

If This Is Genocide, What Isn't?

Lithuania and the Expansion of the World's Narrowest Crime

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Genocide has power because it is narrow. The word does not mean mass killing, atrocity, oppression, starvation, ethnic cleansing, political terror, or crimes against humanity in general. Article II of the [Genocide Convention](#) requires enumerated acts joined to a specific intent to destroy, in whole or in substantial part, a national, ethnical, racial, or religious group as such.¹ Political groups were debated and excluded from the Convention's protected taxonomy.² The exclusion remains part of the positive law.

Lithuanian institutions encountered that boundary while seeking to classify Soviet repression as genocide. The Seimas first solved the problem domestically by expanding genocide beyond the Convention. Retroactivity created the harder question: how could a broader post-Soviet conception be applied to conduct in the 1950s, when political groups were not protected by international genocide law? The litigation from *Vasiliauskas v. Lithuania* to *Drélingas v. Lithuania* produced a route around that obstacle.

Protected-group conversion is the mechanism by which a population defined through political or social membership is treated as a qualitatively significant part of a national or ethnic group and thereby brought within Article II, even though the excluded political or social category remains the operative basis on which the population was selected.

Drélingas did not receive international judicial validation of that doctrine on its merits. The opposite is written into the judgment. At paragraph 102 the Fourth Section said it was “unnecessary to express a position on the validity” of the Lithuanian Supreme Court's interpretation; its task was to decide whether the domestic ruling distorted or misrepresented *Vasiliauskas*. At paragraph 105 it treated the 2016 ruling as a “loyal interpretation” reached “in good faith.”³ The accessory conviction therefore survived Article 7 review without the ECtHR deciding whether the protected-group conversion itself was legally valid. The mechanism acquired European legal effect through deference while its substantive validity remained unexamined.

That is a sharper form of the damage examined here. The political group did not stop being political. A population identified through armed and political resistance was judicially connected to the Convention through national significance, leadership, culture, and survival. Once generalized, the same technique is available for peasants, dissidents, clergy, intellectuals, resistance movements, political elites, and other populations selected on political or social grounds.

¹ Convention on the Prevention and Punishment of the Crime of Genocide, art. II; United Nations, “Definitions of Genocide and Related Crimes.” <https://www.un.org/en/genocide-prevention/definition>

² United Nations General Assembly, Sixth Committee, 128th Meeting, 29 November 1948, UN Doc. A/C.6/SR.128, pp. 655-664, recording the political-group debate and the Committee's final exclusion of political groups. <https://digitallibrary.un.org/record/604798/>. See also Hrad Abtahi and Philippa Webb, eds., *The Genocide Convention: The Travaux Préparatoires* (Martinus Nijhoff, 2008), <https://brill.com/display/title/11534>.

³ ECtHR, *Drélingas v. Lithuania*, no. 28859/16, 12 March 2019, §§ 100-105, 108-109. Section 102 states that the Chamber considered it unnecessary to express a position on the validity of the Supreme Court's interpretation; § 105 calls the ruling a “loyal interpretation” taken “in good faith”; §§ 100, 108-109 invoke the execution/deference logic of *Hutchinson v. United Kingdom* [GC], no. 57592/08. <https://hudoc.echr.coe.int/eng?i=001-191702>

I explain *Vasiliauskas* and *Drėlingas* at length because they involved different defendants, different victims, different dates, different modes of liability, different domestic reasoning, and opposite ECtHR outcomes. The sequence records a domestic statutory expansion, an Article 7 collision, a judicial reconstruction, a Council of Europe execution process, and a later ECtHR judgment that allowed the reconstruction to stand without endorsing its validity. The argument does not minimize Soviet crimes. It tests whether the gravity of an atrocity can substitute for the limiting elements of a particular international crime.

The narrowest crime

The [United Nations' explanation of genocide](#) separates genocide from the wider universe of atrocity. Article II contains a physical element – five enumerated acts – and a mental element – the intent to destroy a protected group as such. Political groups do not appear among the protected groups.

The omission was debated rather than accidental. At the Sixth Committee's 128th meeting on 29 November 1948, delegates considered the political-group question and excluded political groups from the Convention.⁴ William Schabas treats that choice as part of the Convention's drafting history, and David Nersessian's later monograph argues that the exclusion leaves a serious normative gap while rejecting the proposition that political groups simply became protected by customary genocide law.⁵

There is an open route for reform if the Convention is too narrow: amend Article II, adopt a protocol, or create a separate international crime. Jordan Pope's 2026 proposal follows that logic by arguing expressly for expansion rather than pretending the text already says something it does not.⁶ The route examined here is different. It leaves Article II formally unchanged while allowing an excluded category to re-enter by characterization.

