



# Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Latvia

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## Executive summary

### Overview of the general elements of child-friendly justice in criminal proceedings

Latvian legislation establishes special provisions in relation to child victims, witnesses and children who are in conflict with the law (child suspects and offenders). Several laws pay particular attention to children in criminal proceedings taking into account their age and maturity, providing them with additional procedural guarantees and limiting their responsibility. In criminal proceedings every child has the right to be heard and have a legal representative. Depending on the circumstances, children have the right to receive psychological and legal support free of charge. Latvian legislation emphasises that in all child-related activities, irrespective of whether they are carried out by State institutions, private organisations or individuals, the rights and interests of children should be given priority.

### Overview of children's involvement before, during and after judicial proceedings

Latvian law defines a child as a person **under the age of 18**, but it also distinguishes between children **below and above the age of 14**. Everyone older than 14 years of age may be held fully criminally liable and, thus, be detained and imprisoned. Children aged from 11 to 14 can only be subject to compulsory correctional measures, while children above 14 years of age can be subject to both correctional measures and criminal sanctions depending on the issue at stake. Thus, in Latvia, the age of criminal responsibility is **14**, but already from the **age of 11** children can be subject to certain penal measures.

Children have the right to be involved in all matters relating to them. Children are informed of their rights following the first contact with the police, in all stages of proceedings and in all types of activities. If a child does not speak the official language, he/she will be assisted by an interpreter free of charge. There are no provisions, however, providing that the police and the court must provide information in a child-friendly manner and in a language that children understand, taking into account their age and maturity. However, the law requires that all practitioners dealing with children have specific knowledge and children's special interests and needs are taken into account.

Latvian legislation pays particular attention to the questioning of children. First of all, premises must be adjusted to the needs of children. Secondly, children under the age of 14 and those who have suffered from violence or sexual abuse must be questioned in the presence of a teacher/psychologist. The specialist determines what is in the best interests of a child during the questioning. If a face-to-face interview may have negative consequences for the child's physical and emotional well-being, the interview takes place with the aid of technical measures in the presence of psychologist. The presence of the child's representative is optional. The specialist is required by law to communicate with children in a language they understand, taking into account their age and maturity.

In any proceedings relating to children, they must be given the opportunity to be heard either directly or through a representative. The presence of a defence counsel is **mandatory** for child offenders at all times. Child victims can exercise their rights only through their legal representatives, except when providing testimony and expressing their views. Children older than age 15 may exercise their rights together with their representatives. State funded legal assistance, at the moment, is provided only under certain conditions.

In relation to the conditions of detention, the same rules apply to both adults and children. Both adults and children can be detained for up to 48 hours. Before this term expires, the child must either be arrested or released. There are, however, specific rules on placing children in custody (known as 'investigation prisons'). The time for which children can be placed in such facilities is half of the maximum time set for adults and it can be extended only in exceptional circumstances.

Children may be imprisoned but the time limits set are considerably shorter than for adults. The law allows the imposition of lighter sentences on children than the minimum sanctions provide even in cases where the crime was committed in aggravating circumstances. Whenever possible, alternative measures to imprisonment should be applied. These measures are of a correctional or educational nature. The aim of such measures is not to punish but rather to facilitate the personal development of

the child in order to reinforce their moral and societal values, orientate the child towards refraining from illegal actions and re-integrate the child into society.

Latvian law requires that in all child-related activities carried out on behalf of the State or local authorities, the rights and interests of children are given priority. Thus, submissions and complaints related to the protection of children must be examined without any delay, and the work and workload within the courts must be organised to ensure priority is given to cases involving children. Latvian legislation also requires that anyone dealing with the protection of children on behalf of the State or local authorities has specialist knowledge of child-related issues. Furthermore, information regarding a child who has become a victim, witness or has violated the law must be kept confidential when it is obtained by an employee of a State or local government institution, or a child care, educational, or social assistance organisation.

### **Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps**

The State Inspectorate for the Protection of Children's Rights is the main institution responsible for the protection of children's rights. It supervises and controls compliance with the Law on the Protection of the Rights of the Child and other legislative acts that regulate protection of children's rights. Also various non-governmental institutions are involved in promoting a child-friendly approach to criminal justice, for instance, by providing child-friendly premises and offering the assistance of trained psychologists during proceedings involving children.

The strengths of the Latvian criminal justice system lie in the child-friendly approach guaranteed to child victims. They are provided with access to psychological, medical, legal and other types of assistance, taking into account the best interests of the child.

The main gaps, however, concern the approach taken towards children who are in conflict with the law. They are, first and foremost, regarded as offenders. It is widely recognised that the best interests of a child must be a primary consideration also with regards to child offenders both during the pre-trial investigation and during the examination of the case in court.

## Abbreviations

CL	Criminal Law
CPL	Criminal Procedure Law
CRIN	Child Rights International Network
EC	European Commission
EU	European Union
LPRC	Law on Protection of the Rights of the Child

# 1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

## *Legal Framework*

There is no single law in Latvia comprising all the substantive and procedural provisions relating to children in criminal proceedings. Various laws and regulations contain different provisions to protect the rights of children. The basic rights both for adults and children are guaranteed by the Constitution of Latvia (*Satversme*)<sup>1</sup>. Nevertheless, the main principles and rules on the protection of children are established by the **Law on Protection of the Rights of the Child (LPRC)** adopted on 19 June 1998<sup>2</sup>. Specific rules relating to children in civil and criminal matters are contained in the Civil Law, the Civil Procedure Law, the Criminal Law and the Criminal Procedure Law.

Criminal procedure in Latvia is based on two main pillars – the **Criminal Law (CL)**, adopted on 17 June 1998 and **Criminal Procedure Law (CPL)**, adopted on 1 October 2005. These rules are applied both to adults and children. Neither the CL nor the CPL contain one single section detailing provisions on criminal proceedings involving children. However, both the CL and the CPL pay particular attention to children taking into account their age and maturity, providing additional guarantees during proceedings and mitigating their responsibility. The CPL contains provisions for the investigation and adjudication of cases involving children (as victims, witnesses or suspects/defendants), but these rules are spread throughout the law. The CPL sets provisions of mandatory participation of a defence counsel for suspects/defendants handling children's cases, the presence of legal representatives and teachers/psychologists during the interview, application of special security measures, safeguards in respect of children in detention and special provisions for adjudicating their cases.

The legal framework for judicial proceedings involving children is also established through the Law on Protection of the Rights of the Child (LPRC). It ensures the essential rights of children and the responsibility of the State, law enforcement and local government institutions. Beyond the basic rights guaranteed to every child, i.e. life and health, other rights are ensured such as the right of a person to their identity, right to privacy, wholesome living conditions and a benevolent social environment, equal rights and opportunities to acquire education, and rights to property. Although LPRC primarily regulates the preventive measures for the protection of children, the rights and principles established therein apply to criminal proceedings as well.

Special provisions concerning child offenders are provided by the **Law on Application of Compulsory Measures of a Correctional Nature to Children** adopted on 31 October 2002<sup>3</sup>. The law establishes rules on measures of an educational nature applicable to children from 11 to 18 years of age taking into consideration the gravity of the offence committed as well as the child's personality and maturity. The aim of such measures is not to punish but rather to facilitate the child's development.

Considering that provisions relating to children in criminal proceedings are spread throughout four applicable laws, it is often challenging for professionals to adopt the same approach in similar circumstances.

<sup>1</sup> The Constitution of Latvia (*Satversme*), 1922.

<sup>2</sup> The Law on Protection of the Rights of the Child (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>3</sup> The Law on Application of Compulsory Measures of a Correctional Nature to Children (*Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem*), 2002.

## Institutions

The **State Inspectorate for the Protection of Children's Rights** is the main institution supervising and controlling compliance with regulations on the protection of children's rights. Inspectors may conduct negotiations and interview children without the presence of other persons. As there is no special ombudsman dealing with children rights, a special department at the Latvian **Ombudsman's Office** deals with complaints regarding violations of children's rights, paying particular attention to violations committed by State or local government institutions and their employees<sup>4</sup>. There is no special prosecutor's office or court establishment for children, and in general the same professionals who deal with adults also deal with matters involving children.

Institutions that are entrusted with the special task of acting in the interest of children as part of local government institutions are **orphan's courts**. These are guardianship and trusteeship institutions established by a municipality or city government. An orphan's court ensures the protection of the rights and legal interests of a child (or another person lacking capacity to act). Although called a court, orphan's courts perform judicial functions only occasionally. Mostly they deal with conflicts between parents and children, represent children in relation to the State, local governments and law enforcement institutions if the parents or other family members cannot do so, supervise socially disadvantaged families and give advice on the best interests of children in divorces. In collaboration with social services, orphan's courts act locally on information received about possible criminal offences committed against children or by children<sup>5</sup>.

The **State Police** collaborate closely with the State Inspectorate for the Protection of Children's Rights, orphan's courts and non-governmental organisations when dealing with children as victims, witnesses and suspects/defendants. These institutions act on behalf of children when parents/guardians and other family members cannot<sup>6</sup>.

The **State Probation Service** is responsible for promoting restoration of justice and the social reintegration of children in conflict with the law. It provides the opportunity for victims and offenders to engage voluntarily in the process of settlement through an intermediary (victim-offender mediation)<sup>7</sup>. LPRC emphasises the priority of the rights and best interests of the child in all matters that affect the child.

The protection of children's rights has to be pursued through collaboration with the family, State and local government institutions, public organisations and society in general. By working together, the State institutions should ensure a multidisciplinary approach to the protection of children's rights in Latvia:

- The Cabinet of Ministers is responsible for formulating draft laws on the protection of children's rights; it approves long-term State policy projects and the programme for the prevention of child crime and the protection of children from crime;
- The **Ministry of Welfare** is also responsible for long-term State policies in this field and, among other things, extra-familial care and training of employees of the State Probation Service;
- The competence of the **Ministry of Health** includes the formulation, organisation and coordination of child healthcare policy;
- The competence of the **Ministry of Education and Science** includes the formulation of State policy in the field of education and sports and ensuring access to education;
- The **Ministry of the Interior** is responsible for a three-year draft programme for the prevention of child crime and the protection of children from crime, the performance of

<sup>4</sup> The Law on Ombudsman (*Tiesībsarga likums*), 2006.

