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**CRIME AND PUNISHMENT IN LITHUANIAN SSR**

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## **INTRODUCTION**

### **The research problem, background, novelty and relevance**

Soviet criminal law, legal practices and definitions of crime and punishment, which functioned in the Soviet Lithuanian State and society after the occupations of 1940 and 1944, and which were slowly started to be modified only during the Perestroika and finally changed after 1990, are research topics, which still lack researchers attention in the fields of the humanities and social sciences. Separate aspects of these categories after the declaration of Lithuania's independence were analyzed in the framework of such disciplines as law, history and sociology. But these attempts mostly covered narrow, micro-level topics and aspects of the Soviet concepts of crime, punishment, and the system of law and criminal prosecution. Therefore, despite its extremely important role of generating the specific knowledge in the mentioned scientific discourse, such research lacked a broader view<sup>1</sup>.

The broader, interdisciplinary, multi-view and macro-perspective analysis is still to be made, just as the analysis that has some comparative aspects. Therefore this dissertation can be treated as the first attempt to carry out this kind of analysis, offering generalized macro-level insights into the research topic and the first survey of the Soviet Lithuania's discourses and practices related to crime and punishment, in a spatially, chronologically and disciplinary broader perspective. In this way the research results of the present dissertation are able to broaden the general contemporary understanding of how the ideal types of Soviet categories of crime and punishment formulated by the Central power of the Soviet regime, functioned on the local level of the occupied territory (which was annexed to the empire as one of the Soviet Republics after 1940).

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<sup>1</sup> See, for instance, the research carried out by Arvydas Anušauskas devoted to the repressive aspects of the Soviet penal system in Lithuania. We will discuss it in more details in the Introduction Subchapter dealing with the analysis of historiography.

The need to undertake this kind of research (on the levels of both the Lithuanian SSR and the whole USSR) was determined by separate fields:

- a) the field of historical memory, b) the field of sovietology, c) the field of history of Soviet law.

The analysis of the Soviet penal law in the context of Lithuania is also important because the Criminal Code of the Republic of Lithuania (Lietuvos Respublikos baudžiamasis kodeksas) was adopted only on 26 September 2000<sup>2</sup>. Until that the modified Criminal Code of the Lithuanian Soviet Socialist Republic of 1961 was in effect in Lithuania<sup>3</sup>.

It means that Soviet criminal law ideas (or the legal forms only, without the former content) could at least hypothetically impact legal thinking of the first decade of independent Lithuania, or even later (keeping in mind the fact that sometimes certain ideas about the social and legal reality can impact society and individual thinking even after the laws, which embodied these ideas, have been abolished). Here we do not claim that Soviet legal thinking had the continuity in the Lithuanian field of criminal justice after 1990; this statement requires separate research, which is not our aim. However, if in the future the historians of law and criminology want to investigate the impact Soviet law had on the post-Soviet legal and criminological mentality and the system of criminal justice in post-Soviet Lithuania, a proper understanding about Soviet law will also be necessary. Therefore this dissertation can be considered to be one of the initial steps in building up this knowledge and understanding.

Soviet concepts of crime and punishment, together with the image of the Soviet system of law and criminal justice are a part of the narrative, which can be defined as “the narrative about the Gulag” in the *historical memory* of

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<sup>2</sup> Lietuvos Respublikos baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas, 2000 m. rugsėjo 26 d. Nr. VIII-1968, accessible online:

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555> [last visited on 17 June 2017].

<sup>3</sup> Vytautas Piesliakas, „Naujojo Lietuvos Respublikos baudžiamojo kodekso principinės nuostatos ir baudžiamoji politika“, *Jurisprudencija*, 1998, Vol 10(2), pp. 40-42.

Lithuania and many other earlier-communist<sup>4</sup> countries. Actually, the Soviet system of law is interpreted through the prism of the Gulag and seen in the context of Soviet repressions.

Both Soviet studies and the sub-discipline of Soviet legal history focus on Soviet law, concepts of crime and punishment in the international *academic discourse* from the very dawn of their existence and have already built a solid body of knowledge. The Soviet concepts of crime and punishment are important for the researchers today, first and foremost, as the concepts, which were formulated (or which themselves formulated, hopefully, our analysis will provide an answer to this problem) by the Soviet penal law and the Soviet system of criminal prosecution.

During the Soviet era, in the sphere of historical memory, the Soviet system of criminal law, together with the concepts of crime and punishment, became the symbol and the “**place of memory**”<sup>5</sup> to the entire Soviet and post-Soviet generations all over the huge territory, which once belonged to the empire called “the Soviet Union”. The best symbolic definition of this “place of memory” is the **Gulag**.

According to Anne Applebaum, this term, once used to refer to the administration of the Soviet-type forced labour camps, gradually became a symbolic way to define the whole Soviet penal system, which was created, first of all, in the Soviet Russia, and then, in the whole Soviet Union<sup>6</sup>, the system of law and criminal prosecution.

The image of the Soviet system of penal law, along with the concepts of crime and punishment, have actually been predominated by a symbolic

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<sup>4</sup>We use the term earlier-communist instead of post-communist in order to avoid the controversy related to the still existing stigma and unequal, hierarchically lower image of the post-communist world (and the Western-centred Cold War stereotypes of the division of Europe between the capitalist West that was not only economically but also culturally more advanced and the slower developing socialist East).

<sup>5</sup>*Lieu de mémoire*, or *the site of memory* is a concept related to the phenomenon of the collective memory stating that certain places, objects or events can have special significance related to a group's recollections. The concept has been defined by the French historian Pierre Nora. See more in: Pierre Nora, Lawrence D. Krizman, *Realms of Memory: Conflicts and divisions*, New York, 1996.

<sup>6</sup>Anne Applebaum, *GULAG. A History*, New York, 2003.

significance of the Gulag (or the Soviet prison) as the “place of memory” in the historical memory of Lithuania, other former-Soviet countries and even in the West until today. The term Gulag – coined in the terminology of names of Soviet penal institutions, the language used by their officers and in the reality of the people repressed by these institutions – gradually migrated from the discourse of the Soviet prison to the dissident circles, became printed in various Samizdat newspapers and books, and, through such works as *The Gulag Archipelago* by Aleksandr Solzhenitsyn<sup>7</sup> found their way to the public sphere in the West. Even today it is a common metaphor used to describe the whole life inside the Iron Curtain.

As the Lithuanian historian Tomas Vaiseta noted in his doctoral dissertation, the experience of imprisonment shaped everyday life of a Soviet individual even in the late-Soviet period. Vaiseta gave an example of the Lithuanian poet Marcelijus Martinaitis to illustrate his statement: the poet described his experience of living in the late-Soviet Lithuanian society as something very close to “imprisonment”, “deportation” and “isolation”<sup>8</sup>. Such metaphors were also used in the environment of the Lithuanian anti-Soviet dissidents. For instance, the Lithuanian underground publisher and political prisoner Algirdas Patackas also believed that the whole Soviet state could be described as another, larger “zone” (the Gulag camp)<sup>9</sup>.

Lithuanian dissidents were no exception and such tendencies could be observed all over the Soviet empire. Joseph Brodsky described the prison or the labour camp as the extension of the entire Soviet society. Hence, the symbol of the Gulag became more than a metaphor of Soviet criminal law; it was turned into a metaphor describing the whole Soviet reality. Some part of historiography borrowed this metaphor. According to the historian Julie Hansen, the Soviet system of criminal prosecution could be described and

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<sup>7</sup>Aleksandr Solzhenitsyn, *The Gulag Archipelago*, New York, 2011.

<sup>8</sup>Tomas Vaiseta, *Nuobudulio visuomenė: Kasdienybė ir ideologija vėlyvuoju sovietmečiu (1964-1984)*, Vilnius, 2014, p. 10, 11.

<sup>9</sup>*Demokratija Lietuvoje. Pilietiškumas ir totalitarizmas XX amžiaus istorijos lūžiuose*, Mingailė Jurkutė, Nerijus Šepetys (eds.), Vilnius, 2011, p. 192.



understood as a mirror reflecting the social world outside the prison<sup>10</sup>. The historian Martin Kragh does not only agree with such an attitude but also pays special attention to its repressive nature and to the regime's attempts to criminalize and punish more and more Soviet individuals and groups<sup>11</sup>.

Hence, both the historical memory and the above-mentioned examples of historiography create the initial impression that the entire generations of the USSR "homo sovieticus" and the LSSR "soviet citizens" actually have internalized these Soviet definitions of crime, the criminal and the system of criminal prosecution and used the symbol of the Gulag to define this system. It seems that it was this symbolic language used to describe Soviet concepts of "crime" and "punishment" in Lithuania and elsewhere that determined their academic research.

The lack of research in this certain field, the field of Soviet law and the concepts of crime and punishment in the LSSR, justifies academic attempts made to dig into the historical reality thus analysing (and, perhaps, deconstructing, or at least questioning) the myth of historical consciousness. In our case it is the myth of Soviet justice in the LSSR as the justice of the Gulag.

Applebaum, when using the metaphor of the Gulag avoids said possible (but still unproved) overestimation of the Gulag rules and reality in the Soviet system of criminal prosecution. She argues that the system of Soviet criminal justice must be seen **as the whole** not only limiting the research perspective to the life *inside the camps*. Applebaum proves this attitude by her own analysis showing that the system of camps could not function without the Soviet system of courts where specific Soviet-type court proceedings are held. She also expresses the idea that the system of the Gulags was actually a result of Soviet

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<sup>10</sup> "...prison experience (...) leaves traces in the surrounding society and culture." Julie Hansen, "Introduction", in: Julie Hansen, Andrei Rogachevski (eds.), *Punishment as a crime? Perspectives on Prison Experience in Russian Culture*, Uppsala, 2014, p. 9.

<sup>11</sup> Martin Kragh, "Free and Forced Labor in the Soviet Economy: An Uncertain Boundary", in: *Punishment as a crime*, p. 43.

law, Marxist-Leninist legal philosophy and the whole system of criminal prosecution of Soviet type formulated according to this theoretical model<sup>12</sup>.

Hence, the described experience of Soviet dissidents and cultural intelligentsia, and scientific insights of Hansen, Kragh, on the one hand, and those of Applebaum, on the other, form a background to the question whether the Soviet system of criminal prosecution adopted a very specific, exceptional attitude to the concept of crime and punishment, which was closely related to the reality of the Gulag and the repressive nature of the Soviet regime. On the other hand, too common (and sometimes not critical) use of the metaphor of the *Gulag*, employing this symbol to define the whole system of criminal prosecution in the USSR, arouses suspicion that the historical research of the Soviet system of criminalization, academic deconstruction of the Soviet concepts of “crime” and “punishment” in the academic research could have been affected by this historical memory and its symbolism. Actually, the Soviet concepts of crime and punishment and the whole Soviet system of criminal prosecution are usually analysed and seen entirely through the lens of their *repressive nature* in the Lithuanian post-Soviet historiography tradition and thus the symbol of the Gulag is still very broadly used<sup>13</sup>.

This focus is the reason why even a more fundamental question about *the very nature* and *existence* of Soviet law is asked in this dissertation. This broader question, whose source is legal sociology and philosophy, is asked about Soviet penal law, and the concepts of crime and punishment formulated by it. It is a problem of the so-called totalitarian legality (or the problem of nature of law in non-democratic societies, in which the idea of “rule of law” is not seen as the self-evident public good and value). The question whether any kind of law *at all*, including the penal one, existed in the totalitarian societies of the 20th century, and if yes, what was the “nature” of this kind of law is defined by Claudia Verhoeven as “one of the most difficult political” and

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<sup>12</sup>Applebaum, *GULAG. A History* .

<sup>13</sup>Such is, for instance, the research of Lithuanian historian Arvydas Anušauskas.

academic problems “of the modern period”<sup>14</sup>. It is one more reason why Soviet penal justice and the Soviet concepts of crime and punishment should be analysed: to broaden the general understanding about the idea and nature of Soviet penal law.

Finally, one more problem arises in the studies of the Soviet concepts of crime and punishment: dissidents and researchers representing the totalitarianism paradigm were not interested in the specifics of these concepts in one or another Soviet Republic; they talked *about the whole Union in general*. But in reality the experience, attitudes and practices related to the concepts of crime, criminality and penalty could vary on the central and local levels.

This observation comes from the contemporary discourse of the Soviet studies. For instance, it was in 1969 already that Alexandre Bennigsen put forward the hypothesis that processes taking place in the USSR could be put in theoretical frameworks of colonization and decolonization<sup>15</sup>. Today this tradition is continued by many scholars, for instance, Jörg Baberowski whose analysis demonstrates that many aspects of the functioning of the Soviet society, for instance, strategies of dealing with different ethnic groups and ethnic minorities were very similar to those that *empires* (using the classic meaning of this definition) applied<sup>16</sup>.

Hence, the dimension of two levels –imperial (USSR) and local (LSSR) – and checking how the concept of Soviet criminality functioned in both of them is another central focus of this research.

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<sup>14</sup> Claudia Verhoeven, “Court files”, in: *Reading Primary Sources: The interpretation of texts from nineteenth- and twentieth- century history*, Miriam Dobson, Benjamin Ziemann (eds.), London, New York, 2009, p. 103.

<sup>15</sup> Alexandre Bennigsen, “Colonization and Decolonization in the Soviet Union”, *Journal of Contemporary History*, January 1969, vol. 4 no. 1, pp. 141-151.

<sup>16</sup> Jörg Baberowski, *Zivilisation der Gewalt. Die kulturellen Ursprünge des Stalinismus* (Berlin, 2003), accessible online: <http://edoc.hu-berlin.de/humboldt-vl/136/baberowski-joerg-3/PDF/baberowski.pdf> [last visited on 13 January 2017], p. 33.

## **Formulation of the research object, aim and objectives**

The goal of our research is not to deny the role of the repression mechanism embodied in the Soviet system of criminalization but to question whether repressing, enslaving (meaning forced labour) or even killing non-guilty people in order to establish “total power” were the **only** goals of the Soviet mechanism of penal law and criminalization: during the entire period of the existence of the Soviet State, throughout the centre and peripheries of the Soviet Empire.

In this way we also aim to question if the image of the Soviet concepts of crime and punishment, the structure of the penal law, and the system of criminal prosecution provided by the totalitarian paradigm and the “Gulag myth” in Lithuania and elsewhere were correct and complete (since this image only represented its repressive nature leaving other functions of this system aside). On the other hand, we also raise the question if ignoring the repressive traits of the Soviet system of criminal prosecution (and concepts of crime and punishment formulated by it) – the attitude, common in the historiography of a non-totalitarian paradigm – was also sufficient to define the Soviet penal law and Soviet concepts of crime and punishment.

We also raise the question whether the already-existing comparative and case studies related to the analysis of the concepts of crime and punishment were sufficient because they usually did not take into consideration academic insights resulting from the academic discourse on colonial and post-colonial studies and from the paradigms of revisionism and post-revisionism: that the Soviet system, even under Stalin, was not so monolithic as imagined, that various fractures and tensions existed in it and generated the dynamics *among the Soviet elites, between the state and society, between the centre and the periphery* of the Soviet empire.

Therefore the **research object** is the map of the Soviet concepts of crime and punishment, their content and functioning on different Soviet political, institutional, social, chronological and spatial levels and spaces: from

post-revolutionary Russia to the Perestroika-guided Soviet world; from the centre of the Empire (Moscow) to its Periphery (one particular Soviet Republic, Soviet Lithuania). The research is focused on the ideas, concepts and definitions of crime and punishment, which were formulated in the Soviet Union and Soviet Lithuania, and the development of these ideas and concepts until the collapse of the USSR.

**The aim of our research is** to reconstruct and deconstruct, define, describe and compare the Soviet concepts of crime and punishment: their content, different definitions, changes and evolution during different historical periods of the Soviet State in the Centre (Soviet Russia) and Periphery (Soviet Lithuania) of the Soviet Empire, and on different political, institutional and social levels on which these concepts were created, modified, or rejected<sup>17</sup>. In this way, the research aims to generate some new insights into the nature and specifics of the Soviet-type criminal law and the system of criminal justice and criminal prosecution, and to give an answer to the question whether it was the entirely repressive mechanism, a tool of political power, as the myth of the Gulag claims, or if Soviet criminal law had at least some features of a separate, partially independent structure of criminal justice.

With this end in view, it is necessary to reconstruct painstakingly the Soviet concepts of crime and punishment going to the very beginning of their origin and focusing on their evolution (and later “cleaning” huge layers of meanings linked to these concepts by the historical memory, which does not always correspond to historical facts).

Based on the research aim and guided by the chosen theoretical background and methodology, several research objectives have been formulated:

1. To investigate and reconstruct the Soviet Lithuanian concepts of “crime”, “punishment”, and “criminal” – their meanings and content – on 6 different levels: *political discourse and official Soviet ideology, professional (expert) criminological knowledge,*

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<sup>17</sup> Suggesting the alternative to the *central power formulated* Soviet reality.

*the Mass Media, the field of criminal prosecution, the law making level, and the discourse of the “people from the street”.*

2. To describe and define the “ideal type”: the basic forms and norms of Soviet criminal law and the system of criminal prosecution.
3. To question, whether the Soviet Lithuanian society had at least partially adopted and internalized the concept of crime formulated in the Soviet penal law and in the public discourse.
4. To adopt the concept “crime” (which comes from sociology and criminology) to the historical studies of the Soviet society.
5. To investigate what local impact Soviet Lithuania had on the formation of the categories of “crime”, “punishment”, “criminal” and the system of criminal prosecution and to show in what they differed from the categories formulated on the imperial level.
6. To investigate and define changes in the content and meanings of these concepts seeing these changes in the context of general transformations of the Soviet regime.
7. To generate some new insights into the nature of Soviet criminal law and criminal justice, questioning the dualistic attitude to it shaped by the historical memory and academic research: the distinction between the attitude emphasizing political repressions and the attitude emphasizing independence of the Soviet legal system.
8. With the help of empirical research to answer the question whether the Soviet criminal justice system in the LSSR had other than entirely repressive goals and if it had spheres that were at least partially independent from political control and subordination.

### **Initial hypotheses:**

1. The Soviet concepts of crime and punishment were formulated artificially on the political level, and were completely subordinate to it. Then these political, ideology-based concepts were embodied in laws and the working mechanism of the Soviet system of criminal prosecution.
2. After the occupation of Lithuania the Soviet ideal legal concepts of “crime” and “punishment” were embodied deep in the local system of criminal prosecution: on the levels of professional legal knowledge, legislation, the network of institutions and in practical functioning of the Soviet criminal justice system. Thus, the empire digested the former local Lithuanian system of criminal prosecution completely, created the new one according to the *ideal type* example and incorporated it into the common imperial system.
3. There were considerable differences in the Soviet concepts of crime and punishment and in Soviet penal law before and after the death of Stalin.
4. The understanding about deviance on the levels of “people from the street” and “law braking” could be different from the official ideology and politically-controlled legal system (in LSSR and USSR). After the Stalinism, this difference increased.

### **Theoretical background and definition of the main concepts of research**

As this dissertation is devoted to describing the history of the *very concept* itself rather than to the history of a particular phenomenon it is important to stress that we cannot offer a clear and final definition of the Soviet terms of crime and punishment before starting our analysis. To find these definitions in particular periods and spaces of the Soviet empire is the aim of this research, therefore the main markers, limits and symbolic signs of these definitions will be clear only in the conclusions of this dissertation.

However, to be really precise about focusing on the exact research object, it is important to describe how the concepts of crime and punishment are understood in contemporary social sciences and humanities.

The pre-rational experience of (at least) a Western individual reveals that the way the concept of *crime* is understood in different societies can be compared to the hypothetical *dark matter* in the universe. Crime and deviancy, as specific social experience of different individuals and societies<sup>18</sup>, can be first seen as the underground, anti-value, reverse social reality and a hypothetical average individual would be glad never to step into this world.

Academic definitions of crime and the system of penal law and penalty were born in the field of criminology<sup>19</sup> in the middle of the 18th century. Various schools of law and criminology developed many attitudes related to the nature, extent, management, causes, control and consequences of a crime and criminal behaviour back then.

It is important to say, however, that still there is no consensus and one definition of crime and criminality in the academic world. Attempts have been made to find it, for instance, such efforts were taken by positivist criminologists<sup>20</sup>. However, in the course of time the concept of crime changed even in the academic discourse and it means different things in different places. It has neither unified and concrete content nor boundaries and depends on a particular society and culture.

Various schools of thought do their utmost to explain and define the phenomenon of crime; and this definition differs. Some of them formulate very abstract sociological definitions, whereas others formulate it using the logic of the discipline of law<sup>21</sup>. Specialists on criminal law usually agree that crime is

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<sup>18</sup>Online Oxford dictionary defines the word “crime” as “an action or omission which constitutes an offence and is punishable by law”, as “illegal activities” or as “an action or activity considered to be evil, shameful, or wrong”, accessible online: <https://en.oxforddictionaries.com/definition/crime> [last visited on 1 June 2016].

<sup>19</sup>See more about criminology as an academic discipline in: *Kriminologija*, eds. A. Kiškis, G. Babachinaitė, Vilnius, 2010, p. 11.

<sup>20</sup>Stephen Jones, *Criminology*, Oxford, 2006, p. 119.

<sup>21</sup>In academic discipline of Criminal Law crime is understood as a social phenomenon prohibited by law. In this sense a particular phenomenon becomes a crime only when it is



the conduct prohibited by law<sup>22</sup>. Meanwhile criminologists and sociologists argue that crime is not only a legal but also cultural and social concept and phenomenon<sup>23</sup>.

One of the earliest Western academic definitions of crime was formulated by Cesare Beccaria in his text *An Essay on Crimes and Punishment* written in 1764<sup>24</sup>. At the beginning of the 20th century criminology became a separate academic discipline in Europe and the United States of America though<sup>25</sup>. Beccaria's text transformed the European legal and social order. Before it was published "European criminal justice systems bore little resemblance to ours today", for instance, law could be retroactive and do not necessarily have a written form, it was applied in different ways to the social elites (aristocracy), which was "legally privileged" and could be abused when applied in case of social groups, which had no political and economic power. Physical penalties were also practised<sup>26</sup>.

Beccaria adopted a new attitude towards crime: he argued that it was *only* law that was able to define crime<sup>27</sup>. He also stressed that torturing a criminal is not allowed and formulated a new definition of punishment claiming that its aim was "to prevent the criminal from doing further harm to society, and to prevent others from committing the like offence"<sup>28</sup>. Ideas and concepts of Beccaria, as a still-important background and basis of modern Western criminal law and criminology, are very important in the context of our

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included into the criminal law (although it can be condemned by the society even before). Meanwhile criminology argues that crime is not only a legal category. Exploring the phenomenon of crime is not easy for modern science of criminology due to the fragmentation of approaches towards the concept of crime. The inner discourse on criminology, the debates are still taking place, raising the question whether the concept of crime is necessarily related to criminal law or should this concept be defined in other ways, not linking it to legal categories.

<sup>22</sup> *Kriminologija*, p. 11.

<sup>23</sup> Stuart Henry, Mark M. Lanier, *What is crime? Controversies over the Nature of Crime and What to Do about it?* Lanham, Maryland, 2001, p. 1.

<sup>24</sup> Frank P. Williams III, Marilyn D. McShane, "The foundations of Modern Criminology", in: *Criminology Theory. Selected Classic Readings*, Cincinnati, OH, 1998, p. 1.

<sup>25</sup> Jones, *Criminology*, p. 119.

<sup>26</sup> Williams, McShane, *The foundations of Modern Criminology*, p. 1.

<sup>27</sup> *Ibidem*, p. 2; Cesare Beccaria, "On Crimes and Punishments", in: *Criminology Theory. Selected Classic Readings*, p. 14.

<sup>28</sup> Beccaria, *On Crimes and Punishments*, p. 14, 15.

research because, taking them into consideration, we will be able to reveal whether these ideas and concepts at least in some aspects impacted the Soviet criminological thought (and it helps to measure the balance between the autonomy and the external influences of the Soviet discourse on the penal law).

Beccaria's significance to criminology can be compared to Christianity's significance to Western ethics: though modified many times, Christian ideas are still shaping the worldview of contemporary Western societies on the deepest level. The same is true of Beccaria: his ideas on crime and punishment related to such concepts as human dignity, presumption of innocence, and the rule of law in the definition of the concept of crime (and during a trial) are still structuring the Western criminal law and practises of criminal prosecution. Hence, if we are able to see, whether (and if yes, how) these ideas impacted the Soviet criminological thought and the system of criminal prosecution too, we will be able to answer the question if Soviet penal law and the system of criminal prosecution were a part of the Western legal order, or was it something normatively different and belonged to a different, non-Western culture and civilization<sup>29</sup>.

The next paradigm in criminology, which offered specific definitions of crime and punishment, is Positivism, or "the Positive school". It started with the insights by Cesare Lombroso who claimed that a criminal behaviour was fixed in the genetically inherited specific biological, physical, and psychological characteristics, which some individuals possess<sup>30</sup>. Here it is important to say that Lombroso's attitude can be seen as opposition to the attitude of Beccaria. While Beccaria argued about crime as a personal responsibility and the *choice of free will of an individual* (therefore it was based on the concept of **personal guilt**, and therefore, individualistic),

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<sup>29</sup> It is true that various schools of criminology, especially, those based on the discipline of psychiatry and the study of human brain are putting forward the hypothesis that crime in some cases can be related to some *psychiatric illnesses* or *genetic inheritance*. Some other schools concentrate on *social factors* as the main reason of the criminal behaviour. However, despite this multi-level scientific discussion, such theories and insights are applied only in crime prevention programs.

<sup>30</sup> Cesare Lombroso, "Crime: Its Causes and Remedies", in: *Criminology Theory. Selected Classic Readings*, p. 42-43.

Lambroso talked about criminality as an *inherited rather than chosen* quality of **some types of individuals**.

Positivism was derived from a Darwinist tradition and flourished in the second half of the 19th century. It claimed that crime was determined by “biological, psychological or social factors” and therefore it was not understood as a “rational decision made by offenders”, that “criminals differed from non-criminals in their biological or psychological make-up”<sup>31</sup>. Positivist theories of criminology had one specific requirement, namely, to establish and prove some ideas about “the existence of “types” of people who were likely to commit crimes”, which can be “based on biology, personality or values”<sup>32</sup>.

Jeremy Bentham, an English philosopher, jurist, and social reformer and the founder of modern utilitarianism, is also treated as a part of the positivist tradition in criminology. Bentham was the advocate of the abolition of the death penalty and physical punishment<sup>33</sup>. He also developed insights into the legal and social reform, the main idea of which was to design a new-type prison he called the Panopticon<sup>34</sup>. Michel Foucault treated the Panopticon as a model of several 19th-century penal institutions<sup>35</sup>. The English legal theorist John Austin developed the theory of legal positivism opposing traditional natural-law approaches. He argued against any necessary links between law and morality<sup>36</sup>.

Despite their differences in the attitude to the phenomenon of crime, both mentioned paradigms and traditions expressed the exceptional role, which the category of crime and deviance played as an analytical tool in order to

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<sup>31</sup> Jones, *Criminology*, p. 118.

<sup>32</sup> *Ibidem*.

<sup>33</sup> On Bentham's legal ideas see more in: Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Vol. 1, London, 1823.

<sup>34</sup> See more about the panopticon idea and its application in “Bentham Project” developed by the University College London, accessible online:

<https://www.ucl.ac.uk/Bentham-Project/who/panopticon> [last visited on 1 June 2017].

<sup>35</sup> See more in: Michel Foucault, *Discipline and Punish: The Birth of the Prison*, New York, 1979.

<sup>36</sup> On Austin's concept of positivist law see more in: John Austin, *The Province of Jurisprudence Determined*, London, 1832.

understand a certain society: “Social rules and their violation are an intrinsic aspect of a social organization, a part of the human condition.”<sup>37</sup>

Not all scholars and scientific traditions understood the phenomenon of crime as something having only negative consequences to the harmonious functioning of the social reality. Some scholars, including the sociologist Emil Durkheim, argued that the existence of crime was necessary to build any kind of social structure<sup>38</sup>. However, all these scholars imagined and saw crime, first of all, as *contradiction* and *opposition* to the mainstream social values, rules, models of actions and social characteristics. According to Stuart Henry, *a social deviance* could be described as a “social norm violation”<sup>39</sup>.

However, a very important feature of the dimension of the concepts of crime and punishment is *their universality*. According to contemporary criminology, there is no society, which would not have its own understanding of crime and the system of preventing it and punishing for it, or the idea, which kind of behaviour in a certain society is not-tolerated. Perhaps therefore the phenomenon of deviance and crime, as a part of it, are among the most important categories in today’s social sciences<sup>40</sup>. Emphasizing the extreme importance of this social dimension, Durkheim even stated that society without a crime is possible only in theoretical writings but in *any social reality* crime will exist<sup>41</sup>.

Hence, crime in criminology and sociology is understood, first of all, as some kind of *dark matter*, which, though understood and punished differently in different social contexts, is supposed to be very important part of every existing social structure. The concept of crime embodied in law, according to

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<sup>37</sup> David Garland, “Of Crimes and Criminals: The Development of Criminology in Britain”, in: *The Oxford Handbook of Criminology*, New York, 1994, p. 28.

<sup>38</sup> Seamus Breathnach, *Emil Durkheim on Crime and Punishment (An Exegesis)*, Boca Raton, Florida, 2002, p.124.

<sup>39</sup> Stuart Henry, *Social Deviance*, Cambridge, 2009, p. 1, 2.

<sup>40</sup> David M. Newman, *Sociology– Exploring the Architecture of Everyday Life*, Los Angeles, London, New Dehli, Singapore, 2008, pp. 218–251.

<sup>41</sup> Henry, Lanier, *What is crime? Controversies over the Nature of Crime and What to Do about it?*, p. 2.

Durkheim, help *consolidate* society, create common understanding about legal and normative limits<sup>42</sup>.

However, a crime as an extreme case of social deviance, and the criminals who practises this kind of deviance is not tolerated in any society and is something contradictory to what is understood to be *the norm*.

*Social norms* can be understood as structures, rules or markers “designed to govern or control” an individual’s behaviour<sup>43</sup>. The need for rules arises in any social structure because “humans have the need to coordinate their behaviour if they are to live successfully together in a social group”. Thus, therefore they define “rules or norms of behaviour”<sup>44</sup>.

When speaking about norms it is important to remember, that not all of them are consciously understood and accepted as such. Some of them direct and determine individual behaviour unconsciously. Other are only declared but not practiced.

Today sociologists use the term “internalized norms” to express this difference: “...what does it mean to say that a person has internalised the norms of society? The norms of society are by definition shared by the members of society. To violate norm is, therefore, to act contrary to the desires and expectations of other people”. So the internalization of the norm occurs when an individual accepts a norm and value established by others (for instance, the state) as its own through the process of socialisation<sup>45</sup>.

If we think in this way it becomes obvious that a deviance, especially its extreme case – criminality – is understood by any society as something threatening the very existence of the common well-being. Thus, even if Durkheim argued about the positive role of the violation of the norm in the process of building social solidarity –almost in all cases of societies analysed

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<sup>42</sup> Anthony Giddens, *Sociology*, Cambridge, 2001, p. 207.

<sup>43</sup> *Deviant Behaviour. Readings in the Sociology of Norm Violation*, Clifton D. Bryant (ed.), New York, Washington, Philadelphia, London, 1990, p. 8.

<sup>44</sup> *Ibidem*, p. 4.

<sup>45</sup> Travis Hirschi, “A Control Theory of Delinquency”, in: *Criminology Theory. Selected Classic Readings*, Cincinnati, OH, 1998, p. 291.

by sociologists until today, extreme deviances are opposed to what is understood to be a norm.

In the middle of the 20th century new ideas in the field of criminology were developed, called “critical criminology”. Among this new wave of ideas there are theories claiming that crimes are not an objective but *constructed* reality, produced and reproduced by the state’s government and the penal system<sup>46</sup>.

All the above-mentioned theories and sociological and criminological schools of thought agree about one aspect: there is no society where, in the mainstream behaviour of individuals, and in the mass culture deviances are tolerated or even equated to norms. It is true that, as the Lithuanian scholar Aleksandras Dobryninas demonstrated, some traits or cultural signs, coming from the field of criminals, can be put in the mainstream<sup>47</sup>. In some ways criminality can be even indirectly “produced” or “supported” by the power-holders and a certain social system. However, normally every society has its own norms and anti-norms defining the normative limits.

Legal definitions of the concept of crime should be mentioned along with sociological and criminological ones. Criminal law defines crime as “an act or omission that causes certain negative consequences described in criminal law”<sup>48</sup>. It can also be described as “an act punishable by law that has constituent elements of crime defined in criminal law” as “unlawful” and “wrong”<sup>49</sup>.

Hence, in most cases the legal definition links the concept of crime with the concept of law. The legal definition of crime is based on penal law and cannot be seen without it: “qualifying acts as criminals (criminalization) and, hence, making them subjects of criminal penalties (...) is based on the concept

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<sup>46</sup> See more in: Aleksandras Dobryninas, Gintautas Sakalauskas, Laimutė Žilinskienė, *Kriminologijos teorijos*, Vilnius, 2008.

<sup>47</sup> Aleksandras Dobryninas, *Virtuali nusikaltimų tikrovė*, Vilnius, 2001, p. 98.

<sup>48</sup> Aleksandras Dobryninas, Ilona Čėsnienė, Margarita Dobrynina, Vincentas Giedraitis, Reminigijus Merkevičius, *Perception of Criminal Justice in Society*, Vilnius, 2014, p. 16.

<sup>49</sup> Wessels, J., Beulke, W., *Strafrecht*, Allgemeiner Teil. 28. Auflage, Heidelberg, 1998.

of criminal law as *ultima ratio*<sup>50</sup>(...) or as subsidiary protection of the basic values”<sup>51</sup>. Exactly this kind of definition is used in the Criminal Code of the Republic of Lithuania, which is in effect today: it states that “an offence is a dangerous act (act or omission) prohibited by this Code, which is punishable by imprisonment” (Article 11)<sup>52</sup>.

Hence, the legal school, just as sociologists and criminologists, also argues that the analysis of the concept of crime can reveal what the basic values of a certain society are:

“Accordingly, not any person’s conduct may be qualified as a crime and subject of criminal sanctions, but only the act or omission that violates or threatens to violate the basic values in a relevant society: human life, liberty, integrity of the human body, honour, constitutional order, territorial integrity of the State, etc.”<sup>53</sup>

Therefore, defining the things that were treated as punishable in the Soviet empire, in the Centre and Peripheries, during different periods of its existence, a hypothetical map of the basic, most important values of this state and society can be drawn in different discourses and by the different social groups

However, it is important to keep in mind the fact that *the legal definition of crime* is insufficient, too narrow and subject to criticism: along with the

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<sup>50</sup> According to Aušra Dambrauskienė, “*This principle means that criminal liability, being the most restricting measure in terms of rights and freedoms of persons must be applied in exceptional cases only, when other legal or non-legal means are insufficient in order to put a stop to criminality. The content of the ultima ratio principle includes the following: 1) serious violation of individual, social and state legal interests; 2) absence of alternative influence means for this violation in other legal spheres. The content of the ultima ratio principle also encompasses inner (consistency of the criminal law system) and outer (the means of criminal law is exceptional when compared with the means of other legal branches) aspects, as well as aspects of legislature and law enforcement*”. See more in: A. Dambrauskienė, „Ultima Ratio principio samprata“, *Teisė*, 2015, No 97, pp. 133-134.

<sup>51</sup> Dobryninas, Čėsniėnė, Dobrynina, Giedraitis, Merkevičius, *Perception of Criminal Justice in Society*, Vilnius, 2014, p. 17.

<sup>52</sup> „Nusikaltimas yra pavojinga ir šiame kodekse uždrausta veika (veikimas ar neveikimas), už kurią numatyta laisvės atėmimo bausmė“. In: Lietuvos Respublikos baudžiamasis kodeksas, 2000 09 26, accessible online:

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555> [last visited on 5 July 2017].

<sup>53</sup> Dobryninas, Čėsniėnė, Dobrynina, Giedraitis, Merkevičius, *Perception of Criminal Justice in Society*, p.17.

relative nature of the criminal codes, which vary from country to country, the approach that the criminal is defined in the process of criminal prosecution is insufficient either because not all crimes, including those specified in laws, are revealed<sup>54</sup>.

The physical act itself does not help the crime to be defined either: if murder, for instance, is seen as a crime by most societies, there are exceptions when, in certain circumstances, they can be justified. The concept of crime has no unified moral or legal background and is very relative<sup>55</sup>. There has been no clear and unified definition of crime thus far and no consensus about the concept has been reached yet. As Stephen Jones argues, the only possibility is to speak about different meanings, which come from different scholar attitudes and traditions, or about “conflicting images of crime”<sup>56</sup>.

Thus, the phenomenon of crime is the central concept of our research. Of course, as in case of almost all societies, the concept of crime in the Soviet Union was not strictly defined. As a negative description of *a common set of social rules*, the meaning and understanding what a crime really is has changed in the course of time<sup>57</sup>. Therefore, it is important not only to understand its initial definition but also to show its evolution.

The greatest problem in defining the concept of crime is the fact that, as we have already seen, social sciences cannot offer a clear understanding and the definition of the phenomenon of criminal behaviour. Most scientists agree that the reality behind the concept of crime is highly relative.

According to the Lithuanian sociologist Arnoldas Zdanevičius, the phenomenon of crime defined by Durkheim is a considerable sociological phenomenon and concepts. In a sociological sense, however, it is difficult or even impossible to find a universal definition of it. Crime is a concept, which is impacted and conditioned culturally. It greatly depends on historical and social

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<sup>54</sup> Jones, *Criminology*, p. 31.

<sup>55</sup> *Ibidem*, p. 32.

<sup>56</sup> *Ibidem*, p. 41.

<sup>57</sup> See more in: K. R. Kiralfy, “Recent Legal Changes in the USSR”, *Soviet Studies*, Vol. 9, No 1 (July, 1957).



contexts. The legal definition of deviance is insufficient either. Therefore, a large multi-disciplinary perspective and analysis of many levels – from micro to macro – is needed to understand the phenomenon of crime in a certain state and society<sup>58</sup>.

In our analysis we chose to apply the sociological definition, which in our opinion is the broadest one and most adequate to be used as an analytic instrument explaining the reality related to the concept of crime and the criminal behaviour in the Soviet system. This term is *deviance*.

However, even if it is able to overcome the narrowness and relative character of the legal definition of the crime, another problem also exists here – the term deviance, on the contrary, is too broad: not all deviances are crimes.

One possibility to solve this problem is to apply the term *extreme deviance*, as has already been mentioned above. The concept *extreme* also needs explaining. Of course, it is possible to choose the approach stating that deviance is an extreme if it is prosecuted by law. But in this case we come back to the “legal” definition of crime criticized by criminologists.

Another way to overcome the problem of legal narrowness and sociological broadness of the concept of crime is to include another element in the definition of crime – “social harm”. Hence, crimes are only those *deviances*, which are recognized<sup>59</sup> as socially harmful.

The idea of “social harm” was first introduced by the English philosopher, political economist John Stuart Mill. Mill was a proponent of utilitarianism, just as his predecessor Bentham. He stated that the social good could be measured by the greatest degree of happiness, accessible to a largest number of the population. Mill stated that it was acceptable to harm oneself but only until the individual harming himself or herself does not harm others. Mill also argued that individuals should be prevented from doing lasting, serious harm to themselves or their property by the harm principle. Mill stated that

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<sup>58</sup> Arnoldas Zdanevičius, *Kriminologinio žinojimo ideologija ir utopija bei jo santykis su valdžia*, doctoral dissertation, Kaunas, 2001.

<sup>59</sup> As mentioned before, not in all cases they *really* make universal social harm, because, as Durkheim believed crime could also help to build the social structure.

such social harms may include acts of omission, as well as acts of commission<sup>60</sup>. Thus, according to Mill, the only kind of conduct that the state may rightly criminalize is the behaviour that does harm to others.

The legal philosopher Joel Feinberg expanded the definition of Mill adding the aspect of “offence” to the aspect of “social harm”. According to him, certain kinds of non-harmful but profoundly offensive conduct could also be strictly prohibited by law, although he agrees with Mill's liberal position and disagrees in many aspects with criminalization of what is treated as immoral activities, such as pornography<sup>61</sup>. However, according to him, public (not private) exposure of the Nazi symbols could be regarded as offensive and therefore criminalized<sup>62</sup>. According to Feinberg, “criminalization, when a particular legal prohibition oversteps the limit of moral legitimacy, is a serious moral crime”<sup>63</sup>.

Another legal philosopher Douglas Husak also continued the tradition of seeing the concept of crime not in the light of the criminal law only. He highlighted the difference between two definitions of the crime *malum in se* (the conduct, which is wrong or evil in itself, by nature, independent of regulations governing the conduct and seen as such by the most societies, for instance, murder) and *malum prohibitum* (the conduct, which is treated as wrong, because it is prohibited by the law). Husak criticized too large and inadequate number of criminalized actions and omissions in the American criminal law (the phenomenon, which he defined as *overcriminalization*)<sup>64</sup>.

According to Husak, legal decisions on which conducts should be criminalized by law should include the so-called *principle of proportionality*, “according to which the severity of the sentence should be the function of the

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<sup>60</sup> John Stuart Mill, *On Liberty*, London, 1859, p. 101, 134-156; Idem, *Utilitarianism*, London, 1871.

<sup>61</sup> Joel Feinberg, *Harmless Wrongdoing. The Moral Limits of the Criminal Law*, New York, 1988, p. 319.

<sup>62</sup> Idem, *Offense to Others. The Moral Limits of the Criminal Law*, New York, Oxford, 1985, p. 95.

<sup>63</sup> Idem, *Harm to Others. The Moral Limits of the Criminal Law*, New York, 1984, p. 4.

<sup>64</sup> Douglas Husak, *Overcriminalization – The Limits of the Criminal Law*, New York, 2008, pp. 3-36.

seriousness of the crime”<sup>65</sup>. He also expressed opinion that not only the law defined a crime but also the harm of a criminal act experienced by the victim and society.

Eugene McLaughlin and John Muncie continued the tradition of Mill, Feinberg, Duff and Husak, in their theory on crime connecting the legal definition with the above-mentioned understanding of crime as social harm<sup>66</sup>. This attitude suits our research where a multi-meaningful term of crime will be used.

The theory of McLaughlin and Muncie integrates both legal and sociological definitions and offers three basic elements which form the concept of crime. These elements are defined by McLaughlin and Muncie as follows: 1) social damage, b) a social contract (or agreement), c) the official response of society to damage<sup>67</sup>.

*Social damage* is understood in terms of *extreme deviance*: it is, first of all, the behaviour, which cannot be accepted and treated as normal in a certain society because it is believed<sup>68</sup> that this behaviour inflicts damage on the basic elements of the social structure.

*The social contract*, first of all, means law: a set of rules, defining what can be treated as damage in one or another society.

*An official response* usually means a social agreement on sanction or punishment applied to the individual who violated the social agreement and is seen as the one who causes damage<sup>69</sup>. We will also speak about the dimension of *punishment* here.

A similar idea of the way the concept of crime could be analysed was proposed by Edwin H. Sutherland. He suggested treating the phenomenon of crime in the context of three levels related to the process of formulating and

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<sup>65</sup> *Ibidem*, p. 14.

<sup>66</sup> Eugene McLaughlin, John Muncie, *The Sage Dictionary of Criminology*, London, 2006, p. 78.

<sup>67</sup> *Ibidem*.

<sup>68</sup> As mentioned before, it is only believed that deviance is harmful but, as Durkheim demonstrated, it is possible that it does not only do harm to the social structure, but, on the contrary, consolidates the individuals.

<sup>69</sup> McLaughlin, Muncie, *The Sage Dictionary of Criminology Ibidem*, p. 78.

maintaining the definition of crime: 1) *law-making* (the legal norms), 2) *law-breaking* (the actual criminal behaviour), 3) *law-enforcement*<sup>70</sup> (the structure of institutional actors in the field of criminal justice and the functioning of the procedure of criminal prosecution)<sup>71</sup>.

As we see, this understanding is similar to the attitude to the phenomenon of crime expressed by McLaughlin and Muncie: *law breaking* could also be understood as “damage”, *law making* could be equated to the “social contract”, and *law enforcement* is equal to what is called “an official response”.

This definition is acceptable in our research, but must be somewhat modified and linked with another aspect, namely, the theory of the criminologist Richard Quinney on the so-called “social reality of crime”. According to Quinney, “crime is a definition of human conduct that is created by authorised agents in a politically organized society”:

“Crime is a definition of behaviour that is conferred on some persons by others. Agents of the law (legislators, the police, prosecutors and judges), representing segments of a politically organized society, are responsible for formulating and administering criminal law. Persons and behaviours, therefore, become criminals because of the formulation and application of criminal definitions. Thus, crime is created.”<sup>72</sup>

Taking into account said criminological theoretical insights and definitions (Durkheim, McLaughlin and Muncie; Sutherland and Quinney) crime is

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<sup>70</sup> Law enforcement is a system, according to which some members of society act to enforce the law by discovering, deterring, rehabilitating, or punishing people who violate the rules and norms of this particular society. The term defines such institutions as courts and prisons, it is applied to those who participate in crimes discovering, investigation and prevention. See more in: Kären M. Hess, Christine Hess Orthmann, *Introduction to Law Enforcement and Criminal Justice*, Boston, 2012, p. 1.

<sup>71</sup> Ronald L. Akers, *Criminological Theories: Introduction and Evaluation*, London, 1999, p. 2.

<sup>72</sup> Richard Quinney, “The Social Reality of Crime”, in: *Criminology Theory. Selected Classic Readings*, p. 217.

understood and analysed as the type of deviance, which is defined by three interrelated and interlinked conditions in the present analysis:

1. Crime contains the dimension of *official legal norms* and is *officially prohibited* (the level of “law-making”).

2. Crime is a violation of the mainstream *set of social norms*, which is experienced as *socially harmful* (or, contains the level of “law-breaking”).

3. Crime is also a socially and politically constructed reality, which reveals itself during the process of *law-enforcement*, or what we call the system of criminal prosecution. Thus *crime is constructed* by the agents of law (legislators, the police, prosecutors and judges) *in the process of criminal prosecution*.

## Methodology

This research belongs to the history of ideas and analysis of concepts and discourses and we, first of all, will use a methodological approach of “history of concepts” formulated by Michel Foucault. Therefore methodological insights into the concept of crime and punishment coming from the disciplines of criminology and sociology are needed.

Foucault in his work *The Archaeology of Knowledge and the Discourse of Language* when analysing post-positivist transformation and poststructuralist shift in social sciences and the humanities, concentrated mainly on the importance of multi-disciplinary and multi-discursive perspectives. Also, he proposed a methodological tool to describe and analyse different objects in the multi-discursive perspective. According to Foucault, the history of ideas can be understood as the history of *concepts* now<sup>73</sup>.

As Foucault wrote, in analysing one or another discursive field “we must grasp the statement in the exact specificity of its occurrence; determine its conditions of existence, fix at least its limits, establish its correlations with

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<sup>73</sup> Michel Foucault, *The Archaeology of Knowledge and the Discourse of Language*, New York, 1972, p. 4.

other statements that may be connected with it and show what other forms of statement it excludes”. Also, “we must show why it could not be other than it was, in what respect it is exclusive of any other, as it assumes, in the midst of others and in relation to them, a place that no other could occupy”<sup>74</sup>.

In this way the historical and sociological analysis of one particular concept leads the researcher to much broader perspectives. What is more, the analysis of a certain concept in different political cultures, social systems and cultural traditions can be used as a comparative tool. It is possible because the content of a particular concept might vary according to the historical period, geographic space, and political tradition; also according to social and mental transformations of a certain society or group. Therefore a spatial and chronologic map depicting different conceptual contents can demonstrate not only social and political changes in certain societies or social groups but also to reveal conflicts and interrelations between different social groups and classes, different nations, cultures and even civilizations.

The world’s history has already shown that **some concepts are particularly good tools** to research and demonstrate certain dimensions of political and social changes, to reveal geographic, social and political limits. Foucault himself showed great interest in some of them. Such concepts as *madness* and *normality*, *crime and punishment*, *law* and *sexuality* became Foucault’s way to grasp the deepest dimensions in the transformations of Western modernity. Today his work *Discipline and Punish: The Birth of the Prison* is treated as a classic example of this type of research. It is a classic example illustrating how the history of ideas and concepts can grasp even deeper dimensions of the cultural and social world and reveal the process of a certain historical social/political/cultural or mental transformation<sup>75</sup>.

Hence, as Foucault demonstrated, if a historian or sociologists seeks to investigate, describe and show large-scale social, cultural and political transformations, it is advisable to concentrate on basic social and cultural

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<sup>74</sup> *Ibidem*, p. 28.

<sup>75</sup> Foucault, *Discipline and Punish: The Birth of the Prison*, New York, 1979.

concepts, which can be understood as the *elements*, revealing not only the institutional transformations but also norms, values and everyday practices of individuals. In this way the deconstruction, reconstruction and the analysis of the concepts *crime* and *punishment* (as basic social elements) can be seen as good **methodological tools for the sovietologist** too because the reconstruction, deconstruction and the analysis of these concepts in the Soviet or the so-called Communist world (just as in any other society or culture) is able to reveal the deepest essence of social and political particularities of these specific societies. Hence, the analysis of these concepts can become another way to measure the changes of social and political transformations in the Eastern Europe during the rule of the so-called Communist regimes and the period of post-Communist transformations.

In this way, due to the above-mentioned quality of being *anti-value* and *anti-norm*, the Soviet definitions of crime and punishment can become good indicators illustrating basic (or the most important) social and cultural norms and values of this particular social and political system. They can not only reveal the way in which the Soviet legal, social and political system was organized in the different periods of the Soviet regime but also show the behaviour limits of Soviet individuals in their everyday practices and reconstruct their social norms and beliefs.

This research methodologically also belongs to the so-called post-colonial studies and post-imperial part of Sovietology, therefore methodologically it can also be treated as a part of “post-colonial criminology”. Post-colonial criminological studies are mostly linked to such scholars as Edvard Said, Gayatri Spivak and Homi Bhabha. According to McLaughlin, this part of criminology is interested in “analysing criminology’s historical complicity in techniques of colonial governance”; revealing the terms, theories and concepts in the discipline of criminology developed as a result of the colonization policy and social processes related to it; seeing, how the processes of colonization and decolonization affect various forms of

criminological discourses, “working within or in relation to non-European / non-Western criminological “writings from elsewhere”<sup>76</sup>.

Therefore, our analysis is also directed towards revealing this (Western-related, but, in general, non-Western) Soviet tradition of criminology, and the concepts of crime and punishment embodied in it.

The third basis for our analysis is the methodology developed by the philosopher and sociologist Alfred Shutz and criminologist Aleksandras Dobryninas. Dobryninas has transformed a more universal methodology developed by Schutz and adopted it to the research of the concept of crime and the so-called research of different “criminological discourses”. Meanwhile the author of this dissertation transformed this methodology once again and adopted it to studying the phenomenon of “crime” and “punishment” in a particular-kind of state and society – the Soviet state and society.

The methodology of Shultz and Dobryninas is a wideused way of analysing in Lithuanian criminology today. For instance, Aleksandras Dobryninas, Ilona Čėsniënė, Margarita Dobrynina, Vincentas Giedraitis, Reminigijus Merkevičius use it in their analysis of the criminal justice phenomenon and its social perception. According to them, this model proposes the idea of “interaction between knowledge, power and language” and can be drawn “from two theoretical sources: the social epistemic stratification theory by Alfred Shutz” and “the idea of discourse as empowered speaking analysed by Michel Foucault”<sup>77</sup>.

Shutz identified 3 different levels of knowledge about one or another social phenomenon, which “allow constructing three different ideal types that can be identified as “the expert” (expert knowledge), “the well-informed citizen” (intermediate knowledge), “the man on the street” (everyday knowledge)”. These groups are referred to as different groups of a certain

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<sup>76</sup> McLaughlin, “Post-Colonial Criminology”, in: *The Sage Dictionary of Criminology*, McLaughlin, Muncie (eds.), p. 214.

<sup>77</sup> Dobryninas, Čėsniënė, Dobrynina, Giedraitis, Merkevičius, *Perception of Criminal Justice in Society*, p. 11.



society and may involve many different social actors “from universities and political parties to the mass media and rural communities”<sup>78</sup>.

Aleksandras Dobryninas further develops such levels in which the concepts of crime and punishment can be defined differently: a) the *professional criminological discourse*, which is formulated by the academic professionals of law and criminology; b) the *public criminological discourse*, or the construction and representation of the phenomenon of crime in the mass media; c) the *political criminological discourse*, or the level of the governing structures (or political power) defining and understanding the concept of crime and the phenomenon of criminality<sup>79</sup>.

Of course these discourses can be interrelated and interconnected.

The so-called “people from the street” are guided by the knowledge of how to act in and react to a specific situation or issue using “typical recipes, showing how to act in a typical situation, using typical means and methods and reaching typical goals”. Such knowledge does not require any research, is simplified and guided by the prevailing stereotypes. Such knowledge seems to be something very simple and “self-evident”<sup>80</sup>.

According to Dobryninas, the mass media, usually balances between the knowledge of the “*people from the street*” and that of “*well-informed citizens*” (the rest are better acquainted with expert knowledge, but are not experts themselves)<sup>81</sup>.

As we see, in our case, “experts” will be formulators of a *professional discourse*. “*Well-informed citizens*” are not as important to our analysis as a special group because their knowledge in the Soviet state, as we will see, was based on the professionals and ideology. But it is very important to take into consideration the group of “*people from the street*” – first of all, to evaluate

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<sup>78</sup> *Ibidem*; Alfred Shutz, “The well-informed citizen”, in: Idem, *A Collective Papers*, Vol. 2, The Hague, 1964, pp. 120-134.

<sup>79</sup> A. Dobryninas. “A., Democratic Change and Crime Control in Lithuania: Compiling New Criminological Discourses”, NATO Fellowship Programme Final Report, Vilnius, 1996, accessible online: <http://www.nato.int/acad/fellow/94-96/dobrynin/concl.htm>, [last visited on 1 June 2016].

<sup>80</sup> *Ibidem*.

<sup>81</sup> *Ibidem*.

what kind of definitions, norms and values concerning the phenomenon of crime, existed in the Soviet Lithuania.

This model we will join with the described concepts of the crime, developed by Durkheim, McLaughlin and Muncie, Sutherland and Quinney. We will modify it as well, in order to use it for the Soviet studies.

The existence of the public sphere as such in the Soviet Union is still highly debated. Considerable doubt exists as to the impact of the society (“or people from the street”) on the formation of the highly-censored mass media, which is considered as a space where propaganda and the regimes’ ideological interests dominated the idea to represent what really is interesting to the masses and, especially, to spread a scientifically based professional knowledge.

Something similar can be said about the field of law-making and law-enforcement. According to Marry Ann Glendon, Michael Wallace Gordon, Christopher Osakwe, the Soviet system of law and criminality was dominated and its development was guided by the Communist Party as the political adviser, moral educator and the one which cared about saving the specific nature and character of the so-called “socialist law”. Independence of the legal system in general was only declarative but in reality law was predominated by the political power (its ideological assumptions, various decisions and directives)<sup>82</sup>.

So, we can guess that, for instance, the levels of “law-making” and “law-enforcement”, as well as the operating crime-defining mechanism, were not independent but controlled by the Communist Party or its leader.

However, if we divide our research levels as proposed, we can get a tool of analysis, which will help us to show how all these levels were connected and what differences existed among them.

Thus, on the one hand, it is true that “professional” and “public” discourses in the communist state were predominated by the political power. On the other hand, the so called system of double-standards might be detected

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<sup>82</sup> Marry Ann Glendon, Michael Wallace Gordon, Christopher Osakwe, *Vakarų teisės tradicijos*, Vilnius, 1993, p. 283, 284.

under the declared, official discourse where real values and practical actions differed from those declared officially according to the requirements of ideology<sup>83</sup>. Additionally, as Berman noted, the distinction between the Soviet criminological thought and a really functioning system of criminal prosecution must be also taken into consideration<sup>84</sup>.

Hence, the methodological framework shaping our analysis will be formulated according to the following model:

I. The definition of crime in the *political discourse and official Soviet ideology*.

II. The *professional (expert) criminological knowledge*.

III. The definition of crime on the *level of the mass media* (related more to the level of ideology than to real social representations).

IV. The definition of crime on the law-enforcement level (the process *of criminal prosecution and the imposition of a penalty*).

V. The definition of crime on the level of *law-braking* (or real tendencies related to criminality of in the LSSR).

VI. The definition of crime, which functioned on the *level of the people from the street* (or generalized values, norms, definitions and stereotypes related to the phenomenon of criminality).

## **Historiography**

The very *concepts of the crime and punishment*, provided by the Soviet political, social system and by Soviet law, were traditionally seen as objects of analysis in Western, Russian, post-Soviet and Lithuanian historiography and empirical research of other disciplines in the context of broader research topics: a) the analysis of the repression mechanism, which functioned in the Soviet state from its very beginning (the approach practiced mostly by the

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<sup>83</sup> Valdemaras Klumbys, *Lietuvos kultūrinio elito elgsenos modeliai sovietmečiu*, doctoral dissertation, Vilnius, 2009, p. 144.

<sup>84</sup> Harold J. Berman, Principles of Soviet Criminal Law, *The Yale Law Journal*, Vol. 56, No. 5 (May, 1947), p. 803.

historians); b) the analysis of Soviet law and the legal system in general, including its penal aspects (the approach practiced mostly by the specialists on law and legal history) .

This situation determined the fact that two main attitudes to the Soviet legal and criminal justice system exist:

1) It was sooner simply a tool of totalitarian power designed to carry out repressions and implement Bolshevik-planned social engineering than a *sui generis* system (the tradition “a”);

2) Soviet criminal law and the model of the criminal justice system were designed as a *separate* legal sub-system, a part of the so-called “Socialist law” together with its other sub-systems such as, for instance, Soviet civil law (the tradition “b”)<sup>85</sup>.

*Historians (the tradition “a”)*, who devoted their research to the analysis of the Soviet past in the 20th-century Europe, since the birth of the discipline called “Soviet studies” they have been particularly interested in one – repressive – aspect of the Soviet system of criminalization and punishing. Many of them agreed that different forms invented to repress the individual formed the core of the functioning mechanism, the economic and social organization and the legal system of the Soviet State and society, at least until the end of Stalinism.

Such approach was especially popular with those who represented the historiography of totalitarianism. This was the discourse, in which the Soviet Union’s system of criminal prosecution and the concepts of crime and punishment formulated and developed in the Soviet empire, caught interest of scholars and the general public for the first time – the discourse, dominated by the image of the Soviet state, as an enormous totalitarian machine, in which all smaller organizational parts, including the legal system, are designed only to support the main function: to suppress an individual and implement total power. Hence, the Soviet concepts of crime and punishment, the images of

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<sup>85</sup> A. Ostroukh, “Russian Society and its Civil Codes: A Long Way to Civilian Civil Law”, *Journal of Civil Law Studies*, Vol. 6, Issue 1, summer, 2013, p. 374.

soviet criminal law, criminal justice, and the system of criminal prosecution, were linked with the idea of the “totalitarian regime” by the specialists on “sovietology”.

The Soviet concept of crime and behaviour with the criminal is seen in the light of the repressive political system in this tradition. And this is not surprising if we keep in mind the fact that, according to Fitzpatrick, political sciences after World War II dominated the discourse of Soviet studies, exaggerating the role of the state in the construction of the political and social reality and, at the same time, ignoring the potential of other social actors to have some (even very limited) flexibility in constructing the social reality<sup>86</sup>. In our case it concerns the construction of the definition of crime and criminality, which was seen *only* as a product of political power in this paradigm. Interest in a political-type crime (and political repressions) dominated in this situation.

Hannah Arendt, whose classic work *The Origins of Totalitarianism*, according to Fitzpatrick, made the greatest impact on the development of the entire paradigm<sup>87</sup>, was the first scholar not only to exaggerate the role of political power in the construction (better to say *destruction*) of the social reality of the atomized individuals but also to propose the idea of how this “totalitarian” political system transformed the universal social ideas and social reality of crime and the criminal<sup>88</sup>.

Arendt put forward the idea that “totalitarian” political systems (which in reality took shape of the Soviet Union and National socialist Germany) invented the new way to criminalize an individual as a political enemy without necessarily criminalizing his or her actions but by the criminalization of the very *personality*, traits and symbols the group he or she belonged to, even thoughts or intentions. Arendt defined this phenomenon as the construction of the “objective enemy” who was criminalized by the totalitarian legal system for a “possible crime” – the criminal activity, which the person labelled the

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<sup>86</sup> Sheila Fitzpatrick, “Introduction”, in: *Stalinism. New Directions*, Sheila Fitzpatrick (ed.), London, New York, 2000, p. 2.

<sup>87</sup> *Ibidem*, p. 2.

<sup>88</sup> Hannah Arendt, *Totalitarizmo ištakos*, Vilnius, 2001, pp. 408- 413.

“objective enemy” had never committed in reality but which was believed by the totalitarian ideology as his or her latent characteristic, which *could* be but not necessarily *had to* be potentially revealed some day (and therefore this trait was potentially dangerous, as well as the individual who had this trait). Hence, in short, according to Arendt, in the totalitarian state people were arrested not for what they had really done but for what the totalitarian state thought they were capable of doing because even acting in an irreproachable way, these people were members of (ethnic, religious, social or other) groups which were defined by the ideology as “hostile”<sup>89</sup>.

The tradition of a second type (“*b*”) started in the field of *legal history discipline* and aroused the interest, first and foremost, of the historians and lawyers, interested in the origin and development of Soviet law. The fundamental work *Justice in the USSR. An Interpretation of Soviet Law*<sup>90</sup> by Harold J. Berman, together with his other books and articles<sup>91</sup>, can serve as classic examples of this type of research.

In his *Justice in the USSR. An Interpretation of Soviet Law* Berman describes the Soviet system of law as an enormous and complex mechanism. He sees the roots of the discipline of law outside the Soviet Union, and bases the sources of the Soviet legal ideas and concepts on the legal, social structure and intellectual tradition of the Russian empire not denying the impact of the Marxist-Leninist ideas. Criminal law, for Berman, was only a part of the analysis, among other fields of Soviet law, for instance, civil law or family law. Hence, the entire legal doctrine, developed in the Soviet Union – not only its part, the concept of crime and the penal legal tradition – was in the core of Berman’s huge and fundamental-type analysis<sup>92</sup>. In this way Berman’s viewpoint is contradictory to the tradition to use the metaphor of the Gulag in

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<sup>89</sup> Arendt, *Totalitarizmo ištakos*, pp. 408-413.

<sup>90</sup> Harold J. Berman, *Justice in the USSR. An Interpretation of Soviet Law*, Cambridge, London, 1987.

<sup>91</sup> Berman, “Principles of Soviet Criminal Law”, *The Yale Law Journal*, Vo.1 56, No. 5 (May, 1947).

<sup>92</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*.

defining Soviet criminal justice and to emphasize the repressive character of Soviet law and its subordination to the political goals entirely.

This tradition to see the Soviet system of law as the whole, without stressing the division between the legal doctrine and legal practice, between penal, civil and other parts of it, in the contemporary field of history is followed by the historian Ulrich Schmid<sup>93</sup>. The so-called “socialist law” (understood as law of the USSR and other states of the Eastern Bloc) in the context of the whole Western legal tradition and its separate discourses, was analysed by Marry Ann Glendon, Michael Wallace Gordon and Christopher Osakwe. Their work, devoted of the legal history of the whole Western civilization was translated into Lithuanian and published in Lithuania in 1993<sup>94</sup>.

Some other scholars both, historians and lawyers are also a part of this intellectual tradition, however, they focused not on the whole Soviet legal system but on its part, namely, criminal law. These scholars are H. P. Solomon Jr.<sup>95</sup>, F. J. Feldbrugge<sup>96</sup>, Ivo Lappena<sup>97</sup>. The article by A. K. R. Kiralfy<sup>98</sup> deserves mention here. The study *Revolution in Law– Contributions to the Development of Soviet Legal Theory, 1917-1938* edited by Piers Beirne, belongs to the same research tradition<sup>99</sup>. In his book *Soviet Law and Soviet Society* G. C. Guins also described the social level on which soviet law developed and functioned<sup>100</sup>.

In the context of contemporary Soviet studies, the approach of Glendon, Gordon and Osakwe raises some doubts. This is, for instance, their

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<sup>93</sup> Ulrich Schmid, “Constitution and narrative: peculiarities of rhetoric and genre in the foundational laws of the USSR and the Russian federation”, *Studies in East European Thought*, 2010, Vol. 62.

<sup>94</sup> Glendon, Gordon, Osakwe, *Vakarų teisės tradicijos*.

<sup>95</sup> Peter H. Solomon Jr., *Soviet Criminal Justice under Stalin*, Cambridge, 1996.

<sup>96</sup> F. J. Feldbrugge, “Soviet Criminal Law. The Last Six Years”, *The Journal of Criminal Law, Criminology and Police Science*, Vol. 54, No 3, (September, 1963).

<sup>97</sup> Ivo Lappena, *Soviet Penal Policy*, Denmark, 2000.

<sup>98</sup> A. K. R. Kiralfy, “Recent Legal Changes in the USSR”, *Soviet Studies*, Vol. 9, No 1, July, 1957.

<sup>99</sup> *Revolution in Law– Contributions to the Development of Soviet Legal Theory, 1917-1938*, Piers Beirne (ed), Armonk, N.Y, London, 1990, p. 30.

<sup>100</sup> G. C. Guins, *Soviet Law and Soviet Society*, The Hague, 1954.

statement that the Communist Party in the field of law was omnipotent and exercised direct control over the Soviet legal system, doctrine and administration during the whole period of the existence of the Soviet State<sup>101</sup>. H. P. Solomon Jr. has a different viewpoint<sup>102</sup>.

Both *historical/totalitarian* and *legal* attitudes, however, have limitations, which we seek to avoid. The first attitude usually focuses only on a political crime and extra-judicial institutions<sup>103</sup> and does not take into account the system of usual courts and non-political criminality. The second attitude deals mainly with the content of legal definitions and norms thus remaining in the field of ideas ignoring their practical implementations in many cases<sup>104</sup>.

However, *there are exceptions and works* overcoming this theoretical and methodological limitation: *they are related to changes in the discipline of Soviet studies*. As the popularity of the totalitarian paradigm in the field of Soviet studies declined, and social sciences began to dominate in the discourse on Soviet studies in the 1970s, and when the desire “to bring society back” and to “write history” of the Soviet Union not only “from above” but also “from below” appeared<sup>105</sup>, the way of studying the phenomenon of Soviet-type crime and criminality was also modified. Such research was usually concerned with one or another empirical aspect of criminality in the Soviet Union.

Such was, for instance, the work by Walter D. Connor who focused on statistical and other tendencies in homicide crimes in the USSR, and discussed the possibilities to compare these tendencies with the homicide criminality in the USA. The work had the whole phenomenon of murders in the Soviet

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<sup>101</sup> Glendon, Gordon, Osakwe, *Vakary teisės tradicijos*, pp. 282-283.

<sup>102</sup> Solomon Jr., *Soviet Criminal Justice under Stalin*.

<sup>103</sup> As, for instance: *Сталинизм в советской провинции: 1937 - 1938 гг. Массовая операция на основе приказа № 00447*, Сост.: М. Юнге, Б. Бонвеч, Р. Биннер, Москва, 2009.

<sup>104</sup> Guins, *Soviet Law and Soviet Society*, p. 1.

<sup>105</sup> Fitzpatrick, “Introduction”, in: *Stalinism. New Directions*, pp. 2-3.



Union – not only the its political aspects in focus <sup>106</sup>. Thus, it fitted into the revisionist paradigm.

The work by Nick Lampert devoted to economic criminality and corruption in the Soviet system of bureaucracy and networks of the nomenclature followed this tradition <sup>107</sup>. As will be discussed later in this Chapter, corruption on all levels of the political apparatus of the Soviet State, and such phenomenon as the black market and “second economy” has aroused interest of sovietologists up till now.

The economic criminality research in the Soviet Union and Russia is continued to be carried out by Alena V. Ledeneva and her colleagues. For instance, the collective monograph *Economic Crime in Russia*, (edited by Alena V. Ledeneva and Marina Kurkchiyan) is important in this context <sup>108</sup>. Some chapters of the book were especially significant to our research: for instance, the Chapter by Johan Bäckman, (*The Hyperbola of Russian Crime and the Police Culture*).

The turn towards cultural issues (and the interest of cultural historians and anthropologists) in the Soviet studies <sup>109</sup> brought new tendencies into the studies of the phenomenon of crime and punishment too. One of the recent examples is the collective study *Punishment as a Crime? Perspectives on Prison Experience in Russian Culture* (edited by Julie Hansen and Andrei Rogachevskii), the result of the research project implemented at the Uppsala University, Sweden. The project focuses on the cultural aspects of the phenomenon of criminality and the experience of prison in the Soviet, Russian and post-Soviet societies. Such phenomenon, as prison experience and the prison subculture are also analysed <sup>110</sup>.

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<sup>106</sup> Walter D. Connor, “Criminal Homicide, USSR/USA: Reflections on Soviet Data in Comparative Framework”, *The Journal of Criminal Law and Criminology*, Vol. 64, No. 1, 1973 03.

<sup>107</sup> Nick Lampert, “Law and Order in the USSR: The Case of Economic and Official Crime”, *Soviet studies*, Vol. 36, No. 3 (Jul., 1984).

<sup>108</sup> *Economic Crime in Russia*, Alena V. Ledeneva, Marina Kurkchiyan (eds), The Hague, London, Boston, 2000.

<sup>109</sup> Fitzpatrick, “Introduction”, in: *Stalinism. New Directions*, p. 3

<sup>110</sup> *Punishment as a Crime? Perspectives on Prison Experience in Russian Culture*.

It is also important to mention that interest in the political aspect of the construction of the Soviet idea and social practice of crime and criminality did not disappear after the totalitarian paradigm had lost its popularity. Following the Perestroika and the collapse of the Soviet Union, when the archives of the Communist Party and the Soviet political authorities and administration were opened to scholars, it was finally possible to measure the scale of political repressions in quantitative ways. Also, the archives of the courts, military tribunals, the NKVD-NKGB-MGB-KGB and other institutions belonging to the Soviet system of criminal prosecution were opened. It gave the possibility to reconstruct the mechanism of criminalization, the tendencies of trial and many other aspects not only from the memoirs of witnesses but also using the archival documents. This formed a more precise and accurate picture.

The Soviet system of criminal prosecution was reconsidered again as a tool to carry out political repressions in this context. One of the examples is the fundamental study *The Black Book of Communism: Crimes, Terror, Repression* (first published in 1997) by Stéphane Courtois, Nicolas Werth, Jean-Louis Panné, Andrzej Paczkowski, Karel Bartosek and Jean-Louis Margolin<sup>111</sup>. Some other works by the same scholars, for instance, the analysis of the mechanism and practice of the Soviet state repressions, which included mass deportations, the creation of the system of forced labour and some other aspects reflecting the repressive character of the Soviet system of criminal prosecution, implemented by Werth also deserve mention here<sup>112</sup>. And, of course, the history of the Gulag written by Anne Applebaum had an impact on the whole discourse on the Soviet concepts of crime and punishment in both theory and practice<sup>113</sup>.

This new interest in political criminality and the repressive mechanism of the Soviet system of criminal prosecution from the early 1990s is also

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<sup>111</sup> We will use the Lithuanian translation: Stéphane Courtois, Nicolas Werth, Jean-Louis Panné, Andrzej Paczkowski, Karel Bartosek, Jean-Louis Margolin, *Juodoji komunizmo knyga. Nusikaltimai, teroras, represijos*, Vilnius, 2000.

<sup>112</sup> Верг. Н., *Террор и беспорядок. Сталинизм как система*, Москва, 2010

<sup>113</sup> Applebaum, *GULAG. A History*.

related to the fact that most post-Soviet or post-socialist societies in Europe once again<sup>114</sup> rehabilitated their former political prisoners and changed their legal status from the *criminal* (or the former criminal) to the *victim* of the state's crime.

Thus, interest in understanding Soviet political repressions (and interest in the Soviet system of criminal prosecution) peaked. In many countries even new research institutions were created to evaluate and investigate what was once criminal prosecution institutions and practices (under the Soviet and Socialist rule) and now treated as *crimes*, committed by the states (the USSR and other states of the Eastern Bloc) against their inhabitants. The Institute of National Remembrance in Poland is a vivid example of that.

It is important to mention that some researchers were able to join several of these perspectives: the voice of the former political prisoners (in the post-Soviet reality redefined as “victims”), the totalitarian focus on repressions and social aspects of the Soviet system of criminal prosecution. One of such successful, multi-perspective examples is research carried out by Geoffrey Hosking, which resulted in the book *Rulers and victims: the Russians in the Soviet Union*<sup>115</sup>. The book *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power* by B. Bowring is similar<sup>116</sup>.

Finally, some insight into the Soviet-type definition of crime can be found even in the books or articles devoted to a broader topic – the biography of young Stalin written by Simon Sebag Montefiore and discussing the links between the criminal world of the Russian empire and the Bolshevik and other revolutionary organizations<sup>117</sup>.

However, due to these reasons, no *multidisciplinary attempts to implement the detailed historical-sociological-criminological-legal analysis of the Soviet concepts of crime and punishment* have been made in the field

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<sup>114</sup> Meaning the post-Stalinist rehabilitation campaign, which started after Stalin's death.

<sup>115</sup> Geoffrey Hosking, *Rulers and victims: the Russians in the Soviet Union*, Cambridge, London, 2006.

<sup>116</sup> Bill Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, Abingdon, New York, 2013.

<sup>117</sup> Simon Sebag Montefiore, *Der Junge Stalin*, Frankfurt am Mein, 2007.

of Soviet studies for a very long time, and even now this field of studies is taking its first steps.

Now a few words should be said about why the *imperial-colonial-post colonial paradigm* of the Soviet studies is also important to this research: the system of criminal justice in separate Soviet Republics has never been isolated from the tendencies observed in the so-called metropolis: Moscow<sup>118</sup>. It is true that different historical periods, the political, social and economic development of the USSR witnessed a different extent to which the centre impacted the peripheries. However, some kind of impact always existed. To measure this impact is one more method to increase general understanding about the generalities and tensions between the centre (Moscow) and local level (LSSR) that the Soviet-type imperialism and colonialism caused.

The idea, that the USSR was an empire should not be taken for granted. This research is too narrow to verify the correctness of the theories stating the kinship and similarity between the Soviet Union and the typical empire, or a colonial state. However, taking the imperial dimension into the consideration might help us increase general theoretical understanding and empirical knowledge about the scientific background and validity of thinking about the Soviet empire in post-colonialism's theories, concepts and terms.

The theoretical attribution of the USSR to the category of empires is based, first of all, on the insights of such scholars as Terry Martin. He focuses on the nationality-related aspects of the terror campaigns of 1928-1930, 1932-1933, 1937-1938, and stresses that the dynamics between the centre and the periphery of the Soviet empire and that a special model of the Soviet state (which he calls "the affirmative action empire") had a great impact on these repressions. According to Martin, "...terror was employed asymmetrically against bourgeois nationalists rather than against great-power chauvinists". It frustrated the national communists and reflected "a turn toward the hard-line" policy:

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<sup>118</sup> For instance, the court system of all separate Soviet republics was connected. See more in: John J. Shoemaker, "The Administration of Criminal Justice in the USSR", *Acron Law Review*, No 1 (Fall, 1969) p. 62.

“...in the nationalities policy, the hard-line emphasized the threat of separatist “bourgeois nationalism”, in particular the threat of counter-revolutionary penetration through the cross-border ethnic ties. As a result, “bourgeois nationalists” were targeted, which in turn had the effect of undermining the Soviet nationalities policy.”<sup>119</sup>

The text by Jörg Baberowski and Anselm Doering-Manteuffel also belongs to this tradition. They put forward the a hypothesis that both National Socialist Germany and the Soviet Union can be defined as “multiethnic empires”: “the Soviet Union was already a multinational empire when the Bolsheviks began to reorder it according to their own ideas”<sup>120</sup>.

It is important to stress that, according to Jörg Baberowski and Anselm Doering-Manteuffel, the Bolsheviks understood every “difference as a threat” and therefore they pursued “exterminations campaigns to eradicate such difference”<sup>121</sup>. According to Baberowski and Manteuffel, this elimination of the difference, which, in the imagination of the Soviet leaders, threatened the unity of the Empire and the whole social order, was first of all practiced against various cultural and ethnic groups. According to them, the Bolsheviks “believed it possible to eliminate for ever what they perceived to be a disordering and disturbing diversity of cultures and communities” and “this belief itself derived from an eschatological ideology of redemption, the ideology that represented the future life as a permanent order of social” unity and homogeneity<sup>122</sup>.

