

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011
CORRESPONDENTS' REPORTS

LITHUANIA¹

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Cases — Trial Statistics

- Prosecutor General's Office of The Republic of Lithuania, *Baudžiamosios bylos dėl nusikaltimų žmoniškumui ir karo nusikaltimų* (Lietuvos Respublikos BK XV sk.), perduotos teismams [Criminal cases involving crimes against humanity and war crimes submitted to the courts] (1990–2011)
<<http://www.prokuraturos.lt/LinkClick.aspx?fileticket=lvk3Eks43Ok=&tabid=221>>

Since the restoration of statehood in 1990, 36 pre-trial investigations in respect of crimes against humanity and war crimes committed during the Nazi and Soviet occupations have been submitted to the Lithuanian courts.

However, the prosecution of the objects of these investigations appears to be increasingly challenging due to the age of the accused. According to the Prosecutor General's Office, in the period 1990–2011, four trials were terminated because of the death of the accused. Furthermore, in nine cases, perpetrators of crimes against humanity and war crimes were found to be unfit to stand trial on the basis that they were suffering from mental disorders at the time of the trial and were therefore unable to understand the nature of the trial proceedings and the consequences of the proceedings. Only nine cases resulted in judgments, with only six of these cases resulting in sentences with real imprisonment penalties. There are currently 12 cases pending before the courts.

Cases — Definition of the Crime of Genocide

- *Vytautas Vasiliauskas*, Kaunas Regional Court Decision of 9 June 2011
- *Vytautas Vasiliauskas*, Court of Appeal decision of 2 December 2011

Vytautas Vasiliauskas was found guilty of committing the crime of genocide while serving with the Ministry of State Security of Lithuanian SSR (MSS), a notoriously oppressive military structure, from 1952. The Regional Court found that the Accused had participated in an attack resulting in the shooting and later the deportation of a guerrilla fighter J.B. in circumstances where he had knowledge of the main objective of the MSS, namely the physical destruction of the national-political group, the Lithuanian guerrilla fighters.² Although the Accused did not confess to the charge, maintaining he had been fighting 'bandits',³ the Court dismissed Vasiliauskas' argument that the members of armed groups were military personnel and could not be considered as victims of genocide.⁴

¹ Information and commentaries provided by Rytis Satkauskas.

² See <m.lrytas.lt/-13228164211322554241-teismui-kilo-abejoniu-ar-galima-persekioti-uz-partizanu-naikinima-nuteista-v-vasilaiuską.htm>.

³ Lithuania's full Sovietisation was obstructed from 1944–1952 by an armed partisan resistance movement, which cost the lives of an estimated 20 000–30 000 partisans.

⁴ See <<http://www.delfi.lt/news/daily/lithuania/buvusi-mgb-leitenanta-nuo-bausmes-gali-isgelbeti-konstitucinis-teismas.d?id=52436443>>.

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Vasiliauskas was sentenced to 4 years' imprisonment but was released due to his state of health.

Following the Regional Court's decision, the Court of Appeal of Lithuania suspended the trial. It filed a request with the Constitutional Court to adjudicate the issue of whether the definition of the crime of genocide contained in Article 99 of the new *Criminal Code* (having regard to the 1948 *Genocide Convention*), which recognises the destruction of a social and political group as genocide, is consistent with the *Constitution of the Republic of Lithuania*.⁵

The case against Vytautas Vasiliauskas was initiated after a new definition of the crime of genocide was introduced into national law in 1998.⁶

The European Court of Human Rights continues the investigation of the *Vasiliauskas v. Lithuania* case brought by Vytautas Vasiliauskas in relation to another judgment.⁷

☛ *Marijonas Misiukonis et al.*, Panevėžys Regional Court decision of 29 September 2011

In 2011, the Panevėžys Regional Court also filed a request with the Constitutional Court in the case of Marijonas Misiukonis *et al* for identical reasons to those in the case of Vytautas Vasiliauskas, namely the compatibility of the definition of the crime of genocide with the Constitution.⁸

