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IMPLEMENTATION OF THE MAIN THEORETICAL PROVISIONS ON THE RIGHTS AND RESPONSIBILITIES OF MINOR PARTICIPANTS OF THE EUROPEAN CRIMINAL PROCEEDINGS (USING THE EXAMPLE OF THE REPUBLIC OF LATVIA) IN THE INVESTIGATION OF CRIMES

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Abstract. The article is devoted to the research of current issues related to the legal status of minor participants of the European criminal proceedings (using the example of the Republic of Latvia). Their rights and responsibilities during investigative actions during the investigation of criminal proceedings (criminal cases) are considered, an analysis of the conceptual characteristics of participants in criminal proceedings is carried out, the features of their legal status are determined, and practical examples are given.

The issues of improving the institution of participants in criminal proceedings are relevant for this research. The author focuses in the article on guarantees of compliance with the rights and obligations of participants in criminal proceedings, which definitely entails compliance with human rights and freedoms.

The introduction of new participants in criminal proceedings, including minors, into European legal acts, including the Latvian Criminal Procedure Law, the expansion of their rights and obligations, contribute to the further improvement of their legal status at all stages of criminal proceedings.

Key words: human rights, minor, criminal proceeding, criminal liability of minors, sexual exploitation of women and children.

The goal of the research. The purpose of this article is to characterize and analyze the legal status of participants in European Criminal Procedure Law (using the example of the Republic of Latvia).

Introduction. Since 1 October 2005, the Criminal Procedure Law (hereinafter referred to as the CPL) has been in force in Latvia, the goal of which, in accordance with Article 1, is to establish such a procedure for criminal proceedings that ensures the effective application of norms of the Criminal Law and the fair regulation of criminal-legal relations without unjustified interference in the life of an individual. Along with adults, minors participate in criminal proceedings (criminal cases), for whom a special legal procedure has been established during interrogation and other criminal procedural actions during the investigation of crimes.

Literature review. Latvian scientists such as Arija Meikališa, Kristīne Strada-Rosenberga, Sandra Kaija, Anrijs Kavalieris, Andrejs Vilks, Irena Nesterova and others have dedicated their scientific articles to the study of issues related to participants in criminal proceedings, including minors. They examine criminal procedural and tactical issues related to the legal status of these participants.

Methodology. The research was carried out in the field of criminal law; the following research methods were used: comparative legal, dialectical, logical-legal, analytical, statistical, study of the regulatory framework.

Results and discussion. Article 91 of the Satversme (Constitution of the Republic of Latvia) states that all people in Latvia are equal before the law and the courts, and human rights are implemented without any discrimination (Satversme).

Participants in criminal proceedings are persons endowed with procedural rights of the CPL and have procedural obligations. The CPL regulates persons involved in criminal proceedings (officials conducting criminal proceedings), persons exercising defense, the victim and his/her representation, and other persons involved in criminal proceedings. They, in the course of exercising their rights and fulfilling their duties, enter into criminal-procedural relations.

Along with adults, minors participate in criminal proceedings (criminal cases). According to Article 11 of the Criminal Law of Latvia (hereinafter referred to as CL), an individual who has reached the age of 14 at the time of committing a criminal act is subject to criminal liability (Criminal Law). A minor, i.e., a person who has not reached the age of 14, is not subject to criminal liability.

Most crimes committed by minors have age-specific characteristics. We consider it necessary to note that the behavior of minors (teenagers) has a number of peculiarities. These can include a lack of life experience, minors having a low level of self-criticism, cannot always assess life circumstances in accordance with reality, increased emotional excitability, suggestibility, unbalanced arousal, etc.

A person is considered to have reached a certain age on the day following his/her birthday. If age is determined as a result of a forensic medical examination, the person's birthday is considered to be the last day of the year determined by the expert. When setting the minimum or maximum age, the court is guided by the minimum age of such a person suggested by the expert (Liholaja 2021, p. 281).

Persons directing the process – the investigator, the prosecutor, the judge – must have knowledge of the current state of age examination. There is an objective X-ray method. That is used to determine age and is considered by specialists to be objective, providing sufficiently accurate results.

The peculiarities of criminal liability of minors are expressed in the fact that the types of punishments that can be applied to minors are limited, the punishment is assigned taking into account the specifics of the subject of the criminal act, the court can release the minor from the assigned punishment by applying compulsory educational measures to him.

Article 152 of the CPL regulates the specifics of interrogating a minor. The term "minor" is understood in accordance with the Law on the Protection of Children's Rights: "In the field of administrative offenses and criminal law, all relevant legal norms applicable to minors are applied to a person under the age of 18" (Law on the Protection of Children's Rights).

Latvian professor Arija Meikalisha points out that the term "minor" applies to all individuals under the age of 18. If a person reaches the age of 18 during the proceedings, there is no longer a strict obligation under the CPL to apply the specific features of interrogating a minor, regardless of the age at which they are involved in the proceedings, etc. However, since all norms relating to the interrogation of minors are fundamentally related to additional protection and maximum respect for the interests of the minor, it is probably not unreasonable to apply them in practice even after the formal age of majority has been reached (Meikalisha 2019, p. 500). The same approach is also indicated in 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 (Directive 2016/800).

