

JUDICIAL BIOGRAPHIES



A handwritten signature in Georgian script, written in black ink. The signature is stylized and cursive, appearing to read 'ლუარსაბ ანდრონიკაშვილი'.

LUARSAB ANDRONIKASHVILI
(1872-1939)

LUARSAB ANDRONIKASHVILI'S SCIENTIFIC AND PEDAGOGICAL ACTIVITY*

VLADIMER MAKASHVILI

LUARSAB Andronikashvili was prepared for academic and pedagogical work as a result of all his past activities. His speeches in court contributed to the development of theoretical thinking due to their high academic level. In 1906, he was elected as the head of the theoretical conferences of young assistants to lawyers in St. Petersburg, which he headed for the following 12 years. Only prominent and academically trained lawyers were chosen for such a leading position. It was because of his extensive theoretical training that, after the February Revolution, when a commission chaired by A. Kony was established to revise criminal law legislation of 1903, together with other well-known scholars, such as Professor N. Tagantsev, Professor A. Zhizhilenko, Professor I. Lublinski and others, Luarsab Andronikashvili was also chosen as a member of the commission, and he was assigned to revise the chapters on political and religious crimes.

The well-known civil law specialist Yuri Gambarov described Luarsab Andronikashvili's practical work as follows: 'the science of law ... along with theoretical knowledge, implies practical knowledge as well, and the latter is no less scientific than the former ... Legislative and judicial activities, which are based on theoretical knowledge, in turn provide the latter with an underestimated service, and if such activities are imprinted with talent and leave a somewhat important trace in the public life ... it can be used as a title for holding a professorial post, no less than the traditional presentation of an academic degree and academic papers'.

Therefore, it was no coincidence that when it was decided to establish a legal department at Tbilisi State University at the end of 1921, Luarsab Andronikashvili was invited from Russia to organise that work. In 1922, together with Professor Philipe

* პროფესორ ვლადიმერ მაყაშვილის ამ სტატიის ინგლისურენოვანი თარგმანი შესრულებულია საქართველოს იუსტიციის სამინისტროს საკანონმდებლო მაცნეს მთარგმნელობით ცენტრში (რედ.).

Gogichaishvili, he developed the structure for a Social and Economic Faculty with two departments: economic and legal. Luarsab Andronikashvili was tasked with finding appropriate resources and training new academic personnel in the area of law.

When Luarsab Andronikashvili arrived in Georgia, no legal discipline was taught at Tbilisi State University. Due to the lack of academic legal personnel, the entire burden of teaching legal sciences fell on Luarsab Andronikashvili. At first he had to teach almost all the main courses, such as the general theory of law, the general part of civil law, the general part of criminal law, criminal proceedings, etc.¹ These courses laid a solid foundation for the development of legal education in Georgia.

Luarsab Andronikashvili's versatile and brilliant talent, extensive education, extraordinary hard work, and selfless dedication to educating the young, ensured such a high level in his lectures that he was rightfully considered as one of the best lecturers in Georgia.

Luarsab Andronikashvili's lectures always attracted a wide audience. In addition to Law Faculty students, his lectures were attended by students from other faculties, and often members of the public as well.

The lectures delivered by Luarsab Andronikashvili had quite a unique character, which enables us to speak about the special style of his academic speeches.

Luarsab Andronikashvili believed that a lecture should, first of all, arouse a student's interest in the subject. For this, it is necessary that the lecture gives the students a clear idea of the subject to be studied, to introduce its main problematics and the genesis of the main ideas in that field of science, and to show them the perspective of their development. As a result of that approach, clearly, during his lectures, Luarsab Andronikashvili did not stop with all the topics of the discipline studied, which were envisaged by the course curriculum. He had an excellent ability to distinguish the primary from the secondary, and to identify the essence of the problem in the primary matter, which covered its ideological side and would become a subject of academic polemics.