This insight is very important in the context of our research because it leads to another important question, namely, if such a system as the Soviet

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<sup>119</sup> Terry Martin, *The Affirmative Action Empire. Nations and Nationalism in the Soviet Union, 1923-1939*, Ithaca, London, 2001, p. 23.

<sup>120</sup> Jörg Baberowski and Anselm Doering-Manteuffel, “The Quest for Order and the Pursuit of Terror. National Socialist Germany and the Stalinist Soviet Union as Multiethnic Empires”, in: *Beyond Totalitarianism. Stalinism and Nazism Compared*, Michael Geyer, Sheila Fitzpatrick (eds.), New York, 2009, p. 180.

<sup>121</sup> *Ibidem*, p. 181.

<sup>122</sup> *Ibidem*.

Empire sought to eliminate all differences, to make society homogenous and unified, could it ever tolerate (and did it tolerate) any kind of deviances, especially in such an extreme form as *crime*?

*In Lithuanian historiography* the context of political and social interest in dealing with the communist past shaped the early historiography of the 1990s and even the 2000s. The voice of the former political prisoners and deportees, and the decision of the new government of the independent state to sever the ties with Soviet system, treating it as criminal per se gave rise to new institutions devoted to the study and evaluation of the Soviet past. At the same time, historiography focused on political repressions.

The early Lithuanian historiography of the Soviet past had very close connection with the images and symbols functioning in the historical memory. These symbols are defined by the historian Christine Beresniová as narratives and myths of *victimization*, and *suffering*<sup>123</sup>. These myths became filters through which the whole Soviet past was interpreted in the 1990s and at the beginning of the first decade of the 21st century.

The image of the Soviet period produced using the metaphor of suffering started to develop not in the field of historiography at first. This image was created in the environment of the Lithuanian dissidents, in the illegal, underground publishing, Samizdat, as well as among the Lithuanian Diaspora in Western countries, in the memoirs of the deportees and political prisoners<sup>124</sup>.

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<sup>123</sup> Christine Beresniová's presentation "Teaching the Nation: Navigating Narratives of Nationhood in Lithuanian Post-Soviet education", Vilnius Symposium on Late Soviet and Post-Soviet Issues, Vilnius, 2012 12 07.

<sup>124</sup> In 1943, the book by Alena Devenienė about Lithuanian deportees *Lietuvos tremtinių trągingas likimas* was published in the United States. In 1944, the Lithuanian emigrant Juozas Prunskis issued the book about the deportations *Sibiro ištrėmime ir bolševikų kalėjime*; in 1953 one more member of the Lithuanian diaspora in the West, Kazimieras Barėnas, issued the collection of novels about political repressions *Giedra visad grįžta*. See more in: Alena Devenienė, *Lietuvos tremtinių trągingas likimas. Kalba, pasakyta Amerikos lietuvių konferencijoj Pittsburgh, Pa., rugsėjo 3 d., 1943*, Boston, 1943; Juozas Prunskis, *Sibiro ištrėmime ir bolševikų kalėjime*, Chicago, 1944; Kazimieras Barėnas, *Giedra visad grįžta*, Memmingen, 1953.

Hence, the first steps in Lithuanian historiography of the Soviet period, including historiography related to the Soviet definitions of the crime and punishment, were guided by two aspects: the totalitarian paradigm of Soviet studies and empirical, historicist-type research of the Soviet period (the aim of the latter was, first of all, to collect the documents from the newly-opened archives of Soviet institutions and to record losses incurred by the Soviet occupation and re-occupation and its victims). One general trait of such historiography was as follows: those historians being a part of the paradigm of totalitarianism lacked a critical view due to the totalitarian theory and approach. Actually, the theoretical background of research in such cases was weak: they represented totalitarianism in the construction of their research and the attitude towards the Soviet state and society; however, in their works made almost no references to the totalitarianism theory.

Hence, according to the Lithuanian historian Arūnas Streikus, the early Lithuanian post-Soviet historiography paid the greatest attention to the most obvious and most painful aspects of Soviet experience<sup>125</sup>. Such tendencies determined chronological limits of the research and became the reason for choosing research topics. The collective trauma resulting from collective conscience of society directed the research to the most painful period – the epoch of the Stalinist repressions. Totalitarianism, as a paradigm, determined that the greatest attention should be paid to investigating the USSR and the LSSR governments, state institutions, the Communist party, such institutions as the NKVD-MGB-KGB and their repressive policy. However, the whole Soviet political and institutional system was seen as one monolithic, powerful unit. Thus, this methodology was focused on the institutions and structures of political power, broader social and cultural aspects were excluded<sup>126</sup>. Here lies one big paradox – this generation of historians, actually, instead of carrying out an analysis of experiences of the repressed individuals, without going deep into

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<sup>125</sup> Arūnas Streikus, *Sovietų valdžios antibažnytinė politika Lietuvoje (1940-1990)*, Vilnius, 2002, p. 8.

<sup>126</sup> Dalia Marcinkevičienė, “Sovietmečio istoriografija: užsienio autorių tyrinėjimai ir interpretacijos”, *Lietuvos istorijos metraštis*, 2003, No 2, p. 94.

their cases, collected statistical data, studied the mechanism of repressions and measured their scale by counting the victims.

As early as 2009 the Lithuanian historian Vilius Ivanauskas claimed that there were two perspectives in Soviet studies of Lithuania: the totalitarian perspective and the perspective focusing on Lithuania's Soviet modernization<sup>127</sup>.

The example of this "victimological" and totalitarian perspective would be the book *Lithuania in 1940-1990. The history of the occupied Lithuania* (2007)<sup>128</sup> published by the Genocide and Resistance Research Centre of Lithuania. This study is one of the most striking examples of the Lithuanian Soviet history emphasizing negative aspects of the Soviet period concentrating on losses and victims. Though a short analysis of economy and culture of the Soviet State exist there too, the main focus was on the repressive aspects of the Soviet system.

Such focus on the repressions and attempts to reconstruct the way in which the legal system of the interwar Lithuania was changed by the new system of Soviet criminal prosecution aimed at repressing the occupied state and society instead of implementing justice also existed in historiography of the Lithuanian historian Arvydas Anušauskas<sup>129</sup>. His works can be defined as belonging to the paradigm of "totalitarianism" (or what can be called the "new totalitarianism"; this sub-paradigm can be associated with such studies as the already mentioned *Black Book of Communism*). There are other Lithuanian scholars, who belong to the same tradition, for instance, Juozas Starkauskas and his analysis of the NKVD–MVD–MGB system<sup>130</sup>.

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<sup>127</sup> Vilius Ivanauskas, "Soviet-Period Achievements in Lithuania and their Interpretations: A Look at the National aspects from the Perspective of Evaluating Nomenklatura Activity", *Darbai ir dienos*, No 52, 2009, p. 105-107.

<sup>128</sup> *Lietuva, 1940-1990: okupuotos Lietuvos istorija*, Arvydas Anušauskas (ed.), Vilnius, 2007.

<sup>129</sup> Arvydas Anušauskas *Teroras. 1940 - 1958 m.*, Vilnius, 2012; idem, „Represinė SSRS vidaus reikalų sistema Lietuvoje“, *Lietuvos vidaus reikalų istorija*, Vilnius, 2008.

<sup>130</sup> Starkauskas S., *Čekistinė kariuomenė Lietuvoje 1944-1953 metais: NKVD – MVD - MGB kariuomenė partizaninio karo laikotarpiu*, Vilnius, 1998.



Another group of Lithuanian historiography can be defined as case studies – the case study of Tuskulėnai manor mass grave and its victims and perpetrators written by Severinas Vaitiekus belongs to this field<sup>131</sup>. One more example is the case study of the war prisoner camp and later the Gulag camp in Macikai<sup>132</sup>. Both case studies do not only give a thorough of the circumstances under which Soviet penal practices functioned in occupied Lithuania but also provides more general insights into the basic features of Soviet legality. Therefore both were of great use to my research.

Some young historians also show interest in the field of Soviet Lithuanian criminality and penal practises. Such is the investigation of the execution of the death penalty in Soviet Lithuania between 1950 and 1990 by Darius Indrišionis<sup>133</sup>.

All these works were important to the present dissertation and helpful in building up a deeper understanding of how the Soviet system of criminal prosecution really functioned. On the other hand, their methodological perspective can be criticized as the whole totalitarian paradigm was criticized by the revisionists for a failure, according to Fitzpatrick, “to show that Soviet society was something more than just a passive object of the regime’s manipulation and mobilization”, that “the society’s capacity to generate “initiative from below” also existed<sup>134</sup>. These aspects are important for our analysis because, in the Soviet Lithuania, a newly-occupied and incorporated territory, not only the highest circles of the nomenclature had some possibilities to negotiate with the central power in Moscow but also a larger part of society rejected the Soviet-proposed new social and political reality,

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<sup>131</sup> Severinas Vaitiekus, *Tuskulėnai: egzekucijų aukos ir budeliai (1944-1947)*, Vilnius, 2002.

<sup>132</sup> *Macikai house of death: the WWII prisoner of war and Gulag camps 1939-1955 in the environs of Šilutė*, Edita Jankauskienė (ed.), Vilnius, 2015.

<sup>133</sup> Darius Indrišionis, „Mirties baismė Lietuvos SSR 1950–1990 m.: teisiniai pagrindai ir periodizacija“, *Genocidas ir Rezistencija*, No 1 (39), 2016, pp. 65-80.

<sup>134</sup> Sheila Fitzpatrick, “Introduction”, in: *Stalinism. New Directions*, p. 6-7.

together with its concept of crime and doctrine of law (by starting armed resistance and proposing some alternative legal reality<sup>135</sup>).

Recently the number of different research approaches in Lithuanian sovietology has been on the increase. For instance, the research carried out by the historian Valdemaras Klumbys is orientated towards tensions between different groups and strategies of behaviour in the late-Soviet Lithuania<sup>136</sup>.

The development of Lithuanian Soviet historiography was more or less repeating the processes, which took place in the Western sovietology several decades ago, and these processes also stimulated to the interest in the very concept of crime and punishment and in the Soviet system of criminal prosecution which started to growing only recently<sup>137</sup>. Similarly to their Western colleagues, Lithuanian revisionists focused on the Soviet version of industrialization, the Soviet nomenclature, the post revisionists concentrated their attention on Soviet everyday life, mentality, culture and communist transformations on the level of an individual<sup>138</sup>.

It is important to mention, that the turn of Lithuanian sovietology towards revisionism and post-revisionism left even less space for the studies of crime and the field of criminal prosecution. The study of Nerija Putinaitė, for instance, focused on individual strategies of dealing with the Soviet system, without placing greater emphasis on the criminal aspects of these strategies (without ignoring the repressing aspects of the Soviet state and society)<sup>139</sup>.

However, various aspects of criminality were discussed in some studies of this type. For instance, the phenomenon of the “telephone law” and corruption among the Soviet industrial and political elites was revealed in

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<sup>135</sup> Aistė Petrauskienė, *Partizaninio karo vietos: įamžinimas ir įpaveldinimas nepriklausomoje Lietuvoje*, doctoral dissertation, Vilnius, 2017.

<sup>136</sup> Valdemaras Klumbys, *Lietuvos kultūrinio elito elgsenos modeliai sovietmečiu*, doctoral dissertation, Vilnius, 2009, p. 4.

<sup>137</sup> Marcinkevičienė, *Sovietmečio istoriografija: užsienio autorių Tyrinėjimai ir interpretacijos*, p. 91.

<sup>138</sup> *Ibidem*, pp. 91-105.

<sup>139</sup> Nerija Putinaitė, *Nenutrūkusi styga: prisitaikymas ir pasipriešinimas sovietų Lietuvoje*, Vilnius, 2007.

Saulius Grybkauskas work, which dealt with Soviet industrialization<sup>140</sup>. The research of Marius Ėmužis is also important in this context<sup>141</sup>. The Soviet kind “people from the street” discourse, everyday life experiences are revealed by Tomas Vaiseta in his dissertation and monograph<sup>142</sup>.

Finally, it is worth stressing that in Lithuania, too, *not only historians but also lawyers* contributed to historical research of Soviet Lithuania’s concepts of crime, punishment, and the system of criminal prosecution.

Vidmantas Žiemelis, for instance, carried out research on Soviet Lithuania’s Public Prosecutor’s Department<sup>143</sup>, Mindaugas Maksimaitis and Stasys Vansevičius in their book devoted to the history of Lithuania’s law conducted research on the Soviet law as well<sup>144</sup>. Arvydas Pocius did research on a professional Russian criminological discourse and included Soviet authors into the analysis too<sup>145</sup>. Gintaras Šapoka described the evaluation of the Soviet Lithuanian penal system by the Lithuanian lawyers who emigrated to the West<sup>146</sup>.

Last but not least is *Russian historiography* that should not be forgotten either. According to Fitzpatrick, after the collapse of the USSR, Russian scholars joined the Western ones thus enriching the general field of Soviet studies<sup>147</sup>.

The joint project of Russian and foreign historians focussed on the history of Stalinism, and it is an important example of how Russian and Western scholars cooperate today. Though the project is aimed at shaping the

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<sup>140</sup> Saulius Grybkauskas, *Sovietinė nomenklatūra ir pramonė Lietuvoje 1965–1985*, Vilnius, 2011, p. 9; Idem, Saulius Grybkauskas, “Nomenklatūrinis sovietinės Lietuvos pramonės valdymas: partinės baudmės, KGB kompromitavimas ir klientiniai ryšiai”, *Genocidas ir rezistencija*, 1 (23), Vilnius, 2008.

<sup>141</sup> Marius Ėmužis, *Partinės baudmės tarp klientelizmo ir kolektyvizmo sovietų Lietuvoje (XX a. 5-7 deš.)*, pp. 68-85.

<sup>142</sup> *Nuobodulio visuomenė: Vėlyvojo sovietmečio Lietuva (1964-1984)*, p. 367-368.

<sup>143</sup> V. Žiemelis, “Lietuvos prokuratūros pertvarkymo į sovietinę prokuratūrą raida 1940-1941 metais”, *Jurisprudencija*, 12 (102), Vilnius, 2007.

<sup>144</sup> Maksimaitis M., Vansevičius S., *Lietuvos valstybės ir teisės istorija*, Vilnius, 1997.

<sup>145</sup> A. Pocius, “Nusikaltėlio asmenybės samprata Rusijos autorių kriminologinių koncepcijų kontekste”, *Jurisprudencija*, 5 (95), Vilnius, 2007.

<sup>146</sup> G. Šapoka, “Sovietinės Lietuvos baudžiamosios teisės vertinimas lietuvių teisininkų išėvių darbuose”, *Jurisprudence*, 18 (2), Vilnius, 2011.

<sup>147</sup> Fitzpatrick, “Introduction”, in: *Stalinism. New Directions*, p. 5.

whole phenomenon of Stalinism and focuses on its social, political, economic, cultural, everyday life and other aspects, the book devoted to the reality of repressions related to the so-called Decree No 00477 is important to our research. The authors of the book reveal a complex picture of the Great Terror in 1937-1938, including legal aspects of criminalization of the political enemy<sup>148</sup>.

Another example of importance to our context is the work by С. А. Красильников. It is extremely important to our research context because it does not only reveal the organization of deportations of peasants as “enemies” arranged from above but also describes such initiatives of the population coming from “below” as protests against these repressions<sup>149</sup>. It helps us see that even under Stalinism in the 1930s the Russian population showed some signs of not being totally-atomized by the regime.

The study by В. А. Козлов is dedicated to the post-Stalinist period. It focuses on the behaviour of deviant, conflict groups in the era when the Gulag system was dramatically reformed and underwent fast erosion. It also tells the history of political and police practices, which were used in order to repress both what was understood and defined as a deviant behaviour and social protest under Khrushchev and Brezhnev<sup>150</sup>.

Such classic examples as *the Gulag Archipelago* by A. Solzhenitsyn<sup>151</sup> balancing somewhere between historiography, memoirs and literature help to shape and enrich the research context with insights, which actually had a greater impact on the contemporary popular understanding of the Soviet system of criminal prosecution than the professional scientific literature did.

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<sup>148</sup> *Сталинизм в советской провинции: 1937 - 1938 гг. Массовая операция на основе приказа № 00447*, Сост.: М. Юнге, Б. Бонвеч, Р. Биннер, Москва, 2009.

<sup>149</sup> Красильников С.А., *Серп и Молот. Крестьянская ссылка в Западной Сибири в 1930 - е годы*, Москва, 2009.

<sup>150</sup> Козлов В. А., *Массовые беспорядки в СССР при Хрущеве и Брежнев (1953 – начало 1980 - х гг.)*, Москва, 2010.

<sup>151</sup> Aleksandras Solženycinas, *Gulago archipelagos*, 1, Vilnius, 2009.

## Research sources and methods

The main research methods in this work are a critical analysis and synthesis of historical sources and historiography. A large part of these documents is court files whose importance and use in the research of history is well described and justified by Claudia Verhoeven<sup>152</sup>.

We also use some elements of research methods coming from the field of oral history: 13 qualitative anonymous semi-structured interviews were conducted: 3 with the former legal professionals (the Militia investigator, an officer of the Public Prosecutor's Department and a former student of law) and 10 with random "people from the street" (in order to check whether and how the Soviet-constructed concepts of crime and punishment could reach the level of an individual who has no direct contact with the criminal world or the system of criminal prosecution). It is important to mention, that due to the age of the respondents, the interviews could be used only for the analysis of the post-Stalinist period.

There are several types of primary sources used in the research:

a) Legal sources of the USSR and the LSSR: constitutions<sup>153</sup>, criminal codes<sup>154</sup>, court decisions, guidelines, work programmes and regulations of the institutions in the field of criminal prosecution<sup>155</sup>. These documents reveal the official legal position and show, what was treated as a crime on the level of law-making and law-enforcement in the Soviet Union, what criteria were used by the legal system to criminalize individuals and groups.

b) Documents revealing how the concept of crime was defined on the highest political level: official documents, decisions and decrees issued by

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<sup>152</sup> Verhoeven, "Court files", in: *Reading Primary Sources: The interpretation of texts from nineteenth- and twentieth- century history*, pp. 90-105.

<sup>152</sup> Solomon, *Soviet Criminal Justice under Stalin*, p. 19.

<sup>153</sup> *Lietuvos Tarybų Socialistinės Respublikos Konstitucija*, Kaunas, 1940.

<sup>154</sup> *RTFSR Baudžiamasis kodeksas, veikiąs Lietuvos TSR teritorijoje*, Vilnius, 1952; *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis Kodeksas*, Vilnius, 1961.

<sup>155</sup> Perlovas I. D., *Liudies teismo darbo organizavimas*, Kaunas, 1949; Kairelis A., *Prokurorinė priežiūra Tarybų Lietuvoje*, Vilnius, 1982.

the Communist Party of the USSR and their leaders. These are, for instance, transcripts and records of congresses and meetings of the Central Committee of the USSR and the Communist Party of the LSSR<sup>156</sup>, speeches and writings of political leaders of the USSR.

c) Archival sources revealing the dimension of criminal prosecution (law enforcement mechanism), mostly personal criminal files from the Lithuanian Special Archives<sup>157</sup>: Foundation K-1, 58 (files of those accused for political crimes), Foundation 1771 (the Central Committee of the Lithuanian Communist Party) and Foundation V-145/40 (usually files of those accused for the so-called “criminal”, non-political crimes). We also used some published documents of criminal processes<sup>158</sup>.

d) The professional criminological discourse can be seen from the literature, devoted to legal educators and those engaged in the system of criminal prosecution as experts and professionals<sup>159</sup>. Here we also use writings of Soviet law’s most influential figures, such as Andrey Vyshinsky<sup>160</sup> and Evgeny Bronislavovich Pashukanis<sup>161</sup>.

e) The press analysis helps us to see the phenomenon of Soviet Lithuanian criminality not only in the framework of the public discourse and representations. Many newspapers in the Soviet system were official transmitters of the political position and main ideological guidelines: these were for instance, the *Tiesa*, the *Kauno tiesa*, the *Liaudies balsas*. The professional legal journal *Socialistinė teisė* was useful on the multilevel. First

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<sup>156</sup> *Lietuvos Komunistų Partijos (bolševikų) Centro Komiteto IV plenumas. 1944 m. gruodžio 27 - 30 d.*, Vilnius, 1945; *Apie kai kuriuos bolševikinės spaudos uždavinius, Paskaitų, skaitytų respublikinių kraštų ir sričių laikraščių redaktorių pasitarime prie VKP(b) CK Propagandos ir agitacijos valdybos sutrumpintos stenogramos*, Vilnius, 1947.

<sup>157</sup> We will use the abbreviation LYA (Lietuvos ypatingasis archyvas in Lithuanian).

<sup>158</sup> *Lietuvos vyskupai kankiniai sovietiniame teisme*, Vilnius, 2000.

<sup>159</sup> Žuravliovas D., *Agitatorius – socialistinio lenktyniavimo organizatorius*, Vilnius, 1948; Cegelis A., *Visuomenė socialistinio teisėtumo ir teisėtvarkos sargybose: medžiaga lektoriui*, Vilnius, 1981; Černokozova V., Černokozovas I., *Komunistinės moralės pagrindai: metodinė priemonė propagandistams*, Vilnius, 1977; Rudaševskis L. *Liaudies kontrolės viešumo vaizdinės priemonės*, Vilnius, 1973.

<sup>160</sup> The speech of A. Vishynskij, accessible online:

<http://art-bin.com/art/omosc22m.html#not2>, [last visited on 1 March 2016].

<sup>161</sup> Евгений Брониславович Пашуканис, *Избранные произведения по общей теории права и государства*, Москва, Наука, 1980.

of all, it published much more open information about various crimes and trends in criminality (the information, which was highly censored in the USSR and the LSSR). Also, it is useful for a better understanding of the expert's level. Such illustrated journal as *Šluota*, which was intended for the "people from the street" level, and included a didactic dimension (as almost every kind of the mass media in the Soviet state). When talking about the late Soviet period, *Šluota* was relatively open about some kinds of social problems, including some dimensions of criminality (not all types of it). We also include the alternative formation of the public discourse as, for instance, samizdat literature and such publications as *Lietuvos Katalikų Bažnyčios kronika*.

f) Another group of sources is diaries and memoirs: for instance, written by Juozas Zdebskis<sup>162</sup>, Kęstutis Lakickas<sup>163</sup>. From such sources we can more easily capture the dimension of the Soviet everyday life, values, norms and practices related to the dimension of crime.

### **Spatial and chronological boundaries**

Even if experts of the Soviet studies today are questioning the validity of the so-called totalitarian paradigm, the chronology of the USSR history is still attached to the idea of the totalitarian era of Stalin and the post-totalitarian period, which started after Stalin's death (the mid-1950s – the mid-1980s) and Perestroika (the mid 1980s – the 1990s)<sup>164</sup>. We are not going to change this tradition in our research

Our analysis investigates the concept of crime, its evaluation and depiction, which is revealed in the practice of punishment in the Soviet Union after the 1917 Revolution and in the LSSR in 1940-1990. It is true that in constructing such a macro, panoramic view of the concept of crime, which

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<sup>162</sup> Zdebskis J., *Gyvenimas mąstymuose, Kunigas tarp vagių: iš kalėjimo dienoraščių*, Vilnius, 1996.

<sup>163</sup> Lakickas K., *Kalinys Z - 311*, Vilnius, 1994).

<sup>164</sup> Zenonas Norkus, „Andropovu klausimu. Komunizmas kaip lyginamosios istorinės sociologinės analizės problema“ (I), *Sociologija: Mintis ir Veiksmas*, 1 (19), Vilnius, 2007, p. 16.

existed in Soviet Lithuania, one runs the risk of miss some smaller details. Here we can employ a well-known practice, which comes from the discipline of geography: there are three ways to construct a map of a particular area: to use small-scale, medium-scale or large-scale techniques.

As we know from geography, large-scale maps are detailed representations of one smaller area, such as a city, town or district. Medium-scale maps are used trying to depict the country. Small-scale maps are dedicated to depicting the global perspective.

Hence, just as in the geography, some smaller details must sometimes be sacrificed for depicting bigger and the most important objects with the greatest possible accuracy in mapping; in this research, also, a generalized view instead of a detailed large-scale map of one particular “area” of Soviet Lithuanian criminality (for instance, research on one specific sort of crimes, as murders, rapes etc. during a short period of time) was chosen.

Of course, all three types of scales are necessary and highly significant to understand the phenomenon of criminality in the LSSR and in the USSR in general, We hope that our macro-analysis is able to provide some general framework, catch and depict the most important objects and markers and give a background to specify other, smaller areas of the Soviet Lithuanian map of criminality, thus giving initial material for much more detailed view in the future research of the phenomenon.

As has been mentioned above, the main subject of the analysis is the concept of crime, which existed in Soviet Lithuania in the period of 1940-1941, 1944-1953 and 1953-1990. We do not include the Second World War and Nazi occupation, and build our chronology according to the officially recognized dates of Lithuania’s first and the second Soviet occupations. Thus, we stick to the traditional model of periodization of the history of occupied Lithuania in the 20th century<sup>165</sup>.

The analysis starts in the Bolshevik Russia, before Lithuania was incorporated in the USSR. This approach is unusual in Lithuania’s

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<sup>165</sup> *Lietuva 1940-1990: Okupuotos Lietuvos istorija.*



contemporary historiography. In our case it is necessary, because, as we will see, the main ideas and concepts mapping Soviet Lithuania's criminality were born in the USSR, or more precisely, Soviet Russia (outside the territory of Lithuania). Additionally, it is important to stress that even geographically the area of criminal prosecution and penal institutions in the Soviet Union was never isolated from the territory of the Soviet Republic but covered the whole USSR.

Hence, it is possible to analyze criminality neither chronologically nor spatially in the LSSR without the perspective of the whole USSR and its centre Moscow. The chronological division of Stalin's and later period is determined by the fundamental legal reform, which took place in the Soviet Union after Stalin's death and transformed the whole system considerably<sup>166</sup>.

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<sup>166</sup> A. K. R. Kiralfy, *Recent Legal Changes in the USSR*, p. 1.

## **I. CREATION: OCCURRENCE AND DEVELOPMENT OF THE IDEAL TYPE OF THE SOVIET CONCEPTS OF CRIME AND PUNISHMENT (1917-1940)**

### **1. On the dream about society without criminality: theoretical and ideological assumptions and preconditions for the Soviet concept of crime**

As the methodology developed by Foucault suggests, the analysis of a certain concept should start with “grasping” this definition “in the exact specificity of its occurrence” and “determining its conditions of existence”<sup>167</sup>. Therefore we start the analysis of the Soviet concepts and ideas of crime and punishment from the analysis of the discourses, fields of ideas, intellectual contexts and conditions in which these concepts emerged and acquired their original meaning. For instance, Paul R. Gregory’s research also confirms that Soviet concepts of crime and punishment and the system of criminal prosecution were created before Stalin, and that some aspects of these concepts had developed even before 1917 when the Bolsheviks took power<sup>168</sup>.

The Bolshevik understanding of crime and law was the result of combining three main factors: some ideas emerging from the rural social organization of the Russian empire, the early pre-Soviet Bolshevik empirical experience and Marxist philosophy. But the concept of crime has never been *only* a pure combination of a junction of merely these 3 intellectual and social entities. Many different traditions, ideas and legal definitions, as well as the social reality and political decisions, had an impact on the development of the concepts of crime and punishment in the Soviet Union as a whole, and in different Soviet Republics, in our case, in Lithuania occupied by the Soviets. Hence, the description and a deeper understanding of the Soviet concepts of crime and punishment and the mechanism of functioning of these concepts,

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<sup>167</sup> Foucault, *The Archaeology of Knowledge and the Discourse of Language*, p. 28.

<sup>168</sup> Paul R. Gregory, *Terror by Quota: State Security from Lenin to Stalin*, New Haven, Connecticut, 2009, p. 1.

creating the form of Soviet penal law and the system of criminal prosecution are impossible without identifying the ideological, social and legal basis on which these concepts were formulated and developed.

The Marxist philosophic tradition was not the only – though the main – factor, which has shaped the formation of soviet ideas about criminality and penalty. The Soviet state was built according to Lenin's, and later, Stalin's interpretation of Marxist philosophy and the utopian idea of communism as the last phase of the world's social development<sup>169</sup>. In the 19th century Tsarist Russia, however, the Marxist utopia was inseparable from the local context. It took shape in a certain historical period, a certain society with its own history and its own unique social reality.

Though the Bolsheviks sought to erase the existing social reality and built a new Communist utopia, they were children of their own country and society, the people who went through the process of socialization in that certain society and were affected (though unintentionally in some cases) by the surrounding social reality. The Bolsheviks' worldview was therefore impacted by the local social norms, some ideas and practices of the social organization, which existed in the Russian Empire in the 19th century or even earlier.

The first trait of this kind identified by the researches of Russia's culture and mentality of the 19th and 20th century can be defined as the Myth of the Russians as "chosen people" to implement some universal mission<sup>170</sup>. Russia was imagined being a new holy empire, and after the fall of Byzantium in the 16th century the "concept of Moscow as the Third Rome, with a special mission to bring true Christianity to the whole" world, became deeply rooted in the Russian mentality. This idea took "shape in the church", so "it was never really adopted by the Muscovite Tsars or by later Russian emperors"<sup>171</sup>. Therefore the idea gained popularity among the non-noble population, as it was spread in Russian Orthodox churches: "among peasants, merchants, clergymen

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<sup>169</sup> Lappena, *Soviet Penal Policy*, p. 11.

<sup>170</sup> Geoffrey Hosking, Geoffrey, *Rulers and victims: the Russians in the Soviet Union*, Cambridge, London, 2006, p. 10.

<sup>171</sup> *Ibidem*.

of the official church, and even at times statesmen”. So “the latent sentiment persisted that Russia was in some way a holy empire, chosen by God for a great mission”.<sup>172</sup>

The belief in the sacred mission of the Russian people led to the idea that the Russians were able to spread divine values and create a new, better world step by step and century by century created conditions for practical development of such utopian projects. During the 19th century the mesianistic tradition was continued by Russian writers and intelligentsia: they translated it “in contemporary terms, as an assertion of Russia’s special mission, distinct from that of West”<sup>173</sup>.

Though the so-called “Slavophil” tradition still related this utopian idea of a perfect society and the Russian special mission to Christianity, “this outlook could easily be transmuted into a form of socialism” and to the idea about the revolution coming from Russia and spreading further. This new concept of “socialist mission” was formulated by Russian thinkers between the 1860s and the 1890s<sup>174</sup>. Those thinkers saw Russian peasants as the leading revolutionary force contrary to classic Marxists who emphasized the role of the proletariat in the revolution. This potential of Russian peasants as leaders of the revolution was seen, first of all, in their collective forms of the self-government and social control, as well as in the traditions of property sharing in Russian villages. A collective way of dealing with many social problems, including the problem of criminality, which was believed to exist in such villages, was expressed by the “Slavophil” tradition as well<sup>175</sup>.

In such a way the traditional Russian imperial-messianic myth was transformed into the socialist utopia. It took on the earlier form, which was filled with a new, Marxist content. The old form and some old values, however, were still impacting the socialist worldview. The impact made by a traditional Russian attitude towards the law, and the way the idea about the

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<sup>172</sup> *Ibidem.*

<sup>173</sup> *Ibidem*, p. 17-18.

<sup>174</sup> *Ibidem*, p. 18.

<sup>175</sup> *Ibidem.*

responsibility for the crime was constructed also deserves mention here. This attitude came from the tradition of a collective social organization, which matched the Marxist one. According to it, the community, not the individual, was given priority in a social organization. It was also related to the fact that the level of individualism in 19th century Russian rural communities was low. Traditionally Russia was a country of small towns and villages, “many of them at the margins of viable agriculture”, therefore “members of Russian communities were highly interdependent”<sup>176</sup>.

Due to their way of economic organization with specific division of labour these traditional communities had “to generate collective arrangements that would provide for mutual support and help in their isolated and vulnerable situation” from an early stage. Later Soviet law and the system of criminal prosecution borrowed one of the basic ideas from there – the so-called idea of *krugovaia poruka* (круговая порука)<sup>177</sup>. It was kind of system in which, due to the above- mentioned social and economic conditions, all members of the community were understood as responsible “for settling conflicts, preventing crime, apprehending criminals”<sup>178</sup>, and in which the concepts of individual responsibility and personal guilt did not exist.

So, as in the traditional Russian rural communities all members were highly interdependent in the organization of labour and other practices<sup>179</sup>, the

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<sup>176</sup> *Ibidem*, p. 11.

<sup>177</sup> Literally this term means the “circular surety”, but is more likely translatable as “joint responsibility”. Though the concept and idea of joined responsibility impacted the Bolshevik legal thought and, later, legislation and legal practices, the term itself was not used by Bolsheviks in legal theory and, later, legislation. See more in: Hosking, *Rulers and victims: the Russians in the Soviet Union*, p.11.

<sup>178</sup> Hosking, *Rulers and victims: the Russians in the Soviet Union*, p.11.

<sup>179</sup> It is important to stress that *krugovaia poruka* was a concept, shaping the traditional mentality of the rural areas of the Russian Empire and the mechanism helping collect and administrate taxes from the peasants, living in a *obshchina* (община). *Obshchina* was a village with the communal ownership of land, governed by the full assembly of the community, called *skhod* (сход). Such collective responsibility was an important part of everyday practices of traditional Russian rural communities, and therefore influenced their understanding about many different areas of the social organization and everyday life, including the understanding about crime and guilt. This attitude that the whole community shares the responsibility for a crime committed by a certain individual was well reflected by the Russian intelligentsia of the 19th century and by the intellectual discourse of this period, including, for instance, a novel “The Brothers Karamazov” by Fyodor Dostoyevsky (Федор

idea of *круговая порука* helped such communities deal with deviances and, technically speaking, to survive. Later its traits were transferred into Bolshevik law and the system of criminal prosecution, and remained there until the death of Stalin. For instance, this was the permission to prosecute family members of the criminal, and those who hypothetically shared the responsibility for the crime, which they did not commit. This trait of the Soviet system of the criminal prosecution in this dissertation will be discussed more extensively.

The idea of community's inter-dependency did not only become the source of ideas that stated the principle of "collective responsibility" for the crime but it also impeded the development of understanding such categories as individual responsibility and personal guilt. Hence, the Russian background of Soviet-type Marxism was a factor explaining why some ideas, undefined in the classic Marxist theory, were included in Soviet-type Marxist philosophy, ideology, and law.

Bolsheviks, followed by Soviet communists, attempted hard to eliminate the previous Tsarist social order and to repress the former elites. However, though inspired by the Western Marxist ideology, they went through the process of socialization in the Russian social environment. We do not have to look far for examples – Stalin, himself, started out as a student at Theological Academy<sup>180</sup>; Lenin studied law.

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*Михайлович Достоевский*). However, "joint responsibility" for crime did not enter the legislation of the middle and the second half of the 19th and 20th century Russian Empire. "Joint responsibility" for crimes did not exist in "The Digests of Laws of the Russian Empire" (*Свод законов Российской империи*, the code of penal and civil law in the Russian Empire, which functioned since 1835 and consisted of a collection of all valid Russian Empire laws, which were step by step collected in one book after 1803). Also, "joint responsibility", was not a part of the later codification – The Penal Code of the Russian Empire of 1846 (which was influenced by the Western European legal theory), penal regulations of 1864 and 1869. The Criminal Statute of the Russian Empire of 1903 (which later became the basis of criminal law for independent Lithuania of 1918-1940) also included only the concept of individual guilt; according to it, no collective guilt was possible. Hence, "joint responsibility" for a crime appeared in Bolshevik penal law and penal practices only; however, it was not inherited directly from law of the Russian Empire. See more in: V. Andriulis, M. Maksimaitis, V. Pakalniškis, J. S. Pečkaitis, A. Šenavičius, *Lietuvos teisės istorija*, Vilnius: 2002, pp. 274-278, 405-409.

<sup>180</sup> Simon Sebag Montefiore, *Der Junge Stalin*, pp.95-99.

The Bolshevik ideology included the utopian Marxist dream of a perfect communist society in which all forms and causes of any kind of social evil would be eliminated. The authors and developers of these ideas found an explanation for any kind of injustice, first of all, in Marxist philosophy. Hence, the roots of the Soviet ideas of crime can be found, first of all, in the Marxist theory, which saw the so-called “social conflict” between social classes as the main reason for such a phenomenon as crime to exist<sup>181</sup>.

The lack of the so-called social solidarity was identified as the problem leading to violence and criminality – Karl Marx and Friedrich Engels, Marxists and Bolsheviks agreed on this with the classical sociological attitude towards criminality developed by Durkheim. The only difference existing between these attitudes was as follows: Durkheim stressed that the crime is necessary to the construction of any human social order as a marker between the norm and deviance; therefore even if the content of the concept of crime changes, the very phenomenon will always exist in any community. Marxism, as the utopian ideology, on the contrary, stated that criminality would disappear if “social solidarity could be regained”<sup>182</sup>.

Thus, though Marxism and Durkheim shared the same attitude to the causes of crime, which was seen as a lack of social ties between individuals and a lack of social solidarity; they “differed in their analysis of the source of the erosion of solidarity and their prescription for its restoration”<sup>183</sup>.

It is important to mention that Marx himself wrote very little about the crime, while Engels reflected on the nature and content of this concept more. However, both of them “stressed differences in interests and in power much more than did Durkheim”. According to the Marxist theory, “conflict was inherent in the nature of social arrangements under capitalism, for it was

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<sup>181</sup> Lilly, J. R., Cullen, F. T., Ball, R. A., *Criminological Theory: Context and Consequences*, Thousand Oaks, California, 2011, p.167.

<sup>182</sup> *Ibidem*.

<sup>183</sup> *Ibidem*.

capitalism that generated the vast differences in interests and capitalism that gave a few at the top so much power over the many of the bottom”<sup>184</sup>.

Hence, the basic difference between Marxism and Durkheim’s attitude towards criminality can be seen in the understanding of the very origin of crime in a certain society and the attitude to its social function. Durkheim claimed that even if the creation of a crimeless society were declared, it would mean only that the institutions that intended to control crimes and criminal behaviour were misusing their power<sup>185</sup>. The Soviet ideology originating from Marxism believed that a society without a crime was not only theoretically possible but also unavoidable when the development of a concrete society reaches the phase of Communism. It was thought, that crime will be a vanishing reality in the phase of Socialism, and crimes will no longer exist in the phase of Communism, only administrative offences will remain. Therefore criminal law will also be replaced with the self-administration of society<sup>186</sup>.

The roots of the Soviet ideas on crime and criminality seem, to be also related to changes in society brought about by industrialization and modernisation. Even if these processes were much slower in Russia, the Bolsheviks could be familiar with the social changes brought about by them, as they were familiar with Marxism, and because some of the leaders of the Bolshevik overturn had experience of living in the West (for instance, Switzerland).

In the 19th-century Europe, alongside other social changes, a traditional attitude towards such social phenomena as deviancy, crime and criminality was transformed. According to Foucault, with rapid industrialization taking place, the number of people involved not only in criminality itself but also in criminal activities that had a political dimension, was on the increase<sup>187</sup>. The crime in the society was begun to be understood sooner not as a negative violation of

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<sup>184</sup> *Ibidem*, pp. 167-168.

<sup>185</sup> Henry, Lanier, *What is crime? Controversies over the Nature of Crime and What to Do about it?*, p. 2.

<sup>186</sup> Berman, *Principles of Soviet Criminal Law*, pp. 803-804.

<sup>187</sup> Foucault, *Disciplinuoti ir bausti. Kalėjimo gimimas*, p. 324.



moral norms but as a positive activity and a tool in a fight for better living conditions. Marxism found this attitude highly acceptable. It developed the idea that crime originated in the lower classes of society and took on the shape of resistance against exploitation. According to such a view, it means that the causes of crime lie in the actions of upper classes, which use various methods of exploitation against the proletariat.

Therefore the crime in the Soviet legal thought was not necessarily interpreted as a negative social phenomenon. It was just a natural behaviour of the suppressed classes fighting for economic resources. According to Applebaum, Lenin himself “perceived traditional criminals – thieves, pickpockets, and murderers as potential allies”<sup>188</sup>. And this attitude was rooted in the belief that crime was merely a consequence of inequality, and only the poor were criminals who, naturally, should be in favour of a revolution and ready to fight for a better social order.

The fact that many Bolsheviks themselves had the experience of being imprisoned or deported as political prisoners is to be mentioned here. What’s more, some of their activities were actually financed by criminal acts. Stalin himself started out as a Bolshevik and became a criminal; his example can vividly illustrate how closely criminality and the political activity were related in the early Bolshevik mentality and their worldview. Some scholars indicate that at the beginning of his career as a revolutionary, Stalin could be defined even as a “gangster” who played an active role in bank-robberies, extortion, arson, piracy and even murders. All these activities, however, had a political purpose – money from bank robberies were used to finance the planned “revolution”. Stalin was not the only Bolshevik practising criminal lifestyle: for instance, the revolutionary David Sagirashvili was referred to as the one “who knew Stalin and some of the gangsters”<sup>189</sup>.

Thus, one of the explanations of why the Bolsheviks never treated law as something natural and why an ordinary non-political crime was not seen as a

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<sup>188</sup> Applebaum, *GULAG. A History*, p. 5.

<sup>189</sup> Montefiore, *Der Junge Stalin*, p. 17, 34, 36.

great social problem can be found here. With its roots in the underground, the Bolshevik organization adopted the idea that crime was only the way to rebel against social inequality. Bolsheviks had experience of criminals and this fact combined with the Marxist idea of uselessness of law as a bourgeois superstructure led them to the following paradox: on the one hand they did not concentrate on and care much about the traditional forms of criminality because the latter would “disappear” in the communist utopia. On the other hand, after the Bolshevik Revolution, the political crime became the object of especially harsh punishment. The core statement here, as mentioned afore, was the idea that an individual, by committing a crime, resisted to the social class, which established such an unjust law rather than to the law itself<sup>190</sup>. Later, as we will see, this separation of the concept of “crime” from the concept of “law” had fatal consequences for the content of Soviet criminal law and the criminal justice system. In the Marxist thought the crime became sooner a social than legal phenomenon.

Also, Marxism proposed the solution to the problem of criminality – a “revolution followed by a period of socialism”<sup>191</sup>. It was the “action oriented” ideology rather than a theoretical one. Marx and Engels “were less concerned with the pure understanding of social problems than with changing things for what they considered to be better”<sup>192</sup>.

The Marxist thought, which gave rise to the Soviet concept of crime, did not only separate the concept of crime from that of law. It was also sceptical about the institute of law itself. According to Marxism, the economic structure of a society consists of its fundamental substance, i.e. the “material basis”, whereas the state with all its institutions, political and legal dimensions belongs to the “superstructure”<sup>193</sup>. Therefore neither the state nor its product – law – has an independent existence and an objective character; they are dependant on the economic development. In July 1919, Lenin stated that “the state simply

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<sup>190</sup> *Ibidem*, p. 324.

<sup>191</sup> Lilly, Cullen, Ball, *Criminological Theory: Context and Consequences*, p. 167.

<sup>192</sup> *Ibidem*, 2011, pp. 167-168.

<sup>193</sup> Lappena, *Soviet Penal Policy*, p. 11.

did not exist prior to the division of society into classes, but as that division emerges and grows firmer, so does the state". A state is only "an instrument of rule", or "a machine of suppression" used by the dominating classes towards the dominated ones<sup>194</sup>.

Therefore both Marxism and the early Bolshevik ideology expressed clearly a nihilistic attitude towards the idea of the state and also towards the idea of law. According to this philosophical tradition, law had the meaning only in the context of the state. Law, as a social institute, could not have an independent existence.

The attitude of linking law to the state, as well as having a nihilistic attitude towards both, is expressed, for instance, by one of the most influential Soviet law theorists, Evgeny Pashukanis. According to him, both the state and law stem from a common background, class oppression: "*The bourgeois theory of the state is 90% the legal theory of the state. The unattractive class essence of the state, most often and most eagerly, is hidden by clever combinations of legal formalism, or else it is covered by a cloud of lofty philosophical legal abstractions*"<sup>195</sup>. Hence, law is understood as a tool to justify the bourgeois state's power and oppression towards the individuals who belongs to the oppressed classes. Thus law for the Bolsheviks (before Stalin) had no independent existence and fulfilled the function within the state only.

Marxism, though reinterpreted by Lenin, and later, Stalin many times<sup>196</sup> became the main philosophical and ideological source, which determined the shape of the Soviet concepts of *crime* and *punishment*. According the Marxism, crime is not a consequence of a lack of moral limits and control. It is not a result of a great desire written in the hearts of every human being by passion<sup>197</sup>. Also, in Emile Durkheim's opinion crime is "bound up with the fundamental conditions" of the social life. The Soviets rejected Durkheim's

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<sup>194</sup> *Ibidem*, 12.

<sup>195</sup> Evgeny Pashukanis, "The Marxist Theory of State and Law", in: *Selected Writings on Marxism and Law*, P. Beirne, R. Sharlet (eds.), London, New York 1980, pp. 273-301.

<sup>196</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, p. 13.

<sup>197</sup> Foucault, *Disciplinuoti ir bausti. Kalėjimo gimimas*, pp. 325-326.

idea that crime serves as social integration and the definition of values, as well as a catalyst of any social change. The Soviets did not believe at all that crime performed any social function<sup>198</sup>.

According to Durkheim, crime is a universal category existing in all societies. Marxist ideas treated crime sooner as the category, which depended on the social status, position and material conditions of an individual or particular social groups<sup>199</sup>. The Marxists saw crime as an extreme manifestation of social injustice and inequality.

As has been mentioned before, Marxism, a traditional Russian messianic worldview and anti-individualism on a practical level of a social organization were the main though not *the only* components of Soviet ideas on crime and criminality. Marxist ideas, later reinterpreted by Lenin and Stalin, were embodied in a very specific context of the Russian society. Therefore, though the revolution declared the destruction of all former types of power and society and the creation of a brand new socialist world, some traits of the pre-revolutionary Russian criminal justice system survived and were incorporated in the socialist one.

Some features of the criminal justice system of the Russian Empire, as well as some traits of the legal tradition and the school of thought called legal Positivism, can be traced in the Bolshevik legal thought. For example, in his ideas of legal thinking Lenin used the principle that all laws and their compliance depended on the Sovereign. Originally this principle resulted from legal Positivism<sup>200</sup>. Its roots can be found in one of the main ideas of the positivist John Austin, namely, that laws are commands issued by the sovereign to the members of society and fulfilled because of the threats of punishment (sanctions) if the commands are disobeyed<sup>201</sup>.

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<sup>198</sup> Emile Durkheim, "Foundations of the Classic Sociological Theory", in *Classical and contemporary sociological theory: text and readings*, Appelrouth, Scott, Edles, Laura Desfor (eds.), SAGE Publications, Inc; 2007, pp.101-102.

<sup>199</sup> Foucault, *Disciplinuoti ir bausti. Kalėjimo gimimas*, pp. 325-326.

<sup>200</sup> Berman, *Justice in the U.S.S.R. An Interpretation of Soviet Law*, pp. 25, 248.

<sup>201</sup> John Austin, *The Province of Jurisprudence Determined*, London, 1832.

Some traits of such legal systems as Natural law, Roman law and Civil law were identified in Soviet law too<sup>202</sup>. The main traits, which owe their origin to Natural law, were the principle that no individual could be a judge in his or her own case; that the court had to hear and pay attention to the arguments of both sides, that no one could be judged without allowing him or her to explain and defend his or her position. Those principles were embodied in the principles of the socialist criminal procedure. However, in practice they were not always respected. In the Soviet system the principles derived from Natural law were in a hierarchically lower position than those derived from the tradition of legal Positivism<sup>203</sup>. The principle of the “state’s priority” was embedded in the socialist constitutional law and was transferred into the penal law and the system<sup>204</sup>.

According to the logic of this principle, an individual committing a crime against the state also does harm to the society, because the society by giving all power to the state, is reflected only by the state. This aspect enabled every crime against the state to be interpreted as the crime against society. hence, the harm done to the state was made equal to the harm done to the society.

Said principle exists in legal systems even today and cannot be treated as something exceptionally Bolshevik or as something specific to the Soviet system of criminal law only. However, the difference is that society itself never becomes a Sovereign in the Soviet state. The Bolsheviks came to power in a way of the overturn. Later Soviet Russia and the Soviet Union were ruled by dictators and the Party. The Bolsheviks created the illusion that they were ruled by *the people*; however, in reality these concepts were empty and served as the means of creating the imagined reality.

The early Soviet society was prevented from any initiatives and legislation-related decisions. Soviet legal principles were formulated under control of the Communist Party and its leader. On the one hand, this logic of

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<sup>202</sup> Glendon, Gordon, Osakwe, *Vakarų teisės tradicijos*, pp. 258-529.

<sup>203</sup> *Ibidem*, pp. 258-260.

<sup>204</sup> *Ibidem*, p. 260.

the Soviet legal system determines a highly expressed attitude to the *crime against the state* in the Soviet criminal justice system and the criminal code. On the other hand it can explain the lessening importance of the *crime against the individual*.

Hence, Marxism formulated two principles embodied in the Bolshevik criminological thought:

a) crime is an outcome of social inequality; the way the suppressed classes resist injustice;

b) all existing forms of law are created by the upper social classes; therefore the so-called “capitalist” law must be replaced by more just “socialist law”<sup>205</sup>, which was called “revolutionary law” (*революционные права*) or “Soviet law” (*советское право*) by the Bolsheviks)<sup>206</sup>.

The terms themselves were used by the Bolsheviks in early 1920’s. They were embodied in the works by the Bolshevik legal thinkers and were related to the institutionalization of newly emerging Bolshevik law as an academic discipline. For instance, the Institute of Soviet Law was founded in 1922 and the journal titled *Soviet Law* (*Советское право*) was begun to be published. The journal titled *The Revolution of Law* (*Революция права*) was published at that time too<sup>207</sup>.

According to the Bolshevik legal theory of that time, even *socialist law* was needed only during the period of social transformation. There will be no need for law in Communism as due to equal division of resources no crime will exist there.<sup>208</sup>

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<sup>205</sup> The term “Socialist law” is a general concept used by contemporary legal historians and legal scholars to describe the legal tradition based on Marxism and Leninism and formulated in Soviet Russia and the Soviet Union after the October Revolution of 1917. The Bolsheviks of that period used the other terms “Revolutionary law”, “Soviet law” more frequently. See more in: Glendon, Gordon, Osakwe, *Vakarų teisės tradicijos*, pp. 258-266.

<sup>206</sup> B. Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, Abigdon, New York, 2013, pp. 55-57.

<sup>207</sup> *Ibidem*.

<sup>208</sup> Lilly, Cullen, Ball, *Criminological Theory: Context and Consequences*, p. 167.

Hence, the Bolshevik understanding about crime and law was influenced by the so-called Marxist “legal nihilism”<sup>209</sup>. The Bolshevik ideology claimed that a society without crime was not only possible but it was also unavoidable in Communism<sup>210</sup>. After the Revolution this attitude led the Bolsheviks to a total rejection of the previous legal order and to the creation of new “Socialist” law. It did not only have to be fairer, to protect the rights of the proletariat better but it also had to serve as a temporary tool to deal with crime during the period of social transformation to the communist society.

The third aspect of the Bolshevik attitude towards law and crime was related to their own experience of being an underground organization whose members were persecuted by law of the Russian Empire and the fact that some of them were even linked with the non-political criminal networks<sup>211</sup>. Later these factors determined one of the main features of the Soviet criminal justice system: a sharp distinction between two categories of crime – “political” and “criminal”. People belonging to the first category were hardly persecuted as enemies; in case of an ordinary crime Lenin believed that “the Revolution itself would do away with them”, therefore the Bolshevik regime had to devote less attention to them<sup>212</sup>.

This attitude – Lenin’s indulgence in the so-called “traditional criminals” – is clearly expressed in Lenin’s text written on the 24th-27th of December, 1917 (according to other sources, on the 6th-9th of January, 1918) and titled *How to Organize the Socialist Emulation*<sup>213</sup>. Though Lenin expresses the idea of “*dire war against the rich*”, against the “*bourgeois intelligentsia*”, “*frauds*”, “*drones*” and “*hooligans*”, he also states that in unjust capitalist societies “*thousands*” of people who are not rich and are of lower class origin

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<sup>209</sup> The concept “legal nihilism” is used by legal scholars and historians to describe a certain Marxist, Bolshevik and Leninist attitude towards law; however, this very term did not occur in the Bolshevik legal thought and legal doctrine. See more in: Lappena, *Soviet Penal Policy*, p. 11.

<sup>210</sup> Berman, *Principles of Soviet Criminal Law*, pp. 803-804.

<sup>211</sup> Montefiore, *Der Junge Stalin*, p. 17.

<sup>212</sup> Applebaum, *GULAG. A History*, pp. 5-6.

<sup>213</sup> “Socialist emulation” (Russian: *социалистическое соревнование*) was a form of competition between state-owned enterprises and between individual workers in the USSR. It was a tool widely used by Soviet propaganda, especially in the period of industrialization.

people “were forced into the way of hooliganism, selling themselves and becoming frauds due to misery and poverty”. According to Lenin’s text, “human beings were losing their human shape” in such unjust societies<sup>214</sup>.

Hence, in his text Lenin clearly expresses the already described Marxist idea that the unjust capitalist system can drive even workers and peasants into a criminal lifestyle; such criminals, however, are treated as less dangerous because the main cause of their crimes is Capitalism together with rich social classes which support and maintain the capitalist system.

The legal theory and ideas about crime and criminality developed in the Bolshevik ideology prevailed after the Revolution and persisted until the middle of the 1930s. The Marxist nihilist attitude still existed during the New Economic Policy (NEP), even though a relatively softer character of the regime created conditions to develop a certain amount of theoretical pluralism. As mentioned before, during the NEP Bolshevik law existing at the level of ideology was transferred into the discipline of professional law, and even some legal academic journals dedicated to the new Soviet law were published. However, all these journals belonged to Marxist tradition<sup>215</sup>.

## **2. Post-revolutionary development**

### **2.1. Legal and criminological thought**

Historians of law tend to focus on four basic periods of the development of the Soviet-type criminal thought and attitude towards criminal law (and law, in general) after the Revolution of 1917. These periods can be defined chronologically:

1. The criminal thought, criminal law and criminal justice system in the period of the Revolution and the Civic War (1917 – 1921);

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<sup>214</sup> V. Leninas, „Kaip organizuoti lenktyviavimą?“, V. Leninas, *Pilnas raštų rinkinys*, Vilnius, 1986, Vol. 35, p. 198.

<sup>215</sup> Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, pp. 55-57.



2. Changes in the period of the New Economic Policy – NEP (1921-1928 m.).

3. The period of the First (1928-1933) and the Second (1933-1937) Five-Year Plans.

4. The criminological thought, criminal law and changes in the criminal justice system developed by Andrey Vyshinsky (the middle of the 1940's – Stalin's death in 1953)<sup>216</sup>. Some part of these changes meant a new insight into Soviet law as a result of the Second World War and the post-War legal order.

This definition of the different periods of evolution in the Soviet criminal thought reveals that a professional legal and criminological discourse in Soviet Russia and the USSR cannot be treated as an independent, politics-free scientific tradition; the scholars' attitude towards crime and criminality was closely bound with the political and ideological line of the communist authority.

What's more, according to Johan Bäckman, “the Soviet criminological expert tradition was lenient rather than critical due to a limited influence on policy-making”<sup>217</sup>. Thus, the Soviet legal and criminological thought cannot be defined as an independent scholarly and scientific tradition. It was only the period of NEP that was marked by a rise of relative pluralism and independence in the Soviet legal theory and scholarly tradition, though it was linked to the official Marxist-Leninist ideology.

Even in this case, however, the analysis of the Soviet legal and criminological thought, traditions and their changes is a beneficial tool capable of revealing logic and the inner traits of Soviet understanding of crime, a criminal and criminality. This analysis clearly shows how well changes in the criminological thought coincide with the development of the criminal justice system and attitudes towards nature of crime and punishment.

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<sup>216</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, pp. 29-66.

<sup>217</sup> Johan Bäckman, “The Hyperbola of Russian Crime and the Police Culture”, in: *Economic Crime in Russia*, p. 262.

The main feature uniting the first three periods of the development of Soviet legal thoughts was concentration on the Marxist theory and Marxist understanding of law. Shortly after the Revolution the attitude towards criminal law was sceptic: law was perceived as a tool of “capitalists” and therefore, at least theoretically, was not treated as one of the most effective means of social contract, social control and building of a new society.<sup>218</sup>

The common feature of the first and third periods was the idea that law, in its very essence, was just a relic of the bourgeoisie-type state and society and that this relic will disappear in the communist future. Common statements and attitudes towards criminal law, concepts of crime and punishment were based on the belief that by eliminating higher social classes and social exploitation of the lower classes and creating a classless society the very need of law, as a system of rules, regulating the behaviour of individuals will vanish naturally<sup>219</sup>.

Lenin adopted a sceptical attitude towards law; at least, at the beginning. But even he soon realized that under the Bolshevik rule, in the Soviet society being created the need for law existed mainly as a weapon to implement social control over the groups that were seen as “enemies of the revolution”. When legal methods to deal with the “enemy” were recognized as important, the new goal of law and the legal theory was to justify Lenin’s actions of terror. The goal to create this kind of criminal law – as a tool for justification – was achieved by the early Bolshevik jurists, for instance, Stuchka<sup>220</sup>.

Pyotr Ivanovich Stuchka (1865-1932) was a Latvian Bolshevik who was active during the Revolution. He was the People’s Commissar of Justice (in 1917 and 1918) and later, Chairman of the Supreme Court of the RSFSR (1923-1932). Also, he edited important Latvian and Russian communist newspapers and periodicals. In the 1920s, Stuchka was one of the main Soviet legal theoreticians in the USSR who promoted the so-called “revolutionary” or “proletarian” model of socialist legality. However, he cannot be called a total

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<sup>218</sup> Solomon Jr., *Soviet Criminal Justice under Stalin*, p. 18.

<sup>219</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, p. 26.

<sup>220</sup> *Ibidem*, p. 18.

legal nihilist: as one of the publishers of the scientific journal *Revolution of Law*, Stuchka theoretically based the opinion that “for a period of transition from capitalism to socialism Soviet law had to exist to serve the interest of the rulers, the working class”. Hence, the “proletariat law” was justified and treated as necessary by Stuchka whereas capitalist law was proclaimed to be useless<sup>221</sup>.

In the early 1920s Stuchka argued “for a materialist conception of law and for a class concept of law against prevailing idealist conceptions”. Stuchka developed the “conception of a revolutionary role for Soviet law during the transition period from capitalism to communism”. He insisted on the necessity of “Soviet” law during the transition period but argued that after Communism had been built, this need would vanish<sup>222</sup>.

Soon his colleague Evgeny Bronislavovich Pashukanis became Stuchka’s opponent. Although Pashukanis is described in historiography as a person who developed a “specifically Marxist understanding” about law and as an “important contributor to the materialist critique of legal forms”<sup>223</sup>, Pashukanis’ legal theory can be referred to as “legal nihilism”, especially when compared to that of Stuchka. Pashukanis was a central figure in the realm of the soviet law in 1917-1937. He is the author of the work *The General Theory of Law and Marxism*<sup>224</sup> first published in 1924.

As a Marxist, Pashukanis treated law not as an independent or basic subject of social regulation and social reality in general but only as a superstructure, which developed in the course of evolution of economic social relations. In his theory of criminal law and of law in general, Pashukanis claimed that “*the role of the purely legal superstructure – the role of law – declines, and from this can be derived the general rule that as [technical]*”

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<sup>221</sup> *Ibidem*.

<sup>222</sup> *Revolution in Law– Contributions to the Development of Soviet Legal Theory, 1917-1938*, Beirne (ed), pp. 30-31.

<sup>223</sup> Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, p. 48.

<sup>224</sup> Evgeny Bronislavovich Pashukanis, *The General Theory of Law and Marxism*, New Brunswick, London, 2007.

*regulation becomes more effective, the weaker and less significant the role of law and legal superstructure in its pure form” is<sup>225</sup>.*

Pashukanis based his insights on Marx whom he has quoted: *“In the succession of economic categories, as in any other historical, social science, it must not be forgotten that their subject – here, modern bourgeois society – is always what is given, in the head as well in reality, and that these categories therefore express the forms of being, the characteristics of existence, and often only individual sides of this specific society, this subject.”* According to Pashukanis, *“What Marx says here about economic categories is directly applicable to juridical categories as well. In their apparent universality, they in fact express a particular aspect of specific historical subject, bourgeois commodity-producing society.”<sup>226</sup>*

In *The General Theory of Law and Marxism* Pashukanis argues that *“only the bourgeois society was destined to embody “the universal significance of the legal form”<sup>227</sup>. He insisted that only under Capitalism does the true legal form appear: “the possibility of taking up a legal standpoint is linked with the fact that, under commodity production, the most diverse relations approximate the prototype of commercial relation and hence assume legal form.”<sup>228</sup>*

According to Pashukanis, law is directly linked to economic relations. He expresses the view that *“law is always connected with economic relations and is unthinkable absent these relations”<sup>229</sup>. He claims that “juridical communication” (юридическое общение) cannot be treated as an everlasting, true form of human relations and communication. It cannot be treated as some kind of a universal form of building a society and social connections, which cannot be eliminated<sup>230</sup>. In this way Pashukanis opposed the idea of the*

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<sup>225</sup> *Revolution in Law– Contributions to the Development of Soviet Legal Theory, 1917-1938*, p. 29.

<sup>226</sup> Pashukanis, *The General Theory of Law and Marxism*, p. 70.

<sup>227</sup> Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, p. 53, 58.

<sup>228</sup> *Ibidem*, pp.58-59.

<sup>229</sup> *Ibidem*, p. 49.

<sup>230</sup> Евгений Брониславович Пашуканис, *Избранные произведения по общей теории права и государства*, Москва, Наука, 1980, с. 75-76.

fundamental value and nature of law, treating law as a phenomenon, which has only a temporary form of inter-human agreements and connection. In his opinion law is not independent or natural in its very nature; it stems from economic relations between human beings and regulates these economic relations.

Hence, though Pashukanis reached the top of the development of his legal theory in the period of NEP and followed the strict Marxist tradition, he denied the very foundation of law as an independent social structure and the idea that society needed this structure to ensure harmony of social life<sup>231</sup>. On this point Pashukanis' opinion differed from the general intellectual context of the NEP period. Therefore it is not surprising that his ideas were not easily accepted by other legal intellectuals at the time of NEP.

From 1925 to 1930, Pashukanis was criticized by other Soviet jurists “for overextending the commodity exchange concept of law, confusing a methodological concept with a general theory of law, ignoring the law's ideological character, and even for being an antinormativist”. Critics disagreed with Pashukanis' many ideas, including the idea that masses were already ready to participate in the so-called “public administration”: the new kind of rules, which were believed to have been invented for a social regulation function in the future when Communism has been reached, and which were defined as having a totally different nature from that of law<sup>232</sup>.

The so-called commodity exchange concept of law can be defined as Pashukanis' idea that any kind of “public law relations, e.g. criminal law, are an extension of the forms generated by relationships between commodity owners, albeit that the contents of such public law relations are less than

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<sup>231</sup> Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, p. 51.

<sup>232</sup> *Revolution in Law— Contributions to the Development of Soviet Legal Theory, 1917-1938*, p. 30.

adequate to this form”<sup>233</sup>. On account of these theoretical insights Pashukanis was also denounced by his critics as a “legal nihilist”<sup>234</sup>.

Nearly all Pashukanis’ critics were Marxists and members of the Communist Academy, they were associated with the moderate wing of the so-called “commodity exchange school”, which was set up in the Academy. The group was led by Stuchka. Pashukanis himself was in charge of the “radical wing”. Outside the Communist Academy there were also jurists who criticize Pashukanis and his ideas. One of them was A. A. Pionkovsky who was a member of the competing Institute of Soviet Law (the institution is defined by Piers Beirne as “Pashukanis’ major critic”<sup>235</sup>) at that time.

As of 1927 Stuchka criticized Pashukanis for “insufficiently emphasizing the class content of law” and for “denying the existence of either feudal or Soviet law”<sup>236</sup>. Pionkovsky, another Soviet jurist and the author of *Marxism and Criminal Law*, claimed that Pashukanis was wrong about the “commodity exchange concept” as he took the “ideal type concept, for a general theory of law”<sup>237</sup>.

Debates between Stuchka, Pashukanis and other scholars reveal several aspects of the early Soviet criminological thought and legal doctrine. First of all, they witness that even in the country dominated by official ideological guidelines and clichés there was space for a scientific and academic development of the intellectual tradition towards law and some signs of an independent legal tradition. During NEP the state did not seem to be deeply involved in these debates between the “total” legal nihilists and the founders of the doctrine of “revolutionary legality”; and a limited amount of free thought and flexibility was possible despite the fact that clear ideological frameworks, which marked the limits of such “free thinking”, were in existence.

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<sup>233</sup> Dragan Milovanovic, “Editor’s introduction”, In: Pashukanis, *The General Theory of Law and Marxism*, p. 15.

<sup>234</sup> *Revolution in Law— Contributions to the Development of Soviet Legal Theory, 1917-1938*, p. 30.

<sup>235</sup> *Ibidem*.

<sup>236</sup> *Ibidem*, p. 31.

<sup>237</sup> *Ibidem*.

This limited space of an academic discussion and pluralism in the USSR before the 1930s is also testified to by publishing several legal academic journals in the 1920's. At that time "neither a precise class evaluation was required nor a formal recognition of Marxist method"<sup>238</sup>.

From 1922 to 1927 the journal *Law and Life* was issued. It was devoted to the "issues of law and economic construction". In 1922 the Institute of Soviet Law, "part of the Socialist (later Communist)" Academy began to publish the journal *Soviet Law*. This Institute was "the first Soviet scholarly institution created to bring together Marxist lawyers". In 1929 the journal was renamed *Bulletin of the Institute of Soviet Law*. Its main aim was to create a system of Soviet law and accomplish this aim "from a Marxist position"<sup>239</sup>.

Another important journal of the period *Revolution of Law* (whose editorial members were both Stuchka and Pashukanis) made no attempts to develop such legal system as "Soviet Law". The editors of the journal sought seeking to develop a "materialist, class, revolutionary dialectical approach to the issues of the state and law"<sup>240</sup>. Thus, it witnessed a nihilistic attitude.

Limited intellectual pluralism in the realm of law disappeared gradually after the end of NEP. When the first five-year plan was begun to be carried out in 1928, and especially when collectivization led to the policy of "de-kulakization", legal concepts were limited due to the regime's decision to implement repressive measures against the population. In legal practices concern about soviet-type legality which was of importance during NEP, was replaced by applying extra judicial and administrative forms of criminalization on a mass scale.

Within this context the ideas of "legal nihilism" developed by Pashukanis, became more beneficial to the regime than the competing doctrine of "Soviet type law" and "revolutionary legality". Thus, it is not surprising that in 1929-1930 Pashukanis' career reached a peak. In 1929 he became Vice-

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<sup>238</sup> Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, pp. 55-57.

<sup>239</sup> *Ibidem*.

<sup>240</sup> *Ibidem*.

rector of the Institute of Red Professors (it was referred to as the “theoretical staff of the Central Committee”). “In 1929-1930 Pashukanis reached the apex of the Marxist school of jurisprudence and the Soviet legal profession”<sup>241</sup>.

The career achievements of Pashukanis were related to the reorganization of the Institute of Soviet Law. This independent legal institute “was reorganized and absorbed and its publication was abolished” by the Communist Academy<sup>242</sup>. During the reorganization, “all theoretical and practical work in the field of law was concentrated in the Communist Academy”. Also, “the Section of Law and State and the Institute of Soviet Construction of the Communist Academy were merged”. The journal «Революция права» (*Revolution of law*) was also renamed; Pashukanis became Director of the new Institute of the State, Law and Soviet Construction; shortly after it was renamed and became the Institute of Soviet Construction and Law. Also, at that time Pashukanis started his work as a “chief editor of its new journal, «Советское государство и революция права» (*The Law of Soviet Government and the Revolution*) and a co-editor of «Советское Строительство» (*Soviet Construction*), the journal of the USSR Central Executive Committee”<sup>243</sup>.

Hence, until 1936 Pashukanis was “the leading theorist of law in the USSR”<sup>244</sup>, and his success was obviously related to the Stalinist period of the First (1928-1933) and the Second (1933-1937) Five-Year Plans. His nihilist attitude towards law at the time of forced collectivization, industrialization and a fast development of the Gulag system was very useful to the regime.

One paradox marked Pashukanis’ legal attitude. As a nihilist and Marxist, he believed that the state was gradually withering away and

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<sup>241</sup> *Revolution in Law— Contributions to the Development of Soviet Legal Theory, 1917-1938*, p. 29.

<sup>242</sup> The Communist Academy (Russian Коммунистическая академия), was founded in Moscow on 25 June, 1918, as the Socialist Academy; it was renamed in 1924. The Communist Academy was intended to allow Marxists to address problems independent of, and implicitly in rivalry with, the Academy of Sciences, which long pre-existed the October Revolution and the formation of the Soviet Union.

<sup>243</sup> *Ibidem*.

<sup>244</sup> Bowring, *Law, Rights and Ideology in Russia. Landmarks in the destiny of a great power*, p. 53.



consequently law had to wither away as well. But this belief did not prevent him from becoming one of the architects of the Soviet Constitution, the document, which officially declared “socialism in one state” and became the monument of Stalinist power and a shift to the so-called policy of “restoration” of the importance of law and the state. In 1936 Pashukanis was appointed Deputy People’s Commissar for Justice of the USSR and Deputy Chairman of the Drafting Committee for the 1936 “Stalin Constitution”. In the same year he was nominated a candidate for membership of the Academy of Sciences of the USSR and Chairman of the Academic Council attached to the People’s Commissariat for Justice of the USSR<sup>245</sup>.

Such a high position of Soviet nomenclature, however, was reached only due to the fact that Pashukanis “was a staunch loyalist in the relation to the regime”. During the last few years of his life Pashukanis was able to reconsider his legal ideas in favour of a new ideological line, reduce his nihilism and sceptical attitude towards law and legality<sup>246</sup>.

However, his work activities in the leading professional positions did not prevent Pashukanis from becoming a victim of the Stalin’s Great Purge. Pashukanis was arrested on the day of his appointment by the regime “to supervise the revision of the whole system of the Soviet codes of law”. On 4 September, 1937, the Military Collegium sentenced Pashukanis to death as a member of a “band of wreckers” and “Trotsky-Bukharin fascist agents”<sup>247</sup>.

Pashukanis’ works were also excluded from the leading professional criminological discourse and regained popularity and importance only in the late Soviet society. One of his books, for example, was reprinted in 1980<sup>248</sup>. This early Soviet legal thought was eliminated from professional criminological and legal discourses because it was not in line with Stalin’s new ideological and political strategy, the idea that some social problems, for

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<sup>245</sup> *Ibidem*, pp. 53-55.

<sup>246</sup> *Ibidem*, p. 55.

<sup>247</sup> *Ibidem*, p. 55.

<sup>248</sup> Евгений Брониславович Пашуканис, *Избранные произведения по общей теории права и государства*.

instance, criminality, did not disappear after Socialism has already been built, and that the nihilist attitude towards criminal law, and law in general, had to be replaced with a new doctrine.

Hence, during the years of Great Terror, the nihilist doctrine and the “nihilist” definition of crime (as a declining phenomenon, a capitalist remnant) was replaced by a growing recognition of legal categories.

The period of Pashukanis was followed by the era of another Soviet legal theoretician Andrey Vyshinsky. A new period of the development of the Soviet legal and criminological thought and theory commenced. Two basic differences separated them. Pashukanis, with his nihilist attitude towards law, proved highly useful in the period of collectivization and industrialization when the development of Stalin’s regime needed fast, non-legal and non-judicial ways of dealing with the so-called “enemies of the state”. The rise of Vyshinsky marked the so-called “restoration of law” in the period when, on the one hand, the stability of the regime was achieved, and on the other hand, the need to justify terrible cleansing of the Communist Party called the “Great Purge” began.

## **2.2. Laws and regulations**

According to the paradigm of totalitarianism, the very existence of law in its traditional sense in such societies as the Stalin’s USSR is impossible. As Verhoeven noted that “the traditional understanding of the law” is “entirely inadequate” in totalitarianism: “this is because under “totalitarianism” the law loses its fixity and goes airborne; the old law exists in the state of suppression, and meanwhile the laws of history – Marxist and Darwinian – go on the move”. According to her, the USSR was not a lawful state because it “suspended or ignored all positive laws”, however, it was not “lawless” either because it had “invoked higher law”<sup>249</sup>.

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<sup>249</sup> Claudia Verhoeven, “Court files”, in: *Reading Primary Sources: The interpretation of texts from nineteenth- and twentieth- century history*, p. 103.

Even apart from the utopian-imperial Marxist-Bolshevik aspirations towards divine legality, and despite theoretical legal nihilism the Bolsheviks started to pass their own laws and legislation straight after the October Revolution, during the Civil War<sup>250</sup>. The first legal document, which officially defined crime in Soviet Russia was called *The Guiding Principles of Criminal Law of the RSFSR* (Russian: *Руководящие начала по уголовному праву РСФСР*)<sup>251</sup> and was issued on 12 December 1919 by the People's Commissar for Justice. According to this document, two drafts were issued as a result of the attempts to define the nature of the prospective penal code: in 1920 and 1921. The first Criminal Code of Soviet Russia was issued in 1922<sup>252</sup>.

After the Revolution and the Civil War the Bolshevik state was concerned with transferring its newly formulated legal principles to other Republics of the Soviet Union. *The Decree On the Fundamental Principles of Criminal Legislation of the USSR and the Union-Republics* (*Основные начала уголовного законодательства Союза ССР и Союзных Республик*)<sup>253</sup> of the Central Executive Committee of the USSR of 31 October 1924 specified the new principles of criminal law. The criminal codes of other Republics had to conform to them. One more criminal code of the RSFSR was issued in 1926 and came into force in 1927. The criminal codes of other Republics of the Soviet Union were adopted during the period between 1926 and 1928. They all had the same structure set by the code of the RSFSR<sup>254</sup>. Thus the Bolshevik legal principles became legal principals obligatory all over the Soviet empire.

According to Bäckman, in Soviet Russia the criminal code had to be drafted so that it could dissolve “the border between actual crime and any

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<sup>250</sup> Solomon, *Soviet Criminal Justice under Stalin*, p. 19.

<sup>251</sup> *The Guiding Principles of Criminal Law of the RSFSR*, accessible online: <http://soviethistory.msu.edu/1917-2/state-security/state-security-texts/guiding-principles-of-criminal-law-in-the-rsfsr/>, [last visited on 15 June 2016].

<sup>252</sup> Lappena, *Soviet Penal Policy*, pp. 27-28.

<sup>253</sup> *Основные начала уголовного законодательства Союза ССР и Союзных Республик*, accessibleonline: [http://www.libussr.ru/doc\\_ussr/ussr\\_2237.htm](http://www.libussr.ru/doc_ussr/ussr_2237.htm), [lastvisitedon 15 June 2016].

<sup>254</sup> *Ibidem*, pp. 28-34.

activities contradicting state interests”<sup>255</sup>. To reach this goal, *The Guiding Principles* of 1919 embodied one of the basic Bolshevnik legal principles – the so-called “material definition of crime”, which defined crime “as an action or omission, dangerous to a given system of social relationships”. This means that *not only* the actions or omissions laid down in the law can be defined as crimes but also any other act, even not specified in the criminal code, if it is recognized as dangerous to the Bolshevnik state<sup>256</sup>. This definition also determined another feature of the Soviet criminal justice system, namely, crime against the state was treated as much more important than crime against an individual.

The “material definition of crime” could exist in Soviet legislation because one of the guiding rules of the Western legal systems, the so-called maximum “*nullum crimen sine lege*” (no crime without the law), was not included in the Criminal Code of 1922<sup>257</sup>. It created a theoretical possibility for criminal prosecution of the acts, which are not identified in Soviet laws – without violating Soviet legal procedures and misusing the law. The criminal code itself was designed so that it should prohibit not a concrete list of crimes but any act that is potentially dangerous to the Soviet order or which could be labelled as such by the totalitarian authority<sup>258</sup>.

The “material definition of crime” became one of the most important traits defining crime in the USSR. It was transferred into all subsequent criminal codes of the RSFSR and other Soviet Republics issued before the end Stalinism<sup>259</sup>.