The specific features of the interrogation of a minor can be divided into three large groups:

- 1) those that apply to any minor in any procedural status,
- 2) those that apply to minor witnesses who do not have the right to defense,
- 3) those that apply only to certain categories of minors, namely, only to minors who have not reached the age of 14 and minors who have been recognized as victims of violence committed by a person on whom the victim is materially or otherwise dependent, of human trafficking, or of a criminal offense directed against a person's morality or sexual integrity (Meikalisha 2019, p. 501).

In the field of substantive Criminal Law, the EU has the competence to adopt directives providing for minimum rules for the definition of criminal offenses and sanctions in relation to particularly serious crimes with a cross-border dimension, mainly in the following areas: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms

trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime, and organized crime (Nesterova 2015, p. 147). The aforementioned crimes are specified in Article 83, Part 1 of the Treaty on the Functioning of the European Union (Treaty on the Functioning of the European Union).

In the field of substantive Criminal Law, a number of directives have been adopted. One of the recently adopted directives is the European Parliament and Council Directive 2011/36/EU of April 5, 2011, on the prevention and combating of trafficking in human beings and the protection of its victims (Directive 2011/36/EU).

The course of the interrogation of a minor victim and witness shall be recorded in sound and image if this is necessary for the minor to achieve the goal of the criminal proceedings. The course of the interrogation of a minor who has been recognized as a victim of violence committed by a person on whom the victim is materially or otherwise dependent, of human trafficking, or of a criminal offense against a person's morals or sexual integrity shall be recorded in sound and image, except in cases where this is contrary to the best interests of the minor or interferes with the achievement of the goal of the criminal proceedings.

Recording a child's testimony on video not only allows you to obtain information about what happened but also simultaneously shows the child's reactions and emotional state during the interrogation. Unlike a written protocol, which can inaccurately formulate the investigator's questions and the child's answers or in the so-called desired form, a video accurately reflects the child's language and the course of the interrogation, which can help eliminate doubts about one or another victimized child's response and the description of the events that took place (Ceļmale 2016).

If video equipment is used to record a scene, the same principles must be followed as when using a camera, namely from the general to the specific. The person who is filming the scene of the event must comment on each shot during the filming process.

All necessary prerequisites must be provided so that the captured image supports objective reality; lighting must not transform the object; the shooting location must exclude the possibility of perspective distortions, etc.

Before the recording, certain preparatory work must be done, which includes clarifying the tasks with the help of the video recording, selecting the appropriate technical means, and, if necessary, involving competent specialists.

Of great importance in this work is the creation of a scenario, which should note which objects and episodes should be depicted, in what order it is desirable to do it, what shooting techniques should be used, from what locations, and in what way to record. It is advisable to mark the shooting locations on crime scene plans or diagrams.

When analyzing the provisions of Part 2 of Article 152 of the CPL, it should be noted that the teacher's task is not to assist the investigator in recording testimony. The right of the person directing the proceedings, the investigator, the prosecutor is to record the testimony of a minor participant in criminal proceedings, after which the persons participating in the investigative action are familiarized with the protocols. As a rule, in practice, when studying the protocols of investigative actions in criminal cases, the teacher has the right to make comments on the reliability and completeness of the records made and to clarify and supplement the protocol. Then this protocol is signed by the teacher.

However, we see a slightly different position. In criminal proceedings (criminal cases), the teacher should be interrogated and involved in the investigation as a witness. Thus, the investigator must, for example, interrogate minor participants in criminal proceedings who have the right to defense: the person against whom criminal proceedings have been initiated, the detainee, the suspect, and also perform other investigative actions with the named participants in the criminal proceedings. In this case, the teacher is able to characterize the minor's personality, how the minor relates to studies, classmates, and his hobbies.

As for such a specialist as a psychologist, then, based on the practical experience of the author, such a specialist, possessing scientific knowledge in the field of psychology of minors, has professional skills in communicating with them; he provides the investigator with invaluable assistance in a criminal case. This assistance may be expressed in establishing psychological contact between the investigator and the minor.

An important circumstance is assisting the investigator in formulating questions to the minor during the course of investigative actions.

In practice, during the investigation of criminal proceedings, a teacher or psychologist is often brought in to conduct investigative actions with minor participants in criminal proceedings. Their participation allows the person directing the process to conduct investigative actions effectively and, subsequently, to use the results as evidence in the criminal case. An important factor is the assistance of the specified specialists to the investigator in formulating questions during investigative actions.

It is important to point out that both teachers and psychologists have their own requirements for holding a position, but in addition to them, if these persons are invited as specialists in the interrogation of a minor, they are also subject to the requirement expressed in Article 51 of the Law on the Protection of the Children's Rights regarding the need for specialized knowledge in the field of children's rights protection (Kaija 2018, p. 262).