<sup>5</sup> The Law on Orphan's Courts (*Bāriņtiesu likums*), 2006.

<sup>6</sup> LPRC (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>7</sup> The State Probation Service Law (*Valsts probācijas dienesta likums*), 2004.

the juvenile information system and, amongst others, training the police with respect to children's rights;

- The competence of the **Ministry of Justice**, amongst other things, is to ensure training for judges with respect to children's rights and to ensure that work and workload within courts is organised giving priority to cases involving children;
- Local government is responsible for the analysis of the situation on a regional or city level and for the development and implementation of programmes for the protection of children in their territory; they also provide assistance and support to families with children, ensure the rights of the child to acquire education, and organise parental education<sup>8</sup>.

### **Criminal Trials**

There is a three-level court system in Latvia – 35 district (city) courts, 6 regional courts, and the Supreme Court. All of the criminal cases relating to child offenders, **aged from 14 to 18**, are heard according to a general procedure in any of the 34 district courts by a single judge. The Law on Judicial Power does not require that cases involving children are dealt with by judges specialised in child-related matters. According to the Law on Judicial Power<sup>9</sup>, a Chief Judge of a district (city) court is responsible for allocation of cases among judges. The CPL guarantees mandatory participation of defence counsel for suspects/defendants both in pre-trial investigation and judicial investigation<sup>10</sup>.

Courts in Latvia have to handle a considerable caseload. For this reason, the trial of a case is often delayed for months. According to the CPL, however, the hearing of cases involving children must be given priority. That is specified in the CPL which states that proceedings against a child must be dealt with first and within a reasonable time<sup>11</sup>. Similarly, the LPRC requires that the rights and best interests of a child are observed, and criminal proceedings involving children are heard in a court pursuant to special procedures<sup>12</sup>. The CPL also states that if a child is held in custody, such criminal proceedings must be heard in court no later than 3 weeks from the receipt of the case by the court<sup>13</sup>. Likewise, the CPL sets shorter procedural time limits for children to be held in pre-trial arrest, i.e. half the time specified for adults<sup>14</sup>. The arrest term may not be extended except in exceptional circumstances and, thus, normally the child must be released immediately.

Cases regarding compulsory educational measures in criminal cases applicable to children aged from 11 to 14 are examined by a single judge of the district (city) court. Cases regarding compulsory educational measures in administrative matters are dealt by a local government administrative commission according to the child's place of residence<sup>15</sup>.

### **Young victims, witnesses and suspects/offenders**

The CPL distinguishes between children as victims, witnesses and suspects/defendants. As regards child victims, there are provisions on their representation<sup>16</sup>, exercise of rights<sup>17</sup>,

<sup>8</sup> Report on "[Child-friendly Justice in Latvia: Focusing on Crime Prevention](#)", 2012. Please see also the Programme for Preventing Child Delinquency and Protection of Children Against Criminal Offences from 2013 to 2019 (*Bēru noziedzības novēršanas un bērnu aizsardzības pret noziedzīgu nodarījumu pamatnostādnes 2013.–2019. gadam*: <http://www.mk.gov.lv/lv/mk/tap/?pid=40273658>), to be adopted in 2013.

<sup>9</sup> Article 33 of the Law on Judicial Power (*Likums 'Par tiesu varu'*), 1993.

<sup>10</sup> Article 83 of CPL (*Kriminālprocesa likums*), 2005.

<sup>11</sup> Article 14, para. 4 (*Kriminālprocesa likums*), 2005.

<sup>12</sup> Article 20 of LPRC (*Bēru tiesību aizsardzības likums*), 1998.

<sup>13</sup> Article 488 of CPL (*Kriminālprocesa likums*), 2005.

<sup>14</sup> Article 277 of CPL (*Kriminālprocesa likums*), 2005.

<sup>15</sup> Article 5, para. 2 and 3 of the Law on Application of Compulsory Measures of a Correctional Nature to Children (*Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem*), 2002.

<sup>16</sup> Article 104, para. 2 of CPL (*Kriminālprocesa likums*), 2005.

<sup>17</sup> Article 104, para. 3 and Article 107, para. 2 of CPL (*Kriminālprocesa likums*), 2005.



questioning<sup>18</sup>, procedural protection<sup>19</sup>, prohibition of coercive procedural measures<sup>20</sup> and the child's testimony in the court<sup>21</sup>. Broadly speaking, the same rules that apply to child victims apply to child witnesses.

As regards child suspects/defendants, there are specific rules on their representation<sup>22</sup>, questioning<sup>23</sup>, pre-trial detention and arrest<sup>24</sup>, sentencing<sup>25</sup> and measures of a correctional nature<sup>26</sup>.

At the moment, the CPL does not provide equal rights for child victims and child suspects/defendants in terms of access to legal assistance. While child suspects/defendants must be provided with legal assistance at all times, it is not mandatory for child victims<sup>27</sup>. Child victims, however, will have access to legal assistance and representation free of charge according to **Directive 2011/92/EU on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography**, which needs to be implemented by 18 December 2013<sup>28</sup>.

### **Definition of a child**

There is no definition of the term *child* provided in the CP or CPL. Matters specific to the status of a child are primarily regulated by the Family Law which is a part of the Civil Law adopted in 1937. The Civil Law states that a person is recognised as a child until he/she becomes 18 years old. Until then the child's parents are responsible for him/her<sup>29</sup>. The same is provided in the LPRC.

Latvian law also defines youth. According to the Youth Law adopted in 2008, persons aged between 13 and 25 are considered to be youth<sup>30</sup>. This law, however, does not address any matters related to civil or criminal proceedings. It relates to youths' involvement in policy development and social activities.

### **Age and maturity**

No age limit is set by the CL and CPL for a child's ability to participate in investigations and court proceedings. Whether a child can testify on circumstances of a criminal offence is decided on a case-by-case basis by the person directing the proceedings. He/she takes into account the child's ability to speak and to reflect in his/her own words on what has happened.

According to the Civil Law, **children under 7 years of age** cannot be held liable for a wrongful act as a result of which harm has been caused<sup>31</sup>. This is a general legal rule and means that in Latvia children younger than 7 years of age are not responsible before the law. It is also taken into account when deciding on the child's ability to participate in actions related to an investigation.

<sup>18</sup> Article 107, para. 2, Article 148, para. 2, Articles 152 and 153 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>19</sup> Article 299 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>20</sup> Article 244, para. 3 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>21</sup> Article 501, para. 5 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>22</sup> Article 83 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>23</sup> Article 107, para. 2, Article 148, para. 2, Articles 152 and 153 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>24</sup> Articles 277 and 278 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>25</sup> Articles 64 to 66 of CL ([Krimināllikums](#)), 1998.

<sup>26</sup> Article 522 of CPL ([Kriminālprocesa likums](#)), 2005. The Law on Application of Compulsory Measures of a Correctional Nature to Children ([Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem](#)), 2002.

<sup>27</sup> Article 104, para. 5 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>28</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

<sup>29</sup> Article 219 of the Civil Law ([Civillikums](#)), 1937.

<sup>30</sup> Article 1 of the Youth Law ([Jaunatnes likums](#)), 2009.

<sup>31</sup> Article 1637 of the Civil Law ([Civillikums](#)), 1937.

### **Non-discrimination**

Latvian law in all aspects of child-related justice has provisions on non-discrimination. To start with, the Constitution of Latvia guarantees that human rights are exercised without any discrimination<sup>32</sup>. Also, the LPRC states that children's rights and freedoms are ensured by the State to all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social background, place of residence, property or health status, birth or other circumstances of the child or of his/her parents, guardians, or family members<sup>33</sup>. There is administrative and criminal liability envisaged for violation of non-discrimination provisions<sup>34</sup>.

Finally, the CPL is based on the principle of equality, namely, the same procedural approach is guaranteed to all persons involved in criminal proceedings irrespective of their origin, social and financial situation, employment, citizenship, race, nationality, religion, sex, education, language, place of residence, and other conditions<sup>35</sup>. Up to now, the Ombudsman's Office has not received any complaint related to discrimination against a child in criminal proceedings<sup>36</sup>.

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<sup>32</sup> Article 91 of the Constitution of Latvia ([Satversme](#)), 1922.

<sup>33</sup> Article 3 of LPRC ([Bērnu tiesību aizsardzības likums](#)), 1998.

<sup>34</sup> Article 204 of the Latvian Administrative Violations Code ([Latvijas Administratīvo pārkāpumu kodekss](#)) and Article 149 (1) of the CL ([Krimināllikums](#)), 1998.

<sup>35</sup> Article 8 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>36</sup> Information collected through consultation with national stakeholders.

## 2 Child-friendly justice before and during criminal judicial proceedings

### 2.1 The child as a victim

Broadly speaking, the same rules apply to both adult and child victims. Anyone who has suffered harm, whether psychological/emotional, physical or material, as a result of a criminal offence, can be considered a victim.

A person is formally recognised as a victim by decision of a police investigator or a prosecutor. This decision can only be made with the written consent of the victimised person or his/her representative. If the person objects, he/she is granted the status of a witness.

As regards child victims, however, there are specific rules on their representation<sup>37</sup>, exercise of rights<sup>38</sup>, questioning<sup>39</sup>, procedural protection<sup>40</sup>, prohibition of coercive measures<sup>41</sup> and the child's testimony in the court<sup>42</sup>.

Latvian legislation requires that anyone dealing with the protection of children on behalf of the State or local authorities has specialist knowledge of child-related issues<sup>43</sup>.

Information on the support and rights of victims is also available on the website [www.cietusajiem.lv](http://www.cietusajiem.lv).

#### 2.1.1 Reporting a crime

There are no specific provisions regarding children reporting a crime. Anyone who has suffered from or otherwise learned about a crime may report it:

- to the police by phone (110 and 112 from a landline and mobile phones), letter (post, fax, e-mail) or by going to the nearest police station or online through [e-service application](#);
- to the public prosecution service by letter (post, fax, e-mail) or by going to the public prosecutor's office.

