baudžiamojo proceso vystymosi tendencijos po 2003 m. Lietuvos Respublikos baudžiamojo proceso kodekso įsigaliojimo [Trends of the Devepolment of Criminal Procedure after the Entry into Force of the Code of Criminal Procedure of the Republic of Lithuania in 2003]. *Jurisprudencija.* 2008, 6(108): 32–40.

3 Differentiation of criminal procedure as well as consolidation of the alternative ways of settling criminal conflicts serve as one more vivid tendency of the evolution of criminal procedure. However, due to a limited extent of the article it will not be analyzed. See: Ažubalytė, R. Alternatyvūs baudžiamojo konflikto sprendi-

1. Influence of the Theoretical Model of Criminal Procedure on the Evolution of the Law of Criminal Procedure

The theoretical models of criminal procedure analyzed in the doctrine of criminal procedure had been serving for a long time as the grounds for the interpretation of the development of the criminal procedure of a particular state at a certain period of time and of its provisions. Practically speaking, all scholars of criminal procedure acknowledge that there are several types (abstract models) of criminal procedure which have their own principles and procedural forms determined by them.

According to the majority of researchers of criminal procedure, the *common law* has chosen the adversiarial (accusatorial) system in the sphere of criminal procedure, whereas the Roman-German law gave preference to the inquisitorial system.[4] In principle, the theoretical models of criminal procedure (the difference of which is based on the priority of criminal procedure as an activity), i.e. the *crime control process* or the *due process*, are not at variance with this system. The idea that suppression of crimes is the main purpose of criminal procedure serves as the grounds for the model of the *crime control process*. It could be characterized by efficiency, rapidity, the power of the police, informal procedures, the priority of the pre-trial investigation over the court.[5] The model of the *due process* is based on the protection of individual freedoms and rights, because the theory of stigma is known and accepted as well as the threat of the loss of freedoms (as a result of the process) is evaluated. Thus, certain fair criteria which must protect the rights of the accused person and of the suspect are fixed in this model.[6] Not so much efficiency, but reliability (of the proofs, procedures), adversariality, court as the fundamental place of decision-making, and formal procedures are typical of it.[7] Despite of being criticized due to their unclear interrelation, disregard for the victim's position in the criminal procedure and peremptory attribution of certain features to one or another model,[8] nowadays these theoretical models are widely enough used while analyzing the problems of the law of criminal procedure.[9]

Certain scholars deviced two ideal forms of administering criminal justice: the *hierarchical* and the *co-ordinate* model.[10] Certain scholars of comparative law single out

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mo būdai nagrinėjant bylą teisme [Alternative Methods of Resolving a Criminal Conflict in Judicial Proceedings]. *Jurisprudencija.* 2008, 6(108); Ažubalytė, R. *Diskrecinis baudžiamasis persekiojimas: teoriniai pagrindai, taikymo problemos ir perspektyvos Lietuvoje* [Discretional Prosecution: Background, Problems of Practice, Outlook in Lithuania]. Ph. Diss. Vilnius: Lietuvos teis4s universitetas, 2002.

4 Pradel, J. *Lyginamoji baudžiamoji teisė* [Comparative Criminal Law]. Vilnius: Eugrimas, 2001, p. 117.

5 Packer, H. *The Limits of the Criminal Sanction*. California: Stanford, 1968, p. 158.

6 The victim's rights had not been widely discussed in the 1960s.

7 Packer, H., *op. cit.,* p. 154.

8 Ashworth, A. *The Criminal Process*. Oxford, 1994, p. 27–29; Swoboda, S. A Normative theory of criminal procedure. *Criminal Law Forum.* 2007, 18: 153.

9 Cole, G. F.; Smith, Ch. E. *The American system of criminal Justice*. West/Wadsworth, 1998, p. 8–10; Sanders, A. From Suspect to Trial. In *The Oxford Handbook of Criminology.* Morgan, M. M.; Reiner, R. (eds.). Oxford, 1997, p. 1051–1054.