That distinction between reform and circumvention governs the analysis. A legal system may decide that intentional destruction of a political group deserves the same stigma and punishment as genocide. It may even be normatively correct to do so. The law is altered honestly when the change is prospective and general. The doctrinal difficulty begins when a limiting rule is treated as an obstacle to be redescribed away because a preferred historical case does not fit it.

Lithuania writes the problem into domestic law

On 9 April 1992, the restored Lithuanian state enacted the [Law on Responsibility for Genocide of Residents of Lithuania](#). The original definition tracked the Convention's four protected groups rather

⁴ UN General Assembly, Sixth Committee, 128th Meeting, 29 November 1948, UN Doc. A/C.6/SR.128, pp. 655-664; Abtahi and Webb, eds., *The Genocide Convention: The Travaux Préparatoires*. [https://digitallibrary.un.org/record/604798/https://brill.com/display/title/11534](https://digitallibrary.un.org/record/604798?https://brill.com/display/title/11534)

⁵ William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2d ed. (Cambridge University Press, 2009), chs. 2-3, especially the discussion of the drafting and protected groups; David L. Nersessian, *Genocide and Political Groups* (Oxford University Press, 2010). <https://www.cambridge.org/core/books/genocide-in-international-law/8DBF9888184D74C00B6D87DA479260E7https://academic.oup.com/book/34424>

⁶ Jordan Pope, "And Then They Came for Us: Expanding the Definition of Protected Groups in Article II of the 1948 Genocide Convention," *Journal of International Criminal Justice* 24, no. 2 (May 2026): 289-307, DOI 10.1093/jicj/mqag008, published online 27 March 2026. Pope writes that the *Drėlingas* Chamber "expanded the scope of genocide" by accepting that political subgroups integral to a national or ethnic group's survival may fall within Article II. <https://academic.oup.com/jicj/article/24/2/289/8551294>

than adding political and social groups. The law was retroactive, and the post-Soviet legal project placed Nazi and Soviet occupation crimes within a common accountability frame.⁷

The decisive statutory expansion came on 21 April 1998. Former Criminal Code Article 71, as amended by Law No. VIII-708, added social and political groups to the national, ethnic, racial, and religious groups and gave the provision retroactive force.⁸ The 2000 Criminal Code retained that broader architecture in Article 99, which became operative on 1 May 2003.

The source status of the legislative purpose must be kept exact. The Seimas legislative history confirms that an explanatory memorandum to draft P-759 was filed on 23 September 1997, but I have not retrieved the memorandum itself.⁹ The 2014 Constitutional Court record reports the Seimas representative's account of it: the international definition was limited to four group categories, was difficult to apply to the mass destruction of Lithuanian residents, and adding political groups would help resolve criminal-qualification problems involving mass repression under the Nazi and Soviet occupations.¹⁰ I therefore treat the proposition as an attributed account preserved in the Constitutional Court record rather than as the memorandum's own words.

The adverse provenance is nevertheless direct enough for the narrower proposition. The official constitutional record does not claim that international genocide law already protected political groups. It records the legislative problem as the opposite: the international definition was considered too narrow for conduct Lithuanian lawmakers wished to classify, and domestic law was broadened.

The Baltic comparison requires one qualification. Lithuania was not alone in broadening domestic atrocity law; Judge Motoc's *Drėlingas* dissent listed Estonia among states whose national law extends genocide beyond the four Convention groups.¹¹ Comparative scholarship nevertheless describes Lithuania as pursuing the Soviet-genocide classification more aggressively, while Latvia and Estonia relied more heavily on crimes against humanity and related categories in addressing Soviet repression.¹² The feature examined here is therefore not Lithuanian monopoly over expansion. It is the combination of an explicitly broader domestic statute with the *Vasiliauskas-Drėlingas* sequence that carried the protected-group problem into Strasbourg.

⁷ Law of the Republic of Lithuania No. I-2477, "On Responsibility for Genocide of Residents of Lithuania," adopted 9 April 1992, effective 15 April 1992. <https://www.e-tar.lt/portal/lt/legalAct/TAR.83DF9659EC0D>

⁸ Lithuanian Criminal Code, former art. 71 as amended by Law No. VIII-708 of 21 April 1998 (published/effective 6 May 1998), extending genocide to national, ethnic, racial, religious, social, and political groups and giving the provision retroactive force. <https://e-seimas.lrs.lt/rs/actualaeditio/TAIS.20465/NbAroCquiH/>. Criminal Code No. VIII-1968 was adopted 26 September 2000; art. 99 retained political and social groups and the Code became operative on 1 May 2003. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555>

⁹ Seimas legislative history for draft P-759 lists an "Aiškinamasis raštas (P-759)" dated 23 September 1997. The linked memorandum itself was not accessible in the current retrieval, so its substantive content is not quoted directly. https://www.lrs.lt/sip/portal.show?p_a=sale_klaus_detaliau&p_k=1&p_kl_stad_id=3972&p_r=37067

