



LITHUANIAN EXPERIENCE OF THE SOVIET GENOCIDE INVESTIGATION: PROBLEMATIC CASES AND GENERAL CONCLUSIONS

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One of the most important problems, which occurred in Lithuania after the re-establishment of Independence, was historical and legal evaluation of the Soviet past. First and foremost, events of the Stalin era had to be revised. These included, first of all, issues of the Lithuanian resistance and crimes committed by the Soviet oppressors. It should also be stressed here that the above mentioned evaluation had to be based not on the Khrushchev's new party line, but on the point of view of the independent and West-oriented state. So, there were many criminals to unveil, as well as heroes to favour, both in historical research and legal investigation.

One has to admit, although with regret, that the Republic of Lithuania has not yet completely succeeded in achieving these goals. Already first steps taken in order to establish the so called "historical justice" showed that fifty years of living under the violent totalitarian regime affected not only the physical or mental health of the separate individuals, but also the mentality of the Lithuanian society as a whole, which has lost its ability to make a clear distinction between the friends and the enemies, as well as between the criminals and their victims. However, this paper is not a lament of the desperate Lithuanian. The true intention is to draw reader's attention to the more general problems, concerning the existence of the Soviet genocide as such and the correspondence of the Soviet violence to the concept of genocide, provided by Prof. Raphael Lemkin. Two Lithuanian criminal cases, in which the Soviet collaborators were accused, will serve as an illustration, as well as a certain empirical background for theoretical considerations.

The Case of the Soviet Hit-Agents: Genocide?

Before starting to speak about the case of the Soviet hit-agents it is essential to explain briefly who they were. The hit-agents were one of the most secret categories of the MGB's cooperators. They were armed and used in combat operations against Lithuanian resistance groups. Usually hit-agents, posing themselves as members of the resistance, established a connection with some group of the real guerilla-fighters, went to contact, and then killed or arrested them. This category of agents was also used in the MGB's secret operations of larger scale, but analyzing them would not be relevant in this paper.

On June 23rd, 2000 prosecutor from the Attorney General's Office of the Republic of Lithuania accused 5 suspected ex-hit-agents before the Vilnius District Court. Only two of them were found guilty, but were not punished because of mental illnesses. Other three were acquitted of all charges. Prosecutor's appeal did not help much, because it was dismissed by the Court of Appeals. The reason for such ruling of courts was related to the evidence and is not important for our subject. The important thing, however, is that the defendants in this case were accused of having collaborated in genocide.

The Prosecutor's arguments were that the Lithuanian partisans made up a political group, which the MGB sought to exterminate. It should be added here that, according to the Penal Code of the Republic of Lithuania, an attempt to exterminate a political group is also considered genocide. It was also stated that the hit-agents knew about the MGB's intention and deliberately helped to fulfill it. Hence the charges with collaboration in genocide. It is interesting to note that none of the courts expressed any reservations about such interpretation of the facts.

However, there might be some, especially looking from the Lithuanian point of view. The relationship between the MGB and the Lithuanian partisans is better defined as an armed conflict rather than extermination. Even without political or legal arguments it is obvious that these men were shooting at each other, setting traps and making ambushes, thus, waging a war. Moreover, the legal recognition of the guerilla-fighters as the representatives of the State, and the announcement that the Declaration of the 16th of February, 1949, passed by the leadership of the resistance, is an act of law, gives grounds even to suggest that Lithuania and the Soviet Union were at a state of war. The actions of the hit-agents, however insidious, would appear in such context as an illegal form of military or paramilitary tactics rather than a means of extermination. And although, as it will be discussed later, there was a theoretical possibility to charge the hit-agents with collaboration in genocide, it was not done in a right way by prosecutors in this case. The use of the hit-agents against Lithuanian resistance movement, if taken separately from other Soviet actions, had to be considered a war crime, not an act of genocide.

The Case of the Deportations: Why not Genocide?