10 Damaška, M. Structure of authority and comparative criminal procedure. *Yale Law Journal*. 1975, 84: 480 [quoted by Swoboda, S., *supra* note 8, p. 153].

the models of the criminal law and procedure being ruled by the 'intensity' of repression while regulating the criminalization of the deeds and the procedure of their investigation and hearing, i.e. the one which relies on repression and the other which does not accept it and, therefore, is inclined to depreciate its significance. Such differentiation is also not sufficiently precise, but, according to the authors, in reality the legislator selects either the policy of trust in repression (*the authoritarian model*) or the conditionally larger mistrust in it (*the liberal model*), as the grounds for lawmaking in each branch of criminal justice law.[11]

Besides other factors, it is exactly the spring of the inquisitorial procedure that defines the authoritarian type of the process, and it is the spring of the adversiarial (accusatorial) process that defines the liberal type of the process.

After having acknowledged that there are several types of the process, several presumptions can be made, i.e. the assignment of the criminal procedures of different types can also be different, or the assignment of the criminal procedure may remain the same but the methods of implementation may be different. The authors, who relate the theoretical model of criminal procedure to its goals, interpret the adversiarial (accusatorial) process as a process, the principles of which define the essence of the civil society; they perceive the essence of the investigative (inquisitorial) process as a reflection of the values of an authoritarian state but not of the civil society.[12] Different goals of criminal procedure, in their turn, may determine the different structure of criminal procedure. However, while talking about the possibly of different assignment of the real criminal procedures, once again it is necessary to consider the difference between the ideal, only theoretically existing model of criminal procedure and the positive criminal procedure.[13] It is possible to talk about the pure adversiarial process or the pure investigative (inquisitorial) process only as about abstract theoretical ideas because the positive processes possess the elements which are attributed to both models, i.e. to the adversiarial and the investigative (inquisitorial) model. Most systems of criminal procedure do not conform to a purely adversiarial or inquisitorial model: they combine elements from each.[14] Worthy of attention are the ideas of the authors who state that the positive process is somewhere between the *due process* and *the crime control process.*[15]

Usually it is acknowledged that the search for truth serves as the assignment of the investigative (inquisitorial) criminal procedure, whereas the criminal procedure, based on the adversiarial model, is assigned for settling arguments between parties. Being ruled by the theoretical classification of the models, the majority of Lithuanian authors acknowledge that the fundamentals of the investigative (or mixed) theoretical model prevail in the Lithuanian criminal procedure.[16]

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11 Pradel, J., *supra* note 4, p. 118; Smirnov, A. V. *Modeli ugolovnovo procesa* [The Models of Criminal Procedure]. Sankt-Peterburg: Nauka, 2000, p. 130.

12 Smirnov, A. V., *supra* note 11, p. 130.

13 Pradel, J., *supra* note 4, p. 118; Packer, H., *supra* note 5, p. 154.

14 Dorsen, N., *et al Comparative Constitutionalism: Cases and Materials*. St. Paul: Thomson, 2003, p. 1047.

15 Sanders, A., *supra* note 9, p. 1051–1054.

16 Goda, G.; Kazlauskas, M.; Kuconis, P. *Baudžiamojo proceso teisė* [Criminal Procedure Law]. Vilnius: Teisinės informacijos centras, 2005, p. 14.

However, after the restoration of independence of Lithuania, the same tendencies which were formed and noticed in the democratic states in the middle of the twentieth century (constitutionalization, internalization-europeization of the ordinary law and differentiation of procedural forms[17]) started to influence the evolution of the law of criminal procedure. The impact of the historically formed model of criminal procedure on the modern law of criminal procedure remains,[18] in spite of the noticeable convergence of the systems of criminal procedure which are based on different models.[19] However, at present the constitutional imperatives and the international imperatives of the human rights standards determine, essentially, the perception and interpretation of the assignment of the modern criminal procedure.

These tendencies inevitably produce a larger and larger impact on the creation, interpretation and application of the norms of the Lithuanian law of criminal procedure. The following conclusion is to be drawn: while laying the foundations of the national law of criminal procedure, the evolution of the criminal procedure of the modern lawful states must be modeled and perceived, and, despite of choosing the historically formed adversiarial or inquisitorial model, such criteria of evaluation as the Constitution and the international (also the European Union) standards of the protection and defense of human rights, must be chosen.

