

CONSTITUTIONALIZATION AND INTERNATIONALIZATION OF THE LITHUANIAN CRIMINAL PROCEDURE LAW

RIMA AŽUBALYTĖ

Mykolas Romeris University, Faculty of Law, Department of Criminal
Procedure, Lithuania

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 be 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 - europeanisation, 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.

Key words

Criminal procedure; constitutionalization of criminal procedure; internationalization of criminal procedure; europeanisation of criminal procedure.

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 CCP¹, 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. 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- europeanisation of the ordinary law and differentiation of procedural forms³) 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,⁴ in spite of the noticeable convergence of the

¹ Code of Criminal Procedure of the Republic of Lithuania. *Official Gazette*. 2002, 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 Development 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 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.

⁴ Tak, P. Bottlenecks in international police and judicial cooperations in the EU. *European Journal of Crime, Criminal Law and Criminal Justice*. 2000, 8/4: 353–356; Shejfer, S. A.

systems of criminal procedure which are based on different models.⁵ 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 adversarial 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.

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 europeanisation.

The Constitution and the Law of Criminal Procedure

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 state established in the Preamble to the Constitution presupposes that every individual and society as a whole must

Kuda dvizheta Rosijskoje sudoproizvodstvo (Razmyshlenie po povodu vektorov razvitiya ugovno-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. A Normative theory of criminal procedure. *Criminal Law Forum*. 2007, 18: 168.

⁵ 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 4, p. 157–158.

be safe from unlawful conduct against them.⁶ 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.⁷ 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.⁸

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.⁹ The Constitution cannot be interpreted following the ordinary law;¹⁰ it means that it is exactly the interpretation of the ordinary law that 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

⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 8 May 2000. *Official Gazette*. 2000, 39(1105).

⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 29 December 2004. *Official Gazette*. 2005, 1(7).

⁸ The ruling of the Constitutional Court of the Republic of Lithuania of 16 January 2006. *Official Gazette*. 2006, 7(254).

⁹ 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.

¹⁰ 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: Katuoka, S. (ed.), *Teisė besikeičiančioje Europoje. Liber Amicorum Pranas Kūris*. Vilnius: Mykolo Romerio universitetas, 2008, p. 677–678.

to be analyzed in isolation from the constitutional context.¹¹ 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 procedure¹²) as well as the latest scientific research into criminal procedure¹³ 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.

Internationalization 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)¹⁴. But the striking changes of the Lithuanian

¹¹ Abramavičius, A.; Jarašiūnas, E. Konstitucinė dimensija baudžiamojoje teisėje [The Constitutional Dimension in the Criminal Law]. *Teisė*. 2004, 53: 9.

¹² 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; The Constitutional court of the Republic of Lithuania. Rulings, decisions and conclusions. [interactive] [accessed 20-11-10]. http://www.lrkt.lt/Documents1_e.html

¹³ Jurgaitis, R. *ibid*, 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., *Alternatyvūs baudžiamojo konflikto sprendimo būdai nagrinėjant bylą teisme* [Alternative Methods of Resolving a Criminal Conflict in Judicial Proceedings]. *Jurisprudencija*. 2008, 6(108): 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.

¹⁴ Convention on the Protection of Human Rights and Fundamental Freedoms. *Official Gazette*. 1995, 40(987).

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 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 law¹⁵ 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,¹⁶ the started process of fixing the precedent in Lithuania¹⁷ 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.

Well known that the Strasbourg organs have stressed that they have no mandate to act as a court of fourth instance: it is not their task to ascertain whether the domestic law at issue has been correctly applied or whether the facts have been correctly established.¹⁸ Despite of the Convention has had a very important effect on the development of criminal procedure law, the responsibility of implementing the Convention falls to the national authorities.

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' case¹⁹ determined the cancellation of preventive detention as contradictory to Article 5 of the

¹⁵ 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, 9(199).

¹⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 8 May 2000.

¹⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006. *Official Gazette*. 2006, 36(1292); The ruling of the Constitutional Court of the Republic of Lithuania of 24 October 2007. *Official Gazette*. 2007, 111(4549).

¹⁸ Trechsel, S. *supra* note 5, p. 83-84.

¹⁹ Jėčius v. Lithuania, No. 34578/97.

Convention; the decision made in the case of *Birutis and others v. Lithuania*²⁰ 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*²¹; the reasonableness of the length of detention was analyzed in the case of *Stašaitis v. Lithuania*²²; the infringements of the presumption of innocence in were revealed in the case of *Butkevičius v. Lithuania*²³; the ECHR position regarding the application of the undercover agents was explained in the case of *Ramanauskas v. Lithuania*²⁴.

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 (Article 186 of CCP) were changed following the criteria formed by the ECHR.

The influence of EU law to the Lithuanian Criminal Procedure Law

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 'juridized'. The tendencies of the development of the national law of the EU Member States are not only the state's own 'concern'.²⁵ 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 scholars²⁶ as well as the European Court of Justice²⁷ 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,

²⁰ *Birutis and Others v. Lithuania*, No. 47698/99, 48115/99.

²¹ *Šleževičius v. Lithuania*, No. 55479/00.

²² *Stašaitis v. Lithuania* (dec.), No. 47679/99.

²³ *Butkevičius v. Lithuania* (dec.), No. 48297/99, ECHR 2002-II.