¹ In addition to these courses, at different times Luarsab Andronikashvili taught new philosophy at Tula Pedagogical Institute, forensic eloquence at Moscow State Institute of Speech, administrative law and trade law at Tbilisi Polytechnic Institute, and civil law proceedings, criminal psychology, and the culture of speech at Tbilisi University. In his final years, Luarsab Andronikashvili held high-level seminars in criminal law, criminal law proceedings and criminology, and managed the Department of Civil Law.

At the same time, through his lectures, Luarsab Andronikashvili aimed to develop academic thinking skills in students. In his opinion, a lecture should not be solely aimed at helping the attendees to passively study the subject and simply accumulate knowledge. A lecture should actively engage attendees in the process of research itself, accustom them to independent academic thinking, and a bold and critical approach to literary sources, and facilitate the transformation of their knowledge into an active belief.

Such an understanding of the task of delivering lectures determined the character and structure of Luarsab Andronikashvili's lectures. Not taking into account compiled lectures, there are two types of lectures. One type of lecture is characterised by conveying the achievements of academic knowledge in a logically completed form. The other type of lecture represents the process of academic research. It provides a path which leads a researcher to certain academic conclusions. Luarsab Andronikashvili's lectures were a brilliant example of the second type of lecture. Andronikashvili was able to find the primary source, from which he would gradually and consistently explore the essence and meaning of the problem, and the nature of the institution and concept concerned. He would reveal to the audience the laboratory of his thinking, the process of brainwork that would determine his viewpoint and make him develop or support a certain opinion. In order to attract the attention of the audience, he often used to present a controversial and complex problem in the form of polemics. Luarsab Andronikashvili, who was a prominent judicial figure in the past, was well aware of the power and importance of the adversarial principle. There were several occasions where he was convinced that it is easier to arrive at the truth when several different opinions are opposed and contending with each other, and that the lack of a certain viewpoint is more noticeable when the ideas related to the matter to be examined are presented in the form of a thesis and an antithesis. Moreover, he either used to engage himself in the polemics with a certain concept or present the contest of opposing theories in this manner. Luarsab Andronikashvili's former students still remember, for example, how he would talk about the famous battle of Munich between the leaders of the classical and sociological schools, K. Birkmeyer and F. Liszt. In the same way, he opposed the arguments presented by those who consider punishment as a means of revenge and the authors who consider punishment as a means of social security and protection. At the same time, it was not enough for Luarsab Andronikashvili to convey indifferently the statements and counter-statements of the disputing authors, but rather he would determine his attitude towards the matter of dispute as a result of weighing their importance on the basis of deep analysis and reasoning.

Luarsab Andronikashvili's particularly extensive academic training was expressed in his lectures. Along with the legal review of a matter, he covered the topic from other perspectives as well. He often used data from philosophy, psychology, and sometimes natural sciences, if that was necessary to comprehensively cover a legal problem. Moreover, he would do it so skilfully that the overall architectonics of the lecture was not disturbed. Andronikashvili was good at organically combining different sides of the problem and clearly demonstrating how a certain discipline of science becomes efficient as a result of cooperation with another discipline, and how important it is for law, in particular, to use notions obtained from other areas of knowledge.

Luarsab Andronikashvili knew fiction well and often used in his lectures characters created by classic authors. He used literary examples particularly often when talking about criminal law problems. The topics of responsibility, crime and punishment are frequently conveyed by well-known authors. It is known, for example, that the inner world of a criminal, the passions which push a person to evil, and the feelings about the conception and implementation of an evil intention, are particularly skilfully described by Shakespeare, Dostoevsky and others in their works. That is why, during his lectures, Luarsab Andronikashvili often reviewed the works by those authors and the literary characters of criminals created by them. For example, during one of his lectures Luarsab Andronikashvili presented a brilliant analysis of the psychological image of the origination and development of criminal intent in Macbeth, and explained a complex concept of intellectual assistance using the example of Lady Macbeth.

