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KONONOV CASE AND THE BALTIC STATES

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Abstract. *The present article is a subjective commentary on the case Kononov v. Latvia dealt by the European Court of Human Rights, in particular drawing attention to the Courts intention not to regard context of the case as important for the substantial issues. Author considers this approach in a bigger picture of clash of historical and legal paradigms of the heritage of the Second World War in different countries (namely, Western Europe, Russia, the Baltic States). Author also discusses what impact Kononov case might have on Soviet crimes prosecution in the future.*

Keywords: *war crimes, international criminal law, international humanitarian law, the Baltic States, occupation, ECtHR, ECHR, Soviet regime crimes.*

Introduction

The present article is a commentary on the case *Kononov v. Latvia* dealt by the European Court of Human Rights (hereinafter—ECtHR or the Court). It reflects my own personal opinion as well as the Baltic States perspective on the issue. Therefore the aim of this commentary is to share insights why this case is so special for the Baltic States

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and to discuss that its contextual issues were as much important as the substantial legal issues. The actuality of the topic might be seen from the wide public discussions that followed the different stages of the case both in Russia and the Baltic States. Moreover, this case was of utmost importance to the Baltic States because it was one of the most serious international "verifications" of their efforts to try persons responsible for Soviet regime crimes and will definitely have the impact on future Soviet crime prosecutions.

1. *Kononov* Case in Short

Former Soviet partisan Vasiliy Kononov was convicted by the Latvian courts in late nineties for war crimes, committed during Mazie Bati punitive expedition when Soviet partisans executed a number of Mazie Bati inhabitants (including burning alive six persons, including three women, one of them in the late stage of pregnancy) whom they presumed to be collaborating with Germans[1].

Kononov brought his case to the ECtHR and the Court in its Chamber judgement (hereinafter—Chamber judgement) 4 votes to 3 found that Latvia has breached Article 7 of the European Convention on Human Rights (hereafter ECHR). In some extent, the Chamber reinterpreted the findings of the Latvian courts and found out that Kononov was not able to foresee that his acts were war crimes under current international law due to unclarity in combatant/civilian distinction issue and/or even if he committed crime under national law it was statute-barred.

Latvia has referred Chamber judgment to the Grand Chamber and Grand Chamber 14 votes to 3 overruled Chamber judgement (hereinafter—Grand Chamber judgement) and found that Latvia has not breached its international obligations under the Convention. The Grand Chamber in its judgement went deeper into issues of international humanitarian law (in particular, war crimes) and came to other conclusions than the Chamber.[2]

2. Conflicting Paradigmas

However, only from the first glance it was a case of legal arguments only. The case was very sensitive politically from the very beginning. It was also the case where one of the crucial issues of the complicated heritage of the Second World War and beyond in the Baltic States was brought to international legal arena. The case witnessed not only the clash of legal arguments, but also a different historic-political discourses and paradigms of the Second World War and subsequent events. First of all, it concerned

1 *Kononov v. Latvia* [GC], no. 36376/04, para. 15-20.

2 For the summary of the case(s) *see* Press release issued by the Registrar Chamber judgment *Kononov v. Latvia* [interactive]. [accessed 01-07-2011]. <http://cmiskp.echr.coe.int/tkp197/view.asp?item=11&portal=hbkm&action=html&highlight=36376/04&sessionid=74347201&skin=hudoc-pr-en>; Press release issued by the Registrar Grand Chamber Judgment *Kononov v. Latvia* (Application no. 36376/04)[interactive]. [accessed 01-07-2011]. <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=36376/04&sessionid=74347061&skin=hudoc-pr-en>.

former Soviet partisan and citizen of Russia (Russia has granted citizenship for Mr. Kononov, as soon as his case reached the trial stage in Latvia). Russia constantly accuses Latvia and other Baltic States of "rewriting Second World War history" and the trials of former Soviet officers and members of repressive institutions (KGB, NKVD, etc.) views as a part of it.[3] No surprise, Russia entered the case in ECtHR as the third party on behalf of the claimant. Lithuania entered the case as the third party in support for Latvia. Moreover, the case witnessed very complex and in some way unique situation. It was not a clear-cut Soviet committed massacre (like e.g. Rainiai massacre in Lithuania 1941 when retreating Soviet forces brutally tortured and murdered political prisoners[4] or infamous Katyn massacre); Kononov case was more warlike situation that involved three parties: Soviets, Germans and Latvian villagers. Finally, the roots of this case go as far as the question of Baltic States occupation or/and annexation or/and incorporation or/and subjugation by the Soviet Union itself. Third parties to the case, in particular Lithuania and Russia constantly stressed this issue in their arguments, nevertheless, as we will see the Court decided that it has neither need nor jurisdiction to deal with it trying hard to keep the case on a "safe" legal track.