¹⁰ Constitutional Court of Lithuania, Judgment No. KT11-N4/2014, 18 March 2014. The Court record reports the Seimas representative's account of the P-759 explanatory memorandum; I attribute the proposition to that record rather than quote the inaccessible memorandum as though directly inspected. <https://www.e-tar.lt/rs/legalact/303e7e50af6011e39b958c81fb177d0b/>

¹¹ Motoc dissent, *Drėlingas*, §§ 5-6, noting Lithuania's early expansion and listing Estonia among States with domestic definitions broader than Article II. <https://hudoc.echr.coe.int/eng?i=001-191702>

¹² Lauri Mälksoo, "Judging History: The European Court of Human Rights and the Qualification of Soviet Crimes in the Baltic States," *Human Rights Law Journal* 39 (2019): 19-22, draft/publication record available at https://www.researchgate.net/publication/344496637_Judging_History_The_European_Court_of_Human_Rights_and_the_Qualification_of_Soviet_Crimes_in_the_Baltic_States; Dovilė Sagatienė, "The Debate about Soviet Genocide in Lithuania in the Case Law of the European Court of Human Rights," *Nationalities Papers* 49, no. 4 (2021): 776-791, published online 27 November 2020, DOI 10.1017/nps.2020.56. <https://www.cambridge.org/core/journals/nationalities-papers/article/debate-about-soviet-genocide-in-lithuania-in-the-case-law-of-the-european-court-of-human-rights/71CF0CAF617D1B43A867019C3F6792EF>

Vasiliauskas: the political group fails

The man, the operation and the two victims

Vasiliauskas v. Lithuania concerned Vytautas Vasiliauskas, who had served in the security services of the Lithuanian Soviet Socialist Republic. The criminal case arose from a 2 January 1953 MGB operation against two Lithuanian partisans, identified in the ECtHR judgment as J.A. and A.A. Both were killed.¹³

The historical context was the postwar armed resistance to Soviet rule. Soviet security documents described the resistance in political and security language: “bandits,” the “nationalist underground,” armed resistance and related categories. The relevant domestic prosecution did not begin by charging Vasiliauskas with participation in a plan to destroy ethnic Lithuanians because they were Lithuanian. It proceeded through the status of the victims as members of the partisan movement.

What the Lithuanian courts actually held

The trial court convicted Vasiliauskas under Article 99. Its factual and legal characterization was direct: the victims belonged to a separate political group, the Lithuanian partisans, and Vasiliauskas knew that the Soviet security apparatus sought the physical eradication of that group. The Court of Appeal tried to move the reasoning toward the Convention by saying that description of the partisans as merely political was conditional and imprecise; they were also representatives of the Lithuanian nation. The Lithuanian Supreme Court nevertheless described the conviction in terms that returned to the original category: extermination of inhabitants belonging to the separate political group of Lithuanian partisans.¹⁴

That record is the essential starting point for everything that followed. The first successful domestic theory was not “ethnic Lithuanians targeted as ethnic Lithuanians.” It was “partisans targeted as a political group.” Lithuania’s broader post-Soviet statute could sustain that theory domestically. International legality could not necessarily sustain it retroactively.

The Article 7 problem

Article 7 of the European Convention on Human Rights embodies the legality principle: no one may be convicted for conduct that was not criminal under national or international law when committed. Lithuania therefore faced a problem of time as well as taxonomy. The domestic legislature could enlarge genocide prospectively. It could not project a 1998 expansion back onto 1953 unless the conduct already constituted genocide under sufficiently foreseeable international law.

The Grand Chamber held, by nine votes to eight on 20 October 2015, that Lithuania had violated Article 7.¹⁵ It found no sufficiently clear basis for saying that political groups were protected by treaty law or, on the record before it, by customary international genocide law in 1953. The Court also

¹³ ECtHR (Grand Chamber), *Vasiliauskas v. Lithuania*, no. 35343/05, 20 October 2015, §§ 25-32. The operation against J.A. and A.A. occurred on 2 January 1953; the Kaunas Regional Court convicted Vasiliauskas on 4 February 2004. <https://hudoc.echr.coe.int/eng?i=001-158290>

¹⁴ *Vasiliauskas*, §§ 29-35, 38-41, 164-178. The indictment and trial judgment characterized the victims as members of a “separate political group”; the appellate courts attempted to connect the partisans to the national group. <https://hudoc.echr.coe.int/eng?i=001-158290>

¹⁵ *Vasiliauskas*, operative part and §§ 162-191; the Grand Chamber found an Article 7 violation by 9 votes to 8. <https://hudoc.echr.coe.int/eng?i=001-158290>

rejected the adequacy of the later attempt to place the partisans under the national/ethnic mantle. The domestic courts had not made a firm factual finding explaining why the particular political group constituted a significant part of a protected national group in a way that made Vasiliauskas's genocide conviction foreseeable at the time.¹⁶

The ECtHR did not decide that Soviet crimes were legitimate, minor, or immune from criminal punishment. It held that a post-Soviet state could not retroactively sustain this genocide conviction through a conception of the crime that was not sufficiently accessible and foreseeable when the conduct occurred.

