The Introduction of Soviet Criminal Laws: Soviet Criminal Law in Lithuania

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Abstract

The main objective of this paper is to demonstrate the circumstances surrounding the introduction of Soviet criminal law in Lithuania, which together illustrates similar processes that took place in other Eastern European countries occupied by, or directly influenced by, the Soviet Union by the changing of the structure of their states. The authors of the paper focuses on two main themes (issues): the genesis of Soviet criminal law, the background to its adoption in Lithuania and its general features; and an overall review and assessment of the different types of crime. Analysis of these issues concludes that despite continuous attempts to reform Soviet criminal law, its content did not meet the criteria of the rule of law, and this became one of the fundamental differences between the provisions of criminal law in Western democracies.

Keywords: Soviet criminal law, criminal law sources, Soviet Lithuania.

Introduction

The first half of the twentieth century was not the most favourable historic period for the Lithuanian nation. After liberating itself from Tsarist Russia and German occupation and declaring independence in 1918, the Lithuanian nation began actively developing a state with

its own institutions and laws. Having restored its statehood at the beginning the twentieth century, the Lithuanian nation related its statehood history to the Grand Duchy of Lithuania, but also emphasised that it was creating a new state based on democracy. Therefore, not only was the succession of the statehood idea declared but an entirely new state was created without encroaching on the statehood of the Grand Duchy in its entirety. The new state had to create its own state legal system but, understandably, in the beginning it still had to accept the prevailing former Tsarist Russian laws by refining them and rearranging them for the needs of a democratic state. Even so, the process was suspended in 1940 when the Soviet Union occupied Lithuania. The Soviet occupation was carried out under the guise of the Lithuanian nation's will to join the Soviet Union and the activities of the so-called 'People's Seimas' were useful for that purpose.

During the occupation, social order was fundamentally changed and this process was carried out along with measures of criminal law. We can say that with the changing of orders, criminal law is, or may become, a major instrument for the changing of the structure of a society and that these processes in particular were observed in Soviet Lithuania. The main objective of this paper is to demonstrate the circumstances surrounding the introduction of Soviet criminal law in Lithuania, which together illustrates similar processes that took place in other Eastern European countries occupied by, or directly influenced by, the Soviet Union by the changing of the structure of their states. At the same time it is necessary to emphasise that this process has not been examined in detail and has not been evaluated in the legal literature (doctrine). There is a lack of research, or it is at the least very narrow in nature. In Lithuania, this issue so far has not attracted the more comprehensive focus of legal researchers. While this problem and some of its specific aspects were of interest to Lithuanian lawyers, immigrants and pre-war Lithuanian lawyers, who retreated to the West because of the Soviet occupation and carried out their research there, the number of publications on this topic is, however, not abundant. The question has often only been addressed only in articles of a general nature examining the Soviet regime per se, raising the question in the background of international law and only one study of Soviet criminal law by V. Vaitiekūnas has attempted to examine the sources of Soviet criminal law and their evolution in occupied Lithuania in more detail. V. Vaitiekunas (1958, p. 6) even urged lawyers to analyse Soviet law as a separate legal phenomenon, the development of which directly affects Lithuania.

This paper is based on the research of exiled Lithuanian lawyers, as well as the legal sources of that time, and presents an assessment of Soviet criminal law in Lithuania. While performing the analysis of the problem, we would like to specify it by defining the two main topics – a) the genesis of Soviet criminal law, the background to its adoption in Lithuania and its general features, b) an overall review and assessment of the different types of crime.

Introduction of Soviet criminal law sources in Lithuania and their common features

As for the introduction of Soviet criminal law in occupied Lithuania, it is necessary at the outset to specify what criminal law the independent Lithuania had in order that we can assess the changes. In this case, we confine ourselves only to a general overview of the sources of law without going into more detail on the legal content.