It is no secret that the view of the USSR policy from 1939 and beyond much differs in Russia and the Baltic States. It was also well reflected in the peculiarities of the case. E.g. Russian representatives argued that executed villagers were *citizens* of Soviet Union who betrayed USSR by siding with the Germans therefore Red partisan's executed their power towards fellow citizens.[5] Latvia and Lithuania both rejected "soviet citizenship" argument that directly stemmed from Russia's statements that the Baltic States were legally annexed by the USSR in 1940. The complicated question of villager's alleged collaboration with German's military authority had also different approach. To Latvia and Lithuania villagers sought for German's help only in self-defence from the Red Partisans's violence and rampage; Latvian villagers owed no allegiance and no sympathy to Soviet partisans due to circumstances of previous Soviet policy. Therefore Latvia villagers just found themselves in the situation when one hostile power changed the other.[6] To the Russian side farmers who held in the cupboards weapons provided by Germans were equal to "armed militia" collaborating with Germans.[7]

Probably the most instructive point that this case was not an ordinary legal case was the fact that even ECtHR judges were not able to stand aside from the political and personal evaluations. As it was written in the emotional concurring opinion to the Chamber judgement by the judge Myjer:

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3 As an example of such accusations *see* Na postsovetskom prostranstve perepisyvajut istoriju VOV [In the post-soviet area they are rewriting the history of Great Patriotic War] [interactive]. [accessed 27-07-2011]. <http://www.newsland.ru/news/detail/id/727847/cat/94/>.

4 For more on Soviet massacres in Lithuania *see* Anušauskas, A. Terror and Crimes against Humanity: The First Soviet Occupation. In: *The International Comission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania*. Vilnius: Margi raštai, 2006, p. 100−106.

5 *Kononov v. Latvia* [GC], no. 36376/04, para. 174.

6 *Ibid.*, para. 179.

7 *Ibid.*, para. 174.

I was born in the Netherlands just after the Second World War and grew up with the perception that the Nazis and their collaborators were entirely in the wrong and those who fought against the Nazis (including members of resistance groups) were completely in the right. Whatever acts the resistance groups had committed against the occupying German forces or against Netherlands nationals who had collaborated with them, it had always been for the right cause.[8]

This passage of the honourable judge, to my mind, clearly showed the typical understanding of the Second World War in the eyes of the Westerner who was brought up in the world where a place for only one evil, i.e. Nazi Germany, was. The quick rise and rather quick destruction of this one of the most brutal and bloody regimes in World's History probably seemed a kind of "end of the history," there was no more evil left in the world, or any other evil was of the lesser-kind. It seems that such view is transferred to the legal domain as well. Again, in the words of Judge Myjer:

The Nuremberg trials and the subsequent trials of the Nazis and their henchmen at the international and national level were to be the final "judicial settlement" under criminal law of what had happened during the Second World War. After that, all States could start with a clean slate'[9].

Based on this, Judge Myjer put forward proposition that 'not all crimes committed during the war can be considered war crimes' that is absolutely true, however, in his reasoning the judge came to the conclusion that under international law during the Second World War trials only Nazi's crimes were to be regarded as war crimes to whom no statutory limitations can be attached.[10] Even though joint dissenting opinion to the Chamber judgement by judges Fura-Sandström, Davíd Thór Björgvinsson and Ziemele the argument was rebutted by the statement that "There is certainly nothing in the Convention itself to limit the application of Article 7 to Nazi crimes alone,"[11] judge Myjers position is instructive from "one-evil" perspective. Moreoever, it was later in principle supported by the Grand Chamber's minority.[12]

Such view very much differed with the experience of my country that fell to the mercy of Soviet Union's occupation and annexation tacitly agreed with Nazi Germany in infamous secret protocols of Molotov-Ribbentrop pact in 1939. For us, living in the Timothy Snyder's "Bloodlands"[13] there were always tough decisions to make when three waves of occupations rolled through (Soviet, Nazi and Soviet again). The complexity of Bloodlands situation and possible idealistic approach to it probably was best described by the Polish general Wladyslaw Anders. He luckily escaped Katyn's massacre fate and later US General George Patton remembered that he was told my W. Anders that

8 *Kononov v. Latvia*, no. 36376/04, Concurring opinion of judge Myjer, para. 9.