Among other things, Luarsab Andronikashvili considered as a mistake the opinion, which is quite widespread in legal literature, according to which Lady Macbeth is considered to be an abettor in crime. In Luarsab Andronikashvili's view, Lady Macbeth should be considered as an intellectual (psychological) assistant. Luarsab Andronikashvili justified this opinion by the fact that Lady Macbeth did not instigate in her husband the idea of committing a crime. Macbeth made the decision to commit the crime independently (Luarsab Andronikashvili considered that the scene with the witches was a symbolic expression of the origination of that decision). Lady Macbeth only strengthened Macbeth's desire to commit the crime by trying to suppress the motives hindering the crime, and on the contrary, to encourage the motives, namely ambition, leading Macbeth to the commission of the crime.

Luarsab Andronikashvili was especially skilful in using in his lectures examples from judicial practice, through the skilful selection and incomparable analysis of which he was able to make it easier for his students to understand the most complex legal institutions and concepts.

Luarsab Andronikashvili's lecturing style was characterised by great emotionality. He always delivered lectures with passion, by feeling the matters he was talking about. Although he used to start a lecture in a low voice, almost relaxed, the voice gradually became stronger and suddenly a stream of thoughts broke out like a strong wave. At the same time, Andronikashvili was not artificial, he was very natural and direct. It was not characteristic of Luarsab Andronikashvili to convey different views indifferently. If he believed an opinion to be correct, he used to express his sympathy or approval with great enthusiasm. However, he implacably attacked a concept that he believed to be wrong, especially if the concept conflicted with his moral views. The lecturer's sympathy or antipathy towards a certain opinion was sometimes felt by the intonation of his speech, his facial expressions, etc. For example, when he compared the arguments of one of the leaders of the classical school, K. Binding, with F. Liszt, the listener would involuntarily imagine a frowning, deep-thinking person with a powerful voice; as for the opponent, Franz Liszt, Andronikashvili would present him as a show-off, speaking in a loud voice, as if Andronikashvili wanted to emphasise the groundlessness of his academic opinions and his hesitant character.

Luarsab Andronikashvili was a great master of speech. He knew the techniques of oratory very well. But he was not the type of orator who wanted to charm his audience with the superficial embellishment of words, paradoxical reasoning, or other cheap tricks aimed at creating an external effect. The strength of his speech, first of all, resulted from the depth of thought and the extraordinary expression of narration. He convinced his audience, as he was himself sincerely and deeply convinced, of the truth and fairness of his opinion. His speech, especially about matters related to ethical problems, was always imbued with deep feelings and noble pathos. In such cases, the lectures were very dramatic and had a special educational effect on the attendees. At the same time, his speech was figurative: he used the right epithets, brilliant metaphors, and elegant comparisons. He had a voice rich in modulations, his facial expressions were very eloquent, and his gestures were highly temperamental. Sometimes he would rage furiously at an imagined opponent, and sometimes he would wave his index finger with narrowed eyes, with a slightly sarcastic smile, as if saying: 'nothing will work for you'. Even a pause was important in Luarsab Andronikashvili's speech.

All these external accessories of a lecture were organically connected with the content. Therefore, although a record of Luarsab Andronikashvili's lectures would surprise readers with the depth of thought and the abundance of the materials used from different areas of knowledge, it would not provide a complete idea of his lectures. This is understandable, as Luarsab Andronikashvili had not only the ability to think creatively, but also an incomparable talent to convey ideas.

Luarsab Andronikashvili had a high sense of responsibility. He was very serious about his pedagogical work. Every lecture was important to him. Such high-quality lectures obviously required an extensive advance preparation. How did Luarsab Andronikashvili prepare for a lecture?