The “material definition of crime” principle opened the door to applying the “principle of analogy” in the process of criminal prosecution: if some act

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<sup>255</sup> Bäckman, “The Hyperbola of Russian Crime and the Police Culture”, in: *Economic Crime in Russia*, p. 260.

<sup>256</sup> Lappena, *Soviet Penal Policy*, pp. 27-28.

<sup>257</sup> *Ibidem*, p. 28.

<sup>258</sup> Kiralfy, “Recent Legal Changes in the USSR”, p. 14.

<sup>259</sup> *Уголовный кодекс РСФСР: с изменениями на 1 декабря 1938 г.: официальный текст с приложением постановочно-систематических материалов*, Москва, 1940.

was recognized as harmful to the Soviet state but was not defined in the Criminal Code, another similar law could be applied in that case<sup>260</sup>.

This trait of the Soviet penal code was at variance with one of the most important principles defined by Beccaria: it is only the law that is able to define the crime<sup>261</sup>. In Soviet law “*the material*”, rather than a legal definition of crime, allowed some actions or omissions that were unidentified in the existing laws to be defined as crimes, if the state (which was deemed to the elite of the Soviet regime) recognized them as dangerous. In this way the Soviet concept of crime contradicted the definition that has existed in the mainstream legal discourses since Beccaria until today: the law is the only source on the basis of which an individual is prosecuted and punished.

Article 16 of the RSFSR Criminal Code of 1926, which after the Soviet occupation of 1940 was transferred to the territory of Lithuania, embodied the principle of analogy stating that “*if some action dangerous to society is not specified directly in this Code, the basis and limits of responsibility for it are set by adapting those Articles of the Code, which cover the crimes of the strikingly similar nature*”<sup>262</sup>. The principle of the “material definition of crime” was embodied in the in Article 58<sup>263</sup> of the Soviet Criminal Code. According to Alexandr Solzhenitsyn, an open and ambiguous formulation of its paragraphs, flexibility and a dialectic way of application created a theoretical possibility for criminalization of almost any action if it was recognized as dangerous to the Soviet state<sup>264</sup>.

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<sup>260</sup> Lappena, *Soviet Penal Policy*, pp. 31-34.

<sup>261</sup> Frank P. Williams III and Marilyn D. McShane, “The Foundations of Modern Criminology”, in: *Criminology Theory. Selected Classic Readings*, p. 2.

<sup>262</sup> “*Jei kuris nors visuomenei pavojingas veiksmas šio Kodekso tiesiogiai nenumatytas, tai už jį atsakomybės pagrindas ir ribos nustatomi taikantis prie tų kodekso straipsnių, kurie numato panašiausiai rūšies atžvilgiu nusikaltimus*”. In: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, Kaunas, 1941, p. 16.

<sup>263</sup> Article 58 of the Russian SFSR Penal Code came into force on 25 February 1927, revised several times, most considerably in 1934. Its conditions were created by the early Bolshevik legislation.

<sup>264</sup> A. Solženycinas, *Gulago Archipelagas*, Vol. 1, p. 75.

The principle of collective responsibility rooted in the concept of “joint responsibility” was a part of Soviet criminal law<sup>265</sup> (Article 58<sup>th</sup>, section 58<sup>1c</sup>) embedded this principle<sup>266</sup>. As we will see in Chapter Two of this dissertation, “joint responsibility” in LSSR practice of the criminal prosecution and in the process of criminalization became an unwritten rule and tradition, especially in political cases. Shadows of this principle manifested themselves, for instance, in the attempts to combine criminal files of several different persons into one case imagining that political crimes in the Soviet state could be committed only by a group of enemies rather than individually. This principle can be also traced in applying administrative repressions and sometimes even in criminal prosecution tactics against the family members of the participants in armed resistance.

According to Bäckman, the Soviet concept of crime accentuates “socially dangerous” consequences of an act (consequences which are at variance with the state interests) rather than the guilt of the suspect”<sup>267</sup>. Applebaum agrees with this attitude claiming that it was the first Bolshevik Criminal Code that embodied the absence of the concept of individual guilt<sup>268</sup>.

The analysis of the Criminal Code of the RSFSR, at least partially, confirms the following view: the word guilt is not mentioned in it at all<sup>269</sup>. Whereas other codes, for instance, the Criminal Code of the Republic of Lithuania, give the definition of the term “guilt”<sup>270</sup>. However, this is only a partial view because we should note that the concept of guilt existed in Soviet

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<sup>265</sup> Šapoka, *Sovietinės Lietuvos baudžiamosios teisės vertinimas lietuvių teisininkų išeivių darbuose*, p. 461.

<sup>266</sup> „Pabėgus ar perskridus į užsienį kariui, pilnamečiai jo šeimos nariai, jei jie kuo nors yra padėję rengiamai ar įvykdytai išdavystei, arba nors žinojo apie ją, bet nepranešė valdžiai, baudžiami laisvės atėmimu nuo penkerių iki dešimties metų su viso turto konfiskavimu. Kitiems pilnamečiams išdaviko šeimos nariams, kartu su juo gyvenusiems ar nusikaltimo metu jo išlaikomiems, yra atimtinės rinkiminės teisės, ir jie nutremtini penkeriems metams į tolimuosius Sibiro rajonus.“, in: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 36.

<sup>267</sup> Bäckman, *The Hyperbola of Russian Crime and the Police Culture*, p. 261.

<sup>268</sup> Applebaum, *GULAG. A History*, p. 5.

<sup>269</sup> *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*

<sup>270</sup> *Lietuvos Respublikos baudžiamasis kodeksas*, 2000 09 26, accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555> [last visited on 5 July, 2017].

law<sup>271</sup>; however, the Soviet concept of guilt was based on the psychological theory of guilt there<sup>272</sup>, therefore it could not be adequately understood by the Western scholars.

In practice of most Soviet political trials, however, the reason to punish an individual was not based on the evidence of “guilt” but on labelling an individual as “socially dangerous” usually due to his or her belonging to some group<sup>273</sup>. In this way not only individuals who violated the law but also entire groups labelled as “enemies” by ideology could be from then on identified as “criminals” and prosecuted (in Subchapter 4 this practice will be discussed in detail).

Soviet criminal law also allowed Soviet laws to be applied to the activities committed before those laws had been adopted<sup>274</sup>. Consequently, Soviet law did not include the principle *lex retro non agit* (“the law does not operate retroactively”)<sup>275</sup>. This was another contradiction to a modern Western legal tradition of Enlightenment started by Beccaria who was the first to formulate the fundamental legal principle that law cannot be retroactive<sup>276</sup>. However, it is important to mention here that *lex retro non agit* even theoretically could not exist in Soviet law as it did not contain the aforementioned *nullum crimen sine lege*.

This logic allowed a criminal prosecution of entire groups to be carried out, for example, the so-called “byvshie liudi” (*бывшие люди*) the former “ruling classes”, the real or imaginary enemies of the revolution<sup>277</sup>.

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<sup>271</sup> See for instance: Г.К. Матвеев, *Вина в советском гражданском праве*, Киев, 1955; Алексей Иванович Рарог, *Вина в советском уголовном праве*, Саратов, 1987.

<sup>272</sup> See for instance in: Каченко, В. И. Вина: понятие, виды, *Teisė*, 1989. No. 22, p. 20.

<sup>273</sup> Viola, “The Second Coming: Class Enemies in the Soviet Countryside, 1927-1935”, in *Stalinist Terror. New Perspectives*, J. A. Getty, R. T. Manning (eds.), Cambridge, 199, p. 70.

<sup>274</sup> Šapoka, *Sovietinės Lietuvos baudžiamosios teisės vertinimas lietuvių teisininkų išeiivių darbuose*, p. 461.

<sup>275</sup> Indrišionis, *Mirties bausmė Lietuvos SSR 1950–1990 m.: teisiniai pagrindai ir periodizacija*, p. 70.

<sup>276</sup> Frank P. Williams III and Marilyn D. McShane, “The foundations of Modern Criminology”, in: *Criminology Theory. Selected Classic Readings*, p. 1.

<sup>277</sup> Viola, *The Second Coming: Class Enemies in the Soviet Countryside, 1927-1935*, p. 70.

The term “byvshie liudi” came from the early years of the Bolshevik rule – the show trials against SR’s<sup>278</sup> in the summer of 1921. The show trials came along with a big hate propaganda campaign. During it Anatoly Vasilyevich Lunacharsky (Анатолий Васильевич Луначарский) who was one of the prosecutors at that time labelled the defendants as “germs” (that could infect the entire population) and “vermin”.

In 1922 he wrote the pamphlet under the title *Former People* and the term came to be used in the Bolshevik ideology and terminology. However, originally the term was used for the first time in a short story of the same title written by Maxim Gorky (Максим Горький), and was published in 1903<sup>279</sup>. In this way the meaning of the concept “criminal” finally was tightly linked with the image of an enemy.

Hence the Criminal Code of 1926, the one which also functioned in Soviet Lithuania after the occupation, defined a crime as an action or omission “dangerous to society”, or “*every action or omission directed against the Soviet order or violating the legal order established by the authority of peasants and workers for the period of transition into to the communist system*”<sup>280</sup>.

It is also important to mention that, as mentioned, the principle of “joint responsibility” was also defined by law. The Criminal Code contained its elements of it. For instance, it was, embedded in Section 58<sup>1c</sup> of Article 58<sup>281</sup>.

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<sup>278</sup> “The Socialist Revolutionary Party” (Russian: *Партия социалистов-революционеров*, ПСР).

<sup>279</sup> B. G. Rosenthal, *New Myth, New World: From Nietzsche to Stalinism*, University Park, Pennsylvania: 2002, p. 175.

<sup>280</sup> „*Visuomenei pavojingu pripažįstamas kiekvienas veiksmas ar neveikimas, nukreiptas prieš Tarybų santvarką arba pažeidžiąs teisinę tvarką, darbininkų ir valstiečių valdžios nustatytą pereinamajam į komunistinę santvarką laikotarpiui*“, in: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 12.

<sup>281</sup> „*Pabėgus ar perskridus į užsienį kariui, pilnamečiai jo šeimos nariai, jei jie kuo nors yra padėję rengiamai ar įvykdytai išdavystei, arba nors žinojo apie ją, bet nepranešė valdžiai, baudžiami laisvės atėmimu nuo penkerių iki dešimties metų su viso turto konfiskavimu. Kitiems pilnamečiams išdaviko šeimos nariams, kartu su juo gyvenusiems ar nusikaltimo metu jo išlaikomiems, yra atimtinios rinkiminės teisės, ir jie nutremtini penkeriems metams į tolimuosius Sibiro rajonus*“, in: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 36.



Several important notes can be seen here. First of all, the Soviet Criminal Code was actually divided into three parts according to three different types of criminality (political, economic, and “criminal”<sup>282</sup>). But the very form of the whole code and the way the crime was defined, the “material definition of crime”, where the crime was understood as any action or omission dangerous to the soviet *state*<sup>283</sup>, not to the society or an individual, had politicized even actions or omissions, which were understood as non-political in other codes. In many other criminal codes of Europe in effect in the first half of the 20th century the direct link between the crime and the state was only accentuated in the case of special kind of crimes, such as, say, espionage. In the Soviet state this direct link between the crime and the state existed in all crimes because the very fundamental trait of the concept of crime was the relation between this act and the danger posed to the state. Thus, in this sense, all crimes in Soviet law (though, as we will see later, not in practice of the criminal prosecution) were “political”.

Therefore theoretically the Soviets actually did not need Article 58 to repress political enemies; the principle of analogy could also be used as a tool to criminalize any sort of “hostile elements”. The whole criminal code was designed in the way it could be used to fulfil the function of criminalization of “political” kind of offenders. Practically, however, these extensive possibilities of Soviet criminal law were rarely applied 100%. As we will see later, in case of political criminality, applying Article 58 prevailed, perhaps, because it was the easiest way. In case of criminal cases the analogy was not widely used either.

The “restoration of law” reform brought about no significant changes in Soviet penal legislation but it was more related to not-political criminality. Many new non-political activities were criminalized, including juvenile delinquency and abortions<sup>284</sup>.

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<sup>282</sup> See more in: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*

<sup>283</sup> Lappena, *Soviet Penal Policy*, pp. 27-28.

<sup>284</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, pp. 48-49.

However, even Stalin's growing cautiousness about the application of legal procedures during the process of criminal prosecution, the investigation and trial did not lead him to issuing a new Criminal Code or to making some fundamental changes in the existing one. The Code of 1926 was still in effect, which, as discussed above, was actually just the adaptation of the Bolshevik legislation of 1919. It means that no new codification was made by the Stalin and Vyshinsky reform in the sphere of criminal law; therefore the conclusion can be drawn that the old Bolshevik criminal law was suitable to the new goals set by Stalin's regime: to deal with the imaginary political crimes without violating Soviet law and legal procedures<sup>285</sup>.

### 2.3. Institutional development

Shortly after the October Revolution the system of the institutions dealing with crime was established. The elimination of the Tsarist court system was one of the first steps that the Bolsheviks made by issuing the "Decree of Courts (No 1)" in 1917. The so-called "local mixed courts" were created<sup>286</sup>. At the beginning they functioned in a very chaotic way, even their names were different<sup>287</sup>. The Bolsheviks also created special courts for political trials – revolutionary tribunals<sup>288</sup>. The judiciary practically was not separated from the executive power in the Soviet state. The People's Commissariat for Justice, the prototype of the Ministry of Justice of 1946, also called "Narkomiust" (Russian: *Народный комиссариат юстиции, Наркомюст*) was found in 1917 for the purpose of managing courts. As of 1918 it drafted new codes<sup>289</sup>.

Only the supporters of the Revolution could work in the Bolshevik courts. As a rule, they had no legal education. New courts had hardly any

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<sup>285</sup> Now I am talking only from the perspective of Soviet law. Of course, from the point of view of international law, the Stalinist repressions cannot be denied as criminal acts.

<sup>286</sup> G. Esakov, "The Russian Criminal Jury: Recent Developments, Practice, and Current Problems", *The American Journal of Comparative Law*, Vol. 60, 2012, p. 669.

<sup>287</sup> Solomon, *Soviet Criminal Justice under Stalin*, p. 21.

<sup>288</sup> *Ibidem*, 20; Esakov, *The Russian Criminal Jury: Recent Developments, Practice, and Current Problems*, p. 669.

<sup>289</sup> Solomon, *Soviet Criminal Justice under Stalin*, pp. 19-21.

independence and they were under control of local authorities (the Soviets). The main feature of their activities was the idea that “where the law provided no guidance, judges” had to “rely upon their “revolutionary consciousness”<sup>290</sup>, which was an empty and abstract concept at that time. Therefore it became possible to misuse Bolshevik law.

In 1919-1922, different courts were incorporated into one uniform, centralized and hierarchical system of the People’s Courts. They dealt with the majority of civil and criminal, as well as some administrative, offences. There were courts of several levels: local, *okrug*<sup>291</sup> (area), and *oblast*<sup>292</sup> (province, region) people’s courts and congress ones. The appellations from the local people’s courts were forwarded to the courts of a higher level. Revolutionary tribunals were of the highest level<sup>293</sup>. In 1923, the Supreme Court of the Soviet Union was founded. The Military Collegium of the Supreme Court of the Soviet Union was created in 1924.

The new system of institutions had one of the main features of the Soviet criminal justice mechanism, i.e. the division into ordinary courts and extra judicial institutions<sup>294</sup>. In 1917, the VChK or Cheka (Russian: ЧК – *чрезвычайная комиссия*), “The All-Russian Emergency Commission for Combating Counter-Revolution and Sabotage”, was founded. By late 1918, hundreds of Cheka committees had been created in various cities, at multiple administrative units of Soviet Russia. Cheka gained the right to investigate, interrogate and punish people for committing counter revolutionary crimes.

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<sup>290</sup> *Ibidem*, p. 21.

<sup>291</sup> The term *Okrug* (Russian: *округ*) was a type of a Soviet administrative division. This tradition of an administrative division was inherited from the Russian Empire. In the 1920s, *okrugs* were administrative divisions consisting of several other primary divisions such as *oblasts*, *krais*, and others. For some time in the 1920s they also served as a primary unit when guberniyas were abolished. At that time *okrugs* were divided into *raions* (Russian: *район*). On July 30, 1930 most of the *okrugs* were abolished.

<sup>292</sup> The term *Oblast* (Russian: *область*) can be translated as “area”, “zone” or “province”. In the USSR *oblasts* were a type of administrative divisions of the Union Republics. *Oblasts* consisted of “districts” (*raions*) and cities or towns. Cities and towns came directly under the jurisdiction of *oblasts*. Some *oblasts* also included autonomous entities – autonomous *okrugs*.

<sup>293</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, p. 31.

<sup>294</sup> G. P. Van den Berg, “The Soviet Union and the Death Penalty”, *Soviet Studies*, Vol. 35, No. 2, Apr., 1983, p. 154.

But it dealt with non-political crimes too.<sup>295</sup> Later the institution was renamed OGPU, NKVD, MVD, and KGB<sup>296</sup>.

Usually, but not in all cases, people's courts were formed to deal with usual, and extra judicial institutions, with political crimes<sup>297</sup>. Also, the prototype of the famous OGPU and NKVD troikas was created in 1918. Later, when Stalin announced that "kulaks" (кулак)<sup>298</sup> would be "liquidated as a class"<sup>299</sup>, they became very important.

The new system was planned to have high level of centralization and control: for instance, in 1922 Lenin opposed the idea that the representatives of the Procuracy came under the so-called "double authority". He was surprised at the opposition in his own party to the idea that local representatives of the Procuracy would be appointed only by the central power and be responsible only for the "centre": *"The majority requires the so-called dual subordination, which on the whole is set to all local employees, i.e., so, that they should be subordinate, firstly, to the centre representing a respective People's Commissariat, and, secondly, to a the local executive committee of the guberniya"*<sup>300</sup>.

Lenin expressed the following attitude to the so-called Soviet justice and legality: according to him, *"legality cannot be that of Kaluga or Kazan, there must be one single [legality – M.K.] for the whole of Russia, and even for the*

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<sup>295</sup> Solomon, *Soviet Criminal Justice under Stalin*, pp. 19 - 20.

<sup>296</sup> Gregory, *Terror by Quota: State Security from Lenin to Stalin*, p. 1.

<sup>297</sup> Van den Berg, *The Soviet Union and the Death Penalty*, p. 157.

<sup>298</sup> The term „Kulak“, which described the rich peasantry, was a term with its origin in the Russian Empire (Stolypin reform), but came into use in the Bolshevik terminology. The label of kulak was broadened in 1918 to include any peasant who resisted handing over his grain to the detachments from Moscow, whereas during the campaign for collectivization, almost all the criteria here were blurred and even middle or poor peasants could be repressed. In Lithuania the term was translated as "buožė". Basically the definition of "kulak" was associated with a political criminal and an enemy and became the next big target group of Soviet repressions after the campaign against the "former people".

<sup>299</sup> Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin*, New York, 2010, pp. 25-26.

<sup>300</sup> „Dauguma reikalauja vadinamojo dvigubo pavaldumo, kuris yra nustatytas apskritai visiems vietiniams darbuotojams, t. y. kad jie būtų pavaldūs, pirma, centrui atstovaujantiems atitinkamam liaudies komisariatui, antra, vietiniam gubernijos vykdomajam komitetui.“ In: V. Leninas, „Apie „dvigubą“ pavaldumą ir teisėtumą. Draugui Stalinui pateikti politiniam biurui“, *Pilnas raštų rinkinys*, 1922 m. kovas – 1923 m. kovas, T. 45, Vilnius, 1988, p. 193.

whole Federation of the Soviet Republics”<sup>301</sup>. Hence, Lenin stated the following:

*“Inter alia, unlike any administrative authorities, the Prosecutor's supervision has neither administrative nor decisive vote in any administrative matter. The Prosecutor has the right and duty to do only one thing: to ensure that understanding of legitimacy should be uniform all over the country irrespective of all local differences and local impacts. The only duty of the Prosecutor is to hand over the file to the court.”*<sup>302</sup>

As a result, the Procuracy was formed as an institution with the right to control the local authority: *“...In principle, it is not correct to say that the Prosecutor has no right to contest the legality of decisions of the executive committees of provinces and other local government bodies’ (...) the Prosecutor must contest every illegal decision ...”*<sup>303</sup>

Another step taken was the creation and development of penitentiaries, and this was also done in a centralized way by creating the centralized system. New Soviet labour camps appeared during the years of the Civil War already. In 1920, the so-called “first camp of the Gulag” was founded on the Solovetsky

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<sup>301</sup> „...teisėtumas negali būti Kalugos ir Kazanės, o turi būti vienas visos Rusijos ir net vienas visai Tarybinių respublikų federacijai...“ In: V. Leninas, „Apie „dvigubą“ pavaldumą ir teisėtumą. Draugui Stalinui pateikti politiniam biurui“, *Pilnas raštų rinkinys*, T. 45, p. 193-194.

<sup>302</sup> „Be kita ko teisėtumas turi būti vienas, ir svarbiausia viso mūsų gyvenimo ir viso mūsų nekultūringumo blogybė yra ta, kad nuolaidžiau jama senovinei rusiškai puslaukinių pažiūrai ir papročiui, kai norima išlaikyti Kalugos teisėtumą, skirtingas nuo Kazanės teisėtumo. Reikia atsiminti, kad, kitaip negu bet kuri administracinė valdžia, prokuroro priežiūra neturi jokios administracinės ir jokio sprendžiamojo balso nė vienu administraciniu klausimu. Prokuroras turi teisę ir privalo daryti tik viena: prižiūrėti, kad visoje respublikoje būtų laikomasi tikrai vienodo teisėtumo supratimo, nepaisant jokių vietinių skirtumų ir neatsižvelgiant į jokias vietines įtakas. Vienintelė prokuroro teisė ir pareiga perduoti bylą spręsti teismui.“ In: Leninas, „Apie „dvigubą“ pavaldumą ir teisėtumą. Draugui Stalinui pateikti politiniam biurui“, p. 194.

<sup>303</sup> „...iš principo neteisėta sakyti, kad prokuroras neturįs teisės užprotestuoti gubernijų vykdomųjų komitetų ir kitų vietinių valdžios organų sprendimus, (...) prokuroras privalo užprotestuoti kiekvieną neteisėtą sprendimą...“, *Ibidem*, p. 195.

Islands. In 1921, there were 48 camps. In 1929, the Gulag system became even more significant due to the Stalin's industrialization<sup>304</sup>.

In the 1930s changes associated with Stalin's regime touched the institutions of the criminal justice system. The role of extra-judicial bodies was growing. In January of 1930, the goal "to liquidate kulaks as a class" was declared and normal legal procedures were suspended following the OGPU order. The "troika" was established in each locality. It could issue rapid verdicts without any right of appeal. Troikas served as judges, juries and executioners. By Order No 00447 of the NKVD of 1937 the NKVD troikas were created at the level of the *republic*, *krai*<sup>305</sup> and *oblast* for a speedy and simplified trial. The role of the Military Collegium of the Supreme Court of the Soviet Union was also changed in the 1930s. As of June 1934 it was assigned the duty of hearing cases under Article 58. But the majority of cases under of Article 58 were decided by troikas<sup>306</sup>.

Hence, collectivization and the Great Purge assigned a more significant role to the extra-judicial bodies<sup>307</sup>. Another change was the creation of the Office of Public Prosecutor of the USSR in 1936. According to the Soviet Constitution of 1936, the Prosecutor exercised the highest degree of control over accurate execution of laws<sup>308</sup>. Also, law schools were expanded in the 1930s, more educated judges and lawyers joined the system. The quality of application of legal procedures improved<sup>309</sup>.

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<sup>304</sup> Applebaum, *GULAG. A History*, pp. xvi, 5, 7, 18-20.

<sup>305</sup> The term *krai* (Russian: *край*) means a type of a geographical administrative division in the Russian Empire and in the RSFSR. It is very difficult to translate it into English due to its specific meaning, having no analogues in other states, therefore in this text we will use the untranslated version. Etymologically this word is related to the verb "*кроить*", which means "to cut". Historically, *krais* comprised vast territories located along the periphery of the Russian state, since the word *krai* also means border or edge. In English the term is often translated as "territory".

<sup>306</sup> Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin*, New York, 2010. pp. 25-26, 78-87.

<sup>307</sup> *Ibidem*.

<sup>308</sup> L. M. Surhone, M. T. Tennoe, S. F. Henssonow, *Procurator General of the Soviet Union*, Saarbrücken, 2011.

<sup>309</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, p. 57.

Consequently, there were changes in the Stalinist period, and they were taken into account when the Soviet legal order was transferred to the newly occupied territories in the 1940s. However, the main features of the court system formulated shortly after the revolution, remained<sup>310</sup>. The Stalin's constitution of 1936 defined such court system of the USSR: the Supreme Court of the USSR (*Верховный Суд СССР*), Supreme Courts of the Republics (*Верховные Суды Республик*), the courts of "Krai" (*Край*) and "Oblast" (*Область*), the Courts of the Autonomous Republics (*Автономные Республики*) and Autonomous "Oblasts" (*Областей*), Courts of area (*Окружные*), Special Courts of the USSR (*Специальные*), and People's Courts (*Народные суды*)<sup>311</sup>.

The centralized court system was already Lenin's idea although he thought that courts should have the possibility to take local particularities into consideration:

*"What kind of courts are these? Our courts are local. Judges are elected by the local council. Therefore the authorities whom the Prosecutor hands over a case to be heard regarding a violation of the law, is the local authorities: firstly, it must observe the laws common for the whole Federation and, secondly, in establishing the severity of the penalty it must take into account all local circumstances and has the right to say that even if in one or another case the law has been violated without doubts, however, due to such and such circumstances well known to the local people which were*

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<sup>310</sup> *Ibidem*.

<sup>311</sup> The Article Number 102: «Правосудие в СССР осуществляется Верховным Судом СССР, Верховными Судами союзных республик, краевыми и областными судами, судами автономных республик и автономных областей, окружными судами, специальными судами СССР, создаваемыми по постановлению Верховного Совета СССР, народными судами.» *Конституция (Основной закон) Союза Советских Социалистических Республик (утверждена постановлением Чрезвычайного VIII Съезда Советов Союза Советских Социалистических Республик от 5 декабря 1936 г.)*, Last visited on July 1, 2016, Accessable online in:

[http://constitution.garant.ru/history/ussr-rsfsr/1936/red\\_1936/3958676/chapter/9/](http://constitution.garant.ru/history/ussr-rsfsr/1936/red_1936/3958676/chapter/9/), [last visited on 1 July 2016]; *Tarybų Socialistinių Respublikų Sąjungos Konstitucija (Pagrindinis įstatymas). Su TSRS Aukščiausiosios Tarybos I, II, III ir VII sesijų priimtais pakeitimais ir papildymais*, Kaunas, 1940, p. 19.

revealed in local court, mitigate the penalty imposed on such and such individuals...”<sup>312</sup>

Hence, on the level of courts, certain particularities had to be tolerated but the Procuracy had control over the local level<sup>313</sup>.

According to Lenin, this decision was taken not only because of the need to develop a common understanding of Soviet law, legality and justice in the whole republic (RSFSR) and federation (USSR), but also because the local level was full of problems related to the legally illiterate local personnel that was disloyal to the party and because of a lack of efficiently working legal staff. Therefore Lenin said that “*there is no doubt that we live in the ocean of illegality and that the local impact is one of the largest, if not the greatest enemy hindering the introduction of legality and a sense of culture*”<sup>314</sup>.

Lenin also noted the following: “*Hardly anyone has heard that the Party’s cleansing revealed the prevailing fact that most local commissions, in carrying out the Party’s cleansing, simply squared personal and local accounts*”<sup>315</sup>. Thus, at least theoretically, the idea of centralization was positive: it had to ensure that Soviet law, justice and legality should be respected all over the Union and avoid the abuses of law on the local level in dealing with the opponents who are mainly local communists (or with potential competitors).

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<sup>312</sup> „Kokie gi šie teismai? Mūsų teismai yra vietiniai. Teisėjus renka vietinės tarybos. Todėl toji valdžia, kuriai prokuroras perduoda spręsti jo iškeltą bylą dėl įstatymo pažeidimo, yra vietinė valdžia, ji privalo, pirma, absoliučiai laikytis bendrų, visai federacijai nustatytų įstatymų, o antra, nustatydamas bausmės dydį, privalo atsižvelgti į visas vietines aplinkybes ir turi teisę pasakyti, kad nors tokiu ir tokiu atveju įstatymas neabejotinai buvo pažeistas, bet tokios ir tokios vietiniams žmonėms gerai žinomos aplinkybės, paaiškėjusios vietiniame teisme, verčia teismą pripažinti, jog reikia sušvelninti bausmę tokiems ir tokiems asmenims“. In: Leninas, „Apie „dvigubą“ pavaldumą ir teisėtumą. Draugui Stalinui pateikti politiniam biurui“, *Pilnas raštų rinkinys*, T. 45, p. 193-195.

<sup>313</sup> *Ibidem*.

<sup>314</sup> „...nėra abejonės, kad mes gyvename neteisėtumo jūroje ir kad vietinė įtaka yra vienas iš didžiausių, gal net pats didžiausias priešininkas, trukdantis įvesti teisėtumą ir kultūringumą.“ Leninas, In: V. Leninas, „Apie „dvigubą“ pavaldumą ir teisėtumą. Draugui Stalinui pateikti politiniam biurui“, *Ibidem*, p., p. 195.

<sup>315</sup> „Vargu ar kas nebus girdėjęs, jog partijos valymas atskleidė vyraujančią faktą, kad daugumoje vietinių tikrinimo komisijų, vykdančių partijos valymą, vietose buvo suvedinėjamos asmeninės ir vietinės sąskaitos“, *Ibidem*.



### **3. The concept of crime and the system of criminal prosecution during the “Restoration of law” reform of the 1930s**

Changes in the Soviet legal theory took place when “legal nihilism” lost its ideological background due to Stalin’s announcement of the creation of Socialism in one country in 1936. The idea that law would be abolished soon was replaced with the new statement alleging that there was a need for legal stability. This reform is defined by Berman as the “Restoration of law”<sup>316</sup>. The reform took place in the general legal doctrine and legal doctrine, laws and legal practices in the sphere of criminal justice and criminal prosecution.

The reform was related to a general change in the Soviet ideology. In 1936 the creation of a classless society in the USSR was announced, “Socialism in one state” was recognized as a possible reality. Ideologically this change was closely linked with the turn from “Leninist Marxism”, which was “the transformation of classical Marxism”, to “Stalinism”, which actually was Stalin’s transformation of “Leninism”. Consequently, not only political and social dimensions of the Soviet state but also law, which was closely linked to the ideology underwent the most significant changes after the establishment of Soviet Russia and later the USSR<sup>317</sup>. It is important to emphasize the fact that following this change the Soviet legal system and the legal theory remained stable for many years; next reforms took place after Stalin’s death already.

Between 1934 and 1936, laws and legal procedures whose significance was reduced during the periods of the Civic War and Collectivization became important again. The period of paradoxes began. When Stalin’s fight against imaginary enemies became extremely fierce, the traditional legal order, which had many common traits with law of the Tsarist system, was restored, at least, externally<sup>318</sup>.

However, the main question here is related to the depth of those legal categories and to the problem of their operation and efficiency: did the legal

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<sup>316</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, pp. 29-66.

<sup>317</sup> *Ibidem*, pp. 53-55, 63.

<sup>318</sup> Solomon, *Soviet Criminal Justice under Stalin*, p. 153.

categories really work in practice or were they used only as an ideological peel constructed to cover the chaotic usage of brutal, naked and unlawful power guided by one and the only rule – the will of a powerful dictator?

Not only the “Restoration of Law” period had impact on the development of the Soviet legal doctrine and practice. As it has been shown in the previous chapters of this work, attention to some kind of the legal order and the development of a specific legal doctrine (the “socialist” one) was also a feature of the period of NEP. Soviet legal and ideological definitions of crime were formulated before the mid-1930 already. Also, before this particular period the Soviet Union had already encountered such phenomena as an ideological construction of a *criminal* and *enemy* using such meaningfully elusive and flexible concepts as, for instance, “*kulak*”. The final “material” definition of a crime took shape already in the Penal Code of 1926 and did not change markedly until the death of Stalin.

We can notice that one exceptional aspect separates the period of the “Restoration of law” from other periods of Soviet legal development path: it was only during this period that the idea of criminals and enemies acting even on the highest level of society in the Soviet social order – among the leading figures of the Communist Party – emerged. Hence, then the Soviet definition of a political crime reached the maximum flexibility: theoretically no one in the Soviet state, even those in Stalin’s closest environment, could be sure that soon they would not be accused of political treason and become “guilty without guilt”.

This idea seems to be a great paradox if we keep in mind another important part of the Soviet-type definition of a crime: a crime is a reality, which tends to decline and vanish in the face of the development of socialism and creation of preconditions for a fundamentally just and equal communist society. It seems that Stalin here implemented an ideological shift from classical Marxism to Stalin’s imperial “Leninism” and “traditionalism”.

In 1936 the creation of a classless society in the USSR was announced. Stalin’s famous thesis that after the formation of socialism in one state, the

state has to be extremely strong so as to protect it from a negative capitalist impact coming from the outside became the main ideological directive of the period. In 1936 Stalin declared that the stability of laws then was needed more than ever before<sup>319</sup>.

Hence, in the sphere of the criminal law doctrine the Soviet authority turned to the legacy of the pre-revolutionary period, at least externally. In the doctrine legal nihilism of the past development of the Soviet state was forgotten.

In the spheres of penal legislation and a criminal prosecution the abolition of legal nihilism was embedded by broadening the list of criminalized activities. More and more non-political activities were criminalized – this criminalization had nothing in common with the discourse of the symbolic fight against the regimes enemies<sup>320</sup>.

As we see, the turn towards the type of “criminal” criminality took place in legislation. Before that period its importance in the sphere of legislation was put in the shade of the main focus, i.e., the “political” crime, as was clearly demonstrated by the way the penal code was drafted.

Andrey Vyshinsky was a leading jurist, a specialist on law and a symbolic figure of that period. That period is sometimes referred to as “Vyshinsky-Stalin” period in historiography, whereas the legal system of Vyshinsky is called “the Vyshinsky’s school of legal thought”<sup>321</sup>. He reached the top of his career in the 30s of the 20th century. In 1935 Vyshinsky became Procurator General of the RSFSR and a justifier of Stalin’s Great Terror. His role as a prosecutor in the famous show trials of Zinoviev-Kamenev was extremely important and well-described in historiography, and documented in many sources<sup>322</sup>.

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<sup>319</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, p. 53.

<sup>320</sup> *Ibidem*, pp. 48-49.

<sup>321</sup> F. J. Feldbrugge, Soviet Criminal Law. The Last Six Years, *The Journal of Criminal Law, Criminology and Police Science*, Vol. 54, No 3, (September, 1963), pp. 261-262.

<sup>322</sup> Courtois, Werth, Panné, Paczkowski, Bartosek, Margolin, *Juodoji komunizmo knyga. Nusikaltimai, teroras, represijos*, p. 1045; Andrei Vyshinsky speech during Kamenev’s and Zinoviev’s proceedings, accessible online:

The Lithuanian scholar A. Dobryninas describes Vyshinsky as a definer and founder of a socialist and Soviet-type attitude to the crime whose importance to the history of Soviet law and criminality can be compared with the fundamental impact made by Beccaria. According to Dobryninas, Beccaria's rhetoric became the manifestation and expression of the liberal democratic ideology, whereas Vyshinsky's rhetoric justified, defined and substantiated the totalitarian communist worldview. Therefore both doctrines created a great resonance in the societies of their time and became paradigm guidelines to the following generations, as well as shaped the mainstream legal discourse in Western democracies and Eastern European Communism<sup>323</sup>.

According to Berman, though Vyshinsky's ideas and especially practices without doubt were reliant on Stalin, he managed to develop a separate positivist legal theory where law was separated from politics and economics and became an independent doctrine. Vyshinsky worshipped the Constitution of 1936, and contrary to his predecessors claimed that the highest level of development of law was reached in Socialism in one state rather than in Capitalism<sup>324</sup>. This idea took an entirely opposite line to that expressed in Pashukanis thesis stating law existed only in Capitalism and even the very concept of it should not exist in the Socialist state.

Although Vyshinsky agreed that law was a political category, he believed that it was wrong to belittle the importance of law. According to his theory, law had to reflect, first and foremost, "the will of people"<sup>325</sup>. This attitude contradicted the earlier attitudes developed by Pashukanis and Stuchka who, as we already know, attributed an entirely political role to the criminal law in socialist societies. Also, this partial more external, than internal "depolitization" of the Soviet legal doctrine contradicted the concept of crime embodied in Soviet legislation. As mentioned before, the "material

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<http://art-bin.com/art/omosc22m.html#not2>, [last visited on 12 January 2017].

<sup>323</sup> Dobryninas, *Democratic Change and Crime Control in Lithuania: Compiling New Criminological Discourses*; Dobryninas, „Nusikaltimų retorika Lietuvos politiniame diskurse“, *Semiotika. Šiuolaikinio socialinio diskurso analizė*, Vilnius, 1997, p. 28.

<sup>324</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, pp. 54-55.

<sup>325</sup> *Ibidem*.

definition of crime” and the “principle of analogy” had transformed the soviet concept of the crime, which was shaped in the Code, into an entirely political concept, even in case of “criminal” criminality (because this concept stated that a crime was any harm done “to the Soviet state”).

If we agreed with this statement, it would be necessary to admit that Vyshinsky’s doctrine’s definition of the function of law was close to the one provided by a Western legal tradition of the Enlightenment, namely, that law is the object and reflection of a social contract, and that laws are formulated as a means of expressing and exercising the basic needs and rights of all the citizens in a certain state and society. Here a comparison to Beccaria can be made using Beccaria’s statement that “*laws are the conditions under which men, naturally independent, unite themselves in society*”<sup>326</sup>.

Some sources seem to support this statement. In one of his books Vyshinsky claims the following: “*law expresses these things, which the ruling classes treat as just, beneficial and acceptable*”<sup>327</sup>. When he is talking about “society” we, without doubt, should imagine the “ideal type” of Soviet ideology – the hypothetic state of democratically organized and fully represented workers and peasants, which has never existed in reality. However, if such “society” consisted only of workers and peasants (as was ideologically and even practically planned in the USSR), the law, following this model, could be interpreted as a form of a “social contract” – even if such a “democratic” model of Soviet society were never present in reality and remained only as part of utopia.

The echo of the idea of a “social contract”, as a source of law, can also be found in a Vyshinsky-period textbook for lawyers (the book was published in Soviet Lithuania too). Vyshinsky who was an editor of the book defined 3 main functions and missions of penal law: a) to protect the Soviet society and

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<sup>326</sup> Beccaria, “On Crimes and Punishments”, in: *Criminology Theory. Selected Classic Readings*, p. 14.

<sup>327</sup> «Закон выражает собой то, что считают справедливым, выгодным и угодным для себя господствующие классы.» А. Я. Вышинский, *Теория судебных доказательств в советском праве*, Юридическое издательство НКЮ СССР, Москва, 1941, с. 7.

the state set by the Stalin's Constitution from crimes; b) to ensure the rights of Soviet citizens; c) to protect the rights and needs of the Soviet state institutions, entities, enterprises and various organizations<sup>328</sup>

Even here, however, the rights of state and its citizens are presented as not being of equal importance. The state is mentioned twice and the citizens are mentioned only once in the text under discussion. Human rights are not mentioned in the text either, which means that only the state is that particular power granting the rights to individuals, and that without the state an individual and citizen would be without any rights, and would not be protected by law. Thus, high priority of the state over an individual is embodied there. The well-being of the state is shown as a top priority, which coincides with the already discussed concept of crime of the Criminal Code.

Many other texts by Vishinsky, and his speeches during the trials in particular, testify to the fact that such an attitude towards his doctrine is correct. For instance, in one of his texts he claims the following: “... *It is necessary to understand Lenin's words about the Soviet courts as public-political courts. Soviet courts take an active part in building the state as bearers of the Soviet policy. This policy is aimed at destroying resistance to the course of socialism on the side of its enemies...*”<sup>329</sup>

Vyshinsky also stressed the need “*to strengthen the dictatorship of the proletariat, the ruling soviets*”, to develop “*respect for the rules of the socialist*

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<sup>328</sup> „Tarybinis baudžiamasis įstatymas vykdo svarbiausius uždavinius, gindamas nuo visokių kėsinių: a) Stalino Konstitucijos ir sąjunginių bei autonominių respublikų konstitucijų nustatytą visuomeninę ir valstybinę santvarką, socialistinę ūkio sistemą ir socialistinę nuosavybę; b) TSRS piliečių politines, darbo, buto ir kitas asmenines teises bei interesus, laiduojamus Stalino konstitucijos ir sąjunginių bei autonominių respublikų konstitucijų; c) valstybinių įstaigų, įmonių, kolektyvinių ūkių kooperatyvinių ir kitų visuomeninių organizacijų teises ir įstatymų saugomus interesus“. In: Višinskis (ed.), *Tarybinė baudžiamoji teisė*, Vilnius, 1941, p. 3.

<sup>329</sup> «...надо понимать слова Ленина о советских судах как “государственно-политических судах”. Советские суды активно участвуют в государственном строительстве, являясь проводниками политики советского государства. Эта политика направлена на уничтожение сопротивления делу социализма со стороны его врагов, на укрепление диктатуры пролетариата, власти советов, уважения к правилам социалистического общежития, государственной дисциплины.» А. Я. Вышинский, *Теория судебных доказательств в советском праве*, с. 14.

*community, state and discipline*”<sup>330</sup>. Hence, such dependency of the court work on the Soviet government is a clear sign that in many cases Vyshinsky’s “democratic” rhetoric is only a surface concealing the fact that inner logic of his legal doctrine remained unchanged since the drafting of the Criminal Code in the 1920’s: the state is still seen as the main actor in the process of criminal prosecution and the main element in the construction of the concept of crime.

Consequently, even though sometimes some seemingly “democratic” ideas and expressions could be found in the legal theory and in the professional criminological discourse in Vyshinsky’s period, there was always a possibility that the logic of law enforcement in practice in the Soviet state would function according to different principles and logic.

However, it was Vyshinsky who, at least on the level of ideology and in his legal doctrine, rejected the former nihilist and negative attitude towards the very institute of law as such. Without doubt he left the already existing “gates” in Soviet legislation to exercise unlimited political power but that was made practically only in the sphere of political-type criminality. The positivist legal theory developed by Vyshinsky was in line with the practical goals of the Soviet regime when even the creation of socialism “in one state” did not mean the ultimate communist paradise and the problem of criminality still existed.

While the criminal justice mechanism dealing with the “enemies” who, according to the new ideological turn, were a part of the transitional period during which a fight between the antagonistic classes became extremely intensive, was still in operation, the doctrine and legislation were slightly reshaped because different social problems did not disappear; consequently, the prosecution of criminal-type criminality was also growing. However, this new concern of the Soviet state about non-political criminality could also mean that the state was turning into the so-called “police state” willing to implement the highest level of power and control over its citizens.

Thus, the conclusion can be drawn that the basic difference in the Soviet legal system during the periods before and after the mid-1930s was not only

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<sup>330</sup> *Ibidem*, p. 14.

the new possibility to define even members of the highest political elite as criminals. The discourse on the ideology and the legal doctrine also represented the change: before this significant change the ideology and the legal doctrine declared a nihilist attitude to the role of criminal law (some legal order existed in *practice*, courts were created, laws issued and other legal practices developed). And *after* the mid-1940's the importance of law to the socialist state was recognized even on the ideological level and by the legal theory and doctrine (or, in other words, by a "professional" level of a criminological discourse).

The formation of the criminal justice system of the USSR finally came to end in the middle of the 1930s. The process of the Soviet legal development was symbolically completed by adopting the Stalin's constitution in 1936. It specified that the criminal codes of separate Union Republics had to be replaced by the all-Union penal code. The concepts of "revolutionary consciousness" and "revolutionary legality" in the law remained but their meaning was changed. They were no longer metaphors of flexibility in the definition of the crime when it was possible to formulate the content of the concept of crime according to the needs of the Revolution. Also, it did not mean flexibility and freedom of local courts and institutions during the process of a criminal prosecution. The new meaning of "revolutionary legality" was a mandatory requirement that all post-revolutionary legal acts were recognized and adopted all over the whole territory of the USSR. Hence, this phrase, which before the mid-1930s was a symbol of flexibility, then became a metaphor of stability<sup>331</sup>.

Berman claimed that the principle of criminal law "no crime, no punishment [without] a previous law" was reasserted as the socialist principle, and the doctrine of analogy was severely limited so that actually it became (despite opposite claims by the Soviets) merely a method of the amplification of a statute by interpretation". Even the terms "crime" and "punishment", which were abolished during the period of NEP, were restored in the legal

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<sup>331</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, pp. 56-57.



doctrine: the “formal-juridical” element was now emphasized as having the importance equal to that of a “material” element of social danger and social defence. According to Berman, “personal guilt” was again “*considered as essential element of crime*”<sup>332</sup>.

But despite changes in the doctrine, the “principle of analogy” was not eliminated in practice. In the above-mentioned textbook republished in Lithuania in 1941, Vyshinsky continues to regard analogy as a valid concept: “...*socialist law allows the so-called analogy. Penal Codes are unable to specify all kinds of actions dangerous to society, therefore, if some action dangerous to society is not directly specified, the basis and limits of responsibility for it are set by applying those articles of the Code, which specify crimes of the most similar nature*”<sup>333</sup>

It is hardly possible that the book edited by Vyshinsky could provide such important statements without his will and agreement. It also seems that despite a new rhetorical discourse and some changes in laws, the very core and basic principles of Soviet legislation and the concept of crime created and developed just after the Revolution of 1917 remained untouched.

The penal codes of 1926-1927 also remained in effect. After the Stalin’s Constitution was adopted in 1936, no new general legislation came into force in the sphere of criminal law, except for some separate laws together with the already-existing code of 1926.

The Constitution strengthened the already created legal order significantly, including the principle of imperial domination. Article 20 of the Constitution provided for greater centralization and less individualism in the Republics: “*In case of discrepancy between the law of a Union Republic and*

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<sup>332</sup> *Ibidem*, p. 56.

<sup>333</sup> „*Antra vertus, socialistinė teisė leidžia vadinamąją analogiją. Baudžiamieji kodeksai negali išsamiai numatyti visas galimas visuomenei pavojingas veiksmų rūšis, todėl, jei kuris nors visuomenei pavojingas veiksmas baudžiamųjų įstatymų tiesiogiai nenumatytas, tai už jį atsakomybės pagrindas ir ribos nustatomi taikantis prie tų kodekso straipsnių, kurie numato panašiausios rūšies nusikaltimus.*“ In: Višinskis, *Tarybinė baudžiamoji teisė*, p. 7.

*the all-Union law, the all-Union law is preferential*<sup>334</sup>. This was repeated in the Criminal Code of the RSFSR, which was adopted in Soviet Lithuania after the occupation of 1940: “*the all-Union law, if it differs from the one adopted on the level of a certain Republic, is preferential*”<sup>335</sup>.

Berman also noted that the period witnessed some changes in the level of a criminal prosecution and trial: “a new Judiciary Act was promulgated in 1938 to lay the foundation for a more orthodox trial procedure”. According to him, the need for “judicial culture” (i.e., a proper court procedure) and “judicial authority” was emphasized”, as Vyshinsky stated in 1938: “judicial activity requires the deepest trust in the court. (...) The judge must fight for that trust”<sup>336</sup>. This statement of Berman is confirmed by Vyshinsky himself: “the authority of the Soviet court is to enforce the socialist truth, which it serves”<sup>337</sup>.

During the “restoration of law” reform, a professional education of lawyers was also revived, law schools were renewed and expanded; also, the “legal education returned to more orthodox paths”<sup>338</sup>. However, even Berman who interpreted Vyshinsky’s doctrine as a part of “legal positivism” recognized that though “the nihilistic theory of law, which had previously dominated was denounced now; yet the practice of force and violence survived”<sup>339</sup>. Hence, the formation of the criminal justice system of the USSR finally came to an end in the mid-1930s. According to Berman, its main feature was coexistence of law and terror:

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<sup>334</sup> «В случае расхождения закона Союзной республики с законом общесоюзным, действует общесоюзный закон.» *Конституция (Основной закон) Союза Советских Социалистических Республик (утверждена постановлением Чрезвычайного VIII Съезда Советов Союза Советских Социалистических Республик от 5 декабря 1936 г.)*, accessible online:

[http://constitution.garant.ru/history/ussr-rsfsr/1936/red\\_1936/3958676/chapter/2/](http://constitution.garant.ru/history/ussr-rsfsr/1936/red_1936/3958676/chapter/2/), [last visited on 1 July 2016].

<sup>335</sup> *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 171.

<sup>336</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, p. 57.

<sup>337</sup> *Авторитет советского суда обусловлен силой социалистической правды, которой он служит*, Вышинский, *Теория судебных доказательств в советском праве*, с. 12.

<sup>338</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, p. 57.

<sup>339</sup> *Ibidem*.

“How can law and force exist side by side? It was Soviet thesis that they can. Vyshinsky in 1938 wrote with utter frankness that alongside “suppression and the use of force,” which are “still essential” so long as world-wide communism does not exist, it is necessary to have “also” due process of law. Behind such a thesis is the assumption that politics is beyond law, and that law only extends to those areas of society in which the political factor has been stabilized. Where the stability of the regime is threatened, it is dealt with by “suppression and the use of force.”<sup>340</sup>

As we see, beginning with the mid-1930s the reality of Soviet law was very complex and confusing. Vishinsky developed “positivist” legal concepts and strengthened legal practices in trials instead of “nihilism” and “revolutionary consciousness” but he did not redefine the “material definition of crime”. Even though mass repressions were over, and the outfit of a “traditional” legal order prevailed in the Soviet system of a criminal prosecution, the possibility to apply analogy was left if the conditions of “stability” declared by the Constitution changed. As Moscow show trials witnessed very soon it did not take to wait and see.

Researchers find it difficult to understand where “a line” between law and force was drawn in the Soviet legal doctrine, legislation and practice during the Stalin-Vyshinky period. Berman defined that situation as an “inherent conflict between law and force”. According to him, this tension in Soviet law “resulted in some strange paradoxes”. Many practical examples of these paradoxes can be found, e.g. a contradiction between law and its enforcement, between legality and unjust political repressions:

“The law punished discrimination on the basis of nationality, yet the Ministry of Internal Affairs removed and dispersed whole national groups which were considered insufficiently loyal – the Volga Germans, the Crimean Tartars, the Karachai, the Kalmyks, the Chechen and Ingush, and the Balkars. Anti-Semitism was a crime in law, but Jewish “cosmopolitans” were sent to labour camps as counterrevolutionaries.

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<sup>340</sup> *Ibidem.*

Legal guilt was purely personal but political guilt could be avenged against relatives and friends”<sup>341</sup>.

However, now terror was dressed in a legal outfit. Legal procedures took priority even in Moscow show trials: the attitude to legal logic and dimension was emphasized there<sup>342</sup>.

Another new trend of the Vyshinsky period was the fact that types of political, economic and criminal offences and their prosecution could be linked with each other resulting in the possibility of blurred lines between “political” and “non-political” criminality (the distinction obvious in earlier times). This trend was especially remarkable in such situations as embezzlement of the state’s property or sabotage. These charges could be formulated on the basis of both criminal articles of the penal code and political articles organized to combat “counter-revolutionary crimes” such as Article 58<sup>343</sup>.

Some changes took place in the work of the institutions too. When the “restoration of law” reform started the institutions sought to achieve that prosecution of political crimes would be organized according to the principles of the legal doctrine, respecting all legal procedures though this tactic was not always successful<sup>344</sup>.

In the 1930s main elements of the court system were the Supreme Court and the People’s courts. As of 1938 the amount of terror decreased but courts continued to pursue the former repression policy<sup>345</sup>.

Hence, while the period of the Revolution and the Civil War can be regarded as the starting point of Soviet legislation and basis for such concepts as the “material definition of crime” and “analogy” (they remained unchanged until the death of Stalin)<sup>346</sup>, Vyshinsky created the most influential Soviet legal doctrine and philosophy. In this way both periods constructed the “ideal type”

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<sup>341</sup> *Ibidem*, pp. 57-58.

<sup>342</sup> Richard Pipes, *Russia Under the Bolshevik Regime*, New York, 1995, pp. 402-403.

<sup>343</sup> Berman, *Justice in the USSR. An Interpretation of Soviet Law*, pp. 56-57, 60-63, 66.

<sup>344</sup> Lappena, *Soviet Penal Policy*, p. 28.

<sup>345</sup> *Ibidem*, p. 66.

<sup>346</sup> Bäckman, *The Hyperbola of Russian Crime and the Police Culture*, p. 261.

model of the Soviet criminal justice system and the concept of crime, which became an example to the LSSR in 1940.

Vyshinsky's focus on law and legal procedures was also reflected in the work of courts. From 1933 to 1952 the number of sentences carried out by regular courts in the USSR was higher than that of the extra-judicial tribunals (except for those in 1937-1938, the years of the Great Terror). Though the main mission of the Soviet criminal justice system was to carry out repressions, a criminal prosecution of non-political criminals existed<sup>347</sup>.

Thus, during the periods of the Revolution and active social transformations the extra-judicial means had the priority over usual courts and normal procedures of a criminal prosecution, whereas after declaring "stability" and "socialism in one state" (by adopting the Constitution of 1936), the rhetoric of "stability" and "normality" was used much more frequently. However, throughout the whole Stalinist period it was officially declared that the Soviet State was not only surrounded by an external enemy from the Capitalist world. The existence of the USSR was believed to be threatened by a dangerous *internal* enemy.

Surprisingly, even in such circumstances, a state of war or a state of emergency was never declared in the whole Soviet Union, neither during the "Vyshinsky" period or even before it. The definition of a state of emergency even did not exist in Soviet law. As the historian Alexander N. Domrin stated: "Before the 1990s there existed no parliamentary statute in the Soviet Union dealing with the emergencies, for example, such as those arising from popular unrest or in the wake of a natural disaster"<sup>348</sup>. So, despite the militant rhetoric and a frequent use of such words as "fight" in a public discourse and legislation, the state of war in reality was not declared.

According to Domrin, "questions on peace and war, including the power to declare war, were assigned to the exclusive jurisdiction of the Union authorities", this was the mission of the USSR Supreme Soviet. General rules

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<sup>347</sup>*Ibidem.*

<sup>348</sup> Alexander N. Domrin, "Russian Law of Emergency Powers and State of Emergency", *Indian Journal of Constitutional Law*, No 5 (2007), p. 113.

defining the “state of martial law” were issued only after the war had really broken out, in a Decree of the USSR Supreme Soviet Presidium of 22 June 1941 On Martial Law (*О военном положении*).<sup>349</sup> According to the legal historian F. J. M. Feldbrugge, this document was referred to as “an edict of the Presidium of the USSR Supreme Soviet of 22 June 1941”:

“According to the 1941 edict, the proclamation of martial law in the USSR (or in a limited area) contains the following elements. Competence in matters of public order and state security is transferred to the military authorities. The military command acquires broadly defined powers to requisition (against payment) means of transport, and to conscript the civilian labour force. In all fields of administration under military control, the military authorities may back up their instructions by the imposition of administrative fines and short-term detention.”<sup>350</sup>

According to Feldbrugge, in the years of World War II the Presidium of the USSR Supreme Soviet “*has occasionally proclaimed a state of siege within certain defined territories (the Crimea, the Stalingrad province, etc.)*”. It was “*a special form of martial law*” which entitled, for instance, “*the military to shoot marauders, spies, etc. on the spot.*”<sup>351</sup>

This situation sounds very interesting if we have in mind the fact that during the entire period of its existence (between 1918 and 1940) the Lithuanian Republic remained in a state of emergency.

It is worth mentioning that conditions for declaring a state of emergency were defined by the Union Constitution but they were not identified in all republican constitutions, including the Constitution of the Lithuanian SSR<sup>352</sup>. Therefore the conclusion can be drawn that in this case the law of the Union

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<sup>349</sup> *Ibidem*, p. 113

<sup>350</sup> F. J. M. Feldbrugge, “War, State of” in: *Encyclopedia of Soviet Law*, edited by F. J. Ferdinand Joseph Maria Feldbrugge, Gerard Pieter Van den Berg, William Bradford Simons, Dordrecht, Boston, Lancaster, 1985, p. 815.

<sup>351</sup> *Ibidem*.

<sup>352</sup> *Lietuvos Tarybų Socialistinės Respublikos Konstitucija (Pagrindinis Įstatymas). Priimta devintojo šaukimo Lietuvos TSR Aukščiausiosios Tarybos neeilinėje devintojoje sesijoje 1978 m. balandžio 20 d.*, Vilnius, 1978.

Republic did not provide for the right to declare a state of emergency or a state of war. It was only the central power that had the right to declare it. Hence, it was another evidence of centralization of power in the Soviet empire.

Last but not the least, it is important to keep in mind that the Second World War and the post-War political order also had an impact on the Soviet criminal law theory and legal practices.

First of all, an abstract legal concept of a criminal was given a new empirical form in a real enemy – firstly, the German military forces and Nazi collaborators. Secondly, being one of the Allies in fighting and winning victory also meant coming out of the inner political and legal discourse, and, lastly, a partial de-isolation of the USSR. This also meant, at least before the beginning of the Cold War, that the Soviets would have to participate in the setting of the new, post-war legal order. The most important thing was to find a just way to deal with the Nazi War Criminals, without letting the world learn about war crimes committed by the Soviet side.

On the one hand, Soviet lawyers, including the leading figure Vyshinski, when participating in international debates had to create the image, or a myth, of a well-functioning and just internal legal system. It led to even greater strengthening of legal methods and practices during the process of investigation and punishment. The Soviets decided not to rewrite laws but to present their legal system as a just one in the eyes of the world.

Therefore, after the war the very core of the Stalinist legal order remained; however, it was enriched with some new trends. Western observers noticed partial “normalization” of legal practices. The process of a criminal prosecution was brought closer to Western standards<sup>353</sup>.

Practically, as we will see later, it did not mean that suddenly Soviet law became just. Article 58 and analogy were not abolished yet; such concepts as “joined responsibility” were not eliminated. However, at least a part of the post-war trials stopped dealing with the imagined criminals – these trials can

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<sup>353</sup> Juliette Cadiot, Tanja Penter, “Law and Justice in Wartime and Postwar Stalinism”, *Jahrbucher fur Geschichte Osteuropas*, No 2, 2013, p. 161.

be described as the attempts to implement justice towards the Nazi war criminals, including those who were involved in the Holocaust<sup>354</sup>.

As Cadiot and Penter point out, the war brought about some changes in the development and evolution of the Soviet legal system; on the other hand, however, many pre-war practices and methods remained<sup>355</sup>.

#### **4. Major trends and classic examples of logic of criminalization and criminal prosecution in practice**

The analysis of the Soviet criminal justice system creates a very strong impression that the processes of criminalization and a criminal persecution in practice, especially in the sphere of political crimes, even after declaring the importance of law in the mid-1930s, was organized according to different rules and practices (different from the rules and practices of written legal documents, the constitution and the codes). On the other hand, officials of Soviet legal institutions, especially after the “Vyshinsky” reform of 1930s, focused on the role of law and tried to follow the logic of the criminal codes. This paradox is hardly understandable; however, it might also serve as a key to the very core of the Soviet-type criminal justice system. Therefore, the analysis of some classic examples of legal practice of the USSR helps us get closer to the basic elements of criminal justice institutions and shape the concepts of “crime” and “punishment”.

The system dealt not only with political criminality, “the Gulag held many types of prisoners” and “served as the Soviet Union’s main penal system: robbers, rapists, murderers, and thieves spent their sentences not in prisons but in the Gulag”<sup>356</sup>. Therefore, the need to discuss both the process of a criminal prosecution and the investigation of “political” and other kinds of criminals is necessary, even if it is difficult to accomplish this task: a lack of sources,

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<sup>354</sup> *Ibidem.*

<sup>355</sup> *Ibidem.*

<sup>356</sup> *What Were Their Crimes?*, accessible online:

<http://gulaghistory.org/nps/onlineexhibit/stalin/crimes.php>, [last visited on 13 January 2017].



memoirs and historiography, as mentioned in the Introduction of this dissertation presents a huge problem.

On the practical level, though the Soviet court system and the mechanism of a criminal prosecution were designed, first of all, to deal with political crimes, the problem of non-political criminality was not ignored. According to Gregory, the majority of arrests, made “by the state security agency were classified as political crimes” in the Stalin’s era but “in the early 1920s, between 1930 and 1936, and during the war, attention of the “organs” was focused on “other crimes”<sup>357</sup>.

Repression of political “enemies” dominated from 1917 to 1953. According to Bäckman, “the Russian state has always been active in defining ultimate foes as objects of stigmatization and repression”. He noted that “after the Revolution of 1917 protection of the “revolutionary state and society” took precedence over protecting the rights of the individual”, while “the principal foe was the “class enemy”<sup>358</sup>.

Bäckman’s research has also confirmed that the design of Soviet law was made in order to implement the repressive function and to deal with political criminals: “the social element of crime (“social danger”) and the analogy principle defined by the criminal code formed the legal basis for the repression carried out by the state organs”<sup>359</sup>. Here the connection between violent repressions on the one hand and, the method of justifying them with the help of the existing law on the other hand, is clearly expressed.

The formulation of the concept of “deviant” or “criminal” in the Soviet criminal justice system took place in the context of ideological premises. The ideology emphasized the struggle of classes and the idea of the “class enemy”. The enemy in the Soviet ideology was described as a hostile personage who was trying to eliminate the consequences of the Revolution and to restore the former social order favourable to the classes of the exploiters. The Soviet ideology did not only escalate the ideas of abolishing the antagonistic social

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<sup>357</sup> Gregory, *Terror by Quota: State Security from Lenin to Stalin*, pp. 16-18, 23.

<sup>358</sup> Bäckman, *The Hyperbola of Russian Crime and the Police Culture*, p. 261.

<sup>359</sup> *Ibidem*.

classes and make those ideas a dominant dimension of the public space. The very Soviet state under Stalin and prior to his regime was organized according to the principles of this ideology, and the social reality had to be squeezed into the ideological clichés, which sometimes were not only too narrow but also empirically senseless.

As we saw, Soviet criminal law defined the concept of crime, combined it with the ideological concept of the *enemy* and embedded it in the criminal code. The only problem was that not only the principle of analogy but also the very definition of crime as an act harmful to the Soviet state left too much space for interpretation.

Historiography especially that representing the tradition of “totalitarianism” clearly shows the way the hypothetical possibility of criminalization of every soviet citizen was developed. As Applebaum noted that “from the very earliest days of the new Soviet state (...) people were to be sentenced not for what they had done, but for what they were”, but “unfortunately nobody ever provided a clear description of what, exactly, a class enemy was supposed to look like”. Due to this reason, “the definition who was and who was not an “enemy” also varied from place to place”<sup>360</sup>.

As we have already seen, in defining political criminality the ideological concept of the class enemy was linked with the legal definition of crime and criminal in the dimension of Soviet laws. “Criminal” laws were not formulated in this way. But even in case of criminal laws, there was always a possibility to use “analogy” thus extending the existing list of criminal activities and criminalizing acts not mentioned in the code.

However, due to the need to justify repressions in the eyes of Soviet society, and later, due to the need to create of positive image of a Soviet in the eyes of Western observers<sup>361</sup>, even the political “enemy” (especially this applied to the period of Vyshinsky) could not be eliminated *only* by the brutal power and naked terror. The process of prosecution, with some exceptions, had to be

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<sup>360</sup> Applebaum, *GULAG. A History*, p. 6.

<sup>361</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 161.

organized applying the existing written rules of law (even if various misuses and abuses of law, as already identified in this dissertation, were possible). Strict written rules of a criminal procedure and the process of criminal proceedings had to be applied in the majority of cases, at least, declaratively.

After the Revolution and during NEP, the Tsarist lawyers were repressed, and the newly-formulated system of Soviet criminal justice built in place of the destroyed Tsarist one, failed to function well. Various violations of a criminal procedure could be possible. One of the causes of these violations was a lack of well-educated officers in the system of criminal prosecution. As one of the interrogators of that time witnessed, he, a 17-year old student of literature then, was employed to work as a lawyer and investigator though he had never studied law. Later he wrote in his memoirs the following:

*“Let us be honest: now it would be difficult to understand how a seventeen-year-old boy could be appointed an investigator (who even did not have a degree in law). However, this was the case. After all, these were the first years of the creation of the Soviet state and life itself urged new personnel to be trained and educated for all spheres of the building of the state. Then there was a serious lack of judges, investigators. Just a year ago, Lenin initiated the creation of the Soviet Public Prosecutor's Office. Instead of revolutionary tribunals functioning in the first years, the Soviet state set up the People's and province courts. The Criminal and Criminal Procedure Codes were just adopted, and justice could be based not only on “revolutionary consciousness” but **also** on the law.”<sup>362</sup>*

When young legally illiterate people were employed in the system of criminal prosecution, different violations of law and an inadequate application of the

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<sup>362</sup> „Sakykim atvirai: dabar būtų sunku suprasti, kaip galėjo paskirti tardytoju septyniolikmetį vaikinuką, netgi ne teisininką. Tačiau taip buvo. Juk tai pirmieji Tarybų valstybės kūrimosi metai, kai pats gyvenimas ragino kelti ir ugdyti naujus visų naujosios valstybės kūrimo sričių kadrus. Teisėjų, tardytojų tada ypač trūko. Vos prieš metus V. Lenino iniciatyva buvo sukurta tarybinė prokuratūra. Vietoj pirmaisiais metais veikusių revoliucinių tribunolų Tarybų valstybė ką tik buvo įsteigusi liaudies ir gubernijų teismus. Visiškai neseniai buvo priimti baudžiamasis ir baudžiamojo proceso kodeksai, ir teisingumas galėjo remtis ne tik „revoliuciniu sąmoningumu“, bet ir įstatymu.“ In: L. Šeininas, *Tardytojo užrašai*, Vilnius, 1982, pp. 5-6.

rules of a criminal procedure became possible. However, even the quoted sentences show an attempt to follow written laws and codes rather than abstract “revolutionary consciousness” (a popular concept at that time).

The Vyshsky period brought new declarations that penal laws and written rules had to be given serious consideration and strictly followed in the process of a criminal prosecution. “Just” methods of court work, as well as of work of the institutions of criminal investigation and Public Prosecutor’s Office had to be ensured: “*to guarantee correct solving of the tasks referred to court in criminal proceedings, the Criminal Procedural Code established the order of functioning of courts and the institutions assisting them to work, such as investigative bodies and the Public Prosecutor's Office.*”<sup>363</sup>

Precision and accuracy were officially required to be practiced in the process of a criminal investigation: “*The necessary material must be collected in advance so that the case should be properly prepared for hearing in court*”; “*The institutions of investigation must operate according to the set procedural [criminal] forms*”<sup>364</sup>.

Also, the role of evidences was emphasized, stating that it had to be collected and investigated in a precise and just way. Finally, a correct application of a concrete Article of the Penal Code was required; according to Vyshinsky, it was extremely important to “*correctly qualify the crime, that is, to adapt one or the other article of the Special part of the Criminal Code to it.*”<sup>365</sup>. Finally, correctness of the testimonies of witnesses had to be ensured:

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<sup>363</sup> „Laiduoti, kad teisingai būtų išspręsti nurodytieji uždaviniai, teismui nagrinėjant baudžiamąsias bylas, Baudžiamasis procesinis kodeksas nustatė teismo, taip pat jam padedančių dirbti organų, - tyrimo organų ir prokuratūros, - veikimo tvarką.“ In: Višinskis (red.), *Tarybinis baudžiamasis procesas*, Vilnius, Vilniaus universiteto teisės mokslų fakultetas, 1941, p. 4.

<sup>364</sup> „Tam, kad teismas galėtų teisingai susivokti byloje, turi būti iš anksto surinkta reikalinga medžiaga. Byla turi būti reikiamu būdu parengta teismui nagrinėti; Tyrimų organai turi veikti, laikydamiesi nustatytų procesinių formų.“ In: Višinskis (red.), *Tarybinis baudžiamasis procesas*, p. 4.

<sup>365</sup> „...teisingai kvalifikuoti nusikaltimą, t. y., pritaikyti jam tą arba kitą Baudžiamojo kodekso ypatingosios dalies straipsnį“, Ibidem.

*“Criminal proceedings cannot rely on irresponsible testimonies collected no one knows how and where. The prosecution of a Soviet citizen and handing him over for trial affects the interests of the accused clearly that it can be done only with having conclusive proof of his guilt”<sup>366</sup>.*

Apart from these declarative requirements and arguments, there was another side to the Soviet criminal procedure expressed by Vyshinsky in the following words: *“The logic of the criminal proceedings is not confined to only one formal legal side of things. In the class court the logic of the process is also determined by areal correlation of class forces in the country”<sup>367</sup>.*

Different kinds of experience of the individuals sentenced and tried as offenders for a political crime here can serve as relevant examples illustrating that the procedure of a criminal prosecution in the Soviet state could be far from the slogans, proclamations and even official requirements in reality. For instance, many cases reveal extreme flexibility and inaccuracy in applying Soviet legal standards, defining, investigating a crime and in labelling a concrete person as a criminal. This flexibility, as has already been stressed, was embodied in the very core of concrete political articles of the Criminal Code, first of all, in well-known Article 58.

Before the Vyshinsky’s reform, the forms of violating law and the criminal procedure could be particularly extreme:

“In 1930, a Red Army soldier returned to his native village to discover that a number of his neighbours – people whose socioeconomic status was similar to his own – had been dekulakized. The soldier went to the local soviet to lodge a protest. He told the soviet officials that if they considered his neighbours to be kulaks, then he, too, must be a kulak and should be dekulakized. Complying with the soldier’s demands, the soviet issued a resolution

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<sup>366</sup> „Baudžiamajame procese negalima pasikliauti neatsakingais liudijimais, surinktais nežinia kaip ir nežinai iš kur. Tarybų piliečio patraukimas tieson ir jo perdavimas teismui paliečia patraukiamojo interesus taip jaučiamai, jog tai galima padaryti tik turint visiškai įtikinamus jo kaltės įrodymus.“In: Višinskis (red.), *Tarybinisbaudžiamasis procesas*, p. 4.

<sup>367</sup> «Логика уголовного процесса не исчерпывается одной только формально-юридической стороной дела. В классовом суде логика процесса определяется реальным соотношением классовых сил в стране.»  
Вышинский, *Теория судебных доказательств в советском праве*, с 20.

calling for the dekulakization of the soldier “according to his personal wish”. (...) During this time and after, for a glass of vodka or a bottle of *samagon* (moonshine), a kulak could be transformed into a poor peasant or, in the absence of a glass of vodka or a bottle of *samagon*, a poor peasant could be transformed into a kulak.”<sup>368</sup>

As can be seen, labelling of a concrete individual as a political “criminal” depended not on the objective fact of a criminal offence but sooner on categorizing and attributing an individual to one or another social class. Such an attitude actually is not irrational if we have in mind the fact that the Soviet-type concept of a criminal offence was constructed according to the “material definition of the crime”.

Furthermore, the social class in the Soviet state was a rather ideological concept, which was not based on the empirical reality. The definition of the class was not born and developed during the observation or research, as, for example, in cases of social scholars who also used and are still using the term “class”. In the Soviet case, the concept was developed in the ideological reality and its content was defined according to ideological connotations. The enemy had to be found and constructed, and the reality had to be squeezed and pushed into these artificial categories and concepts.

Also, as discussed in the previous chapters, according to criminal laws, the Soviet concept of a political crime can be characterized as a concept of extreme flexibility. Its content varied depending on the ideological situation. The definition of the “kulak” showed it especially clearly. For example, in around 1930, the local authorities accused “...a village teacher in the Central Black Earth Region (...) of being the daughter of a priest and therefore decided to dekulakize her”. And even when “the teacher gathered documents to prove that she in fact was not a daughter of the priest, she was unable to convince the

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<sup>368</sup> Lynne Viola, “The Second Coming: Class Enemies in the Soviet Countryside, 1927-1935”, in: *Stalinist Terror. New Perspectives*, J. A. Getty, R. T. Manning (eds.), Cambridge, 1993. p. 65.

local authorities, who claimed, “If her mother visited the priest, then it is possible that the priest is her father.”<sup>369</sup>

It is interesting to note that the kulaks as such were not criminalized in the Criminal Code of the RSFSR, even if such Articles as Article 58 could be applied against them, due to its flexibility. But repressions against the kulaks were carried out by extra-judicial means, and justified by the resolution of the Politburo “On measures for the elimination of kulak households in districts of comprehensive collectivization” of 30 January 1930<sup>370</sup>.

Two dimensions of the concept of crime, in case of the definition of the kulak, can be revealed. Firstly, here we can recognize the idea that the crime is not only the act violating a concrete law. Crime is a trait which lies in the very fundamental dimensions of some individuals or social groups. In this case the cause of a crime is seen in genetic factors, or blood; the teacher was characterised as a criminal and persecuted because she was thought to be a daughter of the priest (a member of a social group defined as the enemy). Secondly, flexibility of the concept of crime and the possibility to find the reason to criminalize almost each individual is clearly reveals in this example. The teacher was sentenced not because of the fact that she was a daughter of the priest but because of the possibility that she might be his daughter no matter how irrational it sounds.

However, if we keep in mind how the Bolshevik ideology treats crime, such cases do not seem so illogical. As has been discussed above, this ideology separated the concept of crime from legal, ethical or moral categories and defined it, first of all, according to the social class.

Despite well-founded criticism of her theory on totalitarianism Arendt remains one of the scholars capable of capturing and describing this tricky logic of the Soviet definition of crime<sup>371</sup>. According to Arendt, the situation of

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<sup>369</sup> *Ibidem*.

<sup>370</sup> Peter Julicher, “*Enemies of the People*” *Under the Soviets: A History of Repression and Its Consequences*”, Jefferson, North Carolina, 2015, p. 99.

<sup>371</sup> The exploiter class of Soviet Russia was more an ideological fiction than reality of the population. It was constructed in the Communist Bolshevik ideology even before they

a criminal who is categorized as an *objective enemy*, differs from that of an usual suspect – the accusation against him is formulated not because he is a member of real opposition, or carefully plans to overturn the government but because of a certain policy pursued by the regime. And the criminalization of an individual under this category is not related to any strong suspicion of his/her being involved in certain criminal activities<sup>372</sup>.

Contrary to the case of becoming a criminal because of a crime committed, the *objective enemy* is like a bearer of some *tendencies*. Ever new enemies are invented and the category changes its content, however, it further remains the most important method of criminalization. Hence, according to Arendt, it was not by accident that after the repressions of the real enemy – the former ruling elite of Russia – the Soviet regime turned to “kulaks”, “Trotskyites” and gradually reached the point when even the “core” of the Communist Party and Stalin’s closest comrades were be tried and punished<sup>373</sup>. They did not become just enemies; they were termed as *class enemies* though actually they belonged to the class, which was absolutely different from that they were accused of belonging to.

Hannah Arendt managed to show the link between the need for the “material definition of crime” and criminalization using logic of the concept of “objective enemy”. She called it a “possible crime”. The “possible crime” became an argument to arrest an individual when the assumption that he or she *might* have committed a crime was made. It was assumed that an individual was a potential criminal because criminality lay in the very core of his or her personality, even the social or family background, as in the above mentioned case of prosecution of *kulaks* played no role there. According to Arendt, classic examples of the prosecution of such crimes were Moscow show trials<sup>374</sup>. Thus,

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captured power. The concept of class did not have the objective content, it could not be recreated, redefined and reinterpreted. Therefore, new groups of people to fit in the framework of the concept of the class enemy could be found. See in: Arendt, *Totalitarizmo ištakos*, p. 409.

<sup>372</sup> *Ibidem*, pp. 409-410.

<sup>373</sup> *Ibidem*, p. 410.

<sup>374</sup> *Ibidem*, pp. 412-413.



the logic of a criminal prosecution, after the Vyshinsky's reform and a declared devotion to law and legal procedures, remained unchanged.

Because of such logic of the Soviet type concept of political crime and the criminal prosecution of these crimes, the confession of the criminal became the very important – or the only – evidence in the criminal cases<sup>375</sup>.

It is important to mention that charges in the Moscow Show Trials against G.E. Zinoviev, L.B. Kamenev and other accused persons were formulated under Article 58 of the Criminal Code of the RSFSR<sup>376</sup>.

