

**CRIMINAL LAW AND CRIMINALITY
IN THE BALTIC COUNTRIES.
MAIN TRENDS
(Comparative analysis)**

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S u m m a r y

Main trends in criminal justice in the three Baltic countries were investigated. The research has shown quite different (even opposite) trends in criminal law and criminal procedure, on the one hand, in Lithuania and Latvia, and, on the other one, in Estonia. The former two countries have been developing rather restrictive, repressive and on strict criminal punishment based criminal policy. Contrary to this, Estonia has developed rather liberal policy.

But most recent trends in Estonia also show disappointment with the liberal policy and a turn to a more rigid one.

1. Aims of the Baltic comparative investigation

The social revolution and disintegration of the former Soviet Union provided three Baltic countries - Lithuania, Latvia and Estonia - with an opportunity to start a total reform of their criminal law and criminal justice.

The point of departure for this reform was identical in all new Baltic countries. It was the Soviet criminal law and criminal procedure that has been in force in Baltic for more than 50 years. A common feature in all Baltic republics was a great wish to change the existing legal system radically, to develop quite new, modern, effective, human, smoothly working, consistent one. Especially great effort has been made reforming the national criminal laws. In each country the reforms caused great discussions, a lot of proposal and amendments. It is very important to regard that in all these republics these discussions and these changes were stirred up by unusual increase in criminality. The rising wave of criminality, fear and uncertainty in population, joined with an anomic situation joining every social overturn, instability, decreasing living standards made the public very demanding to criminal justice and criminal law. Very radical, urgent and effective changes in law were demanded.

Our presentation aims to sum up the results of the first years of development in criminal law and procedures in the Baltic countries: Lithuania, Latvia and Estonia. A basis for comparative investigation were:

Estonian Criminal Code (official text on February 10, 1994)

Estonian Code of Criminal Proceeding – (official text on November 30, 1994)

Lithuanian Criminal Code – (official text on November 28, 1994)

Lithuanian Code of Criminal Proceeding – (Official text on December 12, 1994)

Latvian Criminal Code (official text, February 26, 1998).

Also some later development in the three criminal laws was investigated.

During the investigation corresponding legal norms in the Baltic countries were compared. We tried to learn: 1) if these corresponding legal norms were comparable, 2) if so, then if they were similar and 3) if not, how great were differences.

Because of great differences between the Baltic countries in their languages and because of very great rate of legislative changes we did not have any clear idea about each other countries' new legislation. But starting our comparison we believed that differences in development of criminal legislation should not be very great. 50 years of life and work in an identical criminal system, many generations of lawyers trained in the same Soviet legal school, huge and stable criminal justice system inherited from the Soviet time-all this were thought to be huge power inhibiting every serious attempt to reform the existing criminal justice within some short time.

The results of our research were striking. They have shown that our premier belief was absolutely wrong. We saw how much national criminal justices can divert in very short time despite all similarity in social, economical, cultural, political situation in both countries and despite the long common legal tradition.

This presentation is supposed to be a development of the earlier one (See, Ando Leps and Viktoras Yustickis Estonian and Lithuanian Criminal Legislation. Comparative Analysis. In "Crime and Criminology at the End of the Century. Tallinn. 1997, p. 93-102).

That presentation dealt with the criminal justice in only two countries – Estonia and Lithuania. This time our team was joint by Latvia. It was represented by prof. Uldis Krastins – a member of the legislative group, which develops the Latvian criminal law. He informed us on the situation and recent trends in Latvian criminal legislation.

A year and a half has passed since our 1997 common presentation. Since this time some new changes have followed. Also an intensive work preparing the total reform in criminal law was in process in Latvia and Lithuania. The drafts of the new criminal codes were prepared in both countries.

This provides us with an opportunity to foresee some trends in the future development in the Baltic Criminal Law.

Some of this recent change will be regarded comparing the criminal law in the three Baltic States.

Some other ones will be discussed in special chapter 5. "Further Development in Criminal Law in the Baltic States".