The nine-to-eight split and the route later taken

Vasiliauskas was decided by nine votes to eight. The division prevents any account of the judgment as an uncontested statement of genocide law. The principal joint dissent by Judges Villiger, Power-Forde, Pinto de Albuquerque, and Kūris rejected the majority's legal and factual assessment; Judge Ziemele separately criticized treating the partisans' political identity in isolation from their national role.¹⁷

The dissents are relevant for a specific reason. They already contained much of the intellectual route later operationalized in *Drėlingas*: do not stop at the political membership criterion; characterize the partisan movement through its national function, leadership, scale, and role in preserving the Lithuanian nation. The 2016 Supreme Court did not invent that mode of reasoning from nothing. It turned it into the operative basis of the later accessory conviction.

The historical material was already there

By the time the Grand Chamber ruled, the Strasbourg record contained substantial historical material about Soviet repression. Lithuania's 2014 Constitutional Court judgment supplied figures for arrests, deportations and partisan deaths, described the social breadth of repression, characterized the armed resistance as national self-defence, and invoked the 1949 declaration of the Lithuanian Freedom Fighters' Movement. The Lithuanian Government likewise argued before the ECtHR that the resistance drew from broad social strata and represented the nation.¹⁸

That chronology prevents a false account of the next case. *Drėlingas* did not succeed because Lithuania suddenly discovered a historical record that had been absent from *Vasiliauskas*. Much of the material was already available. The defect identified in *Vasiliauskas* was that the original criminal conviction had not transformed that surrounding history into the necessary adjudicated finding and foreseeable legal classification.

The 2014 Constitutional Court builds the bridge

The [Constitutional Court judgment of 18 March 2014](#) preceded the Grand Chamber's 2015 judgment. It therefore cannot honestly be described as Lithuania's response to losing *Vasiliauskas*. It was

¹⁶ *Vasiliauskas*, §§ 176-186, especially the Court's treatment of the absence of a sufficiently established and foreseeable basis for treating the particular partisan population as a significant part of the protected national group. <https://hudoc.echr.coe.int/eng?i=001-158290>

¹⁷ *Vasiliauskas*, joint dissenting opinion of Judges Villiger, Power-Forde, Pinto de Albuquerque, and Kūris, and separate dissenting opinion of Judge Ziemele. <https://hudoc.echr.coe.int/eng?i=001-158290>

¹⁸ Constitutional Court of Lithuania, Judgment No. KT11-N4/2014, 18 March 2014; *Vasiliauskas*, §§ 56-63 and the Government's submissions. <https://www.e-tar.lt/portal/en/legalAct/303e7e50af6011e39b958c81fb177d0b> <https://hudoc.echr.coe.int/eng?i=001-158290>

delivered while the Strasbourg litigation was pending, and it already shows Lithuanian constitutional law grappling with the conflict between the broader domestic statute and the narrower international crime.¹⁹

The Constitutional Court accepted that Lithuania could define genocide more broadly for domestic purposes. But it also recognized the legality problem: retroactive punishment for destruction of a political or social group as such could not be justified merely by Lithuania's later statutory enlargement. The court then supplied the bridge that would become decisive.

A political or social group could be relevant to Convention genocide if it simultaneously constituted a significant part of a national, ethnic, racial or religious group protected by international law, such that destruction of the part affected the protected group itself.

Applied to the anti-Soviet resistance, the instruction was clear: when courts classified actions against the partisans, they should consider the significance of that group to the Lithuanian nation. The political group had not been added to Article II. Instead, the political group could potentially cross the Article II boundary by becoming a significant national subgroup.

This was the conceptual hinge. It existed before *Vasiliauskas* was decided. What *Vasiliauskas* demonstrated was that the hinge had not yet carried the criminal conviction.