It is known that all prominent figures of the university diligently prepare for their lectures. Moreover, preparation for a lecture does not end with the assimilation of the material, its analysis, and the writing down of the lecture. Some well-known lecturers even preliminarily determine the external methods that should help the audience to easily assimilate the lecture. For example, the well-known Russian history professor V. O. Klyuchevsky, who was considered to be one of the best lecturers, not only collected and planned the material long before the lecture, and comprehensively clarified the content of each lecture, but also preliminarily formulated individual phrases, comparisons, metaphors, and selected a suitable pose, facial expression, and gesture for individual parts of the lecture in front of a mirror. He used to think of, in advance, when to raise or lower his voice when presenting certain parts, etc.² Some other prominent scholar lecturers also used to carefully prepare for their lectures. It is said about the famous zoologist M. A. Menzbier that his lectures, composed of premeditated, even and precise phrases, were so sophisticated that they sometimes gave the impression of being learnt by heart³.

Luarsab Andronikashvili used to prepare for his lectures differently. He would never completely prepare a lecture in advance, with all its external accessories and details. Luarsab Andronikashvili would not set such an objective even when he was outlining the scheme of the lecture in writing, or writing down the entire lecture in advance. For him, the preparation of a lecture entailed a review of the literature, a selection of

² К вопросу о методике лекций в высшей школе. Очерки. Под. Редакц. Проф. Н. А. Константинова, Изд. МГУ. 1953. pp. 26-27, 29.

³ Ibid. p. 23.

legislative and judicial practices and other materials, the clarification of the main deriving provisions on which the lecture would be based, and most importantly, the internal mental preparation for the creative process, which would unfold in front of the eyes of the audience. Anyone who witnessed Luarsab Andronikashvili's preparation for a lecture remembers well how he would walk around the room and talk to himself out loud. But it was not a rehearsal in front of a mirror of a written lecture that was learnt by heart. It was the process of thinking out loud, intense brainwork aimed at solving a matter substantially.

No matter how diligently and deeply thought out an issue was, Andronikashvili's lectures would still remind us of improvisation. By listening to Luarsab Andronikashvili one would get an impression that the lecturer's opinion was being born for the first time there, in the lecture hall. Lectures delivered on the same topic, although being based on the same ideological grounds, were never alike. It is not surprising that students who wanted to study the subject in depth often attended the same course taught by Luarsab Andronikashvili several times. Such lectures not only provided students with special knowledge, but also, by demonstrating to them an example of creative thinking, engaged them in creative work, which continued even after the end of the lecture, thus contributing to the development of academic research methods. It is safe to say that Luarsab Andronikashvili's lectures and speeches represented a real school for the formation of academic thinking.

* * *

WHEN Luarsab Andronikashvili was being buried, a well-known figure and his close friend, Ivane Javakhishvili, spoke a few words. It was not a eulogy or a speech addressed to the audience. The venerable academic spoke to himself despairingly: 'Luarsab you are gone as a great singer; you are gone and you took all your wealth and charm with you'. And, indeed, Andronikashvili used to captivate and excite the audience with his lively speech. He did not leave any published academic paper, except for the translations of several books (including the translation into Russian of Kuno Fischer's 'Descartes'), and the academic editions of translated papers. He, like an ancient Hellenistic philosopher, would profusely spread highly interesting and always original opinions during his lectures and speeches, as well as in private conversations, but he was indifferent to the publication of those opinions.

It is not true that he did not write. He left quite an extensive literary heritage: lectures on criminal law, lectures on forensic eloquence, and speeches on certain important

points of law. But all that represents only a brief record of the main ideas of the author, which has not been completed in detail and finalised for publication.

It is difficult to say what the reason for this was. Perhaps the reason was the special dynamics of his nature and way of thinking, or the fact that he was more interested in the creative process itself rather than the outcome of that process, or excessively high standards and excessive strictness towards himself, or the extraordinary versatility of his interests. That peculiarity of Andronikashvili's work is a complex psychological matter, which can be best explained by his words about the genius Hellenistic philosopher, Plato:

‘The world's greatest, one might say, the first author, put the spoken word above the written word. In his opinion, the written word reminds us of a picture that stands silently before the viewer's questions. While truth is always dialectical. Only a living word is the way to the truth.’