9 *Ibid.*, para. 5.

10 *Ibid*., para. 14.

11 *Kononov v. Latvia*, no. 36376/04, Joint dissenting opinion of judges Fura-Sandström, Davíd Thór Björgvinsson and Ziemele, para. 3.

12 See *Kononov v. Latvia* [GC], no. 36376/04, dissenting opinion of judge Costa joined By Judges Kalaydjieva And Poalelungi.

13 For the definition of "Bloodlands" term-of-art *see* Snyder, T. *Bloodlands: Europe Between Hitler and Stalin*. New York: Basic Books, 2010, preface, p. xi.

"*if his corps got in between a German and Russian army, they would have difficulty in deciding which they wanted to fight the most,*"[14] there also exists more romantic version of this remark: "*With the Nazis, we [Poles] lose our lives; with the Soviets, we lose our souls.... If I found my army between the Nazis and the Soviets, I would attack in both directions.*"[15] However, the noble general knew very well that this "two direction" attack would also mean annihilation of its army and nation as it happened to Poland in 1939. Moreover, noble warriors who are ready to sacrifice their lives for the cause even in older times were in minority. The interest of most of people, as history shows, was simply to try hard to survive. Yes, there were people who voluntary sided with Nazis; there were people who voluntary sided with Soviets. But majority of people did not wish to side with anyone but sometimes had to side with one or another side against the other due to the circumstances and not of the genue belief in side's cause or ideology. Contrary, Western Europe never had to choose between two evil powers on their soil, there were just one right, and one wrong. In Bloodlands the lesser evil was a choice of the situation and not of the prescribed fashion (take for example Lithuania's situation: in 1938 Lithuania is threatened by ultimatum and war with Poland regarding Vilnius region, in 1939 Nazi Germany occupies and annexes Klaipėda (Memel) region, in 1939 USSR following Molotov-Ribbentrop pact established military contingents in Lithuania and in 1940 totally subjugated Lithuania by occupying and annexing it[16]). One who saw Andrzej's Wajda movie "Katyn" might remember the opening scene when the crowd of people are gathered on the bridge and are shouting to each other: "there are German's on that side," "there are Russians on another side." Therefore it was not just a matter of one or another level collaboration with Nazis, but also a matter of the co-existence with any, including Soviet occupation.[17] This is one of the explanations why for the Westerners it is so hard to grasp Baltic perspective in this case.

Another majour difference between the situation of Western Europe and Bloodlands was that the persons who committed war crimes and crimes against humanity in the Netherlands, France, etc. were prosecuted for their deeds. Justice, even if not perfect one, was done. Nazi and Nazi associated criminals were also prosecuted by the Soviets in the Bloodlands as well. However till USSR existed, Soviets were not prosecuted and even decorated for their crimes because these crimes were a part of Soviet Union's identity, its "policy element." This was definitely in line of the 'clean slate' approach

14 Patton, G. S.; Harkins, P. D. *War as I knew it*. Houghton Mifflin Harcourt, 1995, p. 80; *See* Putnam, J. Saviors of the 20th century - Hitler & Stalin. The war of annihilation between the Nazis and Communists [interactive]. [accessed 27-07-2011]. <http://coltonspointtimes.blogspot.com/2010/10/saviors-of-20th-century-hitler-stalin.html>.

15 *See* Putnam, J., *ibid.*

16 For more detailed description of the events *see* Eidintas, A.; Senn, A. E.; Žalys, V. *Lithuania in European Politics. The Years of First Republic, 1918–1940.* New York: St. Martin's Press, 1999, p. 139–187.