2. Substantial criminal law in the Baltic countries. Level of punitiveness of criminal law

Punitiveness of criminal law shows how severe criminal sanctions are in a criminal law. A criminal law providing more severe punishments for identical *corpus delictae* is considered to be more punitive. Let us compare the legislation in the Baltic countries in this respect.

1. Imprisonment. Its length

Imprisonment is a spine bone of a modern criminal law. Punitiveness of a national criminal law can be seen first of all in figures showing how many years, months are to be served for some offences according to this law. Comparing two national criminal laws, we can see that very similar offences in one law are punished with a much longer imprisonment than in another, we can conclude that the first one is more punitive (at least, in this respect).

During our investigation, we were comparing maximal lengths of imprisonment provided by every national legislation for identical or very similar violations of the criminal law. With that end in view, we selected such violations which were formulated by both national legislations in the same way (both hypothesis and dispositions of a law are defined in both national legislations in a very similar or identical way). It was not important for us that sometimes these similarly formulated offences had different titles in each legislation. The main point was the identity in *corpus delictae*.

Sometimes we met a situation when only one single part of some legal norms was formulated in the same way. The point is that many articles of criminal code describe several versions of the same offence. For example, murder and very cruel murder can be described in the same article "Murder" just as two single parts of it. Comparing articles like that sometimes we met situations when only one part of an article like that were comparable. In this situation, we considered this part as a separated *corpus delicti* and tried to compare it with corresponding legal norms in the other legislation.

Comparable offences were grouped in-groups according to the chapters of criminal law. When comparing Estonia and Lithuania, we used the classification of the Estonian Criminal Code. This means that when finding that some offence was put by the Lithuanian legislator in a different chapter of the Criminal Code than it is done by Estonian one we followed the Estonian classification.

The next step was calculation of the average *maximal* imprisonment in every single group (chapter). Maximal punishments of every offence included in a chapter were added together and their average was calculated.

The results of the calculation for Estonia and Lithuania are shown in Table 1.

The conclusion is obvious. The Estonian legislator is much less punitive than the Lithuanian one.

After the Latvian colleague had joined us, we also tried to compare Latvian and Lithuanian criminal sanctions.

The conclusion was that Lithuania and Latvia are about the same level of punitiveness. So the average in upper limits of criminal punishments for offences against the State was 8.8 years in Latvia and 8.7 in Lithuania. The relative averages in offences against the person were in Latvia 4.9 years and 4.7 in Lithuania.

Table 1. Maximal length of imprisonment in Estonia and Lithuania

NR.	Offences	Estonia (length in years)	Lithuania (length in years)
1.	Against the State	6.3	8.7
2.	Against the Person	4.1	4.9
3.	Against Political and Labour Rights of the	0.6	

	Person		1.6
4.	Against Rights of Property	4.8	5.8
5.	Against Economy	0.9	2.5
6.	Malfeasance	2.8	4.3
7.	Against Justice	1.8	2.8
8.	Against the Order of Government	1.2	2.8
9.	Against the Public Order	3.5	4.7
10.	Military Offences	5.2	5.4

2. Capital punishment

There are five violations in Estonia that can be punished by capital punishment. So are, for example, aggravated homicide, terrorism, act of terror against the representative of other state (Art. 64-1, 65, 101 of Estonian Criminal Code). In Lithuania, only one offence can be punished with capital punishment. It is aggravated homicide. So, at first sight, Estonian law is more punitive. But the opposite seems to be true when we consider the execution of capital punishment.

The point is that in Estonia the capital punishment *is never executed*. In Lithuania, the capital punishment was usually executed within 10 days after an appeal for pardon is rejected by President.

The situation in Latvia formally was similar to Estonia (also five corpus delictae could be punished with the capital punishment). But in fact it was more similar to Lithuania (the capital punishment used to be both appointed and executed). The recent development in both countries proved to be quite similar. Both countries suspended the execution of the capital punishment. As for future, Lithuania is going to abolish and Latvia to continue using this punishment (but only for one corpus delicti).

So, the general situation up to last time is two rather strict legislations (Latvia and Lithuania) versus rather liberal one (Estonia).