This case was much less complicated. On April 4th, 2002 the prosecutor of the Attorney General's Office of the Republic of Lithuania accused Vincas Misiūnas before the Vilnius District Court. On December 30th, 2002 Misiūnas was found guilty of the deportation of the civil population of the occupied territory. After his appeal, made on 17th January, 2003, the Court of Appeals commuted his sentence without questioning his guilt.

It looks like nothing was wrong with this case, unlike in the previous one. However, one interesting question appears: why not genocide this time? If the hit-agents could be charged with it, then Misiūnas even more so. He and his colleagues from the MGB acted on the grounds of the decision of the Central Committee of the Communist Party of Lithuania concerning the deportation of the kulaks from the territory of LSSR, which was undoubtedly a continuation of the old Soviet policy against private farmers as obstacles for collectivization. Stalin himself officially declared the goal to exterminate such farmers when he spoke about the extermination of the kulaks as a class. The living conditions in the "otdalennyje rajony SSSR" (the distant regions of the USSR), as the Soviets usually called them, could also be considered as leading to extinction. So, in this case there was also a group of people, which the MGB or the CPL or even Stalin himself intended to exterminate. It was also possible to claim that Misiūnas knew about this intention and deliberately helped to fulfill it. Why not charge him with collaboration in genocide then? A simple answer could be that genocide is more difficult to prove. But such argument could help only if the case of the deportations was analyzed separately. Looking at it in comparison with the case of the hit-agents, as both being the results of the prosecution of the Soviet criminals, the situation becomes curious: crimes committed by one side of an obvious armed conflict are called genocide, while the deportation of the group of civilians with a suspected intention of extermination is considered simply a form of intolerable treatment. This curiosity clearly signifies a miscomprehension of the concept of genocide among Lithuanian lawyers. It is understandable, as cases concerning genocide, crimes against humanity or war crimes are very rare and one does not pay them serious consideration while studying criminal law in university or practicing it in prosecution or court. However, problems, which have arisen during the analysis of above mentioned Lithuanian cases, are not caused by the incompetence of lawyers alone. The much more general and interdisciplinary question rests behind all this. Many scholars, legal practitioners and politicians, especially those from Eastern Europe, have claimed that there was a Soviet genocide. However, there is no clear concept of this phenomenon yet and the efforts to create it are still undertaken. In this paper some ideas concerning the above mentioned issue will be provided, which may be of some interest to genocide researchers.

The Concept of Genocide: Back to Lemkin

Before discussing the Soviet genocide, the general concept of this crime should be considered. Indeed, there are many definitions of genocide, provided by various authors, and still it is fair to concentrate on the thoughts of the "godfather" of that term – Prof. R. Lemkin. Therefore it is the works of the above mentioned scholar that will be used as a background for further considerations in this paper.

In the contemporary popular mind the concept of genocide is simplified to a mass murder. However, that was not exactly what professor Raphael Lemkin had in mind when he spoke of genocide: "Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups". So it is quite clear that the term *genocide* first of all means the disruption of the group as the organizational entity rather than the physical extermination of its members, which is only the last resort or maybe the last stage of genocide. In other words, there is no need to annihilate a person's body in order to commit homicide. In the same way, there is no need to kill all the members of the group in order to commit genocide. However, genocide is not completed even after the disruption of the group as the entity. As Prof. Lemkin puts it: „Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain or upon the territory alone, after removal of the population and the colonization by the oppressor's own nationals". Already here we can see that such a process is very similar to the one well known by the Soviets: „osvojenije vnovj priobretennyh teritorij" (assimilation of the recently acquired territories). And this coincidence is not accidental.

