Tomas Girdenis

Coherence in Criminal Policy for Offenses Against Justice That Obstruct the Investigation of a Case

The System of Offenses Against Justice in the Criminal Code of the Republic of Lithuania and Its Coherence

The effective combating of crimes against justice is an indispensable element of every state's criminal policy. Only by ensuring a safe environment for participants in criminal proceedings can a smooth criminal trial be expected. Therefore, the effective combating of crimes against justice requires coherence, both in criminal law and in the case law implementing it. Importantly, coherence between the provisions of the special and general part of the Criminal Code is essential for effective criminal policy. A lack of coherence between criminal law rules can lead to highly ineffective criminal policy. This analysis of both criminal law rules and case law shows precisely how a lack of coherence between criminal law rules leads to an ineffective and, in some cases, totally non-deterrent criminal policy in the fight against crimes against justice.

Chapter XXXIV of the Criminal Code of the Republic of Lithuania (hereinafter – the CC) is devoted to crimes and misdemeanors against justice. Criminal offenses against justice can be broadly divided into two groups: 1) offenses that obstruct the investigation or trial of a case; and 2) offenses that obstruct the implementation of legal decisions. The following acts may be included among the offenses of obstructing the investigation or trial of a case: 1) obstructing the activities of a judge, prosecutor, pre-trial investigation officer, or advocate (Art. 231 of the CC); 2) contempt of court (Art. 232 of the CC); 3) influencing a witness, victim, expert, specialist, or translator (Art. 233 of the CC); 4) influencing a victim to reconcile with the perpetrator (Art. 234 of the CC); 5) false complaint, statement, report, testimony, conclusion, or translation (Art. 235 of the CC); 6) false accusation or report of an unlawful offense (Art. 236 of the CC); 7) concealment of the offense or of the perpetrator of the offense (Art. 237 of the CC); 8) failure to report the offense (Art. 238 of the CC); and 9) disclosure of data of a pre-trial investigation without authorization (Art. 247 of the CC). The following acts may be included among the offenses impeding the implementation of legal decisions: 1) obstruction of the activities of a bailiff (Art. 231 of the CC); 2) disorganization of the work of a custodial institution (Art. 239 of the CC); 3) release of a prisoner (Art. 240 of the CC); 4) escape of a prisoner

(Art. 241 of the CC); 5) evasion of the execution of a custodial sentence or of a prison sentence, or of the return to the place of custody (Art. 242 of the CC); 6) evasion of penal measures (Art. 243 of the CC); 7) failure to comply with a sentence imposed on a legal person (Art. 244 of the CC); 8) failure to comply with a non-punitive court decision (Art. 245 of the CC); and 9) transfer, concealment, destruction, or damage of inventoried or seized property or property subject to a temporary restraint of title (Art. 246 of the CC).

When analyzing the penalties for obstruction of justice offenses in the CC, it can be noted that the legislator does not consider these offenses to be particularly dangerous, as most of them are minor offenses, with the most severe penalty being imprisonment for up to 1 or 2 years. In exceptional cases, usually when coercion is used to commit these crimes or when other qualifying features are present, these crimes are of a minor nature, with the most severe penalty being imprisonment of up to 4 or 5 years. Criminal offenses of evading a court order are even less serious, are generally considered misdemeanors, which are not punishable by imprisonment or as a minor offense, and are punishable by up to 2 years' imprisonment. One exception is the offense of concealment of seized property, which can be punished by up to 7 years' imprisonment, depending on the value of the property. Only offenses involving obstruction of serving a custodial sentence are punishable by stricter penalties – up to a maximum of 3, 6, or 15 years of imprisonment, depending on the seriousness of the offense and the consequences caused.

Although the CC has as many as 9 articles devoted to the offenses of obstructing the investigation of a case, the main offenses in this category are: Art. 231 of the CC, i.e., obstruction of the activities of a judge, prosecutor, pre-trial investigation officer, or advocate; and Art. 233 of the CC, i.e., influence on a witness, victim, expert, specialist, or interpreter. The seriousness of these offenses in the eyes of the legislator is essentially identical. Simple obstruction of the subjects of the investigation or influence on other participants in the proceedings is punishable, among other penalties, by up to 2 years of imprisonment, and the penalty is increased to up to 4 years of imprisonment if the offense is committed by means of physical or other coercion. If physical injuries are caused during these crimes, this would lead to criminal liability under the norms for the qualified commission of the relevant injuries: minor bodily injury is punishable by imprisonment of up to 5 years, serious bodily injury is punishable by imprisonment of between 2 and 12 years, and murder is punishable by imprisonment of between 8 and 20 years, or life imprisonment.

Assessing whether such sanctions are sufficient and dissuasive is quite difficult. However, an analysis of the CC allows us to see how they fit in with other

criminal offenses prohibited in Lithuania. Although the interpretation of a dangerous act is broader under Art. 231 of the CC than under Art. 233 of the CC, they both have in common that they prohibit any influence on the participants in the proceedings. The Supreme Court of Lithuania, when interpreting the element of obstruction under Art. 231 of the CC, stated that "obstruction as a criminal offense may consist of both active and passive acts […], obstruction may take the form of a demand, request, advice, instruction, etc." (2K-350-693/2017, 2017). It is therefore logical to look at how the CC prohibits other unlawful influences on persons.

The closest norm for obstruction of the investigation of a case, which specifically relates to influencing the subjects of the investigation, is bribery (Art. 227 of the CC). Bribery is essentially the obstruction of an investigation where the subjects of the investigation are influenced by the payment of a bribe. Bribery is in fact a special norm in relation to Art. 231(1) of the CC. However, simple bribery by giving a bribe for a lawful act or omission in the exercise of authority is already punishable by up to 4 years of imprisonment, bribery for an unlawful act or omission in the exercise of authority is punishable by up to 5 years of imprisonment, and the giving of a large bribe is punishable by up to 7 years of imprisonment. So, we have a rather strange situation where influencing the subjects of an investigation by means of a bribe is punished almost twice as harshly as influencing them by means of coercion. An equally interesting picture emerges when we compare the effects of psychological violence on the subjects of an investigation or other participants in a case, with the norms prohibiting psychological violence based on other types of action. Here, the mere act of making an intense threat to any person is considered to be terrorizing a person and is punishable by up to 4 years of imprisonment – the same as if the threat involved influencing both the investigation and the other participants in the case. In other words, no additional, more severe liability is provided for if the threat is intended to influence the investigation. If a person uses coercion to enforce a real or perceived right, they are exercising self-willed conduct and can be sentenced to up to 5 years of imprisonment. The penalties are even stricter if psychological coercion is used to force a person to transfer property. For example, if psychological coercion is used to demand the performance of an act of a financial nature, it is considered extortion and is punishable by up to 6 years of imprisonment, and up to 10 years of imprisonment if the extortion of high-value property is involved. On a theoretical level, it is possible to envisage absurd situations where a person who uses psychological coercion against a victim directly and demands the transfer of a high-value asset should be punished 2.5 times more severely than if they were to use the same coercion against

a judge demanding that they be awarded the same high-value asset, when perhaps the opposite should be true.

