Chapter 3
Development of Property Protection in Criminal Law During Lithuania’s Independence

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Abstract Legal protection of property is regulated in many branches of law: constitutional, civil, administrative, social security, etc. Criminal law is the last resort (ultima ratio) in defending this legal value. However, no matter how much effort is made to protect property, the extent of crimes against property remains high. To combat this phenomenon, the criminal laws were constantly amended and supplemented, and new forms of dangerous behaviour were criminalized during the period of restoration of Lithuania’s independence. Some of these amendments raise questions not only of their expediency but also of their compatibility with the constitutional provisions, also main principles of criminal law and their compliance with the requirements of legal technique. This chapter, based on the jurisprudence of the Constitutional Court of Lithuania and the Supreme Court of Lithuania, also on the doctrine of the Lithuanian criminal law, deals with the main tendencies of the development of criminal laws relating to criminal acts against property, property rights and property interests in Lithuania during the independence period (1990-2019); analyses certain problematic issues of criminal liability for criminal acts against property; features of aggravated theft and other criminal acts against property; and also evaluates the corpus delicti of criminal acts that have emerged since the new Criminal Code.

This chapter is written under the scientific project Challenges to the Systemic Nature of the Special Part of the Criminal Code of the Republic of Lithuania, which is financed by the Research Council of Lithuania (agreement No. S-MIP-19-180178) SU-1074 2019-05-29) under the activity “Researchers’ Teams’ Projects in 2019–2022”.

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© Springer Nature Switzerland AG 2021
G. Švedas, D. Murauskas (eds.), Legal Developments During 30 Years of Lithuanian Independence, https://doi.org/10.1007/978-3-030-54783-7_3
3.1 Introduction

Property occupies an important place in the life of an individual, society and state, and it is in the interest of every society to protect property from criminal harm. Article 17 of the Charter of Fundamental Rights of the European Union states: “Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. Intellectual property shall be protected” (Charter of Fundamental Rights of the European Union 2012, pp. 391–407). Article 23 of the Constitution of the Republic of Lithuania (hereinafter Constitution) establishes the inviolability of property and the provision that property rights are protected by law. This article also provides for an exception in which property may be seized: “Only in the manner prescribed by law for the needs of society and justified by circumstances” (The Constitution of the Republic of Lithuania 1992). It needs to be noted that the Constitution establishes only the general principle of inviolability of property. Legal protection of property is regulated in many branches of law: civil, administrative, social security, etc. Meanwhile, criminal law is the last resort (ultima ratio) in defending this legal value. Criminal liability is imposed only for the most dangerous acts against property. However, no matter how much effort is made to protect property, the extent of crimes against property remains high. In Lithuania, criminal acts against property always constitute the largest part of all registered criminal acts. In 1996, thefts, robberies and swindling accounted for about 80% and in 1998 for about 70% of all recorded crimes. An analogous ratio of these crimes continued in 2003–2004 (Švedas 2005, p. 66). From 2005 till 2011, the number of registered criminal acts against property amounted to about 65%. Since 2012, this number has gradually decreased and in 2018 accounted for 36.8% (see Data on criminal acts recorded by pre-trial investigation). However, despite the decline in these criminal acts, they still account for more than one third of all recorded criminal acts in Lithuania.

Therefore, the state has a priority duty to protect property from dangerous attacks. It also reflects the legislator’s attitude to continually adjust and enforce laws relating to criminal acts against property. Although major changes in criminal law were linked to the restoration of Lithuania’s independence and European integration, with the increasing debate on the shortcomings of the Soviet-era criminal law and its ability to protect the interests of a new society, an overview of three decades of criminal laws related to the criminal acts against property shows that these laws were constantly amended and supplemented later (after the restoration of Lithuania’s Independence). Following the restoration of Lithuania’s independence, differentiation of criminal liability, taking into account different forms of property, did not comply with the principle of equality of all property forms before the law, enshrined in the Constitution and other laws of the Republic of Lithuania; therefore, steps have been taken to unify criminal liability for attempted encroachment on any form of property. In 1994, many articles of the old Criminal Code (hereinafter old CC) dealing with crimes against property have been substantially amended. Changes have been made not only by combining several acts but also by changing the content, meaning and elements of the corpus delicti of crimes and features of aggravated corpus delicti of crimes, and some crimes were decriminalized (for example, minor embezzlement of state or public property, etc.).