Children are encouraged through social media and information provided on relevant websites to report crime. Besides the general emergency numbers, children may also call the free of charge child helpline (116111) providing psychological help to children and teenagers.

If a child provides information on possible violence or other unlawful activities against him/her, such information is forwarded to the Inspectorate for the Protection of Children's Rights, which performs all the necessary activities in cooperation with the police, the orphan's court and other services. Moreover, anyone who learns that a child is in danger has a duty to inform the authorities<sup>44</sup>. The CL provides for criminal liability for a person who fails to inform authorities where it is known with certainty that preparation for or a commission of serious or especially serious crimes against a child is taking place<sup>45</sup>. Criminal proceedings in Latvia are initiated on the basis of information that is sufficient to indicate that a criminal offence has been committed<sup>46</sup>. Anonymous information is not accepted. If a child reports a

<sup>37</sup> Article 104, para. 2 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>38</sup> Article 104, para. 3 and Article 107, para. 2 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>39</sup> Article 107, para. 2, Article 148, para. 2, Articles 152 and 153 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>40</sup> Article 299 of CPL ([Kriminālprocesa likums](#)), 2005

<sup>41</sup> Article 244, para. 3 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>42</sup> Article 501, para. 5 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>43</sup> Article 20 of LPRC ([Bērnu tiesību aizsardzības likums](#)), 1998.

<sup>44</sup> Article 51, para. 3 of LPRC ([Bērnu tiesību aizsardzības likums](#)), 1998.

<sup>45</sup> Article 315 of CL ([Krimināllikums](#)), 1998.

<sup>46</sup> Articles 369 to 371 of CPL ([Kriminālprocesa likums](#)), 2005.

crime, the police immediately check the information to decide whether to start criminal proceedings or not. If a child has reported the crime in person, within 3 hours the police must contact the parents or guardian, non-governmental organisations or authorities protecting the rights of children, which then act on behalf of the child.

### 2.1.2 Provision of information

Victims, adults and children have a right to information<sup>47</sup>. No legal obligations were identified requiring the police to inform children of their rights when they first report a crime though information is provided to them subsequently. There are also no documents providing that the police and the court must provide information in a child-friendly manner and in a language that children understand, taking into account their age, maturity and abilities. However, practitioners dealing with children are continuously provided with special training and thus are trained to take into account their needs<sup>48</sup>. In the period between 2009 and 2011, 352 police officers were trained on child-related issues<sup>49</sup>.

In general, the rights of children in legal proceedings are exercised through their legal representatives. Thus, any information on the different aspects of judicial proceedings is primarily provided to the representatives, but children are also informed<sup>50</sup>. In particular, prior to their questioning, children are informed of their rights and duties. However, children under the age of 14 are not warned about a refusal to answer questions and about providing a false testimony to avoid their being intimidated by such a warning<sup>51</sup>. In addition, victims are informed of the right to be formally recognised as a victim, the way an interview will be recorded, the right to give testimony in a language the victim understands and the right to be assisted by an interpreter free of charge, of the decision to terminate criminal proceedings, of the date and time of the trial and of the outcome of the trial<sup>52</sup>.

### 2.1.3 Protection from harm and protection of private and family life

#### *Police and courts*

There are several measures that can be taken to ensure the safety of a child if the person who has allegedly committed an offence is a member of the family or primary caregiver.

Any child who has suffered violence, or if there is a real threat of violence, can be separated from the family, unless it is possible to isolate the alleged perpetrator. Therefore, both child victims and witnesses are provided extra-familial care as well as emergency care in a medical treatment institution or assistance in a rehabilitation institution. Furthermore, the police may refuse to notify the child's parents and family members of the child's location and the medical and rehabilitation institutions may prohibit them from meeting the child<sup>53</sup>.

Additionally, through civil proceedings, a court may deprive a parent of parental responsibility. If both parents are deprived of their responsibility, the court requires the orphan's court to appoint a guardian for the child<sup>54</sup>.

<sup>47</sup> Article 98 of CPL.

<sup>48</sup> E.g., Articles 20 and 64 of LPRC ([Bērnus tiesību aizsardzības likums](#)), 1998. Also, the Cabinet Regulations No. 729 regarding Procedures for the Acquisition of Special Knowledge in the Field of Protection of the Rights of the Child and the Content of Such Knowledge ([Noteikumi par speciālu zināšanu apguves kārtību bērnu tiesību aizsardzības jomā un šo zināšanu saturu](#)), 2005.

<sup>49</sup> A report on the "Program for Preventing Child Delinquency and Protection of Children Against Criminal Offences from 2009 to 2011", <http://polsis.mk.gov.lv/view.do?id=3144>, 2012.

<sup>50</sup> Article 151, para. 1 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>51</sup> Article 152, para. 3 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>52</sup> Articles 96, 110, 321 and 392 of CPL ([Kriminālprocesa likums](#)), 2005. See also the report Victims in Europe: Implementation of the European Framework Decision on the standing of victims in criminal proceedings, APAV (Portuguese Victim Support) and Victim Support Europe, p. 64-71, 2009.

<sup>53</sup> Article 27 of LPRC ([Bērnus tiesību aizsardzības likums](#)), 1998.

<sup>54</sup> Articles 200 and 222 of the Civil Law ([Civillikums](#)), 1937.

To avoid any contact between the child and the alleged perpetrator during the court sessions, the court may proceed without the child's presence by reading his/her testimony or playing it (if recorded before) by technical means.

### **Special protection**

Both adult and child victims and witnesses of serious crimes can be granted special procedural protection before and/or after the opening of the investigation if their life, health or other lawful interests are under threat<sup>55</sup>. Children may also be provided such protection when they testify in relation to crimes such as acts leading to depravity, encouraging sexual relationships with a person younger than 16 and cruelty and violence against a child<sup>56</sup>. The decision to grant such protection is based on a written request made by the threatened child or his/her representative to the police officer or the prosecutor in charge of the case<sup>57</sup>. Under this procedure, the child may request anonymity. If approved by the Prosecutor General, the identity data in all documents related to the case are substituted with a false name<sup>58</sup>.

In general, special protection measures may include personal protection; measures ensuring that communications are not wiretapped and correspondence is not opened; relocation to a secret place, including relocation abroad; issuance of personal documents (e.g. passport) with another identity; change of permanent residence; non-disclosure of personal data available in publicly accessible information systems and insurance of personal property<sup>59</sup>.

### **Protection of private and family life**

The protection of the child's identity and dissemination of information concerning the child is regulated by several laws. First of all, general data protection measures set clear conditions for the processing of personal data<sup>60</sup>. Thus, such processing is also strictly regulated in criminal proceedings. Furthermore, criminal proceedings are performed in compliance with internationally recognised civil rights which prohibit unjustified or excessive intervention in a person's private and family life.

There are specific provisions stating that all materials in criminal cases are confidential. Only officials who direct the criminal proceedings (investigators, prosecutors or judges)<sup>61</sup> and those who are granted access by these officials according to law, have the right to access case materials. Such persons, according to law, are victims, defendants, their legal counsels and representatives<sup>62</sup>. After the judgment is delivered, the case materials are available to a wider circle of persons – employees of the court, the Prosecutor's Office, investigating institutions, persons whose rights were violated by the offence and persons performing scientific activities. Everyone who has access to the case materials has a duty to keep the information secret.

Additionally, to safeguard the privacy of child victims and witnesses, the court may decide to hold proceedings in closed session, for example, where the case relates to a crime against

<sup>55</sup> Article 299 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>56</sup> Articles 162, 162<sup>1</sup> and 174 of CL ([Krimināllikums](#)), 1998.

<sup>57</sup> Article 299 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>58</sup> Article 303, para. 3 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>59</sup> Article 16 of the Law on Special Protection for Persons ([Personu speciālās aizsardzības likums](#)), 2005.

<sup>60</sup> The Personal Data Protection Law ([Fizisko personu datu aizsardzības likums](#)), 2000.

<sup>61</sup> A person directing the proceedings, according to Article 27 of CPL, is:

- (a) an investigator or in exceptional cases a public prosecutor – in the investigation phase;
- (b) a public prosecutor – in a criminal prosecution phase;
- (c) a judge who leads the adjudication – in preparing a case for trial, as well as from the moment when the adjudication is announced until the transfer of the case to the next instance or until the execution of the judgment;
- (d) the composition of a court – during a trial;
- (e) a judge – after the judgment enters into force.

<sup>62</sup> Article 375 of CPL ([Kriminālprocesa likums](#)), 2005.

morals or sexual inviolability<sup>63</sup>. There is no provision regarding the victim's right to request a closed session. Neither was a specific provision with regard to appealing such a decision.

There are special rules on the confidentiality of child-related information. Namely, any information obtained by an employee involved in the provision of child care, education, social assistance or any other service provided by State or local government institutions regarding a child who has become a victim, witness or has violated the law, is confidential<sup>64</sup>.

As regards media reporting, it is prohibited to publish information which is confidential. Materials from pre-trial investigations may be published only with the written permission of the prosecutor or the investigator<sup>65</sup>. There is a general prohibition to publish any image of a victim, witness or suspect/defendant recorded as a photograph, video or by any other means during the proceedings without the permission of the person, whether adult or child, or his/her representative. The person directing the proceedings may allow such publication if deemed necessary to disclose the crime<sup>66</sup>. There are special guidelines prepared by the Ombudsman's Office in close collaboration with the Association of Journalists for the media on how to report on issues involving children<sup>67</sup>.

#### 2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment

According to the principle of the protection of children's rights, in all child-related activities, irrespective of whether they are carried out by State institutions, private organisations or individuals, the rights and interests of children take priority<sup>68</sup>.

Submissions and complaints related to the protection of children must be examined without any delay<sup>69</sup>. The interview of the child must take place in premises that are adjusted to the needs of the child. The law does not specify any details, but several regional non-governmental organisations in collaboration with the police have created and provide premises where children can be questioned in a child-friendly environment<sup>70</sup>. There are no fully equipped child-friendly premises in police stations. However, 27 new child-friendly rooms are planned to be created by 2019<sup>71</sup>.