Thus, a comparison of these norms shows that the norms and sanctions in the special part of the CC and the penalties for them are not in line with the penalties for offenses against justice, and that the penalties for the offenses against justice under investigation are too lenient and do not reflect the potential seriousness of the offenses.

Criminal Liability for Offenses Against Justice in the United Kingdom and the United States of America

To paint a fuller picture of the adequacy of Lithuanian criminal policy in combating crimes against justice, it is necessary to look at the broader context, i.e., how other countries combat these crimes.

Since Lithuania is part of the continental legal system, it would be natural to analyze the criminal policy of the European Union (EU) countries on this issue. However, the EU countries are dominated by the rather abstract sentencing rules of the continental legal tradition. Therefore, to assess the fairness of the offenses in question not only in terms of formal criminality (the penalties laid down in the law), but also in terms of actual sentencing aspects, the EU countries become inappropriate for the purpose of the study without a separate analysis of the case law of those countries regarding the sentencing of penalties. The United Kingdom (UK) and the United States of America (USA) were therefore chosen for the analysis of foreign countries. The reason for this choice is that the criminal policy of these countries is moving toward a more detailed formalization of sentencing through the adoption of sentencing guides for the courts. It is the more detailed formalization of the sentencing process that allows for a more precise assessment not only of the possible sanctions provided for in their law, but also of the specific criteria for sentencing in the analysis of offenses against justice. The choice of these non-EU countries thus enables a more accurate assessment of the real criminal policy in the fight against crimes against justice, and not just that which is formalized in law.

Punishing crimes of perverting the course of justice in the UK

In the UK, in order to charge a person for perverting the course of justice, prosecutors must prove that an accused person committed an act or series of acts which has or have a tendency to pervert and which is or are intended to pervert the course of public justice (Crown Prosecution Service 2022). According to the

guidance of the Crown Prosecution Service of the UK, the following types of act may constitute the offense of perverting the course of Justice:

> persuading, or attempting to persuade, by intimidation, harm or otherwise, a witness not to give evidence, to alter his evidence or to give false evidence; interference with jurors with a view to influencing their verdict; false alibis and interference with evidence or exhibits, for example blood and DNA samples; providing false details of identity to the police or courts with a view to avoiding the consequences of a police investigation or prosecution; giving false information, or agreeing to give false information, to the police with a view to frustrating a police inquiry; for example, lying as to who was driving when a road traffic accident occurred; lending a driving licence to another to produce to the police following a notice to produce, thereby avoiding an offence of driving whilst disqualified being discovered; agreeing to give false evidence; concealing or destroying evidence concerning a police investigation to avoid arrest; assisting others to evade arrest for a significant period of time; and making a false allegation which wrongfully exposes another person to the risk of arrest, imprisonment pending trial, and possible wrongful conviction and sentence (Crown Prosecution Service 2022).

According to the Charging Standard, prosecutors, in deciding whether or not it is in the public interest to proceed with charges of perverting the course of justice, must consider the nature of the proceedings with which the defendant was trying to interfere and the consequences, or possible consequences, of their interference (Crown Prosecution Service 2022). For example, it is likely that perverting the course of justice will be the appropriate charge when: "the acts wrongfully expose another person to risk of arrest or prosecution; the obstruction of a police investigation is premeditated, prolonged, or elaborate; the acts hide from the police the commission of a serious crime; […] concerted attempts to interfere with jurors; attacks on counsel or the judge; or conduct designed to cause the proceedings to be completely abandoned; a concerted attempt has been made to influence significant witnesses, particularly if accompanied by serious violence" (Crown Prosecution Service 2022) and so on.

Thus, under UK law, both unjustified prejudice to litigants and obstruction of justice in general, depending on the seriousness of the offense, can be regarded as representing the crime of perverting the course of justice. However, it should be noted that in less serious cases, tampering with a witness may also be punishable under Section 51 of the Criminal Justice and Public Order Act 1994. If the offense is not serious enough according to the factors outlined in the General Charging Principles to justify charges of perverting the course of justice, Section 51 of the Criminal Justice and Public Order Act 1994 is applicable, and this act can invoke up to 5 years of imprisonment (Crown Prosecution Service 2022). However, when a person is sentenced for perverting the course of justice, other rules apply.

In this case, the Sentencing Guidelines (Sentencing Council 2023) must be used. It is worth mentioning that the Sentencing Guidelines for Perverting the Course of Justice are effective only from October 1, 2023. According to the Guidelines, perverting the course of justice is punishable by anything from a community order to 7 years in custody. For the purposes of sentencing under the Guidelines, it is first necessary to determine the category of the offense, which depends on culpability and damage. Culpability can be high, medium, or low. For example, high culpability can be demonstrated by one or more of the following: "conduct over a sustained period of time; sophisticated and/or planned nature of conduct; underlying offence very serious; breach of trust or abuse of position or office" (Sentencing Council 2023), whereas low culpability can be observed if the offense was "unplanned and/or limited in scope and duration; unsophisticated nature of conduct; underlying offence was not serious; involved through coercion, intimidation or exploitation or as a result of domestic abuse; offender's responsibility substantially reduced by mental disorder or learning disability" (Sentencing Council 2023). Level of harm falls into three categories and can be assessed by a number of factors. For example, Category 1 harm (the most serious category) is determined when: "serious consequences for an innocent party as a result of the offense (for example time spent in custody/arrest); serious distress caused to an innocent party (for example loss of reputation); serious impact on administration of justice; substantial delay caused to the course of justice" (Sentencing Council 2023) and Category 3 is identified when all of the abovementioned factors had limited impact. So, in case of high culpability and serious harm (category 1), a person should be sentenced to 2–7 years of custody, with a starting point of 4 years of custody. In case of low culpability but serious harm (category 1) or high culpability but limited harm (category 3), a person should be sentenced from 9 months to 2 years of custody, with a starting point of 1 year of custody. Only low culpability with limited harm (category 3) could lead to the mildest punishment, ranging from a high-level community order to 9 months of custody, with a starting point of 6 months of custody. Of course, "once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range" (Crown Prosecution Service 2023).

Punishing Obstruction of Justice Crimes in the USA

At the federal level in the USA, criminal acts are prohibited by the United States Code (USC). Obstruction of justice is considered as any act that involves interference with the orderly administration of law and justice (Chang *et al.* 2023).