It should be noted that even after the adoption on 26 September 2000 and entry into force on 1 May 2003 of the new Criminal Code of the Republic of Lithuania (The Parliament of the Republic of Lithuania 2000) (hereinafter new CC), criminal laws were constantly amended and supplemented, and new forms of dangerous behaviour were criminalized. For example, nine amendments and supplements of the old CC relating to the various features of the corpus delicti of aggravated theft were adopted; new acts—illicit enrichment (Art. 1891, new CC) and manipulation of sport event (Art. 1825, new CC)—were criminalized; etc.

Therefore, while the danger (seriousness) of various criminal acts against property is a historically variable category, usually determined by the changing state order and economic and social factors, and while attitudes about the danger (seriousness) of crimes may change over a relatively short period of time even without a change in state order, the question arises as to whether such a rapid change of various features of the corpus delicti of criminal acts against property can be justified (especially after the entry into force of the new CC). All the more so because this law has been the result of a long and careful work of qualified lawyers since 1990. In addition, some of these amendments raise questions not only of their expediency but also of their compatibility with the constitutional provisions, also main principles of criminal law and their compliance with the requirements of legal technique.

This chapter, based on the jurisprudence of the Constitutional Court of Lithuania and the Supreme Court of Lithuania, also on the doctrine of Lithuanian criminal law, deals with the main tendencies of the development of criminal laws relating to criminal acts against property, property rights and property interests in Lithuania during the independence period (1990–2019); analyses certain problematical issues of criminal liability for criminal acts against property and features of aggravated theft and other criminal acts against property; and also evaluates the corpus delicti of the criminal acts that have emerged since the new CC.

3.2 The Main Tendencies of the Development of Lithuania’s Criminal Laws Concerning the Protection of Property During 1990–2000

Lithuania, after the restoration of independence in 1990, “inherited” old criminal laws, which contain different provisions concerning the protection of property: crimes against so-called socialist property were provided in Chapter 2 of the old CC, and crimes against individual property were provided in Chapter 5 of the old CC. It should be noted that, although these chapters have provided practically the same crimes, sanctions for these crimes were different: crimes against socialist
property were punished more severely. The new concept of property and economic relations has resulted in new types of conduct that may be considered to be dangerous and therefore prohibited. Moreover, an increased number of crimes against property, low clearance rate of this kind of crimes have led to a review of the legal regulation of property protection. Undoubtedly, aspiration for European integration is also required to assess the whole system and main principles of property protection in Lithuania.

In the fight against embezzlement of another’s property, there was a trend in the legislature to tighten criminal liability for certain types of theft. Since the restoration of Lithuania’s independence, as many as nine amendments and supplements to the old CC have been made in connection with various features of the corpus delicti of aggravated theft. On 11 March 1990, the Provisional Basic Law of the Republic of Lithuania was adopted, which, according to V. Pakalniškis, laid the foundations for the development of private property and the private sector (Pakalniškis 2002, pp. 69–79). However, the changing economic conditions and the facilitated movement of people to Western Europe also had negative aspects, such as the emergence of new kinds of theft. For example, in 1991–1993, the so-called iron business was a profitable criminal activity—large quantities of non-ferrous metals were transported from Lithuania to Western Europe (Gutauskas 2003, pp. 5–18), resulting in the worldwide theft of non-ferrous metals. Thieves brutally disrupted power grid installations, devastated cemeteries by stealing grave fences, etc. In order to combat these acts, on 10 June 1993, the legislature passed a law, which has introduced a new feature of aggravated theft—“the abdiction of non-ferrous metals by dismantling or reassembling an installation, structure or other property” (Arts. 90 and 91, old CC), thereby significantly increasing criminal liability for this type of theft. It is an interesting fact that this essential feature of aggravated theft was restricted to cases of stealing state property only, so if the non-ferrous metals owned by citizens were stolen in this way, the act, in the absence of other features of aggravated theft, was qualified as simple theft.