While considering Prof. R. Lemkin's ideas, a fundamental work of another scholar - Dr. Hannah Arendt's "Origins of Totalitarianism" – is worth mentioning. Dr. H. Arendt argues that once a totalitarian movement has come to power, it inevitably creates a totalitarian regime, starts to execute the policy of expansion, and exports its pattern to occupied territories. It is quite clear that Dr. H. Arendt and Prof. R. Lemkin describe the same process, in spite of the fact that subjects of their studies differ. Such a small

comparative analysis of the ideas of these two scholars leads to the conclusion that the resort to genocide is an integral part of totalitarianism. And if we accept Dr. H. Arendt's idea that the Russian communism was a totalitarian movement as well, we will also have to admit that the Soviets committed genocide. However, all these considerations do not help to answer what exactly it looked like.

The Soviet Genocide: Target Groups, Methods and Results

Although Soviet and Nazi regimes were both totalitarian and had many things in common, some differences are noticeable too. These concern, first of all, ideology. It is true that the well-known Nazi interest in biological nature of man was not common to the Soviets, who stressed the social status instead. However, a misleading parallel is often drawn between the Nazi elimination of ethnic groups and the actions of the Soviets against certain social classes. Such claims are nothing but simplification. The *classless* society, not the state of workers and peasants, was the final goal of the Soviets. Therefore, they did not attack the bourgeoisie or kulaks and were not trying to impose the dictatorship of the proletariat. It is just a first impression. In reality the Soviet actions were directed against the so-called "bourgeois society", the most important feature of which was its ability to create and maintain the modern national state of those times. In other words, the Soviets attacked nations.

Prof. Mykolas Riomeris, a famous pre-war Lithuanian specialist of the constitutional law, once wrote that the word *nation* may have two different meanings, which he described in the Latin terms *natio* and *populus*. *Natio* is a group of people with the same ethnic origins, while *populus* is an element of a state, the very simplified description of which could be group of people with common citizenship. It is obvious that *natio* was the target of the Nazis. There are enough grounds to claim that *populus* was that of the Soviets. Because *populus* is the bearer of the social structure, institutions, culture and traditions of the people living in one state in the same way as *natio* is the bearer of the same features of an ethnic group. It is obvious that *natio* has a potential to create a stable social unit – the Jewish example is a clear indication of such ability. *Populus* also has a similar potential, only a social unit created by it has a specific name – a state. These creational abilities were obstacles for a total domination, be it based on the racial purity or social and political homogeneity. Therefore, the Soviets attacked statehood and identity based on a citizenship with the same persistence that was showed by the Nazis in the persecution of the ethnic groups.

The methods employed by the Soviets were almost identical to those used by the Nazis. Although Prof. Lemkin created the concept of genocide only on the basis of the Nazi experience, it is easy to cite his sentences which fit the Soviet policy very well: "In the incorporated areas <...> local institutions of self-government were destroyed and a German pattern of administration imposed", "The social structure of a nation being vital to its national development, the occupant also endeavors to bring about such changes as may weaken the national, spiritual resources. The focal point of this attack has been the intelligentsia, because this group largely provides the national leadership and organizes resistance against Nazification", "In order to prevent the expression of the national spirit through artistic media, a rigid control of all cultural activities has been introduced". And lastly, the favorite of the author of this paper, the truthfulness of which any ex-inhabitant of the Soviet Union could confirm: "The consumption of alcohol was encouraged, for while food prices have soared, the Germans have kept down the price of alcohol". In addition to the last sentence, it is interesting to provide the words of one man, who told the author of this paper in a private conversation, that "the Soviets deported half of Lithuania and drowned the other half in alcohol".

However, contemporary scholars usually stress the utmost importance of lethal methods as a criterion of the recognition of genocide. It is true that the Soviets did not use gas chambers and none of their concentration camps was called a death factory. However, the Soviets had their own methods of mass extermination of people. The deportations had the same effect, and the fact that the Nazis did not have their Siberia explains a lot. On the other hand, there is quite enough information about the real killings. For example, Dr. Arvydas Anušauskas in his solid work "The Soviet extermination of the Lithuanian nation in 1940-1958" provides information about shootings of political prisoners in the first days of the German attack. It should also be stressed that the Soviets had invented very subtle methods of mass extermination, for example, via sentencing to death for counterrevolutionary crimes. The fact that the real criminals could also sometimes be executed as the counterrevolutionaries and therefore it is difficult for contemporary scholars to cope with the information about such executions only proves that the Soviets were very clever criminals, maybe even more clever than the Nazis.