2. The Constitution as the Spring which Models the Evolution of the Law of Criminal Procedure

As it was mentioned above, the criminal procedure in Lithuania as well as in other countries which keep to the continental law tradition is usually attributed to the historically formed theoretical model of investigative procedure. However, within recent centuries the almost indisputable position that the Constitution serves as the grounds for the legal system as well as for the law of criminal procedure is developed in the democratic states. The fundamentals are formed in the Constitution and in international treaties as well as in the European Union (hereinafter referred to as the EU) primary and secondary law, which consolidate the human rights and the mechanisms of their protection; being ruled by these principles, the legislator models the definite rules of criminal procedure. The strive for an open, just, and harmonious civil society and law-governed

17 Analogous tendencies of the private law and of the civil procedure are much more discussed, at least in Lithuania. These items do not serve as the object of scientific investigations in the doctrine of criminal procedure.

18 Tak, P. Bottlenecks in international police and judicial cooperations in the EU. *European Journal of Crime, Criminal Laew and Criminal Justice.* 2000, 8/4: 353−356; Shejfer, S. A. Kuda dvizhetsa Rosijskoje sudoproizvodstvo (Razmyshlenie po povodu vektorov razvitija ugolovno-procesualnovo zakonodatelstva) [Where do the Russian Legal Proceedings Move to (Reflections on Account of the Vectors of the Development of the Criminal-Procedural Legislation)]. *Gosudarstvo i pravo*. 2007, 1: 34; Swoboda, S., *supra* note 8, p. 168.

19 Trechsel, S. *Human Rights in Criminal Proceedings*. Oxford University Press, 2005, p. 5; Amann, D. M. Harmonic convergence? Constitutional criminal procedure in an international context. *Indiana Law Journal*. 2000, 75: 825−838; Swoboda, S. A., *supra* note 8, p. 157−158.

state established in the Preamble to the Constitution presupposes that every individual and society as a whole must be safe from unlawful conduct against them.[20] The purpose of the state as a political organisation of the entire society is to ensure human rights and freedoms and to guarantee the public interest; therefore, while exercising its functions and acting in the interests of the entire society, the state has the obligation to efficiently ensure effective protection of human rights and freedoms as well as other values protected and defended by the Constitution of every individual and the whole society.[21] Thus, the obligations of a state, which arise from the Constitution to ensure the security of each person and all society from criminal attempts implies not only the right and duty of the legislator to define criminal deeds and establish criminal liability for them by means of laws, but also the right and duty to regulate relations regarding detection and investigation of criminal deeds and consideration of criminal cases, i.e. the relations of criminal procedure.[22]

However, the purpose of criminal procedure and its separate norms, prior to the preparation of the new code and its adoption in the doctrine of criminal procedure as well as in the judiciary practice, used to be analyzed by circumventing the analysis of the provisions of the Constitution as an integral act. The provision that the Constitution serves as the basis of the legal system is undisputable in legal literature; thus, other branches of law and other legal institutions must be analyzed as the development of the principles and ideas fixed in the Constitution.[23] The Constitution cannot be interpreted following the ordinary law;[24] it means that it is exactly the interpretation of the ordinary law that

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20 The ruling of the Constitutional Court of the Republic of Lithuania of 8 May 2000. On the compliance of Part 12 of Article 2, Item 3 of Part 2 of Article 7, Part 1 of Article 11 of the Republic of Lithuania Law on Operational Activities and Parts 1 and 2 of Article 1981 of the Republic of Lithuania Code of Criminal Procedure with the Constitution of the Republic of Lithuania. *Official Gazette.* 2000, No. 39-1105.

21 The ruling of the Constitutional Court of the Republic of Lithuania of 29 December 2004. On the compliance of Article 3 (wording of 26 June 2001), Article 4 (wordings of 26 June 2001 and 3 April 2003), Paragraph 3 of Article 6 (wording of 26 June 2001) and Paragraph 1 of Article 8 (wording of 26 June 2001) of the Republic of Lithuania Law on the Restrain of Organised Crime with the Constitution of the Republic of Lithuania. *Official Gazette.* 2005, No. 1-7.