The work and workload within the courts is organised to ensure priority is given to cases involving children<sup>72</sup>. The court proceedings may be adapted in terms of hearing the case in closed sessions and by allowing testimonies to be read or played via technical means, thus, without the presence of a child.

<sup>63</sup> Article 450 of CPL (*Kriminālprocesa likums*), 2005.

<sup>64</sup> Article 71, para. 1 and 2 of LPRC (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>65</sup> Article 7 of the Law on the Press and Other Mass Media (*Par presi un citiem masu informācijas līdzekļiem*), 1990.

<sup>66</sup> Article 66, para. 2, Article 97, para. 9, Article 110, para. 4 of CPL (*Kriminālprocesa likums*), 2005. Article 7 of the Law on the Press and Other Mass Media (*Par presi un citiem masu informācijas līdzekļiem*), 1990.

<sup>67</sup> Guidelines to professionals on how to speak with and about children in the media: [http://www.tiesibsargs.lv/img/content/vadlinijas\\_ka\\_medijos\\_runat\\_ar\\_un\\_par\\_berniem\\_2012.pdf](http://www.tiesibsargs.lv/img/content/vadlinijas_ka_medijos_runat_ar_un_par_berniem_2012.pdf), 2012. Based on Ethical Guidelines for Journalists in other European countries, these Guidelines analyse best practices and provide advice for journalists in Latvia. They cover: (a) how to speak about children (e.g., taking into account their interests and rights, especially if they are involved in a conflict situation) and with children (e.g., not to use the vulnerable position of a child to obtain information); (b) how to use pictures or videos with children (e.g., children should not be easily identifiable); (c) how to use information about children provided by their family members (e.g., information provided by family members in an emotional state should be used in a careful manner).

<sup>68</sup> Article 6, para. 1 and 2 of LPRC (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>69</sup> Article 20, para. 2 of LPRC (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>70</sup> Information collected through consultation with national stakeholders.

<sup>71</sup> The Programme for Preventing Child Delinquency and Protection of Children Against Criminal Offences from 2013 to 2019 (*Bērnu noziedzības novēršanas un bērnu aizsardzības pret noziedzīgu nodarījumu pamatnostādnes 2013.– 2019. gadam*: <http://www.mk.gov.lv/lv/mk/tap/?pid=40273658>), to be adopted in 2013.

<sup>72</sup> Article 64, para. 2 of LPRC (*Bērnu tiesību aizsardzības likums*), 1998.

Access to psychological and practical support is provided to victims of violence by the State, local governments and different non-governmental institutions (crisis centres, social assistance services). Medical help and social rehabilitation is provided and financed by the State<sup>73</sup>. If a child victim needs a companion, his/her accommodation expenses at the receiving institution are also covered by the State<sup>74</sup>.

Special provision exists with respect to victims of human trafficking. Such victims are assisted by a social worker, psychologist and legal counsel, and are provided with medical advice. They are also provided individual rehabilitation and reintegration programmes, support during criminal proceedings, education programmes and housing. The service is funded by the State and for a time period of 6 months<sup>75</sup>.

### 2.1.5 Protecting the child during interviews and when giving testimony

There are specific provisions aimed at protecting the child during interviews and when giving testimonies. To start with, the invitation to children is sent through intermediaries (legal representatives, educational institutions or the orphan's court). However, if there are circumstances that hinder such an invitation (for instance, if an allegedly abusive parent could receive the invitation), it is done without any intermediaries. Also, a child victim who is under 14 years of age and who has suffered from violence or sexual abuse committed by a person he/she is dependent on may not be obliged to take part in an interview<sup>76</sup>.

Children under the age of 14 (and also older children if deemed necessary by the person directing the proceedings (investigators, prosecutors or judges), for instance, in cases of violence and sexual abuse) must be interviewed in the presence of a teacher or a specialist who has acquired specific psychological knowledge in relation to children in criminal proceedings<sup>77</sup>.

If the psychologist concludes that a face-to-face interview may have negative consequences for the child's physical and emotional well-being, the interview takes place with the aid of technical means (e.g. audio/video recording) in the presence of a psychologist (the child's representative may also be there if the child does not object). This provision relates to children under the age of 14 and those who are victims of violence or of sexual abuse by parents or other caregivers.

A room that is suitable for a conversation with a child must also be technically adapted to ensure that the conversation can be seen and heard by the person directing the proceedings (investigators, prosecutors or judges) and that the questions asked can be heard only by the psychologist. The procedure is explained and the questions are asked having been adapted to the needs of the child.

The law limits the length of the interview to a maximum of 6 hours a day, including a break. However, if the child does not object, the interview may continue. Conversely, the number of questioning sessions is not limited. The psychologist, however, may advise against multiple questioning. In this case, any further questioning requires the permission of the investigative judge or the court<sup>78</sup>.

<sup>73</sup> Article 52 of LPRC (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>74</sup> Para. 69 of CRIN National Report on Latvia: <http://www.crin.org/resources/infodetail.asp?id=25545#aa>, 2011. Cabinet Regulations Nr.1613 "The Procedure of the Necessary Assistance Provision to Children who have Suffered from Unlawful Activities" (*Kārtība, kādā nepieciešamo palīdzību sniedz bērnam, kurš cietis no prettiesiskām darbībām*), 2009.

<sup>75</sup> Cabinet Regulations Nr.889 "Rules on Procedures for Trafficking Victims to Receive Social Rehabilitation Services, and the Criteria for the Recognition of Human Trafficking Victims" (*Noteikumi par kārtību, kādā cilvēku tirdzniecības upuri saņem sociālās rehabilitācijas pakalpojumus, un kritērijiem personas atzīšanai par cilvēku tirdzniecības upuri*), 2006.

<sup>76</sup> Article 152, paras. 3 and 4 of CPL (*Kriminālprocesa likums*), 2005.

<sup>77</sup> Articles 152 and 153 of CPL (*Kriminālprocesa likums*), 2005.

<sup>78</sup> Ibid.

As indicated before, to protect the child from the trauma of giving testimony in court, the court may decide to proceed without the presence of the child. That is, a child's testimony is either read out or played (if recorded previously) in court. No specific provision was identified on the child's or his/her representative's right to request the use of such means.

Regarding the admissibility of evidence, the law requires that all information regarding the facts acquired during criminal proceedings is obtained and written in minutes. Children younger than 14 years of age do not need to sign the minutes, while older children are required to read and sign every page. Minutes are also signed by the person directing the investigation and the child's legal counsel and legal representative if present. The person directing the investigation is responsible for complying with the rules. If that has not been done, the court may declare the evidence inadmissible<sup>79</sup>.

If the interview took place with the aid of technical means in the presence of a psychologist who asked questions prepared by the investigator and was recorded on video, this interview is admissible as evidence in a criminal case.

### 2.1.6 Right to be heard and to participate in criminal proceedings

A child must be given the opportunity to be heard in any proceedings relating to him/her, either directly or through a representative. In criminal proceedings specifically, however, child victims cannot exercise their rights in their own capacity, except to provide testimony and express their views. Children older than 15, may exercise their rights together with their representative<sup>80</sup>.

Victims may be involved in all stages of proceedings and in all types of activities during the investigation and the court hearings. At all times, victims (whether adult or child) have the right to initiate a settlement with the offender, which may lead to the termination of proceedings.

As established in the CPL<sup>81</sup>, in the pre-trial criminal proceedings the victim's main rights are as follows:

- to familiarise themselves with the registration page of the case (Criminal Proceedings Register)<sup>82</sup> and to request the removal of officials appointed to the case (for instance, due to potential conflict of interests);
- to submit applications requesting performance of investigative and other actions (such as to perform an expert-examination, invite a witness);
- to familiarise themselves with a decision to perform an expert-examination in advance, and to request amendments thereof (to be informed, for instance, that a witness will be questioned and to request that certain questions are asked);
- to submit complaints on the actions of officials involved in criminal proceedings;
- to apply for compensation;
- to appeal procedural decisions (for instance, a decision not to invite a witness suggested by the victim);
- to receive copies of the case materials that will be transferred to the court;

<sup>79</sup> Article 130 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>80</sup> Article 104, para. 4 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>81</sup> Articles 98 to 101 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>82</sup> According to Article 376 of CPL, the Criminal Proceedings Register is the registration page, inserted in each criminal case that begins with an entry regarding the initiation of criminal proceedings and ends with information regarding the entering into effect of the judgment. During the course of criminal proceedings, information listed on the page includes the legal classification of the offence, recognition of a person as a suspect, security measures applied; information on the officials who perform the concrete criminal proceedings. Any person involved in criminal proceedings has the right within three working days to familiarise him or herself with the Criminal Proceedings Register.



- to submit a request to have access to information not appended to the primary documents (sensitive or confidential information obtained through special investigative actions such as surveillance);
- in questioning and interviews, the victim also has all the rights and duties of a witness (such as the duty not to disclose the content of questioning and interviews).

In court sessions, the victim's main rights (varying slightly depending on the circumstances) are as follows:

- to receive information about the time and place of the court hearing;
- to receive information about the participants in the trial (judge, prosecutor, experts, etc.) and request their removal;
- to express opinions regarding every matter to be discussed, including the penalty to be imposed on the offender;
- to ask questions to witnesses and experts and make comments on the evidence (to participate in the examination of a criminal case, to participate in an examination performed directly and orally of each piece of evidence to be examined in court);
- to check the documents in the case file and make copies;
- to check the court decisions and the transcripts of the hearings;
- to submit applications;
- to speak in court debates;
- to familiarise themselves with the judgment and the minutes of a court session;
- to make an appeal.

If a child is involved in the criminal proceedings and does not speak the official language, he/she has the right to use the language he/she understands and to be assisted by an interpreter free of charge<sup>83</sup>.

### 2.1.7 Right to legal counsel, legal assistance and representation

Child victims have both the right to legal representation and legal assistance<sup>84</sup>. Children can be represented by a parent or guardian, a grandparent, brother or sister of legal age, i.e. 18 years and over, a representative of an authority protecting the rights of children or a representative of a non-governmental organisation involved in protecting the rights of children.