The next step in the change of essential features of aggravated theft is related to a law that was adopted on 19 July 1994, which changed the regulation of criminal liability for crimes against property. These changes were also largely influenced by Lithuania’s new economic conditions and integration into Europe. There was a growing debate about the lack of Soviet-era criminal laws and the questionable suitability of defending the interests of a new society. Provisions to punish differently for similar crimes against property were contrary to the general principles of criminal law. The differentiation of criminal liability according to different forms of ownership also did not comply with the principle of equality before the law, established in the Constitution and other laws of the Republic of Lithuania, for example the Civil Code, which provided that the Republic of Lithuania shall guarantee equal protection of rights to all owners. In accordance with mentioned amendments of the old CC, criminal liability for all crimes against property was provided in Chapter XII of the Special part of the old CC. Criminal liability for both simple and aggravated theft was provided for in Article 271 of the old CC. However, it should be noted that these changes were not only structural. The content and meaning of some features of aggravated theft have been amended, and some of them have been dropped. On 19 July 1994, the law returned to the rule prevailing in independent Lithuania by abolishing the regulation of open theft as an independent (separate) crime (Abramavičius et al. 2001, p. 357). At the time, the doctrine of Lithuanian criminal law regarded theft as a secret or open, unpaid seizure of another’s property for the purpose of appropriating it. Extremely large-scale theft regulation as a stand-alone crime was dropped. The interpretation of the ex post evaluative feature “the large-scale” is provided by the law itself (Para 1, Art. 280, old CC). In addition, some of the features of aggravated theft disappeared, such as “significant damage” (provided for theft of personal property) and “extremely dangerous recidivist” (provided for theft of state and personal property), and other features, such as “apartment intrusion” (provided for theft of personal property) and “intrusion into another storage facility” (provided for theft of state property), have been partially replaced by “intrusion into non-residential premises” (Para 2, Art. 271, old CC) and “intrusion into residential premises” (Para 3, Art. 271, old CC). In addition, the feature “repeat crime” (whether or not the offender had been convicted of previous theft) was changed to an aggravating feature of “a conviction for crime against property”. Therefore, from now on, only special recidivism is relevant for aggravated theft. Thus, the aforementioned law abolished the differentiation of criminal liability for theft by object (form of property); by the nature of violence (all violent property thefts were attributed to robbery); by the method of commission, whether open or secret (theft was considered as both a secret and an open seizure of another’s property); by scale (only large-scale theft was left); by subject (extremely dangerous recidivist); and by consequences (significant damage). On the other hand, criminal liability for theft started to be differentiated according to the type of premises (non-residential, residential) and specific object (car).

The feature of “intrusion into a dwelling” defined a more dangerous act than the feature of “intrusion into a non-dwelling unit” because the first case attempts to seize not only human property but also an additional object—the human right to inviolability of the dwelling guaranteed by Article 24 of the Constitution (Abramavičius et al. 2001, p. 357). Analysing the above-mentioned changes, one can positively evaluate the decrease of the number of features characterizing the subject of aggravated theft, the abandonment of the evaluative feature such as “significant damage” and the disclosure of the feature “large-scale” content in the law itself. From a legal technical point of view, the changes made can be said to have been reasonably abandoned in the individual articles regulating the features of theft. From now on, all the features of aggravated theft are included in the same article as the main structure of theft, but only in other paragraphs thereof (Paras 2, 3 and 4, Art. 271, old CC), which makes them easier to apply in case law. In addition, all structures of aggravated theft use the same construction (name of the act is indicated, theft committed … and then the features of aggravated theft are described), which avoids unnecessary repetition of the objective features of the main corpus delicti of theft and shortens the text of the law. However, some of the changes made after the restoration of Lithuania’s independence regarding the features of aggravated theft were less successful. For example, on 30 May 1995, Article 280 of the old CC (The Parliament of the Republic of Lithuania 1995) was amended and included a “Clarification of
Terms”, which provides that unauthorized possession of each vehicle is to be qualified as a large-scale theft. However, this approach of the legislature did not comply with the basic principles of criminal law. In particular, this rule was discriminatory as a certain asset (car) without any criteria was considered to be more valuable than other assets. According to V. Piesliakas, under this law, the courts were required to treat the seizure of every car, regardless of its value, as a serious crime (Piesliakas 2006, p. 50). Criticising this position of the legislator, A. Drakšienė emphasized that such provision had previously recognized the value of each car to be at least 250 MGL1 (large scale). Therefore, although the perpetrator was aware of the lower value car being stolen and the actual damage caused to the victim by the crime also did not conform to the element of large-scale, the court, when classifying the act, was guided not by the actual content of the person’s guilt (perception of the value of the thing) but also by the will of the legislator, which was contrary to the basic principles of criminal law (Abramavičius et al. 2001, p. 350).