The process of interrogation itself, according to the witnesses, could vary from the above-described requirement for a just, precise and honest procedure of a criminal investigation. Olga Adamova-Sliozberg who was sentenced and tried according the Article 58 in the years of the Great Terror in the mid-1930s and who was sure that she was not guilty during the whole time of her punishment described her expectations while waiting for the interrogation in the following way in her memoirs: *“I imagined the investigator would be intelligent and refined, like Porphyry from Crime and Punishment. I put myself in his position and was sure I would realize who was standing before me in two seconds and would quickly let that kind of person go free”*<sup>377</sup>. The reality turned out to be different: the investigator was impolite, shouting and using psychological manipulations to force her to sign the confession. Sliozberg recalled the interrogator saying after the first round of questions, when she refused to sign it the following: *“Think about it in your cell. You understand that only a pure-hearted confession will give you a chance to see your children again. Obstinate denial characterizes you as a professional political fighter. Go away and think about it.”*<sup>378</sup>

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<sup>375</sup> Feldbrugge, *Soviet Criminal Law .The Last Six Years*,p. 262.

<sup>376</sup> *The Case of the Trotskyite-Zinovievite Terrorist Centre. Heard Before the Military Collegium of the Supreme Court of the USSR*, Report of Court Proceedings, August 19-24, 1936, Moscow, accessible online:

<https://www.marxists.org/history/ussr/government/law/1936/moscow-trials/index.htm>, [last visited on 1 October 2016].

<sup>377</sup> Olga Adamova-Sliozberg, *My journey: how one woman survived Stalin's gulag*, Evanston, Illinois, 2011, p. 19.

<sup>378</sup> *Ibidem*, p. 20.

However, some “improvements” were already made in the Vyshinsky’s reform at the time of Olga’s interrogation: she wrote that she was “very lucky” in her investigation because “*it took place at the beginning of 1936, when women were*” almost not beaten anymore. However, according to Olga, there were other methods to make a women confess, for instance, if she had children different clever manipulations were used to persuade her that if she confessed having committed a crime her imprisonment would be shorter or her punishment would be less severe and the possibility to see her children would be greater<sup>379</sup>.

The *possibility* to commit a crime – or the logic of “objective enemy” – in Soviet logic of criminalization was sometimes linked with the already mentioned category of *joined responsibility*. It was common in Soviet criminal justice practice to accuse a person of committing a crime on the basis of his personal relations, friendship with someone who has already been accused. Well-known Article 58 (Section 58<sup>1c</sup>) can be mentioned here as an example, which runs as follows:

*“...when a soldier escapes or flees abroad, adult members of his family, if they helped him to carry out or to prepare the treason by any means, or if they at least knew about it and did not report to the authority, will be sentenced to from five to ten years imprisonment with the confiscation of the whole property. Other adult family members who lived together with the traitor or were maintained by him when the crime was committed, will be deprived of their electoral rights and they will be deported to the distant regions of Siberia.”*<sup>380</sup>

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<sup>379</sup> *Ibidem*, pp. 19-23.

<sup>380</sup> „Pabėgus ar perskridus į užsienį kariui, pilnamečiai jo šeimos nariai, jei jie kuo nors yra padėję rengiamai ar įvykdytai išdavystei, arba nors žinojo apie ją, bet nepranešė valdžiai, baudžiami laisvės atėmimu nuo penkerių iki dešimties metų su viso turto konfiskavimu. Kitiems pilnamečiams išdaviko šeimos nariams, kartu su juo gyvenusiems ar nusikaltimo metu jo išlaikomiems, yra atimtinės rinkiminės teisės, ir jie nutremtini penkeriems metams į tolimuosius Sibiro rajonus.“, in: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 36.

According to the logic of “*krugovaia poruka*”, the family members could be defined as responsible for the crime even if they did not know anything about the planned or committed treason. It means that adult family members could be punished because of the activities of other individuals. As we will see, even in Lithuania’s case this situation developed quite often. This was not the case with adults only, this applied to children too.

It is important to point out here that according to Article 238, failure to report about a crime<sup>381</sup> is criminalized in Lithuania today. However, family members of a person who committed a crime are not deemed to be responsible in that case even if they failed to report about the crime<sup>382</sup>. Thus, the law is in contradiction to what is specified in Soviet law.

Individuals in the USSR could be punished because of their origin. The family history became a argument why an individual was recognized as the one involved in the reality of a “possible crime”. It is needless to say here that in those cases no real crime was planned or committed. The crime was inscribed in the person’s genetics and origin and even though he or she was a devoted communist of second generation, the pre-revolutionary family history could become an argument for a criminal prosecution and punishment. It means that one of the main traits of the Soviet concept of crime – the link between criminality and the social class – was the reality which really worked in a practical process of criminalization.

As has already been mentioned, after the reform of the 1930s, a political crime was also seen as the phenomenon that occurred even in the very “core” of the Communist Party nomenclature not only among the hostile social classes. The line between the criminal and the executor, the victim and the oppressor was erased: the fate of the most famous developers of soviet-type justice, such as Pashukanis who himself was accused of political crimes and executed, is convincing evidence of that.

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<sup>381</sup> „*Nepranešimas apie labai sunkų nusikaltimą*“.

<sup>382</sup> *Lietuvos Respublikos baudžiamasis kodeksas*, 2000 09 26, accessible online: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555> [last visited on 5 July 2017].

Some other cases can also show that a criminal in the Soviet Union was defined as a “bearer of tendencies”. It became perfectly obvious in the case when “the People’s Commissariat for Justice condemned the dekulakization of middle peasants in the Central Black Earth Region. Here middle peasants who were not kulaks before 1917 found themselves subject of dekulakization”<sup>383</sup>.

Everyone in the Soviet state knew that the enemy existed. That enemy – committing the gravest possible crime, a crime against the Soviet state – was, first of all, a person who belonged to the *antagonistic class*. He was the *class enemy*. But the real content of the concept – *who exactly* was recognized as the class enemy of the concrete period – was unpredictable and dependant, most likely, only on the will of the high-ranking members of the Communist Party and the dictator.

Going back to the case illustrating the importance of the origin of a person in the process of criminalization during the dekulakization of middle peasants in the Central Black Earth Region, the People’s Commissariat for Justice “was disturbed in general about the genealogy mania. It complained in 1931 that the lower courts too often tried people on the basis of their social status of ten or twenty years earlier and spent needless time researching village history of fifty to one hundred years earlier in search of what happened in 1905”. Sometimes the situation demonstrated even maximum absurdity: “In one village, a peasant brought suit against the local authorities claiming that he had been unjustly dekulakized and moreover, that his son was a party member and the soldier in the Red Army. The village party cell countered by reminding the court that this peasant owned the mill before the Revolution and continued to be a better-off peasant after the Revolution.”<sup>384</sup>

The Soviet-type logics of criminalization is revealed clearly in the famous “Doctors’ plot”. It can be considered to be the last show trial and is irrefutable evidence that the Soviet system of criminal justice did not change from the mid-1930s to the death of Stalin. The orders given from above had to

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<sup>383</sup> Viola, *The Second Coming: Class Enemies in the Soviet Countryside, 1927-1935*, p. 73.

<sup>384</sup> *Ibidem*.

be fulfilled especially carefully. As in any other similar case the crimes were invented and the guilt of the suspects was proved<sup>385</sup>.

Though the logic of the Soviet-type process of criminalization was obvious to the officials of the Soviet criminal justice system – even if they sometimes became victims themselves – for a long time the society remained optimistic about its just character and the role of legal proceedings and a legal way of organizing a criminal prosecution and the process of trial. For example, the above-mentioned Sliozberg went through a long and painful process of “awakening” and facing painful Soviet reality of the criminal justice system.

She went through her first experience of Soviet-type criminalization in her own home prior to her arrest. Sliozberg’s family hired a nanny to take care of the children. One day, after receiving a letter informing her about the death of her children, she told Sliozberg the following story: “...in 1930 during the winter I went to Moscow to help my sister with her new baby, and while I was there they seized my family because we were kulaks. They sent my husband to the camps, my mother and the children to Siberia. (...) And now they write to tell me that my children have died...”<sup>386</sup>

Sliozberg was shocked to hear about her nanny’s experience and about the loss of her children due to terrible living conditions in Siberia: “I felt as if the heavy weight was pressing on my heart. The world that had been so clear, so intelligible, and so secure for me had been shaken. What had Marusia and her children done wrong? Could our life, so clear, so hardworking, and so upstanding be based on the suffering and blood of innocent people?” Her husband Yudel Ruvimovich Zakgeim who was a professor at Moscow State University, the Department of Dialectics of Nature and the Department of History and Philosophy<sup>387</sup>, gave the following reply to her confusion and frustration<sup>388</sup>:

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<sup>385</sup> Jonathan Brent, Vladimir P. Naumov, *Stalin’s last crime*, London, 2003, p. 2.

<sup>386</sup> Adamova-Sliozberg, *My journey: how one woman survived Stalin’s gulag*, pp. 5-6.

<sup>387</sup> Katharine Gratwick Baker, “Introduction”, in: Adamova-Sliozberg, *My journey: how one woman survived Stalin’s gulag*, p. xiii-xiv.

<sup>388</sup> Adamova-Sliozberg, *My journey: how one woman survived Stalin’s gulag*, p. 6.

*“You see, they can’t make a revolution with white gloves. Annihilating the kulaks is bloody and difficult process, but it has to be done. Maruysia’s tragedy isn’t as simple as it seems to you. What was her husband sent to the camps for? It is hard to believe that he wasn’t guilty on anything at all. You don’t end up in the camps for nothing. Maybe we should think about getting rid of Marusia. There is much that is suspicious about her...”<sup>389</sup>*

Thus, we can easily notice the rationalization and justification of the terror and repression. The soviet society seems to have been living in the ideological reality; therefore such cases when someone could be punished without the guilt were hardly understandable.

Later Sliozberg’s husband added: *“After all she may be a good woman; perhaps in these circumstances there has been a mistake. But you know that when they cut down the forest, wood chips fly.”<sup>390</sup>*

Later, when the Sliozberg’s husband was arrested and sentenced to death for being the Trotskyite, and after she had been arrested, absurdity of the investigation and the Soviet logic of criminalization revealed itself to Sliozberg in a very tragic and personal way. In the spring of 1936 they were arrested by the NKVD during the repressions related to the assassination of Kirov, the leader of the Leningrad Communist Party (it was carried out in 1934). The husband was shot dead within twenty-four hours; the wife was imprisonment in the soviet forced labour camps for twenty years. Being innocent of any crime, Sliozberg wrote in her memoirs about her trial on 12 November, 1936: *“The written accusation against me was astonishingly stupid. It stated that... [a colleague of my husband at the university] had...recruited me into a terrorist organization that had the goal of murdering Kaganovich... I had violated article 58, points 8 through 17, which meant I was a terrorist... The indictment*

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<sup>389</sup> *Ibidem.*

<sup>390</sup> *Ibidem*, p. 6-7.

was signed by Vyshinsky”. In 1956, during the procedure of rehabilitation, Sliozberg was proved innocent<sup>391</sup>.

Hence, Sliozberg herself went through a tricky process of Soviet investigation where the evidence of crime was invented according to the need and where confession of the suspect became the basic argument for trial and punishment. As has already been described the methods employed to make the suspect confess in this process varied from psychological pressure to different kind of threatening<sup>392</sup>.

It is important to note that Sliozberg’s experience coincided with the experience of many other soviet citizens who became “guilty without the guilt”. Dmitry Likhachev, a former Gulag prisoner, met the same destiny as “many of his contemporaries”: he “was arrested in 1928 for taking part in an academic discussion circle and was thus one of the early victims of the Bolsheviks’ systematic destruction of Russian civil society”<sup>393</sup>.

This case, as Applebaum notes, reflects the Soviet reality about the crime adequately: “In the view of the Soviet secret police, any organized group, even one devoted to the discussion of literature – Likhachev’s fellow club members saluted one another in ancient Greek – was by definition an enemy of the state. Accordingly, they accused Likhachev of planning the counterrevolutionary activity. He served his sentence on the Solovetsky Islands, the Soviet Union’s first political prison”<sup>394</sup>.

Later Likhachev wrote several essays about the years he spent on the islands. One of the essays describes his arrest and leaving home in February 1928. His first reaction was, as in Sliozberg’s case, the certitude that his arrest was merely a mistake. He knew he was not guilty at all: “*My mother put some things together (soap, underwear, warm clothes), and we bid each other*

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<sup>391</sup> Gratwick Baker, “Introduction”, in: *My journey: how one woman survived Stalin’s gulag*, p xiv.

<sup>392</sup> Adamova-Sliozberg, *My journey: how one woman survived Stalin’s gulag*, pp. 19-21.

<sup>393</sup> Applebaum, *Annals of Communism: Gulag Voices. An Anthology*, New Haven, CT, 2011, p. 1.

<sup>394</sup> *Ibidem*.

goodbye. As everyone does in these situations I said, “This is madness, it’ll soon be sorted out, and I’ll be back soon.”<sup>395</sup>

Other Soviet Republics went through similar experience too. In the period of the Great Purges, “Belorussian political leadership was found guilty of counterrevolutionary acts of espionage on behalf of “fascist” Poland”<sup>396</sup>.

Asia Brasler, a teenage Jew girl from Minsk who was seventeen years old at the time of the purges is one of witnesses<sup>397</sup>. Asia was extremely surprised at the Soviet logic of crime and criminal: “If they are enemies of the people, then who isn’t?” Nina Galperin, another girl who was a few years younger, “shared Asia’s views of the Belorussian leadership”. Nina was “a student at a Soviet Russian school, whose grandparents supported the system because it had put an end to pogroms”. She recalled Asia’s “lack of concern (...) and her trust in the NKVD’s efforts to wipe out the enemies”<sup>398</sup>. So, the common tendency in the society was, as in the case of Sliozberg’s husband, to believe that the *enemy* really existed and that some amount of repression was necessary to build a better and brighter communist future.

Also, Nina was talking “about her admiration” for the local communists “Gikalo and Cherviakov and her surprise when their alleged acts of espionage against the USSR were disclosed”. She was very surprised by the fact that they “had done so much for Minsk and had suddenly become spies”<sup>399</sup>.

“Mr. Brasler, Asia’s father, a devoted Communist who had helped to reorganize Minsk Jewish workers into cooperatives, and a committed Yiddishist active in an amateur Yiddish theatre group, continued to support the party as family friends disappeared.” He argued that “it was impossible” that people “without sin” could be arrested<sup>400</sup>. So, even in the eyes of terror and repressions, a huge number of people in the whole USSR still believed that the

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<sup>395</sup> *Ibidem*, p. 4.

<sup>396</sup> Elissa Bemporad, *Becoming Soviet Jews: The Bolshevik Experiment in Minsk*, Bloomington, IN, 2013, p. 189.

<sup>397</sup> *Ibidem*.

<sup>398</sup> *Ibidem*, p. 190.

<sup>399</sup> *Ibidem*.

<sup>400</sup> *Ibidem*.



enemy really existed, that the crime was the objective reality and empirical fact, not only an ideological interpretation of reality and a way of reconstructing the existing social order. It meant that the mechanism of terror justification inside the Soviet Union worked. The next chapter will show that this was not the case in the new republics such as Soviet Lithuania.

Only after some time had passed, and “*the purges gathered momentum, like so many others who occupied the leading positions in society*”, Mr. Brasler began “*to realize that he too could be arrested any day*”<sup>401</sup> and that every soviet citizen was a potential criminal who could be accused any time if only the regime needed that.

The working mechanism whereby the Soviets tried people for their imaginary crimes is also described by Otto Kirchheimer as a “prefabricated alternative reality”:

“The prosecution put up a collection of motley facts in which real occurrences were inextricably bound up with purely fictitious happenings. But their admixture pointed to an alternative reality, consisting of dangers which would have come to pass but for the vigilance of the official hierarchy. The factual occurrences were taken from any number of political activities and decisions with which the defendants had been associated during their professional and political careers.”<sup>402</sup>

Here Kirchheimer is obviously talking about the trials of the former leaders and high officials of the Soviet state. The same method of relating and mixing “real occurrences” with the “purely fictitious” facts and creating the atmosphere of a constant threat and danger to the Soviet state was employed.

Lenin’s ideas about crime and punishment actually reflected this method in the proposal “*to find the formulation*” linking all the activities of the

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<sup>401</sup> *Ibidem.*

<sup>402</sup> Otto Kirchheimer, *Political Justice. The use of legal procedure for political ends*, Princeton, New Jersey, 1961, p. 106.

Socialist Revolutionary Party (SRs), the Mensheviks and others with the “*fight of international bourgeoisie against us*”<sup>403</sup>.

The tactic to mix true facts with the false ones, or true facts with fictional intentions was actually used against Sliozberg and the women who she met in prison. For instance, some people who she met were punished according to the Article 58, Point 10 for propaganda against the Soviet government, which in reality was a private discussion and criticism of Stalin between husband and wife<sup>404</sup>.

On the one hand, there was a grain of truth in the accusations as the conversation really took place and during conversation they spoke ill of the Soviet leader, However, on the other hand, this fact was taken out of the real context (a private discussion) and put into a fictional one (public propaganda).

## **5. Types of deviancy: *political versus criminal***

While focusing on the “dark side” of the Soviet system of a criminal prosecution and on how it used the law as a tool to repress society, we should not forget that alongside political repressions on a mass scale, criminalization of a criminal accused for non-political reasons existed in the USSR too. Those criminals were also passed through the Gulag system.

According to Applebaum, the Soviet model of the criminal justice system was developed so that it allowed a distinction between two different types of crimes to be drawn: “the existence of two categories of prisoners – “political” and “criminal” – had a profound effect on the formation of the Soviet penal system”<sup>405</sup>.

The distinction between the two different types of criminality was obvious already in the years of the Revolution and the Civil War already, and

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<sup>403</sup> „RSFSR Baudžiamojo kodekso įvadinio įstatumo projekto papildymai ir laiškai d. Kurskiui“, V. Leninas, *Rinktiniai raštai. 1922 m. kovas – 1923 m. kovas*, T. 45, Vilnius, 1988, p. 185.

<sup>404</sup> Adamova-Sliozberg, *My journey: how one woman survived Stalin's gulag*, p. 33.

<sup>405</sup> Applebaum, *GULAG. A History*, p. 6.

later it became rooted in the penal system of the USSR so firmly that in the historical memory it was seen as one of the ways of defining the Soviet criminal justice system even after the collapse of the USSR.

As in many other cases, the roots of the tradition to divide criminals into two different blocks emerged directly from the Bolshevik ideology. As has already been discussed in the previous chapters, the major factor was the idea that a common (usual) crime in every society was caused by the capitalist system and inequality it produced. When society enters the phase of Socialism the number of common crimes will decrease. In the communist phase this number will also decrease when causes of crimes, namely, social inequality and exploitation of the working classes will be eliminated. Hence, according to this view, a non-political type of criminality should not be a primary concern for the Bolshevik state. First of all, it has to conquer the opponents to the Revolution.

This viewpoint was acceptable to Lenin. According to Applebaum, “on the one hand, the first Soviet leader felt ambivalent about the jailing and punishment of traditional criminals – thieves, pickpockets, and murderers”. As Applebaum noted, in Lenin’s view “the basic cause of “social excess” (meaning crime) was “the exploitation of the masses”:

“The removal of cause, he believed, “will lead to the withering of the excess”. While on the other hand Lenin “also reckoned that the creation of Soviet state would give rise to new kind of criminal: the “class enemy”. A class enemy opposed the revolution, and worked openly, or more secretly, to destroy it.”<sup>406</sup>

In Lenin’s opinion the class enemy “was harder to identify than an ordinary criminal, and harder to “correct”. And, “unlike an ordinary criminal, a class enemy could never be trusted to cooperate with the Soviet regime”<sup>407</sup>.

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<sup>406</sup> *Ibidem*, 5.

<sup>407</sup> *Ibidem*.

Not only different juridical institutions but also different attitudes to punishment existed. Labour camps of the Gulag system also highlighted this specific aspect of Soviet-type criminality – a distinction between the criminals sentenced according to the political Articles of the Soviet Criminal Code and those punished for common crimes such as theft, murder, or rape. The first ones were defined as “the political” criminals in the Gulag system and the second ones were termed simply as “criminals”. As Mark Galeotti underlined, both types occupied different positions in the hierarchy of prisoners. The Gulag system labour camps “posed a huge logistical problem to the authorities. As millions of political prisoners were rounded up and sent to forced labour camps, the state began co-opting criminals and criminals as enforcers, to keep the “political” in line. This gave rise to a new criminal tradition built on the cooperation between the law-breakers and the Communist Party”<sup>408</sup>.

Hence, first of all, “criminal-type” criminality, at least before the middle of the 1930s when Stalin began the “restoration of law” was treated as a problem of less importance to the Soviet authority. This attitude had the ideological background: it was presumed that common crimes would disappear when society reached the phase of socialism and would stop existing in communism altogether. The historical background can be found here too. It has already been shown that traditionally, before the Revolution of 1917, the Bolsheviks were related to the criminal world and practiced many forms of traditional criminality in order to finance their activities.

Also, it is important to note that “political” criminality related to both the regime’s need to construct the enemy and real opposition was treated as much more dangerous. The third preliminary conclusion can be drawn: political criminality, as our last Chapter showed, was sooner imaginary and socially constructed in many cases than it actually was. Many of those accused as class enemies did not really oppose to the Revolution or the Soviet

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<sup>408</sup> Mark Galeotti, “The Russian Mafiya: Economic Penetration at Home and Abroad”, in: *Economic Crime in Russia*, p. 31.

government. In many cases everything was the other way round – the supporters of the Soviet ideals still believed they had been arrested by mistake.

The problem of a division and definition could arise because the concept of “political crime” was an unclear, “problematic concept”<sup>409</sup>. However, there are some suggestions how a political crime could be defined: for instance, by claiming that “it is not the crimes themselves that distinguish political criminals but rather their motivation, their treatment of a crime as a necessary means to achieve a higher goal”. Thus “political offences have a distinct motivational nature that should not be overlooked”. Normally the following major traits of political criminality are identified: a) ideology as a leading motive to commit the crime, b) an actor committing the crime has a political motivation; c) political criminals “violate the law for the primary purpose of opposing to the ideas of an individual, group, or governmental power”<sup>410</sup>.

Hence, according to these definitions, two conditions are necessary to define the crime as a political one: 1) a crime must have political intention and pose a threat to the government or the ruling authority; 2) a crime must be prohibited by law and defined in laws.

According to this definition, many convicts of Stalin’s purges were innocent, especially those communists who had neither taken any actions nor even had any intention to resist Stalin’s authority, as well as the dissidents prosecuted for practicing their religion or publishing religious Samizdat literature in the late Soviet period.

Despite the fact that the Soviet state was much more focused on the political type of criminality, some researchers detected the roots of “criminal-type” criminality in the very core of the Soviet system. Such kind of research focuses on the development of criminological subcultures and the organized crime in the Soviet Union. According to Galeotti, the research of the phenomenon of the Russian mafia discovered the roots of this specific form of

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<sup>409</sup> Jacqueline B.Helfgott, “Political Crime”, In *Criminal Behaviour: Theories, Typologies, and Criminal Justice*, Los Angeles, London, New Dehli, Singapore, 2008, p. 324.

<sup>410</sup> *Ibidem*, pp. 324-325.

the organized crime, which existed during the Stalin era, in nineteenth-century Russia already. These traditions were rooted in a specific social environment; they were maintained by specific social groups<sup>411</sup>.

In general, according to Galeotti, this type of criminal behaviour can be called the “thieves’ world” – “vorovskoy mir” (*воровской мир*). This term was coined in the pre-revolutionary period and later adopted by its Soviet successors. However, according to Galeotti, “the nineteenth-century criminal traditions of the so-called vorovskoj mir, “thieves’ world”<sup>412</sup>, were transformed by Stalinism”. Such traditions were related to specific morality, attitudes, worldviews, the system of norms and values and, of course, the networks of criminality which developed in the Soviet prisons and camps and which defined non-political criminals as a separate group. These norms, ideas and mentality became the core factor in developing the identity of non-political prisoners<sup>413</sup>.

According to this attitude, the period between 1917 and the Second World War in the USSR was not only the time when the basic ideological and legal definitions of crime and punishment were constructed and developed. The roots of practical patterns of a criminal behaviour can also be found there. According to Vadim Volkov, this “*legendary soviet criminal underworld, the world of thieves (vorovskoj mir)*” was “*formed in labour camps and prisons in the early-Soviet times*”<sup>414</sup>.

Hence, the process was directly related to the development of the Gulag system. It served as a place, where “*gathered the “critical masses” of*

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<sup>411</sup> Galeotti, *The Russian Mafiya: Economic Penetration at Home and Abroad*, p. 31.

<sup>412</sup> The term is related to a well-known definition *a thief in law* (Russian: *вор в законе*). It can be found in most memoirs and diaries of the Gulag inmates, starting with the ones by Solzhenitsyn, and in the post-Soviet era even came into the pop culture of Russia and other post-Soviet countries. The definition means a formal status of a professional criminal who enjoys the elite position within the organized crime environment and exerts informal authority over its lower-status members. Vor culture is inseparable from the organized crime in prison. Only repeatedly jailed convicts are eligible for Vor status. See more in: Federico Varese, *The Russian mafia: private protection in a new market economy*, Oxford, 2001.

<sup>413</sup> Galeotti, *The Russian Mafiya: Economic Penetration at Home and Abroad*.

<sup>414</sup> Vadim Volkov, “Organized Violence, Market Building, and State Formation in Post-Communist Russia”, in: *Economic Crime in Russia*, p. 47.

*criminals, who could articulate, codify and propagate their own values, hierarchies and even code of tattoos – tellingly, the camps became known as “academies” in Russian criminal slang*”<sup>415</sup>. In this way the Gulag system, though organized, first of all, as the tool to fight with the *political* criminality, became the catalyst of *criminal* one.

The definition of the criminal as the “thieve” is treated as the most common symbolic way to describe non-political criminality in the USSR. The term was used on all social levels: by the communist leaders, employees of the Soviet police (militia) and other repressive structures, as well as by the ordinary people of the Soviet society. However, though “criminal-type” criminality in the USSR seems to be – and really was – an empirical fact, a certain level of fluidity in the term, the interpretation and construction of the criminal existed even here<sup>416</sup>.

According to Johan Bäckman, “the most traditional target of stigmatization” in the Soviet system were individuals described as “acknowledged thieves”, or “vor v zakone” (*вор в законе*), very often translated as “thieves in law”. He also explains the context of this labelling: “here *v zakone* does not refer to law (*zakon*) but to something as generally acknowledged (*priznannyi*) by the underworld. Although “thieves professing the code” is a good suggestion, still “acknowledged thieve” sounds better”. Thus, “the concept allegedly refers to the leaders of the traditional underworld originating in the early decades” of the 20th century “as rooted in a broader stigma of “thief” (*vor*) meaning a general mass of the underworld”<sup>417</sup>.

Bäckman is asserting that though “several scholars, most of them Russian, share the view that the tradition was spontaneously created in the underworld in the early 1930s and has existed ever since”<sup>418</sup>, the reality can be much more complicated. The main question is based on the considerations about how well the concept of a “thief” (*vor*) can be substantiated by empirical

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<sup>415</sup> Galeotti, *The Russian Mafiya: Economic Penetration at Home and Abroad*, 31.

<sup>416</sup> Bäckman, *The Hyperbola of Russian Crime and the Police Culture*, p. 265.

<sup>417</sup> *Ibidem*.

<sup>418</sup> *Ibidem*.

data. The author expresses the idea that this term and the definition describing a “thief” can be based not on the empirical fact that this type of criminality really existed but on ideological attempts to construct the alternative reality. Hence, the question is formulated as follows: was a specific type of a criminal – “thief” (*vor*)” – an existing fact in the USSR in the early decades of Soviet state already? Or, as in case of “Kulak” or “Trotskyite”, the concept was also *invented* by the Soviet authority? It is important to mention that, according to Bäckman “some Russian authors have indeed claimed that this stigma was in fact an early invention of the Russian police, and propaganda about danger of the “acknowledged thieves” has been widely proliferated since 1930s.”<sup>419</sup>

Here we can remember Vyshinsky who defined not only “*homeland’s traitors*”, “*plunderers of the socialist property*”, “*spies*”, “*saboteurs*”, “*wreckers*”, “*terrorists*” but also “*thieves*”, “*those who commit acts of violence*”, “*hooligans*” and “*speculators*”, as criminals “*who must be punished without mercy*”<sup>420</sup>. Hence, the categories of political enemies were put together with “usual” and economic criminals thus erasing the line between “criminal” and “political”.

Bäckman seems to support this attitude: “This hypothesis also bases the fact, that this theory had a racist dimension – thieves were referred to mostly as Georgians. So, there is a possibility that “the stigma of a “thief” (*vor*) is an invention of the Russian police in the 1920s serving to repress the individuals labelled as class enemies, especially “thieves of social property”<sup>421</sup>.

This example illustrates that even in case of “criminal” type criminality a certain amount of interpretation could have existed. Hence, the main trait of Soviet criminal law – its flexible character and the possibility to put almost every soviet citizen into the frames of “criminal” – existed even in case of non-political crimes.

The case of one particular crime, the so-called “banditism”, illustrates the blurred lines between the political and criminal types in Soviet legislation

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<sup>419</sup> *Ibidem*.

<sup>420</sup> Višinskis (ed.), *Tarybinė baudžiamoji teisė*, p. 3.

<sup>421</sup> Bäckman, *The Hyperbola of Russian Crime and the Police Culture*, 265.



especially well. The definition of banditism contained in the Criminal Code does not show clearly whether it is treated as a criminal or political crime: it has the traits of both. Banditism was included in Chapter Two of the Criminal Code, among “*the crimes against the governing order extremely dangerous to the Soviet Union*”<sup>422</sup>. Banditism was defined in Article 59<sup>3</sup> as “*organizing and participating in armed gangs and their attacks against Soviet or private institutions or individual citizens, breaking performance of trains and disrupting normal functioning of other means of transport and communications*”<sup>423</sup>. Hence, these activities could be both intended and politically motivated wrecking and sabotage but politics-free, pure criminal acts as well. It seems that the Article encompassed both cases.

The main paradox, however, was that the Soviet system invented new types of criminals and crimes not only in the ideological reality or in repressing innocent people. The newly-built system of the labour camps became a certain school of criminal behaviour and the place where connections between the criminals could be established, and where a special criminological subculture with all its attributes was born.

Thus, it is only partially true that the distinction between “criminal” and “political” criminality existed in the USSR. This distinction was usually clear from the perspective of a prisoner: political prisoners did not belong to the “world of thieves”; they had a different identity. From the perspective of Soviet law, however, sometimes this distinction was absolutely unclear and became the object of interpretation:

“The distinction between political prisoners and common criminals was equally arbitrary. The uneducated members of the temporary commissions and revolutionary tribunals might, for example, suddenly decide that a man caught riding a tram without

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<sup>422</sup> „Nusikaltimai valdymo tvarkai, itin pavojingi Sovietų Sąjungai“.

<sup>423</sup> „...ginkluotų gaujų organizavimas ir dalyvavimas jose ir jų organizuojamuose tarybinių ar privatinųjų įstaigų ar atskirų piliečių užpuolimuose, traukinių sustabdymuose ir geležinkelių bei kitų susisiekimo ir ryšių priemonių ardyme...“ In: *RTFSR baudžiamasis kodeksas pakeitimais iki 1940 m. lapkričio 15 d.*

a ticket had offended society, and sentence him for political crimes. In the end, many such decisions were left up to the policemen or soldiers doing the arresting.”<sup>424</sup>

The fluidity of the soviet concept of a “criminal” crime is revealed most clearly in case of economic crimes. According to Applebaum, it would be a mistake to think that economic crimes in the Soviet society were not treated as political: “prison sentences, forced-labour terms, and even the capital punishment were arbitrarily meted out” not only to the real political opponents, but also to economic criminals, for instance, “speculators” or “anyone engaged in an independent economic activity”<sup>425</sup>.

Hence, the distinction between political and economic could be blurred in certain periods of Soviet history. On the other hand, as mentioned above, because of the design of the Criminal Code each crime in the Soviet Union could be treated as “political” (since there was only one definition specifying that a crime was an action posing a threat to the Soviet state).

Memoirs of the early Soviet employees of the system of a criminal prosecution confirm the hypothesis that concepts of “political”, “criminal” and “economic” criminality in the USSR were blurred; however, at some point they all were “political”. The former interrogator wrote in his memoirs describing a criminal situation in Moscow in 1923: “*I do not know where from and devil knows why all kinds of nastiness started crawling from all cracks – professional crooks and arrogant coquettes, greedy-faced speculators and elegant, uncommunicative traders in “live commodity”, bandits with aristocratic manners and the former aristocrats who have turned into bandits, erotic maniacs and simply various fraudsters*”. All these crimes – not only the political ones – as we can see from the memoirs, were treated then as a serious threat to the Soviet society and therefore the author, a member of Komsomol, and a student of literature then, was convinced to start working in the system of

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<sup>424</sup> Applebaum, *GULAG. A History*, p. 6.

<sup>425</sup> *Ibidem*.

criminal justice. According to him, there was a dire need for people who could deal with said type of criminality<sup>426</sup>.

Hence, the boundary between a criminal and political type of crimes was not always clearly defined and understandable. This division between political and other types of crimes became not so sharp in the period of the “restoration of law”. However, this division survived in the Soviet system of prisons and camps. The Gulag system of the USSR highlighted this division in particular. As Galeotti underlined, both types had different positions in the hierarchy of prisoners: “As millions of political prisoners were rounded up and sent to forced labour camps, the state began co-opting “criminal” criminals as enforcers to keep the “political” ones in line”<sup>427</sup>.

## 6. Remarks on Punishment

The purpose of punishment in the USSR seems to be quite clear. The Soviet State sought to isolate or execute the “enemy” using tools of terror, mass threatening, unstable atmosphere, where anyone, even the Soviet top elite, could be criminalized, imprisoned or executed. The classic view of Soviet repressions and application of various tools to punish and eliminate “enemies” was described by Arendt as a constant condition of instability of the totalitarian state.

According to her, in order to survive the totalitarian state's policy must be unpredictable<sup>428</sup>. The initial explanation of the Soviet concept of punishment could be constructed in the following way: *to punish*, no matter what legal or extra-judicial means are applied, in the USSR it meant, first of all, to expel or to *eliminate*. According to Lenin, another goal of penalty was

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<sup>426</sup> „...nežinia iš kur ir velniaižin kodėl iš visų plyšių ėmė lįsti visokia bjaurastis – profesionalūs sukčiai ir arogantiškos koketės, spekuliantai godžiais veidais ir elegantiški, nešnekūs prekiautojai gyvąja preke, aristokratiškų manierų banditai ir buvę aristokratai, tapę banditais, erotomanai ir tiesiog įvairiausi sukčiai“, In: Šeininas, *Tardytojo užrašai*, pp. 3-5.

<sup>427</sup> Galeotti, *The Russian Mafia: Economic Penetration at Home and Abroad*, p. 31; *Lithuania in 1940-1991: the History of Occupied Lithuania*, pp. 246-253.

<sup>428</sup> Arendt, *Totalitarizmo ištakos*, p. 379.

social control established “*over the rich, cheats, spongers, hooligans, (...) these damned remnants of the capitalist society, this rubbish of the humankind, these hopelessly rotten and torpid parts, this relapse, plague, cancer, which socialism inherited from capitalism.*”<sup>429</sup>

However, this attitude is debated by the scholars. When the archives of the USSR became accessible to scholars after the collapse of the USSR, researchers discovered that the phenomenon of the Soviet repressions was more complex. According to Christian Gerlach and Nicolas Werth, “now it appears not to have been a single phenomenon but sooner a number of interrelated repressive lines and policies, divergent in scope, character, and intensity implemented by legal and extra-legal means and aimed at different categories of “enemies”<sup>430</sup>. Hence, even when talking about Soviet repressions (applied only against those who were related to political criminality), the Soviet concept of punishment seems to be not so simple.

One of the elements of the Soviet idea of punishment, at least until the death of Stalin, seems to have been its relation to violence as such. Gerlach and Werth defined both the USSR and Nazi Germany as “extremely violent societies”<sup>431</sup>. It seems that the practical aim to eliminate the enemy, at least in the early stage of the Soviet regime, was combined with not so easily-explainable and perhaps even unconscious intention to incite more and more violence in the structure of the administration or everyday reality of the newly-created Soviet State. After the Russian Civil War had come to an end Lenin indicated how enemies should be punished stressing the need for violence : “...we should apply shooting more often (...) for all means of Menshevik, SR

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<sup>429</sup> „Apskaita ir kontrolė, kurios yra būtinos pereinant į socializmą, gali būti tiktai masiškos. Tik savanoriškas ir sąžiningas, revoliuciniu entuziazmu paremtas darbininkų ir valstiečių masių masių bendradarbiavimas atliekant turtingųjų, sukčių, dykaduonių, chuliganų apskaitą ir kontrolę gali nugalėti tas prakeiktas kapitalistinės visuomenės liekanas, tas žmonijos atmatas, tuos beviltiškai supuvusius ir apmirusius narius, tą antkrytį, marą, piktžaidę, socializmo paveldėtą iš kapitalizmo.“ In: „Kaip organizuoti lenktyniavimą?“, V. Leninas, *Pilnas raštų rinkinys*, T. 35, 1917 m. spalio - 1918 m. kovas, Vilnius, 1986, p. 197.

<sup>430</sup> Christian Gerlach, Nicolas Werth, “State Violence – Violent Societies”, in: *Beyond Totalitarianism: Stalinism and Nazism Compared*, p. 135.

<sup>431</sup> *Ibidem*, p. 137.

*and similar activities; we should find a formulation relating these activities to the international bourgeoisie and its fight against us... ”<sup>432</sup>.*

The quote reveals several aspects. The idea that the main aim of punishment was elimination of the enemy seems very clear. However, Lenin’s insistence on finding a new formulation ensuring that more “*activities*” (in reality, more people) could fit into the definition of the enemy is complicated. It seems that this way of inventing new criminal categories also could have been used as a tool to justify multiplication of violence.

Hence, we see that punishment did not only seek to neutralize or eliminate some individuals who were believed to be dangerous or to do harm to the Soviet state in the early stage of the Soviet rule already. The goal of punishment, especially of that defined by the legal means, was to transform chaotic Bolshevik violence of the pre-revolutionary, Revolution and Civic War period into more civilized and more sophisticated *legal* forms. However, these could have been real, conscious or unconscious, intentions of the regime. Some other roles were associated with the act of punishment in the ideological and legal reality. Severe and violent penalties were seen by Lenin as reality necessary only “*until the conditions have been created to guarantee that the counter-revolution will pose no threat to the Soviet authority*”. According to him, prior to that “*revolutionary tribunals were given the right to apply the highest penalty – shooting – for the crimes specified in Articles 58, 59, 60, 61, 62, 63 and 64 of the Criminal Code*”<sup>433</sup>. It is important to point out that this was not done, and only few of these articles allowed the death penalty in the Penal Code of the RSFSR.

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<sup>432</sup> „Mano nuomone, reikia plačiau taikyti sušaudymą (...) visoms menševikų, eserų ir pan. veiklos rūšims; rasti formuluotę, susiejantių šiuos veiksmus su tarptautine buržuazija ir jos kova su mumis.“ In: „RSFSR Baudžiamojo kodekso įvadinio įstatymo projekto papildymai ir laiškai d. Kurskiui“, V. Leninas, *Rinktiniai raštai. 1922 m. kovas – 1923 m. kovas*, T. 45, p. 185.

<sup>433</sup> „Kol bus įgyvendintos sąlygos, garantuojančios, kad į Tarybų valdžią nesikėsins kontrrevoliucija, revoliuciniams tribunolams suteikiama teisė taikyti aukščiausią bausmę – sušaudymą už nusikaltimus, numatytus baudžiamojo kodekso 58, 59, 60, 61, 62, 63 + 64 straipsniais.“ In: „RSFSR Baudžiamojo kodekso įvadinio įstatymo projekto papildymai ir laiškai d. Kurskiui“, *Ibidem*, p. 185.

Contrary to the ideology, Soviet legal documents did not emphasize the punitive role of punishment and did not define it as a tool to eliminate the class enemy. According to the Penal Code, persons, “*having committed socially-dangerous acts or posing danger because of their links with the criminal environment or their past activity*” who are defined and recognized as criminals “*are subject to measures of social defence of a judicial-corrective, medical, or medical-pedagogical character*”<sup>434</sup>.

It means that Soviet law formulated 3 different forms of punishment. Firstly, according to soviet law, criminals could be corrected in such special institutions as prisons or labour camps. Secondly, and this dimension of a soviet-type punishment was frequently used in the late Soviet period, criminals could be cured via misuse of psychiatry. The third aspect of the soviet-type punishment was re-education. According to the Code, all three forms of punishment were orientated towards achieving one major goal, namely, to *correct* the criminal (whether by restraining his or her freedom, administering medical treatment or re-educating).

The situation was similar in a legal doctrine. According to Vyshinsky, the penalty played a very effective educational role; it had to teach society about Soviet values and laws. Show trials, apart from a punitive-eliminative level of the enemy, also served this educational purpose; he maintained that open trials “*mobilized society’s attention*”<sup>435</sup>.

In practice the purpose of punishment could differ from that described in the Penal Code. The range of different punitive measures was much broader. A distinction between *political* and *criminal* type of crimes was a very important aspect reflecting the Soviet policy on punishment in practice. At the very dawn

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<sup>434</sup> *The criminal code of RSFSR, 1934, the General part, Division 3, Article 7, accesable online: <http://www.cyberussr.com/rus/uk-toc-e.html> [last visited on 12 August 2014].*

<sup>435</sup> «Открытые судебные процессы имеют в СССР еще и то значение, что они мобилизуют внимание общества, народа на наиболее острых и важных моментах борьбы с врагами социализма. Открытые судебные процессы в СССР воспитывают массы показом зла, разоблачением всяческих „махинаций“ классового врага и его агентуры, укрепляя бдительность масс, укрепляя их преданность делу социалистического строительства.» Вышинский, *Теория судебных доказательств в советском праве*, с. 16.

of the Communist State the old system of prisons of imperial Russia was adapted to usual *criminals*: “during the first decade of the Bolshevik rule, Soviet penitentiaries even split into two categories, one for each type of prisoners”. And this division, actually, “was made spontaneously, as a response to the chaos of the existing prison system”. Prisons were overcrowded; chaos reigned there, it was easy to escape.<sup>436</sup>

In these circumstances the most widespread means of punishment, which was used on a really large scale before the end of the Stalin period, emerged, and that was the Soviet Gulag, a massive system of forced labour camps. As Applebaum noted, the Cheka (*the Soviet security organ, 1918-1922*) decided that “the Bolsheviks could hardly allow their “real” enemies to enter an ordinary prison system”. According to Bolshevik logic, “chaotic jails and lazy guards might be suitable for pick-pockets and juvenile delinquents, but for the saboteurs, parasites, speculators, the White Army officers, priests, bourgeois capitalists and others [...] more creative solutions were needed.”<sup>437</sup> The concept of forced labour as the most important type of punishment was developed in such conditions,

Hence, from the very beginning of the Revolution, a distinction between ordinary and political criminals determined the attitude towards punishment. Lenin saw a labour camp as “a special form of punishment for a particular sort of bourgeois “enemy”<sup>438</sup>, not for usual criminals., Lenin believed, that “no special punishments were [...] necessary in case of ordinary crimes [...]: in time, the Revolution itself would do away with them”<sup>439</sup>.

However, in respect of political, some economic and other criminals, the attitude towards punishment was completely different. This type of criminality required “harsher punishment than that imposed on an ordinary murderer or thief”. Therefore, for instance, the first Bolshevik “decree on bribery” issued in May 1918 declared the following: “If the person guilty of taking or offering

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<sup>436</sup> A. Applebaum, *GULAG. A History*, 7-8.

<sup>437</sup> *Ibidem*, 8.

<sup>438</sup> *Ibidem*.

<sup>439</sup> *Ibidem*.

bribes belongs to the propertied classes and pays a bribe to preserve or acquire privileges linked to property rights, he should be sentenced to the harshest and most unpleasant forced labour and all his property should be confiscated”<sup>440</sup>. Confiscation of property as a punishment is a special feature of Soviet law that does not exist anywhere else.

Another type of punishment for the class enemy was the so-called administrative measures. They belonged to the group of extra-judicial punishments. It was especially popular in the periods when a legal nihilist attitude towards law and strict judicial means (simplified were applied instead them) in dealing with criminality took priority. The old tsarist method of “administrative exile” was a perfect tool for the Soviet system under the umbrella of humanism: the forced exile could be potentially presented as simple displacement or even migration of the population. Also, administrative exile was useful because it simplified the process of criminalization and criminal prosecution. This type of punishment required no trial and no sentencing procedure (except for cases when it was applied as a extra-judicial means, not based on the Criminal Code where this penalty was also specified)<sup>441</sup>.

As has already been mentioned, the Soviet legal system lacked the dimension of individual guilt, in case of political criminality, in particular. Therefore, according to Aplebaum, the Soviet punishment “should not be seen as retribution”<sup>442</sup>. This attitude was the reason why “correction” or “elimination” was identified as the purpose of punishment in the Code.

The best tool of elimination was the death penalty, which existed in the USSR till the end of the empire. Before and after the Revolution of 1917 Lenin stated that “no revolutionary government can do without” death penalty. It was treated as an “efficient weapon in the class struggle”. The death penalty was abolished during the October Revolution; however, it was restored very soon,

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<sup>440</sup> *Ibidem*, 6.

<sup>441</sup> *Ibidem*, xxx.

<sup>442</sup> *Ibidem*, 5.



in 1918<sup>443</sup>. In February of 1918, a decree issued by Lenin encouraged “the shooting of hostile agents, speculators, burglars, hooligans, counterrevolutionary agitators, and German spies”<sup>444</sup>.

According to G. P. Van den Berg, “the first summary executions were directed not against overt political opponents but sooner against bandits, speculators and blackmailers”. This kind of executions was based on administrative decisions of VChK rather than on a usual criminal investigation procedure and court trial. It also confirms the hypothesis that in criminal prosecution priority was not always given to prosecuting “political-type” criminality and that the dividing line between “political”, “criminal” and “economic” was not so clear. The death penalty was abolished again in 1920 under the Decree of the Soviet government of 17 January. However, this Decree applied only to the sentences passed by ordinary courts. Military tribunals and revolutionary tribunals could further inflict the death penalty. The death penalty was fully restored again within four months<sup>445</sup>. It was finally embodied in Soviet laws in 1922. The RSFSR Criminal Code of 24 May 1922 stated that the death penalty will remain in effect “until its abolition”<sup>446</sup>. This premise was formulated following Marxist ideas about a crime as a temporarily existing reality. Lenin predicted with accuracy when the death penalty should be expected to be totally abolished: after “*the conditions have been created and the counter-revolution will not threaten the Soviet power...*”<sup>447</sup>

According to the Criminal Code, the death penalty could be applied for 5 different types of crimes: counter-revolutionary activities (Article 58), crimes against the order of government<sup>448</sup> “banditism” (Article 59), transfer of secret inventions abroad<sup>449</sup> (Article 84<sup>b</sup>), intentional murder (Article 136), and war

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<sup>443</sup> Van den Berg, *The Soviet Union and the Death Penalty*, 155.

<sup>444</sup> *Ibidem.*

<sup>445</sup> *Ibidem.*

<sup>446</sup> *Ibidem*, 156.

<sup>447</sup> V. Leninas, RSFSR *Baudžiamojo kodekso įvadinio įstatymo projekto papildymai ir laiškai d. Kurskiui*, p. 185.

<sup>448</sup> Nusikaltimai valdymo tvarkai.

<sup>449</sup> Slaptų išradimų perdavimas į užsienį.

crimes (Article 193)<sup>450</sup>. In the years of collectivization an extra-judicial type of the death penalty was often applied too. One more period of the history of the death penalty in the USSR started in 1934 and lasted till the death of Stalin. It was marked by the extension the death penalty even in peace time. Some new crimes for which the death penalty could be imposed were added. This new list included a theft of weapons, political treason and other crimes. Changes were also made to limit the application of summary executions and the role of extra-judicial institutions. The Court Chamber of OGPU was abolished in 1934. The Special Board became its successor; however, it had no right to administer a punishment of imprisonment (no longer than 5 years)<sup>451</sup>. This change was related to the external stabilization of the regime and the “restoration of law” reform.

On the one hand, in the face of changes made in the mid-1930s, a list of crimes for which the death penalty could be administered was extended; on the other hand, extrajudicial measures were limited. During the “restoration of law” period, the implementation of penalties was more and more concentrated in the hands of usual courts. This reflects the regimes' attempts to concentrate on legal and juridical measures. Show trials were used as one more method creating the illusion of Stalin's concern about legality and legal issues.

During the Second World War the possibilities to impose the death penalty were maximised. The martial law was applied to execute on site “*provocateurs, spies and other agents of the enemy*”<sup>452</sup>. In 1947 the death penalty was abolished “*in peace time*” most likely as the propaganda means for foreign observers because it was continued to be carried out, for instance, in the Lithuanian SSR<sup>453</sup>. In 1950 the death penalty was restored<sup>454</sup>.

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<sup>450</sup> *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, pp. 35-48, 62, 86, 107-121.

<sup>451</sup> Van den Berg, *The Soviet Union and the Death Penalty*, p.158.

<sup>452</sup> *Ibidem*, 158-159.

<sup>453</sup> Vaitiekus, *Tuskulėnai: egzekucijų aukos ir budeliai (1944-1947)*.

<sup>454</sup> Van den Berg, *The Soviet Union and the Death Penalty*, p. 159.

## **II. TRANSFER OF CONCEPTS OF CRIME AND PUNISHMENT FROM THE CENTRE TO THE COLONY – THE OCCUPIED LITHUANIAN SSR (THE PERIOD OF 1940-1941 AND 1944-1953)**

### **1. Crime and Punishment in the LSSR under Stalinism: ideological, political and professional discourses**

When the Soviet Union occupied the Lithuanian Republic in 1940, one of the initial steps it took was the destruction of the Lithuanian legal system, including the system of criminal justice and criminal prosecution. Also, the new concept of crime began to be formulated: first of all, at the level of ideology, then in the legal theory and legal practice<sup>455</sup>.

Until the end of Stalinism the Soviet Lithuania did not have any separate legal theory or doctrine. It adopted ideological clichés and dominant trends of the USSR. The LSSR took over the idea of criminal nature of the wealthy classes and bourgeoisie and the poor peasants and workers committing crimes only because they were suppressed by higher social elites and could not survive otherwise.

The Soviet definition of crime transferred to the Lithuania SSR, was related to the definition of criminal as a class enemy (usually related to the concept of bourgeoisie). In the ideological context and public space criminals were depicted, first of all, as social parasites seeking to destroy the Soviet order from the inside. Their negative role in the state institutions of Soviet Lithuania was emphasized.

The 4th plenary session of the Central Comity of the Communist Party of Lithuania, which took place on 27-30 December 1944, urgent inducements were declared to imprison or even impose a death sentence on the criminals who were “acting against the Soviet state”<sup>456</sup>.

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<sup>455</sup> *Lietuva 1940-1990. Okupuotos Lietuvos istorija*, p. 96.

<sup>456</sup> *Lietuvos Komunistų Partijos (bolševikų) Centro Komiteto IV plenumas. 1944 m. gruodžio 27-30 d.* (The 4<sup>th</sup> Plenum of the Central Committee of the Lithuanian Communist Party (Bolsheviks). 27<sup>th</sup> - 30<sup>th</sup> of December, 1944), Vilnius; 1945, p. 71, 75, 78.

The rhetoric used at the plenary session reveals a close relationship between the concept of a criminal and the concept of an enemy in the LSSR. It repeated the tendencies according to which the “ideal type” of a criminal was formulated in Soviet Russia – the concept, which was discussed in the previous Chapter. To define “the enemy” criminological rhetoric was used, which is usually used to define the criminal world<sup>457</sup>.

Though the concept of crime in the USSR and the LSSR was closely related to the concept of an “enemy” before the end of the Stalin period, during the second Soviet occupation (from 1944) the image of the “fascist”, “Nazi” and “German” also became very important in the definition of criminality. The whole former elite of the Lithuanian Republic between 1918 and 1940 was labelled as a “fascist” and treated as criminal. The need to eliminate or at least to imprison the former upper class was declared<sup>458</sup>.

It was during the first Soviet occupation already that de-humanizing rhetorical forms were used to describe social groups understood as “enemies” and “political criminals” then, thus repeating the ideological clichés of the revolutionary period Russia. Political criminals were depicted as “social parasites” in the ideological context and public discourse. Their negative role in the state institutions of Soviet Lithuania was emphasized. This propaganda campaign and criminological rhetoric were as a rule directed against concrete target groups, which were planned to be repressed soon, first of all, the former elite and the employees of the former legal and criminal justice system. The former “bourgeois” authority and institutions were depicted as criminal structures<sup>459</sup>, their employees were treated as “criminals” and “exploiters”<sup>460</sup>.

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<sup>457</sup> *Ibidem*, p. 9.

<sup>458</sup> *Ibidem*, pp. 10-11.

<sup>459</sup> A. Maginskas, „Tegyvuoją 13 – oji Lietuvos socialistinė sovietų respublika. Vilniečių mitingas“, *Tiesa*, 1940 07 01, No 10, p. 3.

<sup>460</sup> „Ir gen. Plechavičius pabėgo“, *Liaudies balsas*, 1940 06 24, No 4, p. 3.

Also, after the occupation of 1940, the former members of the political parties in the LSSR were defined as “enemies of the people”<sup>461</sup>. Different terms of a criminological discourse, such as “the gang” were used<sup>462</sup>.

Not only the former elite but also the entire independent Lithuanian Republic of 1918-1940 was depicted as criminal state in which corruption, bribery and theft flourished<sup>463</sup>. These tendencies repeated the Marxist and Bolshevik idea that a crime was caused by the unjust capitalist system and would disappear in Communism and that the main task of the socialist state was to fight against the political crime.

At the beginning of the occupation, as in post-revolutionary Russia, the political crime was linked, first of all, with criminalization of the former elites – *the former people* – as a real or imaginary political opposition. However, specific historical circumstances and the course of the development in the LSSR and the history of Europe changed the situation. Due to a political loss of control over the territory of the in LSSR 1941 followed by the Nazi occupation, Soviet legal transformations and the formation of a new criminological discourse were disrupted for the next four years. After the second Soviet occupation in 1944, the Soviet administration, in trying to transfer the concepts of crime and punishment to the LSSR, encountered new problems, namely, real political opposition and the armed resistance movement. Thus the programmes of collectivization and sovietisation of different sectors of the Lithuanian society and life, including law and the concept of the criminality, came across serious obstacles and sometimes got stuck in<sup>464</sup>.

It is also necessary to keep in mind the fact that the war had impacted the Soviet law in some aspects and researchers today notice some differences between the post-war Stalinist penal law and the legal system, which existed in

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<sup>461</sup> Zigmās Genys, „Komunistų partija legali!“, *Tiesa*, 1940 06 26, No 6, p. 2.

<sup>462</sup> „Šalin smetoniška gauja iš mūsų tarpo“, *Tiesa*, 1940 06 28, No 8, p. 3.

<sup>463</sup> V. Rudminas, „Gražinti liaudžiai, kas iš jos yra pavogta“, *Tiesa*, 1940 07 02, No 11, p. 2.

<sup>464</sup> *Lietuva 1940-1990. Okupuotos Lietuvos istorija*.

the 1930s<sup>465</sup>. The model of Soviet law of the 1930s, which was attempted to be transferred to the LSSR during the first Soviet occupation in 1940-1941, was modified slightly during the war and the second Soviet occupation came already with these changes. However, according to Cadiot and Penter, though “the war brought several new influences into Soviet law and justice system”, such as trials of real Nazi collaborators instead of the imaginary enemies, many core premises in the legal theory, laws and old Stalinist patterns coming from the 1930 and even an earlier period in legal practices continued<sup>466</sup>.

Today some researchers believe that no professional criminological discourse existed in the LSSR during the Stalin period. According to Solomon, the period between the end of the 1920s and the end of the Stalin era, in general, was not a favourable time for the development of a professional criminological discourse in the whole Soviet Union. Whereas in the early 1920s this discipline, at least empirical criminological research, flourished in the USSR but in the 1930 the situation changed completely<sup>467</sup>. According to Solomon:

“Soviet political leaders all but eliminated empirical research. According to their definition, criminology was neither Marxist (especially the biological research), nor did it square with a penal policy which had become punitive in word as well as in deed. In 1931 the State Institute for the Study of Crime and the Criminal was closed. Criminological research continued for a few more years under more controlled conditions (as in the section on criminal policy in the reorganized Communist Academy), but by the mid-1930's it had stopped entirely.”<sup>468</sup>.

According to Solomon, some attempts were made to revive the discipline in the late stage of the Second World War. However, these attempts were not successful. According to Salomon, the researchers who cherished such hopes

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<sup>465</sup> Cadiot, Penter, “Law and Justice in Wartime and Postwar Stalinism”, p. 161.

<sup>466</sup> *Ibidem*.

<sup>467</sup> Solomon, “A Selected Bibliography of Soviet Criminology”, p. 393.

<sup>468</sup> *Ibidem*.

merely “misjudged the trends; the Stalinist system could end only with Stalin”<sup>469</sup>.

This insight of Solomon was included in the image of the Soviet discourse of criminology in Lithuania. According to Vilma Stalenytė, between 1944 and 1965 criminology, as a discipline, was not developed in a scientific discourse in the LSSR. It was not until 1965 that it was reborn for first time after the interwar period when a cycle of lectures on Soviet criminology was included into the curriculum of the Faculty of Law at Vilnius University (the then Vilniaus Vinco Kapsuko universitetas)<sup>470</sup>.

However, this does not mean that there was the total vacuum of knowledge of crime in criminality in the LSSR professional criminological discourse during the Stalin period.

This knowledge was available in the framework of the discipline of law. For instance, the book titled *Soviet criminal law: general and special part. The textbook for law schools* (Советское уголовное право: части общая и особенная: учебник для юридических школ) published in Russia in the 1940 was available in the LSSR during the Stalin period<sup>471</sup>. Some other law textbooks were available in the LSSR during the Stalin era as well<sup>472</sup>.

Also, in 1948 the book defining the concept of crime from the academic point of view was published in Lithuanian language. Its title was *Criminalistics: Textbook for Juridical Schools* (“Kriminalistika: vadovėlis juridinėms mokyklos” in Lithuanian) and it was published in Kaunas. The book was a translation of the Russian book. Though directly it was not devoted to the definition of crime but to a criminal investigation during the process of criminal prosecution, the book was useful as a source while trying to reconstruct the Soviet concepts of crime and the criminal in the LSSR<sup>473</sup>. In

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<sup>469</sup> *Ibidem*.

<sup>470</sup> Vilma Stalenytė, *Lietuvos kriminologijos istorijos aspektai*, Master Thesis, Vilnius university, 2016, p. 29.

<sup>471</sup> *Советское уголовное право: части общая и особенная: учебник для юридических школ, составили*, Шаргородский М. Д. et al., Москва, 1940.

<sup>472</sup> For instance: Борис Самойлович Утевский, *Уголовное право*, Москва, 1950.

<sup>473</sup> Шавер, Б.М., *Kriminalistika: vadovėlis juridinėms mokykloms*, Kaunas, 1948.

1955 the first volume of the book *The Course of Soviet Penal Law* appeared. Though the *Special Part*<sup>474</sup> was issued in the Soviet Union, it was also available in other republics, including the LSSR.

Hence, we can only partially agree with the statement that there was no “professional criminological discourse” in the LSSR before 1965 (if we define it as a discourse generated by law and criminology professionals). Of course, no politically and ideologically independent definitions of crime and criminality existed either. The discourse that existed in the LSSR was not a local product; it was imported from Soviet Russia. However, some academic discourse and the definition of criminality (not purely scientific but mixed with ideology) did exist.

The above-mentioned book did not only offer the most effective methods to investigate a crime, find a suspect and prove his/her guilt but it also provided a specific definition of crime. According to it, the crime can be defined as “*a criminal infringement directed against the socialist state, socialist property and the rights of the Soviet citizens*”<sup>475</sup>.

This definition shows how the concept of crime was understood in a professional criminological discourse of the LSSR. The definition of crime encompasses three types of crimes: *crimes against the state* (or, so-called “political” crimes), *crimes against socialist property* (“economic” crimes) and *crimes against the individual* (or usual, “criminal” type of criminality). Furthermore, even this definition reveals that these three types of criminality are considered as having different hierarchical positions. This can be revealed by the construction of a sentence and the order of words: political crimes come at the top of the hierarchy; they are followed by economic crimes; and “criminal” offences are shown to be least important.

The Stalinist professional criminological discourse in the LSSR shows clearly that legal categories, law and justice, as well as legal values, were closely related to the official definition of crime and emphasized. The

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<sup>474</sup> А. А. Пионтковский, В.Д. Меньшагин, *Курс советского уголовного права : особенная часть*, Т. 1 (Москва: Госюриздат, 1955).

<sup>475</sup> Шавер, *Kriminalistika: vadovēlis juridinēms mokykloms*, p. 6.



importance of law and legal procedures was stressed in the above-mentioned book “Kriminalistika: vadovėlis juridinėms mokymams”: “*if we want to investigate the [criminal-MK] case in a successful and correct way it is necessary to know the rules of how to use and evaluate evidence. It is also crucial to know how to find and research evidence.*”<sup>476</sup>

The interesting thing is that this book acknowledges that not only the method of “confession” which, as has been shown in the previous Chapter, was the main tool used to prove the suspect’s guilt in the Soviet system of criminal prosecution but also the evidence had crucial importance in proving that. However, basing the trial exclusively on evidence and ignoring witnesses’ testimonies and confessions of a criminal act, is described as the method of “bourgeois criminology” stating that it is not only people who say lies and fantasize that can not be trusted. The same applies to material evidence, which can also be falsified<sup>477</sup>.

As we see, a professional criminological discourse in the LSSR was not a “local” product. All the books available there were either texts by the Russian authors in the original language or Lithuanian translations of Russian studies on the phenomenon of crime. Some features of a local criminological discourse, however, were actually formulated at the Faculty of Law of Vilnius State University where not only political or ideological aspects of the criminology were analysed but also the analysis of “criminal-type” offences was carried out. For instance, in 1952 Antanas Šerkšnas wrote his final thesis devoted to the problem of hooliganism and the measures to deal with it “according to the Soviet penal law”<sup>478</sup>. Hence, some kind of a professional criminological discourse was formulated in the Stalinist LSSR within the framework of the discipline of law.

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<sup>476</sup> *Ibidem*, p. 1.

<sup>477</sup> *Ibidem*, p. 8.

<sup>478</sup> Antanas Šerkšnas, *Chuliganiškumas ir baudžiamoji teisė kova su juo pagal tarybinę baudžiamąją teisę*, final thesis, Vilnius: Vilnius state university, Faculty of Law, 1952, The Vilnius University Library, F. 85 – TB 28.

In his final thesis the author repeated many ideological features of the definition of crime in the Soviet Union. The roots of this criminal behaviour were seen outside the USSR – hooliganism was understood and represented as one of the remnants of the bourgeois past: “*In the Socialist state hooliganism is a rare activity. Separate cases of hooliganism in the contemporary USSR testify to the capitalist remnants still existing in people’s consciousness. (...) A fight against hooliganism is a fight against the petit-bourgeois anarchy...*”<sup>479</sup>

On the other hand, this kind of criminality is justified as a phenomenon that emerged due to long “*ages of exploitation, poverty and oppression*”<sup>480</sup>. Hence, a hooligan is not equated to an enemy or a political criminal and seen as a purely criminal one according to the classic Marxist-Leninist definition of a “traditional” criminal as the one whose criminality is a result of long experience of class exploitation.

The thesis discloses one more aspect, namely, the focus on laws, *legal forms* as the only way to solve the problem of hooliganism<sup>481</sup>. On the one hand, it reflects tendencies in the “restoration of law” period. On the other hand, a special focus on certain laws and legal definitions explained by the author can be seen as a sign of his rejecting the “material definition of crime”, the possibility to apply analogy and the idea of the crime being any “socially harmful” phenomenon that does not necessarily depend on legal definitions.

The thesis shows great tension between the author’s desire to fit into the ideological framework and official explanations of criminality and his attempts to find more rational explanations of the existence of criminality and solutions to deal with it:

“*When we go deeper into psychics of a hooligan, we find the following: hooliganism is only the beginning of all other crimes. If it means nothing to a hooligan to spit to somebody’s face, to talk with a woman in an obscene manner, it will be easy for him to rape a girl, to kill a man, and, finally, to commit a counter-revolutionary crime: in*

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<sup>479</sup> *Ibidem*, p. 10.

<sup>480</sup> *Ibidem*.

<sup>481</sup> *Ibidem*, p. 11

*his psychics a hooligan ignores society, places himself in above others, has no respect either for society or for himself. Hooliganism is the beginning of all other socially dangerous activities.*<sup>482</sup>

One more aspect is reflected in the thesis: the focus on laws and legal forms as the only way to solve the problem of hooliganism<sup>483</sup>.

It is important to point out that this understanding differs from the definition formulated in the professional discourse at the Union's level (for instance, by Vyshinsky). According to Šerkšnas, the individual's criminal recidivism, not only his or her class background, can lead a person to *political* criminality.

A criminal is also seen as the subject of real, not imaginary and not collective guilt and responsibility. He/she is not a typical "objective enemy": *"The subject of the crime is, of course, the individual who has become a target of a criminal prosecution due to his actions"*. It is also stressed that only a psychologically healthy person is seen as responsible for his actions: otherwise a person must be treated and cured rather than punished or eliminated. Hence, a criminal was not equated to a mentally ill person<sup>484</sup>.

These insights of the author of the thesis could be incidental and sporadic. However, the very existence of the examples of such different and relatively free thinking, even covered by the mandatory ideological clichés, is a sign that a Lithuanian professional criminological discourse had the potential to develop some intellectual freedom from the Empires' centre (and from strict ideological definitions of criminality) even under Stalin. These examples were hidden deep inside the narrow field of the academic community of lawyers.

The final thesis was approved and defended, which means that the insights were not censored, they were tolerated and could exist in Vilnius State University even before 1965, which, as we have seen, is defined as the beginning of an independent intellectual criminological tradition in the LSSR .

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<sup>482</sup> *Ibidem.*

<sup>483</sup> *Ibidem.*

<sup>484</sup> *Ibidem*, 35-37.

Perhaps the situation there was similar to that in professional history, which repeated many ideological forms and constructed politically acceptable narratives, and still had some examples of independent insights hidden under systematically acceptable academic forms<sup>485</sup>.

However, not every author and the example of an academic criminological discourse in the LSSR demonstrate this kind of thinking. The final thesis written and defended at the same Faculty by Juozas Karpavičius, which dealt with robberies and plundering is much closer to ideological definitions and standards. First of all, it states, that robbery and stealing from the state is a much more serious crime than robbing an individual, because “*to let plundering from the state happen (...) means to destroy the very social order of the Soviet state, which is based on collective property*”. The above-analysed thesis devoted to the analysis of hooliganism did not include such strong statements and definitions; hooliganism was seen only as *leading* to the destruction of the Soviet state (counter-revolutionary crimes) whereas plundering here is defined as the crime, which destroys the Soviet state<sup>486</sup>.

However, robbery and plunder are placed in a lower position than “banditism” in the hierarchy of crimes. Firstly, the thesis stresses that robberies and plunders are not the activity of the organized group even if sometimes committed by a groups of people. Secondly, it is stressed that banditism differs in its main intention: “*Robbery is such a crime, which is committed only for self-serving interests. In case of banditism, another purpose is possible, next to the self-serving one*”<sup>487</sup>.

Hence, the concept of crime reflected in case of Karpavičius reveals the view that is close to ideological canons and the “material definition of crime”

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<sup>485</sup> See more in: Aurimas Švedas, *Matricos nelaisvėje: Sovietmečio lietuvių istoriografija (1944 - 1989)*, Vilnius, 2009.

<sup>486</sup> Juozas Karpavičius, „Baudžiamoji atsakomybė už plėšimą pagaltarybinę baudžiamąją teisę“, diploma thesis, Vilnius: Vilnius state university, Faculty of Law, 1952, The Vilnius University Library, F 85 – TB. 30, p. 42-43.

<sup>487</sup> Karpavičius, *Baudžiamoji atsakomybė už plėšimą pagal tarybinę baudžiamąją teisę*, p. 45-46.

and the Leninist-Stalinist standard of the definition of political criminality focusing on the intention rather than on the action.

Insights of both mentioned authors reveal one of the already analyzed aspects of the Soviet laws, namely that they are formulated in a very abstract way and have broad definitions. According to Šerkšnas, Article 74 of the Penal Code (which defines hooliganism) reveals that “*the concept of crime is not defined and it is absolutely unclear what the objective side of hooliganism is*”; it is not identified “*which actions should be understood as hooligan*” action<sup>488</sup>. Karpavičius notices that the same can apply to banditism – it is a very broad and very abstract concept<sup>489</sup>.

Hence, it seems that not only Article 58 contained abstract formulations. This kind of formulation of laws was sooner a pattern. Actors of the Soviet Lithuanian professional criminological discourse were familiar with this fact.

Another final thesis at the same Faculty and Department was written by V. Cesevičius and was devoted to bribery and corruption<sup>490</sup>. It formulated the image of a criminal as an “immoral element” and stated that the roots of such behaviour were in the non-socialist past. Though the image of such a criminal is not that of a pure enemy, it has some elements of this picture. Criminals who take bribes are called “frauds”, “violators of the rules of socialist life”, “morally depraved elements” who “hinder normal work of the state”. The author bases his arguments on Vyshinsky’s argument thus demonstrating that the concept of crime reflected in his work is not a result of independent thinking and is impacted by a discourse of the Empire<sup>491</sup>.

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<sup>488</sup> Šerkšnas, *Chuliganiškumas ir baudžiamoji teisinė kova su juo pagal tarybinę baudžiamąją teisę*, p. 21.

<sup>489</sup> Karpavičius, *Baudžiamoji atsakomybė už plėšimą pagal tarybinę baudžiamąją teisę*, p. 47.

<sup>490</sup> It is important to note that the term itself was not used at that time. But the Criminal Code devoted the whole chapter of the special part (No 3) to the so-called “official and officers offences” („pareigybiniai ir tarnybiniai nusikaltimai”), which included Articles 109 through 121. It included various crimes understood as corruption today, for instance, bribes (Articles 117, 118, 119). See more in: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, pp. 73-79.

<sup>491</sup> V. Cesevičius, *Baudžiamoji atsakomybė už kyšininkavimą pagal tarybinę baudžiamąją teisę*, diploma thesis, Vilnius: Vilnius state university, Faculty of Law, 1952, The Vilnius University Library, F 85 – TB 38, p. 22, 35.

As we see, some limited professional discourse (not fully independent of the Empires' Centre and not totally free from ideology) on crime and punishment in the LSSR existed in the Stalin period. However, there was no criminology as an academic *discipline* there. The phenomenon of crime was analyzed by other disciplines such as criminology and law. The criminological discourse formulated at the Faculty of law was partially independent and had some potential of producing individual, empire-free thinking, at least partially free from the ideological canons. These tendencies, however, were only in the rudimentary phase. They were very limited and weak.

## **2. Formation of Soviet images of crime and a criminal in a public discourse**

Definitions of crime and criminality created in the sphere of ideology and imbedded and consolidated, first of all, among the members of the political elite – the Communist Party – had to be gradually transferred to the public sphere and thus become guidelines for new definitions of crime and punishment in the Soviet society. These definitions, together with other ideological premises, had to become new normative markers in the process of constructing the communist system of values.

The communist system in the LSSR was based not exclusively on terror – similarly to the case in other communist countries, it was a society where monopolization of the mass media played a very important role. The mass media was used for the indoctrination and mobilization of the masses<sup>492</sup>. Therefore the new concepts of crime and punishment in Soviet Lithuania had also to be introduced through the mass media or other forms of propaganda.

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<sup>492</sup> Zenonas Norkus, „Andropovu klausimu. Komunizmas kaip lyginamosios istorinės sociologinės analizės problema“ (I), *Sociologija: Mintis ir Veiksmas*, 1 (19), Vilnius, 2007, 14.

The image of criminality in the mass media was directly related to the ideological and political context. There was no place for objectivity or statistical data related, say, to crime rates<sup>493</sup>.

In the series of lectures to the editors of newspaper of the Soviet republics *krays* and *oblasts* organized by the Department for Agitation and Propaganda of the Communist Party of the Soviet Union (*отдел агитации и пропаганды*) it was stated that the role and function of each newspaper was to be “*a collective propagandist, agitator and organizers of the masses*”<sup>494</sup>. Therefore, it had to be closely related to the Communist Party; even the employees of newspapers were recommended to have important positions in the Party<sup>495</sup>.

Thus, the image of the communist society as a “society without crime” had to be gradually built in the Lithuanian SSR public discourse. Information about crimes was highly limited and sometimes it was even prohibited to write about crimes and criminality<sup>496</sup>.

Because of these reasons information related to criminality was not common in public. Soviet Lithuanian public space became the place where the Marxist idea about the absence of criminality in a socialist and communist society was very important. According to the Lithuanian historian Margarita Matulytė, with the help of propaganda, the mass media, photography, art or public speeches and the so-called agitations Soviet ideology created the illusion that the society either lived already or was very close to the communist phase in the LSSR. There was almost no place for negative social phenomena

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<sup>493</sup> Žuravliovas, *Agitatorius – socialistinio lenktyniavimo organizatorius*; Slepovas, *Partinio gyvenimo nušvietimas laikraščiuose. Apie kai kuriuos bolševikinės spaudos uždavinius. Paskaitų, skaitytų respublikinių kraštų ir sričių laikraščių redaktorių pasitarime prie VKP(b) CK Propagandos ir agitacijos valdybos sutrumpintos stenogramos*, 21; Блюм А. В., *Советская цензура в эпоху тотального террора 1929-1953*, СПб.: Академич. проект, 2000.

<sup>494</sup> *Apie kai kuriuos bolševikinės spaudos uždavinius, Paskaitų, skaitytų respublikinių kraštų ir sričių laikraščių redaktorių pasitarime prie VKP(b) CK Propagandos ir agitacijos valdybos sutrumpintos stenogramos*, p. 3.

<sup>495</sup> Slepovas, *Partinio gyvenimo nušvietimas laikraščiuose*, p.21

<sup>496</sup> Dobryninas, „Nusikaltimai, žiniasklaida ir viešoji nuomonė Lietuvoje“, *Virtuali nusikaltimų tikrovė*, p. 11.

in this new ideological reality. Information about criminality (especially negative phenomena) was heavily censored<sup>497</sup>.

Editors were recommended to depict the political level and the process of building communism in the following way: “...we cannot depict our life using too dark colours [and negative images – M.K.], so that the readers had a wrong image of our life, (...), which is shaped by glorious victories and achievements in all spheres of society, economy and culture...”<sup>498</sup>. Hence, Soviet newspapers and other channels of the mass media were trained to propagate positive experiences and images using the bright, iconic pictures of the ideal type of the various forms of life, possible only in the communist (or at least socialist, pre-communist) society.

Gradually the image of society without crime was strengthened in the public space. Positive news had to prevail on all news-spreading channels<sup>499</sup>. Only specific experts who were loyal to the authority could analyse the data on a real criminal situation but not in public<sup>500</sup>. Such problems as the crimes committed by the Soviet officials and the employees of the Soviet administration, as well as statistical data relating to those crimes, and crimes in general were kept secret. Therefore, according to Arvydas Anušauskas, the Lithuanian society, at least during the Stalint period, had no idea about real crime rates and about the criminogenic situation in the society of that time<sup>501</sup>.

Hence, the depiction of criminality in a public discourse was highly politicized and guided by ideological guidelines. The information was limited but when it was available the mass media concentrated on the *political* type of criminality.

There were five main images of criminals in the Lithuanian press of the Stalin period:

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<sup>497</sup> Margarita Matulytė, *Nihil obstat. Lietuvos fotografija sovietmečiu*, Vilnius, 2011, p. 25.

<sup>498</sup> *Ibidem*, p. 11.

<sup>499</sup> Dobryninas, „Nusikaltimai, žiniasklaida ir viešoji nuomonė Lietuvoje“, *Virtuali nusikaltimų tikrovė* p., 11.

<sup>500</sup> *Ibidem*.

<sup>501</sup> Anušauskas, “Represinė SSRS vidaus reikalų sistema Lietuvoje”, *Lietuvos vidaus reikalų istorija*, p. 315.



a) The former elite and the authority, the former employees of public institutions and legal the system or, in other words, “*byvšie liudi*”. They were defined as “the bourgeois nationalists”, after the war – as “the German, Nazi bourgeois nationalists”, or “fascists”. It was sooner the imaginary than a real enemy.

b) “Class enemy”, mostly kulaks.

c) Plunderers involved in the embezzlement of state property, speculators and other economic criminals. The image lay in between real crimes and ideological clichés.

d) Saboteurs. The image was sooner an ideological construct than the objective fact.

e) The class enemy and criminality in general beyond the territory of the USSR – the Capitalist world.