Victims and their representatives have the right to choose a legal counsel, but the State does not fund it. Legal assistance which is free of charge is provided on the basis of a decision taken by the person directing the proceedings (investigators, prosecutors or judges) provided that the child's rights and interests are endangered or otherwise not ensured or his/her representative has made such a request. Once the person directing the proceedings has made a request to the Latvian Council of Sworn Advocates, a legal counsel must be assigned within 3 days<sup>85</sup>.

Legal aid (and compensation to victims of crime) and payment for it is provided by the Legal Aid Administration. It is an administrative institution responsible to the Ministry of Justice. Services are provided free of charge.

<sup>83</sup> Article 11 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>84</sup> Article 104, para. 1, 2 and 5 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>85</sup> Article 104, para. 6 of CPL ([Kriminālprocesa likums](#)), 2005.

### 2.1.8 Remedies or compensation exist for violation of rights and failure to act

There are measures in place allowing a victim (whether adult or child) to claim restitution and compensation. First of all, the CPL provides a duty for the investigator to perform all measures provided for in the law to ensure compensation for harm<sup>86</sup>. Secondly, a victim can claim restitution for psychological/emotional, physical or material loss caused by the person who committed the crime. If the victim believes that the full harm caused to him/her has not been compensated, he/she or his/her representative may also make a civil claim<sup>87</sup>. No child specific arrangements were identified regarding a claim for compensation.

The law also provides the right to claim financial compensation from the State for psychological/ emotional, physical or material loss. The criminal offences for which the victim may ask for compensation are limited. Namely, the intentional criminal offence must have resulted in the death of a person, the victim must have suffered grave or moderate bodily injuries or from sexual abuse or must have been infected with HIV, hepatitis B or C or must have been a victim of human trafficking<sup>88</sup>.

As mentioned above, compensation to victims of crime is provided by the Legal Aid Administration.

## 2.2 The child as a witness

Broadly speaking, the same rules apply both to adult and child witnesses. A witness is a person who has been invited to provide information (testify) regarding the circumstances and facts related to a criminal offence<sup>89</sup>.

### 2.2.1 Reporting a crime

In general, the provisions applicable to child victims are also applicable to child witnesses. Therefore, in this regard please see [section 2.1.1](#).

### 2.2.2 Provision of information

A witness, whether adult or child, has the right to know in which criminal proceedings he or she has been invited to testify, to which official he or she has provided information, and the procedural status of said official. Before an inquiry and interview, a witness has the right to receive information from the person directing the proceedings (or another official, for instance, police officer or an expert examiner instructed to do so by the person directing the proceedings) regarding his or her rights, duties, and liability, the mode of the recording of information, as well as regarding the right to provide testimony in a language that he or she knows well, using the services of an interpreter, if necessary<sup>90</sup>. No specific legal requirements for the provision of information to child witnesses have been identified. Therefore, please see [section 2.1.2](#) as regards victims and witnesses in general.

### 2.2.3 Protection from harm and protection of private and family life

In general, the provisions applicable to child victims are also applicable to child witnesses. Therefore, in this regard please see [section 2.1.3](#).

### 2.2.4 Minimising the burden of proceedings and ensuring a child-friendly environment

Please see [section 2.1.4](#) for an overview as regards children in general. In contrast to victims, however, there are no specific provisions on access to psychological and practical

<sup>86</sup> Article 29 of CPL (*Kriminālprocesa likums*), 2005.

<sup>87</sup> Article 350 of CPL (*Kriminālprocesa likums*), 2005.

<sup>88</sup> Article 1 of the Law on the State Compensation to Victims (*Par valsts kompensāciju cietušajiem*) in accordance with the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, 2006.

<sup>89</sup> Article 109, para.1 of CPL (*Kriminālprocesa likums*), 2005.

<sup>90</sup> Article 110 of CPL (*Kriminālprocesa likums*), 2005..

support for child witnesses. If the police find it necessary, psychological and other types of assistance may be requested from social institutions providing help in crisis situations. Also, psychological assistance and social rehabilitation services are available free of charge to people with a low income.

As mentioned before, all children who have suffered from violent crime have the right to receive special medical and social rehabilitation assistance. Depending on the case, such assistance can be provided at home or in a specialised facility<sup>91</sup>.

### 2.2.5 Protecting the child during interviews and when giving testimony

The provisions on interviews and testimony in general apply to all children. In that regard, please consult [section 2.1.5](#). In contrast to victims, however, the law does not provide any exception as regards obliging a child witness (and suspects/defendants) to participate in questioning<sup>92</sup>.

### 2.2.6 Right to be heard and to participate in criminal proceedings

Witnesses in general, both adults and children, have fewer possibilities to participate in the proceedings. In criminal proceedings they have the following rights: to make notes and additions to testimonies recorded in writing or to write their statement by hand; to submit a complaint about the progress of an inquiry or interview during pre-trial criminal proceedings and to submit a complaint to the investigating judge if a personal secret has been disclosed. In cases of unlawful or unjustified behaviour of the person directing the proceedings, a witness may submit a complaint to a higher level institution: as regards the actions of the police – to the public prosecutor office, but for actions of the public prosecutor office – to the supervisory public prosecutor office or Prosecutor General. In court sessions, witnesses may be present during the proceedings only when testifying<sup>93</sup>.

### 2.2.7 Right to legal counsel, legal assistance and representation

A child witness has the right to a legal counsel, however, it is not provided free of charge.

There is no specific provision regarding legal representation of a child witness. However, the procedure for inviting a child witness to testify requires sending the invitation to his/her legal representative, educational institution or the orphan's court<sup>94</sup>, and a lawful representatives or a close relative is allowed to be present during questioning<sup>95</sup>.

### 2.2.8 Remedies or compensation for violation of rights and failure to act

In general, witnesses do not have special rights to claim compensation, unless formally recognised as a victim of the offence. Yet, in line with the Latvian Constitution, anyone (child or adult) whose rights have been violated without legal justification has a right to compensation<sup>96</sup>. Thus, anyone who has suffered damage from unlawful or unjustified actions done on behalf of the State may request compensation as prescribed by law<sup>97</sup>. Anyone can also submit a complaint to the Ombudsman who has the responsibility to examine

<sup>91</sup> The Cabinet Regulations Nr.1613 “The Procedure of the Necessary Assistance Provision to Children who have Suffered from Unlawful Activities” ([Kārtība, kādā nepieciešamo palīdzību sniedz bērnam, kurš cietis no prettiesiskām darbībām](#)), 2009.

<sup>92</sup> Article 244 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>93</sup> Article 495 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>94</sup> Article 146, para. 3 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>95</sup> Article 152, para. 2 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>96</sup> Article 92 of the Constitution of Latvia ([Satversme](#)), 1922.

<sup>97</sup> The Compensation Law for Damages Caused by the State Authorities ([Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums](#)), 2005.

submissions of individuals and initiate an investigation if necessary to clarify circumstances<sup>98</sup>.

## 2.3 The child as a suspect/defendant

In general, the same provisions apply to adult and child suspects/defendants. However, there are special rules regarding representation<sup>99</sup>, questioning<sup>100</sup>, pre-trial detention and arrest<sup>101</sup> and measures of a correctional nature<sup>102</sup> applicable to children.

Latvian legislation also requires that anyone dealing with the protection of children on behalf of the State or local authorities has specialist knowledge of child-related issues (including investigators, prosecutors and judges)<sup>103</sup>.

### 2.3.1 Age of criminal responsibility

Latvian law defines a child as a person under the age of 18. Furthermore, there is a distinction between children under and above the age of 14. If a criminal offence is committed by someone younger than 14, the person directing the proceedings (usually, the investigator or prosecutor) does not initiate criminal proceedings<sup>104</sup>. **As of 14 years of age**, a child may be held fully criminally liable and, thus, be detained and imprisoned. **Children aged from 11 to 14 can only be subject to special penal measures** – compulsory correctional measures<sup>105</sup>, while children from 14 years of age can be subject to both correctional measures and criminal sanctions depending on the issue at stake. Thus, in Latvia, the age of criminal responsibility is 14 years of age, but already from the age of 11, children can be subject to certain penal measures<sup>106</sup>.

### 2.3.2 Provision of information

Children and their representatives are informed of their rights and duties regardless of their procedural status: as a person against whom criminal proceedings have been initiated<sup>107</sup>, a person who is detained<sup>108</sup>, a suspect<sup>109</sup>, accused<sup>110</sup> or convicted person<sup>111</sup>. Furthermore, they have the right to receive the information in written form<sup>112</sup>. As with victims and witnesses, there are no documents providing that the court and the police must provide information in a child-friendly manner and in a language that children understand, taking into account their age, maturity and abilities.

When a child is detained, the person is immediately informed of the reason for detention and on the right to remain silent as well as that everything that is said may be used against him/her<sup>113</sup>. Furthermore, in the event of detention of a child the person directing the

<sup>98</sup> Article 12, para. 2 of the Law on Ombudsman ([Tiesībsarga likums](#)), 2006.

<sup>99</sup> Articles 83 and 89 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>100</sup> Article 107, para. 2, Article 148, para. 2, Articles 152 and 153 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>101</sup> Articles 277 and 278 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>102</sup> The Law on the Application of Compulsory Measures of a Correctional Nature to Children ([Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem](#)), 2002.

<sup>103</sup> Article 20 of LPRC ([Bērnu tiesību aizsardzības likums](#)), 1998.

<sup>104</sup> Article 373 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>105</sup> The Law on the Application of Compulsory Measures of a Correctional Nature to Children ([Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem](#)), 2002.

<sup>106</sup> Article 11 of CL ([Krimināllikums](#)), 1998.

<sup>107</sup> Article 61 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>108</sup> Article 62 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>109</sup> Article 65 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>110</sup> Article 69 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>111</sup> Article 74 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>112</sup> Articles 63 and 66 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>113</sup> Article 265, para. 1 of CPL ([Kriminālprocesa likums](#)), 2005.

proceedings (investigators, prosecutors or judges) has an obligation to inform the parents/guardians or family members who are of legal age, i.e. 18 years and over. The law requires this to be done within 3 hours.