Crimes related to obstruction of justice are prohibited by §§ 1501–1521 of Title 18 in the USC. These provisions guarding against obstruction of justice address very particular behaviors, but the criminal acts closest to our research are established in §§ 1503, 1505, 1510, and 1512. The central provision in this statutory arrangement is § 1503, which is known as the catch-all provision. This provision prohibits obstruction of justice, jury tampering, or any attempts to use force, threats, or coercion to influence, obstruct, or impede the due administration of justice (Roman *et al.* 2018). "Related sections include §§ 1505, 1510, and 1512, which prohibit the obstruction of proceedings before departments, agencies, and committees, the obstruction of criminal investigations, and tampering with a witness, victim, or informant" (Roman *et al.* 2018). Furthermore, § 1503 prohibits "influencing or injuring officer or juror generally," § 1505 "Obstruction of proceedings before departments, agencies, and committees," § 1510 "Obstruction of criminal investigations" and § 1512 "Tampering with a witness, victim, or an informant" (USC 2023). Due to the limited scope of this study, only §§ 1503 and 1512 will be further analyzed.

It is necessary to emphasize that § 1503 addresses conduct that obstructs justice in both civil and criminal judicial proceedings. Section 1503(a) can be viewed as having two parts. The first part of § 1503(a) protects jurors and judicial officers from threats, intimidation, and retaliation. The second part of § 1503(a) forbids corrupt endeavors to influence, obstruct, or impede the due administration of justice (Chang *et al.* 2023).

If obstruction of justice is not related to murder, it can be punishable by imprisonment for not more than 10 years, a fine under this title, or both (USC 2023). Additionally, according to § 1503, "if the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case" (USC 2023). "When the act of obstruction is a homicide, the maximum penalty for a § 1503 violation is life imprisonment or death. If the obstruction involves an attempted killing or an offense against a petit juror, the maximum punishment is twenty years of imprisonment and a fine" (Chang *et al.* 2023). The sentencing guidelines (United States Sentencing Commission 2021b) provide for more detailed sentencing.

"Defendants convicted under § 1503 are sentenced in accordance with § 2J1.2 of the United States Sentencing Guidelines ('Guidelines'), which carries with it a base offense level of fourteen" (Chang *et al.* 2023). The base offense level of 14 means that, depending on the criminal history of the defendant, this offense is

punishable by 15–21 months of imprisonment in case of the 1st criminal history category, and up to 37–46 months of imprisonment in case of the sixth category of criminal history. It is also worth mentioning that a base offense level of 14 also means that this crime falls into Zone D. According to the sentencing guidelines, "if the applicable guideline range is in Zone D of the Sentencing Table, the minimum term shall be satisfied by a sentence of imprisonment" (United States Sentencing Commission 2021a). So, a fine or probationary sentence alone is not allowed by the sentencing guidelines, and real imprisonment is the only option.

"Under the Guidelines, if the obstruction offense causes physical injury or property damage (or threatens to cause either), the offense level increases by eight" (Chang *et al.* 2023). This means that the total offense level is equal to 22, and it is punishable by from 41–51 months of imprisonment to 84–105 months of imprisonment, depending on the category of criminal history (United States Sentencing Commission 2021b). Of course, there are more aggravating circumstances in the sentencing guidelines, but these are the closest to the main aggravating elements of a crime established in the Lithuanian CC, so they are the most suitable for comparison.

Section 1512 prohibits witness tampering and protects "any person," which is broadly construed to include potential witnesses, grand jury witnesses, excused witnesses, and state investigators (Chang *et al.* 2023). Section 1512(a) forbids tampering with a witness, victim, or an informant related to (a) (1) killing or attempting to kill another person and (a) (2) the use of physical force or the threat of physical force against any person or any attempt to do so (USC 2023). "To prove witness tampering under § 1512(b), the prosecution must show that the defendant: (i) knowingly (ii) engaged in intimidation, physical force, threats, misleading conduct, or corrupt persuasion toward another person (iii) with intent to influence, delay, or prevent testimony or cause any person to withhold a record, object, document, or testimony (iv) from an official proceeding" (Chang *et al.* 2023). Corrupt persuasion includes deterring or attempting to influence testimony through sheer persuasion with a corrupt purpose, and "corrupt persuasion" is defined as persuading someone not to fulfil a legal duty (Chang *et al.* 2023).

If witness tampering was committed while using physical force, as provided in § 1512(a), the punishment is based on the amount of physical harm inflicted by the crime. In the case of the threat to use physical force against any person under § 1512(a), or in case of witness tampering under § 1512(b), a person can be a subject to imprisonment for not more than 20 years. So, when sentencing for witness tampering under § 1512(b), as in the case of § 1503(a), § 2J1.2 2 of the United States Sentencing Guidelines applies, and determines a base offense

level of 14. If the offense causes physical injury or property damage (or threatens to cause either), the offense level increases by eight (United States Sentencing Commission 2021a).

Obstruction of justice is also considered an aggravating circumstance and, under § 3C1.1 of the Guidelines, if a person commits other crimes then the applicable base offense level is increased by two. Section 3C1.1 acts independently of the obstruction of justice sections discussed earlier. As such, this two-level increase does not apply to convictions under § 1503 or § 1512 unless the defendant obstructed or attempted to obstruct the investigation or trial of an obstruction of justice count (Chang *et al.* 2023).

An analysis of the criminal policy of the UK and the USA in the fight against crimes against justice shows that these countries have a much stricter policy than Lithuania in this regard. In the UK, for example, the criminalization of the most serious cases of offenses against justice starts from 4 years of imprisonment, with the possibility of imposing up to 7 years of imprisonment, whereas in Lithuania, 4 years is the maximum penalty for an offense of a similar nature. In the USA, the criminal policy is even stricter, with a minimum guideline of up to 7 years of imprisonment for offenses of a similar nature, without additional circumstances.

Sentencing for Crimes Against Justice in Lithuanian Case Law

Having concluded that the Lithuanian criminal policy is not strict enough at the legislative level alone in combating the crimes against justice in question, it is necessary to look even deeper, i.e., at how this legislative policy manifests itself at the level of case law. Therefore, to assess the practical criminal policy of Lithuania in the fight against crimes against justice, a study of Lithuanian case law was conducted. The penalties under two articles of the CC, i.e., Art. 231 (Obstruction of the activities of a judge, public prosecutor, pre-trial investigation officer, lawyer, or bailiff) and Art. 233 (Influencing a witness, victim, expert, specialist, or translator), were examined. Sentencing policy was examined from two perspectives. Firstly, the sentences imposed separately for each of the offenses in question were examined. However, as the offenses against justice are related to the impact on the investigation of the case (on the investigators or on other participants in the case), it is clear that the offenses against justice that are being investigated are usually (but not always) committed with the aim of avoiding responsibility for other offenses committed previously. In such cases, the person is usually tried both for the previous offense(s) and for subsequent offenses against justice. Real accountability for crimes against justice is therefore achieved through the process of combining the sentences. To fully assess accountability

for crimes against justice, it was therefore necessary to also carry out a study on the impact of the process of combining sentences on accountability.