22 The ruling of the Constitutional Court of the Republic of Lithuania of 16 January 2006. On the compliance of Paragraph 4 (wording of 11 September 2001) of Article 131 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania, on the compliance of Paragraph 5 (wordings of 10 April 2003 and 16 September 2003) of Article 234, Paragraph 2 (wordings of 10 April 2003 and 16 September 2003) of Article 244, Article 407 (wording of 19 June 2003), Paragraph 1 (wording of 14 March 2002) of Article 408, Paragraphs 2 and 3 (wording of 14 March 2002) of Article 412, Paragraph 5 (wording of 14 March 2002) of Article 413 and Paragraph 2 (wording of 14 March 2002) of Article 414 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania and on the petitions of the Šiauliai District Court, the petitioner requesting to investigate whether Article 410 (wording of 14 March 2002) of the Code of Criminal Procedure of the Republic of Lithuania is not in conflict with the Constitution of the Republic of Lithuania. *Official Gazette.* 2006, No. 7-254.

23 Mikelėnas, V. Lietuvos Respublikos Konstitucija Lietuvos bendrosios kompetencijos teismų praktikoje. Konstitucijos aiškinimas ir tiesioginis taikymas [The Constitution of the Republic of Lithuania in the General Competence Court Practice. Interpretation and Direct Application of the Constitution]. *Baltic and Scandinavian countries' conference material. 15-16 March 2002*, Vilnius, p. 133.

24 Kūris, E. Europos Sąjungos teisė Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje: sambūvio algoritmo paieškos. [The EU Law in the Jurisprudence of the Constitutional Court of the Republic of Lithuania: Search for the Algorithm of Coexistence]. In *Teisė besikeičiančioje Europoje. Liber Amicorum Pranas Kūris*. Katuoka, S. (ed.). Vilnius: Mykolo Romerio universitetas, 2008, p. 677–678.

must be substantiated by the provisions of the Constitution. However, some years ago it was possible to fully accept the opinion that the problems of separate branches of law used to be analyzed in isolation from the constitutional context.[25] The abundant jurisprudence of the Constitutional Court of the Republic of Lithuania (hereinafter referred to as the Constitutional Court) of the recent years (in which much attention was drawn to the general model of the constitutional criminal procedure, to the system of the principles of criminal procedure, to the items of separate proceedings of criminal procedure and of the constitutionality of separate norms of criminal procedure[26]) as well as the latest scientific research into criminal procedure[27] allow to state that an analysis of criminal procedure at least on the doctrinal level is impossible without an analysis of the context of the Constitution. The definite rulings passed by the Constitutional Court regarding the law of criminal procedure have at least the ternary impact: firstly, if a norm (or several norms) of criminal procedure is acknowledged as contradictory to the Constitution, it is not applied; secondly, if the norm which is argued about is not acknowledged as contradictory to the Constitution, the provisions stated in the motivation part of the ruling of the Constitutional Court are usually serviceable for interpretation of the norms of criminal procedure; and thirdly, the whole jurisprudence of the Constitutional Court is helpful for the scientific doctrine which investigates the law of criminal procedure.

3. Internationalization and Europeization of the Lithuanian Criminal Procedure

The beginning of the internationalization of the Lithuanian criminal procedure is to be related with the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention)[28]. But the striking changes of the Lithuanian criminal procedure related to the international standards of criminal procedure dealing with human rights and their restriction occurred later. They are to be related to the influence of the jurisprudence of the European Court of Human

25 Abramavičius, A.; Jarašiūnas, E. Konstitucinė dimensija baudžiamojoje teisėje [The Constitutional Dimension in the Criminal Law]. *Teisė.* 2004, 53: 9.