Therefore, we have to restore Luarsab Andronikashvili's views based on his brief notes.

This letter contains Luarsab Andronikashvili's views only on certain matters of criminal law, among which, first of all, it is worth mentioning his view on the concept of crime.

After the original and convincing criticism of the representatives of the anthropological and sociological schools, Andronikashvili gives a peculiar definition of the concept of crime. Andronikashvili considers the public danger of an action to be a necessary element in the concept of crime. In his opinion, the public danger of an action is a motive for prohibiting the action through legislation. By prohibiting a certain action, the legislator acknowledges that such action, as a type, is dangerous to the public. Therefore, a judge is not entitled to check the public danger of the type of crime.

As far as a crime is a violation of a legal norm, Andronikashvili believed that it cannot be defined without that norm. Thus, together with the public danger, its unlawfulness should be recognised as a necessary element of crime. As for the punishability of an action, in Luarsab Andronikashvili's opinion, it must not be considered as a necessary element of the concept of crime. To support his view, he cites the following considerations:

‘If a crime is defined through punishment, then it seems that we have to define punishment through crime. This vicious circle has long been criticised by academics.’

‘But what if the element of punishability is an analytical part of the concept of crime?’ – Luarsab Andronikashvili had a negative answer to this question. ‘... Crime, in his opinion, is ‘a transitivity’, the overcoming of the boundary, i.e. the prohibition, while punishment, on the contrary, means the state’s retaliatory action due to such a misconduct. The concept of counteraction does not analytically derive from the concept of action. Therefore, the concept of punishment does not analytically derive from the concept of crime.’

What if the reasoning that ‘crime is a punishable act’ is synthetic? In such case, in Luarsab Andronikashvili’s opinion, it must be proven that punishment is necessarily linked to every criminal act. This notion, however, must be verified inductively. As a result of inductive analysis, Luarsab Andronikashvili concludes that, in a number of cases, crime is not accompanied by punishment. For example, a foreigner who commits a crime abroad but is in the territory of the Soviet Union cannot be punished under our laws. The second example is a conditional sentence: law allows a judge not to impose a sentence in certain cases, where the commission of a crime has been proven. Based on such and many other examples from both Soviet and foreign legislation, Luarsab Andronikashvili came to a final conclusion that punishability is not a necessary element of crime.

In our opinion, Luarsab Andronikashvili is right, in the sense that, according to Soviet legislation, not every crime necessarily leads to the imposition of punishment. This notion is particularly noteworthy from the point of view of current legislation, where public impact measures are important in the fight against crime, and a person who has committed a crime may be transferred into the care of the collective of workers (public guarantee), or his/her case may be transferred for consideration to a Comrades’ Court. But, at the same time, there is no doubt that only an act threatened with punishment can be considered as a crime. This follows from the definition of the concept of crime, which is envisaged in the new Fundamentals for the criminal legislation. According to Article 7 of the Fundamentals only an act provided for by the criminal law is considered to be a crime, while the second part of the criminal law contains a threat of punishment. Thus, although punishment is neither logically nor factually necessarily linked to a crime, on the other hand, it should not be forgotten that the threat of

punishment envisaged by law, which applies to a person who commits an act posing public danger (crime), is always characteristic of a criminal act.

Luarsab Andronikashvili believed (in our opinion, quite correctly) that guilt was a necessary element of the concept of crime. While he considered the unlawfulness of an act and the public danger to be a generic characteristic of a crime, he saw the specific characteristic of a crime, by which this concept should be distinguished from other types of offences, in the culpable nature of the act. In relation to this problem, Luarsab Andronikashvili reviews in detail the issue of difference between a crime and a civil delict. It can be said that nobody else has discussed this issue so thoroughly in Soviet literature.