17 E.g., the same questions are put forward in the context of Partisan's war in Lithuania (1944 – 1953) by Bernardas Gailius, namely, does anyone can justify himself for non-resisting Soviet regime. *See* Gailius, B. *1944–1953 m. partizanų karas šiuolaikinėje Lietuvos istorinėje, politinėje ir teisinėje kultūroje.* Daktaro disertacija. Humanitariniai mokslai, istorija (05 H) [The Guerrilla War of 1944-1953 in the Historical, Political and Legal Culture of Contemporary Lithuania. Doctoral dissertation. Humanitarian Sciences, History (05 H)]. Vilnius: Vilniaus universitetas, 2009, p. 116−119.

presented by the Judge Myjer. The one might say that not only Soviets, but also none of anti-Nazi allies were prosecuted for their crimes. However, there is one huge difference. E.g. Allied Forces indeed indiscriminately bombed German cities and it should be regarded as a war crime. But the bombing was in response to previous Nazi's offensive, barbarity and occupation. In contrast, Poland, Lithuania, Latvia, Estonia (and Finland in 1939) were not the ones who started the war and were only victims, but victims of two, not one criminal regime. And even though a number of hands of Bloodlans people were also in blood because of collaboration, it was not their nations who started the violence machine. Therefore, it is hard get away from the notion of "double occupation" (on which judge Myjer wished not "to take a stand"[18]) even if the exact name for the Soviet subjugation of the Baltic States and some other territories may vary from "occupation,"[19] to "forcible incorporation" or "illegal annexation."[20]

3. Does "Occupation" Really Doesn't Matter?

And this is exactly the point which ECtHR is trying to avoid on every cost. The reasoning of the Court was clearly identified in *Ždanoka* case: the Court would abstain, as far as possible, from pronouncing on matters of purely historical fact, which do not come within its jurisdiction; however, it might accept certain well-known historical truths and base its reasoning on them.[21] But where to draw the clear line where the jurisdiction ends and the well-known historical truth starts? Therefore the question arises: does the Soviet Occupation in the *Kononov* case(s) is a purely historical fact that do not come in the ambit of the Court's reasoning, or it is well-know historical truth that may have account on reasoning.

As Milašiūtė states, "The test for identifying those historical questions with which the ECtHR deals (as opposed to those with which it does not) consequently comprises three criteria. First, the ECtHR does not decide purely historical questions. Second, the ECtHR accepts to rely on historical truths when they are well-known. Third, the ECtHR accepts to rely on historical truths only when they are necessary as a base for the ECtHR reasoning, i.e. for deciding legal issues posed by a case in question."[22]

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18 *Kononov v. Latvia*, no. 36376/04, Concurring opinion of judge Myjer, para. 10.

19 *See* e.g. Cassese, A. Balancing the Prosecution of Crimes against Humanity and Non–Retroactivity of Criminal Law. The Kolk and Kislyiy v. Estonia Case before the ECHR. *Journal of International Criminal Justice*. 2006, 4(2): 414, 418; Benvenisti, E. *The International Law of Occupation*. Princeton University Press, 2004, p. 67–73.

20 See e.g. Resolution 189 (1960)[1] on the situation in the Baltic States on the twentieth anniversary of their forcible incorporation into the Soviet Union [interactive]. Council of Europe, Parliamentary Assembly, 1960-09-28 [accessed 01-05-2009]. <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta60/eres189.htm>.

21 *Ždanoka* v. *Latvia* [GC], no. 58278/00, para. 96.

22 Milašiūtė, V. History of the communist regime in the European court of human rights cases. *Baltic yearbook of international law*. 2009, 9: 52.

All these issues were addressed in both Kononov's decisions. However, without detalisation. In the Chamber judgement, the Court said that "there is no need for it to deal with these issues (i.e. the events of 1940—add.) as they are neither decisive nor even relevant"[23] (para. 112), the Grand Chamber in principle reiterated this position (para. 210)[24]. And, indeed, the Court solved the case without addressing the issues, only dealing with substantial arguments, in particular, civil and combatant distinction. This was criticised not only by the Balts, but also in the dissenting opinion Judge David Thór Björgvinsson, he stated that the Court lacked the attention to the historical context[25]. However, while dealing with this the Court was forced to move into the sphere of international humanitarian law (or the law of armed conflict) that is not the precise Court's jurisdiction as well. In some extent the Court exchanged the trap of history assessment to the accidental application of IHL.[26] And it is definitely a question whether the second realm is safer than the first. Yes, the Grand Chamber judgement corrected the Chamber judgement reasoning basic inadequacies visible to most international humanitarian law specialists; however, by stipulating facts in extremely neutral manner and getting away from evaluations the Court contributed to the uncertainty that is already present in the Courts cases towards events of 1940.