As mentioned above, Lithuania accepted a large part of the laws of former Tsarist Russia and criminal law was no exception. Perhaps the most negative assessment of lawyers were seen in the sources of criminal law and their situation in the pre-war Lithuanian state, by stating that the accepted Tsarist Russian laws were not successful and that, much more so, even after their adoption in Tsarist Russia they were outdated in their contents and were not suitable for the legal regulation of present relations (Kairys, 1954). Lithuania also accepted (with the exception of the Klaipeda region) the criminal statute of 1903 which was applicable in Tsarist Russia. It was the main source of criminal law, yet both the criminal statute and other accepted laws had no official translation into the Lithuanian language, further complicating their verification (only unofficial translations into Lithuanian were released). Lawyers pointed out that during the whole period of independence a new penal code was never developed. In 1938, the State Council formed a commission for the preparation of a criminal code. It was managed by J. Papečkys and before the occupation produced a first book, which basically covered the general part of criminal law, but a comprehensive analysis of this part of the project cannot be found in the exiled legal publications even though one of the developers of the criminal code, K. Naus÷das, took the project from Lithuania and presented it in the Diaspora press as a modern code (Maksimaits, 2006, p. 154). Nevertheless, it should be emphasised that although the Criminal Statute of 1903 was somewhat outdated by its provisions, on the other hand this code reflected the classical principles and regulations of criminal law and at the end of the 20th century was even seen as advanced in its content. This code was prepared under the leadership of Tsarist Russia's best criminal law specialists, one of them being N. Tagantsev, who contributed to the modernisation of Tsarist

Russian criminal law. An important and telling fact is that this code was only accepted in Tsarist Russia, but it's entry into force was postponed because of provisions which were seen as being too advanced and not acceptable to the Tsarist Russian authorities and the situation at that time. Therefore, the re-established Lithuanian state essentially accepted this modern enough criminal code, although some provisions were replaced and adapted for existing needs. The 1903 Criminal Statute of Tsarist Russia also did not receive a great deal of attention from expatriate lawyers. A comprehensive analysis of criminal law in publications cannot be found, only separate, brief overviews of the contents of the criminal statute, without explicitly stating that soon after the occupation of Lithuania the application of these laws immediately ceased and from 1 December 1940 the USSR's criminal laws came into force (Brazinskas, 1975, a,

1975, b).

It should be noted how Lithuanian Diaspora lawyers initially evaluated the newly introduced Soviet laws in general. V.P. Raulinaitis (1954) drew attention to the very fact of occupation of Lithuania and how it was viewed from the point of international law. It was only pointed out that with legitimate occupation, without prejudice to the provisions of international law, it is possible to apply the laws of the occupational administrative authority in an occupied territory, but in this case the laws should have remained valid. Of course, such a provision could not be accepted and supported by the Soviet Lithuania as Lithuania's alleged accession to the Soviet Union could not be seen publicly as an occupation. However, V.P. Raulinaitis emphasised that in the case of illegal Soviet occupation, no laws imposed by occupiers were binding on the state of Lithuania, while pointing out that the extended actual occupation might create new private or even public legal relations regulated by law according to the occupier's imposed existing law, and therefore the re-established state would have to evaluate the occupation laws and the local administration's past actions, along with re-established relations. However, here he basically meant only the legal regulations on private law which could form the basis of a legal relationship, while in public law the review of occupying regulations was considered only in respect of restitution.

Studies of Soviet criminal law among Diaspora pay very little attention to the introduction of Soviet criminal legislation following the beginning of the first period of Soviet occupation after 15 June 1940. J. Brazinskas' article (1975, b) might give the impression that up until 1 December 1940 Lithuania had some kind of vacuum of criminal law sources. The author said that Soviet laws came into effect immediately – from the 1st of December, but it is then unclear what laws were in force from the beginning of the occupation–from June to December. J. Brazinskas also indicated that USSR criminal laws came into effect after 1 December, but in fact there were no such laws at that time. Indeed, the situation was slightly different; in the beginning the Soviet government revised the Criminal Statute of 1903 and other criminal laws by abolishing or adjusting individual articles (e.g. the provision of military court statutes for the application of the death penalty) (Andriulis, Maksimaitis, Pakalniškis, Pečkaitis, Šenavičius, 2002, p. 459). This first phase essentially transformed the formerly independent Lithuanian criminal law. In June 1940 they announced an amnesty to those people who had been imprisoned because of communist activities, by amending the Criminal Statute's articles providing for the decriminalisation of offenses against the Church. The People's Seimas, supposedly elected on 25 August 1940, adopted a new constitution which created new state institutions and from then on criminal law sources were not only passed by the laws of the parliament – the Supreme Council, but also by decrees of the parliamentary institution – the Presidium. It should be emphasised that these decrees had the same legal effect as the laws of the Supreme Council, and therefore had the force of law. From then on the provisions of the criminal statute were amended by decrees of the Presidium of the Supreme Council. Vandalism, sabotage, harm and other criminal provisions were introduced into the statute (art.