In order to analyze the sentencing policy, all sentences and criminal orders (a criminal order is a sentence issued by a court without a hearing) handed down by the courts of first instance in the Republic of Lithuania in the last 5 years, i.e., from January 1, 2018, to December 31, 2022, were analyzed. The sentencing of the following offenses was therefore examined:

1) 7 convictions were investigated under Art. 231(1) of the CC (Obstruction of a judge, prosecutor, pre-trial investigation officer, lawyer or an official of the International Criminal Court or other international judicial authority in the performance of their duties related to the investigation or examination of a case of a criminal, civil, administrative, or international judicial authority. It should be noted that Art. 231 of the CC also criminalizes obstructing a bailiff in the execution of a judgment, but as this study focused only on offenses against justice related to influencing the investigation of a case, and obstructing a bailiff in the execution of a judgment does not normally affect the investigation of a case, convictions related to obstructing a bailiff were not investigated);
2) 4 convictions were investigated under Art. 231(2) of the CC (Obstruction of the aforementioned officials by means of violence or other coercion);
3) 51 convictions were investigated under Art. 233(1) of the CC (Influencing a witness, a victim, an expert, a specialist, or an interpreter);
4) 6 convictions were investigated under Art. 233(3) of the CC (Influencing a witness, a victim, an expert, a specialist, or a translator by means of violence or other coercion).

At the same time, it was also sought to investigate sentences for very similar offenses, i.e., influencing a witness, victim, expert, specialist, or translator to give false testimony to the Seimas Special Investigation Commission or the Seimas during the impeachment proceedings (Art. 233 (2) of the CC) and influencing the victim to reconcile with the perpetrator through physical, or other forms of violence (Art. 234 of the CC). However, no convictions for these articles in were found the abovementioned period. The verdicts were selected using the publicly available Liteko (Teismai.lt, n.d.) Lithuanian court information system. Cases were selected using the criminal case classifier. In the analysis of the sentences imposed, both repeated convictions of the same person for separate offenses and convictions of separate persons in the same case were considered as individual cases (convictions). Thus, a total of 68 convictions were examined.

Sentencing for Separate Crimes Against Justice

The offense provided for in Art. 231(1) of the CC is a minor offense, punishable by community service or a fine, or by the restriction of liberty or imprisonment for up to 2 years. Of the seven persons convicted under Art. 231(1) of the CC for obstructing the subjects of the investigation, 57% (4 convictions) were sentenced to imprisonment and 43% (3 convictions) to alternative penalties (2 fines and 1 community service). As a rule, alternative sentences to imprisonment were imposed on first-time offenders (2 out of 3 convictions, i.e., 67% of cases), whereas in all cases where a custodial sentence was imposed (4 out of 4 convictions, i.e., 100%), the persons were not on trial for the first time. In general (3 out of 4 convictions, i.e., 75% of cases), the sentences imposed were significantly lower than the average penalty provided for in the law (the average penalty provided for was 1 year and 1.5 months; the average sentence imposed was 5.6 months), and only once (25% of the cases) was a sentence imposed that was slightly higher than the average penalty provided for in the legislation (i.e., a prison sentence of 1 year and 2 months).

Art. 231(2) of the CC imposes a stricter liability for the obstruction of the subjects of an investigation by violence or other coercion. The offense therefore falls into the category of less serious offenses, punishable by a fine or arrest or imprisonment of up to 4 years. Of the four persons convicted under Art. 231(2) of the CC, in 50% of cases (2 convictions) a penalty involving imprisonment was imposed (in 1 case 1 year and 6 months' imprisonment, and in 1 case 15 days' arrest), and in the other 50% of cases (2 convictions) a fine of €1,883 was imposed. The abovementioned imprisonment was imposed on a person who had already been tried for the 15th time, and the actual sentence was reduced to 1 year of imprisonment because the case was dealt with under the simplified procedure. In all other cases, the persons were tried for the first time. However, it should be noted that the actual prison sentence imposed was also half the statutory average for this offense – i.e., 2 years and 1.5 months.

Art. 233(1) of the CC provides for liability for influencing participants in a case to give false testimony. This offense is minor and may be punishable by public works or a fine, restriction of liberty, arrest, or imprisonment for up to 2 years. Of the 51 persons convicted under this Article, 59% (30 convictions) were sentenced to a custodial sentence, 37% (19 convictions) to alternatives to imprisonment, and 4% (2 persons) were exempted from criminal liability. Imprisonment was imposed in 47 % of cases (24 convictions), of which 83% (20 convictions) were not the first time the person was tried. Arrest was imposed in 12% of cases (6 convictions), of which 83% (5 convictions) were not the first time the person

was tried. Of the sentences imposed in connection with imprisonment, 37% (9 imprisonment and 2 arrest) were suspended. In 50% of these cases the sentence was close to the average statutory sentence of 1 year and 1.5 months of imprisonment (12 convictions were sentenced to between 9 months and 1 year and 1 month of imprisonment, with an average of 11.7 months), while in the other 50% of these cases the sentence was not close to the average statutory sentence (12 convictions were sentenced to between 4 months and 6 months of imprisonment, with an average of 5.2 months). In none of these cases was the sentence imposed higher than the average penalty of imprisonment provided for by law. The sentences of arrest were generally close to the statutory average, i.e., in 83% of cases (5 convictions) an average of 48 days of arrest was imposed, and in only 17% of cases (1 conviction) was the sentence imposed closer to the maximum limit of 72 days of arrest. As mentioned above, of the 19 convictions in which a non-custodial sentence was imposed, 47% (9 convictions) were fined (an average of €3,399), 37% (7 convictions) were sentenced to a restriction of liberty (an average of 6.9 months) and only 16% (3 convictions) were given a community service sentence (an average of 328 hours of work).

Art. 233(3) of the CC provides for liability for influencing participants in a case to give false testimony by means of violence or other coercion. This offense is classified in the category of less serious offenses and is punishable by arrest or imprisonment for up to 4 years. In all 6 convictions (i.e., 100% of the cases), a prison sentence was incurred, but in 2 (33% of the cases), a suspension of the execution of the sentence was applied. In all six convictions (i.e., 100% of the cases), this was not the first time these persons were tried. In 50% of these convictions (3 convictions), a sentence of arrest close to the average sentence provided for in the law was imposed (55 days of arrest on average against an average sentence of 52.5 days of arrest), while in the other 50 % of cases (3 convictions) the sentence was imprisonment. Of the custodial sentences imposed, all were slightly lower than the average sentence provided for in the law, i.e., an average of 1 year and 7 months of imprisonment, compared to an average of 2 years and 1.5 months of imprisonment.