If we will take a look at various ECtHR decisions, we will see very different and sometimes even strange and confronting formulations how the events of 1940 in the Baltic States are described. Chamber judgement in *Kononov* case: "On 22 June 1941 Nazi Germany attacked the Soviet Union, of which Latvian territory formed a part,"[27] Grand Chamber judgement: "In August 1940 Latvia became part of the Union of Soviet Socialist Republics (USSR) under the name 'Soviet Socialist Republic of Latvia (Latvian SSR)'"[28]; in *Ždanoka v. Latvia* Grand Chamber decision: "[O]n 16-17 June 1940 the Soviet army invaded Latvia and the other two independent States. The government of Latvia was removed from office, and a new government was formed under the direction of the Communist Party of the Soviet Union (the CPSU), the USSR's only party. From 21 July to 3 August 1940 the Soviet Union completed the annexation of Latvia, which became part of the USSR under the name

Soviet Socialist Republic of Latvia (Latvian SSR)'[29], *Kolk and Kiisly v. Estonia* and *Penart v. Estonia*, "[E]stonia lost its independence as a result of the Treaty of Non-Aggression between Germany and the Union of Soviet Socialist Republics (also known as Molotov-Ribbentrop Pact), concluded on 23 August 1939, and the secret additional protocols thereto. Following an ultimatum to set up Soviet military bases in Estonia

23 *Kononov v. Latvia*, no. 36376/04, para. 112.

24 *Kononov v. Latvia* [GC], no. 36376/04, para. 210.

25 *Kononov v. Latvia*, no. 36376/04, dissenting Opinion of Judge David Thór Björgvinsson, para. 2.

26 Pinzauti, G. The European Court of Human Rights Incidental Application of International Criminal Law and Humanitarian Law. A Critical Discussion of Kononov v. Latvia. *Journal of International Criminal Justice*. 2008, 6: 1046.

27 *Kononov v. Latvia*, no. 36376/04, para. 9.

28 *Kononov v. Latvia* [GC], no. 36376/04, para. 13.

29 *Ždanoka* v. *Latvia* [GC], no. 58278/00, para. 13.

in 1939, a large-scale entry of the Soviet army into Estonia took place in June 1940. The lawful government of the country was overthrown and Soviet rule was imposed by force."[30] These descriptions of the events are taken from the stipulation of facts, not the Court's own assessment, but one may see how different the stipulations are. E.g. if we would replace the wording of Kononov's Grand Chamber judgement with Ždanoka or Penart's and Kolk and Kiisly case wordings, would it make significant changes or just different phrasing, i.e. does the phrase "Latvia became part of the Union of Soviet Socialist Republics (USSR) under the name 'Soviet Socialist Republic of Latvia' reflects the description presented in the other cases facts? One might say that the circumstances of the cited cases are different and they require the different statement of facts, moreover, the statement of facts is generally agreed by the parties and it is not a part of Court's judgement. Nevertheless, in all these cases the events of 1940 was a matter of the general context that played significant part in the reasoning. Such "diverse" descriptions of the same events might raise a frank question: is there a difference to tell a person "the guy is dead" from "the guy was killed" and if the first option is chosen, why is it so? If the pre-war Soviet policy evaluation issue was indeed 'neither decisive, nor relevant' for the solving of the case why then Kononov case mentioned 1940 events at all? Following later on presented Court's arguments in "neutral" approach, the only thing that seemed to be matters for the Court was the war between USSR and Germany. The villagers who maybe collaborated with the Germans might have been of any descent, not necessarily Latvians, nationality had nothing to do with the reasoning of the Court. Moreover, in Grand Chamber judgement Latvia was called a "successor State"[31], the terms "former regime", "change of the regime" was also used despite of the phrase "the new Republic of Latvia"[32] just a paragraph above. Such use of terms contradicts each other. If Latvia in 1990 witnessed only the regime change, there can not be the new Republic of Latvia. If Latvia is a successor state it means that it succeeded from the previous state, i.e. USSR. However, this comes in sharp contrast to the Baltic States claim that in 1990 they *restored* Independence and there can not be any continuity with USSR due to the principle *ex injuria non oritur jus*. This approach is well established both in legal doctrine[33] and international practice (e.g. Baltic States did not succeed any international treaties or obligations of USSR). Does that mean that the Court decided on historic or legal issue towards Latvia's continuity? Or is it just incoherence or *liapsus linguae*? To my view, this is exactly the result of the Court's intention to get away from initial evaluation and it is also evidence that when the Court is not willing to make initial clear-cut assessments it may find itself confused.