578[1], 639[1]), resulting in the persecution of those people harming or resisting the Soviet system (Vansevičius, 1979, p. 293 – 294).

From the very beginning of the Soviet occupation Lithuanian residents, especially those who attempted to show resistance or who the Soviet authorities considered to be or, who might try to be, unreliable were subject to varying degrees and forms of repression. It should be noted here that coercive actions, most often deportation, exile to Siberia, were not regulated by Soviet criminal law, but by the executive decrees of the authorities. One of the most important of these was secret decree No 1299-526, which was passed on 1941-05-16 by the Communist Party Central Committee and the Soviet Union's Board of Commissioners (the USSR highest executive authority, the government) "On the eviction of socially alien elements from the Baltic republics, Western Ukraine, Belarus and Moldova". Thus, criminal sanctions could be applied not only on the basis of law or ordinance, but also though a decree by the executive authorities.

In the second stage the situation regarding the sources of criminal law changed fundamentally, and the reason for this is quite understandable. Both the Criminal Statute of 1903, as well as other Lithuanian state criminal laws, could not properly serve the Soviet occupation authorities even after their amendment and these democratic state laws could not be rapidly and duly applied to the changes in the social order in Lithuania. For these reasons, criminal laws were replaced by others - the Soviet laws. For this purpose, the Presidium of the Supreme Council of the Lithuanian SSR asked the Presidium of the Supreme Council of the USSR to allow the introduction of the RSFSR law in Soviet Lithuania. On 6 November 1940 the Presidium of the Supreme Council of the USSR adopted the decree "On the provisional application of the RSFSR criminal, civil and labour laws in the territory of Lithuanian, Latvian and Estonian Soviet Socialist Republics" (Abramavičius, Čepas, Drakšien÷, Nocius, Pavilonis, Prapiestis, Švedas, 1998, p. 79). Therefore, at that time there were no Soviet criminal codes in the republics, but the main source of criminal law was that of the federal subject –the 1926 Criminal Code of Soviet Russia. This code, as well as other Soviet criminal legislation, came into force in Lithuania following the decree of the Presidium of the Supreme Council of the Lithuanian SSR on 1 December, and thus the validity of Lithuanian state criminal laws applied until that was finally terminated.

Why was this the situation in the Soviet Union? In 1924, the constitution of the Soviet Union (The Constitution was published on 6 Julay 1923) (Конституция (Основной Закон) Союза Советских Социалистических Республик (утверждена II Съездом Советов Союза ССР от 31 января 1924 г.)) established that the USSR supreme management bodies set the foundations of the Union's criminal and procedure law (section II, Art. 1). It therefore seems as if the Soviet Union republics were left with the right to adopt their own criminal codes under the framework of Soviet criminal law, but that this right was not exercised. According to V. Vaitiekūnas (1958, p. 7), the Stalinist regime later destroyed any possibility for the republics to have the

judicial self-government. The USSR Constitution of 1936 (Конституция (Основной закон) Союза Советских Социалистических Республик (утверждена постановлением Чрезвычайного VIII Съезда Советов Союза Советских Социалистических Республик от 5 декабря 1936 г.)) changed the wording of the criminal legislation and from then on the legislation in this area became the exclusive competence of the highest Soviet management bodies (art. 14). The wording of this constitution did not leave any possibility for Soviet republics to develop their own criminal codes.