Overall, the results of the sentencing practice show that the state's harshest response to crimes against justice, which can be considered as cases in which a real custodial sentence is imposed without suspension of sentence, is in fact rather limited. In the case of the analyzed acts against justice without physical or psychological violence, under Art. 231(1) of the CC, a real penalty of imprisonment was imposed in 57% of cases (4 convictions), with an average sentence of 7.8 months of imprisonment. Under Art. 233(1) of the CC, a real penalty of imprisonment was imposed in 29% of cases (15 convictions), with an average

sentence of 8.7 months of imprisonment. If the influence on justice is exercised through physical or psychological violence, under Art. 231(2) of the CC, real imprisonment is imposed, as was the case in 25% of cases (1 conviction), with an average sentence of 1 year of imprisonment. Under Art. 233(3) of the CC, real imprisonment was imposed in 33% of cases (2 convictions), with an average sentence of 1 year and 7.5 months. Of all these cases, only once was the sentence imposed very slightly above the average penalty of imprisonment (under Art. 231(1) of the CC, a sentence of 1 year and 2 months was imposed against an average of 1 year and 1.5 months). However, according to the data from the investigation, some of the persons concerned had already been tried as many as 14 or 15 times.

The Impact of the Process of Combining Sentences on Punishing Crimes Against Justice

The CC provides for three methods of combining sentences:

1) a fully cumulative sentence (Art. 63(3) of the CC), whereby all the lesser sentences imposed are added to the most severe sentence imposed for one of the offenses committed;
2) a partially cumulative sentence (Art. 63(4) of the CC), whereby the more severe sentence imposed for one of the offenses committed is partially supplemented by the lesser sentences. The part of the sentence to be added may not, according to the law, be less than the minimum level of that type of sentence;
3) the consolidation of sentences (Art. 63(2) of the CC), where the more severe sentence is cumulated with the less severe sentences and the final combined sentence is equal to the most severe of the sentences imposed for the individual offenses.

In the study of the practice of combining sentences, it was found that criminal law does not oblige the court to indicate which part of the sentence is added for each individual offense, and that additional criteria have to be applied to determine exactly which part of the sentence is to be added for the crime against justice in question. Thus, of all the judgments and criminal orders of the courts of first instance of the Republic of Lithuania issued in the last 5 years analyzed above, i.e., those issued from January 1, 2018, to December 31, 2022, only those judgments where the sentence for the crime against justice in question was combined with the sentences imposed for another crime(s) committed before the conviction for at least one of them were selected. From these cases, only those

where it was possible to identify the specific part of the added penalty for the crime against justice under analysis were selected. Thus, the following types of cases were used to analyze the part of the sentence that was added for the crimes against justice in question:

1) where only one other offense in addition to the offense against the administration of justice has been committed and the sentence imposed for that offense has been combined;
2) where, in addition to the offence against justice, several other offenses have been committed, but the punishment for these offenses has been imposed by a different judgment and, in effect, the already combined sentence has been combined with the offense in question in accordance with Art. 63(9) of the CC (according to this Article, the sentence shall be combined in cases where it is established, after the passing of a judgment, that a person has committed a different offense before the passing of the judgment in the first case);
3) where, in addition to the offense against the administration of justice, several other offenses have been committed, but where at least one of the other offenses differs substantially in seriousness, with the result that the sentences have been consolidated in accordance with Art. 63(5)(2) of the CC; and
4) where several offenses were committed in addition to the offense against justice, but the court, when imposing the sentence, indicated which part of the sentence imposed for the offense in question was added.

In total, 33 convictions met the above criteria, including 3 convictions under Art. 231(1) of the CC, 1 conviction under Art. 231(2) of the CC, 26 convictions under Art. 233(1) of the CC, and 3 convictions under Art. 233(3) of the CC. All of these cases can be grouped into three categories according to the part of the sentence that was added for the offense against justice:

1) cases where the full sentence imposed for an offense against justice was added to the combined sentence;
2) cases where part of the sentence imposed for an offense against justice was added as part of the combined sentence; and
3) cases where no part of the sentence imposed for an offense against justice was added as part of the combined sentence.

When combining the sentences imposed for obstructing the investigation (Art. 231(1) of the CC), in 67% of cases (2 convictions), 4 months of imprisonment was actually added to the average sentence of 6 months of imprisonment. In 33% of cases (1 conviction), the sentences were consolidated, and 5 months of imprisonment for the offense of obstruction of justice was not added.

When combining the sentences imposed for obstructing the investigation by physical or mental violence (Art. 231(2) of the CC), 5 months of imprisonment were added to the actual sentence of 1 year of imprisonment.

When combining the sentences imposed for influencing other participants in the case to make false statements (Art. 233(1) of the CC), the total sentence imposed for the offense of perverting the course of justice was added in 19% of cases (5 convictions), with an average of 10 months of imprisonment, or, in one case, by adding a total fine of €3,766. Partial cumulation was applied in 50% of cases (13 convictions). Of the average sentence of 7.7 months of imprisonment imposed (7 convictions), an average sentence of 4.3 months of imprisonment was actually added for the purposes of cumulation. In all cases where a restriction of liberty was imposed (5 convictions), only the legal minimum of 3 months of imprisonment was added from an average sentence of 6.8 months. In one case, where a fine of €3,000 was imposed, a significant amount of €2,500 was actually added to the combined sentence. In the remaining 31% of cases (8 convictions), no part of the average sentence of 8.4 months of imprisonment (5 cases) or the average sentence of 47 days of detention (3 cases) was added, because of the application of consolidation as a method of combining sentences.

When combining the sentences imposed for violent influence on other participants in the case with the purpose of forcing false statements (Art. 233(3) of the CC), the full cumulation of the sentences was applied in one case and the full sentence of 60 days of arrest was added. In the other case, partial cumulation of the sentences was applied, and only 20 days of arrest were actually added from the sentence of 45 days of arrest imposed. In the case of a third sentence, cumulation was applied, and 2 years of imprisonment for the crime of justice was not added.

After reviewing the entire practice of combining sentences during the period in question, it is necessary to take a deeper look at the reasons for this variety of combinations. The choice of the method of combining sentences is further analyzed below for all of the offenses examined, both for offenses under Art. 231 CC and Art. 233 CC together (33 cases).

In cases where the full sentence imposed for the offenses in question was added, only 3% of the cases (1 conviction) were subject to full cumulation, and this was in the case of a fine. In the remaining 15% of cases (5 convictions), the full sentence imposed for the offenses in question was added because it was the harshest of the sentences imposed, and the sentences for the other offenses were therefore added on top of the penalty imposed for that offense.

Partial cumulation of sentences was applied in 52% of cases (17 convictions), and in 33% of cases (11 convictions) a part of the sentence was added close to

the minimum amount of the sentence required by law (in the case of imprisonment, the addition was always 3 to 4 months, in the case of deprivation of liberty, always only 3 months and, in the case of an arrest, 20 days of arrest). In 15% of cases (5 convictions), a slightly higher part of the sentence was added (in the cases of imprisonment, 5 to 6 months and in the case of a fine, €2,500 of the €3,000 imposed). It may therefore be concluded that, when applying partial cumulation of sentences and when selecting the size of the sentence to be added, the courts usually focus on the minimum amount of the sentence to be added as provided for by law.