26 For more information about the decisions passed by the Constitutional Court of the Republic of Lithuania related to the criminal procedure, see Jurgaitis, R. Konstituciniai baudžiamojo proceso teisės pagrindai [Constitutional Fundamentals of the Criminal Procedure Law]. In Ancelis, P.; Ažubalytė, R., *et al*. *Sąžiningas baudžiamasis procesas: probleminiai aspektai* [Fair Criminal Procedure: Problematical Dimensions]. Vilnius: Industrus, 2009, p. 17−60.

27 Jurgaitis, R. Konstituciniai baudžiamojo proceso teisės pagrindai [Constitutional Fundamentals of the Criminal Procedure Law]. In Ancelis; P.; Ažubalytė; R., *et al*. *Sąžiningas baudžiamasis procesas: probleminiai aspektai* [Fair Criminal Procedure: Problematical Dimensions]. Vilnius: Industrus, 2009, p. 17−60; Merkevičius, R. *Baudžiamasis procesas: įtariamojo samprata* [Criminal Procedure: Conception of the Suspect]. Vilnius: Registrų centro Teisinės informacijos departamentas, 2008, p. 29–119; Ažubalytė, R., *supra* note 3, p. 42–43; Goda, G. Baudžiamojo proceso forma: optimalių procesinių taisyklių paieškos galimybės ir ribos [The Form of the Criminal Procedure: the Possibilities and Limits of the Search for the Optimal Procedural Rules]. *Teisė*. 2007, 65: 54–58.

28 Convention on the Protection of Human Rights and Fundamental Freedoms. *Official Gazette.* 1995, No. 40-987.

Rights (hereinafter referred to as the ECHR). It has been changing from the sceptical attitude towards the possibility of direct application of the Convention in the spheres of criminal procedure and criminal law[29] to its perceptible impact on lawmaking in the sphere of criminal procedure and changes in practical application of the CCP.

The Constitutional Court's acknowledgement that the ECHR jurisprudence is the source of interpretation of the Lithuanian law,[30] the started process of fixing the precedent in Lithuania[31] and, finally, the LR Supreme Court's practice to follow the ECHR jurisprudence while motivating decision-making in criminal cases, allow to state that this tendency intensifies.

While analyzing the impact of the ECHR jurisprudence on the Lithuanian law of criminal procedure and its application, it is possible to talk about the consequences of the cases lost v. Lithuania and about the impact of the whole ECHR case-law on the Lithuanian criminal procedure.

Soon after the ratification of the Convention, the lost case, in which an infringement of the Convention was stated, influenced both lawmaking and practice of application of the norms of criminal procedure. There, the alterations of the CCP related to the participation of the judge in the detention procedures were adopted after the lost cases; *Jėčius'* case[32] determined the cancellation of preventive detention as contradictory to Article 5 of the Convention; the decision made in the case of *Birutis and others v. Lithuania*[33] served as an impulse to change the procedure of the interrogation of anonymous witnesses, which failed to secure the accused person's right to question the witnesses. Later the ECHR used to state the infringements which were conditioned not by the law but by certain practice more often: the requirement of the right to trial within a reasonable time was once again stressed by the ECHR in the case of *Šleževičius v. Lithuania*[34]; the reasonableness of the length of detention was analyzed in the case of *Stašaitis v. Lithuania*[35]; the infringements of the presumption of innocence in were revealed in the case of *But-*

29 The conclusion of the Constitutional Court of the Republic of Lithuania of 24 January 1995. On the compliance of Articles 4, 5, 9, 14 as well as Article 2 of Protocol No 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms with the Constitution of the Republic of Lithuania. *Official Gazette.* 1995, No. 9-199.

30 The ruling of the Constitutional Court of the Republic of Lithuania of 8 May 2000.

31 The ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006. On the compliance of Item 2 of Paragraph 1 of Article 62, Paragraph 4 (wording of 11 July 1996) of Article 69 of the Republic of Lithuania law on the Constitutional Court and Paragraph 3 (wording of 24 January 2002) of Article 11, Paragraph 2 (wording of 24 January 2002) of Article 96 of the Republic of Lithuania Law on Courts with the Constitution of the Republic of Lithuania. *Official Gazette.* 2006, No. 36-1292; The ruling of the Constitutional Court of the Republic of Lithuania of 24 October 2007 on the compliance of Articles 4 and 165 (wording of 28 February 2002) of the Code of Civil Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania. *Official Gazette.* 2007, No. 111-4549.