Sergejus Tichomirovas, Rimantas Kublickas, Petras Laguckas and Marijonas Misiukonis have been under investigation for approximately 11 years and are accused of participating in the execution of the Lithuanian partisan A. Kraujelis in 1965 and thus administering and aiding the administration of genocide (i.e. deliberately serving the objective of physically eliminating Lithuanian freedom fighters after WWII). Six other suspects in this case are deceased. The victim, A. Kraujelis, is considered one of the last Lithuanian guerilla fighters.⁹

☛ *Petras Janukėnas*, Panevėžys Regional Court decision on 21 October 2011

Finally, the Panevėžys Regional Court in the case of Janukėnas filed one more request on the constitutionality of the definition of the genocide under Lithuanian law.¹⁰ The request also refers to a similar submission made earlier by a group of MPs.¹¹
All requests are still pending.

Cases — Genocide

☛ *Vytautas Jonas Petronis*, Vilnius Regional Court Judgment of 2 May 2011

⁵ See <http://www.lrkt.lt/Prasymai/58_2011.htm>.

⁶ For further insight on the issue of genocide in national and international law see Dainius Žalimas, 'Crimes Committed by the Communist Regimes from the Standpoint of International Legislation: Lithuanian Case Study', *The Institute for the Study of Totalitarian Regimes Conference on the Crimes of Communist Regimes* (Prague, 2010) <http://www.ustrcr.cz/data/pdf/konference/zlociny-komunismu/Dainius_Zalimas.pdf>;

Justinas Zilinskas, 'Broadening the Concept of Genocide in Lithuania's Criminal Law and the Principle of nullum crimen sine lege', 4(118) *Jurisprudencija* (2009) pp. 333–348

<http://www.mruni.eu/mokslo_darbai/jurisprudencija/archyvas/2009>;

Rytis Satkauskas, 'Soviet Genocide Trials in the Baltic States: the Relevance of International Law', 7 *YIHL* (2004).

⁷ See 12 *YIHL* (2009) pp. 603–604.

⁸ See <http://www.lrkt.lt/Prasymai/49_2011.htm>.

⁹ „KT iš antro karto priėmė nagrinėti skundą dėl A.Kraujelio bylos“, *Baltic News Service*, 10 October 2011 <<http://www.delfi.lt/archive/article.php?id=50546872>>.

¹⁰ See <http://www.lrkt.lt/Prasymai/52_2011.htm>.

¹¹ See <http://www.lrkt.lt/Prasymai/37_2011.htm>.

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On 2 May 2011, Vytautas Jonas Petronis, a man aged 80 years, was found guilty of committing the crime of genocide.

The Court found that while a member of a guerrilla organisation, he had been detained by Soviet forces and during this period of detention, had accepted to collaborate. In 1952, on Soviet orders, he convened a guerrilla meeting during which several fighters were killed. Later he convened two more meetings resulting in the deportation of several more members of the armed resistance.

Despite the guilty verdict, Petronis was released due to his poor health.¹²

Legislation — Genocide — Damages Prescription

☛ Law of 8 June 2011¹³

The Lithuanian parliament adopted amendments to the laws which establish that prescription is not applied in the case of a claim for damages resulting from the crime of genocide.¹⁴ The amendments followed the Constitutional Court's ruling of 29 November 2010 which recognised that the law 'On Liability for Genocide of Residents of Lithuania' was in conflict with Article 30(2) of the *Constitution of the Republic of Lithuania*, and the constitutionally protected principle of the rule of law and justice to the extent that the law did not permit genocide victims to demand, without time limitations, compensation from the perpetrator.¹⁵

Reparations for War Damages

☛ Lithuanian Foreign Minister's Statement (4 February 2011)

On 4 February 2011, following a visit to Russia, Foreign Minister Audronius Ažubalis declared that the question of damages for harm caused during the Soviet occupation remains one of the most important issues in bilateral relations between Lithuania and Russia. However, he added that there was no need to talk of numbers at this stage.¹⁶ He also envisaged a need for mutually acceptable solution.