The consolidation of sentences, whereby the punishment for the crime against justice was fully absorbed by the more severe penalty, was applied in 30% of cases (10 convictions). In only 6% of cases (2 convictions) the application of the consolidation of sentences was due to truly serious reasons. In one case, the application of consolidation of sentences was due to the fact that the person had been sentenced to life imprisonment for another offense. In a second case, consolidation of sentences was applied because the forcible coercion to give false testimony led to more serious consequences, which was considered to be an ideal concurrence of offenses (two offenses committed in a single act), for which consolidation of sentences was also applied. In the other 24% of cases (8 convictions), consolidation of sentences was applied based on the specific rule of consolidation of sentences laid down in Art. 63(5)(2) of the CC, which states that consolidation of sentences is also applicable when the offenses committed differ significantly in terms of seriousness and are classified in different types or categories of criminal offenses.

In accordance with Articles 11 and 12 of the CC, criminal offenses in Lithuania are classified according to their seriousness into the following types and categories: criminal misdemeanor, reckless offense, minor intentional offense, less serious intentional offense, serious intentional offense, and very serious intentional offense. Thus, in accordance with the practice of the Supreme Court of Lithuania, "if criminal offences are categorised as belonging to different categories over one or more (e.g., a minor offence and a serious offence), or one of the offences is a misdemeanour, and the other is a minor, serious, or very serious crime, the courts shall recognise the fact that they are significantly different in terms of their seriousness in the sense of subparagraph (2) of Art. 63(5) of the Criminal Code" (Teisės gidas 2007). The Supreme Court of Lithuania's reasoning allows courts to apply consolidation of sentences even if "the offences fall into adjacent categories (e.g., a minor offence and a petty offence), or if one of the offences is a misdemeanour and the other is a minor offence" (Teisės gidas 2007). In such a case, "the gravity of these acts is to be assessed by the courts on a case-by-case

basis (i.e. by comparing the objects of the offence, the matter, the means of perpetration, the effects produced, etc.)" (Teisės gidas 2007).

Taking into account that the offenses in question are classified as minor (Art. 231(1), 233(1) of the CC) or less serious (Art. 231(2), 233(3) of the CC), the application of this rule leads to a paradoxical situation where, in the case of a serious or very serious offense and after application of the rules on the consolidation of penalties, the obstruction of the subjects of the criminal proceedings or coercion into making a false statement goes practically unpunished, while, in the case of a very serious offense, the application of the rules on the consolidation of penalties renders similar acts unpunished, even if they involve the use of physical or psychological violence. This is exactly what the case-law study shows. Here, the punishment for the influence on the participants in the case was included because the perpetrator, in addition to the offense against justice, had committed rape (1-232-348/2018, 2018; 1-50-620/2019, 2019; 1-56-1118/2021, 2021), the distribution of narcotics or psychotropic substances to juveniles (N1-11-282/2021, 2021), grievous bodily harm (N1-81-1021, 2022), and other offenses. Similar decisions can also be found in the practice of the Supreme Court of Lithuania (2K-222-511/2019, 2019; 2K-82-654/2023, 2023; 2K-11-697/2023, 2023). The only case found was one in which the court did not comply with the requirements of Art. 63(5)(2) of the CC and partially added the sentence for coercing a false statement to the sentence imposed for distribution of narcotic drugs or psychotropic substances to minors (i.e., a very serious offense) (N1-207-919/2021, 2021). However, since the court did not say anything at all in the judgment as to the reasons for not applying the requirements of Art. 63(5)(2) of the CC, it is more probable that this case involved the mistaken of application of law, rather than that it represents a different position of the court on the matter.

Clearly, a situation in which committing a serious or very serious crime makes it possible to commit crimes against justice with complete impunity is a dangerous situation. Such a regulation demonstrates a complete lack of coherence between the provisions of the CC, and may indirectly encourage perpetrators to exert an unlawful influence on both the subjects of the investigations and the other participants in the case, with a view to avoiding criminal liability. This lack of coherence can be addressed in two ways. The simplest way, of course, is to improve the CC – i.e., to amend the provisions of Art. 63(5)(2) of the CC so that this rule of consolidation of sentences is inapplicable to offenses against justice. However, the Supreme Court of Lithuania itself could resolve this problem, given that amending the law is not a simple procedure. Since the provision of Art. 63(5)(2) of the CC, according to which the consolidation of sentences is to be applied when the offenses committed differ significantly in terms of seriousness and

belong to different types or categories of offenses, is rather abstract, it would be sufficient to clarify to the Supreme Court of Lithuania that offenses committed in the context of offenses against justice are closely linked to the offenses for which the attempt to evade responsibility was made. This interconnectedness therefore shows that these crimes are similar and do not differ greatly in their seriousness, even if they are classified as different types or categories of crime. Moreover, similar cases and similar decisions have already been made in the practice of the Supreme Court of Lithuania. In a number of cases (2K-570/2012, 2012; 2K-397/2014, 2014; 2K-233-511/2018, 2018; 2A-7-3-489/2019, 2019; 2K-7-71-458/2020, 2020) in which the offenses committed did not fall into adjacent categories, the Supreme Court of Lithuania did not apply Art. 63(5)(2) of the CC and combined the sentences by means of partial cumulation. The main motivation for these decisions was that the offenses were similar to one another, and thus did not differ significantly in terms of their dangerousness. Such a change in case law would therefore not even be considered a significant departure from existing case law and would be an excellent complement to the already established case law, ensuring greater coherence between the provisions of the CC.

Interim Findings

On the basis of research on sentencing for separate offenses against justice, it can be observed that courts usually impose non-custodial sentences for offenses against justice. The most severe state response to offenses against justice, which can be seen as the imposition of a sentence of actual imprisonment without suspension, is also quite limited, with courts usually imposing a sentence that is below the average sentence provided for in the sanction. This study also showed that by combining sentences, courts further dilute the penal policy against crimes against justice, usually by adding only a part of the sentence that is close to the minimum sentence required by law or via the over-application of consolidation of sentences.

A study of the laws and sentencing practices of foreign countries has shown that the criminal policy of Lithuania in the fight against crimes against justice, when obstructing the investigation or influencing the participants in the case, both at the level of legislation and case law, is considerably more lenient than that of the UK or the USA in this regard.

Thus, the CC, in the norms providing for criminal liability for crimes against justice when obstructing the investigation of a case, lacks coherence both with other norms of the special part and with the norms of the general part. The penalties for the offenses against justice in question are inconsistent with, and too

lenient in relation to, the other provisions of the special part of the CC, which provide for liability for similar offenses. The rules on combining sentences provided for in the general part of the CC are not in accordance with the aims of the penalty and unjustifiably expand the use of the application of the cumulation of sentences, thus leading to a situation in which, in cases of serious or very serious offenses, offenses against justice are in fact not punished.

References

1-232-348/2018, 2018. Regional Court of Kaunas. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=670f2aaf-6ce9-44d6-84eeb1a929953dea [Accessed 14 September 2023].

1-81-1021-2022, 2022. Marijampolė District Court. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=df721093-80bc-497f-8cb3-1c698a4230cb [Accessed 14 September 2023].