Article 153 of the CPL describes indirect interrogation of a minor, or interrogation through the mediation of a psychologist.

If the interrogator disagrees with the psychologist's opinion, direct interrogation may be conducted only by decision of the investigating judge during pre-trial proceedings and by court decision during trial. If the person directing the process agrees with the psychologist's opinion, he or she will organize an indirect interrogation.

If the person being interrogated has not reached the age of 14, it is the psychologist who explains the information provided to this person, i.e., the necessity of the ongoing activities, the significance of the information provided by the minor. The psychologist finds out the personal data of the person being interrogated, as well as asks the person directing the proceedings questions in an appropriate form. If necessary, the psychologist informs the interrogator of the need for a break. A minor under the age of 14 does not sign the interrogation protocol, if one is required and written at all.

If the person being interrogated has reached the age of 14, the activities of the person directing the proceedings and the psychologist are regulated by Section 153, Part Four of the CPL. In accordance with the content and nature of the action to be performed, the person directing the process is the one who performs the action, i.e., informs the person through a psychologist about the nature of the action, clarifies personal data, and informs the minor about rights and obligations, as well as responsibility. In turn, the psychologist is the one who asks the minor the questions of the person directing the proceedings, if necessary, paraphrasing them in an appropriate form, and also informs the person directing the proceedings about a break, if one is necessary (Meikališa 2019, p. 506).

Investigative actions, including interrogation of minors (children), have special specifics. In this case, the investigator, prosecutor, and judge must prepare, collect information about this minor, his friends, the environment at home and at school. For example, in criminal cases where violence was used against minor victims, increased attention and kindness should be shown.

If children are under 14 years old, it is best to work with them at home, in a childcare facility, and, since children get tired more quickly, take more frequent breaks. All evidence in a criminal case is always recorded in the form of protocols of investigative actions.

The content of evidence in a criminal case consists of criminal-legal facts, and its form consists of criminal-procedural facts in the form of protocols of investigative actions. Thus, both from the point of view of content and from the point of view of form of evidence, these are facts, or each criminal evidence is a unity of criminal-legal and criminal-procedural facts (Dombrovsky 2011, p. 77).

The investigative action protocol is one of the forms of recording investigative actions. Article 151¹ of the CPL regulates issues related to the peculiarities of the interrogation of a particularly protected victim in pre-trial criminal proceedings.

The victim, who is particularly protected, as well as the specific features of the conduct of procedural actions with him, were included in the CPL at the beginning of 2016, with the introduction of 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 (Directive 2012/29/EU).

The inclusion of new participants in the process, including minors, in the CPL contributes to the further improvement of the system of rights and obligations of participants in criminal proceedings, including minors.

Conclusions. The conducted research, devoted to the main theoretical characteristics of the legal status of participants in criminal proceedings, emphasizes the relevance of the topic. Further development of the system of procedural guarantees and legitimate interests of participants in criminal proceedings, including minors, is one of the key areas for improving the Criminal Procedure Law.

Observance of the rights of a person involved in criminal proceedings is based on the constitutional principles of equality of citizens before the law.

One of the final conclusions may be the exclusion of the concept of a teacher from criminal procedural norms, leaving the concept of a psychologist.

Article 140 of the CPL regulates the performance of procedural actions using technical means. For criminal cases in which investigative actions are conducted with the participation of minors, it is expedient to apply technical means more widely.

The detection of each crime and the effectiveness of the investigation largely depend on how familiar and skilled those directing the process are with scientific methods, applying modern scientific and technical means and techniques in the acquisition, research, and evaluation of evidence.

When conducting such investigative actions with the participation of minor victims, witnesses, detainees, suspects, etc., such as verification of testimony on site, investigative experiments, identification, and other investigative actions, the participation of specialists from various fields not only improves the quality of their implementation but also provides the opportunity to obtain new evidence in a criminal case.

It can also be concluded that:

- Video increases the possibilities of recording events and phenomena. They are recorded in dynamics, accurately capturing the time of development of events and the speed of movement of people and objects; the volume of objects is also better depicted;
- Recording a child's testimony on video allows not only to obtain information about what happened but also to simultaneously show the child's reactions and emotional state during interrogation;
- If video equipment is used to record an inspection of the scene of the incident, the same principles must be followed as when using a camera, namely from the general to the specific. The person who records the scene of the incident on video must comment on each shot taken during the recording process.

The use of scientific and technical methods is permissible only if it is provided for or permitted by the CPL.

Persons directing the process are regularly required to improve their knowledge of the current state of expertise, including such expertise as age expertise, which is especially important in relation to minors.

The conclusions drawn, suggestions, and further research of the problems related to the legal status of minor participants in criminal proceedings, the improvement of the norms of the CPL will allow the observation of the rights of participants in criminal proceedings and human rights during the investigation of criminal proceedings (criminal cases).

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