Luarsab Andronikashvili was against the opinion that asserts the identical nature of a crime and a civil delict and distinguishes between a civil wrong and a criminal wrong only according to their sanctions (this approach was especially developed in German literature by A. Merkel, while in Russian pre-revolutionary literature it was supported by N. Tagantsev, N. Sergeevsky, E. Nemirovsky, and others). Luarsab Andronikashvili believed that such an approach, which considers it impossible to distinguish between these two phenomena, was a proclamation of the lack of principle.

He did not consider that an approach, which distinguishes a crime from other types of offences according to the increased degree of public danger of an action, to be correct either. The degree of public danger is a quantitative element. And a quantitative element cannot explain why a qualitatively different sanction, namely punishment, is related to a crime.

The initial source of Luarsab Andronikashvili's reasoning on this matter was Hegel's opinion, according to which a civil delict is an involuntary wrong (*unbefangene unrecht*), while a crime is a voluntary wrong. Hegel's statements were criticised in the bourgeois jurisprudence by A. Merkel. Namely, Merkel stated that there is an unconscious crime (incognoscible negligence – *negligentia*), and on the contrary, a conscious civil violation.

Luarsab Andronikashvili avoided the shortcomings that were characteristic of Hegel's opinion, but at the same time he agreed with Hegel's main idea that the *constitutional element* of a crime is guilt, and that of a civil delict, objectively inflicted damage.

He stated that, according to Soviet criminal law, punishment could not be imposed if an act was not caused by guilt, i.e. intentionally or negligently. At the same time, civil liability may not be necessarily linked to guilt. For example, Article 404 of the Civil Code provides for liability without guilt: the owner of an undertaking posing increased danger is liable for any damage, unless the damage is caused by force majeure or by the intention or gross negligence of the victim. Liability without guilt is also a characteristic of traffic law, according to which a transport organisation bears the risk of inflicting damage and associated consequences. Furthermore, the obligation of the State and often of private persons to compensate for damage inflicted on someone while exercising their rights, for example, the obligation of a city to compensate the owner of a house for damage inflicted as a result of the modification of a street's profile, i.e. the damage inflicted as a result of the action to which the city is entitled is not based on the principle of guilt either. Or the obligation of a person to compensate another person for damage inflicted as a result of exercising the right of extreme necessity.

‘Therefore, violations of law can be of such a nature that necessarily require the connection of an action with the psychological state of the subject, in order to produce a reaction – these are crimes. In addition, there are offences for which the actor's internal attitude towards the action does not matter, as for example in the above-mentioned cases of wrong. These are always civil violations.’

Luarsab Andronikashvili did not deny that, under law, in order to establish a civil law violation, not only damage, but also guilt should be present. But he referred to the fact that subjectivity plays different roles in criminal and civil liability. The nature and degree of an internal psychological attitude never affects the amount of property liability. For the compensation of damage, it does not matter whether the guilt was in intention or in negligence, or whether the guilt was grave or insignificant. On the contrary, not only the form and degree of guilt affect the nature and amount of criminal liability, but also other nuances of the subjectivity of the committed action.

And lastly, states Luarsab Andronikashvili, the subjectivity of a crime is of such a great importance for criminal liability, that criminal liability can be justified even if the person's action did not have any harmful consequences. Namely, the guilty psychological attitude of a person towards socially dangerous consequences is decisive for the punishability of the preparation and attempt of a crime.

Based on the above Luarsab Andronikashvili drew the following conclusion: a certain relation of the consciousness and will with the committed action and its consequences is necessary for a crime, but it is not necessary to actually inflict damage, while the essence of a civil delict lies in inflicting external damage, the amount of liability depends on the amount of damage, and the special feature of the relation of the consciousness and will with a damaging action is not important.