Censorship was imposed in case of real opposition, i.e., the armed resistance movement.

The first image of a criminal, the one of the *former people*, was very popular in the public space during the period between 1940 and 1941 though it did not lose its importance later. The second and the third images also became common as of 1940, in the years of collectivisation and industrialization (after 1944) in particular. The third and the fourth images existed during both periods: the first and the second occupations. The fifth image gained popularity in the early 1950s and is related to the context of the Cold War and anti-American propaganda.

Hence, as has already been mentioned, the criminalization of the former elite was really common in the public discourse of the LSSR; and such terms as a “gang” were used to define those “former people”<sup>502</sup>. The idea that the former elites, politicians and officials made attempts to leave the country and flee abroad because they were afraid that many crimes they had committed against the Lithuanian people and the country will be revealed soon was

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<sup>502</sup> „Šalin smetoniška gauja iš mūsų tarpo“, *Tiesa*, 1940 06 28, No 8, p. 3.

propagated during the first Soviet occupation. The image was created that in this way they are trying to conceal their crimes<sup>503</sup>.

Criminalization of the former elite was expressed in such rhetorical constructions as “the gang of Smetona”<sup>504</sup>. The image of the *former people* as the criminals was constructed, first of all, in the language. In this way criminalization and criminal rhetoric became one of the methods of constructing a negative image of the groups, which were planned to be repressed and which were linked with the *enemy* ideologically.

The press wrote about the entire former legal system as about the unjust and corrupted one in which laws were designed only to protect the needs of the ruling class. The former legal system was denounced and the requirement to “*cleanse our law-making system*” from the unjust laws of Smetona was expressed<sup>505</sup> promising much more justice in the Communist state and society<sup>506</sup>.

It is interesting to note that in case of Soviet Lithuania some employees of the former administration and the governmental sector (including the system of criminal prosecution), even though “*misled and seduced by Smetona’s lie*”, were actually deemed by the Soviets to be members of the new society, at least it was stated so in the public discourse. However, this can be said only about those former employees of the administration who occupied the lowest hierarchical position in independent Lithuania (those who “*did not make any career*”), were not rich (“*did not have any property*”) and were not class enemies (their origin was by workers or peasants)<sup>507</sup>. Hence, the Soviet administration seems to have been aware that if everyone were repressed, the new system of the state administration and the governmental sector, including

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<sup>503</sup> Ant. Janauskas, „Žemaičių Muravjovas“, *Tiesa*, 1940 06 27, No. 7, p. 3; D., Kaip paspruko žudikas Plechavičius, *Tiesa*, 1940 06 29, No. 9, p. 3, „Ir gen. Plechavičius pabėgo“, *Liaudies balsas*, 1940 06 24, No. 4, p. 3.

<sup>504</sup> *Šalin smetoniška gauja iš mūsų tarpo*, p. 3.

<sup>505</sup> V. Rudminas, „Gražinti liaudžiai, kas iš jos yra pavogta“, *Tiesa*, 1940 07 02, No. 11, p. 2.

<sup>506</sup> „Einam saulės parsinešti. Kalbos pasakytos per mitingą sporto halėje birželio 29 d.“, *Tiesa*, 1940 07 01, No. 10, p. 3.

<sup>507</sup> „Viešai ir griežčiausiai smerkiu savo buvimą pas tautininkus. Buvusių tautininkų žodis“, *Tiesa*, 1940 06 28, No. 8, p. 2.

the system of criminal prosecution, would surely experience a shortage of educated personnel.

The press also informed society about what actions would be regarded as criminal ones in the new social order; for instance, any kind of criticism of the Communist Party, its leaders, and the Soviet administration<sup>508</sup>. Thus, a new system of norms and a new image of deviance were started to be formulated and embedded.

The factor of social control was highlighted in this discourse. As the newspaper "Liaudies balsas" wrote, even the people who tried to spread the ideas close to the communist ideology in public would be repressed, if they did that without informing the Soviet institutions<sup>509</sup>: "*on the whole people, any "working person" now is able and must talk through the new [communist-M.K.] organizations*"<sup>510</sup>.

From the beginning of the first Soviet occupation to the early 1950s the Lithuanian press created a picture of the ideology-driven reality full of various class enemies and traitors<sup>511</sup>. Day in day out, again and again society was warned to be very careful and not to let anyone considered to be the enemy of the people, a member of the "fifth column" inside the newly-created Soviet institutions or the structures of the government<sup>512</sup>.

In 1940-1941 the focus was already given on the "former people" and criminalization of the "class enemy" was already practiced. One tendency can be singled out noticed here: the construction of the association between the "class enemy" and the "criminal-type" criminal. Examples of the people, who fitted into the Soviet definition of the class enemy were taken and described using criminological rhetorical forms (which usually were used to define "common", non-political crimes).

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<sup>508</sup> Karys Z. K., „Kariškio žodis (laiškas iš kariuomenės)“, *Tiesa*, 1940 06 28, No. 8, p. 3.

<sup>509</sup> „Kas yra tie slapukai? Kurie nedrįsta susitikti su buv. politkaliniais?“, *Liaudies balsas*, 1940 06 24, No. 4, p. 2

<sup>510</sup> „Darbo frontas ar darbo priešų frontas?“, *Liaudies balsas*, 1940 06 24, No. 4, p. 3.

<sup>511</sup> *Kas yra tie slapukai? Kurie nedrįsta susitikti su buv. politkaliniais?*, p. 2

<sup>512</sup> Darbininkas, „Daugiau budrumo kuriant miliciją“, *Tiesa*, 1940 06 29, No. 9, p. 2.

In this way a discourse created the impression that usual criminality and political one were phenomena of the same origin. It cannot be treated, however, as attempts to “criminalize” political criminality, or vice versa, to “politicize” the criminal one: ideology still produced the constructed reality in which the criminal and political types of crime had different positions in the Soviet moral and legal hierarchy.

Hence, these tendencies were sooner a way to affect the newly occupied society: to put familiar semantic forms, rhetoric figures of the moral evil into the new ideological context in order to provoke a negative reaction of the public to these new symbols of social and moral problems.

For instance, the *Tiesa* used these rhetorical figures in 1940 when writing about one rich man Adomas Drabatas, the owner of a manor. According to the article, he did not only fight against the Red Army but also hid anti-Soviet literature and beat and exploited the workers of his manor. The article wrote that the process of criminal prosecution was started against Drabatas. His social origin lay in the classic Bolshevik and even Marxist ideology of the enemy, therefore he was chosen as an example to illustrate the Marxist-Leninist ideological premise that all rich capitalists or the bourgeois elite were also criminals by origin and nature<sup>513</sup>.

The press shaped the opinion that the need to fight with criminals defined as the “class enemy” came from below – from society, and was not inspired by the communist administration only<sup>514</sup>. The Soviets really attempted to affect society and make it hostile to the “class enemy”. Therefore hatred was incited against the class enemy in the public discourse, for instance, by printing the biographies of the former Lithuanian politicians, the speaker of the Seimas Konstantinas Šakenis, and the Minister of the

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<sup>513</sup> „Liaudies priešą teismui“, *Tiesa*, 1940 01 05, No. 4 (178), p. 10.

<sup>514</sup> „Šiaulių darbo žmonių mitingas, Sutramdyti liaudies priešus“, *Tiesa*, 1940 07 01, No. 10, p. 4; „Priešai nesnaudžia“, *Tiesa*, 1940 07 03, No. 12, p. 2., K., „Budėkime kol fašistų likučiai neišrauti“, *Tiesa*, 1940 07 05, No. 14 p. 4.

Interior Julijus Čaplikas. Both were depicted in a highly negative light as corrupted criminals<sup>515</sup>.

Criminalization of the violation of production norms also came into the discourse. The press claimed that it was necessary to punish such “criminals”. For instance, information was disseminated that the Supreme Soviet of the USSR had instructed the Public Prosecutor Office to initiate a number of criminal cases against directors, chief engineers and heads of technical control offices because the production of their enterprises violated general Soviet standards of mass production and was of lower quality than required<sup>516</sup>. These criminalization tendencies could be explained as the introduction of planned economy and the attempts to organize industrialization.

During the second Soviet occupation, criminalization of the “kulaks” became extremely significant in the press. In 1949 the First Secretary of the Lithuanian Communist Party Antanas Sniečkus publicly expressed joy related to the fact that Lithuanian peasants were successfully mobilized in the fight “against the kulaks”<sup>517</sup>. He expressed hope that this led to a successful end of the collectivization process<sup>518</sup>.

A profound change in the discourse brought about by the second Soviet occupation was a new definition of the enemy – the “German bourgeois nationalist”. This definition came directly from the context of the Second World War<sup>519</sup>.

The plot and image of victory, as well as the topic of the “German as an enemy” were common in the post-War press<sup>520</sup> and the public discourse<sup>521</sup>. Right after the war Germany and the Germans were depicted as a country and the people responsible for any negative outcomes of the war, and for the war

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<sup>515</sup> „Tautos atstovų galerija“, *Tiesa*, 1940 06 29, No. 9, p. 2.

<sup>516</sup> „Baustini nusikaltėliai ir apsileidėliai“, *Tiesa*, 1940 08 01, No. 40, p. 3.

<sup>517</sup> „Lietuvos KP(b) centro komiteto ataskaita. Lietuvos KP (b) CK sekretoriaus drg. A. Sniečkaus pranešimas“, *Tiesa*, 1949 02 17, No 39 (1792), p. 1.

<sup>518</sup> *Ibidem*, p. 4.

<sup>519</sup> Nerijus Šepetys, *Molotovo-Ribentropo paktas ir Lietuva, teorinės, istoriografinės ir istorinės problemos*, Vilnius, 2002, p. 195.

<sup>520</sup> *Tiesa*, 1945 05 09, Nr. 106 (636).

<sup>521</sup> Viktoras Janušas, „Padėdamas frontui atkeršysiu vokiškiems grobikams“, *Tiesa*, 1945 04 03, No. 76 (606), p. 3.

crimes too<sup>522</sup>. The press, in general, did not avoid printing articles about the War criminals related to the Nazi dictatorship, their arrest and trials in the countries outside the USSR<sup>523</sup>. Such topics as revenge on the perpetrators and the restoration of international justice became more and more common<sup>524</sup>. These tendencies could have also been related to the attempts made by the Soviets to play a significant international role in international legal processes and in the creation of a new post-war legal order, which revealed itself, first of all, in the international tribunals against the Nazi war criminals.

However, the invaders of Lithuania, Nazi Germany and its officials, were depicted not only as extremely negative because of their Nazi ideology, their role in the war crimes committed and because of their being enemies of the Soviet Union but also, as the press wrote, because they were “thieves”, “burglars”, and “plunderers”<sup>525</sup>. Thus, the tendency to use the “criminal” arguments and symbolic rhetorical forms to depict the political enemies was clear there too.

During the years of the first Soviet occupation of Lithuania already, the discourse on economic crimes appeared in the press. For instance, the article of 1940 published in the *Tiesa*, which declared “war with speculators”<sup>526</sup>. In the same year it was also reported that many people were punished for different various crimes committed, “including speculation”. The article also showed that punishments for speculating at that time were relatively scarce<sup>527</sup>. This could be accounted for by the fact that private trading activities were still legally carried out in 1940-1941.

During the second Soviet occupation the depiction of plunderers and thieves of state property as “enemies” became common in the public discourse. It was stressed that such criminals deserved the most severe

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<sup>522</sup> A. Liepinis, „Plaukia nauji kadrai į sostinę Vilnių“, *Tiesa*, 1945 04 04, No. 77(607), p. 3.

<sup>523</sup> „Užsienio kronika“, *Tiesa*, 1945 04 05, No. 78 (608), p. 4; „Rumunijoje suimami fašistiniai nusikaltėliai“, *Tiesa*, 1945 04 06, No. 79 (609), p. 4.

„Rūsčioji sąskaita“, *Tiesa*, 1945 04 07, No. 80 (610), p. 1.

<sup>525</sup> „Bus teisiamas Graikų karininkas Atėnuose“, *Tiesa*, 1945 05 16, No. 112 (642), p. 4; Rūsčioji sąskaita, *Tiesa*, 1945 04 07, No. 80 (610), p. 1.

<sup>526</sup> „Skelbkime kovą spekuliantams“, *Tiesa*, 1940 07 03, No. 12, p. 3.

<sup>527</sup> „Nubausti nesąžiningi prekybininkai“, *Tiesa*, 1940 08 21, No. 58, p. 8.

punishment. For instance, the death penalty was considered to be the most appropriate punishment. It was also underlined that in case of plundering of state property crimes had to be given extensive coverage in the mass media<sup>528</sup>.

Here it is worth mentioning that plundering related exceptionally to state property was a crime highly characteristic of the Soviet Union (on many levels: laws, legal practices, and existing types of criminal behaviour and, of course, the public discourse). This crime was treated as one of the most serious ones. Legally plundering was not defined in the Code but by the Decree of the Central Executive Committee and the Council of People's Commissars of 7 August 1932<sup>529</sup>. Hence, the crime called “plundering” (“grobimas”) meant plundering of state rather than personal property in the LSSR and USSR.

“Saboteur” was another definition and a symbol of a very dangerous criminal<sup>530</sup>. The imaginary acts of the so-called “saboteurs” in Soviet propaganda became an explanation of why processes of industrialization and collectivization were not productive and successful in all cases. According to Stalinist logic, the communist system, planned economy and modernization were designed in a perfect way, even the technical side was really brilliant; Soviet Russia was depicted as the most economically and technologically advanced and progressive state in the world with the most rapid evolution of the society and technological progress. Therefore some shortages of Soviet technology, problems or failure in the system of planned economy could not be explained otherwise than by malicious and hostile actions taken of the enemy<sup>531</sup>.

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<sup>528</sup> J. Bielka, „Griežtai kovokime su visuomeninio socialistinio turto grobimu“, *Tiesa*, 1945 04 07, No 80 (610), p. 2.

<sup>529</sup> „Centrinio vykdomojo komiteto ir liaudies komisarų tarybos nutarimas dėl valstybinių įmonių, kolektyvinių ūkių ir kooperatyvų turto apsaugos ir visuomeninės (socialistinės) nuosavybės sustiprinimo“, *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, pp. 127-130.

<sup>530</sup> A. Marganavičius, „Kenkimas ar politinis aklumas“, *Tiesa*, 1948 01 15, No 12 (1455), p. 2; „Iš nepaskelbtų laiškų „Tiesai“, *Tiesa*, 1948 05 26, No. 123 (1566), p. 3.

<sup>531</sup> „Apsileidimas ar kenkimas?“, *Tiesa*, 1946 01 04, No 3 (837), p. 3.

The press urged the people to punish “saboteurs” by “*using utmost strictness of Soviet laws*”<sup>532</sup>. This was done together with the construction of a positive antipode to such a criminal, the winner of the “socialist competition” (to be more precise the term “socialist emulation” can be used here, because according to the Soviet ideology, a competition as such could exist only in the capitalist world), the so-called “stachanovietis” in Lithuanian<sup>533</sup>.

The requirement to take legal actions against “saboteurs”, which was common during the first Soviet occupation already, continued to be imposed after the second occupation too<sup>534</sup>. The discourse of the “socialist competition” was continued together with criminalization of these people who failed to keep to the highest possible norms of production<sup>535</sup>.

A worker, who balances very close to the limit of his physical abilities in order to keep to or exceed the norms of production, came close to the Soviet ideal type. His antipode, i.e. a violator of the norms, was a person who did harm to or impeded the production process on purpose and those who failed to work hard, were lazy or made no attempts to increase production (taking due care about the production process and work itself was understood as the building of communism).

As mentioned above, the need to justify the production process that was not always effective could be explained as a result of deliberate wrecking. Therefore the press was full of images of those who hindered the process of socialist contests: plunderers of state property, saboteurs. The portraits of the winners of socialist contests within five-year plan periods were shown in the press next to the portraits plunderers and information about them, thus

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<sup>532</sup> „Nepastabūs registratoriai“, *Tiesa*, 1948 02 05, No 29 (1472), p 3.

<sup>533</sup> „Pirmieji stachanoviečiai Tarybų Lietuvoje“, *Tiesa*, 1940 08 30, Nr. 67, p. 6.

<sup>534</sup> „Nepastabūs registratoriai“, *Tiesa*, 1948 02 05, No 29 (1472), p 3.

<sup>535</sup> A. Butkus, „Išvystyti socialistines lenktynes kaime“, *Tiesa*, 1945 04 06, Nr. 79 (609), p. 3.



highlighting contrast between the ideal character and the violator of the norm<sup>536</sup>.

Also, during the second Soviet occupation the crimes, which are treated as corruption today (the term itself did not exist at that time), were brought to the public's attention. For instance, the *Tiesa* announced about the cases of cheating while measuring the land and trying to divide the "kulak farms" when registering them. Such tactics was used in order to register only a part of the property of two farmers to make it look smaller than it really was and thus avoid being labelled "kulaks". The need to start a criminal prosecution against the officers responsible for such cheating was emphasised in the article<sup>537</sup>.

There were also numerous cases when motives for committing other kinds of crimes, for instance, acts of plundering, were explained as the outcome or a trait of the social origin, that is being a kulak<sup>538</sup>. This attitude was expressed by J. Bielka, the Chairman of the LSSR Supreme Court when he appealed to the Soviet citizens encouraging them to "fight" with plundering, and based his arguments on the Soviet Constitution: "*the societies' socialist property is a sacred and unshakeable background of the Soviet structure, the source of homelands' wealth and power*", therefore the people, who intend to plunder or do any harm to this property, according to Bileika, were "*the peoples' enemies*"<sup>539</sup>. The fact that such a high officer of the LSSR system of criminal prosecution participated in the public construction of the concept of an economic crime testifies to the importance of this kind of criminality in the post-war Soviet ideology in occupied Lithuania.

Bielka saw the roots of plundering in the "German fascist state". People who committed those crimes were depicted as "bourgeois nationalists" who after the Revolution and Lithuania's occupation became powerless and tired of

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<sup>536</sup> P. Šermukšnis, „Tarybinio Kauno pasididžiavimas“, *Tiesa*, 1948 01 16, No. 13 (1456), p. 3.

<sup>537</sup> R. Šermukšnis, „Buožių globėjai“, *Tiesa*, 1948 03 26, No. 72 (1515), p. 3.

<sup>538</sup> Janina Malcienė, „Tarybų valdžia – mūsų valdžia“, *Tiesa*, 1945 04 03, No. 76 (606), p. 3.

<sup>539</sup> J. Bielka, „Griežtai kovokime su visuomeninio socialistinio turto grobimu“, *Tiesa*, 1945 04 07, No. 80 (610), p. 2.

an active fight and confrontation, therefore, according to Bielka, they did harm to the Soviet state in an indirect way by posing a threat to Soviet economy<sup>540</sup>.

This construction of the image reveals two important aspects. First, the economic crime in case of plundering was linked with the concept of enemy and with political criminality in the post-war LSSR, at least in ideology and the public discourse. It was not “criminal-type” criminality and not a separate type, as in the Penal Code. Second, the image of a political criminal acting in an indirect way only (not overthrowing the government but just doing harm to the economy) had to demonstrate that the Soviet system was already close to a complete victory and that the open fight was over, even though the class struggle was still going on (the discourse, which, as mentioned above, was spread in the USSR after the adoption of the Constitution of 1936).

In the same article by Bielka law was shown to be the best means to fight with plundering; for instance, using the law of 7 August 1932, which specified execution by shooting as the most appropriate penalty for that crime. The system of criminal justice in the text was encouraged to fight with these crimes more actively and to criticize too light penalties imposed by People’s Courts, which, according to Bielka, were abolished by the Supreme Court. Bielka also wrote that the Supreme Court had reviewed such cases and reclassified the charges according to said law of 1932<sup>541</sup>. Here we can detect the pattern of the “restoration of law” period and Vyshinsky-kind thinking that law and the legal means, actually, mattered in dealing with criminality.

Bielka’s article shows clearly that the public discourse spread information not only about strictness and severity of the punishment for an economic crime but also about the need for an immediate execution of the sentence. Bielka wrote that the punishment would not achieve its goal if it was not carried out soon after the verdict had been announced. He also emphasized the need to make public trials of the people accused of economic crimes for

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<sup>540</sup> *Ibidem*

<sup>541</sup> *Ibidem.*

which severe punishments were imposed and to give them wide press coverage<sup>542</sup>. A didactic function was important here.

Labour unions and the whole society were encouraged to “fight” with plundering of state property and to educate its members about the harm done and the consequences of such crimes<sup>543</sup>.

As has already been mentioned, “wrecking” (in Lithuanian “diversija”) and “sabotage” were seen as two other crimes possible to be depicted in public sphere. During the second Soviet occupation the discourse changed – these crimes, which were seen as relatively mild violations of law during the period of 1940-1941, after the war were attributed to the category of much more serious crimes and were related to the discourse of the class enemy. For instance, such terms as “the bourgeois saboteur” came into being<sup>544</sup>. Hence, one more proof that the spectre of politicized criminal activities was increased after World War II can be detected here.

There were more cases of politicizing economic failures. For instance, in one article of 1946, the *Tiesa* tried to find out the cause of a bad economic situation on one inefficiently-functioning Soviet farm: omission, neglect, wrecking or sabotage<sup>545</sup>. *Tiesa* in 1948 was criticising the newspaper *Soviet Lithuania* for not making public some “saboteur” from Kaunas district forest industry. According to that article, “to punish these bourgeois saboteurs using all strictness of Soviet laws” was necessary<sup>546</sup>.

Three aspects can be discerned here: 1) the growing necessity of the **legal means** in dealing with the “class enemy”; 2) linking the economic crime with the discourse of the enemy and thus bringing it closer to **political**-type criminality; 3) the **educational role** of the Stalinist law and its best method, the publicity (extreme cases of which was organizing show trials, which never took place in the LSSR in their pure form).

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<sup>542</sup> *Ibidem*, p. 2.

<sup>543</sup> *Ibidem*, p. 2.

<sup>544</sup> A. Marganavičius, „Kenkimas ar politinis aklumas“, *Tiesa*, 1948 01 15, No. 12 (1455), p. 2; *Tiesa*, „Iš nepaskelbtų laiškų „Tiesai“, *Tiesa*, 1948 05 26, No. 123 (1566), p. 3.

<sup>545</sup> „Apsileidimas ar kenkimas?“, *Tiesa*, 1946 01 04, No. 3 (837), p. 3.

<sup>546</sup> „Nepastabūs registratoriai“, *Tiesa*, 1948 02 05, No. 29 (1472), p. 3.

The prominence of the image of the economic crime in the public discourse and Soviet propaganda during the second Soviet occupation (before the mid-1950s) could be seen in the Soviet system's needs to accomplish fast industrialization and collectivization. An announcement that the implementation of the first five-year plan was successfully completed, that Lithuanian industry was developing in a positive way and with great progress, that the "*triumph of the Marxist-Lenin's ideas*" had already been scored and that the "*total denunciation of the anti-people bourgeois nationalism*"<sup>547</sup> was made at the 6th Congress of the Lithuanian Communist Party.

These statements were far from true as Lithuanian armed resistance was still going on. However, in 1949 the leader of the Lithuanian Communist Party Antanas Sniečkus expressed the joy that the final blow had been delivered on the "*bourgeois nationalist ideology*", the criminal and hostile "*Catholic clergy*", and that the peasants were "*mobilized for the fight against the kulaks*"<sup>548</sup>. Now "*the victory in the construction of the collective farms*" and the aim of the industry to fulfil the first five-year plan ahead of time were announced as the major goals of the regime, as well as the attempts to destroy the remnants of the "*bourgeois-nationalist ideology*"<sup>549</sup>.

After the 1950s any type of crime and punishment was rarely covered in the press. The *Tiesa* wrote mainly about socialist competitions, achievements in planned economy, industry and agriculture, problems and obstacles posed in the way of a successful realization of the plans<sup>550</sup>. However, since the collectivization was still going on, from time to time the need for the "*fight against the kulaks*" was stressed even during that period. The "Kulak" was referred to not only as the "*enemy of the collectivization*" but also as the

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<sup>547</sup> „Lietuvos KP(b) centro komiteto ataskaita. Lietuvos KP (b) CK sekretoriaus drg. A. Sniečkaus pranešimas“, *Tiesa*, 1949 02 18, No. 40 (1793), p. 4.

<sup>548</sup> *Ibidem*, p. 1.

<sup>549</sup> *Ibidem*, p. 4.

<sup>550</sup> „Trumpiausiu laiku įvykdykime privalomuosius pristatymus valstybei“, *Tiesa*, 1950 10 08, No. 239 (2300), p. 3; „Į naujus laimėjimus“, *Tiesa*, 1950 10 10, No. 240 (2301), p. 1, 2., P. Variakojis, „Gerai parengti pastatus gyvulių žiemojimui“, *Tiesa*, 1950 10 11, No. 241 (2302), p. 3; „Pasiėkime aukštą visuomeninių gyvulių produktyvumą. Melžėjų pasitarimas Joniškėlio tarybiniam ūkyje“, *Tiesa*, 1950 10 12, No. 242 (2303).

“*enemy of the Lithuanian nation*”<sup>551</sup> without elucidating what this term meant exactly and which qualities this concept encompassed.

It is interesting to note that the need to “*invoke revolutionary watchfulness of the Party’s organizations*” was still sometimes mentioned. The revolutionary discourse still existed in the sphere of the definition of crime and punishment though it was not so strong anymore<sup>552</sup>.

The famous scholar from the Faculty of Law of the Vilnius University Juozas Bulavas also joined the public discourse and demonstrated joy in the press that a “*full victory of socialism in Soviet Lithuania*” had already been reached but stressed that the need to fight with the “*remnants of Capitalism*” in “*people’s consciousness*” still existed. The bourgeois nationalists, though no longer resisting openly, were still trying to “*spread their rotten attitudes*” and ideology among the people and to intoxicate people’s hearts and minds<sup>553</sup>.

Economic criminality sometimes still appeared in the press in the early 1950 and was linked to political criminality. The press complained about production, spoilages and difficulties encountered in the production process blaming the “*former kulaks*”<sup>554</sup> for all that.

Topics about cases of malpractice in the agricultural sector were also common in the 1950s<sup>555</sup>. The press reported about plundering of state property too<sup>556</sup>.

Purelypolitical crimes directed against the state, which were not linked with economic crimes, were usually depicted as happening outside the USSR, in the territories of the other countries of the Eastern Bloc, thus broadening the gap between political criminality and the local context. This was done to divert people’s attention from another acute problem that the Soviet government encountered in the LSSR at that time, namely, a partisan resistance movement.

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<sup>551</sup> „Buožija – pikčiausias kolektyvinių ūkių santvarkos priešas“, *Tiesa*, 1949 03 30, No. 74 (1827), p. 3.

<sup>552</sup> *Ibidem*.

<sup>553</sup> „Buržuazinio nacionalizmo krachas“, *Tiesa*, 1953 01 11, No. 9 (2992), p. 2.

<sup>554</sup> *I naujus laimėjimus*, p. 1, 2.

<sup>555</sup> M. Strazdas, „Partinis vadovavimas socialistiniam lenktyniavimui“, *Tiesa*, 1950 10 11, No. 241 (2302), p. 2.

<sup>556</sup> M. Vytėnas, „Nešvankus biznis“, *Tiesa*, 1953 03 01, No. 51 (3034), p. 2.

For instance, the press reported about the judgment passed by the state court in Czechoslovakia against the group who committed “*a number of terrorist attacks against the authorities*” and were in contact with the American secret service<sup>557</sup>.

It is important to mention that around this period (the late 1940s – the early 1950) the public discourse changed – a new concept of the enemy was integrated, associated with the United States of America<sup>558</sup>. In 1948 Germany was still depicted as the great enemy<sup>559</sup> but the anti-American discourse already appeared from time to time<sup>560</sup>. In later years it became more and more common. A new definition of a criminal, a person who performed actions of espionage for the USA caught the eye of Soviet propagandists and became a part of the content of the mass media in the LSSR<sup>561</sup>.

The press also reported about the war crimes committed by the Americans in Korea: the use of biological weapons<sup>562</sup>, American soldiers raping 10-15 years old girls, beating, injuring, and stealing from the local people<sup>563</sup> and other “terrible crimes”<sup>564</sup>. The public criminological discourse was also full of cases of various crimes committed in other capitalist, including former fascist countries, for example, cases of corruption in Italy<sup>565</sup>.

Alongside these new images of crime some older tendencies were continued; for instance, the positive image of “*socialist justice*” and the Soviet system of criminal prosecution was contrasted with the penal system of

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<sup>557</sup> „Nuosprendis teroristinei grupei Čekoslovakijoje“, *Tiesa*, 1950 10 04, No. 235 (2296), p. 4.

<sup>558</sup> „Amerikiečių interventų žvėriškumai Korėjoje“, *Tiesa*, 1950 10 10, No. 240 (2301), p. 4.

<sup>559</sup> Jonas Šimkus, „Šviesus kelias“, *Tiesa*, 1948 01 18, No. 15 (1458), p. 2.

<sup>560</sup> „Pasibaigė „Pažangiųjų Amerikos piliečių“ suvažiavimas“, *Tiesa*, 1948 01 22, No. 18 (1461), p. 4.

<sup>561</sup> „Šnipų organizacijos procese Lenkijoje“, *Tiesa*, 1953 01 29, No. 24 (3007), p. 4.

<sup>562</sup> „Amerikiniai barbarai tebenaudoja Korėjoje bakteriologinį ginklą“, *Tiesa*, 1953 01 30, No. 25 (3008), p. 4.

<sup>563</sup> „Amerikos karių chuliganiški veiksmai Vakarų Vokietijoje“, *Tiesa*, 1953 03 05, No. 54 (3037), p. 4.

<sup>564</sup> „Neįmanoma nuslėpti siaubingus amerikinių agresorių nusikaltimus“, *Tiesa*, 1953 03 05, No. 54 (3037), p. 4.

<sup>565</sup> „Korupcija Italijos vyriausybėje partijoje“, *Tiesa*, 1953 02 07, No. 32 (3015), p. 3.

“*bourgeois Lithuania*”<sup>566</sup>. The topic of trials against the criminals of World War II was still deal with at the end of the Stalin period<sup>567</sup>.

However, one of the main aspects of the life in post-war Lithuania – armed anti-Soviet resistance – was an extremely rare topic in the press during the whole Stalin period. Contrary to some statements in Lithuanian historiography there were no campaigns of “active propaganda against the Partisan war”<sup>568</sup>, as we can see from the press. There were only few articles devoted to armed resistance in the Stalin period, most of the time the press kept silence. Armed resistance was not an important part of the public discourse.

One case of the trial of partisans accused for killing local inhabitants was published in 1946<sup>569</sup>. Another article, printed in 1948, describes how the head<sup>570</sup> of Miegučiai primary school Vladas Žvirblis was killed by the “*bourgeois nationalist bandits*”; but this crime, according to the text, did not prevent “*the progress of the district*” and did not threaten the Soviet-loyal people”<sup>571</sup>.

It seems that the government of Soviet Lithuania made attempts to avoid writing and talking about the partisan war in the public discourse. In these rare cases when the partisan movement was described it was depicted as individual actions by separate gangs of murderers and robbers, not as organized anti-Soviet opposition. Partisans were portrayed sooner as similar to “*criminal type*” criminals. Sometimes they were also linked to the “*class enemy*” – kulaks. The political level of resistance, however, was completely eliminated. The term “bandit”, which was abstract and blurred, allowed such definitions to be used.

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<sup>566</sup> Ed. Ozarskis, „Prieš terminą įvykdyti stalininio penkmečio planą“, *Tiesa*, 1949 01 09, No. 7 (1760), p. 3.

<sup>567</sup> „Reikalavimas išduoti tarybiniam valdžios organams tris karinius nusikaltėlius“, *Tiesa*, 1949 03 13, No. 60 (1813), p. 4.

<sup>568</sup> Kristina Burinskaitė, *LSSR KGB ideologiniai ir politiniai aspektai 1954-1990 m.*, Vilnius, 2015, p. 119.

<sup>569</sup> „Iš teismo salės“, *Tiesa*, 1946 01 04, No. 3 (837), p. 4.

<sup>570</sup> In Lithuanian a term „vedėjas“ was used.

<sup>571</sup> „Mokykloje, kur dėstė Vladas Žvirblis“, *Tiesa*, 1948 01 11, No. 9 (1452), p. 1.

Another aspect, related to the public discourse in the Soviet Union is practice of “show trials”. It existed from the early stage of the Soviet regime and was spread especially widely in the USSR during the Stalin period. Moscow show trials are classic examples. According to Elizabeth A. Wood, education and propaganda is one of the major goals of classic show trials. Therefore in most communist societies such trials were an important part of the public discourse, and their main aim was not only to strengthen political power of the leader but to acquaint society with the new definition of the political “enemy”. Another important aspect of the show trial is its universality and the mass-scale nature: the information about such trials had to be widespread using all main communication channels of one Soviet republic, or even on the Union level thus seeking to achieve that the greatest possible number of individuals received this kind of information<sup>572</sup>.

Such huge campaigns on a mass scale were never organized in Soviet Lithuania, and the show trial in its pure form never took place there. Trials of the participants in armed resistance during the Stalinism did not receive any attention either due to the regime's desire to conceal this problem showing that the process of colonization in Soviet Lithuania was not as successful as it was expected.

There were some elements of such practice in the public discourse. For instance, in 1946 the book under the title of *Indictment and Conviction in the Proceedings for a German Fascist Invaders' Misdeeds in Latvian, Lithuanian and Estonian SSR Territory* (“*Kaltinamoji išvada ir nuosprendis byloje dėl vokiškųjų fašistinių grobikų piktadarybių Latvijos, Lietuvos ir Estijos TSR teritorijoje*”) was published in the Lithuanian language in the Lithuanian SSR. It described the indictment of the Baltic Military Tribunal for the Nazi war criminals in the Baltic countries. The book published fragments of the trial against the SS and other Nazi officers, all of them of German origin. It also told the readers what terrible crimes those people committed against the

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<sup>572</sup> Elizabeth A. Wood, *Performing Justice—Agitation Trials in Early Soviet Russia*, Ithaca, New York, 2005.



“Soviet citizens”, including such crimes as brutal mass killings of children, burning of villages. Cruelty of the accused ones was described in minute detail<sup>573</sup>.

The court decision that was also printed in said book stated that those people were guilty according to Article 1 of the Decree of the Presidium of the Supreme Soviet of Lithuania adopted on 19 June 1943. The decision was a death penalty by hanging<sup>574</sup>. Another example of literature of this kind was speeches by Rudenko (P. A. Руденко) from the Nurnberg tribunal<sup>575</sup> published in Moscow and available in the Lithuanian SSR too.

The existence of said texts reveals several important facts about the legal order in the post-war Lithuanian SSR: a) there were attempts to use the technique of “show trial” kind propaganda (meaning such elements of it as the *educational role* and *definition of the enemy*, this time, the Nazi or their collaborator); b) processes against the Nazi officers and collaborators in the Lithuanian SSR was a part of the larger campaign carried out in the whole Union; c) the facts of the Nazi crimes and their trials were used by the Soviet public discourse for propaganda purposes.

Hence, the full practice of political show trials invented in the Soviet Russia was never really adopted in the LSSR; even if some of its elements did appear in the public space.

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<sup>573</sup> *Kaltinamoji išvada ir nuosprendis byloje dėl vokiškųjų fašistinių grobikų piktadarybių Latvijos, Lietuvos ir Estijos TSR teritorijoje*, Kaunas: Valstybinė politinės literatūros leidykla, 1946.

<sup>574</sup> *Ibidem.*

<sup>575</sup> *Вступительная речь главного обвинителя от СССР тов. Р.А. Руденко на процессе главных немецких военных преступников в Нюрнберге: 8 февраля 1946 г.*, Москва: Юрическое издательство Министерства юстиции СССР, 1946.

### 3. Rewriting laws, reforming courts: ideal type without changes or local particularities?

After the Soviet occupation in 1940, one of the initial steps taken was the destruction of the Lithuanian legal system. Also, the new concept of crime was started to be formulated: first of all, at the level of ideology followed by the legal theory and practice<sup>576</sup>. Books on Soviet propaganda published in the LSSR stated that the main function of the court and law was “*the organization of a fight against the people’s enemies*”.<sup>577</sup>

Some new laws were adopted. For instance, on 22 October 1940, a decree of the Supreme Court of the LSSR, which criminalized “sabotage” and “destruction of state property”<sup>578</sup>, was issued. On 1 December 1940, the Criminal Code of the RSFSR (of 1926) was adopted in the LSSR. This was made by the Decree On the temporal application of criminal, civil and labour laws of the RSFSR in the territories of Lithuanian, Latvian and Estonian Soviet Socialist Republics of the Presidium of the Supreme Soviet of the USSR of 6 November 1940. It annulled all previous legislation and the legal system<sup>579</sup>.

The adopted criminal code transferred the “material definition of crime” and the principle of analogy to the LSSR<sup>580</sup>. New laws also allowed criminalization of the so-called “former people” to be made. The Decree of the Supreme Soviet of the SSRS On the temporal application of the penal, civil and labour laws in the territories of Lithuanian, Latvian and Estonian Soviet Republics was stated the following:

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<sup>576</sup> *Lietuva 1940 - 1990. Okupuotos Lietuvos istorija*, p. 96.

<sup>577</sup> Perlovas I. D., *Liaudies teismo darbo organizavimas*, Kaunas, 1949, p. 3.

<sup>578</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, Vilnius, 1997, pp. 227-228, 275; Šapoka, *Sovietinės Lietuvos baudžiamosios teisės vertinimas lietuvių teisininkų išeiivių darbuose*, p. 459.

<sup>579</sup> V. Žiemelis, „Lietuvos prokuratūros pertvarkymo į sovietinę prokuratūrą raida 1940-1941 metais“, *Jurisprudencija*, No. 12 (102), 2007, p/ 17-19; Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, p. 224.

<sup>580</sup> *RTFSR Baudžiamasis kodeksas, veikiąs Lietuvos TSR teritorijoje. Oficialus tekstas su pakeitimais 1951 m. liepos 1dienai ir su pastraipsniui susistemintos medžiagos priedu*, Vilnius, 1952, p. 7-8; Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, p. 275.

*“The criminal prosecution for the crimes, committed in the territory of the Lithuania, Latvia and Estonia before the establishment of the Soviet authority, as well as the finishing and handing over files of interrogation and trial, sued by Lithuanian, Latvian and Estonian institutions before the Soviet authority was introduced, shall be implemented according to the codes of the RSFSR”*<sup>581</sup>.

Though in the summer of 1941 Lithuania was occupied by the Nazi Germany, the Criminal Code of the RSFSR was re-established in 1944 and remained in effect till the 1960s.

If after 1944 several new legal norms were adopted by the highest Union power – they had to be and were transferred to the Lithuanian SSR. These were two laws of 1947: the new legal norm of plundering was adopted only on 4 June 1947<sup>582</sup> and the new law strengthening the responsibility for thefts and robberies from individuals (also adopted on 4 June 1947)<sup>583</sup>. Hence, any kind of autonomy in the sphere of legislation was lost, and the Centre took total control of the legislation of the periphery.

There were several other laws of this type adopted on the Union level binding for the LSSR automatically; for instance, the law establishing stricter responsibility for rapes, adopted in 1949<sup>584</sup>.

Similar processes were taking place in the sector of courts: the elimination of the Lithuanian court system and replacing it with the one of “imperial” type. After Lithuania’s occupation, first of all, the employees of courts and professional lawyers and judges of the independent Lithuanian

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<sup>581</sup> „Traukimas baudžiamojon atsakomybèn už nusikaltimus, padarytus Lietuvos, Latvijos ir Estijos teritorijoje iki įvedimo jose tarybinès valdžios, o taip pat pabaigimas ir perdavimas pagal priklausomybę tardymo ir teismo bylų, iškeltų atittinkamų Lietuvos, Latvijos ir Estijos organų iki įvedimo jose Tarybinès valdžios, turi būti vykdomas pagal RTFSR kodeksus.“ *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 6-7.

<sup>582</sup> „TSRS Aukščiausiosios Tarybos Prezidiumo 1947 m. birželio 4 d. įsakas „Dėl baudžiamosios atsakomybès už valstybinio ir visuomeninio turto grobimą“, *RTFSR Baudžiamasis kodeksas veikiąs Lietuvos TSR teritorijoje. Oficialus tekstas su pakeitimais 1951 m. liepos 1diena ir su pastraipsniui susistemintos medžiagos priedu*, p. 125-126.

<sup>583</sup> „TSRS Aukščiausiosios Tarybos Prezidiumo 1947 m. birželio 4 d. įsakas „Dėl piliečių asmeninės nuosavybès apsaugos stiprinimo“, *Ibidem*, p. 126-127.

<sup>584</sup> „TSRS Aukščiausiosios Tarybos Prezidiumo 1949 m. sausio 4 d. įsakas „Dėl sustiprintos baudžiamosios atsakomybès už išžaginimą“, *Ibidem*, p. 141-142.

Republic (1918-1940) were replaced by the new employees; many of them were uneducated but loyal to the communist authorities<sup>585</sup>.

The Lithuanian court system was replaced by the court system of Soviet type. On 30 November 1940, the new decree On the Reform of the Judicial System of Lithuania was issued by the Supreme Council of the LSSR. Following this decree, the Soviet system of courts was developed: people's courts and war tribunals. The Supreme Court of the LSSR, together with the Military Collegium<sup>586</sup>, was founded.

The OSO (the Special Council of the State Security Ministry, NKVD) founded to deal with political crimes was extremely active in the LSSR. It had the right to pass sentences on the accused in his/her absence<sup>587</sup>. The Prosecutor's Office was adjusted to the new system<sup>588</sup>.

The Soviet system of courts, however, was not fully transferred to the territory of occupied Lithuania. For instance, the so-called "district courts" (Lithuanian: *apskričių teismai*), specified in the Constitution of the Lithuanian SSR<sup>589</sup> were not found in the territory of Lithuania in the period of 1940-1941. They were not created due to a lack of trustworthy personnel. Instead the "county courts" (Lithuanian: *apygardų teismai*) inherited from independent Lithuania of 1918-1940 continued functioning (though transformed and changed)<sup>590</sup>.

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<sup>585</sup> Žiemelis., *Lietuvos prokuratūros pertvarkymo į sovietinę prokuratūrą raida 1940 - 1941 metais*, p. 18; Sagatienė, „Sovietinių teismų atkūrimas ir raida Lietuvoje 1944-1956 metais“, *Socialinių mokslų studijos*, No 5 (1), p. 197-198.

<sup>586</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, pp. 242-241.

<sup>587</sup> Juozas Starkauskas, *Čekistinė kariuomenė Lietuvoje 1944–1953 metais: NKVD–MVD–MGB kariuomenė partizaninio karo laikotarpiu*, Vilnius, 1998, p. 387.

<sup>588</sup> Žiemelis, *Lietuvos prokuratūros pertvarkymo į sovietinę prokuratūrą raida 1940 - 1941 metais*, pp. 18-19.

<sup>589</sup> *Lietuvos Tarybų Socialistinės Respublikos Konstitucija (Pagrindinis įstatymas). Su Lietuvos TSR Aukščiausiosios Tarybos II, III ir IV sesijų priimtais pakeitimais ir papildymais*, Kaunas, Valstybinė politinės literatūros leidykla, 1946, pp. 20-21.

<sup>590</sup> Sagatienė, *Sovietiniai bendrosios kompetencijos teismai Lietuvoje 1940-1941 ir 1944-1953 metais*, Doctoral dissertation, Vilnius, 2013, p. 50.

Nor were these “district courts” neither the “county courts”, however, specified in the All Union Constitution of 1936<sup>591</sup>. So the existence of “district courts” in LSSR constitution, absence of “district courts” in the LSSR reality, and the continuing existence of “county courts” was a unique feature of LSSR courts system and therefore it differed from the general model and Soviet “ideal type” of the courts network.

All courts in the LSSR were linked in one hierarchical network of the whole Union defined in the Soviet Constitution<sup>592</sup>. County courts functioned as courts of first instance to deal with “counter-revolution” crimes and some economic crimes. Some civil cases came within their competence too<sup>593</sup>.

Soviet documents issued in the LSSR declared that main tasks of the people’s courts was “to protect the social and state structure of the USSR embodied in the Stalin’s Constitution along with its economic system and socialist property”. The main function of the court and law was defined as “the organization of the fight against the people’s enemies”.<sup>594</sup>

During the second Soviet occupation, from 1944, some cases were within the competence of war tribunals<sup>595</sup>. The process of rebuilding the Soviet court system in the LSSR was renewed and lasted until 1956.

After the reoccupation in 1944, due to a lack of personnel county courts were not re-established<sup>596</sup>. But all other institutions created during the period between 1940 and 1941 were restored<sup>597</sup>.

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<sup>591</sup> *Конституция (Основной закон) Союза Советских Социалистических Республик (утверждена постановлением Чрезвычайного VIII Съезда Советов Союза Советских Социалистических Республик от 5 декабря 1936 г.)*, accessible online: [http://constitution.garant.ru/history/ussr-rsfsr/1936/red\\_1936/3958676/chapter/9/](http://constitution.garant.ru/history/ussr-rsfsr/1936/red_1936/3958676/chapter/9/) [lastvisitedon 1 July 2016]; *Tarybų Socialistinių Respublikų Sąjungos Konstitucija (Pagrindinis įstatymas). Su TSRS Aukščiausiosios Tarybos I, II, III ir VII sesijų priimtais pakeitimais ir papildymais*, Kaunas, 1946, p. 19.

<sup>592</sup> *Ibidem*.

<sup>593</sup> Sagatienė, *Sovietiniai bendrosios kompetencijos teismai Lietuvoje 1940-1941 ir 1944-1953 metais*, p. 50.

<sup>594</sup> Perlovas, *Liaudies teismų darbo organizavimas*, p. 3.

<sup>595</sup> Maksimaitis, Vansevicius, *Lietuvos valstybės istorija*, p. 242.

<sup>596</sup> Sagatienė, *Sovietiniai bendrosios kompetencijos teismai Lietuvoje 1940-1941 ir 1944-1953 metais*, p. 50.

<sup>597</sup> *Idem*, “Sovietinių teismų atkūrimas ir raida Lietuvoje 1944–1956 metais”, *Socialinių Mokslų Studijos / Societal Studies*, 2013, No 5 (1), p. 194.

On 25 October 1944, the Council of People's Commissars of the Lithuanian SSR in Moscow issued the act On Renewing the Activities of the LSSR People's Commissariats and Central Institutions and Recruiting of their Personnel. According to it, the activities of the LSSR People's Commissariat for Justice and the Supreme Court of the LSSR were renewed<sup>598</sup>. There was a plan to create 136 people's courts as the first instance courts and the Supreme Court as the highest court, thus repeating the model of the USSR completely<sup>599</sup>.

It is very important to mention that the courts system in the LSSR was not isolated but joined with the court system of the USSR. The highest court in this hierarchy was outside Lithuania and it was the Supreme Court of the USSR<sup>600</sup>. Hence, the Empire did not only give the court system model to the periphery. The local court system was actually included in the imperial one. The two courts – local and imperial –functioned as one inseparable organism.

Due to a lack of sufficient human resources and ongoing Lithuanian armed resistance only 43 people's courts were formed till the middle of 1945<sup>601</sup>. The majority of judges did not even have a secondary education. In 1953, a system of 112 courts was introduced. The restoration of the Supreme Court was much faster.<sup>602</sup>

Attempts to create 4 “oblast” courts (Vilnius, Kaunas, Šiauliai, Klaipėda) according to the USSR court model the made in the LSSR from 1951 to 1953. These attempts failed due to a lack of highly-qualified judges. These courts were abolished in 1953 together with changes in the

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<sup>598</sup> *Ibidem*, p. 195.

<sup>599</sup> Liakas, A., *Tarybiniai teismai Lietuvoje 1940–1960 metais. Tarybų Lietuvos valstybės ir teisės dvidešimtmetis*, Vilnius, 1960, p. 234.

<sup>600</sup> Sagatienė, *Sovietiniai bendrosios kompetencijos teismai Lietuvoje 1940-1941 ir 1944-1953 metais*.

<sup>601</sup> *The list of employees of the Peoples Courts, 1<sup>st</sup> of June, 1945*, LYA, f. 1771, ap. 8, b. 283, l. 9–10.

<sup>602</sup> Sagatienė, *Sovietinių teismų atkūrimas ir raida Lietuvoje 1944–1956 metais*, pp. 195-196, 198.

administrative division of the LSSR<sup>603</sup> when all four oblasts of the LSSR were dissolved.

Hence, some local peculiarities of the LSSR court system existed. However, Lithuanian SSR courts and other institutions in the sphere of the Soviet criminal justice system were, as specified in the Constitution of the USSR of 1936, included in one system with the USSR and were controlled by the Centre of the Soviet empire.

After the Second World War some cases were investigated by Military Tribunals. The Prosecutor's Office played an important role in this new criminal justice system under construction. As any other institution in the Soviet System, the Prosecutor's Office was also under control of the Communist Party. The Prosecutor's Office was responsible for many steps in the criminal procedure<sup>604</sup>.

The institutions which were responsible for investigations also belonged, at least, officially, within the competence of the Prosecutor's Office: this is a distinctive trait of the Soviet system of criminal prosecution that does not exist in the Western countries<sup>605</sup>. Public prosecutors and interrogators dealt with applications about planned and committed crimes, and if some elements of the offence were found, their task was to present the case to the interrogator or directly to court. The indictment was formulated at this point of a criminal procedure<sup>606</sup>.

As we see, the Prosecutor's Office, at least officially, played a rather significant role in a criminal procedure though the interrogator could also impact a criminal case and had great power in the process of the investigation.

It is important to mention that the described system of the institutions responsible for criminal prosecution in the Lithuanian SSR, was not modified until the declaration of Lithuania's independence in 1990. Though practical

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<sup>603</sup> Sagatienė, *Sovietiniai bendrosios kompetencijos teismai Lietuvoje 1940-1941 ir 1944-1953 metais*, p. 50-51.

<sup>604</sup> Maksimaitis, Vansevicius, *Lietuvos valstybės ir teisės istorija*, p. 242.

<sup>605</sup> In other countries procuracies belong to the judicial authority.

<sup>606</sup> Vidmantas Žiemelis, „Lietuvos prokuratūros pertvarkymo į sovietinę prokuratūrą raida 1940-1941 metais“, *Jurisprudencija*, 12 (102), Vilnius, 2007, 19.

functioning of these institutions varied depending on some new changed that were taking place in the general Soviet system and society, the very technical framework of the institutions remained the same.

Transfer of the Soviet Russia's Criminal Code to the LSSR also meant transfer of specific features of Soviet law and specific forms of organising the process of criminal prosecution. Repressions, which followed the introduction of Soviet laws, testified to that. When the last Prime Minister of the Republic of Lithuania Antanas Merkys was arrested in 1941 (later he was put on trial) and when his family was deported<sup>607</sup> it became clear that even people who did not resist the Soviets in reality could become targets of the Soviet system of criminal prosecution, according to the early after-revolutionary imperial pattern, criminalization of the "former people". It was possible due to the inner logic of Soviet laws guided by the "material definition" of crime and criminality.

Thus, Merkys' example demonstrates that the Soviet concept of *deviance* embraced even these people who did not oppose the Soviet authority but were considered by the regime to have the "potential to oppose". This concept of deviance differed from that embodied in Western legal traditions where people, in order to become deviants, had to violate the social norm<sup>608</sup>. In Soviet reality, the very fact of the existence of some groups of people was a *social norm violation*.

The legal mechanism existed to assure this possibility. The adopted Criminal Code of the RSFSR transferred the "material definition of crime", the "principle of analogy"<sup>609</sup>, collective guilt and other principles of the Soviet criminal law to the Lithuanian SSR<sup>610</sup>.

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<sup>607</sup> Danutė Gailienė, *Traumas Inflicted by the Soviet and Nazi Regimes in Lithuania: Research into the Psychological Aftermath*, p. 24.

<sup>608</sup> Henry, *Social Deviance*, pp. 1-2.

<sup>609</sup> Analogy was defined in the Article No 16 of the Criminal Code. In: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 16.

<sup>610</sup> *RTFSR Baudžiamasis kodeksas, veikiąs Lietuvos TSR teritorijoje*, Vilnius, 1952, p. 7-8; Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, p. 275.



The principle of analogy was embodied in Article 16 of the Code which stated the following: *“If some socially dangerous action is not directly provided for in this Code, the basis of liability for it and the limits are set by applying those Articles of the Code, which define crimes of the most similar type.”*<sup>611</sup>

The principle of “joint responsibility” was embodied in Article 58 (Section 58<sup>1c</sup>)<sup>612</sup>. It stated that if a soldier neglected his duty and fled abroad, his adult family members who, at the time of committing the crime were living together with him, or if the soldier covered the cost of their living, he would be subject to the punishment of a five-year exile<sup>613</sup>. Actually it meant that a tool was created to punish people merely for family ties and kinship – family members could be punished even though they did not know about the crime and were not accomplices.

Hence, the Criminal Code in the LSSR transferred the concept of crime, which existed in the RSFSR and stated that crime was *“any action or omission directed against the Soviet system, or which violated the legal order set by the authority of the Workers and Peasants for the period of transformation to Communism”*<sup>614</sup>.

The new Code also provided the definition of punishment. The term *“the means of social defence”*<sup>615</sup> (*“socialinės gynos priemonė”*) was used in Lithuanian. According to the Criminal Code, there were several kinds of punishment: *“the court trial”*, *“medical”*, or *“medical-pedagogic”* means<sup>616</sup>. The definition of the functions of punishment were as follows: a) to prevent

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<sup>611</sup> „Jei kuris nors visuomenei pavojingas veiksmas šio kodekso tiesiogiai nenumatytas, tai už jį atsakomybės pagrindas ir ribos nustatomi taikantis prie tų kodekso straipsnių, kurie numato panašiausius rūšies atžvilgiu straipsnius“. In: *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, Kaunas: Lietuvos TSR Teisingumo liaudies komisariatas, 1941, p. 16.

<sup>612</sup> *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 36.

<sup>613</sup> *Ibidem.*

<sup>614</sup> „...kiekvienas veiksmas ar neveikimas, nukraiptas prieš Tarybų santvarką arba pažeidžias teisinę tvarką, Darbininkų ir Valstiečių valdžios nustatytą pereinamajam į Komunizmą laikotarpiui.“, *Ibidem.*

<sup>615</sup> The term was defined by the legal school of French jurist and judge Marc Ancel.

<sup>616</sup> *Baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, pp. 12-13.

the persons who violated the law from committing new crimes; b) to affect other, “*undecided*” individuals in society from committing crimes; c) to adapt the people who committed crimes to the living conditions of the communities of the state<sup>617</sup>.

The last description of the functions of penalty was extremely important to our research and revealed the picture of criminality in the Soviet society in the best way – the goal of punishment was “*to adapt the offenders to the conditions of communal living of working people in the state*”<sup>618</sup>. It grounds our argument put forward in Chapter I that in the Soviet Union *people* rather than actions were considered to be deviant or criminal. Therefore repressions were directed, first of all, towards eliminating or isolating people even though some level of the re-education system was created in the Gulags.

#### **4. Process of criminal prosecution in practice**

According to researchers, after the World War II important changes took place in the Soviet system of criminal prosecution on the level of the empire. Firstly, regular courts started to play a greater role in criminalization than did such extrajudicial institutions as the NKVD troikas. Secondly, administrative repressions were reduced and judicial convictions using complete legal procedures began. According to Cadiot and Penter, “criminal law became one of Stalin’s main tools of control in the post-war period”<sup>619</sup>.

In the Lithuanian SSR, however, these tendencies were repeated only partly. Until 1953 criminalization practices in the LSSR reminded the same as in the RSFSR of the period of the Revolution and the Civil War rather than those of the Stalin period. The main focus was given on political crimes. It is true that in most cases courts (military tribunals and others) investigated the crimes (political and other types) in the LSSR. Besides that numerous

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<sup>617</sup> *Ibidem*, p. 13.

<sup>618</sup> „...nusikaltusiems asmenims pritaikyti prie darbo žmonių valstybės bendruomeninio gyvenimo sąlygų“, *Ibidem*, p. 13.

<sup>619</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 166.

deportations were still carried out without any judicial prosecution; they were, as it will be shown later in this Chapter, a part of the *criminalization* process rather than the *population displacement* practice.

The system's focus on political crimes prevailed on the level of practice too. During the first Soviet Occupation (1940-1941) the Soviet authorities were concerned with consolidating their power; therefore criminalization of the "byvshie liudi" took place first. In the 1940s arrests of the members of the former Lithuanian political and social elite started, many of them were shot, deported to the Gulags. This was not an attempt to suppress real opposition; the communist elite of the LSSR did not have any knowledge of it at that time<sup>620</sup>.

In post-revolutionary Soviet Russia, applying the principle of collective guilt, repressions were carried out against the so-called "former people": members of political parties, high officials of the Tsarist administration. Such logic was repeated in all Soviet republics which joined the USSR or were occupied and annexed by force: in Soviet Lithuania, for instance, huge cleansing against the former political elites was conducted just after the occupation.

First of all, the former politicians, who failed to flee abroad, including the already mentioned last Prime Minister of the Republic of Lithuania Antanas Merkys, were arrested. He was arrested on 17 June 1940 and deported together with his family. He was sent to various prisons and in 1952, finally the trial was held in the Vladimir Central Prison. Merkys was sentenced to 25 years imprisonment. The former President of Lithuania Aleksandras Stulginskis met the same destiny. Stulginskis was arrested on 13 June 1941 and deported to Krasnoyarsk district, his trial also took place in 1952, and the sentence was the same – 25 years imprisonment. Juozas Urbšys, the Lithuanian Minister of the Foreign Affairs, was also put into the category of the "former people" and deported to Russia on 17 June 1940 together with his wife<sup>621</sup>.

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<sup>620</sup> Anušauskas *Teroras. 1940 - 1958 m.*, pp. 26-27, 29.

<sup>621</sup> Danutė Gailienė, "Traumas Inflicted by the Soviet and Nazi Regimes in Lithuania: Research into the Psychological Aftermath", in: *Lithuanians and Poles against Communism after 1956. Parallel Ways to Freedom?*, eds.: Małgorzata Stefanowicz, Katarzyna

During the period between 1940 and 1941 people were tried for the illegal crossing of the state border, many cases were initiated against the former policemen and the security staff of the State of Lithuania. At the beginning of the trial all arrested people were accused following Article 58. Only if no confession of having committed the crime was obtained, the NKGB and NKVD investigators tried to apply some other articles. That was possible because of the principle of analogy.

After Lithuania's reoccupation in 1944, the system's focus on political crimes continued. At the 4<sup>th</sup> plenary session of the Central Comity of the Communist Party of Lithuania, which took place on 27-30 December 1944, urgent inducements were declared to imprison or even impose the death penalty on criminals who acted "*acting against the Soviet state*"<sup>622</sup>. Educational and propaganda-orientated brochures of that period also defined the fight with political criminality as the main task of the criminal justice system in the LSSR<sup>623</sup>.

Hence, in 1944 the preparations to criminalize the "former people" continued. The Central Committee of the Lithuanian Communist Party started to collect the data about various organizations, which operated outside Soviet control. The information about the former political parties was treated as especially important. For instance, it was collected in the document *The Paper about Lithuanian Bourgeois Parties*<sup>624</sup>. The following goal was set to this kind of documentation: "*In order to understand the current situation better, to fight more successfully against the ideology of bourgeois nationalists, to understand how the members of all parties of bourgeoisie and petite bourgeoisie fell into*

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Korzeniewska, Adam Mielczark, Monika Kareniauskaitė, Małgorzata Stefanowicz, Vilnius, 2015, p. 24.

<sup>622</sup> *Lietuvos Komunistų Partijos (bolševikų) Centro Komiteto IV plenumas. 1944 m. gruodžio 27 - 30 d.*, (The 4<sup>th</sup> Plenum of the Central Committee of the Lithuanian Communist Party (Bolsheviks). 27<sup>th</sup> - 30<sup>th</sup> of December, 1944), Vilnius, 1945, p. 71, 75, 78.

<sup>623</sup> Žuravliovas D., *Agitatorius – socialistinio lenktyniavimo organizatorius*, Vilnius, 1948; Slepovas L., *Partinio gyvenimo nušvietimas laikraščiuose. Apie kai kuriuos bolševikinės spaudos uždavinius. Paskaitų, skaitytų respublikinių kraštų ir sričių laikraščių redaktorių pasitarime prie VKP(b) CK Propagandos ir agitacijos valdybos sutrumpintos stenogramos*, Vilnius, 1947.

<sup>624</sup> *Pranešimas apie Lietuvos buržuazines partijas*, LYA, f. 1771, ap. 7, b. 88, l. 1-2.

*the morass of the counter-revolutionary attic we should take a look at the history of these parties, take them into their evolution*”<sup>625</sup>.

Thus, the concept “byvšie liudi” still existed in the post-war LSSR. However, the labels “fascist” and “bourgeois nationalist” became even more common in criminal prosecution practice. These two terms were a reflection of the post-war changes in the Soviet ideology where the Nazi or the Fascist was a definition of the enemy. In 1947 mass collectivization, alongside deportations and arrests of “kulaks”, started in the LSSR. The “fascist” and the “bourgeois nationalist”, together with the term “bandit”, were the labels used to define Lithuanian armed resistance too. Arrests of its participants and supporters accounted for largest per cent of political arrests and trials<sup>626</sup>.

The procedures of a criminal prosecution in the Soviet Union and Soviet Lithuania were carried out following the model of the Western countries. John H. Shoemaker described them as follows:

“In general, it may be stated that criminal procedural methods followed in the Soviet Union are similar to those found in the western world. Upon the commission of a criminal act, a formal investigation is conducted to determine if further legal action is required; and if such action is deemed necessary, another governmental agency holds a pre-trial examination and an arraignment. The trial is then held, and if the person is convicted he may be sentenced to incarceration in a penal institution or even given the death penalty.”<sup>627</sup>

Shoemaker also stressed the centralization of the system of criminal prosecution comparing it to that of the United States: “One similarity (...) is that in the United States criminal practice on the federal level, the coordination

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<sup>625</sup> “Kad geriau suprastų dabartinę padėtį, sėkmingiau kovotų prieš buržuazinių nacionalistų ideologiją, kad suprastų, kokių būdu antiliaudiškos kontrrevoliucinės palėpės baloje atsidūrė visų buržuazinių ir smulkiabušržuazinių partijų atstovai – reik mesti žvilgsnį į tų partijų istoriją, paimti jas jų vystymosi eigoje”. In: *Pranešimas apie Lietuvos buržuazines partijas*, LYA, f. 1771, ap. 7, b. 88, l. 1-3, 22.

<sup>626</sup> *Lithuania in 1940-1991: the History of Occupied Lithuania*, A. Anušauskas (ed.), Vilnius, 2015, p. 245-308.

<sup>627</sup> John H. Shoemaker, *The Administration of Criminal Justice in the U.S.S.R.*, Akron Law Review, Vol. 3, Iss. 1, Article 3, 1970, p. 49.

and uniformity essential to reform and efficiency are, as under the Soviet system, under control of the central government.”<sup>628</sup>

In practice the process of investigation and the ideal-type Soviet concept of crime, especially in case of political criminality, manifested itself in the process of the criminal prosecution, investigation and trial. Such patterns were not always included in codes, laws and seemed to have been borrowed from propaganda “instructions” of court work (they will be mentioned later) or as unwritten normative patterns, were developed by their colleagues from the broad Empire.

First of all, the process of investigation and the trial in Soviet Lithuania became the place where the flexible, liquid, obscure, interpretation-open Soviet concept of crime could function as a perfect tool to construct the criminal.

In Soviet Lithuania many books were published containing instructions on how to organize the investigation, on the work of the court and on the whole process of the criminal prosecution. Instructions to the “People’s courts” declared that the judge dealing with every case, first and foremost, was obliged to be “*politically aware*”. The second important rule was to find out which role the “*dimension of a class*” and the “*class background*” of the suspect and victims played in a certain case<sup>629</sup>. So it was ideological categories rather than justice, finding the correct interpretation of evidence or the application of a suitable Article of the Criminal Code that was the most important thing in the court proceedings.

According to that instruction book, a very important task of the judge was “to persuade” the court and “*everyone who participated in the proceedings*” that the decision of the judge was just and fair<sup>630</sup>. Hence, the persuasion that the decision was just and fair rather than taking the just and fair decision was considered to be the most important task of the judge.

The State Security Committee of the Lithuanian SSR was an institution directly involved in the process of criminal prosecution. If in case of “usual”

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<sup>628</sup> *Ibidem*.

<sup>629</sup> Perlovas, *Liaudies teismo darbo organizavimas*, p. 42.

<sup>630</sup> *Ibidem*, 42.

crimes the investigators of “militia” are responsible for the judicial preliminary investigation of the crime and interrogation of the criminal, in case of political crime the interrogators of the NKVD, the MGB, and later the KGB fulfilled that function.

The State Security Committee of the LSSR (NKGB-MGB-KGB) dealt with various cases of political criminality: members of political parties and other people, politically or publicly active in the Republic of Lithuania, the former employees of state institutions, different political and non-political organizations. They all were defined as participants in the counter-revolutionary activities, though the majority of them did not carry out any protest actions. Many of these people were sentenced to death (were shot) and perished in the Gulags. Obviously this was not an attempt to suppress secret anti-communist organizations because the First Secretary of the Lithuanian Communist Party Antanas Sniečkus knew nothing about their existence at that time<sup>631</sup>.

Hence, this logic in dealing with sooner imaginary than real political criminality embodied one basic principle of the Soviet concept of crime – a *replacement of the concept of guilt with the concept of danger to a personality*. Those people were prosecuted not because of *what they had done* but because of *who they were*. Here the concept of a “possible crime”, developed by Arendt seems to be close to reality.

In the period of 1940-1941 the majority of political cases were organized according to the Article 58 of the Soviet Penal Code, which, as we have mentioned above, was used in Soviet Lithuania during the whole Stalin period. Some people were tried for illegal crossing of the state borders. Many cases were against the former policemen and the employees of the Lithuanian State security, and the leaders of the various public organizations. At the beginning all the arrested people were accused according to Article 58. Following an intensive and exhausting investigation, if a criminal did not confess, the investigators of the NKGB and the NKVD tried to apply some

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<sup>631</sup> Anušauskas *Teroras. 1940 - 1958 m.*, pp. 26-27, 29.

other articles<sup>632</sup>. It was possible because of the principle of analogy: if the Penal Code had no Article specifying a criminal act of omission, another similar Article had to be applied. There were political cases which revealed clearly this character of the criminal justice system of Soviet Lithuania. At the beginning of the second Soviet occupation the Catholic Bishop Vincentas Borisevičius was arrested and accused according to Article 58. During the investigation the suspect was even asked questions about his activities in one of the organizations devoted to cultural issues, which was more than two decades ago. The past activities, though carried out at the time when the territory of Lithuania did not belong to the Soviet authority, were treated as evidence of guilt, as well as personal beliefs and attitudes. And these past activities were treated as evidence of a crime despite the fact that during his investigation, and even in public speeches, Borisevičius did not make any political comments or statements about being discontent with the Soviet government, except for the expressed concern about the restrictions of the activities of the Catholic Church<sup>633</sup>.

Borisevičius signed the confession that he had written an open letter to the believers, in which he criticised the Soviet government. Also, he agreed with the fact that he had two books of the “anti-Soviet content” and once met the “bandits”, which meant the participants in a Lithuanian armed anti-Soviet resistance movement in order to support them with a certain amount of food. In court this confession was treated as a proof that the Bishop did not only participate in the movement but also was the leader of the armed resistance troops<sup>634</sup>.

In some paradoxical way, the support of armed anti-Soviet resistance, which was provided only once, was officially named and treated as “organized material help” in the case. Episodic meetings with the participants in the

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<sup>632</sup> *Ibidem*, p. 41, 43.

<sup>633</sup> The copy of original criminal case of Bishop Vincentas Borisevičius, *Lietuvos vyskupai sovietiniame teisme* (the collection of published archival documents), Vilnius, 2000, p. 37, 43.

<sup>634</sup> *Ibidem*, p. 183.



resistance movement were defined not only as participation but also as playing the leading role in the resistance movement of some hypothetical anti-Soviet organization, which did not exist in reality<sup>635</sup>.

V. Borisevičius was convicted and sentenced to death according to Article 58 of the Soviet Penal Code. He was killed by the firing squad. The execution was carried out within 72 hours – that was the period, in which, as the Soviet legal theory announced, the convict might appeal against the court decision. Practically this period was far too short to appeal for commutation of his death sentence<sup>636</sup>.

Thus, as in Borisevičius' case, the concept “byvšie liudi” was sometimes used as an argument in the cases of the people arrested for other reasons. Questions about his activities in one of the organizations which operated more than two decades ago, which were posed to the Bishop<sup>637</sup>, show that past activities of 1946 (carried out when the Soviet legislation did not exist in the territory of Lithuania) were still used as a tool of criminalization.

In the case of “kulaks”, as in Soviet Russia, the following logic described by Applebaum was applied in the LSSR: “nobody ever provided a clear description of what, exactly, a class enemy was supposed to look like”<sup>638</sup>. Hence, the criteria for establishing which farmer was wealthy enough to be regarded as a “kulak”, varied. Deportations of “kulaks” in the LSSR were organized according to the pattern developed in Russia during the period of collectivization: according to the lists, by extra-judicial means. The uncertainty as to who the “kulak” really is was similar to that in Russia in the late 1920s and the early 1930s<sup>639</sup>. Many relatives of the deportees and arrested people during that period did not understand the logic of the Soviet concept of crime – why their beloved ones, not rich, only “*average farmers of the village*”, were

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<sup>635</sup> *Ibidem*, p. 185.

<sup>636</sup> *Ibidem*.

<sup>637</sup> *Ibidem*, p. 37, 43.

<sup>638</sup> Applebaum, *GULAG. A History*, p. 6.

<sup>639</sup> Compare, for instance: O. Adamova-Sliozberg, *My journey: how one woman survived Stalin's gulag*, pp. 5-6.

criminalized and punished<sup>640</sup>. Or why that fate – being arrested, tried or deported “*as criminals*” – befell even those who had “*never belonged to any parties*” and “*did not have real estate or land*”<sup>641</sup>. The citizens wrote complaints about the injustice of the situation to the institutions of the LSSR<sup>642</sup>. These cases illustrate that deportations were carried out by quota, chaotically, without clear criteria for criminalization.

However, due to real armed opposition, which was defeated only in 1953<sup>643</sup>, people were often arrested for real rather than for imaginary political crimes in the LSSR<sup>644</sup>. This is where the difference from Stalinist Russia lies.

Such was Povilas Buzas’s case who really was a participant in armed resistance. In 1946 he was accused according to Article 58 of participating in the “armed gang of bourgeois nationalists”<sup>645</sup>. However, only one feature of the “Stalin-Vyshinsky” reform period was applied in this case: the eliminated difference between a “political” and “criminal” crime. Buzas was accused not only of taking part in armed resistance but also of “robbery of the soviet farm”. This crime was not real and Buzas categorically denied it (he confessed to all the rest).<sup>646</sup>

We can compare this case with the already described one from an ideological discourse – the creation of links between economic and political criminality. Here the opposite line can be seen – the attempts to link a political crime with a criminal one. As we will see in Chapter III of our research, this pattern survived and was used in the trials of dissidents.

Hence, the distinction between political, economic and criminal crimes in the LSSR was not in all cases as clear as in the pre-Vyshinsky Russia. It could be also interpreted as a sign that some aspects of the “restoration of law”

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<sup>640</sup> *The file of deportation*, LYA, f. V-5, ap. 1, b. 24655, l. 74.

<sup>641</sup> *The file of deportation*, LYA, f. V-5, ap. 1, b. 41525, l. 2, 2 a.p.

<sup>642</sup> *The file of deportation*, LYA, f. V-5, ap. 1, b. 21504, l. 54, 64.

<sup>643</sup> *Lithuania in 1940-1991: the History of Occupied Lithuania*, p. 270, 285.

<sup>644</sup> However, it is important to keep in mind that Lithuanian armed resistance was a crime according to the Soviet law, but not according to the international law. See more in: B. Gailius, *Partizanai tada ir šiandien*, Vilnius, 2006.

<sup>645</sup> *The criminal file of Povilas Buzas*, Lithuanian Special Archives, f. K-1, ap. 58, b. 14141, t. 4, l. 17-18.

<sup>646</sup> *Ibidem*.

reform was taken to the colonies. Every time a trial of a political criminal took place, it had to follow legal arguments and procedures, and if the “political” activities were seen as not intense enough to convict a person, new criminal ones had to be added.

Perhaps the most serious argument explaining why such criminalization of a political action was used in the Lithuanian context is the above-mentioned attempts of the regime to conceal the political dimension of the Partisan war; as in the public discourse it was more useful to depict partisans and murderers, thefts and robbers than to highlight their impact on the Lithuanian society as real political opposition. It is also highly important because, as we will see later, Lithuanian armed resistance was tried to shape its own separate – though very limited – legal order as an alternative to the Soviet legislation.

Furthermore, it was not difficult to use this tactics of the partisan “banditisation” because real acts of “criminal-type” crimes were committed indeed and some participants in the Partisan War really became robbers and thieves (it never happened on a large scale though, there were only separate cases).

But the greatest paradox here is the fact that, though criminal files of partisans are full of rhetoric referring to them as “bandits”, Article 59<sup>3</sup> of the Criminal Code<sup>647</sup> defining “banditism” was usually not applied in criminal prosecution of the resistance fighters. Article 58 was usually applied instead.

Such was the case of one of the leaders of Lithuanian armed resistance Adolfas Ramanauskas-Vanagas. A huge file was compiled against him, full of evidence of his crimes. He was termed a “bandit” in that file. But the accusations were formulated according to Article 58<sup>648</sup>. There were other, similar cases of the Lithuanian partisans<sup>649</sup>.

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<sup>647</sup> *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 42.

<sup>648</sup> Adolfo Ramanausko-Vanago tardymo protokolas, 1956 11 13, LYA, f. K-1, ap. 58, b. 44618/3, t. 1, l. 44.

<sup>649</sup> The criminal file of partisan Adolfas Kubilius, 1945 04 30 - 1945 09 13, , f. K-1, ap. 58, b. P-15551, t. 2, l. 210.

One conclusion can be drawn here: Lithuanian partisans were defined as bandits only in the eyes of the public (or, perhaps, they were called like that because the term was common in the language of the Soviet officers). From the legal point of view, however, the Soviet system of criminal prosecution saw them as the pure political criminals and as the most dangerous ones.

Going back to the case of Buzas the following is to be said: after he confessed to being a member of a resistance group, though he defined himself as a passive member only, the Military Tribunal, which was responsible for this case, found him guilty and on 20 March 1947 Buzas was sentenced to 10 years imprisonment<sup>650</sup>.

After the start of the second Soviet occupation some aspects of the situation in Soviet Lithuania differed from the ideal type and model of the Soviet criminal justice system of the “Vyshinsky” period defined in the previous Chapter, though some patterns were the same (the afore-mentioned criminalization of the “former people” for the “possible crime” logic for the potential to commit a crime). The cases of both Borisevičius and Buzas differed from that of Olga Adamova-Sliozberg. In the Lithuanian case, real evidence of oppositional activities existed but they were grossly exaggerated. In the case of Russia and the USSR 1940 people were punished as political criminals, despite the fact that they were supporters rather than opponents of the Soviet regime.

There were also cases (as in the case of the mentioned arrest of the former policemen and other state officers of the Lithuanian Republic) in Soviet Lithuania when the crime was really imaginary. There were also cases (of Vincentas Borisevičius and Povilas Buzas) when the suspects really had some contacts with the anti-Soviet organizations and groups. Even in these cases, however, the interpretation of evidence and application of the Articles of the Soviet Penal Code were flexible. Furthermore, usually the accusations were based not on evidences but on confessions. And even such confessions were interpreted freely, in the manner determined by the Soviet officials and judges.

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<sup>650</sup> Criminal file of Povilas Buzas, LYA, f. K-1, ap. 58, b. 14141, t. 4, l. 17-18.

As in Soviet Russia before World War II, the definition of an “enemy” and a “criminal” varied in the LSSR<sup>651</sup>. However, there were no cases in the post-war LSSR, which reminded us of the situation in the mid-1930s in the RSFSR when loyal communists who had no “bourgeois” or “kulak” or non-Bolshevik past could be recognized as class enemies. The LSSR did not experience cleansing of the Lithuanian Communist Party. In case of Soviet Lithuania most of the trials had different logic, namely, the “criminal” was either a real opponent of the Soviet State or an individual belonging to the “enemy class” category of “kulaks”, “byvšie liudi” and others.