Committing genocide means a coordination of lethal and non-lethal methods and it should be discussed here how the Soviets did it. Indeed, the victims of the Soviet repressions contain a huge variety of people. Therefore it is usually difficult for the researchers to classify them so that a principle of genocide would become clear. It is this circumstance that led many scholars to final conclusion that the Soviet repressions were a brutal suppression of the opposition rather than genocide. However, once the society of the independent state, the *populus*, is recognized as the target group of the Soviet genocide, the system becomes very clear. Let us briefly consider the Lithuanian example. In 1940-1941, during the first Soviet occupation, state officials, officers of the army, policemen, journalists, writers and other members of the intelligentsia were the first to be arrested, killed or deported. Then the unexpected German attack disturbed the plans of the Soviets, the execution of which was, however, renewed right

after the return to Lithuania in 1944. This time members of the resistance and their supporters were priority targets. Thus, in both cases lethal methods were, first of all, employed against the active part of the *populus* – people who had enough power and strength to consolidate the society and organize resistance. Then non-lethal methods were used in order to re-educate the more passive members of the society, whose social, political or ideological backbone was more flexible. So, the national pattern was distorted and the pattern of the oppressor imposed – a classical case of genocide, as described by Prof. R. Lemkin.

It is much more difficult to establish chronological boundaries of the Soviet genocide. Unlike the Nazis, the Soviets were the winners of the World War II and had the possibility to proceed with their crimes without risking to be stopped or punished. Therefore it is very difficult to establish a date when the Soviet genocide was completed or aborted. However, at least in Lithuania, it should be connected with Stalin's death, although it was merely a coincidence, not some special merit of Khrushchev. It looks like Stalin successfully accomplished the assimilation of the Lithuanian society and there were only few last members of the resistance left for Khrushchev to execute, which he did without any pricks of conscience. Otherwise, the work was completed: the leaders of the society long gone and the rules of the Soviet life introduced to passive masses. Of course, some violent actions were used from time to time after the Stalin's death as well. Imprisonment of the most active dissidents, various techniques of the KGB or, finally, the employment of the armed forces against the civilians in January of 1991 could be mentioned. There was also a continuous persecution of religion, first of all of the Roman Catholic Church, control of the cultural life and arts and, undoubtedly, encouragement of alcohol abuse. However, all these actions were taken merely to preserve the results of the real genocide, completed before 1953. On the other hand, because of this continuous preservation the results of the Soviet genocide are felt in Lithuania until now.

Speaking about these results, it must be mentioned that if the concept of genocide is understood in the way expressed in this paper, a very popular method of estimating its results via counting the percentage of the population killed loses its sense. Remembering the parallel with homicide, it could be said, that one may cut off all four of person's limbs and he or she will still be alive, but it is enough to cut off the one and only head to send him or her to another dimension. The Jewish example clearly indicates that this is also true about genocide. Although an impressive percentage of the Jews were killed by the Nazis, their ethnic group survived, established its own extremely national state and continuously grew stronger. Therefore, although a huge percentage of killed group members may indicate the cruelty of the oppressor, more complicated methods are needed to estimate the real results of genocide for the group as the entity. Much more time has to pass until the results of the Soviet genocide of the Lithuanian *populus* will be estimated, therefore only a few ideas about them may be mentioned in this paper.

It is obvious that the contemporary Lithuanian society is no match for that of the pre-war Lithuania. Although events of the late 80's and the re-establishment of independence showed that there were still some remnants of the statehood left, they were clearly not large enough to rebuild the state completely. Various authors have discussed this subject.