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30 *Kolk and Kisliyi v. Estonia* (dec.), no. 23052/04, no. no. 24018/04, para. 8; *Penart v. Estonia* (dec.), no. 14685/04, para. 8.

31 *Kononov v. Latvia* [GC], no. 36376/04, para. 241.

32 *Ibid*., para. 240.

33 Mälksoo, L. *Illegal Annexation and State Continuity: the Case of the Incorporation of the Baltic States by the USSR*. Leiden: Martinus Nijoff Publishers, 2003; Ziemele, I. *State Continuity and Nationality: the Baltic States and Russia*. Leiden: Martinus Nijoff Publishers, 2005; Žalimas, D. Legal Issues on the Continuity of the Republic of Lithuania. *Baltic Yearbook of International Law*. 2001, 1: 1–21.

4. Future Impact

When the Chamber judgement was announced, Lithuanian journalist Virginijus Savukynas in a radio discussion put forward a provocative question: "If Latvia has breached Article 7 by prosecuting war criminal from Soviet side, does that meant that ECtHR recognised the legality of Soviet occupation"? Of course, the Court did not pronounce directly neither on legality nor on illegality of Soviet occupation. Nevertheless, the Chamber decision in Kononov case meant a risk that all the prosecutions that started in the nineties against Soviet agents who committed their crimes during or after the Second World War may be suspended or even cancelled under the threat of Article 7 breach, in particular having in mind "clean slate" approach in a legal field. One must not forget that the Nuremberg Charter established not only war crimes, but also even more disputed category of crimes against humanity and most of the Soviet regime crimes were of this kind (to remember massive deportations to Siberia and GULAG slave labour camps). Following Kononov Chamber arguments, the Kolk and Kiisly admissibility decision also would be wrong because of the same foreseeability and statute-barring issues.[34] Luckily Grand Chamber rebutted these arguments and the final result strengthened the ground for Soviet crime prosecutions. It contributed to the clarity of war crimes doctrine that during the Second World War (or more generally—its time frame) all the parties to the conflict were bind by the same rules and at least theoretically were subjected to the same responsibility. But another point also shall be stressed. The Baltic States celebrated Grand Chamber judgement (as Russia did with the Chamber judgement); Russia accused the Court of "politisation" and "revision of the history of the Second World War."[35] However, at least Lithuania might face one important consequence based on Grand Chamber judgement. Kononov's led company killed persons who allegedly collaborated with Germans. Grand Chamber argued that such killings were clearly illegal even if villagers were to be regarded as combatants (such presumption was the most convenient for the applicant). The Court found out that even if such collaboration was, villagers had to be detained and tried, not just simply executed.[36] The problem is that Lithuanian Courts are still dealing with the cases (especially in so-called "rehabilitation procedure") regarding Lithuanian partisan's war (1944-1953). In many cases anti-Soviet partisans being unable to confront Soviet army and interior army forces (NKVD) due to total disproportion in capabilities, directed their activities against real or alleged Soviet collaborators, mainly civilians. Such operations in many cases are reminiscent to Kononov's led punitive expedition. Most of the collaborator's trials were conducted *in absentia* (although Partisan's statutes required that person first of all have to be warned

34 *Kononov v. Latvia*, no. 36376/04, para. 146.

35 21.06.2011 15:03: Reshenie po delu Kononova nanosit uscherb avtoritetu Evropejskovo suda po pravam cheloveka, – schitaet Konstantin Dolgov [Konstantin Dolgov states that the Decision in Kononov's case is diminishing the authority of European Court of Rights] [interactive]. [accessed 01-07-2011]. <http://www.echo.msk.ru/news/786464-echo.html>.

36 *Kononov v. Latvia* [GC], no. 36376/04, para. 204.

to end his collaboration and prove of the guilt was required)[37] and executions carried on. Therefore it might be complicated to Lithuanian courts to follow Kononov's standards and this may lead to the new cases against Lithuania in ECtHR. Moreover, the decision in Kononov Grand Chamber only answered the question regarding the war crimes, but Soviet perpetrators are also prosecuted for more "modern" crimes such as genocide. Will the ECtHR one day have to decide whether Soviet repression and inhumane policy in occupied and annexed territories were comparable to genocide? Will it be possible to avoid general context and to deal with the problem in a pure legal way? The issue of Soviet crimes prosecution "validation" in Strasbourg is definitely not over.