Drėlingas: the political group becomes a national subgroup

A stronger victim for the Lithuanian theory

Drėlingas v. Lithuania arose from different facts. Stanislovas Drėlingas had served in the Soviet security apparatus and participated in the October 1956 operation that captured Adolfas Ramanauskas-Vanagas and his wife, Birutė Mažeikaitė. Vanagas was one of the highest-ranking surviving leaders of the resistance.²⁰

The contemporaneous KGB record gave the prosecution much stronger victim-specific evidence than the record concerning J.A. and A.A. in *Vasiliauskas*. Reports described Vanagas as a leading figure of the “bourgeois national underground” and treated his capture as a priority operation. The 18 October 1956 KGB report said thirty agents had been used in 1956; the Lithuanian Supreme Court later referred to more than forty. Both figures belong in the record rather than being harmonized.²¹ After the capture, Soviet reporting stated that liquidation of the leadership of Lithuanian bourgeois-nationalist formations had been completed. Vanagas was tortured, sentenced to death by the Supreme Court of the Lithuanian SSR, and shot on 29 November 1957. Mažeikaitė received an eight-year sentence and was sent to the Gulag.²²

¹⁹ Constitutional Court of Lithuania, Judgment No. KT11-N4/2014, 18 March 2014. The Court distinguished Lithuania's broader domestic definition from the narrower international definition for retroactive punishment and articulated the significant-part route. <https://www.e-tar.lt/portal/en/legalAct/303e7e50af6011e39b958c81fb177d0b>

²⁰ ECtHR, *Drėlingas v. Lithuania*, no. 28859/16, 12 March 2019, §§ 7-19. <https://hudoc.echr.coe.int/eng?i=001-191702>

²¹ *Drėlingas*, §§ 23 and 53. The 18 October 1956 KGB report referred to thirty agents used in 1956; the Supreme Court later referred to more than forty. <https://hudoc.echr.coe.int/eng?i=001-191702>

²² *Drėlingas*, §§ 22-32. The KGB reports describe the priority attached to Vanagas, the 30 agents used in 1956, and the post-capture reports that liquidation of the leadership had been completed; § 31 records his execution on 29 November 1957 and § 32 Mažeikaitė's eight-year sentence. <https://hudoc.echr.coe.int/eng?i=001-191702>

A 13 October 1956 detention decision also recorded Vanagas “by nationality” as Lithuanian. That datum must be confronted because it can support an argument that nationality entered the Soviet description of him. It does not, by itself, establish the criterion by which he was selected for destruction. The same operational record identifies him through “banditry,” the “nationalist underground,” leadership of the partisan movement, and the security campaign against armed resistance.²³ National identity and political selection can coexist; the Article II question is which characteristic supplied the destructive target.

Vanagas’s position made *Drėlingas* a stronger factual vehicle for qualitative substantiality than *Vasiliauskas*. A leader can make the allegedly targeted part appear qualitatively important. That difference does not determine how the relevant victim population was legally defined.

The domestic proceedings: accessory to genocide

Drėlingas was not convicted as a principal perpetrator of genocide. On 13 June 2014 he was charged as an accessory under Articles 24 § 6 and 99 of the Criminal Code. The Kaunas Regional Court convicted him on 12 March 2015 and imposed five years’ imprisonment. The Court of Appeal upheld the conviction on 10 July 2015. On 18 January 2016 the execution of the sentence was suspended and Drėlingas was released pending cassation. On 12 April 2016 a plenary session of seventeen judges of the Lithuanian Supreme Court upheld the accessory conviction but reduced the punishment to five months, already served.²⁴

The lower-court case therefore predated the Grand Chamber judgment in *Vasiliauskas*. The post-*Vasiliauskas* development was the Supreme Court’s 2016 reasoning: it expressly confronted the October 2015 judgment and reconstructed the protected-group analysis.

The seventeen-judge Supreme Court reconstruction

The Supreme Court read *Vasiliauskas* as exposing a failure of substantiation: the earlier domestic courts had not adequately established why the partisan movement constituted a significant part of a Convention-protected national or ethnic group. The Government later described the 2016 process to the ECtHR in revealing terms. It said the domestic courts had “filled the gap created by the lack of argumentation” in *Vasiliauskas* and that the new case law produced a “dual harmonisation” of domestic law with international law and the Convention.²⁵ That is the state’s own description of argumentative reconstruction rather than discovery of an entirely new historical target.

The quantitative case contained an internal inconsistency. One part of the Supreme Court reasoning referred to at least 50,000 active members of the armed resistance and “about 100,000 others,” language that appears to produce a constituency of roughly 150,000. Another passage said that the whole resistance movement involved around 100,000 residents. The court also used population figures of about 2.5 million in 1945 and 2.3 million in 1951 and retained the figure of approximately 20,000

²³ *Drėlingas*, §§ 23, 27-30. The 13 October 1956 detention decision recorded Vanagas “by nationality” as Lithuanian, while the operational materials also described him through “banditry,” the “nationalist underground,” and partisan leadership. <https://hudoc.echr.coe.int/eng?i=001-191702>

²⁴ *Drėlingas*, §§ 33-46: charge as accessory on 13 June 2014; Kaunas Regional Court conviction on 12 March 2015 and five-year sentence; Court of Appeal judgment on 10 July 2015; execution suspended and release ordered on 18 January 2016; Supreme Court plenary judgment of 12 April 2016 upholding accessory liability while reducing punishment to five months already served. <https://hudoc.echr.coe.int/eng?i=001-191702>

²⁵ *Drėlingas*, Government submissions, §§ 88 and 92. The Government said the domestic courts had “filled the gap created by the lack of argumentation” and described the post-*Vasiliauskas* development as “dual harmonisation.” <https://hudoc.echr.coe.int/eng?i=001-191702>

killed partisans and supporters.²⁶ The discrepancy matters because these numbers carried part of the substantiality finding; it should not be resolved by silently selecting one version.

