

ELĪNA GRIGORE-BĀRA. Criminal prosecution as a component of transitional justice: dealing with Soviet genocide in Latvia

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Abstract

After the restoration of independence in 1990, the Latvian legal system had to undergo a transition from the Soviet totalitarian regime to a democratic system governed by the rule of law. Several transitional justice mechanisms had to be implemented, including prosecution initiatives. To make this possible, the Criminal Code was amended, introducing the crime of genocide in 1993. Until 2009, Latvian Criminal Law provided for a broadened definition of genocide which included additional protected groups and additional prohibited activities. Latvian courts of general jurisdiction that tried the Soviet genocide cases hold that this broadened genocide definition was not in conflict with international law, and thus did not preclude the conviction of persons for crimes committed during the Soviet occupation.

Keywords: Transitional Justice, Latvian Criminal Law, Soviet Genocide, Dynamic Interpretation.

In the conference report, the author addressed two main issues: the development of legislation on the crime of genocide in Latvian law and the relevant court practice. The crime of genocide was introduced into Latvian law in 1993³² as an amendment to the Criminal Code (adopted in 1961).³³ The Supreme Council of the Republic of Latvia added a new chapter to the Special part of the Criminal Code – “Crimes against humanity, genocide, crimes against peace and war crimes”. The chapter consisted of three articles, one of which provided for criminal liability for genocide – Article 68¹ “Crimes against humanity, genocide”. Firstly, the Latvian Criminal Code did not distinguish genocide from crimes against humanity, and merged them together into one article. Secondly, the definition of genocide was broadened – it included social groups and people with common conviction (political groups). Thirdly, the list of prohibited activities was extended – it also included the restriction or deprivation of political, economic, and social rights.

³² Likums „Par grozījumiem Latvijas kriminālkodeksā un Latvijas kriminālprocesa kodeksā” [Law “On amendments to the Latvian Criminal Code and the Latvian Code of Criminal Procedure”], adopted on 6 April 1993, entered into force 28 April 1993, accessed on 31 May 2022, <https://likumi.lv/ta/id/60472>

³³ The Criminal Code was inherited from the Soviet occupation period and remained in force after the restoration of independence of the Republic of Latvia, until it was replaced by the new Latvian Criminal Law in 1998.

In 1998, a new criminal law was adopted – the Latvian Criminal Law.³⁴ It resolved one ambiguity by distinguishing the crime of genocide from other crimes against humanity. Genocide was defined in a separate article – “Article 71. Genocide”. Initially, two additional protected groups remained in the new regulation; however, the list of prohibited activities was shortened and restrictions and deprivations of rights were excluded. Amendments to this article were made in 2009,³⁵ and the additional two protected groups were excluded from the scope of the law. Thus, since 2009, the definition of genocide in Latvian Criminal Law³⁶ is the same as the one in the Convention on the Prevention and Punishment of the Crime of Genocide.

None of the articles that provided the broadened definition of genocide have been reviewed by the Constitutional Court of the Republic of Latvia. Some conclusions on the compliance of the broadened genocide definition with international law can only be seen in the case law of courts that tried genocide cases – regional courts and the Supreme Court of the Republic of Latvia. None of these courts considered that the broadened genocide definition would preclude the conviction of persons for crimes committed during the Soviet occupation. They did not hold that national criminal law was in conflict with international law. For example, the Kurzeme Regional Court asserted that the characteristics of protected groups, listed in the Convention on the Prevention and Punishment of the Crime of Genocide, cannot be considered as an exhaustive list. Similarly, the Zemgale Regional Court used the principle of dynamic interpretation and considered that, while the Genocide Convention provides previous historic experience, new experience has been gained since the Convention was drafted which has to be considered.³⁷

It is doubtful whether genocide cases tried in Latvia have fully ensured the achievement of the objective – the implementation of material justice and the prevention of impunity. In order to promote reconciliation and consolidate peace, more emphasis needs to be placed on other mechanisms of transitional justice.

³⁴ „Krimināllikums” [„Criminal Law”], adopted on 17 June 1998, entered into force 1 April 1999, accessed on 31 May 2022, <https://likumi.lv/ta/id/88966/redakcijas-datums/1999/04/01>.

³⁵ „Grozījumi Krimināllikumā” [„Amendments to the Criminal Law”], adopted on 21 May 2009, entered into force 1 July 2009, accessed on 31 May 2022, <https://likumi.lv/ta/id/193112>.

³⁶ “Criminal Law”, accessed on 31 May 2022, <https://likumi.lv/ta/en/en/id/88966-criminal-law>.

³⁷ Mārtiņš Paparinskis, “Deportāciju prāvas: starptautisko tiesību skatupunkts” [“Deportation cases: an international law perspective”], *Jurista Vārds* No. 16 (371)(2005), <https://juristavards.lv/doc/107215-deportaciju-pravas-starptautisko-tiesibu-skatupunkts/>.