1-50-620/2019, 2019. Panevėžys District Court. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=79526a1c-aaed-481b-9bfa-ddce34f900d1 [Accessed 14 September 2023].

1-56-1118/2021, 2021. Telšiai District Court. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=af06fb45-baa3-451a-871f-22d2aa7811e5 [Accessed 14 September 2023].

2K-570/2012, 2012. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=fa982b39-1031-4a0c-a075-34ac6db5e8b6 [Accessed 14 September 2023].

2K-397/2014, 2014. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=f34d9852-a8ee-4f2c-9ea4-c5a9fc0355ef [Accessed 14 September 2023].

2K-350-693/2017, 2017. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=7a23d630-e0c3-4fb1-9afd-d79abe60c51a [Accessed 14 September 2023].

2K-233-511/2018, 2018. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=c72d8090-328f-4f9b-9cdd-a5e3fa28febc [Accessed 14 September 2023].

2A-7-3-489/2019, 2019. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=1068da4f-6304-46b5-9f57-d968aab0ec7f [Accessed 14 September 2023].

2K-222-511/2019, 2019. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=444d6f7f-cc52-49ee-9cea-1add8d7c2765 [Accessed 14 September 2023].

2K-7-71-458/2020, 2020. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=3cea9170-a6f8-4d4c-83b4-44b6d3b8e21f [Accessed 14 September 2023].

2K-82-654-2023, 2023. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=8e51c991-26c5-4299-871f-57be9ee41aad [Accessed 14 September 2023].

2K-11-697/2023, 2023. Supreme Court of Lithuania. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=4df26486-2428-449b-8acd-058b3c98fe62 [Accessed 14 September 2023].

Chang, W., Ebert, R., Galst, J., and Khemani, A., 2023. Obstruction of Justice. *American Criminal Law Review*, 60 (3), 1093–1126.

Criminal Justice and Public Order Act 1994 (c.33). [online] Legislation.gov.uk. Available from: https://www.legislation.gov.uk/ukpga/1994/33/section/51 [Accessed 29 September 2023].

Crown Prosecution Service, 2022. Public Justice Offences Incorporating the Charging Standard. [online] Available from: https://www.cps.gov.uk/legal-guidance/public-justice-offences-incorporating-charging-standard [Accessed 29 September 2023].

Crown Prosecution Service, 2023. Sentencing – Overview, General Principles and Mandatory Custodial Sentences. [online] Available from: https://www.cps.gov.uk/legal-guidance/sentencing-overview-general-principles-and-mandatory-custodial-sentences [Accessed 29 September 2023].

N1-11-282/2021, 2021. Regional Court of Šiauliai. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=bc3cb56b-6718-42dd-b436-bf964ce30574 [Accessed 14 September 2023].

N1-207-919/2021, 2021. Regional Court of Kaunas. Available from: https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=62e54d54-60d1-4bb6-9ed7-98d626b79388 [Accessed 14 September 2023].

Obstruction of Justice, 18 USC Ch. 73, §§ 1501–1521, 2023. [online] Available from: https://uscode.house.gov/browse/prelim@title18/part1/chapter73&edition=prelim [Accessed 29 September 2023].

Roman, E., Gonzalez, M., and Torres, D., 2018. Collusion, Obstruction of Justice, and Impeachment. *Journal of Legislation*, 45 (1), 9–59.

Sentencing Council, 2023. Perverting the Course of Justice. [online] Available from: https://www.sentencingcouncil.org.uk/offences/crown-court/item/perverting-the-course-of-justice/ [Accessed 29 September 2023].

Teisės Gidas, 2007. Review of Case Law on Sentencing (Articles 54-64 CC). [online] Available from: https://www.teisesgidas.lt/modules/paieska/lat.php?id=32351 [Accessed 29 September 2023].

Teismai.LT. (n.d.). LITEKO. [online] Available from: https://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2 [Accessed 14 September 2023].

United States Sentencing Commission, 2021a. Guidelines Manual. Available from: https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2021/GLMFull.pdf [Accessed 29 September 2023].

United States Sentencing Commission, 2021b. Guidelines Manual Annotated. Available from: https://www.ussc.gov/guidelines/2021-guidelines-manual-annotated [Accessed 29 September 2023].

Jolanta Zajančkauskienė / Rima Ažubalytė /
Oleg Fedosiuk (eds.)

Towards Coherence in Criminal Justice

Challenges, Discussions And/Or Solutions

PETER LANG

Berlin - Bruxelles - Chennai - Lausanne - New York - Oxford

Library of Congress Cataloging-in-Publication Data

Names: Zajančkauskienė, Jolanta, editor. | Ažubalytė, Rima, editor. | Fedosiuk, Oleg, editor.
Title: Towards coherence in criminal justice : challenges, discussions, and/or solutions / edited by Jolanta Zajančkauskienė, Rima Ažubalytė, and Oleg Fedosiuk.
Description: New York : Peter Lang, 2025. | Includes bibliographical references and index.
Identifiers: LCCN 2025015805 (print) | LCCN 2025015806 (ebook) | ISBN 9783631929445 (hardcover) | ISBN 9783631935323 (ebook) | ISBN 9783631935330 (epub)
Subjects: LCSH: Criminal justice, Administration of. | Criminal jurisdiction. | Criminal law. | Criminal liability. | Evidence, Criminal. | Electronic evidence. | Convention for the Protection of Human Rights and Fundamental Freedoms (1950 November 5) | Fair trial.
Classification: LCC K5001 .T69 2025 (print) | LCC K5001 (ebook) | DDC 345—dc23/eng/20250403
LC record available at https://lccn.loc.gov/2025015805
LC ebook record available at https://lccn.loc.gov/2025015806

Bibliographic information published by the Deutsche Nationalbibliothek
The Deutsche Nationalbibliothek collects this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at .Nationalbibliografie; detailed bibliographic data are available on the Internet at http://dnb.d-nb.de.



Mykolas Romeris University

Reviewers:
Prof. dr. Edita Gruodytė (Vytautas Magnus University, Lithuania)
Prof. dr. hab. Wieslaw Plywaczewski (University of Warmia and Mazur in Olsztyn, Poland)

Copy-editor:
MB "Kopis"

Approved by Mykolas Romeris University Law School Council on 11 of June 2024 by resolution No. 1T-14 (1.12 E-20401).