3. Ways to integrate punishments for several offences

If two or more offences are committed simultaneously and two and more punishments are to be imposed, there have to be ways to integrate these punishments. These ways have to be provided by the national law. The modern criminal law has several ways to do it. The most severe is an addition. In this case, all punishments are summed up. If, for example, a court has to do with two offences and two punishments then the length of imprisonment for the first punishment is added to the length of the other one and the person convicted has to serve all the resulting length of imprisonment. The less severe is partial adding. The least severe is absorption (inclusion). An integrated length of imprisonment cannot be longer than the longest imprisonment for the most serious offence committed by a person. The most punitive is of course a national law using the first way (addition); the least punitive is one using the last way.

Today criminal law in the three Baltic countries seems to be quite similar in integrating punishments. In general, it is up to court to choose the way of integration. What are different in Baltic States are the upper limits of an integrated (resulting) punishment and again we see two stricter legislations: Lithuanian and Latvian and much more liberal Estonian one.

In Lithuania, a resulting sum of punishments cannot be larger than 15 years. This means that if after integrating all punishments for a person you receive more than 15 years, (for example, 17) then only 15 are to be served. The situation in Latvia is similar. If one of crimes is very heavy then the upper limit of an integrated punishment can reach 20 years.

In Estonia, this maximal resulting term is much shorter. For greatest part of offender in Estonia (for people that committed their offence first time), the same sum cannot be higher than upper level of punishment for the heaviest offence committed by a person. This upper

level can reach 15 years only in very few cases. (See, Estonian Criminal Code, Art. 40, 41 and Lithuanian Criminal Code, Art. 42, 43, 44).

4. Social groups treated by the criminal law in a more punitive way than the rest of population

National criminal justice is more punitive if there are social groups treated by criminal law more punitively than the rest of population (for example, if a criminal law provides more severe punishments for just the same offence if one belongs to this group). In Lithuania, such group is recidivists-people that committed their crime repeatedly and are declared by court as highly dangerous recidivists (Art. 26. Lithuanian Criminal Code). The same situation can be seen in Latvia. (But it is very important to stress that Latvian legislation is going to reject this concept. Criminal law in draft has no "highly dangerous recidivist").

Estonian criminal law does not have any concept of "highly dangerous recidivist". Here (at least in law), any social group punished in a more severe way than the rest does not exist. So, in this respect the Estonian criminal law also is less punitive than Lithuanian.

5. Possibilities to release a person convicted from serving his punishment

The less punitive is a national criminal law, the more different opportunities it gives to release a person from serving his punishment. A national law can provide the court with opportunities to release one from serving deserved punishment (and from taking part in criminal procedures at all – diversion). A reason for the release can be educational, humanistic and any other. Beyond any comparison Estonia is less punitive in this respect too. In fact, Estonian art. 47. (Conditional release (abstain) of executing the punishment imprisonment) and art. 50. (Release from criminal punishment on bail) provide an Estonian court with very wide discretion releasing every person from imprisonment. It is especially true dealing with offenders that have committed not very heavy offences (offences punished by imprisonment not longer than 8 years).

Also, in Lithuania, it is possible to release a person from the duty of serving an imprisonment sentence (deferment of punishment – Art. 47 Criminal Code of Lithuania). But this law can be applied for much narrower part of people convicted (only if imprisonment is not longer than 3 years and if there are not any aggravating circumstances).

Latvian legislation is much more similar to Lithuanian one. Deferment of imprisonment is possible if one is sentenced for 3 years and less.

3. Restriction in human rights for the purposes of the criminal justice

More or less significant restriction in human rights is usual in every criminal justice system. These rights are restrained when it is needed to detect an offence, to get evidences, to arrange other criminal procedures. Every arrest, search or seizure restricts very important human rights. But these criminal procedures are indispensable in many criminal cases. So, restriction in human rights of people convicted (and to some degree victims, witnesses) is common in every criminal justice. But national criminal justices are very different in a scope of restrictions. Some national criminal laws are very cautious and very reserved when restricting human rights. They do it only when feel it being absolutely necessary. Other criminal justices do it without hesitation every time when they hope it can be useful making criminal justice more effective.

Criminal laws are very different in the three Baltic States in this respect too.