As a result, this feature of aggravated theft was reasonably abolished on 25 November 1999 (The Parliament of the Republic of Lithuania 1999). On 8 June 1995, the law instead of special recidivism (conviction for crimes against property) returned the aggravating feature of repeat crime of theft, the concept of which was disclosed in Article 280 of the old CC. Repeated theft was considered to be an act committed by a person who had previously committed theft, robbery, extortion of property, swindling, misappropriation or squandering of property, murder for mercenary reasons or theft of narcotics, firearms, ammunition, explosives or radioactive material. Thus, the repetition of the crime could have been determined by the previous conviction of the above-mentioned crimes and by the coincidence of several such crimes. However, in cases where several separate thefts were committed, their qualification was difficult: only those crimes that corresponded to different paragraphs of Article 271 of the old CC had independent qualification. All thefts corresponding to one paragraph of the above-mentioned article were qualified as one multi-episode crime. For example, if the perpetrator committed ten simple thefts (without features of aggravated theft), only the first crime was qualified under Para 1 of Article 271 of the old CC and the other nine as one repeated theft under Para 2 of Article 271 of the old CC. Such qualification was determined by the rules provided for in Article 42 of the old CC, according to which separate punishments were imposed only for those crimes that corresponded to different articles of the old CC or different paragraphs of the same article of the old CC. These rules have been criticized in the doctrine of Lithuanian criminal law as legitimising inequality. For example, a person committing two identical crimes has the same legal position as one who has committed ten identical crimes. It was therefore proposed to introduce different sentencing rules so that despite the number of identical crimes committed, each would be subject to a separate punishment (Piesliakas 1995, pp. 100, 104, 105). These proposals were implemented in the new CC, in which the repetition as a

1The MGL or BAPP (Minimum Standard of Living or Basic Amount of Penalty and Punishment) is 50 Eur. (The Government of the Republic of Lithuania 2017).
The avoidance of a pecuniary obligation is the non-performance or only partial performance of a tort, transaction or other legal obligation on the part of the offender (for example, the offender wrongfully renounces his or her obligation to the creditor, creating a situation where the creditor is unable to recover by civil law violated rights). Avoiding a pecuniary obligation means refusing to execute it or, by deception, creating a situation whereby the creditor loses or is effectively deprived of the real opportunity to exercise his or her property rights and avoids the real risk of being legally obliged to perform his or her duty to the right holder (The Supreme Court of Lithuania 2008, 2011, 2016, etc.).

Finally, by Law No. IX-800 (The Parliament of the Republic of Lithuania 2002), the old CC was amended by Article 271¹, which provides for criminal liability for unlawful use of energy or water. This has settled a long-standing dispute in the doctrine of Lithuanian criminal law about how to qualify acts of unlawful use of electricity or heat, gas or water, either as theft or as fraudulent property damage.

In summary, it can be said that in 1990–2000, the main trends of the reform of property protection system by criminal law in Lithuania were related to the (non-systematic) restructuring and development of legal regulation and judicial jurisprudence of the old (Soviet) system, also to the solution of the newly emerged practical and legal problems related to the protection of private property, etc. It should be noted that some of these amendments (for example, concerning vehicle theft etc.) were not properly justified and raised doubts as to their constitutionality. On the other hand, a reform of property protection in criminal law was possible only in a way of more systematic and coherent transformation of all criminal laws, which was implemented by the adoption of the new CC.

### 3.3 The New Criminal Code of Lithuania and Further Developments of the Protection of Property During 2000–2019

The new CC was in development for almost 10 years. In the final period of its drafting, it was mostly influenced by the criminal law of Germany and Poland and conventions of the Council of Europe and by legal acts of the European Union. The new CC was the first mutually approximated and codified national law in the legal framework of the Republic of Lithuania that reinforced the national legal fundamentals underpinning the criminal policy of our state (Abramavičius et al. 2004, p. 11). The new CC sought to reflect the goals and priorities of a modern criminal policy as well as to effectively implement the principles of lawfulness and justice.