The qualitative construction did more work. The resistance was described as exercising the nation's right of self-defence, impeding Soviet repression, protecting Lithuanian national identity, culture, and national consciousness, and embodying national survival. Its leadership was treated as the supreme political and military authority of the occupied state.

The membership reasoning is the mechanism I isolate. The Supreme Court stated that national, ethnic, and political characteristics had “an autonomous alternative meaning” under Article 99, and it described Drėlingas as aiding genocide against persons belonging to the national, ethnic, and political group. It then said that the victims' political affiliation “historically may not be assessed separately from the assessment of a national and ethnic group.”²⁷ The political criterion remained operative; the court connected it to protected national and ethnic membership.

Qualitative substantiality was not Lithuania's invention

Drėlingas did not invent the proposition that a qualitatively prominent part of an already protected group can be substantial. The ICTY Appeals Chamber in *Krstić* treated prominence or emblematic importance as relevant, and the ICJ incorporated qualitative prominence in *Bosnia v. Serbia*, paragraph 200, later restating quantitative, geographic, and prominence factors in *Croatia v. Serbia*.²⁸

The contested move concerns membership construction rather than substantiality alone. In *Krstić* and *Bosnia*, the relevant population was already a geographically identifiable part of a protected Bosnian Muslim group; prominence helped determine whether that protected part was substantial enough. In *Drėlingas*, political and military resistance supplied the operative target category, while national significance helped place that population under the national and ethnic mantle. A familiar substantiality test was made to perform work at the protected-group boundary.

A contrary case: M.M. and a real domestic limit

Lithuanian case law did not label every anti-partisan operation genocide. On 25 February 2016, in case No. 2K-5-895/2016, the Supreme Court upheld the acquittal of M.M. for participation in a 1965 operation against partisan A.K., who killed himself to avoid capture. The court found no proof of the direct intent and special purpose required by Article 99 and held that retroactive conviction for destruction of a “separate political group - resistance to Soviet occupation” was unlawful after the Constitutional Court ruling and *Vasiliauskas*.²⁹

That case is a genuine contrary test. It shows that the Supreme Court applied a limiting rule and that the political-group route, standing alone, was closed. It does not close the route used in *Drėlingas*: a

²⁶ *Drėlingas*, Supreme Court reasoning reproduced in §§ 50-53. One passage refers to at least 50,000 active resistance members and about 100,000 others, while another describes the whole resistance movement as involving around 100,000 residents; the same reasoning uses population denominators and approximately 20,000 partisan/supporter deaths. <https://hudoc.echr.coe.int/eng?i=001-191702>

²⁷ *Drėlingas*, Supreme Court reasoning reproduced in § 51, including the statements that national, ethnic, and political characteristics had “an autonomous alternative meaning” under Article 99 and that political affiliation “historically may not be assessed separately from the assessment of a national and ethnic group.” <https://hudoc.echr.coe.int/eng?i=001-191702>

²⁸ ICTY Appeals Chamber, *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004, § 12; ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment, 26 February 2007, I.C.J. Reports 2007, para. 200; ICJ, *Croatia v. Serbia*, Judgment, 3 February 2015, paras. 142-143 (restating quantitative, geographic, and prominence factors). <https://www.icj-cij.org/node/103223>

²⁹ Lithuanian Supreme Court, 25 February 2016, case No. 2K-5-895/2016, summarized in *Drėlingas*, §§ 66-71. The acquittal was upheld because the required direct intent/special purpose was not established and retroactive conviction for genocide of a separate political group was unlawful. <https://hudoc.echr.coe.int/eng?i=001-191702>

politically identified population can still enter the Convention where a court finds that the population also constituted a significant national or ethnic part and that the required intent existed. *M.M.* therefore clarifies the mechanism rather than eliminating it.

A second Article 7 problem: accessory and complicity

Judge Ranzoni identified a separate retroactivity problem. Drėlingas had been convicted under the modern domestic concept of an accessory in Article 24 § 6, whereas Article III(e) of the Genocide Convention made “complicity in genocide” punishable. Ranzoni asked whether those concepts were sufficiently equivalent that Drėlingas could have foreseen in 1956 that his conduct attracted genocide liability. He treated that as an independent Article 7 defect and criticized the majority for not resolving it.³⁰

The Supreme Court reopens *Vasiliauskas*

Vytautas Vasiliauskas died on 7 November 2015, less than three weeks after the Grand Chamber judgment. On 27 October 2016, a plenary of fifteen Supreme Court judges decided the reopened proceedings. It annulled the earlier judgments and terminated the case because the accused was dead, while reiterating the significant-part theory developed in the post-*Vasiliauskas* case law.³¹

The old conviction disappeared; the new route remained.