1. Arrest

The “taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand” (5) provides a severe restraint in one’s human rights. One of the most important human rights – one’s personal freedom - is temporally taken away in a very harsh, severe way. So, the willingness of national legislator to apply arrest in different situations when it could be useful from a criminalist’s point of view is very important showing the grade of restrictiveness of national criminal justice.

Legal regulations of the arrest in Lithuania show that the criminal law in this country provides the criminal justice with much more rights restricting one’s freedom than Estonian one.

Maximal length of pre-trial detention in Lithuania is 18 months. The same is true for Latvia.

In Estonia it is only 1 year. Lithuanian law is not very demanding evaluating reasons for arrest. In Lithuanian criminal law, there are a lot of offences (See, Lithuanian Criminal Code, Art. 104) in which just only imputation of a crime gives sufficient ground for arresting a person accused. Long time in Lithuania a person could be arrested knowing full well that he has not committed any offence at all. It was so called preventive arrest, i.e. arrest (up to two months) just because there is a good reason to believe that the person is going to commit an offence.

Only in one respect Lithuanian law treats human rights more solicitously than Estonian. In Lithuania, pre-trial detention cannot be applied for offences with maximal length of imprisonment one year or less (See, Art. 104 Criminal Code of Lithuania). Both in Estonia and Latvia it is possible. So, the Lithuanian criminal procedure is much more oppressive compared with Latvia and Estonia.

2. Restriction in human rights and criminal investigation

Both Estonian and Latvian criminal laws are rather conservative and cautious defining rights of an investigator and the ways in which he can obtain his evidences.

An investigator is allowed to commit such traditional criminal procedures as interrogation, search, seizure, control over correspondence, he can appoint an expert examination.

Lithuania acts much more resolutely restricting human rights of a person suspected. The Lithuanian investigator is allowed to accomplish criminal procedures; this restrains human rights in a much more severe way than the Estonian and Latvian ones. Beside the rights mentioned above, Lithuanian criminal law provides prosecution with opportunity to use all kinds of the so-called “operative activities“ which means results of secret activities of police. These activities – secret observation, secret photo, video, film– violate one’s privacy much more than usual criminal procedures (See, 198-1, 4).

3. The Right to Counsel

At first look, all Baltic legislations are quite similar in this respect. The criminal laws are similar establishing rights of a lawyer defending the person accused. A lawyer can take part in all activities made by investigation to person accused. He can have as many meetings with this person as he needs. The length of these meetings cannot be restricted; he has the right to access any documents that are needed to provide a due defence. There is only one particularity of Lithuanian criminal procedure. But this particularity seems to be crucial. First 15 days after imputing a charge (and arrest), the Lithuanian investigator can control every meeting of attorney with the person accused. Also, the investigator can (if he finds it useful) plea to prolong this term.

It is obvious that this weakens the defense. In fact, competing parties are not really equal if one of them knows everything about the other and a person accused cannot speak sincerely with his counsel.

So, within very short time the ways of the Baltic Republics diverted markedly. In fact, they have chosen contrasting ways of development. Lithuania and Latvia took the road of development of rather punitive and restrictive criminal law. Estonia has chosen the opposite way.

4. “Effects” of the changes in legislation. Criminality in the Baltic States

Opposite trends in legislation in Estonia, on the one hand, both Lithuania and Latvia, on the other, is a good chance to observe effects of criminal law upon criminality (Table 2).

We can see that traditionally criminality was the highest in Estonia, and the lowest in Lithuania, that during the social overturn 1990-1995 its level has increased in all three countries. We can also see that the dynamics of criminal situation is also very different in all the three countries. It is “sinuous” development in Estonia, a “jump” and decrease in Latvia, very gradual and steady increase in Lithuania. Most important for us is that all that particularities in development of criminal situation are not lateral to striking differences in criminal policy and legislation.

**Table 2. Criminality (number of crimes per 10,000 population)
in Estonia, Latvia and Lithuania**

Years	Estonia	Latvia	Lithuania
1990	152	129	99
1991	203	151	120
1992	264	235	151
1993	243	204	161
1994	237	161	158
1995	265	155	164
1996	240	152	183

So, Lithuania used to have 1.5 time less crime than Estonia. This relation was stable all these years despite contrasting development in criminal legislation. Contrasting development in criminal law has not resulted in contrasting changes in criminality.