Changes in Soviet criminal law and their takeover in Soviet Lithuania

Developments in the legislative process of criminal law could occur only after the end of the Stalin's rule. On 11 February 1957 Article 14 of the USSR Constitution was amended. This basically re- introduced the possibility for the Soviet Union republics to issue their criminal codes independently, understandably in accordance with Soviet laws, but in the beginning there was a shortage of the main provisions and fundamentals of Soviet criminal laws that the provisions should be replicated by republican codes. These framework regulations were adopted by the USSR Supreme Council on 25 December 1958 – the criminal law basics of the USSR and the Soviet republics (ЗАКОН СССР ОТ 25.12.1958 ОБ УТВЕРЖДЕНИИ ОСНОВ УГОЛОВНОГО ЗАКОНОДАТЕЛЬСТВА СОЮЗА ССР И СОЮЗНЫХ РЕСПУБЛИК). This poses a question: why did they return to the previous model of the delimitation of the competences of criminal law legislation between the Union's republics and the central body? Did it mean a desire to implement the sovereignty of the Soviet republics enshrined in the constitution? Such intentions are basically doubtful. Prior to the adoption of the aforementioned criminal law framework, the Soviet legal doctrine began to question whether the current criminal law complied with the needs of a developed socialist society and the requirements ofsocialist humanism. According to V. Vaitiekūnas, changes could be caused by criticism and pressure from Western countries, especially as the Soviet Union at that time was taking the step of building stronger links with Western states. To support such an assumption, V. Vaitiekūnas (1958, p. 4) pointed out the fact that as early as in 1955 one of the most famous Harvard law professors, H.J. Berman, visited Moscow where he was reassured by the Soviet government that they would also reform criminal law and intended to issue new criminal codes. It is likely that changes in criminal law were determined by the desire and efforts of the Soviet government to bring Soviet criminal law closer, at least ostensibly, to the provisions acceptable in the democratic world, given that the Soviet Union was a self-proclaimed democratic state.

In addition to the above-mentioned Soviet criminal law framework, at the same time the USSR Supreme Soviet Council adopted a pair of Soviet criminal laws: The Law on criminal responsibility for crimes against the state (ЗАКОН СССР ОТ 25.12.1958 ОБ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ ЗА ГОСУДАРСТВЕННЫЕ ПРЕСТУПЛЕНИЯ) and the Law on

criminal responsibility for war crimes (ЗАКОН СССР ОТ 25.12.1958 ОБ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ ЗА ВОИНСКИЕ ПРЕСТУПЛЕНИЯ).

The criminal law framework of the Soviet Union and Soviet Republics essentially laid down the fundamentals of the general part of criminal law to ensure that future codes of the Soviet republics were standardised. Therefore, the fundamentals of the Union's criminal laws became some sort of explicit guidelines for the Soviet Union republics in developing their own codes, but the republican lawmakers had little freedom (only to the extent they were not in conflict with the provisions of the framework) to define sentences other than those provided for in the framework; a minimum term of imprisonment other than that provided for in the framework, mitigating circumstances, the length of parole in cases of conviction, particularly serious crimes, and more.

It should be noted that by examining these provisions concerning the general part of criminal law, emigration lawyers (Vaitiekūnas, 1993, p. 163; Rastenis, 1961, b) saw some attempt to modernise criminal law coming back to the principles and provisions of classic democratic criminal law. First of all, it was pointed out that the Soviet state and its interests were no longer protected by criminal law, but that one of the tasks of criminal law was the protection of the rights of its citizens. The second and perhaps the most important achievement was the bringing back of the classic criminal law principle *nullum crimen sine lege*. Perhaps the biggest flaw in Soviet criminal law was considered to be the analogy of criminal law that was actually applied until then, or even criminal laws applied retroactively. Finally, the mitigation of punishments of a repressive nature in the Soviet penal system was mentioned, for example, the partial limitations of the death penalty that used to be applied widely before that time. Another important innovation worth mentioning is the abolishment of collective criminal responsibility, in which an entire family was held liable for a soldier's deflection. These changes in criminal law were also reflected in the Criminal Code of the Lithuanian SSR adopted later. However, as V. Vaitiekūnas (1958, p. 74) noted, these legislative changes did not make substantial progress in criminal law, but rather created the illusion of ongoing legal reform, even though the latter did not bring Soviet criminal law closer to the democratic, classic provisions of criminal law. An analysis of the general provisions of Soviet law highlights the main problem characteristic in the whole of the Soviet legal system, and thus the society: the public were subject under law to the defence of the interests of the ruling party in such a way that legitimacy was not relevant to the party, and the law here was not a measure of an institutions activities, but the prime priority of the law was the party's interests and objectives. D. Krivickas (1958) stressed that Soviet society did not trust law and justice institutions, as the trust had been undermined as a result of the prevailing corruption.