Importantly, the participation of legal counsel is mandatory in criminal proceedings involving children who are recognised as suspects/defendants<sup>114</sup>. The child also has the right to be represented by his/her parents or guardian, non-governmental organisations or authorities protecting the rights of children. They can participate in the proceedings with the permission of the person directing the proceedings (investigators, prosecutors or judges). Such a decision must be made without delay and no later than 3 days from the representative's request<sup>115</sup>. A negative decision can be appealed against before the supervising public prosecutor<sup>116</sup>.

### 2.3.3 Immediate actions following first contact with police or other relevant authority

Following the first contact with a child, the police are required to provide the child with information on the reason for detention and his/her rights. The police have an obligation to inform the parents/guardians or family members of legal age. The law requires that it is done within 3 hours. The child cannot contact his/her parents or family members in his/her own right, but can request that the police do so on his/her behalf<sup>117</sup>.

As legal assistance to the suspect/defendant is mandatory in criminal proceedings, the person directing the proceedings ensures that a defence counsel is assigned to the child and present in all stages of proceedings and in all types of activities. If the rule is violated, the court can refer the case to a higher level of the police or the prosecutor to repeat the investigation<sup>118</sup>.

#### *Detention measures*

Both adults and children can be detained for up to 48 hours. Before this term expires, the investigator or prosecutor has to either propose the arrest or release of the child. The investigator, with the consent of a public prosecutor may terminate criminal proceedings and send the materials for application of alternative measures, i.e. compulsory measures of a correctional nature<sup>119</sup>. Otherwise, the requirements for detention are strictly prescribed by the law and permission of an investigating judge is not necessary<sup>120</sup>.

The decision on the arrest is made by an investigating judge. Any person to whom the measure of arrest has been imposed, has a right to appeal the decision irrespective of whether it has been done during the pre-trial investigation or during the examination of the case in court.

The law provides exceptions from the general rules in relation to the arrest of children<sup>121</sup>. If a child is a suspect or accused of committing a minor offence or of committing a crime through negligence, detention of the child is prohibited unless he/she is under the influence of intoxicating substances which has led to the death of a person. In case of an intentional, but less grave crime, a child may be arrested only if he/she has previously violated a provision of another security measure or a compulsory educational measure. A child may, however, be arrested for an especially grave crime.

During the detention, a person (adult or child) is placed in a short-term detention room and should be transported to the court where a judge decides on the security measures. If the

<sup>114</sup> Article 83 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>115</sup> Article 89 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>116</sup> Articles 336 and 337 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>117</sup> Article 63 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>118</sup> Articles 486, para. 3 and 130 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>119</sup> Article 379, para 2 of the CPL ([Kriminālprocesa likums](#)), 2005.

<sup>120</sup> Articles 263 to 270 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>121</sup> Article 273 of CPL ([Kriminālprocesa likums](#)), 2005.

judge decides to apply the security measure of arrest, he/she will be transported to the investigation prison. In the short term, in the detention rooms and the investigation prisons, children and adults should be kept separately<sup>122</sup>.

In relation to the conditions of detention, the same rules apply both to adults and children. The only exception is that children have the right to go for an hour long walk if they have been detained for more than 24 hours compared to 30 minutes for adults<sup>123</sup>.

### 2.3.4 Conditions for pre-trial detention/ custody

#### *Custody (Investigation prisons)*

For information on the terms of the police detention, please consult [section 2.3.3](#). There are specific rules as regards arresting children or placing them in 'investigation prisons' during pre-trial proceedings<sup>124</sup>:

1. The time for which a child can be arrested is half of the maximum term applicable to adults:
  - for a less serious crime no longer than 2 months;
  - for a serious crime no longer than 3 months;
  - for an especially serious crime no longer than 7 months.
2. The time for which a child can be arrested may not be extended, except in the case of an especially grave crime which has resulted in a death or the crime was committed using firearms or explosives; it can be extended by a higher-level judge for no more than 3 months.

Any person to whom the measure of arrest has been imposed, has a right to appeal the decision irrespective of whether arrested during the pre-trial investigation or during the examination of the case in court.

Children and adults should be kept separately in both short term detention rooms and investigation prisons<sup>125</sup>. Boys are placed in the Juvenile Detention Facility in the city of Cēsis and girls are placed in a separate section of the *Iļģuciems* prison for women.

Children placed in investigation prisons have the following rights: to meet with parents and relatives once a week; to have a walk for no less than 1.5 hours per day (compared to 1 hour for adults) in an area suitable for the practice of physical and sporting activities; to participate in social rehabilitation and educational, cultural and sporting events.

If the child is punished for violating the facility rules, he/she may be placed in isolation for up to 10 days (compared to 15 days for adults). In this case, the child has the right to have a walk for no less than an hour a day. The child may be allowed to leave the facility if (and for the time) he/she needs to take exams in an educational institution. The child then stays under the supervision of the investigation prison<sup>126</sup>.

### 2.3.5 Protection of private and family life

As explained in [section 2.1.3](#), criminal proceedings are performed in compliance with internationally recognised civil rights prohibiting unjustified or excessive intervention in a person's private and family life and guaranteeing the presumption of innocence.

<sup>122</sup> Article 4, para. 3 of the Law on the Procedures for Holding the Detained Persons ([Aizturēto personu turēšanas kārtības likums](#)), 2005.

<sup>123</sup> Article 8 of the Law on the Procedures for Holding the Detained Persons ([Aizturēto personu turēšanas kārtības likums](#)), 2005.

<sup>124</sup> Article 273, para. 2 and Article 277 of CPL ([Kriminālprocesa likums](#)) 2005.

<sup>125</sup> Article 11, para. 2 of the Law on the Order of Keeping in Custody ([Apcietinājumā turēšanas kārtības likums](#)), 2006.

<sup>126</sup> Article 18 of the Law on the Order of Keeping in Custody ([Apcietinājumā turēšanas kārtības likums](#)), 2006.

To safeguard the privacy of suspects/defenders the court may decide to hold proceedings in closed sessions, among others, when the crime has been committed by a person under the age of 16<sup>127</sup>.

In contrast to the provision of information relating to victims and witnesses, the place of residence and telephone numbers of those exercising the right of defence, including children, is available not only to the person directing the proceedings, but also to those whom he/she has granted the right of access as prescribed by law<sup>128</sup>.

### 2.3.6 Alternatives to judicial proceedings

#### *Measures of an educational nature*

Alternative measures to judicial proceedings applicable to children are measures of a correctional or educational nature. The aim of such measures is not to punish but rather to facilitate the child's personal development, orientate the child towards refraining from illegal actions, and re-integrate the child into society<sup>129</sup>.

There is one educational institution for social correction in Latvia - *Naukseni*, where boys and girls aged between 11 and 18 are involved in activities to master different skills and ensure they receive basic education. If necessary they are provided with assistance in overcoming addictions and improving their health in general. A child can be placed in the educational institution for social correction for a period of 1 to 3 years<sup>130</sup>.

Coercive educational measures may be applied to:

1. children aged 14, 15, 16 and 17 who are released from criminal liability or punishment, or who have been sentenced to coercive educational measures;
2. children aged 11, 12 and 13 for committing a criminal offence.

The decision is based on the nature and circumstances of the criminal offence, the child's character and taking into account liability based on aggravating or mitigating considerations<sup>131</sup>. As the decision is made by the regional court or judge, even at the age of 11, children are involved in proceedings before the court. Additionally, if the child fails to perform the duties imposed, the penalty may be enforced.

The measures applied to children vary from preventive to punitive. It can be a warning; duty to apologise to the victim; custody of parents/guardians, authorities or organisations; compulsory work to eliminate the consequences of the harm caused; duty to reimburse the harm caused if the child has reached the age of 15 and has income; behaviour restrictions; duty to perform community service and placing the child in an educational establishment for social correction<sup>132</sup>.

Community service envisages tasks that the child does for the community free of charge in the place of residence in his/her free time from school or work. In terms of content, it is the same as community service in the case of a criminal punishment. It is organised and supervised by the State Probation Service. Children may be employed for no more than 2 hours per day and no more than 10 hours per week. It is prohibited to employ children after 8pm<sup>133</sup>.

<sup>127</sup> Article 450, para. 3(1) of CPL (*Kriminālprocesa likums*), 2005.

<sup>128</sup> Article 375, para. 3 of CPL (*Kriminālprocesa likums*), 2005.

<sup>129</sup> The Law on the Application of Compulsory Measures of a Correctional Nature to Children (*Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem*), 2002.

<sup>130</sup> An establishment for social correction (*Sociālās korekcijas izglītības iestāde "Nauksēni"*): <http://www.naukseniskii.edu.lv>.

<sup>131</sup> Article 522 of CPL (*Kriminālprocesa likums*), 2005.

<sup>132</sup> At the moment, there is one such establishment for social correction in Latvia: <http://www.naukseniskii.edu.lv>.

<sup>133</sup> Cabinet Regulations Nr. 711 "Implementation of Coercive Educational Measure – the Community Service – by the State Probation Service" (*"Kārtība, kādā Valsts probācijas dienests organizē audzinoša rakstura piespiedu līdzekļa - sabiedriskais darbs - izpildi"*), 2010.

Although from the content perspective educational measures do not differ much from criminal measures, there can be differences as regards the child's criminal record. For instance, if a child younger than 18 years of age has committed a minor offence, after serving the punishment, he/she is regarded as not having been convicted<sup>134</sup>. In practical terms, however, the deletion of a criminal record is rather formal. The details of previous criminal records (offences, sentences, etc.) are kept in the Punishment Register, even after the child reaches the age of 18. This record cannot be deleted and can serve as a basis to prohibit the person from becoming a civil servant, prosecutor, judge, etc. The information is stored in an archive database and is destroyed after the expiry of the storage time period, which is 10 years after the person's death<sup>135</sup>.

### Conciliation

Cases where a compulsory education measure may be applied can also be settled by mutual agreement. Such agreement is implemented by the State Probation Service which is responsible for promoting the restoration of justice and the social reintegration of children in conflict with the law<sup>136</sup>.