32 *Jėčius v. Lithuania,* No. 34578/97.

33 *Birutis and Others v. Lithuania*, No. 47698/99, 48115/99.

34 *Šleževičius v. Lithuania*, No. 55479/00.

35 *Stašaitis v. Lithuania* (dec.), No. 47679/99.

kevičius v. Lithuania[36]; the ECHR position regarding the application of the undercover agents was explained in the case of *Ramanauskas v. Lithuania*[37].

Not only the decisions made in the cases against Lithuania, but also the rest ECHR jurisprudence influence the improvement of the CCP and the practice of its application: recently the rules on the inquiry of children were changed following the criteria formed by the ECHR (Article 186 of CCP).

The legal system experienced significant changes in the year 2003, when Lithuania joined the EU. Europe's values, as the integral factor of the EU, influence directly the evolution of the EU law because they get 'juridizied'. The tendencies of the development of the national law of the EU Member States are not only the state's own 'concern'.[38] The creation of the space for freedom, security and justice serves as one of the most important EU goals. However, while talking about the EU influence on the regulation of criminal justice, it must be noted that the scolars[39] as well as the European Court of Justice[40] keep to the standpoint that, as a rule, neither the criminal law, nor the law of criminal procedure are the subject of the EU general competence, but the law of the European Community can provide certain principles and limits of regulation. Though the demand for close cooperation in the course of criminal procedure really exists,[41] the tendency of the europeization of criminal procedure used to be not so strong. At present, the influence of the EU law is noticed only in several spheres of criminal procedure[42], i.e. while securing cooperation in criminal cases; while fixing the minimal standards regarding the execution of orders freezing property or evidence; while ensuring mutual recognition of the decisions in criminal cases as well as while unifying the minimal rights of the persons participating in a criminal procedure.[43] It must be added

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36 *Butkevičius v. Lithuania* (dec.), No. 48297/99, ECHR 2002-II.

37 *Ramanauskas v. Lithuania* [GC], No. 74420/01.

38 Krehl, Ch. Reforms of the German criminal code - stock-taking and perspectives - also from a constitutional point of view. *German Law Journal*. 2003, 4(5): 421−431.

39 Safferling, Ch. J. Europe as transnational law – a criminal law for Europe: between national heritage and transnational necessities. *German Law Journal*. 2009, 10(10): 1383−1398; Kaiafa-Gbandi, M. The development towards harmonization within criminal law in the European Union – a citizen's perspective. *European Journal of Crime, Criminal Law and Criminal Justice.* 2001, 9(4): 241, 262.

40 Case C-176/03 *Commission of the European Communities v. Council of the European Union* [2005] ECR, Paragraph 47; Case 226/97 *Lemmens* [1998] ECR I-3711, Paragraph 19; Case 203/80 *Casati* [1981] ECR 2595, Paragraph 27.

41 Schomburg, W. Are we on the road to a European law-enforcement area? International cooperation in criminal matters. What place for justice? *European Journal of Crime, Criminal Law and Criminal Justice.* 2000, 8(1): 51−60.

42 Kokott, J. European Criminal Law before and after the Treaty of Lisbon. In *Teisė besikeičiančioje Europoje. Liber Amicorum Pranas Kūris*. Katuoka, S. (ed.).Vilnius: Mykolo Romerio universitetas, 2008, p. 655; Safferling, Ch. J., *supra* note 39, p. 1391.