Finally, when talking about crime in the LSSR it is important to mention the fact that the Soviet authorities dealt with non-political crimes too. Many “usual” crimes were investigated by the People’s courts – from the production of home-made vodka<sup>652</sup> to violence or thefts<sup>653</sup>.

One of the cases demonstrating how differently the system functioned in the criminal prosecution and investigation of political, economic and usual criminality, is the case started on 4 September 1949 and ended on 15 June 1954. Janas Izbickas, Vaclovas Izbickas, Juozas Valukonis were accused according Decree On the criminal responsibility for the plundering of the state and public property (*„Dėl baudžiamosios atsakomybės už valstybinio ir visuomeninio turto grobstymą“*) of the Supreme Soviet of USSR of 4 June 1947 and Article 84 of the Criminal Code of the RSFSR. The case went to the People’s Court. The judgment was pronounced on 31 October 1949<sup>654</sup>.

Brothers Izbickai, who, according to the data of the criminal file, moved to Lithuanian from Poland in 1944, were accused of stealing the wall clock from the orphanage in 1947. According to the file, they hid it in the field and later sold it for 120 rubbles. Later the same they stole a steer and sold in the

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<sup>651</sup> Applebaum, *GULAG. A History*, p. 6.

<sup>652</sup> *The criminal file of People’s Court of LSSR, Lithuanian Special Archives*, f. V-145/40, ap. 1, b. 391, l. 1.

<sup>653</sup> *The criminal file of People’s Court of LSSR, Lithuanian Special Archives*, f. V-145/40, ap. 1, b. 2321, l. 11.

<sup>654</sup> *Lazdijų apskrities 1-os apylinkės Liaudies teismo nuosprendis*, 1949 10 31, Izbickij Jan Leonovič ir kitų baudžiamoji byla, 1949 09 04 – 1954 06 15, LYA, f. V-1, b. 3759, l. 214.

market in Kalvarija for 3000 roubles, several other thefts followed<sup>655</sup>. As can be seen from the data in the files, the accusations had no political context and were not related to what was usually considered to be plundering (systematic, continuous stealing of goods or raw materials from a workplace) and reminds us of simple “criminal” thefts<sup>656</sup>.

It seems that the system understood that the crime had more features of a “criminal-type” criminality than political or even economic one; therefore the file went to the Peoples’ court (not, say, to the Supreme Court of Military Tribunals dealing with more politicized cases). This is where the key to the difference between the criminal prosecution of political criminality (or politicized economic offences) and the usual “criminal-type” criminality lies. The system seems to have acted in a much more objective way in the case of “criminal” cases rejecting such practices as criminalization of the “former people”, forced confessions, and, finally, the very “material definition of crime” and “analogy”.

After a scrupulous interrogation and collection of evidence, a court decided that there was sufficient evidence to prove the guilt of brothers Izbickai. But the role of Juozas Valukonis, the third person accused in these crimes, was still considered not proved enough. The court finally decided that “with such great contradictions” (*„esant tokiems dideliems prieštaravimams“*) between Valukonis testimonies collected during the preliminary investigation of the case and the interrogation made by the court, Valukonis was innocent until proven guilty as specified in the said Decree of the Supreme Soviet of USSR of 1947 (Articles 2 and 4). The court found Valukonis responsible for other crime, indicated in the Article 5 of the same Decree<sup>657</sup>.

All three persons were found guilty<sup>658</sup>. However, the story did not end here though it clearly demonstrated how differently the courts of Soviet Lithuania interpreted law in case of political (or politicized) and usual

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<sup>655</sup> *Ibidem*, l. 214-215.

<sup>656</sup> *Ibidem*.

<sup>657</sup> *Ibidem*, l. 215-216.

<sup>658</sup> *Ibidem*, l. 216-217.

criminality. In the first case laws could be interpreted in broad, flexible way, analogy could be used. In the second case, attempts to reach precise and strict adherence to a certain law is seen (even though the correct qualification of the crime and the decision about which law was violated could possibly be subjective or wrong due to a poor education of the investigators and judges).

Valukonis' attorney disagreed with the verdict. He filed a complaint to the Supreme Court of the LSSR. He claimed that Valukonis sentences to 6 years deportation unjustly because he "*did not confess or admit his guilt during the preliminary interrogation and the interrogation in court*"<sup>659</sup> because he testified that during the preliminary and court interrogation he "*did not participate in the thefts of convict Izbickas*" and "*even did not know about them*". Also, the attorney claimed that Jonas Izbickis attested that Valukonis did not participate in any thefts and knew nothing about them, that he did not give money to Valukonis for the sold things and cattle. Also, according to the attorney witness Motiejūnas (who had the status of the victim in this case) had claimed that the certain person who gave him money for the stolen cattle, was not as tall as Valukonis. According to the attorney, the witness Kasiulevičius also declared that the person involved in the crime was shorter than Valukonis. The attorney drew the conclusion, that the person who gave money to Motiejūnas was Jonas Izbickis not Valukonis<sup>660</sup>.

The attorney stated in the complaint that "*Valukonis was innocent*". He asked the Supreme Court to annul the decision and terminate the criminal case for Valukonis<sup>661</sup>. The Supreme Court took a decision on opening the file once again. The Second People's Court of Lazdijai reconsidered the case and on 30

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<sup>659</sup> It is important to note that this statement, the absence of the fact of confession, could not be seen as the serious and just argument from the legal perspective of today.

<sup>660</sup> *Lazdijų apskrities I-os apylinkės Liaudies teismo nuosprendis*, 1949 10 31, Izbickij Jan Leonovič ir kitų baudžiamoji byla, 1949 09 04 – 1954 06 15, LYA, f. V-1, b. 3759, l. 218.

<sup>661</sup> Lazdijų Juridinės Konsultacijos adv. Misiūno St. kasacinis skundas Lietuvos TSR Aukščiausiajam Teismui Juozo Valukonio baudžiamojoje byloje, 1949 11 09, *Ibidem*, l. 218, 218 a.p.

December 1949 Valukonis was acquitted because his crime “*was not proven*” („*kadangi neįrodytas nusikaltimas*“)<sup>662</sup>.

Hence, as we see, that there are several important aspects here. Firstly, the process of investigation and trial was not politicized (though inaccurate due to evidence in some cases). Secondly, the investigation of the proof of his guilt was quite precise (the court itself had doubts as to passing the verdict against Valukonis). Besides, it is evident, that in some cases the institution of attorney functioned quite well in Soviet courts (the practice of writing the complaint to a higher court existed and well-functioned). The possibility for the crime to be reinvestigated and a different verdict passed was quite realistic. Finally, the file reveals the attempts to classify the crime applying the right, correct and exact law or Article of the Penal Code. All these tendencies differed from those present in a criminal prosecution in political cases.

Konstantin Meilun’s case, which was commenced on 30 June 1946 and ended in on 14 May 1952 is even more interesting<sup>663</sup>. At the beginning his accusations were formulated according to the political Articles of the Criminal Code of the RSFSR: 58-1a (the treason of the homeland), and 58-11 and 58-11<sup>664</sup> (organized activity with the intention to do harm to the Soviet State). Hence, the accusations were really serious and highly political. What is more, Meilun was accused of the attempts to kill one of the so-called “defenders of the folk”). The MVD initiated the case and undertook the investigation, as is done in a typical case of political trials<sup>665</sup>.

After the precise investigation of the evidence and the interrogation, however, the decision was taken to commute the accusation from a political to criminal one – to simple murder (Article 136 of the Criminal Code of the

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<sup>662</sup> Lazdijū II Liaudies teismo nuosprendis, 1949 12 30, *Ibidem*, l. 242-243 a.p.

<sup>663</sup> *The MVD decision to apply the measures of remand, 20<sup>th</sup> of June, 1946*, Criminal file of Meilun Konstantin, LYA, f. F. V-1, b. 1739, l. 3.

<sup>664</sup> *RTFSR baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 35, 40.

<sup>665</sup> *The MVD decision to apply t measures of remand, 20 June, 1946*, Criminal file of Meilun Konstantin, LYA, f. F. V-1, b. 1739, l. 3.



RSFSR<sup>666</sup>). After the process of the interrogation and investigation was over, it was declared that there was enough evidence to transfer the file to court –the accusations were formulated according to Article 136 of the Criminal Code of the RSFSR. Consequently, the decision to commute the accusation from a political to criminal one, i.e. to simple murder, was taken<sup>667</sup>.

What did court succeed to reveal and prove? The situation, as one accused person explained it, was as follows: he shot the man while the victim was urging him to register his identity in Joniškis (the convict was a deserter so he did not want to register)<sup>668</sup>. The witness Škilienė Zofija claimed that the accused Meilun had a gun and tried to shoot Ilgevičius. The witness Marijonas Steponavičius explained the situation in the following way: the “bandits” came to him, threatened to kill him, if they refused to them two guns. Therefore, according to Steponavičius, he and Meilun went to a person called Vimuntas and asked him for two guns he had: “*we gave them to the bandits, scared that they will kill us*”. The witness Bronislavas Vimuntas also confirmed that he had found two guns in a forest and kept them at home. Then “*came Steponavičius and Meilūnas and took them without saying anything*”. In this case the attorney, also, participated in the trial<sup>669</sup>.

The court verdict in this case was ten years without any reclassification of the Article of the Criminal Code (the criminal accusation was left)<sup>670</sup>.

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<sup>666</sup> *Decree on the change of the qualification of a crime*, written by Major Berezin of Švenčionys MVD, Criminal file of Meilun Konstantin, LYA, f. V-1, b. 1739, l. 1946 11 04, l. 42.

<sup>667</sup> *Ibidem*.

<sup>668</sup> „Kalt. išvada yra neteisinga. 1944 m. rudenį buvau Švenčionyse ant komisijos. Mane paleido namo ant 5 dienų. Aš į Karo komisariatą daugiau nėjau ir nuo Raudonosios armijos slapsčiaus. 1944 spalio 10 d. aš raitas ant arklio pasivijau pil. Škilienę Sofiją kuri vežė liaudies gynėją Ilgevičių ir liepiau jai grįžti namo. Tuo laiku priėjo Ilgevičius ir liepė man eiti į Joniškį užsiregistruot. Aš kaip dezertyras nenorėjau eiti į Joniškį, išsitraukiau pistoletą sistemos „parebeli“ ir tris kartus šoviau į Ilgevičių. Jis iššliaužė į mišką. Aš parjojau namo, pasiėmiau iš Vimunto šautuvą ir naktį vaikščiojau ginkluotas miške. Paskiau nuvažiavau į Vilnių ir pastojau ant darbo geležinkelio stotyje „Kirtimai“ vyr. Iešmininku.“, The minutes of the trial hearing, The Peoples’ court of Švenčionys district, 1947 02 26, Criminal file of Meilun Konstantin, 1946 11 04, LYA, f. V-1, b. 1739, l. 54, 54 a.p.

<sup>669</sup> *The minutes of the trial hearing, The Peoples’ court of Švenčionys district, Ibidem*, l. 54, 54 a.p.

<sup>670</sup> *The verdict of the Peoples’ court of Švenčionys district, 1947 02 26, Ibidem*, l. 55, 55 a.p.

It is quite evident that if we compare this process with, for instance, Borisevičius' trial, we will see that Meilun's situation was much more serious: he really took a gun from a farmer, and tried to kill a person who worked in the Soviet system and fought against armed resistance, while Borisevičius gave food to the fighters only once. However, the process of Meilun was depoliticized, seriousness of the accusation commuted from the political to criminal one. We should also note that the Article of the Soviet Criminal Code defining the desertion of the army was not applied in Meilun's.

There are some possible explanations why this did happen. Perhaps Meilun had some connections in the system of criminal prosecution and in this way, taking advantage of corruption, managed to get even more serious, hierarchically higher, *political* accusations. Also, in reality Meilun could be not related to resistance, so the Soviet system did not have a goal to declare him political criminal and impose a more severe punishment on him.

However, these are not the most important questions for our research. The most important thing is the fact that the Soviet system of criminal prosecution could be flexible, selective and non-objective in deciding which case should be seen as political and which should be treated as a "criminal-type" offence. Even if all evidence demonstrated that the person could be defined as the "people's enemy", the court could use another kind of definition

So usually the system was not objective in the cases recognized as "political". The confession of the accused was treated as important evidence, and evidence was interpreted so as to prove the crime, no possibility to be acquitted existed, proofs of guilt were exaggerated or even falsified. In case of "criminal" files there was much more objectiveness in the process of interrogation and investigation. Interrogators and judges at least tried to follow the law and legal procedures (which was not always the case even here, sometimes due to a lack of legal education).

It seems that the Soviet system of criminal law could also function in practice – and it did function – as a system, which followed the principle that there was no penalty without the law. However, it always had the *potential* to

“switch on” another kind of legal reality that was closer to the imaginary ideological world than to empirical one (if there only was such a need).

The historiographies’ statements that “in the post-war period most of the prisoners were sent to the Gulag through sentences given in regular courts, not by extraordinary organs like the NKVD *troiki*” and that “the nature of policing and repressions changed after the war from administrative repressions based on “social”, “national” categories to judicial convictions for breach of law”<sup>671</sup> in Lithuania’s case can only partly be confirmed.

It is true that many political prisoners went on “normal” (as it was possible under the Soviet conditions) trials. But old methods of trying a person *in absentia*, without his/her participation, were also applied.

We can find descriptions of such cases in the memoirs of the repressed persons. For instance, the political prisoner Juzė Niunevičiūtė-Čelinskienė was tried by the OSO in this way. Juzė was arrested in 1947. She did not participate in court proceedings, was kept in the prison in Raseiniai, Lithuania. And the trial was carried out in Moscow<sup>672</sup>.

Another aspect of the Soviet legal practice should be mentioned here: the line between legal practices applied to ordinary citizens and to those who belonged to the Communist Party, according to researchers, came into being in the USSR:

“A large number of people (more than one million) were sent to the GULAG by ordinary tribunals under the accusation of the theft of socialist property. Members of the Communist Party constituted a large part among the convicted people though the Party acted at various levels to protect its members from criminal charges.”<sup>673</sup>

According to researchers, “conflict between legal norms” and “social norms defended by the Party” occurred in the USSR. There were many cases when

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<sup>671</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 166.

<sup>672</sup> Juzė Niunevičiūtė-Čelinskienė, „Netoli nukeliavome“, in: *Į mielą šąlį Lietuvą. Tremtinių bėglių ir našlaičių pargabenimo į Lietuvą istorijos*, Vilnius, 2013, p. 25.

<sup>673</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 166.

“the regional leadership of the Party felt rightful to protect” its members from criminal charges and repressions against economic crimes<sup>674</sup>.

On the one hand, after the Great Terror members of the Communist Party members could not be certain that even being loyal to Stalin they will not be accused and convicted as political criminals. On the other hand, however, the Party members (perhaps, in order to protect themselves from Stalin’s power) started to develop the mechanism to safeguard their colleagues from being involved in the main system of criminal prosecution. It seems that (and contemporary Lithuanian historiography confirms this hypothesis<sup>675</sup>) gradually these practices were developed into a notorious system of “party penalties”.

This situation reveals one more difference in the post-war legal order from that of the 1930s in the USSR: the formation of an alternative normative discourse and alternative system of justice in the Communist Party: “the protection of communists from criminal punishments”, the Party’s tendency “to punish its members according to its own procedures”<sup>676</sup>.

The Lithuanian scholar Saulius Grybkauskas noted the tendency of a different concept of laws and rules among the nomenclature. He also detected the existence of the famous “telephone law” in the LSSR and the USSR<sup>677</sup>.

The practise of applying a different law to the Party members, as we will see in the next Chapter, became even more common in the post-Stalinist years: to such a great extent that it could even be fixed in the documents of the Lithuanian Communist Party<sup>678</sup>. Hence, it seems that the Party and society were gradually put under a different legal order in the USSR.

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<sup>674</sup> *Ibidem*.

<sup>675</sup> Ėmužis, *Partinės baismės tarp klientelizmo ir kolektyvizmo sovietų Lietuvoje (XX a. 5-7 deš.)*, pp. 68-85.

<sup>676</sup> *Ibidem*.

<sup>677</sup> See more in: Grybkauskas, *Nomenklatūrinis sovietinės Lietuvos pramonės valdymas: partinės baismės, KGB kompromitavimas ir klientiniai ryšiai*; Ėmužis, *Partinės baismės tarp klientelizmo ir kolektyvizmo sovietų Lietuvoje (XX a. 5-7 deš.)*, pp. 68-85.

<sup>678</sup> See more in: “SSKP CK Partinių organų skyriaus sąjunginėms respublikoms instruktorių A. Ščegelovo ir M. Karpovo 1956 m. rugsėjo 10 d. informacija į SSKP CK apie kadru auklėjimo trūkumus sovietinės Lietuvos partinėje organizacijoje“, *Lietuviškoji nomenklatūra 1956-1990 metais: tarp sovietinės sistemos ir neformalių praktikų, Šaltinių rinkinys*, S. Grybkauskas (ed.), Vilnius, 2015), p. 84-85.

## 5. Lithuanian armed resistance: an alternative system of criminal justice?

Another important aspect that should be discussed when speaking about the Lithuanian SSR during the Stalin period is a Lithuanian partisan war of 1944-1953 and the question of an alternative to the Soviet system of justice, or, at least, some attempts to build it and to offer an alternative to the Soviet concept and definition of crime and criminality.

Without doubt, partisans were treated as the most dangerous criminals by the Soviet system, the ones who betrayed the Soviet “state”. According to the Lithuanian historian and specialist on armed resistance Bernardas Gailius, partisans were accused and convicted according to Article 58 as people who had committed counter-revolutionary crimes, i.e., the most dangerous crimes in the soviet system<sup>679</sup>. From their own point of view (and the point of view of their supporters) members of armed resistance were, on the contrary, the people who had fought to implement real justice obstructed by the Soviet occupation.

However, if we agree with Gailius’ idea that the Partisan war was not opposition to legitimate and sovereign power in the Lithuanian territory but a real war between the occupied Lithuanian State and Soviet Union, and that in 1944 “the relationship between Lithuania and the Soviet Union was already clear (...), Lithuania either as a subject of international law or as a state and society never recognized Soviet actions as legal and obviously was ready to resist aggression”, the conclusion follows that “counterrevolutionary crimes cannot be defined as crimes against the Lithuanian Republic”<sup>680</sup>. If so, such situation occurred:

“If, thinking clearly, there was no revolution, especially “Lithuanian” one; there could have been no counterrevolution either. What is more, at that time war was going on between Lithuania and the USSR, in which the volunteer army made

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<sup>679</sup> Gailius, *Partizanai tada ir šiandien*, p. 72.

<sup>680</sup> *Ibidem*, p. 9, 11 72.

attempts to prevent the occupation administration from taking final control and rule over the occupied territory”<sup>681</sup>.

Therefore, according to Gailius, all kinds of attempts not to let the Soviet authority implement the final victory in the territory of Lithuania should not be interpreted as a crime, but sooner as heroic attempts to safeguard the Lithuanian society, which had expressed its clear position of being against the occupation, and the Partisan war provided concrete evidence of this fact<sup>682</sup>.

As a matter of fact Gailius expressed the position that before the Lithuanian society accepted Soviet power and resisted, it could not accept the system of law and criminal prosecution set by this illegal, occupation power together with the Soviet concept of crime. Gailius expressed the view that Lithuanian armed anti-Soviet opposition, according to Geneva Conventions and international law, could be defined as combatants who were closer to the regular army and did not fit in the definition of the real partisans<sup>683</sup>.

Actually, partisan leaders had expressed very clearly on what legal basis they constructed their system of legality and justice. The so-called Lithuanian Partisans Declaration of 16 February 1949 (signed by the Union of Lithuanian Freedom Fighters) did not only clearly state that the document embodied “*the will of the Lithuanian nation*”, but also pointed to the Universal Declaration of Human Rights (adopted at the United Nations General Assembly in Paris on 10 December 1948), the Atlantic Charter and Truman’s 12 points, which became its legal basis. Moreover, the Declaration of 16 February bore the inscriptions that the “*Union of Lithuanian Freedom Fighters is the highest political institution of the nation during the occupation*”, that Lithuania was a “*democratic Republic*”, that “*the sovereign Lithuanian power belongs to the nation*”. It also defined the institutions, which legally exercised power in the Lithuanian Republic and formed the government, and stated that the government and parliament were formed as a result of democratic

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<sup>681</sup> *Ibidem*, p. 73.

<sup>682</sup> *Ibidem*, p. 73.

<sup>683</sup> *Ibidem*, pp. 30-43.

elections. The Union proclaimed itself to be the supreme political and military authority in Lithuania<sup>684</sup>.

Hence, if partisans, according to international law, were the only sovereign power representing the Lithuanian society, at least until they were beaten by the USSR and resistance came to an end<sup>685</sup> their jurisdiction was not the only one competing with the Soviet legal system but actually it was the only *legal one*. Therefore the concept of crime, defined by partisans, must also be taken into consideration, even though the above-mentioned attitude has still not been scientifically proved and remains in the stage of hypothesis.

Actually, even in case the Lithuanian partisans could not be recognized as legitimate and just legal power and lawful creators of the system of criminal prosecution, their role in constructing an alternative concept of crime and punishment, which affected at least a part of the Lithuanian society during 1944-1953 (and even later because partisans' ideas continued to be implemented in the form of unarmed resistance), must be taken into consideration in carrying out the analysis. These concepts are important to us because they reflect not only attempts to build alternative legal definitions of the crime and punishment but also as the functioning social reality. These definitions are significant because partisans based their activities on them and imagined that were building their own system of courts and criminal prosecution.

Lithuania's occupation was never recognized by the international community *de jure* either. Therefore there are legal reasons to talk about partisan justice as valid even though the territory of Lithuania belonged to the USSR *de facto*. If we assume that a larger part of the Lithuanian society did

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<sup>684</sup> The original of the text available in: *LLKS Tarybos 1949 m. vasario 16 d. Deklaracija ir signatarai*, accesable online: <http://genocid.lt/muziejus/lt/574/a/>, [last visited on 1 February, 2017].

<sup>685</sup> There has been no consensus reached on this issue between Lithuanian social sciences and humanities thus far. The attitude of Bernardas Gailius is opposed by other Lithuanian law specialists, for instance, Justinas Žilinskas. See more in: J. Žilinskas, "Status of members of anti-soviet armed resistance (Partisons' war) of 1944-1953 in Lithuania under international law", *Baltic yearbook of international law*, Lauri Mälksoo, Ineta Ziemele, Dainius Žalimas (eds.), Leiden, 2012, Vol. 11 (2011), pp. 31-66.

not support the occupation, we can surmise that it could not accept and internalize its definition of crime and punishment. Partisans themselves is the best proof of that: though in the eyes of Soviet ideology, law, the government and Soviet legal practices they were regarded as criminals, in the eyes of society (at least a part of it) members of armed resistance were seen as military power defending independence of the country, and later they were treated as victims of Soviet injustice.

Possibly this is the main reason why criminalization and depolitization of partisans were so important to the Soviet authority. This was a way to cut off the societies' support to this alternative system of justice.

As a matter of fact, partisans proposed some alternative to Soviet law and the system of criminal prosecution. In the early stage of the Partisan war, in 1945, the institution of partisan military courts functioned. Partisan documents bear inscriptions stating that participants in the resistance movement were obliged to do their best not to be compared with “bandits” in the eyes of society, and, first and foremost, they themselves had to perceive and internalize this difference<sup>686</sup>.

The following definition of the “real” criminal who was a collaborator of the Soviet system was also proposed:

*“Within three years we tried a variety of fighting techniques. And we found only one thing correct: there is no life for spies in our homeland. Various omnipotent shufflers and foreigners are spies and they must disappear from our homeland. The Lithuanian degenerates who publicly work with the invaders are known and we can be protected [from them-MK]. These are Lithuanian stuffed animals without honour, the invaders stand behind their backs, forcing the megaphone to speak the language of Moscow. Up to now, we have shown a lot of cases of compassion towards secret*

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<sup>686</sup> “Dzūkijos rinktinės štabo parengtos partizanų veiklos taisyklės Ne anksčiau 1945 m. birželio mėn.”, in: *Dzūkijos Partizanų Rinktinės Štabas Laisvės kovos 1944–1953 metais*, sudarė D. Kuodytė D., A. Kašėta, Kaunas, 1996, pp. 139–143.



*spies but they disappointed us by producing new Siberian victims. There will be no more compassion.*”<sup>687</sup>

Hence, from this point of view a criminal was a person who was engaged in the Soviet administration, or collaborated with the Soviet in various ways. The definition quoted shows that a criminal is a person who supports only the occupying power and that he or she seen as an should be eliminated: “*there will be no more mercy*”, unless an “enemy” goes over to partisans<sup>688</sup>.

From this view point the Lithuanian partisan and Soviet concept of a political crime and a criminal, despite a different content, had a similar *form* – he or she is, first of all, *an enemy*. Accordingly, the function of the penalty is the same, namely, to eliminate the enemy. The only difference here is the fact that the enemy of partisans could come over to their side and then he or she would not be eliminated. On the Soviet side no such possibility existed– once you were attributed to the category of an enemy (for instance, as a war prisoner in the territory of Germany) it was hardly possible to remove or delete the label “enemy”.

Serious attempts were made to draw up partisan legislation and to transfer said concept of crime into it. Partisans issued The Criminal Statute of Union of Lithuanian Freedom Fighters (“Lietuvos laisvės kovų sąjūdžio baudžiamasis statutas“). The following definition of the criminality was given there: “*Every person of Lithuanian or foreign nationality who acts against the interests of the Lithuanian nation or by his actions causes particular harm to the spiritual values or material goods of the Lithuanian nation shall be punished.*”<sup>689</sup>”

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<sup>687</sup> Demokratinio lietuvių sąjūdžio vadovybė Okupuota Lietuva, Vilnius [Laisvės šauklys, 1948 02 24, nr. 8.] (Nenugalėtoji Lietuva: Lietuvos partizanų spauda (1944–1949) [sudarė Liekis A.], Vilnius: Valst. leidybos centras, 1995, p. 226–228.)

<sup>688</sup> *Ibidem.*

<sup>689</sup> „*Kiekvienas asmuo, Lietuvos ar svetimos valstybės pilietis, veikęs prieš lietuvių tautos interesus arba savo veiksmais daręs ypatingą žalą lietuvių tautos dvasinėms vertybėms ar materialinėms gėrybėms, yra baužiamas*“, Lietuvos laisvės kovų sąjūdžio baudžiamasis statutas, LYA, f. K-5, ap. 1, b. 220, l. 1.

Only two kinds of penalties were identified: “*warning*” and “*death penalty*”<sup>690</sup>.

The document also defined several types of crimes: most of them were political crimes related to the activities directed against Lithuania’s independence and the Lithuanian nation. Such types of crimes as: spying and surveillance („*šnipinėjimas*“), robberies („*apiplėšimai*“), being an officer of the occupation authority and implementing the means of the occupation („*okupacinės valdžios pareigūnas, žauriai vykdamas okupacinės valdžios priemones, nukreiptas prieš vietos gyventojus*“), those responsible for the denunciation of the Lithuanian citizens who were later repressed, for instance, deported („*įskundinėjęs gyventojus okupacinės valdžios organams, kai dėl jo įskundikmų nemažiau kaip du gyventojai buvo ar yra kalinami ar ištremti*“) were identified. All these crimes were identified as deserving the death penalty unless criminal activities were discontinued after the warning<sup>691</sup>.

It should be noted here that the possibility to avoid punishment, if the activity discontinued, does not fit into the logic of a “possible crime” and the “objective enemy” where the crime is understood as a feature of the personality rather than actual conduct.

Another case of crime was identified among the already mentioned ones – the criminal was seen as the person who “*taking advantage of his state consciously tries to remove national consciousness from the heart of a Lithuanian and to indoctrinate him with the spirit of denationalisation*”. Such a person had to be subject to the death penalty<sup>692</sup>.

What is interesting and important about the above-mentioned case? Firstly, it is a very abstract definition of crime: because a broad variety of actions could be recognized as attempts to “*remove national consciousness from the heart of a Lithuanian*”. Secondly, the very term “*national consciousness*” is abstract and complicated. Thus, this formulation sooner

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<sup>690</sup> *Ibidem.*

<sup>691</sup> *Ibidem.*

<sup>692</sup> „...kas naudodamasis savo padėtimi, sąmoningai stengiasi išrauti iš lietuvio širdies tautinę sąmonę ir įskiepyti jam nutautinimo dvasią“, *Ibidem*, 1. 1.

reminds us of the “material definition of crime” tactics than the objective, a Western way of building legal norms.

It is important to mention that there is one strange circumstance related to the above-mentioned Statute: it has no date and no signatures, though the archive identifies that the file where the Statute was found dated back to 1950. Hence, the document is definitely not the original Statute; it might be its copy or even its version. The original is quite likely to have never been adopted and confirmed.

Even though considerable doubt exists as to the validity of this Statute as a genuine document, the very existence of the mentioned piece is evidence that the participants in armed resistance did not only have and implement their own concept of crime and punishment. The document testifies to the fact that they were considering and preparing the legal basis for the enforcement of their own jurisdiction, which they treated as legal, and which was seen as such from the point of view of international law (even though international law itself still sees many problems related to the legality of the partisan movement and its jurisdiction).

A special kind of court referred to as the “*military field courts*” („*karo lauko teismai*“), the kind of court-martial, was the only way to implement partisan jurisdiction.

It is important to stress that, according to the classic meaning, “military justice is a distinct legal system that is applied to the members of the armed forces and, in some cases, civilians”, however, usually it does not involve all kinds of jurisdiction in a certain territory, just a part of thereof<sup>693</sup>. Hence, it is not surprising that the above-mentioned partisan Statute contained only one kind of common, non-political criminal offences, namely, robberies. So, the military justice system of partisans, whether legal or not according to the standards of international law, was not universal and all-inclusive. For

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<sup>693</sup> Mindia Vashakmadze, *Understanding Military Justice*, Geneva Centre for the Democratic Control of Military Forces, 2010, p. 10.

instance, these courts did not deal with such crimes as rapes and with many other criminal activities.

Institutionally, these courts were the legacy – and a continuation – of Lithuanian military justice of the interwar period. They were one of three kinds of military courts in independent Lithuania. Created on the model of military courts of 1812 of the imperial Russia, they were established and operated in Lithuania from 1919. They were given the name of a “military field court” in 1928<sup>694</sup>. The courts of the interwar Lithuania, as in case of military courts, used a very simplified procedure. There was neither a prosecutor nor an advocate there and the procedure of a criminal prosecution was really simplified. The decisions were final. Only two days were given for the criminal to file a request for clemency<sup>695</sup>.

Partisan military courts continued this line of a simplified procedure; however, their decisions were carefully archived. Those decisions reflect a simplified process and procedure of these courts. They provide scant information: who is convicted (for instance, Antanas Damasas, b. 1893), for what activity (for instance, espionage), when the court is organized, when the decision is implemented, and whom the convict had betrayed to partisans<sup>696</sup>.

So, if we asked again if there were any signs indicating that the concept of crime formulated in the Soviet ideology could reach the level of an ordinary, average individual in the LSSR, the answer would probably be “not all them”, at least, a part of society that supported the Partisan war, could not naturally internalize the Soviet definition of crime, the criminal and punishment because they had an alternative, which was opposite.

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<sup>694</sup> Andriejus Stoliarovas, *Lietuvos Respublikos karinė justicija 1919-1940 m.*, Kaunas, 2015, pp.116-118.

<sup>695</sup> *Ibidem*, pp. 118-119.

<sup>696</sup> „Pranešimas Nr. 1. Nuorašas“, signed by the partisan Kibirkištis, 1948 09 29, LYA, ap. V-5, ap. 1, b. 129, l. 27.

## **6. Deportation: population displacement or the method of dealing with deviance and criminality?**

As has been already shown, the Soviet concept of extreme social deviance provided by Soviet law was an equivalent of the ideological definition of the *enemy*. It emerged in Soviet Russia after the October Revolution as a consequence of several factors: the impact of the Marxist ideology; the traditional Russian culture, the social structure and mentality; specific experiences of the pre-revolutionary Russian Bolsheviks such as an illegal underground organization.

However, it seems that putting one category of repressed people into the Soviet category of extreme deviants (or criminals) is rather complicated. Here we are talking about deportees and the phenomenon of deportations.

First of all, if we want to understand who deportees were in the Soviet system, we have to remember one of the trends of the Soviet legal system, ideology and the definition of crime – the concepts of the terms “objective enemy” and “possible crime” or, when a deviant is defined in this way, he/she is labelled as a criminal not because he or she is suspected of being involved in real opposition against the government but because she or he is infected with some social “virus”, which can be transmitted genetically<sup>697</sup>.

Such logic, first of all, raised the possibility to label family members of a political convict as deviants, and this was also the case in the LSSR. If the “objective enemy” was a carrier of certain “tendencies”, the “bacteria” or “virus” of a potential crime, people who were closest to him/her could be easily infected. Though these people themselves were not put on trial, they were subject to other kinds of repression against them, for example, deportation.

In Lithuania’s case something similar happened to the “former people’s” families during the first Soviet occupation. For instance, the last

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<sup>697</sup> Arendt, *Totalitarizmo ištakos*, p.408-419.

afore-mentioned Prime Minister of the Republic of Lithuania Merkys was arrested, put on trial, and his family were deported<sup>698</sup>.

This example demonstrates that the Soviet concept of deviance encompassed even these people who did not oppose to the Soviet authority but were treated by the regime as having the “potential to oppose”. This concept of deviance was different from that embodied in Western legal traditions where people, in order to become deviants, had to violate some social norm<sup>699</sup>. In the Soviet reality, the very fact of existence of some groups of people was a *social norm violation*. As has been shown in the previous Chapters, – it was *a person* rather than the action that was treated as a criminal.

In Lithuania’s case deportations were usually organized without any trial, according to the administrative measures. For instance, the following administrative measures were applied against the family members of the participants in armed resistance: deportations on the grounds of “joint responsibility” – as collaborators, accomplices in their real crime.

Such repressions were organized according to several political decisions: for instance, the Resolution of the USSR Council of Ministers On Accepting the Proposal of the Council of Ministers and the Central Committee of the Communist Party of LSSR to Evict from the Territory of the Lithuanian SSR for a Special Deportation 12 Thousand Illegally Residing or Killed in Armed Conflicts and Convicted Bandits and Families of Nationalist, as well as Kulaks and their Families who Collaborated with Bandits<sup>700</sup> It means that belonging to the family of the participants in of resistance was sufficient to be subject to extra-judicial forms of criminalization in the LSSR. The logic of “joined responsibility” is also revealed in the documents. The report written in 1948 by the officials of the MGB and addressed to the First Secretary of the

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<sup>698</sup> Gailienė, *Traumas Inflicted by the Soviet and Nazi Regimes in Lithuania: Research into the Psychological Aftermath*, p. 24.

<sup>699</sup> Henry, *Social Deviance*, pp. 1-2.

<sup>700</sup> „Nutarimas Nr. 417 – 160vs Dėl iškeldinimo iš Lietuvos SSR teritorijos specialiajai tremčiai 12 tūkst. nelegaliai gyvenančių, nukautų per ginkluotus susirėmimus ir nuteistų banditų bei nacionalistų šeimų, taip pat banditų talkininkų buožių su šeimomis“, *Lietuvos gyventojų tremimai 1940-1941, 1944-1953 metais sovietinės okupacinės valdžios dokumentuose*, Vilnius, 1995 p. 306.

Lithuanian Communist Party Antanas Sniečkus describes what “*tasks had been completed in order to send families of bandits and their supporters kulaks away from the Republic of Lithuania*”<sup>701</sup>.

The difference between the deportees, who were repressed *not by the legal means* and the Gulag prisoners in the LSSR, was considerable. The former Lithuanian deportee Valentinas Dėdinas witnessed this difference. During his deportation he noticed that there were “*different carriages in our echelon, which were fiercely guarded and much better protected*”. According to Dėdinas, those carriages carried “*real*” future Gulag inmates – *they were going to be separated from us and transported to the camps of death, whereas we were only suspected (...) we were not found guilty*”<sup>702</sup>.

This description illustrates how differently the Soviet state treated these two categories of the state’s enemies. It seems that the deportees experienced Soviet injustice even more painfully than did the Gulag prisoners because no real process of trial was ever organized in their case. On the one hand, they were people expelled from the Soviet society as deviants. On the other hand, they still believed that they had to be treated as “normal”, because their guilt was never examined. This inner conflict, the situation in between normality and deviance became the core factor in the process of their identity-building.

However, in the eyes of the Soviet administration the deportees were not treated as simply “displaced persons”. The Soviet structures treated them as real criminals. For instance, the report to the Head of the Council of Ministers of the Lithuanian SSR Mečislovas Gedvilas written in 1948 used the terms “arrested” and “convicted” when talking about the people who were deported though it was clear that those persons were never put on trial, they were deported according to the lists drawn up by the LSSR state security officials<sup>703</sup>.

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<sup>701</sup> *MGB raportas, adresuotas A. Sniečkui*, LYA, f. 1771, ap. 11, b. 237, l. 82.

<sup>702</sup> Valentinas Dėdinas, „Išvežimas“, in *Ešelonų broliai*, ed. Albina Venskevičienė, Vilnius, 1991, accesible in: <http://www.partizanai.org/failai/pdf/esalonu-broliai.pdf> [last visited on 25 August 2016].

<sup>703</sup> *Lietuvos TSR Ministrų tarybos pirmininkui drg. M. Gedvilui, Org. Instruktorinio skyriaus vyr. Instruktoriaus Silicko P. J., Pranešimas apie išimtų gyvulių iš banditinių ūkių paskirstymą Varėnos apskrityje*, LYA, f. 1771, ap. 11, b. 257, l. 1.

As mentioned above, after the arrest of the participants in armed resistance, repressions were carried out against their family members. Some elements of the process of criminal prosecution, for instance, searches<sup>704</sup> were also applied to the deportees.

It should be noted that institutionally the process of deportations and, later the deportees' life was organized and administered by the same institutions, which were in charge of the process of criminal prosecution and the execution of the punishment. For instance, the so-called special settlements where people deported from Lithuania, Latvia, Estonia and Moldavian ASSR in 1941 lived were administered by such institutions as the NKVD and belonged to the unified system of the Gulag<sup>705</sup>.

So, the deportees' administrations were within the competence of the same institutional field as in case of "real" prisoners. This factor had an impact on the identity of the deportees and perception of this social group in the societies of both the Lithuanian SSR and the local population of the territories to which those people were deported. In such circumstances the deportees felt they were treated as criminals.

The deported people, as compared to the Gulag inmates and prisoners, had relatively fewer restrictions in their everyday regime and routine. However, their everyday life was absolutely different from the life of free people. Firstly, the deportees were under constant supervision, maintenance, and surveillance the latter being much stricter than in case of random Soviet citizens. The deportees were targets of the forced labour; their movement was restricted and various sanctions were used against them. Their life resembled more the life of prisoners than that of free people. Those people, as documents show, were controlled by the administration of the MVD (the Ministry of Internal Affairs of the USSR). Its institutions had to carry out "*the*

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<sup>704</sup> *RTFSR Baudžiamojo proceso kodeksas veikiąs Lietuvos TSR teritorijoje, Oficialus tekstas su pakeitimais 1954 m. sausio 1 dienai ir su pastraipsniui susistemintos medžiagos priedu, Vilnius, 1954, p. 55.*

<sup>705</sup> *Lietuvos gyventojų trėmimai 1940-1941, 1944-1953 metais sovietinės okupacinės valdžios dokumentuose, pp. 162-163.*



*administrative supervision of special deportees*”, to “*fight getaways and criminal offences*”<sup>706</sup>.

Officially the deportees had no legal status of criminals, though deportation was included as punishment in the Criminal Code: in case of Lithuanian mass deportations, the Criminal Code and other criminal laws were not applied; the process of a court trial was not organized for the deported people. Still the deported people were practically treated as convicted criminals or, at least, as real deviants. If the deportees left the place of their deportation, they could be convicted and put on trial according to the Article 82 of the Criminal Code of the RSFSR<sup>707</sup>.

The deportees themselves also felt that they were treated as criminals. One file of deportations contains a complaint to the Soviet administration, in which a man, whose family was deported, tried to convince it that his family had been deported by mistake and without *guilt*. In that document the deportation is understood and defined as “punishment”. The same person wrote more complaints asking to reinvestigate the case and “*check the facts that proved the crime*”<sup>708</sup>.

Hence, this process of being labelled as criminals was very painful to the deported people because society accepted this cliché. For instance, as the deportee Jūrtė Bičiūnaitė-Masiulienė wrote in her memoirs, in Siberia most people associated her and her family with “*criminals*”. The locals called her and members of her family “*damned kulaks*”<sup>709</sup>. Also, Bičiūnaitė-Masiulienė described the case in her memoirs when the local inhabitants showed her mercy by sharing food with her and understood that she was a victim of the system<sup>710</sup>.

There is ample evidence proving that in case of deportations the whole deported families were regarded as posing a threat to the so-called Soviet

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<sup>706</sup> *Ibidem*, p. 306.

<sup>707</sup> *Ibidem*, 305.

<sup>708</sup> *The file of deportation*, LYA, f. V-5, ap. 1, b. 41525, l. 2 a.p., 3,14 a. p.

<sup>709</sup> Jūrtė Bičiūnaitė-Masiulienė, *Jaunystė prie Laptevų jūros*, Vilnius, 1990, p. 24, 30.

<sup>710</sup> *Ibidem*, 68-69.

system of equality, justice and well-being. Small children were no exception. The Lithuanian deportee Dėdinas recalls that when he was arrested and taken to the railway station in June of 1941, before the train left Lithuania he was asked many times by the NKVD officers where his family was (his family was not found in the train). Dėdinas pretended that he did not know thus saving his wife and children. He also recalled that Lozoraitis' (the former Chief of the Lithuanian Police) pregnant wife and their four children were brought to the railway station alone because her husband was hiding<sup>711</sup>.

Hence, I may say with confidence that the Soviet system and often society treated the deported people *as deviants* though legally they were not criminals.

## **7. Dealing with Nazi collaborators and war criminals**

One more aspect of the Soviet-type legal order and the definition of crime and a criminal after the World War II was the need to deal with the people who belonged to the Nazi governmental structures, administration, networks and played a significant role in commitment of war crimes. As has already been pointed out, the war modified the Soviet legal order: "it confronted the Soviet legal system with several new tasks, e.g. the legal prosecution of German war criminals and Soviet collaborators" (the Soviet law used the terms *izmenniki rodiny, posobniki* to define them)<sup>712</sup>.

This situation was a big challenge for the Soviet legal order designed so that it could accuse and prosecute people for imaginary crimes or as class enemies. Now, for the first time after the Russian Civil War, it did not only have to deal with "real", not imaginary enemy but to find a way to try individuals for Nazi's appalling war crimes such as the Holocaust, without attracting international and local attention to its own mass repressions many of

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<sup>711</sup> Later Lozoraitis decided to show up, jump in the train and to the train and not to leave his family alone; in: Dėdinas, *Išvežimas*.

<sup>712</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 161.

which contained elements of the genocide, as we understand this concept today, and caused deaths and sufferings of millions of people.

Trials against the Nazi collaborators started during the War already. For instance, Soviet war tribunals in Ukraine initiated 93000 cases against those accused of collaboration with the Nazi Germany in the period between 1943 and 1953<sup>713</sup>.

No similar calculations existing Lithuanian because a research process is still going on at the Genocide and Resistance Research Centre of Lithuania. However, the historian Alfredas Rukšėnas estimates that the number of people accused of and tried for the Holocaust crimes in the LSSR amounted to 841 between 1944 and 1953<sup>714</sup>.

The total number could be much bigger because it included not only people prosecuted for the crimes of Shoah. As we can see from the files stored in the Lithuanian Special Archives, sometimes the real Holocaust perpetrators were prosecuted as the Nazi collaborators. For instance, such is the case of Stasys Neinius<sup>715</sup>.

Different cases also existed. For instance, Jurgis Vasilius and Vladas Baltuška were accused in the same manner but for different reasons, namely, as the Nazi collaborators as, for instance, Jurgis Vasilius participated in the army of “traitors of the Lithuanian nation“, which meant the army of Povilas Plechavičius; also because both men belonged to the Interwar paramilitary Lithuanian organization Šauliai and in 1942 joined the “illegal nationalist organization called “Independent Lithuania”. They were tried according to Articles 58-2, 58-10, Part 2, 58-11. Both men were arrested on 14 September 1944, by Kaunas NKGB. In the file there was no accusation of the Holocaust crimes<sup>716</sup>.

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<sup>713</sup> *Ibidem*, p. 162.

<sup>714</sup> The calculations made by the ongoing research of Alfredas Rukšėnas are based on the so called “Joseph Melamed list”. The interview with A. Rukšėnas was taken by the author, on 20<sup>th</sup> of February, 2017.

<sup>715</sup> *Criminal file of Stasys Neinius*, LYA, f. K-1, ap. 58, b. 9592/3.

<sup>716</sup> *Bylos No 115 Kaltinamoji išvada, Kauno NKGB skyrius*, LYA, K-1, ap. 58, b. 5776/3, l. 157-159.

According to Juliette Cadiot and Tanja Penter, during the years of the war and the post-war period the prosecution of war criminals related to the Nazi and the Soviet citizens defined as those who “collaborated with the enemy”, had a mass scale and can be called “a tendency”<sup>717</sup>. As existing data show, these practises were common in Lithuania too.

There are several explanations why this was going on. According to Cadiot and Penter, “the identification and prosecution of war criminals and collaborators was in several ways crucial for the Stalinist leadership, and it became an important part of his post-war policies (...) in the whole Soviet Union”, including formerly occupied Western territories and Central Asian Republics. These authors argue that in such way Soviet government “did not only follow its own policies but also intended to fulfil leading international role in the field of war crimes prosecutions”<sup>718</sup>.

One of the first trials of this kind was held in the liberated Soviet territory of Krasnodar in July 1943. It was organized against “eleven local Soviet collaborators who were members of the SS Special Detachment 10a, responsible for the deaths of thousands of people”. This trial was used for the purposes of the “mass propaganda campaign, aimed at deterring further collaboration, as well as “a tool for national and international political influence”<sup>719</sup>.

As researchers show today, the Soviet hopes to become leaders in setting the general legal order internationally and defining an example of how to deal with war crimes were not fulfilled – the international press was silent about such trials and reported about them only marginally<sup>720</sup>.

But there were other aspects of this process as well: “The Stalinist regime at an early stage formulated and followed its own policies in this field” not only because it attempted to set a pattern to the general tendencies in the international legal discourse, but also “because it did not want the conviction

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<sup>717</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 161.

<sup>718</sup> *Ibidem*, p. 162.

<sup>719</sup> *Ibidem*.

<sup>720</sup> *Ibidem*, p. 163.

of war criminals on Soviet territory to become a topic of international negotiations”. The Soviets, on the contrary, “wanted the absolute monopoly in the interpretation for every war crime, which took place in their territory”, thus also aiming “to establish an official narrative of World War II, which focused exclusively on the Nazi crimes and erased memory of Soviet violent actions in the territories, which were annexed in the aftermath of the Hitler-Stalin-Pact”<sup>721</sup>. Hence, there was a huge complex of reasons why the Soviets were actually organizing trials of the Nazi war criminals and doing this in their own special way.

Today researchers noticed two aspects and goals of these trials, important to the local level: a) an “interpretation and definition of collaboration with the Nazis as a social pathology”; b) using these processes to fulfil the task of creation a discourse of revenge “in the climate of war and victory”<sup>722</sup>.

The Soviets, as winners of the War, had to be invited to Nuremberg and, according to Francine Hirsch, did not only participate there but also tried to play some role in the creation of the post-war international legal order<sup>723</sup>. It was not easy and not fully reached due to “the fact that Soviet domestic practices contradicted Western liberal principles of law”<sup>724</sup>, and Nuremberg was the place where these differences became visible. However, the Soviets managed to make extensive use of Nuremberg not only in the creation of the post-war legal order without the Soviets as those who also bore responsibility for the war crimes, but also in the domestic discourse where they explored the narrative of Nuremberg for propaganda reasons<sup>725</sup>.

One aspect singled out by Hirsch is especially important to our analysis: the Soviet delegation of lawyers, which represented Soviet interests in the International Military Tribunal, consisted of the personnel related to Moscow Trials of 1936-1938: “the Soviet regime and its secret Commission for

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<sup>721</sup> *Ibidem.*

<sup>722</sup> *Ibidem*,161.

<sup>723</sup> Francine Hirsch, “The Soviets and Nurnberg: International Law, Propaganda and Making of the Postwar Order”, *American Historical Review*, June, 2008, p. 701.

<sup>724</sup> *Ibidem.*

<sup>725</sup> *Ibidem.*

Directing the Nuremberg Trials envisioned Nuremberg as a “show trial”, that is, as an exercise in didactic legalism and made a significant effort to control the Soviet legal team and the course of the trials”<sup>726</sup>.

This tendency to start legal cases against real or alleged war criminals reached Lithuania re-occupied by the Soviet as well. Already in 1944 people were arrested for this reason<sup>727</sup>. During the 4th plenary session of the Central Committee of the Lithuanian Communist Party a letter dedicated “To Comrade Stalin” was written in which the Lithuanian Communist Party promised to take actions against the Nazi collaborators who had “betrayed the Lithuanian nation”<sup>728</sup>.

Then the search for the target began. For instance, Juozas Pajaujįs, the organizer of the overturn against Smetona, was depicted not only as an agent of Lithuanian secret service in the secret documents of the Central Committee<sup>729</sup>. It is highly possible that discrediting material was prepared against him on account of his active role in the Provisional Government of Lithuania. The Provisional Government of Lithuania, which took office on 22 June 1941, just before the Nazi occupation, was seen as completely pro-Hitler in the Soviet worldview. However, in 1944 Pajaujįs emigrated from Lithuania and thus managed to avoid repressions. The case of Pajaujįs reveals that already in 1944 a legal campaign to criminalize and try real or alleged Nazi collaborators was planned in the LSSR, just as in the territories re-conquered by the Soviet.

The idea to deal with Nazi collaborators, as mentioned above, reached a public discourse in the Lithuanian SSR as well. The Germans and the Nazi were depicted as responsible for the war crimes, and the role of Nazi collaborators in commitment of these crimes was emphasized in the press<sup>730</sup>.

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<sup>726</sup> *Ibidem*.

<sup>727</sup> See for instance: *Criminal file of Juozas Girtas, who was arrested in 1944 11 13*, Lithuanian Special Archives, f. K-1, ap. 58, b. 28102/3.

<sup>728</sup> *Lietuvos Komunistų Partijos (bolševikų) Centro Komiteto IV plenumas. 1944 m. gruodžio 27 - 30 d.*, Vilnius, 1945, p. 6, 18, 19.

<sup>729</sup> *Pranešimas apie Lietuvos buržuazines partijas*, LYA, f. 1771, ap. 7, b. 88, l. 22.

<sup>730</sup> A. Liepinis, „Plaukia nauji kadrai į sostinę Vilnių”, *Tiesa*, 1945 04 04, No. 77(607), p. 3.

The press wrote about the trials of war criminals in other countries, for instance, in 1945 an article about such processes in Romania was published<sup>731</sup>.

However, the Lithuanian press did not write much about such topics as the role of local collaborators in the Holocaust. Furthermore, this propaganda campaign was carried out on a much smaller scale in the LSSR than in other Soviet Republics, for instance, as mentioned before, in Ukraine where it was a very significant part of the public discourse after 1943.<sup>732</sup>

One of the few examples when the press in the LSSR covered the Nazi war crimes was an article about the process of the LSSR Military Tribunal against the Lithuanian partisans, which tried to show them as the Nazi collaborators. It was published on 4 January 1946. The press referred to this case as a criminal case against “German-Lithuanian Nationalists” who were accused of killing the peaceful Lithuanian population, women and children, without specifying their nationalities or ethnic background of the victims<sup>733</sup>.

The link of the accused with the Nazi administration was emphasized in the text. The article ensured that the evidence of guilt of the convicts was carefully studied and proven during the trial; of course, according to the logic of the Stalinist process of the criminal prosecution, the confession of the convict as the best evidence of the guilt was indicated<sup>734</sup>.

The *show trial* logic in the role of witnesses was not forgotten either and exists in this text. The role of the Public Prosecutor was also demonstrated showing that he demanded the highest, death penalty. As the article revealed, this demand was satisfied and the collaborators who were found guilty were sentenced to death by shooting<sup>735</sup>.

It seems that the tendency to use trials of Nazi collaborators for the purpose of “didactic legalism” existed in the LSSR too, as it did in the rest of the Soviet Union. A relatively small number of publications in the press of

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<sup>731</sup> „Rumunijoje suimami fašistiniai nusikaltėliai“, *Tiesa*, 1945 04 06, No. 79 (609), p. 4.

<sup>732</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 162.

<sup>733</sup> „Iš teismo salės“, *Tiesa*, 1946 01 04, No, 3 (837), p. 4.

<sup>734</sup> *Ibidem*.

<sup>735</sup> *Ibidem*.

the Stalinist period devoted to this purpose testify to the fact that this practice was less common there<sup>736</sup>.

There could be several possible explanations why it was so. Firstly, the Soviet Union reoccupied Lithuania only in 1944, and the processes against the collaborators in other Soviet Republics were started earlier (as mentioned before, in Ukraine they took place already in 1943). If in the years of war the Soviets still saw a great inner and external propaganda potential in such campaigns, the events in Nuremberg gradually demonstrated that the Soviets, despite their significant role there, were excluded from international legal policies due to the above-mentioned differences in two – Western and Soviet – legal systems and due to the changing international political situation at the dawn of the Cold War. Hence, if in 1943, during and just after Tehran, Soviet optimism about not only winning the war but also about contributing to contribute to the international legal order after the victory was still relatively great – Nuremberg changed this situation. The propaganda campaign in the LSSR, a newly regained territory, was only launched but it had no time to gain full speed and acceleration. Therefore it was not a continued actively in the next post-War years.

Secondly, Soviet occupation administration in Lithuania encountered local problems. It was not so easy to consolidate the imperial power in the country where an armed resistance movement became a powerful competitor in the fight for political power and sovereignty where it had a considerable support of the local population and was defeated only in 1953.

Vanessa Vosin noticed two more aspects of Soviet post-war processes against the alleged Nazi collaborators: the idea of “horizontal collaboration”, which meant “sexual intercourse with the Nazi invaders” and “repression by exile of family members of the collaborators” if they were sentenced for treason. According to her, such practices “followed the norms and

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<sup>736</sup> Hirsch, *The Soviets and Nurnberg: International Law, Propaganda and Making of the Postwar Order*, p. 703.



practices of the elimination of “socially harmful elements” the practice in the 1930s. This went on in wartimes and the post war years”<sup>737</sup>.

In Lithuania’s case these types of behaviour with the collaborators’ families did not exist. The local context dictated the reality: these practices from the 1930s and even from earlier years were used to repress the participants in the Partisan war. Therefore, as we have already described in the previous chapters, the second type of repressions was practiced quite broadly and not against the real Nazi collaborators but against the families of the partisans.

Sometimes only an echo of sexual relationships as the evidence of collaboration with the enemy was heard and this was when legal prosecutions of the partisans’ girlfriends were carried out. One of such cases is described by the political prisoner Ona Bujevičiūtė-Padvarietienė<sup>738</sup>.

Such cases in the LSSR were not only rare but they had a completely different legal logic. In short, the women who had romantic relationship or sexual intercourse with partisans were not persecuted legally for this fact; usually they were considered to be involved in the partisan movement as supporters.

## **8. Transfer of punishment**

Transfer of the Soviet concept of crime to the LSSR came together with the import of the Soviet definition, means and methods of punishment. The tendency was obvious in all spheres: in the definition of punishment in laws and legal documents, in their practical application and, of course, in the reality of the punished ones.

When the Lithuanian prison system was included in the Soviet network, it overtook the main features of the division between “political” and “criminal” and even some features of the Gulag subcultures. According to the memoirs of

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<sup>737</sup> Cadiot, Penter, *Law and Justice in Wartime and Postwar Stalinism*, p. 162.

<sup>738</sup> Ona Bujevičiūtė-Padvarietienė, *Sumokėtau jaunyste*, Vilnius, 2016, p. 24-27.

a Lithuanian political prisoner, the difference between “political” and “criminal” prisoners was very great and encouraged by the Gulag administration<sup>739</sup>.

In the Criminal Code of the RSFSR, which was adopted in Soviet Lithuania after the occupation, a term “the means of the social defence” (“socialinės gynybos priemonė”) was used to describe the concept of punishment<sup>740</sup>. The Criminal Code identified several means of punishment: “proclaiming an individual the enemy of the working people with the deprivation of the Soviet Republic and Union’s citizenship and compulsory expulsion from the Union”, “imprisonment in corrective labour camps in the distant regions of the USSR”, “imprisonment in general places of keeping the arrested ones”, “corrective labour without imprisonment”, “deprivation of political and some civil rights”, “compulsory expulsion from the Soviet Union for a certain time period”, “expulsion from the RSFSR or its certain territory with the compulsory settlement in another territory or without it, or with a ban to live in certain territories or without it”, “release from a certain service with or without the ban to be employed according it again”, “a ban to take a certain job, work, or set up business”, “public reprimand”, “the confiscation of property – full or partial”, “monetary fine”, “a warning”<sup>741</sup>.

However, they differed in their status. The Code declared that “the proclamation that an individual is the enemy of the working people with its consequences, imprisonment and the corrective labour without imprisonment are the main judicial-corrective means of the social defence applied to the people who committed offences”<sup>742</sup>.

The Code also identified functions of the punishment. It stated that the means of “social defence” was applied in order to: a) “warn those who have already committed crimes to prevent them from committing new crimes”; b) “to

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<sup>739</sup> Kęstutis Lakickas, *Kalinys Z-311*, Vilnius, 1994, p. 111.

<sup>740</sup> *RTFSR Baudžiamasis kodeksas su pakeitimas iki 1940 m. lapkričio 15 d.*, Lietuvos TSR Teisingumo Liaudies Komisariato leidinys, Kaunas, 1941, p. 13.

<sup>741</sup> *Ibidem*, p. 18-19..

<sup>742</sup> *Ibidem*, p. 19.

*affect other vulnerable members of society*”; c) *“to adapt offenders to the conditions of community living of the state of working people”*<sup>743</sup>.

It is very important to underline that the Code also specified that *“the means of social defence cannot be aimed at causing physical suffering and humiliating the human value and its goal is not to reward or to punish”*<sup>744</sup>.

The Code also identified the terms of criminal prescription stating the following: a) crimes punishable by more than years of imprisonment shall prescribe in ten years; b) crimes punishable by no more than five years of imprisonment shall prescribe five years; c) crimes punishable by not more than one year of imprisonment or milder punishment than imprisonment shall prescribe no more than three years<sup>745</sup>.

In case of the so-called “counter-revolutionary crimes the situation was different. The question of prescription, as well as its term, as specified in the Code, was left in the hands of the court and had to be decided during the concrete trial:

“In the case of prosecution of counter-revolutionary crimes, the prescription shall be applied separately in each different case and is assigned to the responsibility of the court; but if the court will not find the possibility to apply the prescription, in the cases when the penalty of shooting is applied, the court shall obligatory change it to proclamation that the one is the working people’s enemy with the deprivation of the Soviet Republic and Union’s citizenship and compulsory expel from the Union in perpetuity, or the imprisonment of not less than two years.”<sup>746</sup>

This condition was not applied in case of the “former people”:

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<sup>743</sup> *Ibidem*, p. 13.

<sup>744</sup> „Socialinės gynos priemonės negali turėti tikslo teikti fizinių kančių ar žeminti žmogaus vertingumą ir neužsibrėžia uždavinio atmokėti ar bausti“, in: *RTFSR Baudžiamasis kodeksas su pakeitimas iki 1940 m. lapkričio 15 d.*, p. 13.

<sup>745</sup> *Ibidem*, p. 15.

<sup>746</sup> *Ibidem*, p. 15-16.

“if persons are prosecuted for the activities and active fight against the working class and revolutionary movement, which they committed being high officers and having secret duties in the Tsarist regime, or within the counter-revolutionary governments during the civil war, the questions of the application of prescription and changing of the shooting penalty shall be decided by the court.”<sup>747</sup>

Article 21 also identified the situation of the persons who were punished as political criminals: “*Shooting, as the exclusive means of the working people states’ social defence shall be applied to a fight against the most serious crimes, which pose a threat to the basis of the Soviet authority and the Soviet regime (until it is withdrawn by the Central Executive Committee of the Soviet Union), in special cases provided for in the Articles of this Code*”<sup>748</sup>.

The Code also specified “the medical means of social defence”: “*Medical-type means of social defence is as follows: a) forced treatment, b) placement in a special treatment institution including isolation*”<sup>749</sup>.

The “medical-pedagogical” means of “social defence” was understood as placement of a juvenile offender under the obligation to be educated and taken care of by his parents, adoptive parents or relatives, or sending him/her “to a special educational and treatment institution”. The medical-pedagogical or medical means could be “*applied by the court if it decides that in a certain case the application of the judicial means of social defence is unsuitable or it can be applied to supplement*” the judicial means<sup>750</sup>.

The interesting thing is that the old concept of “revolutionary consciousness”, though slightly modified, still existed in this version of the Code adopted in the LSSR in 1940. Article 45 stated that in the process of application of the “judicial means of social defence” to the offender the court

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<sup>747</sup> *Ibidem*, p. 16.

<sup>748</sup> „Kovai su sunkiausios rūšies nusikaltimais, gresiančiais Tarybų valdžios ir Tarybų santvarkos pagrindams, (kol atšauks TSR Sąjungos Centrinis Vykdomasis Komitetas), šio Kodekso kodekso straipsniuose specialiai nurodytais atvejais, kaipo išimtinė darbo žmonių valstybės gynos priemonė, taikomas sušaudymas.“ In: *RTFSR Baudžiamasis kodeksas su pakeitimas iki 1940 m. lapkričio 15 d.*, p. 19.

<sup>749</sup> *RTFSR Baudžiamasis kodeksas su pakeitimas iki 1940 m. lapkričio 15 d.*, p. 20.

<sup>750</sup> *Ibidem*.

must be guided by: a) “the regulations laid down in the General Part of the Code”; b) “limits provided for in the Article of the Special Part identifying a suitable type of crime”, c) “its own socialist legal consciousness taking into consideration the extent to which a certain crime is dangerous to society, the circumstances of the case and the personality of the criminal”<sup>751</sup>.

The following was stated: “*By imposing a criminal penalty the Soviet penal law empowers the court not only to punish criminals but also to correct and re-educate them. The Soviet penal law, without any mercy, punishes traitors of the state, plunderers of socialist property, spies, wreckers, saboteurs, terrorists and other people’s enemies, robbers, thieves, violators, hooligans, and speculators*”<sup>752</sup>.

We can see even here that all the population of criminals is divided into two parts: criminals who can be – and are supposed to be – corrected and re-educated and hopeless criminals possible to be punished and thus suppressed. Hence, the dividing line between “simple” criminals and “enemies” can be found in the basic legal documents of the USSR and the LSSR under the Stalin.

The aim of Soviet law and justice was defined as follows: “to ensure that all the institutions, organizations, officers and citizens of the USSR should implement the Soviet laws strictly and without deviations”<sup>753</sup>. It is underlined that justice is obligatory for everyone, all structures, institutions, organizations and officials, including, of course, members of the Communist Party and nomenclature. It can be seen as the principle of *equality before the law*, or *legal equality*, meaning that all people are subject to the same law and justice (*due process*).

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<sup>751</sup> „Skirdamas nuteistajam teismojo pobūdžio socialinės gynos priemone, teismas vadovaujasi: a) šio Kodekso Bendrosios dalies nurodymais, b) ribomis, numatytomis Ypatingosios dalies straipsnyje, numatančiame reikiamą nusikaltimo rūšį, c) savo socialistine teisine sąmone, atsižvelgdamas į nusikaltimo pavojingumą visuomenei, bylos aplinkybes ir nusikaltusiojo asmenybę.“ In: *RTFSR Baudžiamasis kodeksas su pakeitimas iki 1940 m. lapkričio 15 d.*, p. 29-30.

<sup>752</sup> *Tarybinė baudžiamoji teisė*, redagavo A. J. Višinskis, Vilniaus universiteto teisės fakultetas, leidinys Nr. 3 (Vilnius, 1941), p. 3.

<sup>753</sup> *Tarybinis baudžiamasis procesas*, redagavo A. J. Višinskis, Vilniaus universiteto teisės mokslų fakultetas, leidinys Nr. 4 (Vilnius, 1941), p. 3.

It seems, however, that in reality the principle of legal equality was violated in the USSR. Firstly, we should keep in mind the fact that the privileged social class – nomenclature – had an alternative, its own system of penalties and punishment, which was outside the general Soviet system of criminal justice and criminal prosecution<sup>754</sup>. Secondly, the principle of *equality before the law* was applied in a different way to political and serious economic criminals and to “simple” murderers, thieves and rapists.

The post-war period underwent some changes. First of all, they were related to the abolition of the death penalty. The Decree On the Abolition of the Death Penalty of the Presidium of the Supreme Council of the USSR of 26 May 1947 stated the following:

“The historic victory of the Soviet people against the enemy had witnessed not only the increased power of the Soviet State, but also, and first of all, the incredible devotion of all Soviet Union’s inhabitants to the Soviet Homeland and Soviet Government. Together with it, the international situation within the period after the capitulation of Germany and Japan shows that the matter of peace can be considered as assured for a long time, despite the attempts of the aggressive elements to provoke the war. Keeping these conditions in mind and taking into consideration the requests of the workers and officers labour unions and other influential organizations representing the opinion of the majority of the society – the Presidium of the Supreme Court of the USSR considers that it is no longer necessary to apply the death penalty in the conditions of peace”<sup>755</sup>.

Several aspects could be discerned in this decision. First of all, the desire of the Soviets to play an active role in the post-War international order, including the international law identified by Caddiot and to exert influence by presenting the USSR legal norms as the most modern, humanistic, just, to present them as

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<sup>754</sup> Ėmužis, *Partinės bausmės Sovietų Lietuvoje (XX a. penkrasis-septintasis dešimtmečiai): tarp klientelizmo ir kolektyvizmo*, pp. 68-85.

<sup>755</sup> *RTFSR Baudžiamasis kodeksas veikiąs Lietuvos TSR teritorijoje. Oficialus tekstas su pakeitimas 1951 m. liepos 1 dienai ir su pastraipsniui susistemintos medžiagos priedu*. Vilnius, 1952, p. 123.

examples to be followed by other countries. Of course, internal and international propaganda here could have been important too, therefore it made sense to express solidarity with and support to the Soviet State shown by its own citizens, thus sending a message that the Soviet ideology was right and that political criminality was eliminated. It could also mean that the Marxist revolution was taking place, ideologists were right, crime rates decreased, any political resistance was defeated and therefore there was no more need for the death penalty.

Nonetheless, in 1950 the death penalty was officially re-introduced. The Decree On the Application of the Death Penalty for Homeland's Traitors, Spies, Wreckers-saboteurs" of the Presidium of the Supreme Council of the USSR of 12 January 1950 stated the following:

*"Taking into account the pleas received from the national republics, labour unions, peasant organizations and cultural agents on necessity to make amendments in the decree On the Abolition of the Death Penalty meaning that this Decree would not include homeland's traitors, spies, wreckers-saboteurs, the Presidium of the USSR Supreme Council decides: (...) to allow the application of the death penalty for homeland's traitors, spies, wreckers-saboteurs as the highest means of punishment"*<sup>756</sup>.

Several reasons could be identified as related to this Decree. Firstly, the national armed resistance movements in several Soviet Republics, including the Baltic States. Secondly, the growing tension of the Cold War, which changed the discourse and ideology of peace to the construction of the new Enemy who lived now in the USSR and the Western World. Finally, of course, Stalin himself was possibly planning the next campaign of cleansing and terror, which later resulted in the "Doctor's plot".

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<sup>756</sup> *Ibidem*, p. 124.

### **III. TRANSFORMATION: CHANGES IN THE SOVIET CONCEPT OF CRIME AND PUNISHMENT IN THE PERIOD BETWEEN 1953 AND 1990**

#### **1. Ideological, political and academic context of post-Stalinist modification in Soviet understanding of crime in the USSR and the LSSR**

After the death of Stalin, the criminal justice system of Soviet Lithuania followed by a new legal reform implemented in the whole Soviet Union lost its former totalitarian character. Relative liberalization of the penal system, as well as the amended concepts of crime and the criminal played a huge role there.

First of all, political and ideological transformations were begun and they took place in the whole USSR and the Eastern Bloc. Following these changes the legal system was reformed, together with the concepts of crime and punishment. Practice of the penal institutions and the work of courts also acquired many new traits. However, some old ideas and patterns survived.

While Western observers admired that after the death of Stalin criminal law ceased to be a tool to express political power<sup>757</sup>, changes in the ideology witnessed that the very concept of crime was modified. A criminal ceased to be defined as the class enemy. Crime came to be regarded sooner as some of social illness, or a symptom of a lack of socialist values, socialist education and socialization.

The Khrushchev “thaw”, the period in the history of the USSR after the death of Joseph Stalin (from 1953 to 1964), was a great inspiration for the Soviet legal reforms. At the XX Congress of the Communist Party of the Soviet Union in 1956 Khrushchev delivered a speech criticizing the personality cult and repressions carried out by Joseph Stalin. The dismantling of the Gulag system where many uprisings were staged by of prisoners at that time

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<sup>757</sup> Kiralfy, *Recent Legal Changes in the USSR*, 1.



(uprisings in Norilsk, Vorkuta, and Kenhir) began. A number of political prisoners in the USSR were released from prisons and rehabilitated.

According to Miriam Dobson, after the death of Stalin, between 1953 and 1960, when an amnesty was announced, the Gulag system, which had around 2,5 million inmates before Stalin's death, became five times smaller. She raises the question of how the release of these people affected life in various regions and local communities in the USSR, how society accepted the former prisoners, whether it differentiated political and criminal offenders and if the stigma continued<sup>758</sup>.

According to her, another outcome of this process was emergence of the Gulag subculture which the returnees had brought together with them, and its spread outside the Gulag network<sup>759</sup>.

According to Dobson, "Stalin's successors saw the re-establishment of the rule of law as the first step of recovery". She states that after Beria's arrest in 1953 the media "enthusiastically" declared the new era defined by the concept of "zakonnost" ("legality", "lawfulness")<sup>760</sup>. Hence, at least theoretically and ideologically, the Stalin's era "legality" and Vyshinsky's "law" were recognized as injustice.

In 1953, when the amnesty was started, "a series of commissions were created to review individual cases, leading to rehabilitation of 715 120 victims by 1960" (in their case it was a full rehabilitation, however, between 1954 and 1960 a total of 892 317 cases of counter-revolutionary crimes were reconsidered). As Dobson notes, intentions of the regime, which led to the Gulag reform, was not only loathing towards Stalin's crimes and the goal to implement justice. The regime understood that the Gulag system was more expensive than free labour (and that it was inefficient in economic terms)<sup>761</sup>.

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<sup>758</sup> Miriam Dobson, *Khrushchev's cold summer: Gulag returnees, crime, and the fate of reform after Stalin*, London, 2009, p. 2.

<sup>759</sup> *Ibidem*, p. 109-133

<sup>760</sup> *Ibidem*, p. 5.

<sup>761</sup> *Ibidem*, p. 5, 7.

The hope to liberalize the huge political regime was soon abandoned. Following mass anti-communist uprisings in the German Democratic Republic in 1953, in Poland in 1956 and after the suppression of the Hungarian uprising in 1956, processes of de-Stalinization became slower and were put under strict control of the Party. On December 19 1956 the Presidium of the Central Committee of the Communist Party of the Soviet Union confirmed the letter On Enhancing the Political Work of Party Organizations in Masses and Suspension of Sallies of Anti-Soviet Hostile Elements. As a result, the number of those sentenced for “counterrevolutionary crimes” increased. However, the legal reform, as well as the modification of the definitions of crime and punishment, continued to be carried out.

A new transformation of the definition of the criminal reached its culmination under the rule of Leonid Brezhnev. He stressed that creating a new type of socialist individual, a communist-type human being was the most important aim of the communist transformation, and that in the period of late socialism this type already existed. In the late Soviet period the criminal was defined, first and foremost, as a person who lacked those features and qualities of an ideal type. The extreme deviant was the one who violated common socialist rules, which had to be obvious to the whole society; the norms were understood as self-evident to its well-educated and healthy members<sup>762</sup>.

Brezhnev stressed that the most necessary task of the socialist society was to form “*the new face of the Soviet person, his attitude and worldview*”, and that all the traits, which failed to fit into it, were merely rudiments of the past. The socialist society was seen as the society obliged to fight with these rudiments. Ideological books of that time developing the late-Socialist ideological understanding of criminality and legality stressed that this obligation and task applied to the whole society, not only the Leader of the Communist Party and its political elite. Hence, criminal behaviour was one of the traits, which did not fit into the new portrait of an ideal-type socialist

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<sup>762</sup> A. Cegelis, *Visuomenė socialistinio teisėtumo ir teisėtvarkos sargybose: medžiaga lektoriui*, Vilnius, 1981, p. 1.

person and had to be eliminated with the help of Soviet society that was already ideologically and politically educated, mature and loyal to the regime<sup>763</sup>.

This attitude was very different from the earlier belief that crime was an inner, naturally inherited quality of a person, which was in the very core of his/her existence, and which was inseparable from a person's identity.

Before the death of Stalin people were labelled as the most dangerous criminals because they belonged to "kulaks", "bourgeois nationalists" and "fascists". And only in case of non-political offences, which were treated as less dangerous, the system's attitude was more rational.

According to the attitude adopted during the Stalinist period, the most dangerous criminality came from belonging to a social group making the personality socially dangerous, and defining him/her as the class enemy. This quality – the quality of criminality – could not be changed, erased or cured. Such social belonging was inherited, or gained with "mother's milk". It was more genetic than acquired. Even the penal system could not remove and erase this label; therefore, even after the Gulag and deportation, labelling of such a person as the class enemy continued. The label was for life. The most effective method to deal with crime was physical elimination of such groups of people.

However, when crime was begun to be associated with a lack of education, some social inferiority or psychological illness criminality stopped to be a quality shaping the whole human existence of a concrete individual. It became possible to eliminate *only* the quality without eliminating the person. The criminals could be re-educated or cured. Fatal punishments in the Gulags and death penalties in many cases were replaced, at least theoretically, by correction-orientated, educational measures or psychiatric treatment.

The discipline of Soviet criminology in 1975 formulated the idea that the personality of a criminal differed from that of other individuals only

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<sup>763</sup> *Ibidem.*

because it had traits directly related to a criminal behaviour. In 1981, a list of these traits was made. Their number was around twenty<sup>764</sup>.

The Lithuanian criminologist Arvydas Pocius interprets the attitude that a certain type of “criminal person” exists as the violation of human rights and the presumption of innocence<sup>765</sup>. As we see, this attitude can be compared with the attitude of criminological positivism, for instance, that of Lambroso.

The late-Soviet professional criminological discourse detected and named the following traits related to criminality: social isolation and separation from the society and other individuals, increased sensitivity in inter-personal relationships, impulsiveness, increased suspiciousness, spontaneity in actions, decreased rationality, and a too high level of optimistic or pessimistic feelings. It was believed, however, that the largest group of criminals consisted of psychopathic personalities. Another reason of criminal behaviour was an error in the process of socialisation<sup>766</sup>. Hence, the main task of the penal system was to eliminate those traits and bring back a healthy Soviet man or woman into society.

According to critics, such tendencies in Soviet criminology meant that it was still in the “pre-scientific stage”<sup>767</sup>.

Also, some old traces can be detected in the late-Soviet professional discourse on criminality. For instance, a book for students titled “Tarybų baudžiamoji teisė” (*Soviet Penal Law*), which was published in 1965, focuses on the idea of “communist education” for society and individuals as the best method to prevent the crime but it also admits that re-education is not possible for every criminal in every case:

*“...we still have rudiments of capitalism, alien to communist morality. Unfortunately, there are still people who do not want to work honestly, but try to live at the expense of others. They plunder socialist property, speculate and try to cheat on the society.*

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<sup>764</sup> Arvydas Pocius, „Nusikaltėlio asmenybės samprata Rusijos autorių kriminologinių koncepcijų kontekste“, *Jurisprudencija*, 5 (95), Vilnius, 2007, pp. 72-73.