Death, termination and the Brazaitis comparator

The procedural distinction in *Vasiliauskas* supplies a narrower internal control for another historical controversy. Lithuanian state institutions repeatedly represented the American disposition concerning Juozas Ambrazevičius-Brazaitis as “complete exoneration” or rehabilitation. The American record was narrower. Brazaitis died on 24 October 1974 before the Immigration and Naturalization Service could question him. On 17 December 1974, INS Commissioner Leonard F. Chapman, Jr. reported that the inquiry had elicited no information of an evidentiary nature from the sources contacted, that further investigation appeared unwarranted, and that the investigations were deactivated. He also stated that new sources would continue to be queried and that the investigation could be reactivated if meaningful information emerged. No American court adjudicated the allegations.³²

Representative Brad Sherman later challenged Lithuania’s “complete exoneration” formulation. On 12 May 2026, Vice-Minister of Foreign Affairs Vidmantas Verbickas acknowledged that the phrase was “legally imprecise” and that administrative discontinuation “does not constitute a formal judicial

³⁰ Judge Carlo Ranzoni, dissenting opinion in *Drėlingas*, §§ 25-30, questioning whether domestic accessory liability under Article 24 § 6 was sufficiently equivalent to the Genocide Convention’s Article III(e) concept of “complicity in genocide” as understood in 1956. <https://hudoc.echr.coe.int/eng?i=001-191702>

³¹ *Drėlingas*, §§ 61-65. Vasiliauskas died on 7 November 2015. On 27 October 2016 a plenary of fifteen Supreme Court judges annulled the prior judgments in the reopened proceedings and terminated the case because he had died, while restating the post-*Vasiliauskas* protected-group analysis. <https://hudoc.echr.coe.int/eng?i=001-191702>

³² Leonard F. Chapman, Jr., Commissioner, U.S. Immigration and Naturalization Service, letter to Rep. Joshua Eilberg, 17 December 1974, reproduced in the Lithuania Ministry of Foreign Affairs correspondence package transmitted to Rep. Brad Sherman on 13 May 2026. Chapman reported that the investigation had elicited no substantive evidence, that further investigation appeared unwarranted, that Brazaitis and Šlepetys were removed from the active list and the investigations deactivated, and that the investigations could be reactivated if meaningful information emerged. <https://static-cdn.toi-media.com/blogs/uploads/2026/06/Letter-to-Rep.-Sherman.pdf>

exoneration under U.S. legal standards.” The Ministry continued to defend the factual outcome of the INS inquiry; the procedural concession is the point here.³³

The comparison establishes nothing about Brazaitis’s individual culpability. It establishes the evidentiary meaning of procedural closure. Lithuania’s own Supreme Court treated Vasiliauskas’s death as dispositive of the reopened criminal proceeding without treating the historical or legal propositions underlying the prosecution as disproved. An unfinished American administrative investigation likewise cannot be converted, without a merits determination, into a judicial finding that the allegations were false. Procedural termination does not itself constitute substantive vindication.

Later law used to make 1956 foreseeable

The 2016 reasoning relied on genocide jurisprudence that did not exist in 1956, including *Jelisić*, *Sikirica*, *Krstić*, and the ICJ’s *Bosnia* judgment, along with later Lithuanian statutes and retrospective state characterizations of the resistance.³⁴ Those materials can inform the later development of genocide law. Their use to establish what Drėlingas could have foreseen as an accessory in 1956 raises the Article 7 problem.

Motoc herself complicated the objection. At paragraph 14 of her dissent she criticized the Grand Chamber’s foreseeability reasoning as “highly problematic,” noting that the qualitative-part jurisprudence used in modern international prosecutions also postdated much of the conduct being tried.³⁵ That counterargument deserves an answer rather than selective quotation. The distinction I draw is one of remoteness and function: the ICTY developed its “in part” jurisprudence while adjudicating 1990s crimes within the international criminal system created for those events; *Drėlingas* used jurisprudence from 1999-2007 to reconstruct the protected-group significance of conduct from 1956, four to six decades later, after the original domestic political-group route had failed Article 7 review. The later cases were being used not only to measure an already protected part but to support the bridge by which political resistance became a protected national and ethnic part.