☛ Report of Russia's Presidential Commission

On 17 October 2011, the Presidential Commission of the Russian Federation for the Rehabilitation of the Victims of the Political Repressions (Russian: комиссия при президенте Российской Федерации по реабилитации жертв политических репрессий), set up by a decree issued by the President of Russian Federation on 24 August 2004, issued a report declaring that claims by Baltic nations in relation to Soviet repressions were groundless.

¹² Dainius Sinkevičius, "Partizanus išdavusį „Klajūną“ teismas įpareigojo atsiprašyti nukentėjusiųjų", *DELFI.lt*, 2 May 2011 <<http://www.delfi.lt/news/daily/lithuania/partizanus-isdavusi-klajuna-teismas-ipareigojo-atsiprasyti-nukentėjusiųjų.d?id=45004039>>; "Genocidą vykdęs lietuvis dėl sveikatos sutrikimų atleistas nuo bausmės", *Alfa.lt*, 2 May 2011 <<http://www.alfa.lt/straipsnis/15078990>>.

¹³ See <http://www3.lrs.lt/pls/inter/w5_show?p_r=4445&p_d=112398&p_k=1>.

¹⁴ "Žalos už sovietų genocidą išieškojimui negalios senatis", *BNS ir lrytas.lt*, 9 June 2011 <<http://www.lrytas.lt/13076215561306210997->>.

¹⁵ See <<http://www.lrkt.lt/dokumentai/2010/r101129.htm>>.

¹⁶ "A.Ažubalis: okupacijos žalos atlyginimo klausimas lieka vienas svarbiausių santykiuose su Rusija", 4 February 2011 <<http://www.delfi.lt/archive/article.php?id=41657159>>.

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According to the head of the Commission, M. Mityukov, Russia was also a victim of a totalitarian regime, and was suffering even greater repressions at the time than Baltic States. Mityukov indicated that Lithuania's monetary claims amount to US\$20 billion while Estonia's claims were US\$4 billion plus US\$250,000 for each victim of repression. He claimed that Russia was not responsible for political repressions except where there was a duty to provide all available information concerning these crimes. According to M. Mityukov, compensation must be equal for all victims of repression regardless of whether they were foreigners or nationals.¹⁷

☛ Claim for damages in relation to events of 13 January 1991

On 20 January 2011, during an interview, Minister of Foreign Affairs of Lithuania, Audronius Ažubalis, requested good will from the Russian government in the matter of consciousness and compensation.¹⁸

In 1991, the Soviets attempted to overthrow Lithuania's legitimate administration which had declared independence from the Soviet Union on 11 March 1990. In one event, on 13 January 1991, around 14 people were killed and more than 1000 unarmed civilians were injured during the Soviet army's assault against a TV Tower and the Lithuanian Radio and Television building.

Although the TV Tower and the Radio and Television building were seized, the Soviets refrained from attacking the building of the then-Supreme Council – Reconstituent Seimas (Parliament of Lithuania) which had been surrounded by thousands of people.

The Law on Compensation for the Damage Inflicted by the USSR Occupation includes damages caused by the USSR, *its repression structures* and the army during 1990-1991, and damages caused by the Army of the USSR in 1991-1993 into *the claim to the Russian Federation*.¹⁹

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¹⁷ Прибалтийские страны не могут выдвигать России претензии за советскую оккупацию, заявил в понедельник глава комиссии при президенте России по реабилитации жертв политических репрессий Михаил Митюков. <<http://www.interfax.co.uk/ukraine-news/baltic-states-compensation-claims-for-soviet-era-unfounded-presidential-commission-3/>>.

¹⁸ 'Lietuva tikisi Rusijos kompensacijos už Sausio 13-ąją', *www.lrt.lt*, 20 Janury 2011 <<http://www.delfi.lt/archive/article.php?id=41052361>>.

¹⁹ See more on the Lithuania's claim for Soviet occupation damages in Rytis Satkauskas, 'A Bill for the Occupants or an Issue to Negotiate: The Claims of Reparations for Soviet Occupation' 3 *Baltic Yearbook of International Law* (2003); Dainius Žalimas, 'Commentary to the Law of the Republic of Lithuania on Compensation of Damage Resulting from the Occupation of the USSR' 3 *Baltic Yearbook of International Law* (2003).