For example, Dr. Mantas Adomėnas, a great Lithuanian political philosopher, has stated that the today's loss of the statehood stems from two causes: the deformation of the personal self-consciousness due to the Soviet occupation and "the liberalism of the lowest quality", which replaced the communist slogans. In his other essay, it was also stated, that the Lithuanian society expresses more sympathy to the cynical communist functionaries than to members of the resistance.

Similar ideas were expressed by a well known political columnist Rimvydas Valatka, who recently argued that a civic society may not appear in Lithuania at all. He provided the loss of faith in God – a historical background of the European civic identity – as one of the arguments, supporting his claim, and cited the words of the sociologist Vytautas Radžvilas, stating that Lithuanians are merely a one-language-speaking ethnos, not a real nation.

Discussions about the differences between the resistance, collaboration and conformance as types of reaction to the occupation also appear continuously on the pages of various magazines. Ex-communists, posing themselves as the defenders of the Lithuanian interests against Moscow, usually put in some additional charm.

Finally, the author of this paper himself once also wrote about a strangely negative attitude of the Lithuanian society towards the resistance movement, its lost ability to recognize its enemies and a special form of the Stockholm syndrome, resulting in an unaccountable affection towards the occupants and oppressors.

All these considerations show the results of the Soviet genocide in one way or another. In fact, the above mentioned features of the Lithuanian society such as the loss of the statehood or faith, sympathy towards the occupants and subsequent negative emotions about the resistance movement, are the results of the Soviet genocide. If it is true that the Soviets turned the pre-war Lithuanian *populus*, however imperfect it was, into the one-language-speaking ethnos (with the addition of some other ethnic groups), then it may be concluded that their genocide was absolutely successful. A few

recently made scientific researches tend to approve these suspicions of the humanists.

Two of such studies will be discussed here. One of them - a joint research on the psychological consequences of the Soviet repressions, carried out by the Genocide and Resistance Research Centre of Lithuania and the Department of Clinical Psychology of the Vilnius University - had a clear intention to study the consequences of what is called here the lethal methods of the Soviet genocide (deportations and political imprisonment in concentration camps). Survivors themselves as well as their relatives were examined. The psychologists concluded that the life of the repressed people was completely tumbled. Their traumas lasted for extremely long periods of time, because even after the return to Lithuania rigid restrictions were imposed on them. About 80 percent of the repressed people had health problems and about the same percentage could not successfully acquire an education or choose profession, all this being due to the repressions. The post-traumatic symptoms of these people are very close to the so called "syndrome of the concentration camps", which describes the effects of the imprisonment in the Nazi concentration camps. Even more interesting discovery was made while examining the relatives of the repressed people. It appeared that the effects of the repressions may appear in the second generation and cause psychological problems even for the children of the political prisoners and deportees. This last discovery of the psychologists provides grounds to claim that the lethal methods of the Soviet genocide employed against the active part of the *populus* could indirectly affect the passive members as well and thus intensify the effects of the non-lethal methods.

Speaking about these, another research is worth mentioning. This time the author - Dr. Sigita Kraniauskienė - had no direct intention to study the results of the Soviet violence. It was merely a sociological research, concerning the changes of the factors influencing the socialization of individuals in three generations of the Lithuanian population of the 20th century. The first generation consisted of people born in 1910-1922, the second and the third respectively - of people born in 1923-1944 and 1945-1957. The social life of the first generation was strongly influenced by the establishment of the independent Republic of Lithuania. Patriotic feelings and civic identity of people of this generation were formed and maintained by their elder brothers and sisters. State institutions and various associations of the youth, for example, the Scout movement also played their part in formation of attitudes of this generation. Members of the second generation at the age of 6-17, which is the most important age for socialization, had to go through what is called by the author "confrontation of two social realities". This caused a strong memory of the need to choose one of the sides and painful feeling of the breaking up with the parental traditions. It should be stressed, however, that such conclusion was based only on the studies of the "successfully socialized" people. Members of the resistance movement or deportees, many of whom also belonged to this generation, were not examined by Dr. S. Kraniauskienė. As for the members of the third generation, the author concluded that they distanced themselves completely from the society of the pre-war Lithuania and their social life was most of all influenced by the simple material needs, such as the search for accommodation, which was distributed according to the plan and not sold freely during the Soviet rule. The results of this research illustrate the turning of the pre-war *populus* into the one-language-speaking ethnos so clearly that no other comments are needed.