<sup>765</sup> *Ibidem*.

<sup>766</sup> *Ibidem*.

<sup>767</sup> *Ibidem*, p. 73.

*By doing this, they seize public funds, cause harm to the socialist state and make the living standards of the conscientious people lower.”<sup>768</sup>*

As we see, economic crimes are represented as the central problem and the main definition of crime, and crimes are seen as “rudiments of the past”.

A similar explanation of the reasons of crimes was given in the process of the legal education in the LSSR. An interviewed respondent No 1, a male, born in 1957, who worked at the institutions of criminal search and interrogation<sup>769</sup> for 25 years (and who started his career in the Militia of Kaunas district in 1977) said that while he was a student at Kaunas Militia School the following explanations of the reasons of criminality were given: *“during the Soviet times the explanation was that it was a bourgeois remnant, a vestige, alcoholism, drug abuse, child neglect, family problems...”<sup>770</sup>*

Even more important is the fact that the old definition of the criminal, as an enemy, was still sometimes present in the image of a plunderer in the texts of the LSSR and the USSR after Stalin’s death:

*“Lenin defined the parasitic nature of criminality in a very picturesque way. Criminality, frauds, spongers and hooligans are remnants of the capitalist society, rubbish of the mankind, plague, cankers, which socialism inherited from capitalism. The Soviets cannot stand such people who exploit social goods giving nothing to the society in return. One must fight with these persons with all possible means without mercy.”<sup>771</sup>*

Contrary to the new Criminal Code, this definition presents a criminal as a *person* rather than an *act*. The given text indicates that one must fight with *people* and not with their crimes. In this way the old Bolshevik and Stalinist heritage seems to be still sometimes present in the late Soviet period.

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<sup>768</sup> *Ibidem.*

<sup>769</sup> In Lithuanian – „kriminalinės paieškos ir tardymo institucijos“.

<sup>770</sup> „...sovietmečiu tai aiškino čia yra ir buržuazijos atgyvena, palikimas, girtuokliavimas, narkomanija, vaikų nepriežiūra, šeimyninės problemos...“ In: Interview No 1.

<sup>771</sup> Pocius, *Nusikaltėlio asmenybės samprata Rusijos autorių kriminologinių koncepcijų kontekste.*

Stalinist logic is represented even clearer in another place in the book: “*Persons who threaten the society, socialist property are enemies of the people [liaudis priešai – MK].*”<sup>772</sup>

Another important thing about the new period is the fact that the discipline of criminology was brought back into Lithuanian academic life. In 1963, the State institute for study of crime and the criminal in Soviet Russia, which was closed in 1935 due to the Vyshinsky’s reform, was revived<sup>773</sup>. In Lithuania criminology as a discipline, which practically did not exist under Stalin, was also revived: a new series of lectures was planned at Vilnius University. From 1965 a course on Soviet Criminology was taught at the Faculty of Law. Several other courses for students on criminological topics came into being, scientists were engaged in various research projects (these projects were not accessible to society and had to be secret). However, the majority of academic literature in the LSSR was by Russian authors. Only starting with 1980 books on Western criminology were translated under strict control and censorship<sup>774</sup>.

The major academic achievement, however, was the Lithuanian academic legal and criminological journal *Socialist law*<sup>775</sup>. Its publishing testifies to a partial independence of the Lithuanian criminological discourse, though it was still strictly influenced by the Empire.

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<sup>772</sup> *Ibidem*; P. Solomon, A Selected Bibliography of Soviet Criminology, in: *Journal of Criminal Law & Criminology*, Vol 61, No. 3, 1971, p. 394-395.

<sup>772</sup> Anušauskas, *Represinė SSRS vidaus reikalų sistema Lietuvoje*, p. 315.

<sup>773</sup> Solomon, *A Selected Biography of Soviet Criminology*, pp. 394-395.

<sup>774</sup> Stanelytė, *Lietuvos kriminologijos istorijos aspektai*, pp. 29-32.

<sup>775</sup> *Ibidem*.

## 2. Changes in the concept of crime in the public discourse

After the death of Stalin, some patterns of the Stalinist period in the public discourse in Soviet Lithuania were continued. Newspapers, magazines, radio and television avoided disclosing information related to the criminological statistics and crime rates<sup>776</sup>.

Releasing statistics related to criminality, such as crime rates, was possible only in confidential documents of the Lithuanian Ministry of Interior, Public Prosecutor's Department and Militia or in the KGB documents. Even the most solid statistical publications, including all important sectors of Soviet Lithuania's social, political and economic life, avoided this topic<sup>777</sup>.

In this way Soviet Lithuanian authorities tried to follow the general line of the Communist Party and to strengthen the ideological premise that society already lives in the conditions of the so-called socialism (or, under Brezhnev, "mature socialism"), which is the last step before reaching the highest, communist phase. Crime could not be shown as common practice and a widespread fact of everyday life in the society which, according to ideology, had to be almost perfect.

Despite these practices, some information about crimes occasionally appeared in the public space. For example, interrogators participated in public events where they revealed many positive facts about successfully investigated criminal cases. Positive data reflecting successful work of the institutions dealing with crimes and criminality could also be presented in public<sup>778</sup>. However, even formulated in this way, the information about crimes did not occupy a large part in the public discourse in terms of amount in the LSSR during the late Soviet years.

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<sup>776</sup> Anušauskas, *Represinė SSRS vidaus reikalų sistema Lietuvoje*, p. 315.

<sup>777</sup> See, for instance: *Lietuvos TSR ekonomika ir kultūra tarp Lietuvos Komunistų partijos X ir XII suvažiavimų*, Vilnius, 1960; *Lietuvos TSR ekonomika ir kultūra 1963 metais*, Vilnius, 1964; *Lietuvos TSR ekonomika ir kultūra 1963 metais*, Vilnius, 1970; *Lietuvos TSR ekonomika ir kultūra 1977 metais*, Vilnius, 1978; *Lietuvos TSR ekonomika ir kultūra 1975 - 1980 metais*, Vilnius, 1981.

<sup>778</sup> Anušauskas, *Represinė SSRS vidaus reikalų sistema Lietuvoje*, p. 315.

The possibility to publish information about crimes and criminality was related to the type of newspaper or journal. In the late Soviet years some flexibility on this topic existed in certain periodicals, for example, the humour and satire orientated magazine *Šluota* (the Broom) though sooner to set the norms and educate the readers than to depict an objective situation related to different social problems, including criminality.

Only the above-mentioned academic journal *Socialistinė teisė* (Socialist law) was devoted to professional lawyers and therefore it could allow itself to be more open and present more information about crimes. Its circulation was really small<sup>779</sup>. Hence, the journal was not easily accessible to society and therefore it hardly crossed the limits of the sphere of the professional criminological discourse.

It is not surprising that such channels of the media as the *Broom* often wrote about criminality (to be precise, certain types of crimes). As Alena V. Ledeneva demonstrated in her research, it seems that in the late 1920s and the early 1930s already, even under Stalinist strict censorship, humour, especially caricatures, were treated as an acceptable way to discuss social problems, for instance, “blat” (even if the main goal of such discussions was far from reaching the objective conclusions; sooner it was a means of propaganda and education). Thus, in the late Soviet period this tradition was continued in the LSSR too<sup>780</sup>.

However, there were crimes or other examples of deviance, which were tolerated even by the most ideology-orientated means of the Mass Media: whether in the press, television, or radio<sup>781</sup>. These cases were violations of traffic laws<sup>782</sup>, “plundering of socialist property”<sup>783</sup>, “speculation”, illegal trading and various activities of the illegal market<sup>784</sup>.

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<sup>779</sup> Stanelytė, *Lietuvos kriminologijos istorijos aspektai*, p. 32.

<sup>780</sup> Alena V. Ledeneva, *Russias Economy of Favours: Blat, Networking and Informal Exchange*, Cambridge, 1998, p. 15-21.

<sup>781</sup> Rudaševskis L. *Liaudies kontrolės viešumo vaizdinės priemonės*, Vilnius, 1973, 6.

<sup>782</sup> V. Chadzevičius, „Už eismo saugumą“, *Tiesa*, 1962 07 02, No 154 (5898), p 2.



Speculation was quite a common topic in the press. One issue of the *Broom*, for instance, published an article about an illegal market in which goods were sold directly on the ladies beach. The article, in exclusively satiric manner, described stark naked women and girls not sunbathing, playing, swimming, exercising and singing songs on the beach but turning a free time zone into an illegal market place<sup>785</sup>.

According to the official canons and official rules of the late-Socialist Lithuanian public discourse<sup>786</sup>, this way of depicting illegal acts, as the whole humorous nature of the *Broom* journal, ideally suited to criticizing the shortcomings of socialist life. The guidelines of the Soviet ideology of that time depicted in various educational brochures urged journalists to criticize the problems of the Soviet society through such genres as topical satire, feuilleton, humoresque, fable<sup>787</sup>.

However, this was not the only way of showing what the criminal justice system looked like in the public discourse of the LSSR in the post-Stalin period. Courts were also depicted in the press: for instance, trials of persons accused of the so-called “free loading” (not having any official job)<sup>788</sup>, bribery, corruption and illegal trade were pictured<sup>789</sup>.

The information about thefts from individuals, as well as about the organized criminal activities, was very scarce. Even when it was publicised the focus was not on the crime itself but on very successful work of soviet institutions in their fight against such crimes<sup>790</sup>. Such crimes as murders and rapes did not exist in the public discourse of the LSSR; this was in stark

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<sup>783</sup> B. Dovainis, „Kas kaltas?“, *Šluota*, June, 1980, No 12, p 12; Kostė Julytė, Stepas Kirvelis, „Procentinė mįslė“, *Šluota*, August, 1980, No. 16, 7; Virgis Trumpa, Jurgis Šliumpa, „Aukso gysla“, *Šluota*, August, 1980, No 17, p. 3.

<sup>784</sup> Petras Panavas, „Darinėjau jautelius“, *Šluota*, January, 1980, No 2, p. 12; „Sezamai atsiverk“, *Šluota*, May, 1980, No 10, p. 6-7.

<sup>785</sup> Vytautas Katilius, Juozas Linkus, „Eik, Ieva iš Rojaus!“, *Šluota*, August, 1980, No 18, p. 3.

<sup>786</sup> These canons, as obvious, were set by the Communist Party.

<sup>787</sup> Rudaševskis L. *Liaudies kontrolės viešumo vaizdinės priemonės*, p. 19.

<sup>788</sup> Miroslavas Mitrovičius, „Pernykštis sniegas“, *Šluota*, January, 1980, No 1, p 12.

<sup>789</sup> Caricature picture, *Šluota*, January, 1980, No 1, p 13.

<sup>790</sup> *Ibidem*; Juozas Šikšnius, „Irgi „Gangsteris“, *Šluota*, January, 1980, No. 2, p. 10-11.

contrast to practices in Western societies which experienced regular waves of moral panic at that time<sup>791</sup>: the situation absolutely opposite to the Soviet one when real crime rates were exaggerated rather than reduced in public.

Some kinds of criminal behaviour were depicted more often than others, so we can form see how the late Soviet Lithuanian government formulated and demonstrated the biggest social and moral problems. They often were, for instance, cases of plundering of state property. The *Broom*, for instance, from time to time provided information about the so-called “*writings off to non-production costs*” („*nurašymus į negamybines išlaidas*“). This implied the situation when the plundered raw materials or stock were registered in the documents and reports of the factories as indirect expenses. The *Broom* wrote that this was practiced by plunderers in Kalnapilis brewery in 1978-1979. A large quantity of glass bottles was “taken” in this case<sup>792</sup>.

Not only written texts but also pictures and cartoons were used to describe and publicly condemn cases of plundering. For example, one cartoon in the *Broom* portrayed a worker running at night from a factory with a huge bag of plundered raw materials or already produced goods in his hand<sup>793</sup>.

The press also showed how rare deficit goods were plundered from stores and shops and then sold in the illegal market<sup>794</sup>. According to the press such was the case that took place in the shop called *Okeanas* (The Ocean) in Vilnius where popular and highly desirable kinds of fish had never appeared on its counters and had even never been shown to the customers. It never reached the shop as it disappeared in the shop’s storehouse<sup>795</sup>.

In this case the phenomenon of “blat”, as a specific form of corruption (based on social networks) practiced in the Soviet Union, was also described.

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<sup>791</sup> The term means an exaggerated depiction of crimes in the Mass Media, increasing societies’ fears in the situation though in reality criminal rates were much lower. The phenomenon caused irrational panic, fear and insecurity in a certain community. See more in: Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, Routledge, 2002.

<sup>792</sup> M. Dikas, „Į butelio sveikatą“, *Šluota*, 1980 m. January, No, 1, p. 4.

<sup>793</sup> *Ibidem*, p. 4.

<sup>794</sup> Tadeušas Urbelis, Albertas Lukša, „Pro užpakalines duris“, *Šluota*, 1980, January, No. 1, p. 5.

<sup>795</sup> *Ibidem*.

An article about the shop *Okeanas* demonstrates that the better-quality fish went to those who knew or at least had “*ever said hello, even from a kilometre’s distance, to the shop’s former Director and the current Director’s assistant B. Gudkovas*”<sup>796</sup>.

The forms of depicting the phenomenon of speculation were similar. For instance, in 1980 the magazine *Broom* printed a caricature of two women standing on the top of the Moon and saying to each other “*Hey, Madam, maybe you need imported things*”<sup>797</sup>. In such ways a reference to several Soviet narratives was made: pride that the Soviets took in the space conquest, the lost ideological and technological fight with the USA regarding the first man on the Moon, and the tension between the capitalist West and the communist USSR.

Another story related to plundering state property goes back to 1978. It started with the description of the staff’s conflict in a shop. High tension built up between the Director of the shop, his several associates and one employee in store 21 in the city of Alytus. As the *Broom* described, this tension mounted because other members of the staff started to write complaints against one of the said employee Nina Baciuškienė. Her colleagues described the woman as a quarrelsome, feuding personality very difficult to work with. However, as the article writes, soon it turned out that Baciuškienė’s colleagues were dissatisfied with her because she started to raise the question why “*most of the goods in demand never reached the shop counters*”<sup>798</sup>.

Soon the audit was carried out in the shop by the Committee of the People’s Control<sup>799</sup> (“*Liaudies kontrolės komitetas*”). Many hidden goods were found in the shop during it. Furthermore, according to the article, these goods were taken to the market in Alytus, where illegal traders gathered from the whole country. Of course, actions were taken to find out and punish these traders. The article described the following excuses, explanations and

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<sup>796</sup> *Ibidem*.

<sup>797</sup> Caricature picture, *Šluota*, 1980, January, No. 1, p. 6.

<sup>798</sup> A. Pelegrinda, „Lazda dviem galais. Pirmoji dalis arba pirmas galas, papildantis antrąjį“, *Šluota*, 1978 m., January, No 2, p. 5.

<sup>799</sup> In Lithuanian „Liaudies kontrolės komitetas“.

justifications produced by the people caught during inspection organized by the militia: “*I do not steal, I only take*”, “*...you cannot prove that these sweaters are made in the factory – they have no labels!*”, “*Please, let me go this time. I swear, I will never come back to trade in Alytus again. Only in Plungė. I can cross myself*”<sup>800</sup>.

Hence, the public discourse illustrated that people who carried out actions that were officially prohibited by law and who were recognized as criminal, did not regard or saw themselves as criminals; they even dared to declare such position to the agents of the system of criminal prosecution (possibly, hoping that the logic and the way of thinking of the policemen who caught them will be similar to theirs). As the next subchapters will show, in this case the press, perhaps, unconsciously, reflected and captured the objective view of the processes and ways of thinking of the late Soviet society. Such argumentation also reveals very well one of the greatest moral tensions of the late-Soviet era, namely, a moral condemnation and ideological impossibility of the illegal market and practical inevitability to have it, or the inability to live without it.

The author of the said article also claimed that these tendencies of plundering and speculation were observed on a large scale, that many criminal cases were suited and many people were prosecuted for carrying out this activity – some were punished according to the Criminal Code, administrative fines and penalties were imposed on others<sup>801</sup>.

The situation was really ambivalent. By Soviet law, basically everyone trading or buying goods in the illegal market was a criminal. On the other hand, as Ledeneva noted, it was impossible to have at least a minimal life quality without such activities in the Soviet society<sup>802</sup>.

Apart from economic crimes, speculation and plundering of state property, another kind of crimes existed in the public criminological discourse

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<sup>800</sup> Pelegrinda, *Lazda dviem galais. Pirmoji dalis arba pirmas galas, papildantis antrąjį*, p. 5.

<sup>801</sup> *Ibidem*, p. 5.

<sup>802</sup> See more in: Ledeneva, *Russias Economy of Favours: Blat, Networking and Informal Exchange*, Cambridge, 1998.

in Soviet Lithuanian – bribery and corruption. The press tried to create the image of the moral and educated cultural nomenclature, which made attempts to educate the average population still living in moral darkness and unawareness. For instance, the famous Lithuanian poet Eduardas Mieželaitis offered the poem about a man, the officer who faced the moral dilemma – to take a bribe or not. The adjectives, which were used with the word “bribe” in that poem, were “trendy” and “fashionable” (in Lithuanian “madingas”). It also reveals a large-scale problem under consideration<sup>803</sup>.

The press also wrote about the trials against those who were accused of freeloading<sup>804</sup>, bribery<sup>805</sup>, and doing illegal trading “under the counter”<sup>806</sup>.

Descriptions of crimes against individuals rather than the state, and especially the topic of the organized crime, were especially rare. One of such examples is a text in the *Broom* published in 1980 under the title of “Kind of Gagster” (“*Irgi gansteris*”). The Lithuanian indirect meaning of the title of the story is very ironic – its message is that the “hero” of the article cannot be called a real gangster and that this crime is only a very blurred reflection of serious crimes committed by real gangsters in the Western countries<sup>807</sup>.

The article itself tells the story of a man who tried to organize a criminal activity via stealing Zhiguli cars and racketing people. According to the article, when one of the victims reported this criminal to the militia, he was found very soon, together with the money he managed to racketeer<sup>808</sup>.

The author of the article ridicules the criminal in the following way: “*It turned out that even a “motor” worker, who did not differ in anything from his workmates, can become a skilled swindler. Perhaps having watched too many*

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<sup>803</sup> In Lithuanian one of lines of the poem sounded: „*Nukrito į mano bloknoto bedugnę kažkas nešvankaus. Kažkas panašaus į madingą dabar, aišku, kyšį*“. See more in: Eduardas Mieželaitis, Angelo kyšis, *Šluota*, 1978, February, No 4, p. 5.

<sup>804</sup> Miroslavas Mitrovičius, „Pernykštis sniegas“, *Šluota*, 1980, January, No 1, p. 12.

<sup>805</sup> Caricature picture, *Šluota*, 1980 m. January, No 1, p. 13, Caricature picture, *Šluota*, 1980 January, No 2, p. 1.

<sup>806</sup> Caricature picture, *Šluota*, 1980 January, No 1, p. 13.

<sup>807</sup> *Ibidem*; Šikšnius, *Irgi „Gangsteris“*, p. 10-11.

<sup>808</sup> Caricature picture, *Šluota*, 1980 m. January No 1, p. 13, Šikšnius, *Irgi „Gangsteris“*, p. 10-11.

*low-quality movies, or having read criminal novels, he decided to try his luck and become a hero of the past years...*<sup>809</sup>

The phrase “the past years” (“*ne mūsų laikai*” in the original) is a signal that the crime is a phenomenon related to the past but not to the present or the future; it simply a rudiment. Another important detail in the text is a surprising discovery made by author of the text that even an average worker, who did not differ in anything from his workmates, was capable of committing a crime. This situation differs from the myth of a “criminal-type personality”, created by professional Soviet criminology, which states that this type is different from the average individuals of the Soviet population. On the other hand, it fulfilled the ideological canon that a person becomes a criminal only if he or she has no education, lacks socialization, is impacted by the information from the West, or is mentally ill.

According to the text, the reasons why this “gagster” turned into a criminal lay neither in the Soviet society nor in the Soviet reality. The article makes a supposition that the man could have been influenced by the films he had seen, the books written in the past or outside of the USSR that he had read. As a matter of fact the press usually saw the motives of committing crimes in the impact of the Capitalist West<sup>810</sup>.

Hence, the discourse stressed that a crime was something related to a dimension of the past, a phenomenon, which lacked adequacy in the contemporary Soviet world and social order. In this way the old ideological Marxist premise derived from a nihilist attitude to the law, which stated that crime rates would decrease dramatically in the socialist society and that crime would cease to exist in Communism, was repeated.

After the death of Stalin, the Soviet Lithuanian public discourse witnessed disappearance of the assumption that the class enemy could still exist in the USSR and other communist countries. The actions of the enemy

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<sup>809</sup> „Pasirodo, jog ir niekuo iš bendradarbių neišsiskiriantis motoristas gali būti neblogas aferistas. Gal prastų kino filmų prisižiūrėjęs ar kriminalinių romanų prisiskaitęs, nutarė pats pabandyti ne mūsų laikų didvyrio sėkmę...“. Juozas Šikšnius, Irgi „Gangsteris“, p. 10-11.

<sup>810</sup> Caricature Picture, *Šluota*, January, 1980, No. 1, 13.

were no longer described as the reason of crime and criminality. However, according to the media, the situation behind the Iron Curtain was completely different. Especially the United States of America was depicted as a country, which was criminal, corrupted and which tolerated criminality<sup>811</sup>. The capitalist world was defined as a paradise for criminals: according to the Soviet press, murders and shootings were an inseparable part of everyday life in the streets of American cities. The American police and authorities were shown as incapable of fighting with crime and protect the society<sup>812</sup>.

Texts were illustrated with diagrams showing statistical data of criminality in the USA. For instance, a graphic table showed a dramatic growth in the number of serious offences in the period between 1964 and 1974. Also, a message was spread that the police and the system of criminal prosecution in the West was so corrupted that there was only a very thin line drawn between those who broke the law and those who tried to enforce it<sup>813</sup>.

Prostitution was shown as the problem of the West but the Soviet press sometimes also covered such cases inside the country<sup>814</sup>. One article told the story of the prostitutes in the USA fighting for the legalization of their activity: they united in the labour union and even joined a political party in whose activities a high American police officer was engaged<sup>815</sup>.

Hence, the narrative of the dangerous, criminal, corrupted and immoral Western world was formed as contrast to the at least safe, though not ideal, communist society where crimes were limited to disrespect for common communist property and rules but without aggression against individuals. This tactics was chosen as a method to strengthen the societies' solidarity with the regime.

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<sup>811</sup> „Nusikalstama provokacija“, *Tiesa*, 1962 07 02, No 160 (5904), p. 3.

<sup>812</sup> „Miestuose neramu“, *Tiesa*, 1975 07 17 d., No. 166 (9869), p. 3; Jonas Lukoševičius, „Kai triukšmauja... policija“, *Tiesa*, 1975 07 27, No. 174 (9877), p. 3.

<sup>813</sup> Lukoševičius, „Kai triukšmauja... policija“, *Tiesa*, 1975 07 27, No. 174 (9877), p. 3.

<sup>814</sup> Petras Rimkevičius, Jurijus Zavalkovskis, „Paukštytė“ rašo pasiaiškiniimą“, in: *Komjaunimo tiesa*, 1974 12 19.

<sup>815</sup> Juozas Juozapavičius, „Įstatymo šešėlyje“, *Šluota*, 1978 m., February, No. 3, p. 16.

A lack of communist morality, education, socialization was usually depicted in the mass media as the reason of crime. Criminality was described as misbehaviour of those who have a negative attitude to work (commitment to work was a key value in the communist moral hierarchy); such people were shown as selfish and egoistic<sup>816</sup>. The punishment in this context was understood as a “*lesson*” to those who had no respect for common values and the social order<sup>817</sup>. Thus, the educational dimension of the penal system was very strong.

In determining the motives of crime, planned sabotage of the class enemy was also replaced with a lack of diligence, commitment to a common socialist goal of building a better society, laziness<sup>818</sup>. Main features in the portrait of a Soviet criminal depicted by the mass media, were a tendency to avoid work, laziness, mental illnesses, and various addictions, such as alcoholism. Therefore the need to re-educate criminals was often stressed<sup>819</sup>.

According to the mass media, the task to re-educate criminals and fight against crime had to be carried out not only by penal institutions but also by society; it was seen as a task of every citizens<sup>820</sup>. The social duty to become engaged in the fight against crime was emphasized and according to the public discourse, this duty was the duty of every individual<sup>821</sup>.

Sometimes criminals were referred to as “social parasites”<sup>822</sup>. Such rhetoric, reducing the human personality to biological categories (“parasite”), can be interpreted as a modified and softened reflection of the ideology of the Stalin period regarding a criminal as an enemy. Hence, though a general discourse in the concepts of crime and criminality changed considerably, sometimes the echo of the old definitions of a criminal as an enemy could still be detected.

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<sup>816</sup> A. Korsakovas, „Byla Nr. 11“, *Tiesa*, 1962 07 06, No. 157 (5901), p. 3.

<sup>817</sup> *Ibidem*, p. 3.

<sup>818</sup> S. Blėda, „Žaiginių tarybinis ūkis be Žaiginių“, *Tiesa*, 1962 07 12, No. 162 (5906), p. 2.

<sup>819</sup> Vanda Bogušienė, „Pažeidęs viešąją tvarką“, *Tiesa*, 1975 07 04 d., No. 155 (9858), p. 4.

<sup>820</sup> *Ibidem*.

<sup>821</sup> Cegelis A., *Visuomenė socialistinio teisėtumo ir teisėtvarkos sargybose: medžiaga lektoriui*, 1.

<sup>822</sup> A. Urnaitienė, „Veltėdės priverstos dirbti“, *Tiesa*, 1962 07 13, No. 163 (5907), p. 4.



On the other hand, it seems that political-type criminality *inside* the USSR disappeared from the mass media. Even in cases when some anti-Soviet actions really took place, attempts were made to avoid the information or, at least, to reduce the importance of the case in an official message.

It seems that in case of the so-called “Kalantinišs” in Kaunas in 1972 it was impossible to conceal or totally ignore the “problem”. After the 19-year old Romas Kalanta immolated himself on 14 May 1972, a huge, spontaneous large-scale protest demonstration started in Kaunas in which mainly young people participated. The protest was caused by the attempts of the Soviet authority to prevent a huge crowd of young people who immediately interpreted Kalanta’s self-immolation as a protest act, from participating in Kalanta’s funeral<sup>823</sup>.

Soon after his self-immolation rumours about the event reached Lithuanian dissidents and even the émigré in the West. The largest Lithuanian Samizdat periodical *The Chronicle of the Catholic Church of Lithuania* printed the following message:

*“On the 14<sup>th</sup> day of this month, a young man Romas Kalanta, set himself on fire in the protest against the violation of freedom. Everyone, deeply moved, discussed this tragic protest against the deprivation of national rights, violence, and a lack of respect shown for the nation by the Soviet authority. The funeral turned into a spontaneous demonstration demanding national and religious freedom”.*<sup>824</sup>

Similar but even stricter interpretation of the events soon spread in the West and was seen as a religious protest there and not only as anti-Soviet actions, which had a nationalistic dimension<sup>825</sup>.

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<sup>823</sup> Lietuvos TSR prokuratūros Tardymo skyriaus pažyma apie 1972 m. birželio-liepos mėn dėl Romo Kalantos savižudybės fakto, LYA, f. K-1, ap. 58, b. 47644/3, t. 1, l. 166.

<sup>824</sup> *Lietuvos Katalikų Bažnyčios kronika*, T. 1, No 4, p. 165.

<sup>825</sup> Lietuvos atstovo prie Šventojo Sosto Stasio Lozoraičio jaunesniojo 1972 m. birželio 10 d. pro memoria apie pokalbį su Vatikano valstybės substitutu Giovanni Banneli Romo Kalantos susideginimo ir Lietuvos laisvės temomis, LCVA, f. 648, ap. 2, b. 222, l. 115.

It was not only important but simply impossible to avoid delivering a message about the event in this context. However, attempts were made to change the interpretation of the event and to diminish its importance. Another way to deal with the issue was similar to the methods used during the Partisan war – the elimination of the event’s political dimension.

In this way the Soviet mass media had to represent Romas Kalanta as not being politically aware about his action. The act of self-immolation, the target and the only victim of which was Kalanta himself, could not be identified and described as a criminal act (as in the case of Lithuanian armed resistance). Therefore the only way, which was left, was a version of psychological problems and mental disability. On 21 May 1972 the daily *Tiesa* reprinted the message, which appeared in the *Kauno tiesa*, Kaunas local newspaper on the previous day: *“To give an answer to the questions about the suicide of Romas Kalanta [...] the commission of psychiatrist experts [...] carried out the examination of the case and, after having studied the existing documents [...] and testimonies, drew the conclusion that R. Kalanta was a mentally ill man and that he had committed suicide being in serious mental condition”*<sup>826</sup>.

The situation with the protest was different –criminalization of the participants was seen the acceptable tactic by the Soviet authority. At the same time, however, the scale of the protest was reduced by depicting it as merely marginal hooligan actions of some teenagers or youth that had no political dimension or a symbolic level:

*“Some immature persons, a group of teenagers, who did not understand or interpreted the fact in the wrong way, started to violate the public order. Working people of the city unanimously condemn the attack and express their support of the means, which were taken to ensure the public order in the city.”*<sup>827</sup>

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<sup>826</sup> „Kauno miesto prokuratūroje“, *Tiesa*, 1972 05 21, No 118 (8907), p. 4.

<sup>827</sup> „Chuliganams jokių nuolaidų“, *Kauno Tiesa*, 1972 05 21, No 118 (8907), p. 4.

As we see in the public discourse of late-Soviet Lithuania, main images of crime were related to the economic-type criminality and plundering of state property. This was the feature, which also existed in the public discourse during Stalinism.

But there was almost no space for political criminality in the LSSR in the late Soviet era and no space at all for the so-called criminal who was defined as such because of his/her belonging to a “hostile” group (or being the “enemy”). In rare cases of depicting political criminality in the public discourse such crimes were referred to as consequences of mental illnesses. Hence, the main concept of criminality in late-Soviet Lithuanian differed from that in the public criminological discourse during Stalinism.

### **3. The legal reform: the Criminal Code of the Soviet Lithuania**

The new ideological attitude was embodied in law. In the post-Stalinist LSSR, as in the whole Soviet Union, legal reforms began almost immediately after the death of Stalin. However, it took some time to revise the old penal laws and draw up new legislation.

On 30 December 1954, the Supreme Council of the LSSR issued a decree aimed at supplementing the Criminal Code of the RSFSR, used in the territory of the LSSR with Article 54 – 1. It provided for the parole for the prisoners who had served at least two-thirds of their prison term, if there was evidence about their success in being “corrected”<sup>828</sup>.

In this way the new clause stating that even political criminality was not a decisive factor of an individual was introduced in legislation. The link between the concepts of a criminal and an enemy was lost in the laws.

Between 1953 and 1960, punishments for many crimes, which, under Stalin were treated as “especially dangerous”, became milder. However, the legal responsibility for a limited group of crimes defined as “especially

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<sup>828</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, 276.

dangerous” was made even stricter<sup>829</sup>. Hence, the possibility to “correct” more and more criminals, instead of eliminating them, became gradually embodied in law. However, the old Criminal Code was still in force.

On 21 May 1957 the Council of Ministers of the Lithuanian SSR issued a decree on the task to draw up a new Criminal Code of Soviet Lithuania. The commission was set up to fulfil this task<sup>830</sup>.

In preparing the draft of the new Criminal Code of Soviet Lithuania, the laws that already functioned in the whole USSR, were taken as the examples, though, at the same time they had to be discussed anew, refined and modified according to the local context and needs of the Lithuanian SSR<sup>831</sup>.

The new Criminal Code had to be less strict than the Criminal Code of Soviet Russia used during the Stalin period – punishments for some categories of economic, domestic crimes, or crimes committed by officers (equivalent to “white-collar crimes”<sup>832</sup> in Western criminological terminology) were commuted from the imprisonment to the administrative means or the so-called “means of social impact” (“*visuomeninės poveikio priemonės*”)<sup>833</sup>.

The Lithuanian law historians noted that the new Code strengthened, at least formally, the protection of the rights of the citizens<sup>834</sup>. Hence, the new Code had to be finally drafted in such way that the rights and well-being of the individuals and citizens would also have a certain value. The new Code had, at least theoretically, to protect the rights of the citizens and not only the rights of the state.

One more new legal regulation was the decree adopted on 27 August 1958 by the Presidium of the Supreme Soviet of the Soviet Union On Legal Liability for Damaging State, Public and Personal Property Due to Carelessness” (in Lithuanian – „Dėl atsakomybės už neatsargų valstybinio,

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<sup>829</sup> *Ibidem*, p. 276, 278-279.

<sup>830</sup> *Ibidem*, p. 276, 278-279.

<sup>831</sup> *Ibidem*, p. 279.

<sup>832</sup> White-collar crime is defined as a non-violent offence, which is financially motivated and committed by business and government professionals.

<sup>833</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, p. 279.

<sup>834</sup> *Ibidem*, p. 279.

visuomeninio ir piliečių asmeninio turto sugadinimą“). The Decree stated that a person shall be punished up to 3 years for the actions or omission that caused this kind of damage.

The adoption of this law can be interpreted as the sign that in the sphere of legislation the Soviet state recognized that not only intentional “sabotage” and “wrecking” by the enemy can be seen as the reason of malfunctions in Soviet factories and agriculture. The new idea that people causing harm in this way were not necessarily “saboteurs” and “wreckers” but sometimes simply careless or negligent was developed.

Hence, the discussed law highlights one more aspect, namely, how the discourse on the criminal as an enemy was gradually eliminated after the death of Stalin and on the whole from the legal sphere too.

But “Sabotage” (Article 66) and “Wrecking” (Article 67) were not withdrawn from the Criminal Code until Lithuania's independence<sup>835</sup>.

On 25 December 1958, the Supreme Soviet of the USSR issued another very important document – Fundamental Principles of the Criminal Laws of the Soviet Union and the Union Republics<sup>836</sup>. The authority of the Lithuanian SSR used them as guidelines to prepare its own codes: the Criminal Code and the Criminal Procedure Code<sup>837</sup>.

So, the new Criminal Code lacked independence because its architecture was based on the laws of the whole USSR, and especially the RSFSR<sup>838</sup>. The Lithuanian Code basically repeated the above-mentioned all-union imperial principles. However, some slight differences could be discerned<sup>839</sup>.

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<sup>835</sup> *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu*, Vilnius, 1978, p. 64.

<sup>836</sup> In Lithuanian: TSR Sąjungos ir sąjunginių respublikų baudžiamųjų įstatymų pagrindai.

<sup>837</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija* pp. 278-279.

<sup>838</sup> *Ibidem* p. 279.

<sup>839</sup> *Ibidem*, pp. 278-279.

The new Criminal Code of the LSSR was finally adopted on 26 June 1961 and came in force as of 1 September<sup>840</sup>. In comparison to the former Criminal Code of the RSFSR, used in the territory of the LSSR, the new Code had two new chapters: Crimes against Political and Labour Rights of Citizens and Crimes against Justice. In general, more than 40 new norms were created and recorded<sup>841</sup>.

The most important thing to our research is the following statement in the new Code: “*only the actions provided for in the Code can be treated as crime*”<sup>842</sup>. Hence, the Code stated that only the actions and omissions specified in laws can be treated as crimes<sup>843</sup>. Consequently, the main feature of Stalinist legislation, namely, the principle of analogy, together with the “material definition of crime”, was eliminated.

The new definition of crime was formulated in the Criminal Code in the following way: crime is “*unlawful, socially dangerous act (action or omission) provided for in the criminal law*” which “*encroaches on the Soviet social or state system, socialist economic system, socialist property, citizens’ personalities, their political, labour, property and other rights, also any other kind of a socially dangerous activity, which would encroach on the socialist legal system*”<sup>844</sup>. Again, we see that the rights and the well-being of the citizens rather than those of the state only are expressed as the value of the Soviet society. This made legislation different from that of Stalinism.

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<sup>840</sup> Šapoka, *Sovietinės Lietuvos baudžiamosios teisės vertinimas lietuvių teisininkų išeivių darbuose*, p. 461; *Lietuvos Tarybų socialistinės respublikos baudžiamasis kodeksas*, Vilnius: 1978, p. 3, 8.

<sup>841</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, p. 279.

<sup>842</sup> *Ibidem*.

<sup>843</sup> *Ibidem*; *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu*, p. 3, 8.

<sup>844</sup> „...baudžiamąjį įstatymo numatyta pavojinga visuomenei veika (veikimas arba neveikimas)“, kuria „kėsinamasi į tarybinę visuomeninę ar valstybinę santvarką, socialistinę ūkio sistemą, socialistinę nuosavybę, į piliečių asmenybę, politines, darbines, turtines ir kitas jų teises, taip pat kitokia baudžiamąjį įstatymo numatyta pavojinga visuomenei veika, kuria kėsinamasi į socialistinę teisėtą santvarką“. In: *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu*, p. 5.

This code treated action or omission, which contained some features of the crime, defined in laws only as minor violation of the law, was treated as not dangerous to the society<sup>845</sup>.

This principle was applied in the case of political offenses also. This new legal form could be treated as one more evidence that the Stalinist concept of crime was eliminated in the new legislation – the idea that the political crime was something like a genetic feature, the nature of the personality, a substance, which, if not awakened, still in the passive condition, must be fought with by removing the individual from society.

For instance, during the Stalin period, in case of kulaks, no matter how serious their crime was they could be punished without committing any. Hence, when the Code stated, that some minor acts were no longer crimes that the scale, gravity and seriousness of crime also mattered it meant that only the *act* recognised as very dangerous, a concrete action or omission, was an argument for a criminal prosecution in new soviet law.

When Stalinist attempts to have the laws covering every possible activity or inaction, as Article 58, were eliminated, a completely new era in the definition of crime in Soviet legislation started. Now a criminal prosecution by Soviet law, at least theoretically, as the new Code declared, was directly linked to the crime, as an act, and to the law prohibiting this act. But one problem with the new Code still remained: some Articles, for instance Article 68 (*Anti-Soviet agitation and propaganda*<sup>846</sup>) or Article 225 (“*Hooliganism*”<sup>847</sup>) were still formulated in a very abstract way and created the possibility to interpret them in many ways. Such crimes as “*Banditism*” (Article 75) were also included in the new Code<sup>848</sup>.

The new Criminal Code also stated that only courts had the right to impose punishment<sup>849</sup>. Hence, the possibility for extra-judicial sentences and

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<sup>845</sup> *Ibidem*, p. 5.

<sup>846</sup> *Ibidem*, p. 65.

<sup>847</sup> *Ibidem*, p. 134-135.

<sup>848</sup> *Ibidem*, p. 67.

<sup>849</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, p. 280.

criminal prosecution carried out by such institutions as troikas was also eliminated.

If a citizen of Soviet Lithuania committed a crime abroad, he or she had to be punished according to the Criminal Code of Soviet Lithuania<sup>850</sup>.

However, it seems that the new Code still emphasized the importance of crimes against the state and the communist social order diminishing the importance of a crime against an individual<sup>851</sup>. The fact that crimes against the state still came first and were in a higher hierarchical position in the Code testifies to this statement. Hierarchically one came after another in the following order: “*Crimes against the state*”, “*Crimes against Socialist Property*”, “*Crimes against human life, freedom and dignity*”. The punishment for a political crime was more severe<sup>852</sup>.

As it was formulated in the Code, the needs and interests of the state should be treated as higher than the needs and interests of the citizens and even as having a higher value than the individual life<sup>853</sup>. However, the protection of the rights of citizens was also important in the new Code, which declared this commitment<sup>854</sup>.

The new Code implemented rejection of the concept of a criminal as a class enemy by defining the function of punishment. According to it, the aim of the penal system was not only to punish but also “*to correct or re-educate convicts so that they should sacrifice themselves for sincere work, not violate laws, respect the rules of common socialist life, and prevent crimes of other*

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<sup>850</sup> *Ibidem*.

<sup>851</sup> *Ibidem*.

<sup>852</sup> In Lithuanian: bendrieji nuostatai, nusikaltimas, bausmė, bausmės skyrimas ir atleidimas nuo bausmės, priverčiamosios medicininės ir auklėjimo priemonės. In: *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu*, p. 3.

<sup>853</sup> Maksimaitis, Vansevičius, *Lietuvos valstybės ir teisės istorija*, p. 280.

<sup>854</sup> *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu*, p. 3.



persons”. It was also stressed that the punishment should not cause physical suffering or destroy “*human dignity*”<sup>855</sup>.

Hence, all the former patterns of Soviet criminal law were removed from the Soviet legal theory and legislation in the USSR and the LSSR: “the material definition of crime”; the principle of “analogy”; the concept of “joint responsibility”; criminal prosecution for crimes, committed during the time Soviet laws were not in effect yet; criminal prosecution for social origin (criminalization of “*byvshie liudi*” and “*kulaks*”).

In case of “criminal-type” offences many usual crimes such as murders, rapes and thefts were defined in the Code. But some of Soviet crimes differs from what is criminalized today: as for instance, Male homosexuality (Article 122 of the Code), or so-called “parasitic lifestyle” (Article 145). But prostitution was not identified in the Code as crime. Only finding clients for prostitutes (Article 239) and avoidance of medical treatment in case of sexually transmitted diseases (and infecting another, Article 123)<sup>856</sup> were regarded as crime.

It is also important to say that Soviet authority and institutions, controlled, oppressed or even punished people for practicing their religion and expressing their freedom of thought openly: people who did that were labelled deviants or even criminals by the Soviet system in the post-Stalinist and late-Soviet Lithuania.

Actually, the Criminal Code of the LSSR, though did not prohibit or criminalize practising of religion directly, but it criminalized “*the violation of the laws on separation between the church and the state and school*” in Article 143. Article 144 stated that “*threatening citizens’ personality and violating their rights*” sheltering these actions under the umbrella of religious rituals was also a crime. Article 144 specified that a person can be punished if religion prevents other citizens from fulfilling civic responsibilities and duties<sup>857</sup>. In

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<sup>855</sup> *Ibidem*, p. 8.

<sup>856</sup> *Ibidem*, p. 87, 145.

<sup>857</sup> *Ibidem*, pp. 94-95.

practice, these and other laws were used to suppress the religious communities, for instance, in cases when children were taught Catholic faith in Church<sup>858</sup>.

Hence, persons carrying out various forms of religious education were deviants in the eyes of the Soviet system. However, those people, on the contrary, treated this Soviet prohibition as illegal and regarded their own actions as legally and morally just and necessary.

The norm stating that preventing people from performing religious rituals was a crime also in the Criminal Code of the LSSR but such activity was recognized as a crime only in case religious actions did not violate the public order and did not prevent citizens from fulfilling their duties (Article 145)<sup>859</sup>.

#### **4. The process of criminal prosecution in practice**

After the death of Stalin the Lithuanian criminal justice system lost its former totalitarian character. Relative liberalization of the penal system, as well as the changed concepts of crime and a criminal, played a huge role. However, despite some changes in the ideology and a legal reform carried out in the Lithuanian SSR and the whole USSR, some old patterns inherited from Stalinist, or even the early Bolshevik periods, were continued to be followed in legal practice, work of courts and the process of criminal investigation.

First of all, it is important to repeat that the new Penal Code of the Lithuanian SSR was adopted only in 1961. Therefore legislation of the Stalint period was still valid in the period between 1953 and 1961. For instance, 269 criminal proceedings against the collective farmers according to Articles 1 and 2 were instituted in 1955; as many as 121 criminal proceedings were begun according to Articles 3 and 4 of the Decree On the Criminal Responsibility for State and Communities Property of the Presidium of the Supreme Council of

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<sup>858</sup> See more in: *Lietuvos Katalikų Bažnyčios kronika*, T. 7, No 53, pp. 217-222.

<sup>859</sup> *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu*, p. 95.

the USSR of 4 June 1947. Also, in 1955, a total of 547 criminal proceedings were commenced and 565 people were prosecuted for the production of home-made vodka, *samagon*, according to the Decree of 1948<sup>860</sup>. In the same year, in 1955, the number of criminal proceedings started against collective farmers according to Article 107 of the Criminal Code of RSFSR totalled 211<sup>861</sup>.

However, even the change in laws in 1961 did not mean a complete change in legal practices and the process of criminal investigation.

First of all, it is important to mention that the system of criminal prosecution was further politically controlled in the whole USSR. Sometimes it is pointed out in historiography that the Soviet Public Prosecutor's Department was designed as an independent institution aimed at controlling and protecting the process of criminal prosecution from the violations of the criminal procedure in the reformed system. Formally this institution actually was responsible for overseeing the KGB investigations and it had formal control over the KGB<sup>862</sup>. In reality, however, as our analysis shows, it was a simple formality, and the Public Prosecutor's Department did not intervene in the work of the KGB; sooner it was vice-versa.

Also, the links between the actors of the system of criminal prosecution and the Communist Party, in LSSR and USSR, were obvious and had only one direction – the Party had power and exerted pressure over the Public Prosecutor's Department, not the other way round: "...procurators might not sanction the detention of a suspect or might reject cases initiated by the militia. Yet the Party's pressure to produce convictions meant that the Public Prosecutor's Department was not a disinterested arbiter of legality during the greatest part of the Soviet period, and its oversight was inherently limited"<sup>863</sup>.

There were even cases when the KGB tried to exert control over the Public Prosecutor's Department: the employees of the former Lithuanian

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<sup>860</sup> „Lietuvos TSR vidaus reikalų ministerijos (MVD) Kovos su socialistinės nuosavybės grobstymu ir spekuliacija valdybos dokumentai“, LYA, f. V-100, ap 1, b. 19, l. 15.

<sup>861</sup> *Ibidem*.

<sup>862</sup> Loise I. Shelley, *Policing Soviet Society. The evolution of State Control*, London, New York, 2005, p. 68.

<sup>863</sup> *Ibidem*.

Public Prosecutor's Department witnessed this situation. Respondent 2 who worked from 1973 in the Public Prosecutor's Department in Prienai, and later as an assistant to the Public Procurator of Kaunas district, when asked about the links between the Public Prosecutor's Department, KGB and the Central Committee of the Lithuanian Communist Party recalled the case from the late 1970s: *"Links with the State Security Committee (...) were like that. They wanted very much the Public Prosecutor's Department to intervene in one or another case so that they could check. The case was with the Priest of Garliava<sup>864</sup> because (...) some wooden statue [of the Catholic Saint – MK] was erected"*<sup>865</sup>. The KGB demanded that the correct *"criminal charge"* should be found and the priest should be prosecuted, even if, according to the respondent, it was hard to *"make a file out of nothing"*, when no existing law was violated and no crime existed objectively<sup>866</sup>.

He also mentioned other cases when the KGB interfered with the work of the Public Prosecutor's Department. Also, Respondent 2 recalled how the Central Committee of the Communist Party intervened when Pravėniškės prison chaplain had a car accident<sup>867</sup>.

Not only the changed criminal prosecution practice but also rehabilitation of political prisoners from Lithuania was taking place – just like in the whole Soviet Union. Not everyone seeking rehabilitation was really innocent. The file of Stasys Neinius can be mentioned here again: a man who was sentenced in the Stalin period (1947) for crimes related to the Holocaust. In 1956, he applied to the War Tribunal of the Baltic Soviet County<sup>868</sup> for rehabilitation; he denied his guilt in such crimes as shooting of "Soviet

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<sup>864</sup> Town in the Kaunas district.

<sup>865</sup> „O su valstybės saugumo komitetu tai (...) buvo sąsajų tokių. Jie labai norėdavo, kad vienu ar kitu momentu įsikištų prokuratūra, kad galėtų patikrint. Čia buvo su Garliavos kunigu, klebonu, kad ten pastatė kažkokį, Kazimierui berods, kažkokią medinę statulą. Tai kad nu, kaip sakyti, mokė kaip prisikabinti vos ne prie stulpo, kad reiktų kažkokios tai bylos. Kokios bylos? Nu kaip aš galiu iš nieko padaryti bylą? Nu tai, neteisėtą statybinių medžiagų įgyjimą. Kokį sakau neteisėtą? Nu tai vat, medieną įgyjo tam paminklui daryti.“ In: Interview No 2.

<sup>866</sup> *Ibidem*.

<sup>867</sup> Interview No 2.

<sup>868</sup> "Okrug".

citizens”. The court was asked to check the validity of the evidence of the guilt of the convict again, it was done according to the Decree of the Supreme Soviet of the USSR of 17 September 1955. After the detailed investigation the request of the convict was not satisfied<sup>869</sup>.

The files of the Holocaust perpetrators from exactly that period show at least partial objectivity in the process of criminal prosecution. We can use the case of Pranas Matiukas and other persons of the First (13th) Lithuanian police battalion as an example.

As documents revealed that the decision to put Matiukas and other accused persons on trial was taken on 3 September 1962. They were accused according to Part 1 of Articles 62, and Part 1 Article 68 of the New Criminal Code of the Lithuanian SSR and according the Law On Criminal Liability for State Crimes 25 December 1958. It was decided that a case must be heard with public prosecutor and attorney participating<sup>870</sup>.

It seems that in this case the investigation and the trial were organized in a very precise way. It was done according to all the procedures and requirements of the Soviet-kind process of criminal prosecution. The public prosecutor took an active part in the investigation process. The precise minutes of the file recorded the course of the process:

*“The chairman explains to the defendants that during the trial they have the right: to have the defence, to participate in the examination of all the evidence, material evidence and documents, to pose questions to witnesses, to other defendants; to give explanations about the circumstances of the case at any moment of judicial interrogation, to express their opinion about the requests of other participants in the trial, to have the last word, to comment on the minutes of the trial.”*<sup>871</sup>.

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<sup>869</sup> *Criminal file*, LYA, f. K-1, ap. 58, b. 9592/3, l. 107, l. 294, l. 271, l. 299, l. 300, l. 308.

<sup>870</sup> „LTSR Aukščiausiojo Teismo nario Mieženo Nutarimas dėl kaltinamųjų atidavimo teismui, 1962 m. rugsėjo mėn. 3 d.“, *Criminal file*, LYA, f. K-1, op. 58, d. 4733/3, t. 12, l. 5-6.

<sup>871</sup> „Pirmininkaujantis išaiškina teisiamesiems, kad jie teismo nagrinėjimo metu turi teisę: turėti gynėjus, pareiškti prašymus, dalyvauti tiriant visus įrodymus, daiktinius įrodymus ir dokumentus, duoti klausimus liudytojams, kitiems teisiamesiems; bet kuriuo teismo tardymo momentu duoti paaiškinimus apie teismo tiriamos bylos aplinkybes ir pareiškti savo

The investigation was based on precise examination of evidences and on recorded confessions of the accused ones. One the convicts, Palubinskas, had witnessed that he really took part “in the shooting of citizens of different nationalities” in Kaunas Fort VII and was a member of the 1st (13th) battalion – the decision was taken on 11 October 1962 to sentence him to death (by shooting)<sup>872</sup>.

As we know today the decision to find him guilty was correct though justness of the death sentence should be debatable (the death penalty itself is unjust according to today’s understanding but was treated as moral practice for the Holocaust perpetrators at the post-War international tribunals). As the Lithuanian Historian Arūnas Bubnys proved, the First (13th) Lithuanian police battalion, without any doubt, participated in the Holocaust and could even be called “a very efficient tool of the Nazi-organized politics of the Holocaust”<sup>873</sup>.

But one open question still remains, which is too broad for our analysis, but still important: whether the following occupying power has the right to punish the war or genocide crimes, committed by the previous occupying power and the local collaborators in the territory, occupied three times by two different countries?

However, apart from this, such cases illustrate the tendency that “new principles” of new soviet legality, which Dobson spoke about, were really developed in both the LSSR and on the Union level. And these principles “were meant to ensure that people should be sentenced only if they have broken the law and not because an official (however powerful) chose to designate them as enemies of the people or as socially harmful elements”<sup>874</sup>.

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*nuomonę apie kitų teismo nagrinėjimo dalyvių pareikštus prašymus, kreiptis į teismą paskutiniu žodžiu, pareikšti pastabas dėl teisiamojo posėdžio protokolo“.* In: *Criminal file*, LYA, f. K-1, op. 58, d. 4733/3, t. 12, l. 116.

<sup>872</sup> *Criminal file*, LYA, f. K-1, op. 58, d. 4733/3, t. 12, l. 120, l. 308-310.

<sup>873</sup> Arūnas Bubnys, „Lietuvių policijos 1(13)-asis batalionas ir žydų žudynės 1941 m.“, *Genocidas ir Rezistencija*, 2006, 2(20), p. 48.

<sup>874</sup> Dobson, *Khrushchev's cold summer: Gulag returnees, crime, and the fate of reform after Stalin*, p. 5.

The new legal definition of “political” criminality was no longer as broad and abstract as in Article 58 and thus the number of people who were involved in something potentially politically-criminal decreased considerably. Now Article 62 Treason Against the Homeland identified very concrete acts: “going over to the enemy’s side, espionage, breach of state or military secrecy, defection abroad or refusal to return to the USSR from abroad, helping a foreign country to carry out hostile activities with respect to the USSR”<sup>875</sup>.

Also, penalties became much milder: for anti-Soviet agitation and propaganda (Article 68) – maximum 10 years. But for treason of the state (Article 62) the death penalty could still be imposed<sup>876</sup>.

However, the definitions of some other crimes, say, “Banditism” were still abstract and unclear.

If during the Stalin era one could be prosecuted even for the political crime committed by his or her family member or by ideas or intentions now, at least officially, the act of a political crime had to be the real, not an imaginary *action*. Therefore, for example, dissidents while printing the *Chronicle of the Catholic Church of Lithuania* (LKBK), tried to demonstrate that their goal was merely to avoid discrimination and prosecution of religion and that the periodical did not violate Soviet law. The dissidents attempted to show that, on the contrary, their periodical tried to protect the rights of the citizens of Soviet Lithuania ensured and guaranteed by the same Soviet legal system<sup>877</sup>.

The number of persons prosecuted for political reasons in the LSSR was much smaller than that under Stalin. The KGB was responsible for criminal prosecution and investigation of political criminals before a trial in court took place, therefore the total number of persons tried for political reasons can be seen in the material collected by the KGB. The number of persons, convicted and imprisoned on the basis of the KGB-collected data, was on the decrease

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<sup>875</sup> Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu, p. 62.

<sup>876</sup> *Ibidem*, p. 62, 65.

<sup>877</sup> See, for instance: „Tarp dviejų įstatymų. Teisė gyventi, kai draudžiama gimti (Juozo Zdebskio kalba teisme)“, Lietuvos Katalikų Bažnyčios kronika, T. 1, Nr. 1, p. 41-42.

censurably from 1955. In 1955 there were still 193 such persons, however, in 1956 this figure stood at 55. Later this number was quite stable constituting around 20, 30 or 40 persons per year or fewer but it did not reach 50. There were only several exceptions: in 1957, when the number was 117, in 1962 (54) and in 1978 (57)<sup>878</sup>.

In general there were 1234 such cases and 1068 such persons during the period between 1954 and 1987. Hence, the number of political criminals really recognized as such and punished by court is not impressive (in comparison to Stalinist period). In reality this number was even smaller because the files of the people, prosecuted for serious financial or criminal crimes, for which the KGB was also responsible, are included in these data<sup>879</sup>. The real number of people engaged in various underground activities was larger (not all of them were prosecuted and the KGB did not have information about all of them).

It is also important to mention that Soviet institutions and the regime's agents also showed less interest in repressions against political criminals. This became especially important after signing the Helsinki Accords (Helsinki Final Act or the Helsinki Declaration), the final act of the Conference on Security and Co-operation in Europe held in Helsinki, Finland, in July-August of 1975. Thirty-five states signed the declaration aiming at improving relations between the Communist bloc and the West. Since the document declared respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, the USSR tried to demonstrate its commitment to these principles to the West. Therefore both repressions and dealing with dissidents and opposition by using legal means became complicated<sup>880</sup>. This meant that such practices as forced psychiatric treatment became more common though not on a large scale in the LSSR<sup>881</sup>.

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<sup>878</sup> Kristina Burinskaitė, *LSSR KGB ideologija, politika ir veikla 1954-1990 m.*, Vilnius, 2015, p. 87.

<sup>879</sup> *Ibidem*, p. 86.

<sup>880</sup> *Conference on security and co-operation in urope final act*, accessible online: <http://www.osce.org/helsinki-final-act?download=true> [last visited on 17 January 2017].

<sup>881</sup> As, for instance, in the case of Mindaugas Tomonis.



Despite this, old “Stalinist” patterns of practices sometimes still were encountered in the LSSR; they were especially frequent in political cases. The system of criminal prosecution did not work in a precise way even in case of “non-political” criminality. For instance, the real number and variety of crimes could have been much larger than those that the militia officials really dealt with. Many real crimes remained unrecorded. For instance, respondent 1 recounted the following:

*“When I worked in the district militia, there were such cases. In the city, if a bike was stolen, [the victim was told – MK] well, he had left it in a wrong place, such was the explanation. Maybe some people thought it was lost. Such stupid explanations were given – but they were given. And if a person did not complain, it was not handled and criminal proceedings were refused to be initiated. And this was not entered and not reflected in the statistical data as the crime that was not revealed. If hundred criminal cases were recorded, the initiation of criminal proceedings of thousand cases was rejected.”*<sup>882</sup>

In some criminal cases against the Lithuanian dissidents not only the system’s apathy and incapacity to deal with real problems but also old Stalinist inadequacy and shadows of the repressions sometimes appeared to pose real problems. For instance, the old definition of a criminal, as the class enemy, still was in use. There were cases when individuals and opponents of the Soviet system were criminalized not only because of their recent activities but also for their “counter-revolutionary activities” of the past. Such was the case of Antanas Gintautas Sakalauskas who was prosecuted because of anti-Soviet activity. His file contains an entry made in the year of 1974 with the accusation that this man “*in the past was punished according to Article 84 of the RSFSR*

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<sup>882</sup> „Aš tai, kai rajono policijoj dirbau, nu va tai tokie atvejai. Mieste nu dvirutį pavogė, nu palikot ne vietoj, motyvuodavo. Gal kas galvojo pamestas. Nu vat tokie, kvaili motyvai buvo, bet jie buvo. Ir jeigu žmogus nesiskųsdavo, tai taip ir likdavo gulėt, atsisakyta iškelt baudžiamoji byla. Ir tai nebuvo, neatsispindėjo statistikoj kaip neatskleistas nusikaltimas. Taip kad, jeigu būdavo šimtas budžiamųjų bylų užregistruojama, tai tūkstantis buvo atsisakytų iškelt baudžiamųjų bylų.“ In: Interview 1.

*Penal Code*<sup>883</sup> for fleeing to a foreign country” and had contacts with “an illegal anti-Soviet organization”<sup>884</sup>.

Sometimes even the old method of labelling criminals as class enemies was used after Stalinism. Such was Jonas Volungevičius’ case who was accused for writing “a letter of an anti-Soviet content” and disseminating “anti-Soviet leaflets” in the period between 1965 and 1966. Firstly, his social origin – a peasant – is presented as an important fact in the file. Secondly, his family history is also emphasized and the fact that his father was sentenced for the “anti-Soviet activity” in 1940 is taken into consideration<sup>885</sup>. Hence, Volungevičius’ crime was explained and proved on the basis of his family background.

Volungevičius’ case illustrates indirectly that a person of “bad” social origin and from a “criminal” family was more likely to commit a crime. Such cases do not only resemble old logic of Stalinism but also demonstrate that legal practice could differ from the official definition of criminality in ideology, publicity and laws.

The interesting thing is that some rudiments of old logic of dealing with a criminal as a state’s enemy still existed in non-political processes. In cases where people were punished, for example, for an illegal production of home-made vodka, such category as “social origin of the convict” still existed and was used as an argument in the process of investigation<sup>886</sup>.

The fact that traces of this logic can be still detected in 1988 is especially surprising<sup>887</sup>. It shows that in many cases it was an unconscious repetition of old practices determined by inertia.

However, new explanations of criminal behaviour existed too. Another person accused together with Volungevičius in the same case was Šarūnas

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<sup>883</sup> *RSFRS Baudžiamasis kodeksas su pakeitimais iki 1940 m. lapkričio 15 d.*, p. 61.

<sup>884</sup> *The criminal file of Aloyzas Mackevičiaus, Vidmantas Povilionis, Izidorius Rudaitis, Gintautas Antanas Sakalauskas, Šarūnas Žukauskas*, LYA, f. K-1, ap. 58, b. 47668/3, t. 1, l. 60.

<sup>885</sup> *Ibidem*, l. 119.

<sup>886</sup> *Criminal file*, LYA, f. V-145/40, ap. 1, b. 3015, l. 2, 3, 3 ap.

<sup>887</sup> *Criminal file*, LYA, f. V-145/40, ap. 1, b. 2618, l. 1.

Žukauskas, who, according to the interrogator had violated the law because he lacked “*strong political views, attitudes*”, and because of a lack of commitment to communist values<sup>888</sup>. Hence, the roots of his crime were seen in a lack of political education.

Simas Kudirka’s case is also interesting. He was a Soviet sailor who unsuccessfully tried to flee to the West by jumping onto the USA and ask for political asylum. The KGB interrogators were especially keen on finding at least some evidence about his possible counterrevolutionary activities in the past. In this case of 1970, these attempts were fruitless and no evidence was obtained during the investigation. Therefore, Kudirka’s crime had to be explained by presenting arguments of a negative impact of Western propaganda transmitted through “ideologically dangerous” Western radio stations he listened to<sup>889</sup>.

According to the trial, another political prisoner Izidorius Rudaitis became a criminal because from 1966, after his superannuation, he terminated all social activities. The investigator stated that while living on his own, without a family, this man gradually became “*incapable of developing an adequate understanding about the internal affairs and the foreign policy of the Soviet Union*”. “*The negative impact of Western Radio stations*” was emphasized again<sup>890</sup>.

Another dissident Petras Cizikas, according to his file, became a criminal as a result of a lack of social involvement and personal qualities, which can be seen as foreign to an ideal Soviet individual, and also because he “*was constantly changing his jobs*”, and was “*religious, [and] primitively believed in God*”<sup>891</sup>.

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<sup>888</sup> *Criminal file*, LYA, f. K-1, ap. 58, b. 47668/3, t. 1, l. 61.

<sup>889</sup> *Criminal file of Simas Kudirka*, LYA, f. K-1, ap. 58, b. P15717, t. 2, l. 219.

<sup>890</sup> *Criminal file of Aloyzas Mackevičiaus, Vidmantas Povilionis, Izidorius Rudaitis, Gintautas Antanas Sakalauskas, Šarūnas Žukauskas*, LYA, f. K-1, ap. 58, b. 47668/3, t. 1, l. 61.

<sup>891</sup> *Psychiatric expertise of Petras Cidzikas in his criminal file*, LYA, f. K-1, ap. 58, b. P14623, l. 160.

Hence, we see that legal practice in most cases focused not on the genetic qualities of the class enemy but on a lack of a political education and social commitment, as well as on a negative impact of the Western World.

Another potentially “politically criminal” group consisted of the persons punished during the Stalin period and released from the Gulags. Such was the case of the Catholic priest Algirdas Mocius. From 1944 he was a supporter of the partisan movement: organized money raising campaigns, collected, food, clothing, held religious services to the partisans and performed all seven sacraments. Also, he printed illegal literature. In 1945, he was arrested for this activity and in 1946 was sentenced to 10 years imprisonment in the Gulags according to part II of Article 58-10 and Article 58-11. In June 1954, Mocius was released and returned to Lithuania where he continued resistance activities and was arrested on 6 February 1957 again according to Part II of Article 58-10 for “anti-Soviet preaching” and collecting and keeping anti-Soviet literature at home and again the sentence was 10 years<sup>892</sup>.

In 1967 a separate KGB division was formed in Soviet Lithuania (the LSSR KGB Division V) to fight against “ideological diversion of the enemy” inside the country and in the West. It had to identify and reduce tendencies of potential political criminality<sup>893</sup>.

We should note here that other actors of the criminal prosecution system in LSSR did not use the term *enemy* anymore after the Stalinism. But for the KGB definition of the criminal as enemy was still valid.

The mentioned KGB Division took special interest in the members of the Catholic Church, the former deportees and political prisoners. It fought against the organized and non-organized oppositional activities, such as listening to the Western radio stations, keeping and disseminating the Samizdat press and what was called anti-Soviet symbolics (for instance, symbols of the Independent Lithuanian State of 1918-1940), celebrating Lithuanian national and religious holidays. The Division also took care that any information

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<sup>892</sup> Criminal file, LYA, f. K-1, ap. 58, b. 44166/3.

<sup>893</sup> *KGB slaptieji archyvai 1954-1991*, Kristina Burinskaitė ir Lina Okuličiūtė (eds.), Vilnius, 2011, p. 248-249.

disclosing negative sides of life in the USSR should not be reported to the West<sup>894</sup>. The KGB sought to hide the fact that political criminality still existed in the USSR and that people were still prosecuted for political reasons.

Most probably it was for that reason why such measures as forced psychiatric treatment became used more frequently against the dissidents despite the fact legal ones were still applied and more common. Forced psychiatric treatment means were unsuccessfully used against Antanas Terleckas following one of his arrests in 1973<sup>895</sup>.

The violation of social norms in the Soviet legal practice was treated as a reason not only for political but also for usual crimes., According to the documents of courts and criminal files, people became criminals in the LSSR because they “*were unemployed*”<sup>896</sup>, noisy, alcoholics and on the whole, leading the so-called “*parasite lifestyle*”<sup>897</sup>.

Hence, on the level of practice of law enforcement and law breaking even some features of old Bolshevik revolutionary “legal nihilism” could be discerned in the late Soviet era. This was especially true of the Soviet highest circles of the nomenclature. Many of them were accused and punished for imaginary crimes they had never committed in the Stalin period whereas a high position in the nomenclature could ensure legal immunity to others (never officially recorded in documents but common in practice) even in case of serious crimes. In Lithuanian, during 1940-1941 and from 1944, the nomenclature of the Communist Party of the LSSR even developed a separate system of “party penalties”. Some members of the Communist Party nomenclature in the LSSR, even when violating Soviet law, did not come under usual jurisdiction of Soviet courts but were punished inside the Communist Party by secret inner punitive measures<sup>898</sup>. Thus, some of the

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<sup>894</sup> *Ibidem*.

<sup>895</sup> Antanas Terleckas, *Laisvės priešaušryje. Rezistentų atsiminimai 1970-1986*, Vilnius, 2011, p. 26-28.

<sup>896</sup> *Criminal file*, LYA, f. V-145/40, ap. 1, b. 7683, l. 5.

<sup>897</sup> *Criminal file*, LYA, f. V-145/40, ap. 1, b. 12592, l. 5.

<sup>898</sup> Ėmužis, *Partinės baudmės Sovietų Lietuvoje (XX a. penkrasis-septintasis dešimtmečiai): tarp klientelizmo ir kolektyvizmo*, pp. 68-85.

crimes they committed never became public until the downfall of the Soviet Union.

The interview respondent 1, the already-mentioned militia interrogator, during the interview gave an example of the cases of double-jurisdiction and two different kinds of legality he had encountered in his working practice:

*“I had one case; it was a case of car accident. There were show men from Alexandrow, the Moscow Alexandrow Soviet Army ensemble, dancers. They were driving under the influence of alcohol from Birštonas to Kaunas or from Druskininkai to Kaunas. And they met with an accident, [the car – MK] overturned, and the ear of one of them was cut off during the accident. It was a serious injury according to the [crime - MK] classification of that period. And I investigated the accident, took them to hospital. I also found the ear as far as I remember. It seems to me that Kaunas surgeons operated on him and were able to sew the ear successfully as we took the man to hospital on. The Ministry of the Interior demanded that the case should be sent to it, and it was forwarded to Moscow, as far as I know. However, it had to be investigated in Lithuania since the crime had been committed in Lithuania. But it seems that there was Brezhnev’s directive, or some other, so it was taken away and disappeared.”<sup>899</sup>*

The same interrogator also said that he “*personally made entries in documents*” of this case “*for the board of the Interrogation of the Ministry of the Interior*” and afterwards they “*sent it to Moscow*”<sup>900</sup>.

As we already know, in the Stalin period new categories of criminals were constantly invented, tried and punished by the regime with the help of

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<sup>899</sup> „Turėjau vieną atvejį, tyriau eismo įvykį. Buvo artistai Aleksandrovo, Maskvos Aleksandravo tarybinės armijos to ansamblio šokėjai. Jie važiavo prisigėrę iš Birštono į Kauną, ar iš Druskininkų į Kauną. Ir jie papuolė į avariją, apsivertė, ir vienam iš jų eismo įvykio metu nupjauta ausis. Tai buvo sunkus kūno sužalojimas pagal to meto kvalifikaciją. Iš aš tą avariją tyriau, vežiau į ligoninę, dar tą ausį suradau, atsimenu. Ir man, lygtai man atrodo, tą ausį, gal net ir prisiuvo jam, nes atvežėm kažkaip laiku, kauniečiai padarė daktarai, skubiai operavo. Tai šitą būtų pareikalavo Vidaus Reikalų ministerija, ir, kiek žinau, jinai iškeliavo į Maskvą. Jinai turėjo būti tiriami Lietuvoje. Tai yra Lietuvoje padarytas nusikaltimas. Bet buvo matomai Brežnevo direktyva, ar galbūt dar kažkokia tai, tad jinai išvažiavo ir prapuolė.“ In: Interview No 1.

<sup>900</sup> Interview No 1.

flexible Soviet law. In post-Stalin and late Soviet period this situation changed. The law partially lost its relative and dialectic character because the principle of analogy was eliminated. Now only the crimes defined in the Criminal Code that have real evidence could be punishable. As we have seen, courts sometimes violated this principle. However, changes in the communist society determined some new traits of legal and criminal practice.

These new traits were related to the growing number of illegal practices in which a greater part of society gradually became involved. Failures of the Soviet-planned economic system gradually created the situation when citizens of the USSR could obtain goods and products which, at least partially, satisfied their needs, only in the black market. This situation was depicted well by Marina Kurkchyan:

“In contrast to the legitimate market/black market model, the Soviet state operated as an economy that commonly had two kinds of transactions within it: the official dealing announced and recorded, and those of the second economy, which were not. This meant that the second economy was virtually co-extensive with the whole economy, and involved almost the whole population, to at least some extent. In addition to the legal economy operating by means of controls, plans, directives, quotas and the like, the second economy made quasi-market arrangements available for the whole society in respect to at least part of the material needs of the people.”<sup>901</sup>

Almost each Soviet citizen gradually became a real rather than imaginary criminal in this situation because any independent economic activities were illegal according to Soviet law. Thus, in contrast to the Stalin period when, according to the Soviet law, almost everyone could have been potentially criminalized due to flexibility of laws, now almost every Soviet citizen was actually a criminal because of his/her factual behaviour, however, the system was given a chance to decide which of them will be punished.

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<sup>901</sup> Marina Kurkchyan, “The Transformation of the Second Economy to the Informal Economy”, in: *Economic Crime in Russia*, 84.

Making use of illegal economic activities was a good tool to punish the system's opponents. Of course, political articles still existed and could be applied to suppress the dissidents. After the Helsinki Declaration of 1975, however, it seems that the Soviet authorities tried to avoid political cases in order not to be accused of violating human rights.

Linking political crimes with other criminal activities, which already existed in Stalinism, became common practice in the late-Soviet LSSR. It could reach a double aim: to isolate dangerous dissidents and to discredit them.

Such was the case of Izidorius Rudaitis. He was accused not only of political crimes but also of illegal speculation in the USA currency and of the illegal activities such as buying a printing press in the illegal market (which was, of course, illegal but necessary for printing the underground press, Samizdat). Rudaitis was tried according to the Part I of Article 87<sup>902</sup> of the Criminal Code<sup>903</sup>.

Hence, non-political charges were very easy to formulate against the publishers of the underground press and the opponents engaged in illegal religious activities. Another method was applied in some cases, namely, to involve a real criminal in the process of criminal prosecution against a dissident or a group of dissidents. The aim was not only to find an appropriate Article to punish the political opposition but also to discredit the dissident movement<sup>904</sup>.

One of the publishers of the main Lithuanian samizdat periodical *The Chronicle of the Catholic Church in Lithuania* Gema Jadvyga Stanelytė, was also accused of non-political crimes<sup>905</sup>. She was tried in Kelmė on the 16 December 1980 according Article 240 of the Criminal Code of the Lithuanian Soviet Socialist Republic for “free loading” and according to the Part III Article 199 for violating the public order. The accusation of “free loading” was

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<sup>902</sup> For the violation of the currency exchange operations; *Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis Kodeksas*, p. 72.

<sup>903</sup> *Criminal file of Izidorius Rudaitis*, LYA, f. K-1, ap 58, b. 47668/3, t. 1, l. 117.

<sup>904</sup> *Ibidem*, l. 62, 159.

<sup>905</sup> *Lietuvos Katalikų Bažnyčios kronika*, T. 6, No. 44, p. 258.



dismissed due to a lack of evidence but the woman was punished anyway to 3 years imprisonment in a “corrective” labour camp<sup>906</sup>.

Hence, in order to avoid a direct application of “political” articles of the Criminal Code in cases of dissidents, the practice was developed to prosecute them on the basis of “economic” and “criminal” offences. In this way dissident Romaldas Ragaišis was sentenced (for smuggling glasses). In 1973 Antanas Terleckas who was completely innocent was also sentenced for economic crimes<sup>907</sup>.

One more common pattern of the late Soviet period’s explanation of the existence of the phenomenon of crime was the link between criminal activities and imaginary mental disabilities and diseases. For example, in his criminal case Vytautas Kaladė (the participant of the so-called Kalantinės protest) was described by experts as being a psychopathic personality. The witnesses in his trial mentioned his “*strange behaviour at work, strange clothing and outfit*”<sup>908</sup>.

Not every political criminal was recognized as seriously mentally ill. It seems that dissidents were more frequently prosecuted (or simply warned by the KGB) than sent to psychiatric hospitals. There were, however, several such cases too. For instance, dissident Algirdas Statkevičius underwent “*forced medical measures*” and “*forced cure at a special type Psychiatric Hospital*” as a sanction for printing the anti-Soviet Samizdat<sup>909</sup>.

However, almost every political criminal in the late Soviet LSSR was depicted as not being 100% mentally healthy and as a strange, asocial personality, not fitting into the ideal picture of the so-called *homo sovieticus*.

Not only dissidents, the system’s political opponents but also other people, not fitting into the picture of ideal soviet individuals, were tried in

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<sup>906</sup> *Ibidem*, T. 6, No 46, p. 342-345.

<sup>907</sup> Antanas Terleckas, *Laisvės priešaušryje. Rezistentų atsiminimai 1970-1986*, Vilnius, 2011, p. 22-33.

<sup>908</sup> *The act of psychiatric expertise in the criminal file of V. Kaladė, V. Kačinskas, R. Baužys, V. Urbonavičiūtė, J. Prapuolenaitis, I. Macijauskas, K. Grinkevičius, V. Žmuida* (investigation and trial in this case took place between 1972 05 29 and 1972 06 31), LYA, f. K-1, ap. 58, b. 47644/3, t. 2, l. 7, 8.

<sup>909</sup> *Psychiatric expertise of Algirdas Statkevičius in his criminal file*, LYA, f. K-1, ap. 58, b. 47585/3, t. 2, l. 299-300.

courts or underwent forced psychiatric treatment. For instance, there were proceedings against alcoholics; as a punishment they received forced treatment and forced labour as methods “*to be cured and re-educated*”<sup>910</sup>. Such practices became especially common after the official Decree of the Supreme Council of the LSSR, orientated towards “*strengthening measures to fight against alcoholism and illegal production of home-made vodka*”. The People’s courts were full of cases relating to simple alcoholics. Hence, different addictions and diseases were included in the concept of crime and criminalized<sup>911</sup>.

The tendency towards not recording the majority of crimes in order to produce statistics on “revealed crimes” (if more crime were registered, the possibility that the majority of cases will not be clarified and criminals identified was greater) created a separate problem in the system of criminal prosecution in the LSSR. As Respondent 1 mentioned in the interview, this was a very common practice in the militia of Kaunas district. He revealed that this situation was possible in case of such crimes as thefts but in case of murders, rapes and violence there were other tendencies because such crimes were not so easy to conceal and their victims did not tend to forget them until justice was fulfilled<sup>912</sup>. Due to this practice statistical data of criminality in the LSSR were not reliable in every case.

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<sup>910</sup> *Criminal file*, LYA, f. V-145/40, ap. 1, b. 3604, l. 2.

<sup>911</sup> *Criminal file*, document issued on 1988 04 28, LYA, f. V-145/40, ap. 1, b. 5077, l. 3.

<sup>912</sup> Interview No 1.