This is Luarsab Andronikashvili's opinion regarding the difference between a crime and a civil delict. Regardless of whether we fully agree with this opinion or not, one thing is certain: although the principle of culpable liability prevails in Soviet civil law, it is not a universal and unlimited principle. There are so many exceptions to the general rule, which are so well grounded and solid, that they cannot be considered as a temporary phenomenon or a relic of the past that should disappear along with the further development of the issue of liability for a civil delict.

Deep philosophical training and the understanding that the fundamentals of criminal liability are closely related to the deepest fundamentals of ethics allow Luarsab Andronikashvili to raise and solve, in his own way, the problem of sanity, and in this regard, of free will. It is notable that Luarsab Andronikashvili often used to return to this problem, which he specifically formulated in his report to the members of the Panel of Lawyers, on 23 November 1938.

Luarsab Andronikashvili briefly reviewed the early representatives of the classical school, who naively thought that unlimited free will, that is not conditioned by anything, can be proved by examples like 'Buridan's ass' or by references to our feelings. At present, even representatives of the classical school no longer use such arguments.

On the other hand, Andronikashvili pointed to the anti-democratic and reactive nature of the anthropological and sociological schools. These schools rejected an action prohibited by law as the ground for criminal liability and recognised the dangerous condition of a person to be the subject of punishment, thus rejecting the concepts of guilt and sanity, and ultimately, the very principle of liability based on the fundamentals of law.

Luarsab Andronikashvili reviewed in more detail the opinion according to which the concept of sanity is separated from the objectives of punishment. This opinion was first introduced by A. Feuerbach, but was justified in detail by the leading figures of the

pre-revolutionary science of criminal law in Russia, N. Tagantsev and N. Sergeevsky. Only as a result of the work by N. Tagantsev, European academic thinking returned to the path laid by A. Feuerbach, and in addition, when solving the problem of sanity, some German criminologists unknowingly repeated N. Tagantsev's ideas.

According to N. Tagantsev and N. Sergeevsky, the opinions on sanity will differ, depending on what is considered to be the objective of punishment. For example, if one believes that the objective of punishment is retribution, one must justify the concept of sanity on the basis of free will. But those who assume the objective of punishment to be correction consider sanity and the ability to correct to be the same, etc.⁴

Luarsab Andronikashvili was against this viewpoint and argued that if the objective of punishment is considered to be retribution, it is not clear how the concepts of sanity and guilt can be derived from that. Retribution, as a goal, cannot create the concept of sanity, but on the contrary, retribution itself implies sanity, as its forerunner, and together with it, guilt.

But what if the concept of sanity can be based on the general or private preventive purposes of punishment, such as deterrence or correction. With respect to this matter Luarsab Andronikashvili referred to a report by F. Liszt titled 'On the Criminal Capability of Sanity'⁵, which he presented at the 111th International Congress of Psychologists in 1896. According to F. Liszt, a sane person is one who has the ability to determine actions normally, with motives. This ability is a condition for punishment. Punishment should have a motivating effect on a criminal, and either correct or deter him/her. At the same time, F. Liszt acknowledges the existence of unreformed and habitual criminals who lack the normal capabilities of determination. F. Liszt refers to such criminals as insane persons. According to F. Liszt, they should be placed in isolation houses until they die.

Luarsab Andronikashvili stated that 'with this report Liszt brought to the point of absurdity the viewpoint, according to which sanity and its elements should be based on the goals of punishment. According to the said opinion, repeat offending, committed after serving a sentence, annuls the issue of sanity, since the punishment has not

⁴ *Н. Д. Сергеевский*, Русское уголовное право. Пособие к лекциям. Изд. 11-ое, Петроград, 1915, pp. 218-219.

⁵ *F. Liszt*, Die strafrechtliche Zurechnungsfähigkeit, 'Strafrechtliche Aufsätze und Vorträge'. Zweiter Band, Berlin, 1905, p. 214.

affected the subject's psychology, while sanity is considered to be a psychological ability to subject punishment to the motivational impact'.