The system and most criminal acts against property have been provided in Chapter XXVIII, “Crimes and Misdemeanours Against Property, Property Rights and Property Interests”, of the new CC. This chapter includes theft (Art. 178, new CC), unlawful use of energy and communications services (Art. 179, new CC), robbery (Art. 180, new CC), extortion of property (Art. 181, new CC), fraud (swindling) (Art. 182, new CC), misappropriation of property (Art. 183, new CC), squandering of property (Art. 184), misappropriation of a found item (Art. 185, new CC), causing property damage by deceit (Art. 186, new CC), destruction of or damage to property (Art. 187, new CC), destruction of or damage to property through negligence (Art. 188, new CC), and acquisition or handling of property obtained by criminal means (Art. 189, new CC). The criminal acts against property system was amended by illicit enrichment (Art. 189¹, new CC) and manipulation of sport event (Art. 182¹, new CC). Moreover, this chapter of the new CC also provides legal interpretation of the value of property (Art. 190, new CC).

It should be noted that separate articles of other chapters of the new CC also provide some criminal acts against property, for example credit fraud (Art. 207, new CC), theft, extortion or other unlawful taking or possession of a firearm, ammunition, explosives or explosive materials (Art. 254, new CC); theft, extortion or other unlawful taking or possession of nuclear or radioactive materials or other sources of ionising radiation (Art. 256, new CC); theft, extortion or other unlawful taking or possession of narcotic or psychotropic substances (Art. 263, new CC); theft, extortion or other unlawful taking or possession of a seal, stamp or document or use of the seized seal, stamp or document (Art. 302, new CC); etc.

The adoption and entry into force of the new CC have had a major impact on the dynamics of the features of aggravated theft and other criminal acts against property. For example, the comparison of the 1994 (The Parliament of the Republic of Lithuania 1994) and 2000 (The Parliament of the Republic of Lithuania 2000) versions of the laws shows a marked decrease in the number of features of aggravated theft. According to the 26 September 2000 Law (No. VIII-1968), the following features of aggravated theft were dropped—“repeatability”, “pre-arranged group” and “car”—and the content of the feature of intrusion changed (instead of the features of “intrusion into a dwelling and intrusion into a non-dwelling unit”, one indication of “intrusion into a premises, storage facility or guarded area” is foreseen). In addition, while the content of some features has remained the same, the terminology changed (“large scale” from now to “high value assets”). Thus, the Law of 26 September 2000 (No. VIII-1968) provided the least quantity of features of aggravated theft that characterized either the objective side of the theft (“intrusion into a premises, storage facility or guarded area”) or the value of the thing (“high value assets”). However, comparing the versions of Law of 26 September 2000 (No. VIII-1968), Law of 10 April 2003 (No. IX-1495, The Parliament of the Republic of Lithuania 2003), Law of 5 July 2004 (No. IX-2314, The Parliament of the Republic of Lithuania 2004), Law of 28 June 2007 (No. X-1233, The Parliament of the Republic of Lithuania 2007) and Law of 2 July 2013 (No. XII-500, The Parliament of the Republic of Lithuania 2013) reveals that criminal liability for aggravated theft has been extended. New features were added to the system of aggravated theft: in 2003—car; in 2004—pickpocketing; in 2007—overtly; valuables of a considerable scientific, historical or cultural significance; an organized group; and in 2013—intruding into a communications cable duct system or seizure of property comprising the infrastructure of legal persons of strategic or considerable importance to national security or a part thereof. Therefore, it can be stated that up to
2003, the number of the features of aggravated theft was constantly decreasing, and since 2003, it has started to increase. At present, the system of the features of aggravated theft is one of the widest—compared to the previous laws—consisting of as many as nine of them. In addition, those features have not only been removed through changes in the versions of the law ("repeatability"); "extremely dangerous recidivist", "pre-arranged group"), but new features have been identified ("pickpocketing"; "valuables of a considerable scientific, historical or cultural significance"; "organized group"; "intruding into a communications cable duct system, or seizure of a property comprising the infrastructure of legal persons of strategic or considerable importance to national security or a part thereof"); others have been partially replaced ("intrusion into an apartment", "intrusion into a premises or other storage facility", "intrusion into a dwelling" and "intrusion into a non-dwelling unit" replaced by "an intrusion into premises, storage facility or guarded area"). The form of some of the features currently included in the system of aggravated theft and having previously constituted an autonomous corpus delicti of a crime has remained the same, but the content changed. For example, at present, open theft is considered to be only non-violent seizure of another’s property.

While comparing the system of aggravated theft with systems of other aggravated crimes against property, property rights or property interests, it should be emphasized that some features are specific to theft only: pickpocketing or car theft. Admittedly, the determination of those features in the case of aggravated theft alone is justified since they relate specifically to the specificity of the theft and the prevalence of those types of acts, which is one of the criteria determining the inclusion of a circumstance in the list of features of aggravated criminal act. For example, robbery of a car is not a feature of aggravated robbery due to the presence of units. Meanwhile, overt seizure of another’s property or pickpocketing by its nature cannot constitute the aggravated corpus delicti of robbery or extortion etc.