There are two 'forms' of mediation process differing mainly in the number of sides involved - either it is limited to the offender, the victim, their representatives and the mediator or representatives of orphan courts, social workers and others are involved as well. This second 'expanded' mediation process form is referred to as conferencing<sup>137</sup>. The State Probation Service provides the opportunity for a victim and offender to engage voluntarily in the process of settlement through an intermediary (also known as victim-offender mediation). The procedure consists of a series of meetings with the victim in the presence of a mediator. Both the victim and the offender may seek conciliation at any stage of the criminal proceedings.

The mediator has a duty to ask the child's legal representative permission to start the conciliation process. If the representative refuses to participate, a representative from the orphan's court is appointed. Importantly, if the legal representative, the mediator or a representative of the orphan's court raises concerns as to whether a meeting with the offender would harm the child victim, the conciliation is done without the presence of the child, thus, via his/her legal representative<sup>138</sup>.

### 2.3.7 Minimising the burden of proceedings and ensuring a child-friendly environment

As mentioned before, according to the principle of protection of children's rights, in all child-related activities, irrespective of whether they are carried out by State institutions, private organisations or individuals, the rights and interests of children must be given priority<sup>139</sup>.

There is no obligation set by law to prepare or support children during proceedings. However, there are specific rules on questioning and that it should be done in premises adapted to the needs of children<sup>140</sup>.

The responsibility to provide general support to a child who has been involved in criminal proceedings is shared between local municipalities, parents, educational institutions, police and non-governmental organisations.

<sup>134</sup> Article 65 of CL (*Krimināllikums*), 1998.

<sup>135</sup> Articles 9, 10 and 21 of the Law on Punishment Register (*Sodu reģistra likums*), 2005.

<sup>136</sup> Article 4 of the State Probation Service Law (*Valsts probācijas dienesta likums*), 2004.

<sup>137</sup> Information provided in writing by the Latvian authorities.

<sup>138</sup> Article 13 of the State Probation Service Law (*Valsts probācijas dienesta likums*), 2004; Cabinet Regulations Nr. 825 "Procedure on Organising and Implementing Conciliation with the Participation of a Mediator by the State Probation Service" (*"Kārtība, kādā Valsts probācijas dienests organizē un vada izlīgumu ar starpnieka palīdzību"*), 2007.

<sup>139</sup> Article 6, para. 1 and 2 of LPRC (*Bērnu tiesību aizsardzības likums*), 1998.

<sup>140</sup> Information collected through consultation with national stakeholders.



### 2.3.8 Protecting the child during interviews and when giving testimony

Apart from the requirement that a child suspect/defendant must always be represented by a defence counsel and that a child suspect/defendant may be obliged to participate in an interview, the same provisions apply to child victims, witnesses and suspects/defendants regarding interviews and testimony. Therefore, please consult [section 2.1.5](#).

### 2.3.9 Right to be heard and to participate in criminal proceedings

According to the law, the participation of the accused in criminal proceedings is mandatory<sup>141</sup>. In this regard, the law does not provide any exception for children. Thus, the child must participate in hearings and has the same rights as an adult, except that the presence of a defence counsel is mandatory for children in all stages of proceedings and in all types of activities.

The suspect/defendant has a wide range of rights in all stages of proceedings and in all types of activities during the investigation and the court hearings, and most importantly the right to:

- submit applications requesting the performance of investigative actions and participation in such operations (such as to perform an expert-examination, invite a witness);
- participate in investigative actions (such as in the examination of premises, vehicles, or objects);
- submit complaints (usually regarding investigative actions);
- appeal procedural decisions (for instance, if a decision is taken not to interview a witness suggested by the suspect/defender);
- make a settlement with the victim;
- submit an application requesting to terminate criminal proceedings (for instance, in cases where a minor offence was committed and all damages were redressed);
- participate in a meeting with the investigating judge when his/her complaints and applications are examined;
- receive copies of the materials of a criminal case and submit a request to have access to information not appended to the primary documents (sensitive or confidential information obtained through special investigative actions such as surveillance);
- consent to the termination of criminal proceedings;
- be informed in a timely manner on the place and time of the trial;
- agree not to examine evidence in a court session;
- express his/her views regarding each matter discussed;
- participate in the examination of evidence;
- submit requests (such as to postpone a court session);
- testify;
- participate in discussions, if the defence counsel does not participate;
- make the closing statement;
- receive a copy of a court judgement, access the minutes of a court session, as well as submit notes thereon to append to the materials of the case;
- submit an appeal<sup>142</sup>.

<sup>141</sup> Article 463 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>142</sup> Articles 66 to 73 of CPL ([Kriminālprocesa likums](#)), 2005.

If a child does not speak the official language, he/she has the right to use the language he/she understands and to be assisted by an interpreter free of charge. As mentioned before, the participation of a defence counsel in a court session is mandatory. If the legal counsel does not arrive, the adjudication of the case is deferred.

Children are informed of their rights at all stages of the proceedings. However, there are no explicit provisions requiring the court and other officials to provide information in a child-friendly manner and in a language that children understand, taking into account their age and maturity. There is no obligation to ensure that children have understood the questions asked and the decisions taken. However, all the practitioners dealing with children are required to follow special training and, thus, should be able to act in accordance with their needs<sup>143</sup>.

### 2.3.10 Right to legal counsel, legal assistance and representation

As mentioned before, participation of a defence counsel is mandatory in criminal proceedings involving child suspects/defendants. The child also has the right to be represented by his/her parents or guardian, non-governmental organisations or authorities protecting the rights of children. They can participate in the proceedings with the permission of the person directing the proceedings, but likewise (through the permission) the child may waive the right to have a legal representative present during questioning. The role of a child's representative is rather to assist in the proceedings (be present, ask for information) than be a representative of the child's interests in the proceedings.

The child together with his/her representative has the right to choose a legal counsel. However, in this case the legal assistance provided is not funded by the State. Otherwise, it is ensured by the person directing the proceedings (police, prosecutor or the judge) that a defence counsel is provided. As far as possible, the same counsel represents the child throughout the proceedings. If for some reason it is not possible, another counsel is assigned. A child does not have the right to refuse a defence counsel<sup>144</sup>.

The expenses for the assistance of a defence counsel are determined in the judgment. The expenses for a counsel can be reclaimed from the child (if he/she has income) or his/her parents. In case the family cannot afford to cover these expenses, it is funded by the State.

### 2.3.11 Remedies or compensation for violation of rights and failure to act

During detention or while in imprisonment, every child has the right to seek redress through a submission to institutions for the protection of the rights of the child (orphan's court, the Inspectorate for the Protection of Children's Rights, Ombudsman's Office, and the Latvian Children's Fund). Such communications may not be censored. The manager of the institution is responsible for ensuring that the submission is sent without any delay<sup>145</sup>.

The arrested or accused (whether adult or child) may request compensation for damages resulting from unlawful or unjustified behaviour of the police, prosecution or the judiciary if the person has been acquitted by the court irrespective of the reasons, in cases of exoneration and unlawful arrest. A special law prescribes provisions and the procedure for the compensation of damages<sup>146</sup>.

If the person is acquitted by the court, the request for compensation must be submitted to the Ministry of Justice. If the case is closed during the investigation, the request must be

<sup>143</sup> The Foundation Latvian Judicial Training Centre provides training to judges. Through different lectures judges are trained on specific child-related matters. In 2012, for instance, specific training was organised on the questioning of children and evaluating their testimonies. Information collected through consultation with national stakeholders.

<sup>144</sup> Article 88, para. 3 of CPL (*Kriminālprocesa likums*), 2005.

<sup>145</sup> Article 57, para. 2 of LPRC (*Bērnū tiesību aizsardzības likums*), 1998.

<sup>146</sup> The Law on the Compensation of Damages Incurred as a Result of Unlawful or Unjustified Behaviour of the Police, Prosecution or the Judiciary (*Par izziņas iestādes, prokuratūras vai tiesas nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu*), 1998.

submitted to the Prosecutor General. The time limit for examining such a request is 3 months with possible extension for 2 months<sup>147</sup>.

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<sup>147</sup> Article 7 of the Law on the Compensation of Damages Incurred as a Result of Unlawful or Unjustified Behaviour of the Police, Prosecution or the Judiciary ([Par izzinas iestādes, prokuratūras vai tiesas nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu](#)), 1998.

## 3 Child-friendly justice after judicial proceedings

### 3.1 The child as a victim or offender

#### 3.1.1 Provision of information

According to the law, the sentence is declared verbally in court<sup>148</sup>. If only the decision stating the punishment is announced, the court indicates on what date the full judgment will be available. When declaring the sentence, the court also explains the procedures and deadlines for any appeal.

Once the full judgment is made available, all parties receive a copy of it. If a person involved in the proceedings (except prosecutors and legal counsels) does not have knowledge of the official language, a translation is provided in a language which he/she understands. Within 10 days of when the translation is made available, those involved in the proceedings have the right to appeal. This applies both to adults and children. There is no legal requirement to explain the meaning of the sentence and its consequences to a child in a language that is suitable and understandable to a child of a specific age.

Given that the child victim in most cases does not participate in the trial, the victim's right to appeal is implemented solely by the victim's legal representative. The sentenced child, however, has the right to appeal by him/herself as does his/her legal representative and the defence counsel. Thus, three simultaneously submitted appeals are possible on behalf of the accused. The law sets clear requirements as to the content of the appeal applicable to both adults and children<sup>149</sup>.

#### 3.1.2 Sentencing

When determining the sentence the court takes into account: the gravity of the offence, the injury caused, the personality of the offender, mitigating and aggravating circumstances<sup>150</sup>.

The court, taking into account all circumstances of the case, may exempt a child from criminal punishment by applying alternative measures as discussed in the [section 2.3.6](#) of this report. If the court finds the child guilty of a criminal offence and compulsory educational measures are not applicable, the child may be sentenced to one of the following:

- deprivation of liberty;
- community service;
- a fine.

The following additional punishment may be imposed:

- confiscation of property;
- deportation from Latvia (relates to foreign citizens or persons with a permanent residence abroad);
- a fine;
- limitation of rights;
- police supervision;
- probationary supervision<sup>151</sup>.