Thus, a clear image of the Soviet genocide in Lithuania appears from what was said in this section. The Lithuanian *populus* - the backbone of the independent pre-war state - was the target group, on which both the lethal and non-lethal methods of genocide were employed. The active members of this group were arrested, killed and deported in order to neutralize their ability to consolidate the society and organize resistance. On the passive remaining masses the Soviet pattern was imposed by non-lethal violence: persecution of religion, control of the cultural activities, encouragement of alcohol abuse, and ideological indoctrination. As historical information and the results of the research of Dr. S. Kraniauskienė show, all this was completed before 1953, and the next generation of Lithuanians already began to live in conformance with the Soviet rules. Trying to preserve the results achieved by Stalin, the Soviet leaders after him proceeded with employment of non-lethal methods, sometimes resorting even to imprisonment of dissidents. However, Khrushchev and his successors should be considered abettors rather than actual organizers of the Soviet genocide. All this Soviet activity eventually resulted in almost complete disintegration of the Lithuanian society, which could be clearly observed right after the re-establishment of Independence. However, as it will be explained, these psycho-socio-historical conclusions should not necessarily result in criminal punishment for collaboration in the Soviet genocide.

Genocide or no Genocide? The Toil of the Criminal Investigation

The accordance of the concept of the Soviet genocide expressed in this paper with the Genocide Convention is a separate issue. On the other hand, the Convention itself and the circumstances of its emergence are also separate issues. However, none of them will be discussed here. It is enough to state that the respective article of the Penal Code of the Republic of Lithuania provides a slightly different formula of genocide and the Soviet genocide as described above could be thrust into its framework. Therefore, it is possible to turn back to the starting point of this paper - the criminal investigation of the Soviet actions.

It should have become clear by now to the reader that the defendants in the case of the hit-agents as well as the one in the case of deportations could have been charged with collaboration in genocide, if

only the charges would have been filed properly. Both the suppression of the resistance and the deportations of its supporters and farmers who were obstacles for the collectivization were parts of the system designed to disrupt and assimilate the Lithuanian society. In such context actions of the hit-agents and the officers of the MGB who took part in deportations could be considered collaboration in genocide. However, it would be quite difficult to file such charges against them practically.

The main distinction between historical research and criminal investigation is the fact that historians have only to provide arguments for their statements, while prosecutors must prove them beyond reasonable doubt. The case of the Soviet genocide of the Lithuanian society would be a huge one, with thousands of pages and a few dozens of defendants, despite the fact that only the participation in the execution of the lethal methods of genocide is usually punished. Because of the very complicated *mens rea*, which should consist of at least minimal understanding by a defendant of the true intentions of the actual organizers of genocide, it is always a hard-to-prove crime. In the case of the Soviets a long time period after the completion of the crime as well as the loss of important evidence provide additional difficulties. Therefore it might be impossible to prove charges with collaboration in genocide against the Soviet accomplices. And whenever a prosecutor is not able to prove a "genocide connection", he will naturally choose to charge a defendant with a more obvious crime, for example, with the deportation of the civil population of the occupied territory, as it was done in the case of the deportations. In the same way hit-agents could be charged with war crimes, however, statements about genocide of the resistance movement, organized by the MGB, still sound curious and deserve some decent irony.

One thing, however, which should be stressed as this paper comes to an end, is that no tactical decisions made by prosecutors should affect historical studies. Even if there is no one charged with the genocide of the Lithuanian *populus* or punished for the same crime, such circumstance will not deny the grounds to historically claim that there was the Soviet genocide as there was the one committed by the Nazis.

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