ISBN 978-3-631-92944-5 (Print)
ISBN 978-3-631-93532-3 (E-PDF)
ISBN 978-3-631-93533-0 (E-PUB)
DOI.10.3726/b22750





Open Access: This work is licensed under a Creative Commons Attribution NonCommercial NoDerivatives 4.0 unported license. To view a copy of this license, visit https://creativecommons.org/licenses/by-nc-nd/4.0/

© 2024 Jolanta Zajančkauskienė / Rima Ažubalytė / Oleg Fedosiuk (eds.)
Published by Peter Lang GmbH, Berlin, Germany
info@peterlang.com - www.peterlang.com

Contents

Rima Ažubalytė, Oleg Fedosiuk, Jolanta Zajančkauskienė | MRU
Preface xiii

Jolanta Zajančkauskienė | MRU
Introduction: What is the Role of Coherence in Criminal Justice?
The Characterization of Coherence in Law 1
Coherence Between National, International, and EU Law 4
Challenges to the Coherence of Criminal Law in the EU 6
Research Object 10
Research Aim and Objectives 10
Research Methodology 11
Limitations 12
The Structure of the Book 12
References 12

Part I
The Search for Coherence in Substantive Criminal Law

Oleg Fedosiuk | MRU
The Gray Area in the Concept of Human Trafficking: Between the Text of the Law and the Purpose of Criminalization
Human Trafficking as a Legal Concept 19
The Problem of Defining the Content of Exploitation 22
The Limitlessness of the Concept of Abuse of a Position of Vulnerability 29
Interim Findings 32
References 33

Linas Žalnieriūnas | *MRU*

The Search for Legal Coherence in the Criminalization or Decriminalization of Drug Possession

Factors Influencing Drug Use 37

Causes of Drug Criminalization 41

A Brief History of Drug Prohibition 42

Factors Influencing Drug Categorization and Quantification in Europe 45

Consequences of the Criminalization of Narcotic Drugs 48

The Health-Oriented Decriminalization of Drugs 50

Interim Findings 54

References 55

Tomas Girdenis | *MRU*

Coherence in Criminal Policy for Offenses Against Justice That Obstruct the Investigation of a Case

The System of Offenses against Justice in the Criminal Code of the Republic of Lithuania and Its Coherence 65

Criminal Liability for Offenses against Justice in the United Kingdom and the United States of America 68

Punishing Crimes of Perverting the Course of Justice in the UK 68

Punishing Obstruction of Justice Crimes in the USA 70

Sentencing for Crimes Against Justice in Lithuanian Case Law 73

Sentencing for Separate Crimes Against Justice 75

The Impact of the Process of Combining Sentences on Punishing Crimes Against Justice 77

Interim Findings 82

References 83

Jolita Šukytė | MRU
The Unlawful Stalking of a Person

Stalking as a Dangerous Form of Human Behavior and the Justification for Its Criminalization 87

Indications of Stalking 90

Types of Definitions of Stalking 93

The Regulation of Stalking Actions in Lithuania 95

Interim Findings 101

References 102

Eglė Bilevičiūtė | MRU
Administrative and Criminal Liability: Toward Sustainability

Administrative Liability as a Separate Type of Responsibility 105

Administrative Liability in Different European Countries 107

Administrative and Criminal Liability According to Lithuania's Regulations 109

Researchers' Opinions on the Difference Between Criminal and Administrative Sanctions 110

The Criteria for Determining Administrative and Criminal Liability in the Case Law of Various Courts 112

The Relevance of the Application of the *non bis in idem* Principle for the Qualification of Administrative and Criminal Liability 115

Interim Findings 118

References 119

Andrius Nevera | MRU
Standards for the Coherent Application of the Principles of Criminal Jurisdiction in Relation to Criminal Acts Committed by Lithuanian Citizens and Persons Permanently Resident in Lithuania Outside the Territory of Lithuania

General Remarks 125

The Place of Commission of a Criminal Act and Its Relevance for the Coherent Application of the Principles of Criminal Jurisdiction 126

The Concept of the Flag Principle and the Possibilities of Its Application to Criminal Acts Committed Abroad by Lithuanian Citizens and Persons Permanently Resident in Lithuania 133

The Content and Possibilities of the Application of the Universal Principle in Relation to Criminal Acts Committed Abroad by Lithuanian Citizens and Persons Permanently Resident in Lithuania. Guidelines for the Coherence of the Universal Principle with the Flag Principle and the Active Personality Principle 137

Problems and Solutions for the Application of the Dual Criminality Clause to Criminal Offenses Committed Abroad by Lithuanian Citizens and Persons Permanently Resident in Lithuania 147

Interim Findings 150

References 152

Part II
The Transformation of Criminal Procedure Law in the Context of Coherence

Raimundas Jurka | MRU
The E-Evidence "Movement" in European Union Criminal Justice: Toward or Beyond Coherence?

Cross-Border Access to Electronic Evidence Within the European Union: Reasons and Regulatory Background 162

The Relationship Between the European Investigation Order and the Regulation on Electronic Evidence 167

The Issue of the Admissibility of Electronic Evidence 173

Interim Findings 177

References 178

Renata Marcinauskaitė | MRU
Electronic Evidence in Criminal Proceedings

General Remarks 183

The Concept of Proof-Taking Activity and the Assessment of Evidence in Criminal Proceedings 184

The Concept of Evidence: The Identification of Electronic Evidence 186

The Requirements Applicable to Evidence 192

The Specifics of Electronic Evidence: The Justification of the Reliability of Electronic Evidence 193

Interim Findings 197

References 198

Rima Ažubalytė | MRU
Evidence in a Non-Conviction-Based Confiscation Procedure

General Remarks 203

General Requirements for the Process of Proof of NCB Confiscation 206

The Lower Standard of Proof in the Application of NCB Confiscation: A Balance of Probabilities and/or a Reversed Burden of Proof 213

Interim Findings 222

References 223

Rasa Žibaitė - Neliubšienė | MRU
Subjective Threats to the Free Evaluation of Evidence: Toward a More Coherent Legal Regulation

Manifestations of Intuitive Factors in the Process of Free Evaluation of Evidence 232

Confirmation Bias 235

Hindsight Bias 238

Availability Heuristic 241

Possibilities to Minimize Biases 242

Interim Findings 244

References 245

Sandra Kaija | Riga Stradiņš University Latvia

The Trial of a Criminal Case in an Appellate Court Hearing: A Written or Oral Procedure in the Context of the Right to a Fair Trial

The Right to a Fair Trial and the Choice of Procedure 252

The Possibilities of a Written Procedure in Criminal Proceedings in the Appellate Court 258

Interim Findings 263

References 264

Inga Žukovaitė | MRU

Coherence Between the Model of Remote Criminal Proceedings and the Standards Under Article 6 of the European Convention on Human Rights: The Reality of Threats to a Fair Trial

General Remarks 267

The Interaction Between Strict Procedural Rules and the Changing Context of Technological Progress 270

Encouragements, Warnings, and Boundaries Set by the European Court of Human Rights 274

The Example of Lithuania: Coherence Between Regulation and Practice 278

Interim Findings 282

References 283

Jolanta Zajančkauskienė, Rima Ažubalytė, Oleg Fedosiuk | MRU

Conclusions

Part I. The Search for Coherence in Substantive Criminal Law 287

Part II. The Transformation of Criminal Procedure Law in Context of Coherence 291

Jolanta Zajančkauskienė | MRU
Summary 297

Index 305