The aforementioned features are part of the main corpus delicti of robbery and extortion.

As regards the feature of aggravated theft—“intrusion into a premises, storage facility or guarded area”, it should be noted that a similar feature is also found in the case of aggravated robbery—“intrusion into a premises”. On the other hand, the question arises, why in the case of robbery the legislator sets a narrower aggravating feature than in the case of theft? As a result, robbery committed upon intrusion into a storage facility or a guarded area shall be qualified as simple robbery (Para 1, Art. 180, new CC) in the absence of any other aggravating features. Consequently, a perpetrator who has stolen property from a guarded area or storage facility by using violence or threats or otherwise depriving the victim of a possibility of resistance and without using violence or threats etc. may be punished by an analogous punishment since both Article 178 and Article 180 of the new CC provide for the most severe punishment of up to 6 years’ imprisonment. However, violent seizure of another’s property is obviously much more dangerous; therefore, this feature should be analogous to both theft and robbery.

“An organized group”—as a feature of aggravated theft—is also stipulated for robbery, extortion and swindling. The misappropriation of property, squandering of property, destruction of or damage to property, etc. by participating in an organized group would only be legally regarded as an aggravating circumstance, which influences sentencing (Art. 60, new CC). The question therefore arises as to why the feature "organized group" is used in some cases to differentiate between criminal liability and in others only for sentencing. After all, this feature increases the same degree of danger (seriousness) of any criminal act. After the adoption of the new CC, the widespread aggravating features were partly regulated in the General part of the CC ("extremely dangerous recidivism"; "repeat criminal act", "conviction", forms of complicity), but now there is a tendency to identify an organized group as an aggravating feature in the Special part of the new CC. It should be emphasized that this aggravating feature also applies to certain other crimes, for example trafficking in human beings (Art. 147, new CC); purchase or sale of a child (Art. 157, new CC); theft, extortion or other unlawful taking or possession of narcotic or psychotropic substances (Art. 263, new CC). Hence, will it not be the case that the same aggravating features will again be widely reproduced in the Special part of the new CC? However, this would be impractical from the point of view of the economics of the law. In addition, such a situation has been repeatedly criticized in the doctrine of Lithuanian criminal law, arguing that features common to many aggravated corpus delicti of crimes should be defined in the General part of the CC, and that their influence for sentencing should be specified (Bielitinas 1990, pp. 4, 5; Lietiškioje Kostarijeva 2000, p. 243). The General part of the new CC reveals only the statutory definition of an organized group (and other forms of complicity) and does not emphasize the specific effect of this feature for sentencing, except that...
members of an organized group are usually punished more severely than accomplices of a simple group (Art. 58, new CC). The sentencing rules require, among other things, the assessment of aggravating circumstances (one of them being commission of a criminal act by an organized group (Art. 60, new CC)). However, the specific effect of this feature on the amount of the imposed punishment is not specified but is referred to in Article 178 of the new CC, which also provides the increase of the punishment for theft committed by participating in an organized group. In this context, it is more appropriate to eliminate the organized group as a feature of aggravated crimes against property and to define its specific influence on sentencing in the General part of the new CC (as it is done in the case of dangerous recidivism).

“High value of property” and “valuables of a considerable scientific, historical or cultural significance” as features are mentioned in almost all aggravated corpus delicti of criminal acts against property, except unlawful use of energy and communications services (Art. 179, new CC). Thus, it is easy to see the reproduction of the same features in Chapter XXVIII of the new CC. From the point of view of cost-effectiveness, it would be more appropriate to describe these features at the end of the said chapter of the new CC while also specifying the influence of these features on the differentiation of criminal liability. It should be emphasized that the interpretation of the feature of “high value asset” is given at the end of this chapter (Art. 190, new CC); therefore it would be expedient to present here the interpretation of the “valuables of a considerable scientific, historical or cultural significance” and to indicate the influence of these features on the differentiation of criminal liability. Thus, in Article 178 of the new CC, it would be appropriate to leave individual features only specific to the aggravated theft: pickpocketing etc., and at the end of Chapter XXVIII of the new CC to describe features common to many aggravated corpus delicti of criminal acts against property (such as “high value asset”, “valuables of a considerable scientific, historical or cultural significance”, etc.).