## **5. Some tendencies towards the concept of crime, criminal practices and behaviour in the late-Soviet society**

During the late Soviet period when the discourse of “the society without a crime in communism” was still prevailing, crimes, without doubt, still existed in the USSR and Soviet Lithuania. Furthermore, criminality was not a rare phenomenon.

A change in the definition of the political criminality formulated by the system determined a decreased number of political crimes –people were much more seldom recognized as political criminals and less prosecuted for political reasons. Also, the end of the Partisan war and active armed resistance meant there was no longer active opposition to the regime left. Hence, both a change in the Soviet political and legal system, which modified the definition of political criminality and a considerably decreased number of the opponents to the political regime’s were reasons why political criminality in the LSSR became less common than it was in the Stalinist times.

The scale of economic crimes, on the other hand, was growing. In the late Soviet period it was treated as one of the most serious problems, which was discussed in the public rather than concealed.

Due to the fact that crime rates were publicised the state’s policy remained unchanged in the late Soviet period. Statistical data was still treated as secret. However, some Western researches, for instance, Walter D. Connor who published the results of comparative research on murders in the USSR in 1970 and the U.S.A. in 1973 managed to obtain a certain amount of data necessary for the application of comparative methods<sup>913</sup>.

Statistics on criminality in the late-Soviet LSSR is released by the Lithuanian researchers too. For instance, Anušauskas discovered that in 1972 there were 2566 agents working for the Ministry of the Interior of Soviet Lithuania who were operating among the “criminal-type” of criminals

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<sup>913</sup> Walter D. Connor, *Criminal Homicide, USSR/USA: Reflections on Soviet Data in Comparative Framework*, *The Journal of Criminal Law and Criminology*, Vol. 64, No. 1, 1973 03, p. 111.

networks, a total number of this type of agents was 5366 at that time. He also noted that Soviet institutions were skilled in statistical manipulations in order to conceal real crime rates and justify shortages of their own work<sup>914</sup>.

The memoirs of prisoners of that time also testify to similar tendencies: it was not often that Lithuanian dissidents were kept in Lithuanian and Soviet prisons during the late-Soviet period; if they were sentenced to imprisonment they met not the other political criminals, but many thieves, rapists and murderers there<sup>915</sup>. According to Anušauskas, the annual growth of crime rates in the late Soviet period was not significant but constant<sup>916</sup>.

Anušauskas also noted another tendency, namely, that criminality and crimes in late Soviet Lithuania were quite frequent even among the officials of Soviet institutions responsible for dealing with the phenomenon of criminality. It is important to mention that in some cases Soviet officers were punished in different ways than the society, for instance, in some cases only disciplinary sanctions rather than criminal prosecution and punishment were imposed on them, even for economic or criminal crimes. However, in the period between 1970 and 1975 each tenth officer of the Ministry of the Interior was punished in this way. In 1971, as many as 18 employees of this institution were prosecuted and sentenced for various crimes: bribery, hooliganism, physical aggression against arrested people, falsification of files and documents. Driving under the influence of alcohol seems to be widespread at that time too<sup>917</sup>.

Corruption<sup>918</sup> was a common activity in the USSR. According to the historian and criminologist Nick Lampert, during the Khrushchev's period many officials of the Communist Party, including even the members of the

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<sup>914</sup> Anušauskas, *Represinė SSRS vidaus reikalų sistema Lietuvoje*, pp. 313-317.

<sup>915</sup> Zdebskis, *Gyvenimas mąstymoose, Kunigas tarp vagių: iš kalėjimo dienoraščių*, p. 50.

<sup>916</sup> Anušauskas, *Represinė SSRS vidaus reikalų sistema Lietuvoje*, p. 315.

<sup>917</sup> *Ibidem*, p. 314, 315.

<sup>918</sup> Though, as mentioned, not used in Soviet law, the term *corruption* in our research is understood as “regular, repetitive, integral criminal activity, carried out by an individual, maintaining official relations with the state apparatus”. It is defined as a pursuit of personal benefit through the public service system. See more in: Ilona Michailovič, „Kelio korupcijai užkirtimas baudžiamosios teisės priemonėmis“, *Sociologija. Mintis ir veiksmai*, 2007, No. 2 (20), p. 44.

Politburo, were involved in bribery and other forms of corruption. Under the Brezhnev rule, such practices were even more common; therefore in 1982 Andropov launched a campaign against these activities<sup>919</sup>.

It should be mentioned again that one of the most specific traits of the period was tension between Soviet law and non-formal practices and rules formulating the concept of crime and the definition of criminality that differed from the official ones (and according to which alternative justice of the Soviet nomenclature at that time was in effect). The Soviet system of planned economy was one more source of tension: it denounced any independent economic activities and trading, which people were pursuing.

It seems that a part of the Lithuanian society linked to the political type of criminality in which concept of crime opposite to the Soviet one existed (people who treated the very Soviet system as criminal and resistance to it not only as legal and legitimate, but also as necessary and unavoidable), decreased considerably in size after suppression of armed resistance in 1953. The number of people engaged in the actions of non-armed resistance decreased significantly. Most of the partisans and supporters who were not killed were sent to the Gulags, and their families were deported. This meant a considerable change in the LSSR social structure and a dissolution or at least suppression of its potentially rebellious segment.

The amnesty of the late 1950s and the return of political prisoners strengthened oppositional moods in some ways. Partisan traditions were not forgotten, some non-armed forms and methods of partisans such as the underground press were revived. We should not forget that even the Gulag system, which intensified socialization and networking of political prisoners, in some situations played the roles of catalysts of the anti-Soviet opposition<sup>920</sup>.

As already mentioned before, changes in law and the concept of crime also were the reason why fewer people could be called political criminals. The

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<sup>919</sup> Nick Lampert, *Law and Order in the USSR: The Case of Economic and Official Crime*, p. 366.

<sup>920</sup> M. Kareniauskaitė, "Lietuvos neginkluotojo antisovietinio pasipriešinimo antrosios sovietų okupacijos metais ištakos ir veiksniai", *Genocidas ir rezistencija*, 2011, No 2 (30).

network of people, who could be called Soviet opponents, was also smaller in the late Soviet Lithuania and less considerable than that during the Partisan war. The latest research on the dissident network in Soviet Lithuania did not produce any evidence that the majority of the population was engaged in the Samizdat press or any other illegal dissident activities (despite the fact that internalization of the Soviet values partially failed in LSSR). According to Ainė Ramonaitė and Jūratė Kavaliauskaitė, even living in the conditions of lost ideological meanings and empty Soviet rituals in late-Soviet LSSR it was very difficult to get “outside the disciplinary official discourse”, let alone active oppositional activities in late-Soviet Lithuania. Therefore only few people managed to find social spaces or social networks, which constructed “more real”, alternative social reality outside the reality produced by the Soviet system<sup>921</sup>.

But the system-produced social reality, as we know, was not equal to that depicted in ideology. The understanding about criminality inside this, *not-dissident* part of the late-Soviet social field was not equal to the one reflected in official ideology or a professional criminological discourse. While the dissidents *consciously* ejected Soviet definition of crime and criminality: they saw the very Soviet system as illegal and criminal.

Hence, at least two different concepts of crime (that of dissidents<sup>922</sup> and not-dissidents) can be detected in the late-Soviet LSSR on the “people’s from the street” level.

From time to time the concept of criminality, not only alternative but also opposite to the Soviet one, managed to reveal itself through public and mass forms. Participation in a mass anti-Soviet demonstration after self-immolation of Kalanta in Kaunas was a serious crime in the eyes of the Soviet authority. The arrested participants had an opposite opinion and did not see themselves as criminals. The protest, without doubt, a the political dimension –

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<sup>921</sup> Ainė Ramonaitė, Jūratė Kavaliauskaitė, „Būti nesovietiniam sovietinėje tikrovėje?“, in: *Nematoma sovietmečio visumenė*, Vilnius, 2015, p. 61.

<sup>922</sup> Meaning not only dissidents in a strict sense, but also various forms of spontaneous uncontrolled activities, described by Ramonaitė and Kavaliauskaitė, for instance, the Greens.

according to the investigation of the Soviet authorities, its participants, for instance, Vytautas Misevičius, had shouted the slogans of “national content”, sang national songs and openly expressed their belief that the Soviet system was unjust<sup>923</sup>.

The protest actions were not limited merely to a demonstration and a march – in the night from 18 to 19 May, 1972, leaflets with proclamations expressing support for the independence of Lithuania and such slogans as “Freedom for hippies!”, “Go away, the Red Bugs!” and similar ones, thus rejecting the Soviet occupation authority and legality in the territory of Lithuania were found in many districts of Kaunas<sup>924</sup>.

Another example of large-scale protest, a protest document, called *The Memorandum of Lithuanian Roman Catholics* (prepared in 1971-1972) addressed to the government of the USSR, Leonid Brezhnev and to Kurt Waldheim, the Secretary General of the United Nations<sup>925</sup>) focused its attention on the fact that the Soviet system violated the international legal order. The document aimed fighting with the violations of the religious freedom, human rights and right of the believers was signed by 17 054 people<sup>926</sup>. Hence, the violations of such international legal norms and freedoms caused by the Soviet authorities were seen as illegal and criminal in the document.

It seems that people from social groups not involved in various dissident activities were indifferent, or even had negative attitude to those who were engaged in the oppositional discourse. The interview responded 4, a woman who worked in the laboratory of the chocolate factory Vilniaus Pergalė, when

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<sup>923</sup> Lietuvos TSR Prokuratūros Tardymo skyriaus pažyma apie 1972 m. birželio-liepos mėn. dėl Romo Kalantos savižudybės fakto, LYA, f. K-1, ap. 58, b. 476443/3, T. 1, l. 166; Lietuvos TSR Prokuratūros Tardymo skyriaus 1972 m. liepos 25 d. nutarimas išskirti iš 1972 m. gegužės 18-19 d. Kauno įvykių dalyviams iškelto baudžiamosios bylos medžiagą dėl 1972 m. gegužės 18 d. Kauno miesto sode, *ibidem*, T. 4, l. 18.

<sup>924</sup> Kauno miesto Darbo žmonių deputatų tarybos vykdomojo komiteto vidaus reikalų valdybos 1972 m. gegužės 22 d. pažyma apie Romo Kalantos susideginimą 1972 m. gegužės 14 d. ir 1972 m. gegužės 18-19 d. Kauno įvykius, milicijos ir draugovininkų veiksmus, LYA, f. V-105, ap. 1, b. 23, l. 295.

<sup>925</sup> „Tarybų Sąjungos Komunistų Partijos CK Generaliniam Sekretoriui L. Brežnevui, Sąjenukų Nacijų Organizacijos Generaliniam Sekretoriui Kurtui Valdhaimui“, „Lietuvos katalikų memorandumas“, in: Lietuvos Katalikų Bažnyčios kronika, 1972, No 2, pp. 74-81

<sup>926</sup> *Ibidem*.

asked if she knew anyone involved in a political-kind criminality, and if she had at least heard about such people and their oppositional mood, responded in the following way:

*“Oh no, I don’t know such persons. The girls from our laboratory, we were a good homey team. I chose only those who worked well and were friendly. And I don’t know what happened among the workers, if I had not worked as an engineer but as a chief of a manufactory, or as a craftsmen at one or another division, I would have encountered with their [moods – MK], and now I don’t know, I was not interested in those workers”*<sup>927</sup>.

As we can notice, this women – even unconsciously – defines political criminals or opposition as someone different from her colleagues who were good girls, “good team”, those “who worked well”, acted “in a friendly way”. So, it seems that at least some individuals in the late-Soviet society rejected the idea that political criminality was a positive phenomenon, associated it with a lower hierarchical position in the factory (“workers”), saw and defined it as something deviant, opposite to the norms of the people who cherished official values of the soviet life (built a “good team”, “worked well”).

Similar things were said interview 3, in which a woman, a law student, expressed anger against the Soviet dissident Petras Cidzikas, with whom she studied at the faculty of Law at Vilnius University because he was constantly debating with the professors and trying to prove that repressions against opposition were illegal. The interview Respondentdescribed Cidzikas as too eccentric, the one who “disturbs”, oversteps the limits and violates the law of “normal” life. She also expressed the attitude that political opposition was punished “legally”, that it was just<sup>928</sup>.

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<sup>927</sup> „O ne nežinau tenais kokie. Mūsų laboratorijos mergaitės, mes geras kolektyvas, savas, aš pasirinkau tik tai kas gerai dirba žodžiu, labai draugiškai. O kaip tenais darbininkai tarp savęs, jie šito, aišku būčiau dirbusi ne inžinierė, o būčiau dirbusi cecho viršininkė arba, meistrė, vieno ar tai kito baro, tai aš būčiau susidūrus su ju, o taip tai nežinau, mane nedomino tie darbininkai“. In: Interview 4.

<sup>928</sup> Interview 3.



Thus, political criminality and anti-systemic behaviour was in some cases treated as a real crime or at least deviance by some part of Soviet society, which was involved in the system deeper and internalized the norms and rules of the Soviet life better.

However, it is very important to show that there were spheres where “people’s from the street” definition of crime and practice of a criminal behaviour sometimes contradicted the ideological statements not only within a specific oppositional underground or less strictly controlled communities (such as those studied by Ramonaitė and Kavaliauskaitė) but universally. Such cases were social norms and, usually, behaviour in cases of plundering of state property and such economic crimes as speculation.

Actually, as a result of the shadow economy, not only the moral and social norm stating that plundering and various economic crimes were the behaviour acceptable to any individual but even a rather stable system of economic criminality and the habit of plundering of state property was developed in the Soviet Union and Soviet Lithuania. The statistical data on recorded criminality illustrates quite stable numbers of this type of crimes. However, it is important to note, that this seems to be only a top of the iceberg because many of these criminals were never caught.

Archival documents of the MVD prove the existence of economic criminality in the LSSR just after the death of Stalin. For instance, in 1954, inspection was carried out in the fur factory named after Kazys Giedrys during which a shortage of about two millions decimetres of fur was found<sup>929</sup>.

In 1955, the militia of the LSSR started a prosecution of 2200 “collective farmers” for such crimes as “*thefts, unauthorized usage of land and meadows, illegal production of alcohol and speculation*”. One year earlier, in 1954, this figure was similar – 2052 collective farmers were prosecuted, 1713 criminal proceedings were launched<sup>930</sup> for such crimes. Hence, speculation

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<sup>929</sup> „Lietuvos TSR vidaus reikalų ministerijos (MVD) Kovos su socialistinės nuosavybės grobstymu ir spekuliacija valdybos dokumentai“, LYA, f. V-100, ap. 1, b. 20, l. 129.

<sup>930</sup> *Ibidem*, ap. 1, b. 19, l. 15.

was wide-spread and treated as normal by average individuals not only in towns but also in the country.

One of such crimes was revealed on 18 May 1955 on the collective farm Rytojus, which was located the district of Ukmergė. It was find out that a group of 6 criminal people operated there. Members of the group had plundered 950 kilograms of grain<sup>931</sup>.

In November of 1955, in “kolkhoz” Marytė Melninkaitė in Pagėgiai district the inter-republican scheme of plundering and speculation was revealed: an “*unknown group*” from Kaliningrad district bought grain from this collective farm and its inhabitants at lower price and sold it to “*various kolkhoz*” of the LSSR at a higher price, according to the document, the “*speculator price*”. The MVD called this case “*speculation of bread*”. A total of 30 tons of grain were sold and re-sold in this way. The guilty ones were punished according to Article 107 of the Criminal Code of the RSFSR<sup>932</sup>.

Hence, it seems that in the very dawn of de-Stalinization illegal economic activities flourished in both urban territories of the Republic and in the countryside.

In the middle of 1950 the Soviet Lithuanian authorities expressed a great concern about the scale and spread of this kind of criminality in the Soviet Lithuanian Republic. A document, called *Report on the outcomes of work of the institution of militia MVD USSR Lithuanian SSR about the fight against plundering and speculation in 1955 and in the first quarter of 1956 and the means to improve it*<sup>933</sup> stated that the situation in the Lithuanian SSR could be “*characterized by a widespread embezzlement of socialist property in a number of branches of national industry, and by highly-developed speculation*”. The document ran:

*“Plunderers who infiltrated themselves into enterprises of trade, purveyance, construction and industry having access to production, storage, processing and*

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<sup>931</sup> *Ibidem.*

<sup>932</sup> *Ibidem*, l. 16.

<sup>933</sup> *Ibidem*, ap. 1, b. 20, l. 1-2.

*realization of material goods, plunder these goods using different ways and methods; they derive huge unearned income from this criminal activity.*”<sup>934</sup>

According to documents, various goods had been plundered: “*leather and leather goods, wool and wool products, furs and fur products, fish, meat and dairy products, building material*”. Such things as “*monetary fund*” and products of collective farms and “*Soviet*” farms such as *grain, livestock, feed and other*” were also mentioned<sup>935</sup>.

For instance, the document indicates that large-scale plundering flourished in the “*Lithuania’s supply union*” and within the “*systems*” of state trading. A total of 1000 cases of plundering of property at the cost of 6.2 million roubles were revealed at “*Lithuania’s supply union*” alone. The biggest plundering took place in Klaipėda – losses amounted to 403 thousand roubles; in Ramygala – 344 thousand; in Linkuva – 194 thousand; in Simnas – 166 thousand; in Kuršėnai – 178 thousand; in Kazlų-Rūda – 136 thousand; in Dusetai – 164 thousand; in Dūkštas – 144 thousand; in Ariogala – 127 thousand; in Lazdijai – 121 thousand; in Veisiejai – 172 thousand; in Vilkaviškis – 131 thousand<sup>936</sup>. As much as 427 thousand roubles were lost in State trading enterprise in Šiauliai due to plundering. In Vilnius this figure stood at 262 thousand<sup>937</sup>.

This type of criminality was spread universally in the whole territory of the LSSR and the whole USSR. In this context occupied Lithuania displayed the same tendencies as the whole Soviet empire<sup>938</sup>.

As the archival data indicate, this kind of criminal actions, despite the declared desperate need to fight against it<sup>939</sup> did not cease to exist in the following decades. For instance, in 1965, as many 908 cases of crimes of

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<sup>934</sup> *Ibidem*, 1. 2.

<sup>935</sup> *Ibidem*.

<sup>936</sup> *Ibidem*, 1. 3.

<sup>937</sup> *Ibidem*.

<sup>938</sup> See more in, for instance: Olimpiad Solomonovich Ioffe, Mark Weston Janis, *Soviet Law and Economy*, Leiden, Boston, 1987.

<sup>939</sup> „Lietuvos TSR vidaus reikalų ministerijos (MVD) Kovos su socialistinės nuosavybės grobstymu ir spekuliacija valdybos dokumentai“, LYA, f. V-100, ap. 1, b. 20.

socialist property plundering were recorded, in 1966 their number was 925<sup>940</sup>. Three years later, in 1969, we notice a slight increase – 937 cases within one year. But the following year the number grew and amounted to 1125 already<sup>941</sup>.

Even a more significant growth is seen at the beginning and in the middle of 1980. In 1982, a total of 1193 thefts related to plundering of state property were recorded, and in the following year, in 1983, their number reached 1732<sup>942</sup>. The growth was further on the increase: in 1984 the Soviet structures recorded 1930 cases of thefts related to plundering of state property already<sup>943</sup>. In 1982, the number of recorded crimes committed in shops, stores, markets, bazaars and other places of direct trading totalled 295. In 1983 this figure stood at 328, in 1984 it amounted to 579<sup>944</sup>.

Plundering of state property, various cases of speculation and other economic criminal activities was an everyday occupation of the “people from the street” (both in towns and in the country). It seems that the majority of Soviet citizens did not only practice but also *internalized* these norms. Such actions were treated as socially acceptable and moral by the Soviet society despite the fact that they were criminalized by Soviet law.

Data collected during the interviews confirm this statement. For instance, Respondent 4 when asked if plundering was a common, normal and socially acceptable practice at the chocolate factory where she worked (Vilniaus Pergalė) replied as follows: “*stealing sweets? Of course, especially by the lower class people, workers because their salaries were not so big...*”<sup>945</sup> Respondent 5 who was asked if he knew anything about the thefts during the Soviet times in general, gave a similar answer:

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<sup>940</sup> *Ibidem*, ap 1, b. 21, l. 165.

<sup>941</sup> *Ibidem*, ap 1, b. 25, l. 169.

<sup>942</sup> *Ibidem*, ap. 1, b. 63, l. 215.

<sup>943</sup> *Ibidem*.

<sup>944</sup> *Ibidem*.

<sup>945</sup> „Šitas, tas vat saldainio? tai be abejo kad, ypatingai žemesnė klasė, darbininkai, nes maisto pramonėje tie atlyginimai ne tiek, ne tokie dideli...”

“Well, in this period, as the folks say, everyone, who could access, stole. As it is said, everyone was “taking”, where it was possible to have access. The people I knew worked in a meat factory, so they used to say: “well, I work there, I can take something out, I made a deal”. We all know that there were many kinds of thefts, and everyone tolerated them, and everybody knew that, it means, it was possible to take out because, as it is said, you produced, therefore you could take it for yourself. I did not do that, I could not take anything while [working – MK] with papers, we, the intelligentsia, we did not do that. But I know, that some people who I knew, and who work somewhere with material goods, they tolerated this practice.”<sup>946</sup>

According to the respondents, not only the workers were involved in such criminal practices. Respondent 4 when asked if engineers who had access to the already-made production or raw material at work took them out of the factory, replied: “Among the engineers, these were taking out [the production – MK] who occupied leading positions in manufactory, or were foremen”. According to her, such people were made secret deals with their colleagues who worked at the checkout – the spot in each factory where every leaving worker was checked by the security if he or she did not carry any prohibited item away with him/her<sup>947</sup>.

Respondent 4 learned about these violations only indirectly. She worked in the laboratory of the factory and from time to time she got samples of raw material used in the production of chocolates. The samples were sent to her to prove that the people caught in the act of stealing some raw products, stole products of the same chemical composition, as that used in Vilnius pergale: “you learn about it when a security point catches someone and brings the raw material for analysis, and you have to carry out the analysis to determine

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<sup>946</sup> „A, tais laikais, kaip sako liaudis, visi kas priedavo, tai visi vogdavo. Liaudiškai tariant, kas kur priedavo, tai visi imdavo. Nesakydavo, čia ne mano, dirbi, gamini. Žinau pažįstami dirbo mėsos kombinate, tai sakydavo „aha, aš ten dirbu, galiu parsinešti, susitariu“. Jau šitų visokių kaip sakoma vagysčių tai visi žinom kad buvo daug, ir visi toleruodavo, ir visi žinodavo kad reiškia čia galima imti, nes, kaip sakant, ir darai ir galima pasiimti sau. Aš taip neusidūriau, kaip, ten nieko nepaimsi, kaip sako popieriuką, kaip inteligentai mes tai ne. Bet vat kurie čia visokie pažįstami dirbdavo kur nors prie materialinių visokių vertybių, tai jie ten žinau tą toleruodavo.“, Interview 5.

<sup>947</sup> Interview 4.

*whether it is chocolate already, or some kind of filler, what its [chemical] composition is. I learn there were thefts, and many [thefts] from such cases*”<sup>948</sup>.

According to her, the scale of this type of crimes varied. “Ordinary” workers used to take out only “*ten or twenty chocolates*” whereas the production and goods stolen by the top-employees, their bosses, was taken out of the factory not in their pockets but “*by cars*” – they “*made business*” out of it<sup>949</sup>. It means that the amount of the goods and raw materials, at least in Vilniaus Pergalė had to be impressive. However, according to the respondent, the majority of such cases were never “noticed” because plunderers had an agreement with the security workers and they shared profit earned from the stolen production<sup>950</sup>.

When asked about cases of speculation, Respondent 5 said the following:

*“...at that time there was a lack of many deficit products. So, we all appealed to our acquaintances, and bought them. For instance, my wife and I went to a fashion atelier. There we were bought things and took them out using another exit, I bought fur coats and other things. They were made there and had to be taken to an exhibition palace, where they had to be sold, but... Hence, there were various frauds, illegal selling, buying, reselling; I faced all this. I think this practice was really widespread and flourished during that period.”*<sup>951</sup>

The remaining eleven respondents, when asked about economic criminality, confirmed that they faced it in their environment directly<sup>952</sup>.

There is even some evidence that the system of economic criminality and crimes against state property were in some specific ways supported (of course, unofficially) even by the very Soviet system. For instance, there were

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<sup>948</sup> *Ibidem.*

<sup>949</sup> *Ibidem.*

<sup>950</sup> *Ibidem.*

<sup>951</sup> Interview 5.

<sup>952</sup> Interviews 3, 6, 7, 8, 9, 10, 11, 12, 13.

informal networks between the members of the Communist Party nomenclature and the so-called “clients” – heads of the soviet factories and other enterprises. According to historian William A. Clark and historian Grybkauskas, such underground networks, became important channels of exchanging economic goods and resources in the USSR and the LSSR <sup>953</sup>.

Archival documents also reveal the scale of such crimes. The Ministry of the Interior of Soviet Lithuania claimed that in 1955 already plunderers were “*organized*”, they were related to the “*criminals from the trading networks and with the speculators*”, that they plundered “*huge amounts of goods and monetary funds*”<sup>954</sup>.

Several real cases were mentioned in the MVD documents. In 1955, an organized group of plunderers consisting of 17 members was revealed. According to the document, it operated in various industrial enterprises in the LSSR, and seized 136 tons of iron, which was assigned to making the roofs. They also plundered 26 tons of nails<sup>955</sup>.

The document stated: “*Now the case of plunderers is being considered in the Supreme Court. But this is not the end of the story. In July and August of 1955, the board of the Militia of Kaunas revealed a new group of plunderer, consisting of 20 people who operated in the same system of enterprises and stole iron intended to be use for roofs, and other building materials*”. During the investigation it was established that the group had plundered 43, 2 tonnes of iron and other goods, that cost more than 100 thousand roubles<sup>956</sup>.

An analogous case was also recorded by a special division of the militia set up to fight against plundering of socialist property (Отдел по борьбе с хищениями социалистической собственности (ОБХСС) in Klaipėda, in

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<sup>953</sup> William A. Clark, *Crime and Punishment in Soviet Officialdom, 1965-1990*, *Europe-Asia Studies*, Vol. 45, No 2, 1993, p. 259; Grybkauskas, *Nomenklatūrinis sovietinės Lietuvos pramonės valdymas: partinės bausmės, KGB kompromitavimas ir klientiniai ryšiai*, pp. 24-26.

<sup>954</sup> *Report on the outcomes of work of the institution of the militia MVD USSR Lithuanian SSR about the fight against plundering and speculation inr 1955 and the first quarter of 1956 and the means to improve it*, LYA, V-100, ap. 1, b. 20, l. 3.

<sup>955</sup> *Ibidem*.

<sup>956</sup> *Ibidem*.

January of 1956. The cost of the plundered goods was 150 thousand roubles. The crime was committed in the so-called Lithuanian technical supply bureau in Klaipėda. The document states that the persons from this institution responsible for the crime were prosecuted by the legal system already<sup>957</sup>.

The document drew the conclusion that “almost the whole system of technical supply in Lithuania, which had to provide enterprises and organizations under control of the Republic, including the utility companies, with goods, was affected by organized large-scale plundering of socialist property”<sup>958</sup>.

The imprisoned Lithuanian dissident Priest Juozas Zdebskis in 1971, during his sentence in jail, also met prisoners sentenced for plundering: in general, there were eighteen men who were arrested for large-scale plundering and embezzlement of large amounts of public funds when installing Šiauliai television system. According to Zdebskis, the highest punishment, the death penalty had to be imposed on them<sup>959</sup>. The journal *Socialist Law* also described many cases of plundering<sup>960</sup>, for instance, attempts to plunder more than 1000 kilograms of wheat and other grain<sup>961</sup>. It also identified that speculation was a really common crime, speculation in fur coats, in particular<sup>962</sup>.

As the interviews of respondents No 9, 10, 11 and 12 had demonstrated – they all, when asked about the image of crime in the Soviet time, had mentioned only serious criminal activities, such as murders, body injuries and rapes. But all four persons had demonstrated the view, that speculation and stealing from the state were not the crimes, or moral evil – but, on a contrary,

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<sup>957</sup> *Ibidem*.

<sup>958</sup> *Ibidem*.

<sup>959</sup> Zdebskis, *Gyvenimas mąstymuose, Kunigas tarp vagių: iš kalėjimo dienoraščių*, p. 23.

<sup>960</sup> Kūrys Pr., „Tarpautinė kriminalinės policijos organizacija („Interpolas“)“, *Socialistinė teisė*, 2, Vilnius, 1973, p. 78.

<sup>961</sup> *Ibidem*.

<sup>962</sup> „Baudžiamosios bylos“, *Socialistinė teisė*, 2, Vilnius, 1973, p. 82; Baudžiamosios bylos, *Socialistinė teisė*, 1, Vilnius, 1979, p. 58; Čaika R., Gero mūsų darbo laidas, *Socialistinė teisė*, 1, Vilnius, 1979, 1, pp. 3-5;



good, just and legitimate practice, which helped them to survive and feed their families<sup>963</sup>.

Not only society but also some of “real” criminals had different standards when talking about the crimes aimed at acquiring two kinds of property in illegal ways: state property and personal one. Stealing and robbing from the state was treated as normal practice. According to the Priest Zdebskis, stealing from individuals was seen as more immoral: one of the criminals who Zdebskis met in prison told him that “*one shouldn't steal from individual persons, shouldn't rob them of their property*” because, though he himself took part in such actions, he was “*sorry for the people*”<sup>964</sup>.

Hence, it seems that in case of plundering of state property, the concept of crime, existing in the laws contradicted the one, wide-spread in the whole LSSR society, despite its inner fractions (for instance, between the system’s opponents, indifferent people and the nomenclature; between the rural and urban populations) and collisions.

In the “people from the street discourse”, several more images and definitions of the crime existed. As Respondent 8 recalls, he had two images of the criminals in the Soviet times: the “bourgeois nationalist” killing innocent people, the pre-Soviet Lithuanian government with the former Lithuanian President Antanas Smetona (who, according to the Respondent betrayed the country by fleeing it) and, finally, the “strongest image” – gangs of young people robbing and beating people (he himself became a victim to them several times)<sup>965</sup>.

It seems that the Soviet propaganda clichés mixed with some patriotic ideals in one personality in the said case. Being close to the dissident circles, Respondent8 was for the independence of Lithuania but still internalized the echo of the “former people” narrative. Having in mind some idealistic vision and dream about a free state, this man, however, condemned the real former government of independent Lithuania and even regarded it as a criminal.

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<sup>963</sup> Interviews 9, 10, 11, 12.

<sup>964</sup> Zdebskis J., *Gyvenimas mąstymuose, Kunigas tarp vagių: iš kalėjimo dienoraščių*, p. 52.

<sup>965</sup> Interview 8.

Consequently, it seems that the Soviet public discourse was quite powerful in constructing the new imaginary social reality about the crime; even if the images produced by it were mentally reinterpreted by concrete individual on the basis of his or her closest social reality, networks and experiences.

Respondent 8 shows how powerful personal experience in constructing the definition of crime (becoming a victim of a crime affected him more than propaganda) in the late-Soviet times was. The said case also confirms that an average Soviet individual was related to the ideological and public criminological discourse rather to the professional one (which was concealed and left to scholars, even though it depended on ideology).

According to Respondent 7, serious crimes, like murders, heavy body injuries and rapes in the Soviet period were rare, that period was much safer. Only some inner conflicts and fights sometimes occurred. However, according to him, “*everyone stole*”. When asked, if he himself treated it as a crime, the Respondent replied as follows: “*no, it wasn't a bad thing, it was normal*” and according to him, people treated stealing from the state as a crime only if they “*were caught*”<sup>966</sup>.

Another thing is even more important to our research in Respondent's 7 attitudes towards crime, namely, the way he defined the reasons of criminality. According to him, some women tended to become prostitutes because they “*had formed themselves in the wrong way*” (in Lithuanian – “*blogai, neteisingai susiformavo*”) and were uneducated<sup>967</sup>. Thus, it seems that nothing except the late-Soviet idea was reflected here: that a person becomes a criminal due to a lack of socialization and education; that the individual is raw material and can be “formed” and reformed in a good or bad way. And that social origin or being an enemy no longer defined person's ties to criminality – it was how successfully the values and norms of the Soviet life were instilled and built within him or her.

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<sup>966</sup> *Interview No 7.*

<sup>967</sup> *Ibidem.*

## 6. Discourse of (re)education: from punishment to prevention

Post-Stalinist changes in the concept of crimes also brought about changes in the understanding and definition of punishment. The new definition was constructed in the public and legal discourses. In the late-Soviet period punishment, first and foremost, was understood not as a “revenge” for the crime or as “expulsion”, “isolation” or even “annihilation” of the offender but as a “lesson” to those who disrespected common Soviet values, rules, the legal and social order<sup>968</sup>

The idea of re-education and re-socialization of a criminal gained more and more popularity in the late-Soviet public discourse. Also, the idea was spread that the responsibility of the process of re-education could be put on the shoulders of society and that not only penal institutions were responsible for dealing with real, potential criminals and prevention of crimes.

For instance, articles were published claiming that the traffic safety issues depended not only on the militia – the whole society had to take care that those rules should not be violated. The daily *Tiesa* gave some examples of a successful collaboration between penal institutions (which, as it was written, fulfilled their educational role successfully) and society (which agreed to be educated and collaborated with penal institutions to accomplish that task). Also, the institution called a Collegian Court («Товарищеский суд», or in Lithuanian „*Draugiškasis teismas*“) was getting more and more social space, its importance was growing. Such position as a “public inspector” («общественный инспектор», „*visuomeninis inspektorius*“) was created in order to engage more and more people in dealing with criminals and prevention of crimes. Thus, at least officially, the idea was spread that society should help the institution of the system of criminal prosecution; that it should know how to collaborate with the militia and courts in order to prevent the involvement of new people in criminal networks<sup>969</sup>.

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<sup>968</sup> A. Korsakovas, „Byla Nr. 11“, *Tiesa*, 1962 07 06, No. 157 (5901), p. 3.

<sup>969</sup> V. Chadzevičius, „Visuomenės parama“, *Tiesa*, 1962 07 03, No. 154 (5898), p. 2.

Such institutions as Collegian Courts actually erased the limit between violations of law, crimes, and simply a morally unacceptable asocial behaviour. They can be seen as a tool for social control, and had the a potential to modify societies' understanding of what a crime really is.

Thought the predecessors of Collegial Courts were traced back to 1919, it seems that their significance grew during the process of de-Stalinization. The function of courts was to “educate” workers so that they should respect and not violate “the labour discipline”. The brochure published to define the functions of these courts quoted Khrushchev’s words that it was impossible “*to deal with the remnants of the past in the people’s consciousness*” only with the administrative means, when “*masses are not involved*”: “*The important role here belongs to society. The conditions must be created for people who violate norms of behaviour, principles of the Soviet morality, to feel that their deeds are condemned by the whole society*”<sup>970</sup>.

The aim of these courts was “*to educate the employees of enterprises and institutions to exercise work discipline consciously and to develop high responsibility for administrative decrees and regulations*”<sup>971</sup>. The main functions of these “courts” were defined as follows:

*“The task of Collegial Courts is to instil the communist attitude towards work, towards preserving socialist property, towards respect for the socialist rules of common life in citizens. The most important thing in the work of Collegial Courts is to prevent violations of law, to create zero tolerance conditions for the violators of labour discipline. Collegial Courts function on behalf of the collective and are accountable to it.”*<sup>972</sup>

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<sup>970</sup> I. S. Dvornikovas, A. M. Kaftanovskaja, V. I Nikitinskis, *Draugiškieji teismai ir jų vaidmuo kovoje už darbo drausmės stiprinimą*, Vilnius, 1957, p. 4, 6.

<sup>971</sup> *Ibidem*, p. 5.

<sup>972</sup> „*Draugiškųjų teismų uždavinys – skiepyti piliečiams komunistinę pažiūrą į darbą, į socialistinės nuosavybės tausojimą, socialistinių bendrojo gyvenimo taisyklių laikymąsi. Svarbiausia draugiškųjų teismų darbe – užkirsti kelią teisės pažeidimams, sudaryti nepakantumo darbo drausmės pažeidėjams sąlygas. Draugiškieji teismai veikia kolektyvo vardu ir yra jam atsakingi*“. *Ibidem*, p. 1.

These courts functioned in “enterprises, institutions, organizations, higher education schools and specialized high schools, collective farms” and even in multi-apartment housing organizations and the so-called “street committees”, as well as in rural settlements. They were responsible for cases of violations of “labour discipline” and rules, administrative offences, minor-scale crimes committed for the first time, “cases of the violation of moral norms” and civil cases<sup>973</sup>.

Some cases, which are not criminalized today, could also be included in the functions of these courts: “improper behaviour in the family”, “improper attitudes towards the woman”<sup>974</sup>.

Collegial court could apply such penalties as a requirement “to apologize the victim or the abused one in public”, “a friendly warning” and a public condemnation, warning, monetary fines<sup>975</sup>. The educational function was strongly stressed:

*“The hearing of the collegial court must be organized with active participations of the members of the collective. (...) The educational effect of the collegial court is especially clearly revealed when the guilty one was severely criticized by his workmates, at the same time ensuring that his behaviour in the future will be controlled by the collective”*<sup>976</sup>.

One more method to educate the society and re-educate criminals was covering positive cases, which showed how one should act in everyday situations of the social life in which some people are inclined to commit a crime. The press reported, for instance, how people, who found lost things brought them back to the owners or took to the militia station<sup>977</sup>. In the magazine *Broom* the idea of

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<sup>973</sup> *Ibidem*, p. 1, 5-9.

<sup>974</sup> *Ibidem*, p. 8.

<sup>975</sup> *Ibidem*, p. 21-22.

<sup>976</sup> „*Draugiškojo teismo posėdis turi būti pravestas gausiai dalyvaujant kolektyvo nariams. (...) Auklėjamas draugiškojo teismo poveikis ypač ryškiai atsiskleidžia tad, kai kaltąjį griežtai kritikuoja jo darbo draugai, tuo pačiu užtikrindami, kad jo elgesys ateityje bus kontroliuojamas kolektyvo*“, *Ibidem*, p. 17-18.

<sup>977</sup> „Pr. Mikalauskas, Radinys sugražintas“, *Tiesa*, 1962 07 03, No. 154 (5898), p. 2.

re-educating “drunkards, liars, bribe-takers, thieves and bureaucrats” was also promoted, however, in a somewhat ironic way. A fiction-ironic futurist story printed in it described the Soviet writers of the future complaining about the situation in the society in the year 7777:

*“...for many centuries we have been castigating drunkards and liars, bribe-takers, thieves and bureaucrats. [...] Now we drew the conclusion that thieves, bureaucrats and demagogue still existed, as in the good old days. We have not eliminated them! Have not re-educated them. Have not affected... [...] We were educating the already-educated ones, remaking those who have already been remade. Though rascals did not read our works”<sup>978</sup>*

We see that the aim of the text was to criticize writers because their task to perform the function of social education and re-education of various types of criminals has not been accomplished.

This allegoric story does not only represent a spread of the idea of re-education in the public discourse but also sends an indirect message that the intelligentsia should not aim their text at well-educated readers only but talk so that their words could also reach those who are beyond the privileged discourse. This way of criticizing also means that even the “*rascals who did not read our works*”<sup>979</sup> should somehow become involved in the discourse, so that building of new social values and prevention of criminality could become more effective.

In 1962 the *Tiesa* wrote about a case of plundering in a confectionery factory. The story was presented in a very detailed way showing how seven tones of toffee, fruit and berry filling and other products were plundered. The article stressed that the crime had a collective structure and became huge and

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<sup>978</sup> „mes daug amžių pliekėme girtuoklius ir melagius, kyšininkus, vagis ir biurokratus. [...] Dabar įsitikinome, kad vagys, biurokratai ir demagogai tebeegzistuoja, kaip ir senais laikais. Mes jų neišnaikinome! Neperauklėjome. Nepaveikėme... [...] Mes auklėjome išauklėtus, perdirbinėjome perdirbtus. O nenaudėliai mūsų kūrybos neskaitė“. In: Vytautas Lubinas, „Paskutinis projektas“, *Šluota*, 1980 January, No. 2, p. 11.

<sup>979</sup> *Ibidem*.

large-scale because workers and staff covered it giving shelter and protecting each other. The author stressed that this wrong type of networking should be removed by strengthening the impact of the “party organization” in the factory and that such stories should be made public in order to educate the criminals, potential criminals and society: “*Perhaps we shouldn’t give so much space to covering this bitter story about sweets and their producers. But it must teach many others*”<sup>980</sup>.

The article about sweets disclosed the real names of the criminals involved in the story to call for public condemnation and contempt as a method of social control, crime education and prevention<sup>981</sup>. Possible public condemnation of the criminal became one more aspect of punishment and a punitive measure. It seems that the system believed that social shame and social rejection of the others is also a good sanction imposed on criminals<sup>982</sup>.

Another aspect of punishment in the late-Soviet Lithuanian public discourse was the image of the unavoidability of a sanction. Therefore stories about criminals whose crimes were revealed and who were punished existed in the public discourse too. Such stories sent the message that Soviet laws were humane and compassionate to the individuals, that they were drawn in the best way to ensure just and humane penalty.

On the other hand, however, the message was spread that in case of cruelty and rough violation of law, the militia and courts would do their utmost to investigate the crime and that punishment would, without doubt, be imposed: “*Let everyone, who has violated the law, [...] know – sooner or later he will have to take responsibility*”. The text assured that the militia officers are constantly working “*not wasting even a minute*”<sup>983</sup>.

Hence, a rapid reward and inevitable penalty were two more traits in the public discourse on punishment in the late-Soviet Lithuania. The attempts to

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<sup>980</sup> „Gal būt, nereikėtų taip plačiai dėstyti karčių istoriją apie saldumynus ir jų gamintojus. Bet ji turi pamokyti daugelį.“ In: „Karti istorija apie saldžius reikalus. Nusikaltimas ir jo priežastys“, *Tiesa*, 1962 07 05, No. 156 (5900), p. 2.

<sup>981</sup> *Ibidem*.

<sup>982</sup> *Ibidem*.

<sup>983</sup> Urbonas A., *Milicijos teletaipai kala*, Vilnius, 1973, p. 4, 24.

demonstrate that the penalty was unavoidable and inescapable were also evident in an educational brochure *02 Always Answers* (its title referred to the telephone number of the militia). It created the image of an ever alert and vigilant system of criminal prosecution, always ready to capture and punish criminals: *“this telephone number always answers, militia people in uniform are on duty every hour, day or night, they are always ready to prevent the crime and if it has been committed, to find and punish the perpetrator”*<sup>984</sup>.

Since the consumption of alcohol was treated as one of the reasons of crimes society was defined as bound to fight with drinking. The following story about a hooligan and an alcoholic was published in the *Tiesa* in 1975. Worshipping the civic awareness of society and its collaboration with penal institutions in revealing the crime and in arresting the criminal, the article also reminds of the social duty to re-educate this individual and other offenders: *“intolerance towards violators of the public order becomes the subject of honour and civic nature. It is a noble trait to be responsible for the safety of one’s city, street and yard, and this should be encouraged”*<sup>985</sup>. Another penalty was mentioned in this article – forced treatment from alcoholism<sup>986</sup>.

The law provided a similar definition of penalty. The aim of punishment in Article 21 of the Soviet Lithuanian Criminal Code is defined as follows:

*“The aim of punishment is not only to punish for the crime committed but also to correct and re-educate the convicts so that they should work honestly, observe laws carefully, respect rules of a socialist community life, and prevent the new crimes, not only the crimes committed by convicts, but also crimes of other people. Punishment does not aim at causing physical suffering or destroying human dignity”*<sup>987</sup>.

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<sup>984</sup> V. Mockevičius, J. Raudonis, *02 Visada atsako*, 1975, p. 3.

<sup>985</sup> „Nepakantumas viešosios tvarkos pažeidėjams tampa kiekvieno dorą žmogaus garbės, pilietiškumo reikalas. Būti atsakingam už savo miestą, gatvės, savo kiemo tvarką ir ramybę – taurus ir skatintinas bruožas“. In: Vanda Bogušienė, Pažeidęs viešąją tvarką, *Tiesa*, 1975 07 04, No. 155 (9858), p. 4.

<sup>986</sup> Vanda Bogušienė, „Pažeidęs viešąją tvarką“, *Tiesa*, 1975 07 04, No. 155 (9858), p. 4.

<sup>987</sup> „Bausmė ne tik nubaudžiama už padarytą nusikaltimą, bet ir siekiama pataisyti bei perauklėti nuteistuosius, kad jie sąžiningai dirbtų, tiksliai vykdytų įstatymus, gerbtų socialistinio bendro gyvenimo taisyklės, taip pat siekiama užkirsti kelią naujiems tiek nuteistųjų, tiek ir kitų asmenų nusikaltimams. Bausmė nesiekama daryti fizinių kančių arba



The following types of punishment are provided for in the Code: “*imprisonment*”, “*expulsion*”, “*deportation*”, “*corrective labour without imprisonment*”, “*deprivation of the right to occupy certain posts or do a certain kind of work*”, “*removal from post*”, “*a fine*”, “*public reprehension*”, “*confiscation of property*”, “*deprivation of a special military rank or title*”<sup>988</sup>. It was also said that “*Sending soldiers of compulsory military service to a disciplinary battalion can serve as a punishment to soldiers of compulsory military service*”<sup>989</sup>.

In case of imprisonment, differently from the past, Article 21 did not identify in which type of prison or camp a convict must be kept. Several types of punishment, included in the earlier Stalinist Code, were no longer included in the new one. They were as follows: “*proclamation that the one is the enemy of working people with the deprivation of the Soviet Republic and Union’s citizenship and compulsory expulsion from the Union*”, “*deprivation of political and some civil rights*”, “*expulsion from the Soviet Union for a certain time period*”, “*expulsion from the RSFSR or its certain territory with compulsory settlement in another territory or without it, or with a ban to live in certain territories or without it*”<sup>990</sup>. The new Code provided for no “*warning*”.

The death penalty was defined only as an “*extra penalty*”. Article 24 defined it as follows:

*“The death penalty, shooting, until its total abolition, as an extra kind of punishment shall be applied for crimes against the state in the cases, defined by the USSR law “On the responsibility for the crimes against the state”, for the intentional murder in aggravating circumstances, identified in the Soviet Union’s penal laws and articles of*

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žeminti žmogaus orumo.“ In: Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu, p. 16.

<sup>988</sup> „Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu, p. 16-17.

<sup>989</sup> *Ibidem*, p. 17.

<sup>990</sup> RTFSR Baudžiamasis kodeksas su pakeitimas iki 1940 m. lapkričio 15 d., pp. 18-19.

*the current Code, setting responsibility for intentional murder, and in some separate special cases, defined in the laws of USSR – for some other serious crimes as well.*”<sup>991</sup>.

## **7. Some insights into the discourse on and practices of “the deviants”**

It is not difficult to predict that the Marxist-Leninist ideal of the “society without a crime” was never attained in the Soviet Union and its colony, Soviet Lithuania. However, as the press had built the image of a society in which only certain types of crime existed, the LSSR societies’ link to the image of the real situation towards criminality – and the adequate feeling of safety – were misbalanced and distorted.

This was one of the reasons why the above-difficult situation of organized criminality in Lithuania in the early 1990s was perceived as a real shock. For long decades the press was silent about rapes and murders, only in very special and rare cases these topics could reach the mass media and, suddenly a liberated public sphere was filled with detailed descriptions of shooting and even bombing. Weak control of the state over the new independent country was among the most important reasons why criminality in the early 1990s was so wide-spread and usually covered in the mass media. However, the society which was not given any information of this kind for a long time experienced moral panic even in a more painful way.

Respondent 4 expressed his clear view that life in the late-Soviet Lithuania was much safer than it was after the restoration of independence:

*“Let me go now and I will walk trembling as an aspen leaf. Because I know everything already... (...) And when one hears how many crimes are committed, that*

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<sup>991</sup> Lietuvos Tarybų Socialistinės Respublikos Baudžiamasis kodeksas. Oficialus tekstas su pakeitimais ir papildymais 1978 m. balandžio 15 d. ir su pastraipsniui susistemintos medžiagos priedu, pp. 17-18.

*you might be robbed of your bag in the daytime... You know it all and you walk in fear, especially in the evening.*”<sup>992</sup>

The so-called socialist society of Soviet Lithuania period failed to prevent violence in the late-Soviet. Sexual violence existed there as well. J. Zdebskis met one man, sentenced for group raping of a woman in the Lukiškės prison in Vilnius in 1971: *“Three men were walking together in the middle of the night. All of them were drunk. She was going from a dance party. They kidnapped her, took her to some house, where the fireplace was... This man was 25 or 26 years old. He had a wife, a child”*. Another cell-mate of Zdebskis in the Lukiškės prison was a man sentenced for domestic violence – he beat his wife<sup>993</sup>.

As the statistics of recorded crimes shows, the number of recorded rapes varied. According to these data, in 1965 there were 59 cases of rape in the USSR, in 1966 this figure stood at 104<sup>994</sup>. In 1969 there were 94 cases, the following year, in 1970, the number was 81<sup>995</sup>. Just as in case of economic crimes and crimes against state property, in the 1980s the number of rapes increased. In 1982 there were 123 rapes registered, in 1983 – 141, in 1984 – 152<sup>996</sup>.

Sexual crimes sometimes had extreme forms, for example, the case in Klaipėda in 1971-1972: a man was regularly desecrating dead female corpses in Klaipėda cemetery because of sexual reasons<sup>997</sup>.

In Soviet Lithuanian society murders (even if not discussed publicly) were also a part of life. “Socialist law” described several such cases: a man killed his son-in-law; another victim was killed during the conflict in the

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<sup>992</sup> „*Va dabar mane paleisk, tai eisiu kaip lapas drebulės. Todėl kad tu jau viską žinai... (...) Ir girdint, girdint kiek tų nusikaltimų dabar. Kad dienos metu tau gali atimt rankinuką. Tai tu šitą visą žinai ir visą laiką eini su baime, tuo labiau vakare.*“ In: Interview 4.

<sup>993</sup> Zdebskis, *Gyvenimas mąstymuose, Kunigas tarp vagių: iš kalėjimo dienoraščių*, p. 15-16, 50.

<sup>994</sup> „Lietuvos TSR vidaus reikalų ministerijos (MVD) Kovos su socialistinės nuosavybės grobstymu ir spekuliacija valdybos dokumentai“, LYA, f. V-100, ap 1, b. 21, l. 165.

<sup>995</sup> *Ibidem*, ap 1 b 25, l. 169

<sup>996</sup> *Ibidem*, f. V-100, ap. 1, b. 63, l. 215.

<sup>997</sup> „Baudžiamosios bylos“, *Socialistinė teisė*, 2, Vilnius, 1973, p. 81.

cultural centre of one small provincial town<sup>998</sup>. Several cases of homicide (also, unintentional) and infringements to murder are described in the Chapter Legal Practice, for instance, such cases as the violation of the traffic law, which resulted in a death in an accident; an infringement to kill using an axe committed by one inhabitant of Šalčininkai; a case when a woman, during the quarrel, killed a drunken man by pushing him down the stairs; and some other cases<sup>999</sup>.

As historiography shows, the situation in Soviet Lithuania and the USSR was similar. According to Walter D. Connor, most cases of homicide in the USSR in the 1960s were committed by males, domestic violence resulting in murders prevailed half of murders were committed at home (contrary to the situation in the U.S.A). About 80% of such crimes were committed by drunken people<sup>1000</sup>.

The statistics of recorded crimes in the LSSR the following number of murders per year: 86 cases of murder in 1965, 78 – in 1966<sup>1001</sup>. In 1969, according to such data, 81 persons were killed in the LSSR, in 1970 – 99 people faced such fate<sup>1002</sup>. The growth in the number of recorded crimes in Soviet Lithuania during the last decade included the number of murders too: in 1982 there were 168 murders recorded, in 1983 – 163, in 1984 – 146<sup>1003</sup>.

It is important to mention that the total number of murders did not differ much from those in contemporary Lithuania<sup>1004</sup>: in 2013 as many as 186 persons were killed, whereas in 2014, the number of committed murders was 175<sup>1005</sup>.

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<sup>998</sup> „Baudžiamosios bylos“, *Socialistinė teisė*, 2, Vilnius, 1973, p. 74-75.

<sup>999</sup> „Baudžiamosios bylos“, *Socialistinė teisė*, 1, Vilnius, 1979, p. 60; Baudžiamosios bylos, *Socialistinė teisė*, 4, Vilnius, 1985, p. 57 - 60.

<sup>1000</sup> Walter D. Connor, *Criminal Homicide, USSR/USA: Reflections on Soviet Data in Comparative Framework*, p. 112– 114.

<sup>1001</sup> „Lietuvos TSR vidaus reikalų ministerijos (MVD) Kovos su socialistinės nuosavybės grobstymu ir spekuliacija valdybos dokumentai“, LYA, f. V-100, ap 1, b. 21 l 165

<sup>1002</sup> *Ibidem*, ap 1 b 25, l. 169

<sup>1003</sup> *Ibidem*, f. V-100, ap. 1, b. 63, l. 215.

<sup>1004</sup> Several years before these numbers were almost two times higher.

<sup>1005</sup> The statistical data published by Lithuanian police, accessible online: <http://www.policija.lt/index.php?id=24469> [last visited on June 1 2016].

It is important to keep in mind the fact that, according to Respondent 1, the number of murder cases was smaller in the Soviet period because body injuries, even if they resulted in death of the victim were recorded as body injuries<sup>1006</sup>.

The interview respondents also confirmed the fact that sometimes information or at least rumours about the committed murders and other type of violence reached them, despite a complete vacuum of the information related to this topic in the public discourse. Sometimes the information about such cases was obtained because a person had professional links with the victim. Respondent 5, while studying medicine at Vilnius University learned that another student (studying philology) had been murdered: “...*a philologist was drowned. But we had to keep silent, we could not talk, we had to say that it was a misfortune or something like that*”<sup>1007</sup>.

A great number of the investigated crimes, circumstances clarified and criminals found in case of murders were characteristic of both the late Soviet period and today. In 1969, as has already been mentioned, 81 murders were committed and 79 clarified (97.5% of murders were investigated with good results), in 1970 – 99 murders were committed, and only one case remained unclear (98 murders investigated, or 99% of them)<sup>1008</sup>. In 1982, Soviet institutions investigated and clarified 165, or 98.2% of murders (168 were recorded), in 1983 – 158 murders, or 96.9% (163 were recorded), in 1984 – 136, or 93. 2% of murders (146 were recorded)<sup>1009</sup>. For the comparison: in 2013, as many as 183 murders were successfully investigated (out of 186, 98.4%), in 2014 – 195 (111.4%) murders were investigated and clarified out of 175 murders<sup>1010</sup>.

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<sup>1006</sup> *Interview No 1.*

<sup>1007</sup> *Interview No 5.*

<sup>1008</sup> „Lietuvos TSR vidaus reikalų ministerijos (MVD) Kovos su socialistinės nuosavybės grobstymu ir spekuliacija valdybos dokumentai“, LYA, V-100. ap 1 b 25, l. 169

<sup>1009</sup> *Ibidem*, ap. 1, b. 63, l. 215.

<sup>1010</sup> The statistical data published by Lithuanian police, accessible online: <http://www.policija.lt/index.php?id=24469> [last visited on 1 June 2016].

We can also learn about the crimes related to violence by analysing the files of the People's courts. In one of them (1955) a man was sentenced for beating up another person<sup>1011</sup>. Another file, from 1986, reveals a story of a young man, sentenced for hooliganism and taking part in a scuffle, where several teenagers suffered serious body injuries. A fight took place in the street in Grigiškės, a suburb of Vilnius, after one aggressive gang of young people insulted the other<sup>1012</sup>. This case can also serve as an illustration of the fact that juvenile criminality existed in Vilnius and its surroundings in the 1980s. Respondent 6 experienced violence himself – he was hit and beaten by a passer-by in the street who also stole his cap<sup>1013</sup>.

It seems that in the late-Soviet Lithuanian society, signs of the existing “delinquent subculture”, which can be understood as social space (or, sometimes, even as social network), neutral to the common social norms and values, the agents of which were aware of and ready for the possibility to breaking the law, were observed<sup>1014</sup>. This subculture, without doubts, was a product of the Soviet prison.

The background of subculture was young people. As official sources reveal, every third or every fourth crime committed by a recidivist in late-Soviet period was committed by the people who had broken the law in their teenage years for the first time<sup>1015</sup>. Hence, the tendency was for juvenile delinquents to continue to lead a criminal lifestyle for the rest of their lives<sup>1016</sup>.

Also, visible signs of subculture were seen among the Lithuanian criminals: a system of symbols, norms, values, rules and specific language (jargon or slang)<sup>1017</sup>. Antanas Terleckas, while imprisoned, noticed a special system of values among the prisoners, which did not match the mainstream

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<sup>1011</sup> Vilkaviškio rajono VRM milicijos skyriaus vyr.tardytojo nutarimas skirti kardomąją priemonę, LYA, f. V-145/40, ap. 1, b. 2946, l. 2.

<sup>1012</sup> LYA, f. V-145/40, ap. 1, b. 3604, l. 3-5.

<sup>1013</sup> Interview 6.

<sup>1014</sup> Matza, *Nusižengiamumo srovėje*, p. 67.

<sup>1015</sup> Kairelis, *Prokurorinė priežiūra Tarybų Lietuvoje*, p. 66 - 67.

<sup>1016</sup> *Ibidem*.

<sup>1017</sup> Zdebskis, *Gyvenimas mąstymuose, Kunigas tarp vagių: iš kalėjimo dienoraščių*, pp. 36 - 37.

values and norms. For instance, when he served his sentenced in Vilnius strict regime labour camp for the economic crimes, he noticed that other prisoners hated him because he had a university diploma. As Terleckas indicates, only 2 prisoners out of 700 had degrees of higher education. He was abused by criminals; they grabbed his food and forced him to wash their underwear. Their attitude towards Terleckas changed when prisoners learned that he had been punished for economic reasons: “*All 700 prisoners began to demonstrate high respect for me, thinking that I am a large-scale criminal, organizer of thefts...*”<sup>1018</sup>.

Hence, if any delinquent subculture existed in the Republic of Lithuania (1918-1940), the latter was qualitatively new. It was based on the basis of the rules and slang created in the Soviet Gulag area before the occupation of Lithuania.

As Zdebskis noted, this specific criminal vocabulary was not an “*artificial thing, but a substance of [...] everyday life*”<sup>1019</sup> of prisoners. It seems that the criminal subculture formed and shaped not only moral values, language, or such visible signs of the subculture as, for instance, tattoos but also social practices and the way of socialization: “*What they are talking about? About committed thefts, fights and scuffles, about against whom and how they will take revenge, when they will be released from prisons, where they “smell” money, that they could make a “good deal”*”<sup>1020</sup>.

These young men started illegal activities in their teenage years already, and gradually they became skilled criminals. While in prison, they looked forward to only one thing, “*when they will be able to resume and continue their activities and lifestyle, which was the joy of their life, their understanding about what happiness really was*”<sup>1021</sup>.

This subculture, as a specific “social cosmos”, was noticed by other imprisoned dissidents as well, including females. The dissident Jadvyga Gema

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<sup>1018</sup> Terleckas, *Laisvės priešaušryje. Rezistentų atsiminimai 1970-1986*, pp. 33-39.

<sup>1019</sup> Ne „dirbtinis dalykas, bet [...] jų kasdienio gyvenimo turinys.“

<sup>1020</sup> *Ibidem*, p. 39.

<sup>1021</sup> *Ibidem*.

Stanelytė who was a member of the Catholic dissident movement and a political prisoner, declared during her trial held in Kelmė on 16 December 1980 that during 5 years spent in the Lukiškės prison she encountered many young people with extremely different sense of normality, law and morality. These people “*had no ideals and had no sense and understanding about humanity*”<sup>1022</sup>.

Of course, being a Catholic nun herself, she could have exaggerated the situation. However, it is clear that a criminal people thought in categories that were absolutely opposite to those of a Christian and also to the Soviet ideals and sense of norms, values and morality.

“Socialist law” describes urban areas, in which such subculture developed. These young people gathered in the small “streets, far away from the city centre”, with “small wooden houses”, dark (“blackened wooden electricity poles with one or two dimly flashing lamp”):

*“When a human shadow passes by one of such electric poles giving a dim light, songs turn into silence, sparkling lights fade away and uncomfortable silence falls. Teenagers, gathered next to the fence, who are eager to look like “real” men, then evaluate the late passer-by. If the passer-by is scared and tries to sneak away invisible, like a cat, these guys would certainly come close to him and will ask for the cigarette...”*<sup>1023</sup>.

It is important to note, that criminal subcultures related to the processes of urbanization and industrialization flourished in many countries at that time, undergoing modernization, for instance, the USA<sup>1024</sup>. Thus, the USSR, even if undergoing forced, not free modernization, would be no exception.

However, it seems that these processes were a bit different in the USSR due to its specific historical circumstances and totalitarian past. When the

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<sup>1022</sup> Lietuvos Katalikų Bažnyčios kronika, T. 6, No. 46, p. 344.

<sup>1023</sup> Šatkus P., „Nusikaltimų pėdsakais.Nepasisekęs šantažas“, *Socialistinė teisė*, 1, Vilnius, 1973, p. 66.

<sup>1024</sup> See more in: Albert K. Cohen, *Delinquent Boys: The Culture of the Gang* (Free Press, 1995).



system of the Gulags was going through a grave crises in 1953 and when it finally nearly collapsed due to the end of mass repression and de-Stalinization in the late 1950s<sup>1025</sup>, the late-Soviet society was “filled with the people with the Gulag past, who had been sentenced during the Stalin’s period for the most minor and unimportant offences”. In such a way, with the people coming back from the camps, the values, practices and conflicts developed in the Gulag were transmitted to the “big society” (meaning the social world outside the “zone”)<sup>1026</sup>.

Socialization in the Gulags could also have positive consequences, such as consolidation of the identity and networks of political prisoners, who, when released, became members of non-armed resistance and peaceful opposition in the LSSR. However, the identity of the deviant was also developed and strengthened there. Therefore, after the post-Stalinist mass amnesty, a lot of new people was released from the “zone” and these people had poor skills and abilities to re-integrate themselves in the society.

In this way late-Soviet societies were filled with people who unprepared to live in freedom, who “had lost skills of living in freedom, who were treated as strangers and rejected, who, perhaps, were willing to start everything once again from the beginning but who did not always have enough energy and necessary social experience” to fulfil this task<sup>1027</sup>.

It seems that the Soviet system in USSR and LSSR really lacked a mechanism of successful social re-integration of the former prisoners. It focused on political or ideological re-education but forgot to take care about the social needs of the former prisoners, such as, for instance their integration in a working life<sup>1028</sup>.

The stigma of a former prisoner did not help him to reintegrate himself either, which is true of the case of political prisoners. They experienced

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<sup>1025</sup> Courtouis, Werth, Panné, Paczkowski, Bartosek, Margolin, *Juodoji komunizmo knyga. Nusikaltimai, teroras, represijos*, pp. 348-349.

<sup>1026</sup> Козлов В. А., *Неизвестный СССР противостояние народа и власти 1953 - 1985 гг.*, с. 96.

<sup>1027</sup> *Ibidem*, с. 96.

<sup>1028</sup> *Interview No 1.*

different restrictions of reintegration and even the so-called “trauma of return”<sup>1029</sup>. Hence, it is not surprising why the people released from prisons and camps found it easier to continue criminal practices than to take a very difficult path of re-integration. They “*easily followed the forms of social organization and networking, which they had mastered in the Gulag*”<sup>1030</sup>.

It is also important to note that in Lithuania who encountered Gulag reality only in the 1940s, criminal values, social practices and ways of criminal socialization could not have been so strong and common as in other parts of the Soviet empire, which had the Gulag culture going back to the 1920s. However, as we saw, some tendencies of it existed in LSSR as well.

The Gulag project still affected even the post-Stalinist and late-Soviet development of the LSSR society in the field of criminality. But we can only partly agree with the statement made by Norkus that the Gulag was “*a social microcosm, in which total control and the dehumanization ideal was implemented, an ideal, which the leaders of the totalitarian states seek to implement in the whole society*”<sup>1031</sup>.

On the one hand, despite strict control, the Soviet system somehow failed to prevent the crystallization of completely different social values and networks of solidarity, which were based on *criminal* values and ways of activities different from the Soviet ideology. But, on the other hand, we can agree that the Soviet state was successful in the production of dehumanization through a spread of the criminal subculture, even if this, most probably, was never a plan, but only a result of the regime’s policy of mass repressions.

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<sup>1029</sup> As for instance: Danutė Gailienė, *Traumas Inflicted by the Soviet and Nazi Regimes in Lithuania: Research into the Psychological Aftermath*”.

<sup>1030</sup> Козлов В. А., *Неизвестный СССР противостояние народа и власти 1953 - 1985 гг.*, с. 96.

<sup>1031</sup> Norkus, *Kokia demokratija, koks kapitalizmas? okomunistinė transformacija Lietuvoje lyginamosios istorinės sociologijos požiūriu*, Vilnius, 2008, p. 214.

## CONCLUSIONS

1. The ideal types of the Soviet concepts of crime and punishment were born in the context of the utopian Bolshevik worldview. These concepts were shaped by the Marxist ideology and traditional Russian mesianism. Such factors as the traditional social organization of the Russian villages, anti-individualism, collectivism, Bolshevik experience of being an illegal underground organization and the general context of the 19th-century Europe (where crime was no longer understood merely as a morally negative phenomenon but was seen as a tool of the poor to resist the injustice of power holders) also impacted the evolution of these concepts. Thus, the idea was developed in Bolshevik ideology that usual types of criminality were only a response of the oppressed social classes to the suppression of rich and wealthy exploiters. Real criminals were not murderers, rapists, or, especially, thieves, robbers and burglars in this ideology but rich and wealthy exploiters, aristocracy, bourgeoisie or later the so-called Kulaks (rich farmers). Though the Soviet ideology claimed that the reason of crime was class exploitation, it also held the view that any kind of non-political criminality would wither away by itself when a just communist society without the exploitation was created.

2. As the ideology claimed that the traditional, so-called “criminal” criminality would be eliminated with the building of communism, by eliminating its main reason, that is, social and economic inequality, the Soviet system of criminal prosecution from the early stages of the Bolshevik regime paid much more attention to political criminality. The image of political criminals in the ideal-type Soviet legal doctrine, legislation and practice of criminal prosecution was equated to the following exploiters: the former ruling elites of Tsarist Russia (the so-called former people), bourgeoisie, and the concept of the kulak during the period of collectivization.

3. The goal of punishment in case of a political crime was to eliminate the individual because according to the Soviet ideology, enemies could not be corrected. In such cases it was the individual rather than the act that was

perceived as a criminal. In case of non-political criminality, however, the term correction was used in the Soviet ideology, legal doctrine and the Penal Code of the RSFSR of 1926.

4. Hence, the prevailing definition of a criminal in Lenin's and Stalin's Russia was that of a political criminal or “the enemy”. The system was designed to repress ideologically-labelled enemy groups and to eliminate them. After the occupation of Lithuania this definition was transferred there and prevailed in the public sphere and ideology until the death of Stalin.

5. However, the statement that there was a sharp division between political and criminal types of offences in the Soviet society is only partially correct. As some cases show, ideological clichés and techniques of using law for political repressions could have been applied sometimes even in case of non-political criminality.

6. The specifics of criminological and legal doctrine and the importance of legal and extra-judicial institutions varied according to the needs of the regime under Stalinism. In the periods of mass social transformations (industrialization, collectivization) the legal doctrine focused on “nihilist” definitions of law, whereas criminal prosecution in legal terms was simplified or eliminated – the extra-judicial means and institutions dominated. After the legal doctrine had developed the view of “legality” and “legal stability” in the periods of ideological stabilization (in the USSR that was after the Constitution of 1936), legal concepts became important and even political “enemies” had to go through the procedure of court trials. Administrative, non-judicial means were applied in cases of deportations in the LSSR. Officially the deportees were not prosecuted as criminals and were not tried in courts (the system, however, treated them as deviants even after the Stalin’s era came to an end and the former deported persons came back to the LSSR).

7. After the occupation the legislation drawn up in Soviet Russia and the USSR between 1917 and 1940 was transferred to Soviet Lithuania without at least partial local changes. The LSSR did not have its own Criminal Code: the Criminal Code of the RSFSR of 1926 was used there until 1961. Hence, the

imperial discourse dominated completely in the field of legislation. Therefore, a total incorporation of the Lithuanian legal system into the imperial model can be treated as one of the forms of sovietization.

8. On the level of the professional criminological discourse of the LSSR until 1953 the imperial discourse dominated as well, though some small signs of partially independent legal thinking could be detected in the environment of professional lawyers and law students.

9. The institutions of criminal prosecution in the LSSR were formed according to the imperial model – the Soviet example of the court system. The system of prisons was joined to the Gulag. The system of courts had no independence because people who committed what was recognized as a “political” crime in the USSR could be sentenced by courts outside the territory of the LSSR. The Supreme Court of the USSR – not the Lithuanian one – was the highest court within the hierarchy of the LSSR courts. This institutional way of organizing a criminal prosecution system and the court model were not reformed after Stalinism – the only difference was the elimination of extra-judicial institutions.

It is also important to mention that the KGB was formally responsible for interrogation of political criminals until the independence of Lithuania was declared, so the KGB was also treated as a part of the common system of criminal prosecution. This system remained almost unchanged until the collapse of the Soviet Union and declaration of Lithuania’s independence.

10. The traditional opinion about the totalitarian societies of the 20th century that they were illegal *sui generis* and that totalitarian societies eliminated the traditional concept of penal law and replaced it with higher “divine” laws of the utopian world, and that penal law was only a tool of repressions in these societies, is correct only partially. It is true that Soviet law could function as a tool to repress and prosecute, and the Soviet legislation, actually, was designed to achieve this goal. The very concept of crime in the Penal Code of 1926 was defined as the so-called “material definition of crime”. It stated that any act of omission if it does harm to the Soviet State rather than an act or omission

prohibited by law was criminal. Hence, the concrete law was unnecessary in order to prosecute an individual. Also, the “principle of analogy” stated that if a certain crime was not specified in the Articles of the Criminal Code, the article defining a similar crime could be used for criminal prosecution. The third tool in the Soviet legislation helping to implement repressions was broad and very abstract formulations of some Articles of the Criminal Code; sometimes even professional lawyers were not sure about which activities were covered in such formulations as, for instance, “banditism”. Thus, actors of the criminal prosecution system were free to interpret these Articles in a very flexible way. Article 58 was the most vivid example of that.

11. Hence, until the end of Stalinism, on account of the “material definition of crime” and the “principle of analogy” Soviet laws were designed to impale the goal of repressing the “enemy” by legal means and categories.

12. In the field of criminal prosecution of political criminals in the LSSR, even the past activities carried out when the Soviet legal order was not in existence yet, could be used as evidence of crimes. Also, there were cases when the principle of collective responsibility for the crime was applied. Another problem in the field of criminal prosecution practices in case of political crimes in the LSSR was the fact that legal procedures were often misused, evidence and witnesses interpreted so that they should help the goal of punishing the accused one to be achieved.

13. The traditional opinion about the totalitarian societies of the 20th century that they were illegal *sui generis* and that totalitarian societies eliminated the traditional concept of penal law and replaced it with higher “divine” laws of the utopian world, and that penal law was a tool of repressions in these societies, is correct only partially. There were spheres in legislation and criminal prosecution practice when soviet law functioned in a very traditional way, for instance, in case of not-political criminality. For instance, in Soviet Lithuania, in case of non-political criminality the application of the adequate Article of the Criminal Code for a certain act was usual practice. Misuses of legal procedures were rare.

15. During Stalinism the concept of crime differed significantly from the *ideal type* on the level of society in the LSSR. The ongoing armed resistance, and the fact that a considerable part of society supported it, was a sign that the Soviet definition of crime was rejected at least by the people who did not collaborate with the Soviet system. Perhaps that was why valiant attempts were made to depict the partisan movement as a non-political criminal activity, which was not directed towards a fight against the Soviet government but simply engaged in robbing and killing the peaceful “soviet citizens”, in the public discourse.

16. The Partisan War offered an alternative to the Soviet concepts of crime and criminality. Partisans did their utmost to create their own jurisdiction and legal definitions, as well as to organize the process of criminal prosecution – trials of traitors of resistance and Soviet collaborators. Thus, armed resistance impeded a fast and easy process of sovietization, together with a transfer of the imperial concepts of crime and punishment onto the level of society.

17. After Stalinism, a radical reform and transformation were carried out in the legislation and the legal theory in the whole USSR. Old theories and legal patterns developed by such scholars as Vyshinski were denounced, mass repressions stopped, the Gulags were dismantled. The “material definition of crime” was eliminated from the legal and criminological theory and doctrine, the “principle of analogy” no longer existed in the new criminal codes, which were drafted separately by each Republic, including Lithuania (of course, with the “imperial” guidelines and using “imperial” patterns). In 1961, Lithuania adopted its own Criminal Code, thereby gaining partial independence from the empire.

18. After the death of Stalin the concepts of crime, criminal and punishment were modified in the public sphere too. Socialism was treated as built already (in terms of ideology), so a political crime was seen as a remnant of the capitalist order. The concept of a political crime (committed inside the USSR) was transformed considerably. Now “political” (just like the usual) criminals were treated as people impacted by the capitalist West, mentally ill, insufficiently “socially active”, or as persons whose process of socialization

went wrong. Hence, the concept of a political enemy was eliminated from the public. The enemy still existed, but only behind the Iron curtain. However, to educate the population the mass media often covered such crimes as plundering of state property, speculation and other prohibited economic activities.

19. Tools to punish a political criminal as an enemy along with analogy, the material definition of crime and such Articles as Article 58 were also removed from legislation. However, old logic still impacted the process of investigation and trials of political in the criminal prosecution practise.

20. In both Stalin's and late-Soviet periods, only a very limited amount of public information about criminality was made available in the USSR and the LSSR. The mass media avoided writing about usual *criminal* crimes (murders, rapes) thus creating the image of a better and secure Soviet society. The statistical data and crime rates were kept secret. Therefore, on the level of an individual, especially in the late-Soviet era, a feeling of safety and security was quite strong. Contrary to the Western countries of the second half of 20th century, there was no moral panic in the late-Soviet society.

21. The concept of crime differed considerably from that of legal, ideological and professional definitions in the late-Soviet LSSR *people from the street* discourse. For instance, plundering of state property was not treated as crime there; on the contrary, it was seen as a moral and just act (in which the majority of the population were engaged).

22. A myth about the Soviet system of criminal prosecution as a tool designed and used to carry out political repressions *only* can be confirmed partially. Before the death of Stalin the Soviet penal law had inner mechanisms to be used as such a tool and in fact it worked in this way; however, there were many situations, for example, in case of non-political criminality, when the system did not abuse its own legal procedures, when courts were aware of evidence and just verdicts to sentence innocent people. After the death of Stalin only one tool of this repressive mechanism from the past was left in legislation, namely, too abstract formulations of some Articles, and too abstract, unclear definitions



of some criminal activities (hooliganism, for instance). Hence, this system, at least starting with the period of Vyshinsky, had the goal different from that of repressing and controlling; as in any other country it was to punish such "usual" criminals as rapists, murderers and thieves, as well as to solve the problem of deviance and criminality.

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## **Interviews**

### *With Soviet legal professionals*

Interview No 1: a male, born in 1957, worked as the investigator at Militia in Kaunas district.

Interview No 2: a male, born in 1937, worked in the Prosecutor's office.

Interview No 3: a female, born in 1957, former student of the Faculty of Law in Vilnius State University.

### *With People from the Street*

Interview No 4: a female chemist, born in 1944, former employee of the Soviet factory „Vilniaus Pergalė“.

Interview No 5: a male, born in scientist, 1940, worked at the Ministry of Health.

Interview No 6: a male, physicist, 1952, worked in the Institute of Hygiene.

Interview No 7: a male, worker, born in 1944, worked in various factories in Vilnius and outside the LSSR and as a driver.

Interview No 8: a male, engineer, born in 1945, worked in the various Soviet factories.

Interview No 9: a male, philologist, born in 1952, worked in the Institute of Lithuanian Language and Literature.

Interview No 10: a male, worker, born in 1950, worked in the factory „Kuro aparatūra“.

Interview No 11: a female, philologist, born in 1957, worked in the various museums in Vilnius.

Interview No 12: a male, medical doctor, born in 1952, worked in the Republican Vilnius Clinical Hospital.

Interview No 13: a male, engineer, born in 1951, worked in the various factories of soviet Lithuania.

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