In accordance with the previously discussed provisions of the criminal laws of the Soviet Union, the Supreme Council of the Lithuanian SSR adopted a series of punitive regulations: On

22 May 1959 the Presidium of the Supreme Council of the Lithuanian SSR issued the decree "On the liability for illegal purchase of construction materials", on the same day the Presidium adopted the decree "On the liability for preventing children or teenagers to go for universal compulsory education".Parents or guardians, as well as officials, who maliciously interfered with the mandatory education of children and adolescents, were punished. The Presidium of the Supreme Council in its ordinance of 22 May 1959 amended and supplemented articles 136 and 137 of the Criminal Code (Russian Soviet Federative Socialist Republic) and established aggravating circumstances for intentional murder. Such conditions included: 1) selfish interest, revenge, vandalism, 2) the purpose to cover up another crime, and 3) multiplicity, or the killing of several persons at the same time by a person convicted of serious bodily harm, killing, 4) having a duty to specifically take care of the victim or taking advantage of his/hers helpless situation, 5) the endangering of many human lives or the cruel torture of a victim. The latter novelties of this criminal law did not attract the attention of expatriate lawyers.

The Soviet Republic of Lithuania drafted the criminal code and it was adopted by the Supreme Council on 26 June 1961 (becoming effective on 1 September). After the entry into force of this Code, the Criminal Code of the Soviet Russian Federation was repealed in the Lithuanian territory. The new Criminal Code was prepared as mainly nominally independent, as the Soviet Republics were reluctant to draft their own codes, but simply waited for the new Criminal Code of the Russian Federation, which became virtually a model to everyone. This fact did not go unnoticed in the expatriate press, but there have been various estimates. Left-wing political emigrants even congratulated the Lithuanian SSR upon its succeeding in codifying a criminal law, something which Lithuania had not done in the period from 1918 to 1940. The pre- war Lithuanian lawyer and active member of the Lithuanian expatriate community V. Rastenis was categorically opposed to such opinions (1961, a): "What is given in this area to the Lithuania named the "LSSR" now is exactly not its own Lithuanian criminal law. This is only a translation from the Russian language of the Moscow-produced stereotype of criminal laws “granted” to all sovereign republics of the Soviet empire. The publishers of “republican legislation” are only entitled to enter their own names in the translation, and occasionally some specific law related with their own economic or geographical conditions.” This assessment, although correct, was clearly engaged at downplaying the attempts of the lawyers and authors remaining in Soviet Lithuania to customise the Code and adapt the law in Soviet Lithuania to its most possible extent. However, the Code drafters were confined by the strict framework of the provisions of Soviet criminal law.

Changes also took place within the contents of criminal law and in separate offenses. It is understandable that the greatest attention was paid to the defence of Soviet state interests, state arrangements, and therefore to state crime. V. Vaitiekūnas (1958, p. 42 – 45) presented a detailed genesis of Soviet state crimes and found that the law on criminal responsibility for crimes against the state, which was adopted by the USSR Supreme Council in 1958,

essentially abolished responsibility for former counterrevolutionary crimes and began to form a separate group of crimes against the state. A new content, betrayal, was introduced, collective responsibility was abolished (along with some other things), but it was also emphasised that the changes were too weak and that basically just the phraseology was changing.

During the years of Gorbachev's so-called perestroika, the attention of legal emigrants was focused on the attempts to reform Soviet law that took place in Lithuania. In 1998, the Presidium of the Supreme Council of the USSR made changes to the above law on criminal responsibility for crimes against the state. New contents were introduced following the changes: public incitement to overthrow Soviet power, (art. 7), the insulting or discrediting of public bodies or public organisations (art. 11), and others. D. Krivickas (1989) analysed these contents and, based on the opinion of the U.S. legal and political figures, held that these legislative changes were not adopted to reform the criminal law, but in general to prosecute future dissidents, critics of the government that had been granted freedom of speech, and that thus the Soviet government engaged in limiting the declared freedom of speech, freedom of the press, and the publicity principle.