It must be also mentioned that in 2010 and 2016, the new CC was supplemented by two new crimes—illicit enrichment and manipulation of a sport event, evaluation of which in the doctrine of Lithuanian criminal law has been and remains very critical.

The new CC on 2 December 2010, by Law No. XI-1199 (The Parliament of the Republic of Lithuania 2010), was amended by Article 189’, which establishes criminal liability for Illicit enrichment. According to this article, anyone who possesses property of value of more than 25,000 EUR knowing that this property could not be acquired by lawful income should be punished with a fine, arrest or imprisonment of up to 4 years. A person is considered as committing a crime if he or she cannot justify the lawfulness of the acquisition of the property he or she possesses. In addition, the law requires that a person knows that the property cannot be acquired by lawful means. The crime of illicit enrichment is rather a novelty within the context of criminal legislation. Such novelty was largely based upon the requirements of the United Nations Convention Against Corruption (2003), which was ratified by Lithuania on 5 December 2006 by virtue of Law No. X-943 (The Parliament of the Republic of Lithuania 2006). According to Article 20 of the

Convention, “subject to its Constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”. In the opinion of the legislature, the main aim of this amendment was to prevent corruption and economical, financial and other acquisitive crimes and to make these criminal acts less attractive for the offenders.

The Law received a lot of critique immediately after its entry into force. First of all, the Constitutional Court of Lithuania considered appeals of the Supreme Court of Lithuania and few lower courts on the constitutionality of illicit enrichment. The Constitutional Court of Lithuania did not declare this norm unconstitutional and emphasized the broad discretion of the state in criminal policy while at the same time raising the limit of constitutional tolerance of deficiencies of legal regulation very high: “[…] even though the legislature must evaluate in every concrete case the expediency of declaring a concrete act as a criminal one, as such, the mere existence of doubts as to the expediency of criminalising a certain act or as to the effectiveness of such a legal regulation does not give grounds for questioning the compliance of this legal regulation with the Constitution. Likewise, there is no ground for stating that the legal regulation established in Para 1 of Article 189 of the CC was, at the time of its consolidation, clearly directed against the welfare of the Nation, the interests of the State of Lithuania and its society, or clearly denied the values established in, and protected and defended by, the Constitution’ (The Constitutional Court of the Republic of Lithuania 2017). The court also noted that “by establishing criminal liability for illicit enrichment in Para 1 of Article 189 of the CC, the legislature implemented its wide discretion to choose the norms of a particular branch of law in order to define certain violations of law and to impose concrete sanctions for these violations; considering the dangerousness of illicit enrichment and the important overall objective to protect society from dangerous criminal attempts, the legislature implemented its wide discretion in the area of criminal policy and, having criminalised illicit enrichment, categorised it as a less serious crime’.

On the other hand, criticism of the scientific world was directed towards both the law and the decision of the Constitutional Court. The main arguments of the critiques were that the norm of illicit enrichment violates the principle of presumption of innocence (Fedosiu ki 2012a, p. 724; Fedosiu ki 2012b, p. 1220; Pakšaitis 2013, pp. 335–336; Namavičius 2016, pp. 20–23; Fedosiu ki 2016, p. 31; Bikelis and Mikišys 2018, p. 36; etc.), the principle of ultima ratio (Pakšaitis 2013, pp. 325–326) and the principle of proportionality (Namavičius 2016, pp. 15–19; Drukašius 2016, pp. 224–225; Bikelis et al. 2014, p. 314; Bikelis and Mikišys 2018, pp. 33, 37). Also, some scientists and practitioners blamed the amendment for its uncertainty (Piesiakas 2011, p. 685; Fedosiu ki 2012b, p. 1221; Šalkūnas 2013, pp. 275–276; Makūnaitė 2014, pp. 178–180; Namavičius 2016, pp. 10–14, etc.).

In summary, the majority of scientists would agree only to such corpus delicti of illicit enrichment if the minimum amount of enrichment would be at least several times higher; this crime could be committed only intentionally, and the subject of
this crime could be only a civil servant. In our opinion, all these proposals are reasonable and acceptable. In addition, once implemented, it will be also necessary to transfer the corpus delicti of illicit enrichment from the chapter “Crimes and Misdemeanours Against Property, Property Rights and Property Interests” to the chapter “Crimes and Misdemeanours Against Civil Service and Public Interest” of the new CC.