²⁴ *Ramanauskas v. Lithuania* [GC], No. 74420/01.

²⁵ 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.

²⁶ 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.

²⁷ 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.

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,²⁸ the tendency of the europeanisation of criminal procedure²⁹ used to be not so strong.

The influence of EC law is felt through both the legislation (treaty, directives and regulations) and through regulating effect of the case-law of the Community courts (Court of Justice and Court of First Instance)³⁰.

At present, the influence of the EU law is noticed only in several spheres of criminal procedure³¹, 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.³² The thought is that the mutual recognition will eliminate the need for extensive and detailed harmonisation of national criminal (procedural) law. It is, however, recognised that a certain harmonisation of criminal procedural law will be

²⁸ 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.

²⁹ The term used within the EC is not the Europeanisation of criminal law, but the Europeanisation of national enforcement law.

³⁰ Vervaele, J. A.E. European Criminal Law and General Principles of Union Law. *Research papers in law*. 2005, 5: 3. [interactive] [accessed 13-11-10]. <http://www.coleurop.be/template.asp?pagename=lawpapers>

³¹ Kokott, J. European Criminal Law before and after the Treaty of Lisbon. In: Katuoka, S. (ed.), *Teisė besikeičiančioje Europoje. Liber Amicorum Pranas Kūris*. Vilnius: Mykolas Romeris universitetas, 2008, p. 655; Safferling, Ch. J., *supra* note 26, p. 1391.

³² 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 CPC 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 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 01-05-09]. <http://eur-lex.europa.eu/LexUriServ/site/en/com/2003/com2003_0075en01.pdf>.

necessary, namely the minimum standards that will enable mutual recognition.³³ Due to mutual recognition and the resulting elaboration of transnational European criminal law harmonisation also increasingly involves criminal procedural law.³⁴ National criminal law and criminal procedural law may need to be modified where national rules are incompatible with Community law (negative integration), or national criminal law and criminal procedural law may also need to be modified because Community law must be enforced effectively (positive integration).³⁵

It must be added that recently the traditional criminal paradigm is being supplemented by the elements of the restorative justice model.³⁶ 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 documents³⁷ speeded up the real paces in the sphere of lawmaking, namely, the law on the compensation to crime victims of violent crimes was adopted.³⁸

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 directives³⁹ by the selected method⁴⁰ as well as the Lisbon Treaty⁴¹ consolidate the europeization of the EU Member States' (including Lithuania) criminal procedure.

³³ Vervaele J.A.E. The Europeanisation of Criminal Law and the Criminal Law Dimension of European Integration. *Research papers in law*. 2005, 3: 16. [interactive] [accessed 13-11-10]. <http://www.coleurop.be/template.asp?page=lawpapers>

³⁴ *Ibid*, p. 19.

³⁵ *Ibid*, p. 5.

³⁶ Doak, J. Victims' rights in criminal trials: prospects for participation. *Journal of Law and Society*. 2005, 32(2): 315.

³⁷ 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.

³⁸ The law of the Republic of Lithuania regarding the compensation to crime victims of violent crimes. *Official gazette*. 2008, 137(5387).

³⁹ Kaiafa-Gbandi, M., *supra* note 26, p. 249.

⁴⁰ Case C-105/03 Pupino [2005] ECR I-05285, Paragraphs 44-45; Cases C-74/95 and C-129/95 X [1996] ECR I-6609, paragraph 24, Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-0000, paragraph 74.

⁴¹ Safferling, Ch. J., *supra* note 26, p. 1392.

Thus, in spite of quite mordant discussions of scientists and the complex lawmaking processes, the increased EU attention towards the criminal justice⁴² 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. It can be stated that in fact the Commission aims at minimum harmonization of human rights protection in criminal proceedings across the Member States. As some authors say „direct harmonisation, the regulation of transnational cooperation and the continued development of European enforcement bodies <..> have put Europe in the picture for the everyday practice of criminal law“⁴³.

In summary, it must be stated that the process of the europeanisation and internationalization of the criminal procedure in Lithuania has started not long ago and is awaiting the scientific assessment.⁴⁴ But the Constitutional jurisprudence⁴⁵ of the European countries as well as scientific research⁴⁶ 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

⁴² The **Stockholm Programme** - an open and secure Europe serving and protecting the citizens. **Approved by the European Council on 10-11 December, 2009.**

⁴³Vervaele, J.A.E. *supra* note 33, p. 23.

⁴⁴ 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 baudžiamajoje teisėje* [Implementation of the EU Law in the Lithuanian Criminal Law]. Vilnius: Teisinės informacijos centras, 2005; Švedas, G. *Europos Sąjungos įtaka Lietuvos baudžiamajai teisei* [The influence of EU Law to the Lithuanian Criminal Law]. *Teisė*. 2010, 74: 7-20. 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.

⁴⁵ 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.

⁴⁶ *Ibid.* p. 1313-1355; Kūris, E., *supra* note 10, p. 669–704; Safferling, Ch. J., *supra* note 26, p. 1383–1398; Vervaele, J.A.E. *supra* note 33, Vervaele, J.A.E. *supra* note 30, Kratochvil, V. A Treaty of the Constitution for Europe and the starting points for the „European criminal law“. *Legal studies and practice journal*. 2006, 4: 414-427. *etc.*

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. constitutionalization, internationalization- europeanisation 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.

Contact – email

r.azubalyte@gmail.com