Level of criminality in these countries seems to depend on everything but law. It seems to be highly sensitive to social overturn in the three societies, to a lot of very different economic, cultural, social etc. factors but to be quite insensitive even to radical changes in criminal law.

5. Further development of criminal law in the Baltic republics

All the dates quoted reflect the situation in criminal law in Estonia and Lithuania by the end of 1994. What tendencies prevailed later? Did the discussed trends continue? The investigation of later trends in criminal law in both countries shows that the answer for Lithuania is “Yes!” The answer for Estonia is rather: “No!”

During 1995 and first half of 1996, 75 novels in substantial criminal law were passed in Lithuania. 62 novels were approved in Estonia.

For the purpose of our investigation, all the novels were classified into three groups: penalising, criminalising and specifying ones.

As *penalising* ones were considered all novels that made the sanction (punishment) provided by existing law more severe (for example, prolonging imprisonment). Also as such were considered all novels introducing into an existing law a new part providing more severe punishment in some special cases (so called “qualified” corpus delicti). As penalising were considered all novels that had changed some facultative punishments to obligatory (for

example, before the passing of a novel a court *could* but after it *must* seize the property of a guilty person.

As *criminalising* were considered novels introducing quite new corpus delictae. (For example, new law punishing for action which did not used to be punished before). Also novels expand the effect of an existing law to new are as well classified as criminalising.

As *specifying* were considered novels that just searched to precise a law in effect, to remove some inaccuracies in it.

Generalisation of these novels showed that the earliest trends in the development in the criminal law in Lithuania still persist.

Table 3. Latest trends in the development in criminal law in Estonia and Lithuania

NR.	Kind of novel	Number of novels		% of novels	
		Estonia	Lithuania	Estonia	Lithuania
1.	Penalising	17	55	27	73
2.	Criminalising	37	15	60	20
3.	Specifying	8	5	13	7
	Total	62	75	100	100

As for Estonia, we can see some turn towards more punitive criminal law. There is a lot of criminalising novels and it can be interpreted so that Estonian legislator seems to be disappointed with his liberal criminal policy.

It can be supposed that this disappointment arises from some **illusions** Estonian legislator had concerning this policy. Modern-minded Estonian legislator believed that this modern liberal criminal policy is a more effective way to fight against criminality than the old punitive one. But persistent increase in criminality despite this policy was rather unwelcome news for him. So he saw that this best policy 'does not work, does not produce any positive changes in the criminal situation in Estonia. Just on the contrary, the increase in criminality continued. Public and legislator had to do with especially dangerous manifestations of criminality for which just the soft liberal policy seemed to be guilty. All that have pushed the public and legislator to take "real resolute", "real strong" measures against criminality.

All this caused the recent turn in Estonia.

Conclusions

But the sad reality is that neither harsh nor soft criminal policy are able to stop criminality. Neither severe nor mild criminal punishment can deter criminals from committing crimes. Liberal law is preferred for other than deterrent effect reasons: humanistic, economic, ethical. As for improving the criminal situation, the turn to liberal criminal policy can be effective only as the first step of transition from pseudo solution of modern social, psychological, political etc. problems (by means of criminal law) to real one (by appropriate social means).

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Baudžiamoji teisė ir nusikalstamumas Baltijos šalyse. Pagrindinės kryptys

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SANTRAUKA

Pranešime nagrinėjamos svarbiausios Baltijos šalių baudžiamosios teisės kryptys. Tyrimai parodė, kad Lietuvos ir Latvijos baudžiamosios teisės ir baudžiamojo proceso kryptys skiriasi nuo Estijos. Lietuva ir Latvija sukūrė gana ribotą, prievarta ir griežtomis bausmėmis grindžiamą baudžiamąją sistemą, o Estijos politika šioje srityje ganėtinai liberali.

Tačiau kuo toliau, tuo labiau Estijoje nusiviliama liberalia politika ir linkstama griežtinti baudžiamąją sistemą.