43 Regulation of certain items of criminal procedure has already started on the grounds of the Council Framework Decision which serve as the addenda to the LR CCP published in the *Official Gazette* of the Republic of Lithuania: 2001/220/JHA: Council Framework Decision 2002/584/JHA of 15 March 2001 on the standing of victims in criminal proceedings. *Official Journal L*. 2001-03-22, 82(1); Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision. *Official Journal L*. 2002-07-18, 190 (1); Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. *Official*

that recently the traditional criminal paradigm is being supplemented by the elements of the restorative justice model.[44] Though the legal regulation of the victims' status has not been causing significant problems in the Lithuanian criminal procedure law, the scientific doctrine also pays much attention to the victim of the criminal deed; however, the EU documents[45] speeded up the real paces in the sphere of lawmaking, namely, the law on the compensation to crime victims of violent crimes was adopted.[46]

On the other hand, it must be acknowledged that the mentioned decisions of the European Court of Justice and the Member States' duty to secure the implementation of the provisions of the EU directives[47] by the selected method as well as the Lisbon Treaty[48] consolidate the europeization of the EU Member States' (including Lithuania) criminal procedure.

Thus, in spite of quite mordant discussions of scientists and the complex lawmaking processes, the increased EU attention towards the criminal justice[49] allows to state that the tendency of the europeization of the national criminal procedure will intensify. It can be forecasted that the spheres, in which the provisions regarding the national criminal procedure will be unified, are as follows: the minimal procedural safeguards granted to the participants of the procedure (the suspect, the victim and the witness) and the efficiency of the criminal procedure with regard to the protection of the EU interests.

In summary, it must be stated that the process of the europeization and internationalization of the criminal procedure in Lithuania has started not long ago and is awaiting the scientific assessment.[50] But the Constitutional jurisprudence[51] of the European coun-

Journal L. 2004-08-06, 261(15); Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. *Official Journal L*. 2003-08-02, 196(45); Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties. *Official Journal L*. 2005-03-22, 76. Other items are being discussed in*: Green Paper from the Commission Procedural Safeguards for Suspect and Defendants in Criminal Proceedings throughout the European Union* [interactive] [accessed 01-05-2009]. <http://eur-lex.europa.eu/LexUriServ/site/en/com/2003/com2003_0075en01.pdf>.

44 Doak, J. Victims' rights in criminal trials: prospects for participation. *Journal of Law and Society*. 2005, 32(2): 315.

45 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. *Official Journal L*. 2001-03-22, 82(1); 2002/584/JHA.

46 The law of the Republic of Lithuania regarding the compensation to crime victims of violent crimes. *Official Gazette.* 2008, No. 137-5387.

47 Kaiafa-Gbandi, M., *supra* note 39, p. 249.

48 Safferling, Ch. J., *supra* note 39, p. 1392.

49 The Stockholm Programme - an open and secure Europe serving and protecting the citizens. Approved by the European Council on 10-11 December, 2009.

50 No scientific research into this issue was carried out in Lithuania. The doctrine of the Lithuanian criminal law contains the discussions about the impact of the EU law on the Lithuanian criminal law, see Abramavičius, A., Mickevičius, D.; Švedas, G. *Europos Sąjungos teisės aktų įgyvendinimas Lietuvos baudžiamojoje teisėje* [Implementation of the EU Law in the Lithuanian Criminal Law]. Vilnius: Teisinės informacijos centras, 2005. However, these issues are widely discussed in Europe. See: Rackow, P.; Miller, D. Literature on the internationalisation and europeanisation of criminal law. *Criminal Law Forum*. 2008, 19: 265−275.

51 Pollicino, O. European arrest warrant and constitutional principles of the Member States: a case law-based outline in the attempt to strike the right balance between interacting legal systems. *German Law Journal*. 2008, 9(10): 1314.

tries as well as scientific research[52] allow forecasting that the 'single-sided' transfer of the EU law into the Lithuanian law, may convert into an adjustment of the EU values to the constitutional values of the criminal procedure of Lithuania.

Conclusions

Though the impact of the historically formed model of criminal procedure on the national law of criminal procedure persists, it is strongly influenced by the common tendencies of the evolution of the Western law. After the restoration of independence of Lithuania, the tendencies, which were much earlier noticed in the democratic states, i.e. constitualization, internationalization-europeization of the ordinary law and differentiation of the procedural forms, started to influence the evolution of the law of criminal procedure.