Luarsab Andronikashvili supported the opinion according to which the concept of sanity should not be based on the concept of punishment, but rather on the concept of crime; at the same time, he stated that the concept of sanity should be related to the subjective side of a crime, i.e. guilt.

According to Luarsab Andronikashvili, the concept of sanity implies, as its necessary precondition, the ability of a person to act in a different way. But a person's ability to act differently is not related to free will. In his report, Andronikashvili elaborated the idea that 'the matter of sanity is resolved in courts, in the legislation and in scholars' works based on popular ideas and everyday experience, which means that if laws are viable, it is because they are enforced, and the enforcement of laws proves that an average person has the ability to comply with them'. For example, no judge would ever think of connecting the possibility of acting differently, which he/she attributes to a criminal, to the philosophical problem of free will, although he/she is convinced that no *fatum* would have forced the criminal to act the way he/she acted. This belief is based on experience and the impressions of life, not the acknowledgement of metaphysical free will. The same applies to the legislations of various countries, which generally envisage the same formula of sanity and recognise free will, when the will is not morbid, childish, coerced or misled. This is everyday psychological freedom and not the freedom that exists beyond an attempt. Luarsab Andronikashvili also sees proof of his opinion in the interesting fact that scholars, who have completely different opinions about the problem of free will, generally define sanity in the same way, regardless of whether they are determinists or indeterminists.

We cannot agree with Luarsab Andronikashvili's opinion that the problem of sanity in criminal law can be resolved without the problem of necessity and free will. A person's ability to act in a different way cannot be examined only on the basis of everyday beliefs. In this case, our everyday beliefs reflect the actual ability of a person. It should be noted that Luarsab Andronikashvili himself did not stop only with everyday beliefs, but in the second part of the report he provided a deep and convincing theoretical justification for the ability of a person to act in a different way.

Luarsab Andronikashvili stated that a person's action is subject to causal law, as it is regular, but at the same time, this regularity is of special nature. A person's action is

affected by mechanical, organic and psychological laws, and the effect is not a simple sum of those parts, but rather provides a new feature. That is why it is not always possible to accurately predict a person's actions and it is impossible to claim that the action was conditioned by absolute necessity and the person could not have acted the way other citizens acted.

Luarsab Andronikashvili did not believe the statement that an unrealised possibility means an impossibility to be correct. In accordance with Marxist philosophy, he acknowledged the existence of the category of objective possibility, and considered the circumstance that a person can correct his/her mistakes as proof that objective possibility is an idea which is proved by experience.

And lastly, Luarsab Andronikashvili offered the following argument: crime is not a goal in itself. It is always a means to a goal. The means are chosen for a goal. The choice of means is also conditioned by a preliminary goal. In order to justify the possibility of choosing the means, it is not at all necessary to assume the metaphysical freedom of will. The possibility to choose the means derives from the goal itself. Therefore, it is right to raise the issue of why a person chose a criminal way for achieving his/her goal. The latter argument in favour of the statement that a person has the ability to act in a different way was first raised in Soviet criminal law literature by Luarsab Andronikashvili.

In the same report he suggested a legal formula for insanity. He stated that the criterion of insanity should be constructed synthetically: a) this criterion should be focused on the concept of crime, namely on its internal side (a psychological criterion); b) a psychological criterion should be connected with a biological criterion, i.e. the conditions that exclude the ability of consciousness and normal will. According to Luarsab Andronikashvili, along with mental illness and other morbid conditions, these conditions also included mental deficiency, which was envisaged by Soviet criminal law only in the 1958 fundamentals of the criminal legislation of the Soviet Union and union republics.

We will not examine other issues of the problem of sanity and insanity, which Luarsab Andronikashvili skilfully processed in the said report and in his lectures (there are several versions), based on his deep knowledge of philosophy and jurisprudence. We can only note that the publication of Luarsab Andronikashvili's papers, both on this problem and on some other key problems of criminal law, would significantly contribute to the clarification of the main and most difficult issues of the grounds for criminal liability.