By studying Soviet law, Soviet criminal principles and, in particular, separate offenses, we can see the basic flaw in Soviet law – the law; the legal system was subordinate to the party and the satisfaction of its interests. Soviet criminal law did not recognise the "rule of law" principle, and therefore, the legislature emphasised the need to defend the state rather than a citizen and a person. In this legal system the law was just a tool of the ruling class. In terms of criminal law, Soviet criminal law became a great tool with which to protect class interests, and the protection of human rights was simply not guaranteed under criminal law.

Conclusions

During the first months of Soviet occupation the former penal sources left in Lithuania were substantially revised with the aim of adjusting them, at least partially, to the goals of the new, changed regime and the occupying power.

The criminal laws, the codes newly adopted in Soviet Lithuania, were essentially taken over in almost their entirety by Soviet Russian criminal law. The legislation of the Soviet Union's criminal law and the set fundamentals essentially did not provide any opportunity to the allied republics to customise their criminal law codes and the latter had to strictly comply with the Union's provisions. For this reason, in principle, it is not possible to discuss Soviet Lithuanian criminal law as in fact no customised Lithuanian law existed as such. The codes issued in the Soviet Union republics, including Lithuania, only had an appearance that the Union's republics allegedly had autonomous criminal legislation.

The new Soviet Lithuanian Criminal Code adopted in the seventh decade of the 20th century,

like the Union's criminal provisions, already represented changes in Soviet criminal law, aimed at a partial return to the classical provisions of criminal law and the legal provisions of democratic states.

Despite attempts to reform Soviet criminal law, its content, however, did not meet the criteria of the rule of law. Soviet criminal law was essentially a tool of defending the interests of the ruling class in which the interests of the state, the Communist Party, were better protected than those of any individual citizen and this became one of the fundamental differences between the provisions of criminal law in Western democracies, and the criteria and principles of Soviet criminal law.

References

Abramavičius, A., Čepas, A., Drakšien÷, A., Nocius, J., Pavilonis, V., Prapiestis, J., Švedas, G. (1998).
Baudžiamoji teis÷. Antras papildytas leidimas. Vilnius: Eugrimas.
Andriulis, V., Maksimaitis, M., Pakalniškis, V, .Pečkaitis, J.S., Šenavičius, A. (2002). *Lietuvos teis÷s istorija*. Vilnius: Justitia.
Brazinskas, J. (1975, a). Baudžiamoji materialin÷ teis÷. *Naujienos,* 276, 4. Brazinskas, J. (1975, b). Baudžiamoji materialin÷ teis÷. *Naujienos,* 277, 4.
Kairys, J. (1954). Kai kurių teisinių problemų išvakar÷se. *Teisininkų žinios*, 6, 4 - 5.
Krivickas, D. (1958). Įstatymų ir teismų sprendimų vykdymas okup. Lietuvoje. T*eisininkų žinios*, 25 - 26, 1
- 6.
Krivickas, D. (1989). Teis÷s reformos kažikurie bruožai. *Naujoji Viltis*, 22, 103 - 110.
Maksimaitis, M. (2006). *Valstyb÷s taryba Lietuvos teisin÷je sistemoje (1928-1940).* Vilnius: Justitia. Rastenis, V. (1961, a). Naujų įstatymų kruša ant Lietuvos. 1. Didžiuojasi „savais" įstatymais, nors ir
„didžiųjų brolių" padiktuotais. *Dirva*, 97, 3.
Rastenis, V. (1961, b). Naujų įstatymų kruša ant Lietuvos. Maskva taikosi prie viešosios nuomon÷s. *Dirva*, 99, 3 - 4.
Raulinaitis, V.P. (1954). Okupanto įsakymų teisin÷ vert÷. *T÷vyn÷s sargas*, 11, 135 - 147.
Vaitiekūnas, V. (1958). *Sovietinis teisingumas. Postalininių sovietinių pagrindinių baudžiamųjų įstatymų apžvalga.* New York: S.N.
Vaitiekūnas, V. (1993). *Vidurnakčio sargyboje. Rinktiniai raštai. I tomas*. Chicago: Į Laisvę. Vansevičius, S. (1979). *Lietuvos TSR valstyb÷s ir teis÷s istorija*.