The decisions passed by the Constitutional Court in the cases dealing with the constitutionality of the laws of criminal procedure not only eliminate the provisions which are at variance with the Constitution, but also form the constitutional grounds for the law of criminal procedure and become an important source for the interpretation of the norms of criminal procedure.

The international standards started to influence the law of criminal procedure after Lithuania had joined the international treaties and had entered the European Union. Nonetheless, the increasing impact of the ECHR jurisprudence and EU activities in the sphere of the harmonization of criminal justice are to be evaluated as a certain measure of securing the human rights in criminal procedure and not as the footing of the common (unified) European criminal procedure.

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52 *Ibid*., p. 1313−1355; Kūris, E., *supra* note 24, p. 669–704; Safferling, Ch. J., *supra* note 39, p. 1383−1398.

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LIETUVOS BAUDŽIAMOJO PROCESO TEISĖS PLĖTROS TENDENCIJOS

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Santrauka. *Straipsnyje analizuojamos Lietuvos baudžiamojo proceso plėtros tendencijos per pastaruosius dvidešimt metų Lietuvai atgavus nepriklausomybę.*

Straipsnyje analizuojami pagrindiniai veiksniai, turintys įtakos baudžiamojo proceso srities įstatymų leidybai, taip pat taikant baudžiamojo proceso normas. Tai Konstitucijos imperatyvai bei žmogaus teisės, įtvirtintos tarptautiniuose, taip pat ir Europos Sąjungos aktuose. Konstatuojama, kad anksčiau, keičiant arba pildant baudžiamojo proceso kodeksą, didžiausias dėmesys buvo skiriamas valstybės teisės tradicijai. Tuo tarpu šiuolaikinio baudžiamojo proceso teisės normos turi būti subordinuojamos Konstitucijoje įtvirtintiems principams bei tarptautiniuose susitarimuose numatytiems žmogaus teisių apsaugos standartams.

Trumpai apžvelgus pagrindines baudžiamojo proceso plėtros tendencijas – konstitucionalizaciją bei internacionalizaciją – europeizaciją – daroma išvada, kad nors istoriškai susiklosčiusio baudžiamojo proceso modelio įtaka šiuolaikinei nacionalinei baudžiamojo proceso teisei išlieka, tačiau ją stipriai veikia minėtos bendros Vakarų teisės raidos tendencijos.

Lietuvos Respublikos Konstitucinio Teismo sprendimai bylose dėl baudžiamojo proceso įstatymų konstitucingumo ne tik šalina nuostatas, prieštaraujančias Konstitucijai, tačiau formuoja Baudžiamojo proceso teisės konstitucinius pagrindus bei tampa svarbiu baudžiamojo proceso normų interpretavimo šaltiniu.

Lietuvai prisijungus prie tarptautinių sutarčių, įtvirtinančių žmogaus teises, bei įstojus į Europos Sąjungą, baudžiamojo proceso teisę pradėjo veikti tarptautiniai standartai. Vis dėlto stiprėjanti EŽTT jurisprudencijos įtaka bei ES aktyvūs veiksmai harmonizuojant baudžiamosios justicijos sritį kol kas turėtų būti vertinami kaip tam tikras žmogaus teisių baudžiamajame procese užtikrinimo matas, o ne bendro (unifikuoto) Europos baudžiamojo proceso pamatas. Kita vertus, Lietuvoje dar trūksta sisteminio ir kritinio požiūrio į Europos Sąjungos teisės poveikį nacionalinei baudžiamojo proceso teisei.

Reikšminiai žodžiai: *baudžiamasis procesas, baudžiamojo proceso raidos tendencijos, baudžiamojo proceso konstitucionalizacija, baudžiamojo proceso internacionalizacija, baudžiamojo proceso europeizacija.*

Rima Ažubalytė, Mykolo Romerio universiteto Teisės fakulteto Baudžiamojo proceso katedros docentė. Mokslinių tyrimų kryptys: baudžiamasis procesas, baudžiamojo proceso diferenciacija, nepilnamečių baudžiamasis procesas, diskrecinis baudžiamasis persekiojimas, asmens teisių apsauga baudžiamajame procese.

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