Furthermore, the new CC, on 30 June 2016 by virtue of Law No. XII-2589 (The Parliament of the Republic of Lithuania 2016), was amended by Article 182\(^1\), which makes it a crime to manipulate a sporting event (effective as of 1 January 2017). According to this article, anyone who unlawfully influences the fair conduct or the results of a professional sporting event shall be punished by public works or by a fine or by restriction of liberty or by arrest or by imprisonment of up to 4 years.

It is noteworthy that prior to this amendment, there was a debate in the doctrine of Lithuanian criminal law concerning the criminalisation of sports fraud. According to some authors, the legal framework for investigating and preventing fraud in sport is very important, but criminal law protection was virtually unrelated to the seriousness of the acts in question and the extent of the damage they cause. Therefore, it was proposed to criminalize the manipulation of sporting events in Chapter XXXII, “Crimes and Misdemeanours Against Economy and Business Order”, or in a new, separate chapter, “Crimes and Misdemeanours Against Sport”, of the new CC. As an alternative, it was suggested to incriminate the already existing corpus delicti of bribery and other corruption crimes by adapting the concept of the subject of corruption crimes to the context of sport (Zaksaitė 2012, p. 274).

In assessing this amendment, several points should be made regarding the merits of criminalising such conduct. Firstly, (even before this amendment) manipulation of the results of a sporting event or influencing fair conduct for the purpose of gaining property, property rights or property interests (for example, placing bets on betting companies etc.) could have been classified as fraud (Art. 182, new CC). If sports coaches, judges or other persons treated as civil servants (Art. 230, new CC) manipulated the results of a sporting event or influenced fair conduct by taking a bribe, promising or agreeing to accept a bribe or requesting a bribe, such acts could be qualified as bribery (Art. 225, new CC). If individuals offered, promised or agreed to give or bribe sports coaches, judges or other persons treated as civil servants to manipulate the results of a sporting event or to influence fair conduct, their activities could be qualified as bribery (Art. 227, new CC). Secondly, the manipulation of a sporting event or influence of fair conduct has been classified by the legislature as a crime against property, property rights and property interests, which means that the consequences of such crime must be detrimental to certain property, property rights or property interests. However, according to Article 182\(^2\) of the new CC, criminal liability may arise even in the absence of any violation of property, property rights or property interests, for example in case when anyone, for non-pecuniary gain, commits certain acts that influenced the fair conduct or results of a professional sporting event (e.g., striking a glass scooter on a bicycle racing track, changing ski lubricants, running off a football field and preventing a football player from scoring, etc.). The question is whether such acts (in the absence of property interests) corresponds precisely to the seriousness of a criminal act. Thirdly, in assessing this norm, it should also be noted that the Law on Physical Education and Sports (The Parliament of the Republic of Lithuania 2018) mostly associates the professional athlete with the contract of sports activities and the remuneration for sports activities provided therein. Only a small percentage of Lithuanian athletes are recognized as professionals under the aforementioned statutory provisions (for example, according to the Lithuanian Football Federation, only about 10% of Lithuanian football players are professionals under national law).

3.4 Conclusions

1. In 1990–2000, the main trends of the reform of property protection system by means of criminal law in Lithuania mostly were non-systematic and related to the restructuring and development of legal regulation of old (Soviet) criminal legal framework. The reform was also directed to the solution of the newly emerged practical and legal problems related to the protection of private property etc.

2. The new Criminal Code provided for a sufficiently consistent system of protection of property in criminal law. On the other hand, some amendments and supplements of the new Criminal Code (especially adopted by the legislator in 2010, 2016, etc.) were not particularly justified and (in some sense) disruptive to the system of protection of property in criminal law and its consistency.

3. The corpus delicti of illicit enrichment (Art. 189\(^1\), new Criminal Code) should be re-drafted: the minimum amount of enrichment should be at least 2000 MGL or BAPP (100 000 EUR), this crime may be committed only intentionally, the subject of this crime could be only a civil servant and the corpus delicti of this crime should be transferred to the chapter “Crimes and Misdemeanours Against Civil Service and Public Interest” of the new Criminal Code. Meanwhile, the evaluation of the corpus delicti of manipulation of a sport event (Art. 182\(^1\), new Criminal Code) requires a future observation of its application in courts' jurisprudence.

References

Books and Articles


Legal Acts