<sup>148</sup> Article 531 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>149</sup> Article 551 of CPL ([Kriminālprocesa likums](#)), 2005.

<sup>150</sup> Article 46 of CL ([Krimināllikums](#)), 1998.

<sup>151</sup> Article 65, para. 1 and Article 36, para. 2 of CL ([Krimināllikums](#)), 1998.

Children may receive lighter sentences than the minimum of sanctions prescribed even in cases where the crime was committed in aggravating circumstances<sup>152</sup>.

A fine may be applied only to a child from the age of 15 and if he/she has income.

### 3.1.3 Deprivation of liberty

Children may also be sentenced to imprisonment, but the law sets limits on the amount of time children may be kept imprisoned. The maximum time limits for child detention are as follows:

- 10 years for particularly serious crimes (for adults it may vary from 10 years to a life imprisonment);
- 5 years for serious offences involving violence or if the criminal offence has caused serious consequences (for adults – from 5 to 10 years);
- 2 years for other serious crimes<sup>153</sup>;
- no imprisonment provided for less serious crimes or minor offences.

Deprivation of liberty, especially when involving children, should be used as a measure of last resort and is the most severe sanction<sup>154</sup>.

In Latvia, there is one juvenile correction institution (children's prison) for children sentenced to imprisonment. It is an institution for boys. Girls who have been sentenced to imprisonment serve their sentence in a female prison, in premises separated from adults.

The law does not provide a single framework for children in criminal proceedings or those already serving a sentence who turn 18 years old. In most cases, however, they retain the same rights as before. For example, a person who has committed an offence before reaching the age of 18 or at the age of 18 can be conditionally released early from the sentence, having served at least half of it<sup>155</sup>. Furthermore, a convicted person who has reached 18 years of age may be left in the correctional institution until the end of academic year or the end of the sentence, but only until the person becomes 21 years old. In exceptional circumstances, a special committee may allow the person to stay in the institution longer.<sup>156</sup>

### 3.1.4 Criminal records

Criminal records are deleted from the police files according to the same rules for both adults and children<sup>157</sup>. An exception is if the child has been sentenced for a minor offence. In this case, the child is declared as not having been punished immediately after serving the sentence. In practical terms, however, the deletion of a criminal record is rather formal. That is, if the person is prosecuted again, the details of previous criminal records (offences, sentences, etc.) appear in the person's file with a notice that his/her previous record was deleted.

All the information as regards offences, punishments and coercive measures applied is kept in the Punishment Register, even after the child reaches the age of 18. These records cannot be deleted and can serve as a basis to prohibit the person from becoming a civil

<sup>152</sup> Article 65, para. 2<sup>1</sup> of CL (*Krimināllikums*), 1998.

<sup>153</sup> Any other serious crime means crime that does not involve violence or when the caused consequences are not serious. The term 'serious' is defined in the law as a crime for which the punishment for adults is from 5 to 10 years imprisonment. However, for children, the qualification of crime (and thus punishment) depends on whether it involves violence or not. An example of such other serious crime, that does not involve violence, would be, for instance, theft under certain circumstances.

<sup>154</sup> Information collected in writing from the Latvian authorities.

<sup>155</sup> Article 64 of CL (*Krimināllikums*), 1998.

<sup>156</sup> Article 50.7 of the Sentence Execution Code (*Latvijas Sodū izpildes kodekss*), 1970.

<sup>157</sup> Article 63 of CL (*Krimināllikums*), 1998.

servant, prosecutor, judge, etc. The information is stored in an archive database and is destroyed after the expiry of the storage time period, which is 10 years after the person's death<sup>158</sup>.

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<sup>158</sup> Articles 9, 10 and 21 of the Law on Punishment Register ([Sodu reģistra likums](#)), 2005.

## 4 Strengths and potential gaps

### *The strengths of the Latvian children's justice system are:*

- Protective approach to children in questioning. Children under the age of 14 and those who have suffered from violence or sexual abuse must be questioned in the presence of a teacher/psychologist. Special premises adjusted to the needs of children are increasingly used.
- Special rules are in place to guarantee the confidentiality of information regarding children obtained by any employee of a State or local authority institution.
- Child victims are provided with access to diverse psychological, medical, legal and other types of assistance taking into account the best interests of the child. Furthermore, there are special protective measures for children who are victims of domestic violence or human trafficking.
- To children aged between 11 and 14 only measures of correctional or educational nature can be applied. Also, children aged between 14 and 18 are first provided with opportunities for re-education. Deprivation of liberty of child offenders is used only as a measure of last resort.
- Besides traditional legal representatives (parents or guardians), children in judicial proceedings can also be represented by an authority protecting the rights of children or a representative of a non-governmental organisation involved in protecting the rights of children.
- The participation of legal counsel is mandatory in criminal proceedings involving children who are recognised as suspects/defendants.

### *The gaps identified in the Latvian children's justice system are:*

- The law does not require officials to communicate with children involved in criminal proceedings in a child-friendly manner. There is no obligation to ensure that children have understood the questions asked and the decisions taken.
- The law does not provide equal rights for child victims and child suspects/defendants in terms of access to legal assistance. While child suspects/defendants must be provided with legal assistance at all times, it is not mandatory for child victims<sup>159</sup>.
- The rules as regards children witnesses would need further clarification. The Latvian legislation contains rather few provisions specifying the rights and duties of a child witness, especially if the child is not a victim at the same time, and, in particular, in relation to the child's legal representation.
- Although policy documents provide otherwise, in practice children who are in conflict with the law are, first and foremost, regarded as offenders. It is recognised that more protection must be guaranteed for children, especially, in detention and custody.

<sup>159</sup> Child victims will have access to legal assistance and representation free of charge according to the Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography.

## Conclusions

Latvian legislation pays particular attention to children in criminal proceedings, taking into account their age and maturity, providing them with additional procedural guarantees and limiting their responsibility. Furthermore, the law emphasises that in all child-related activities, irrespective of whether they are carried out by State institutions, private organisations or individuals, the rights and interests of children should be given priority.

There is no special prosecutor's office or court establishment for children in Latvia. In general, the same professionals who deal with adults also deal with matters involving children. The State Inspectorate for the Protection of Children's Rights is the main institution responsible for the protection of children's rights. It supervises and controls compliance with the Law on the Protection of the Rights of the Child and other legislative acts that regulate the protection of the rights of the child. Various non-governmental institutions are also involved in promoting a child-friendly approach to criminal justice, for instance, by providing child-friendly premises and offering the assistance of trained psychologists during proceedings involving children.

The law provides special provisions in relation to all children involved in criminal proceedings and according to their procedural status as a victim, witness and suspect/defendant. The following protective **provisions apply to all children**. Every child has the right to be heard and have a legal representative. Confidentiality of child-related information is guaranteed. Special attention is paid to the questioning of children. Premises must be adjusted to the needs of children and children under the age of 14 and those who have suffered from violence or sexual abuse must be questioned in the presence of a teacher/psychologist. Also, depending on the circumstances, children have the right to receive psychological and legal support free of charge.

There are special guarantees provided to child according to its procedural status: **victim, witness or suspect/defendant**. Child victims have adapted treatment guaranteed in terms of their representation, exercise of rights, procedural protection, prohibition of coercive procedural measures and testimony in the court. As for witnesses, both adults and children, they have fewer possibilities to participate in the proceedings and also there is less support available. In general terms, however, the same rules that apply to child victims also apply to child witnesses (for instance, on special protection and protection of private and family life).

In relation to the status of the **suspect/defendant**, the age of criminal responsibility starts at 14 years of age. Children aged from 11 to 14 can only be subject to compulsory correctional or educational measures. Everyone older than 14 years of age may be held fully criminally liable and, thus, be detained and imprisoned. Overall, however, the law takes a protective approach to suspects/defendants as they are first provided with opportunities for re-education. Deprivation of liberty of child offenders is used only as a measure of last resort.

The strengths of the Latvian criminal justice system lie in the child-friendly approach guaranteed to child victims. They are provided with access to psychological, medical, legal, emotional and other types of practical support, taking into account the best interests of the child. Also, towards child suspects/defendants a protective approach is taken. However, children who are in conflict with the law are, first and foremost, regarded as offenders. It is widely recognised that the best interests of a child must be a primary consideration also with regards to child offenders both during the pre-trial investigation and during the examination of the case in court.



## Annex – Legislation reviewed during the writing of this report

- Cabinet Regulations n.1613 “The Procedure of the Necessary Assistance Provision to Children who have Suffered from Unlawful Activities”, 2009
- Youth Law, 2009
- Latvian Administrative Violations Code, 2007
- Cabinet Regulations n. 825 “Procedure on Organising and Implementing Conciliation with the Participation of a Mediator by the State Probation Service, 2007
- State Compensation to Victims in accordance with the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, 2006
- Rehabilitation Services, and the Criteria for the Recognition of Human Trafficking Victims, 2006
- Law on the Order of Keeping in Custody, 2006
- Law on Orphan’s Courts, 2006
- Law on Ombudsman, 2006
- Law on Punishment Register, 2005
- Law on the Procedures for Holding the Detained Persons, 2005
- Cabinet Regulations n. 729 regarding Procedures for the Acquisition of Special Knowledge in the Field of Protection of the Rights of the Child and the Content of Such Knowledge, 2005
- Cabinet Regulations Nr.889 “Rules on Procedures for Trafficking Victims to Receive Social Compensation Law for Damages Caused by the State Authorities, 2005
- Law on Special Protection for Persons, 2005
- Law on Criminal Procedure, 2005
- State Probation Service Law, 2004
- Law on Application of Compulsory Measures of a Correctional Nature to Children, 2002
- Personal Data Protection Law, 2000
- Law on the Compensation of Damages Incurred as a Result of Unlawful or Unjustified Behaviour of the Police, Prosecution or the Judiciary, 1998
- Law on Protection of the Rights of the Child, 1998
- Criminal Law, 1998
- Law on Judicial Power, 1993
- Sentence Execution Code, 1970
- Civil Law, 1937
- Constitution of Latvia, 1922