Conclusions

Kononov's case was one of the major steps in the efforts of the Baltic States to draw international attention to Soviet regime crimes and to confront Russia's policy of denial. Moreover, it contributed to the clarity of war crimes doctrine that during the Second World War all the parties to the conflict were bind by the same rules and theoretically were subjected to the same responsibility. Nevertheless, the cautiousness of the Court to take into account the specific general context of the case as well as two opinions to the case (Judge's Myjer and joint dissenting opinion to the Grand Chamber judgement) clearly shows that it is still a lot have to be done in order to make Soviet regime crimes and policy more known. Other Soviet crimes cases that are still pending in the ECtHR only stress this need. The Court applies law to the facts and while the facts are not known well enough the application of law may be not perfect.

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21.06.2011 15:03: Reshenie po delu Kononova nanosit uscherb avtoritetu Evropejskovo suda po pravam cheloveka, schitaet Konstantin Dolgov [Konstantin Dolgov states that the Decision in Kononov's case is diminishing the authority of European Court of Rights] [interactive]. [accessed 01-07-2011]. <http://www.echo.msk.ru/news/786464-echo.html>.

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37 Girnius, K. K. *Partizanų kovos Lietuvoje.* Vilnius: Mokslo leidykla, "Atgimimo bendrovė," 1990, p. 302–312.

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KONONOV BYLA IR BALTIJOS VALSTYBĖS

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Santrauka. *Šis straipsnis yra subjektyvus Europos Žmogaus Teisių Teismo* (*EŽTT arba Teismo*) *spręstos bylos Kononov v. Latvia komentaras. Ši byla EŽTT perėjo dvi stadijas. Pirmajame sprendime Latvija buvo pripažinta pažeidusi 7-ąjį Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos straipsnį, bet vėliau, bylą perdavus Didžiajai kolegijai, ji Latvijos veiksmuose teisiant buvusį sovietinį partizaną Vasilijų Kononovą pažeidimo nenustatė. Abu sprendimai buvo labai emocingai sutikti tiek Baltijos šalyse, tiek Rusijoje. Ir jų poveikis neapsiribojo vien tik teisiniais aspektais. Todėl šiame komentare dėmesys sutelkiamas ne į teisės taikymo aspektus byloje, bet į kontekstinius bylos klausimus, t. y. šios bylos santykį su Baltijos valstybių okupacijos ir istorijos klausimais. Nors šie klausimai ne kartą kelti sprendžiant bylą, jais ne kartą remtasi šalių argumentavime, Teismas išsprendė bylą sąmoningai jų vengdamas ir teigdamas, kad jie neturi įtakos bylos sprendimui. Kita vertus, šis vengimas aiškiai byloja apie skirtingas visuomenines bei teisines Antrojo pasaulinio karo supratimo paradigmas Vakarų Europoje, Rusijoje ir Baltijos šalyse, kurios itin gerai atsispindėjo prie sprendimo pridėtose teisėjų nuomonėse* (*pvz., teisėjo Myjerio*). *Be to, gilinantis į Didžiosios kolegijos sprendimą matyti, kad Teismas taip ir nesugeba apsispręsti, kuriai paradigmai pritarti, ir taip sprendime atsiranda sunkiai suderinamų teiginių. Kitas svarbus momentas yra Kononov bylos įtaka Baltijos šalims ir apskritai sovietinių nusikaltėlių persekiojimui. Pabrėžiama, kad Kononov byla buvo svarbi pergalė, sustiprinusi Baltijos šalių pozicijas ir patvirtinusi iš sovietinės sistemos išsivadavusių valstybių teisę persekioti nusikaltėlius už seniai padarytus nusikaltimus, taip pat sustiprinusi karo nusikaltimų doktrinos universalumą tarptautinėje teisėje. Tačiau taip pat atkreipiamas dėmesys, kad Kononov byloje patvirtinti elgesio su galimais kolaborantais reikalavimai yra aukšti ir tai gali kelti sudėtingų problemų nagrinėjant ir vertinant partizaninio karo Lietuvoje* (*1944–1953*) *bylas.*

Reikšminiai žodžiai: *karo nusikaltimai, tarptautinė baudžiamoji teisė, tarptautinė humanitarinė teisė, Baltijos valstybės, okupacija, EŽTT, EŽTK, sovietinio režimo nusikaltimai.*

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