Ranzoni identified a related temporal defect. Active armed resistance had largely ended by 1953, while Drėlingas’s conduct occurred in October 1956. If the partisans’ exceptional qualitative significance depended on an active national resistance, the courts had to identify what constituted the significant protected part in 1956 rather than relying only on the movement’s earlier position.³⁶

³³ Representative Brad Sherman to Prime Minister Saulius Skvernelis, 25 September 2019, challenging the claim of “complete exoneration” and requesting supporting authority or correction, <https://static-cdn.toi-media.com/blogs/uploads/2026/03/Congress-on-Brazaitis.pdf>; Vidmantas Verbickas, Vice-Minister of Foreign Affairs, to Rep. Brad Sherman, 12 May 2026, Ref. (19.2.3)3-2806, reproduced with Ambassador Gediminas Varvuolis’s 13 May 2026 cover letter, acknowledging that “complete exoneration” was legally imprecise and that administrative discontinuation does not constitute formal judicial exoneration under U.S. law, <https://static-cdn.toi-media.com/blogs/uploads/2026/06/Letter-to-Rep.-Sherman.pdf>.

³⁴ *Drėlingas*, § 51; Lithuanian Supreme Court, No. 2K-P-18-648/2016. The reasoning drew on later international jurisprudence including *Jelisić*, *Sikirica*, *Krstić*, and *Bosnia v. Serbia*, and on later Lithuanian legal characterizations of the resistance. <https://hudoc.echr.coe.int/eng?i=001-191702>

³⁵ Motoc dissent, *Drėlingas*, § 14, criticizing the foreseeability analysis based on qualitative-part jurisprudence developed after the conduct under review. <https://hudoc.echr.coe.int/eng?i=001-191702>

³⁶ Judge Ranzoni, dissenting opinion in *Drėlingas*, §§ 22-24, addressing the 1953/1956 temporal problem and the reliance on the movement’s earlier significance. <https://hudoc.echr.coe.int/eng?i=001-191702>

The Committee of Ministers closes Vasiliauskas supervision

The domestic reconstruction acquired an institutional effect before the Fourth Section decided *Drėlingas*. In December 2017, while supervising execution of the 2015 *Vasiliauskas* judgment, the Secretariat of the Committee of Ministers recorded the Lithuanian authorities' changes in domestic case law and stated that the shortcomings identified by the Court "have been rectified in domestic case-law at the highest level." On 7 December 2017 the Committee adopted Resolution CM/ResDH(2017)430 and closed supervision.³⁷

The closure did not adjudicate whether the significant-part conversion was substantively correct under genocide law. The Committee of Ministers was exercising its Article 46 execution function. It nevertheless supplied a second institutional step: by late 2017 the Council of Europe's political execution body treated Lithuania's judicial response to *Vasiliauskas* as sufficient to close the case.

Expansion by deference: Strasbourg permits the reconstruction without deciding its validity

On 12 March 2019, the Fourth Section held by five votes to two that there had been no Article 7 violation. The scope of that holding must be stated exactly. At paragraph 102 the Chamber said it "considers it unnecessary to express a position on the validity" of the Supreme Court's interpretation. It confined itself to whether the 2016 ruling distorted or misrepresented *Vasiliauskas*. At paragraph 105 it characterized the Supreme Court's approach as a "loyal interpretation" taken "in good faith." The Chamber framed the inquiry through the execution-of-judgment and subsidiarity logic it had used in *Hutchinson v. United Kingdom*: whether later domestic case law had dispelled the deficiency identified by the ECtHR and drawn the necessary conclusions from the earlier judgment. Paragraphs 108-109 returned expressly to *Hutchinson* and primary domestic responsibility.³⁸

I call this expansion by deference: a domestic doctrinal innovation acquires operative European legal effect because the reviewing court defers to the domestic court's good-faith execution of an earlier judgment while expressly declining to decide whether the underlying interpretation of genocide is valid. The phrase does not imply that Strasbourg endorsed the doctrine. It identifies the institutional pathway by which the doctrine survived.

That pathway makes the institutional history more consequential. The protected-group conversion remained operative after European review even though the reviewing court refused to decide the substantive question that made the conversion controversial.

Motoc: expansion identified from inside the Court

Judge Iulia Antoanella Motoc dissented separately. At paragraph 1 she said a change of this magnitude should have been considered by the Grand Chamber. At paragraph 2 she wrote that this was "the first time that ethno-political genocide has been recognised by an international Court," warned that other countries would be tempted to follow, and accused the majority of "expanding the scope of genocide

³⁷ ECtHR, *Drėlingas*, §§ 74-75, reproducing the Committee of Ministers Secretariat's execution assessment; Committee of Ministers, Resolution CM/ResDH(2017)430, 7 December 2017, closing supervision of *Vasiliauskas*. <https://hudoc.echr.coe.int/eng?i=001-191702https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168076f2a1>

³⁸ ECtHR, *Drėlingas v. Lithuania*, no. 28859/16, 12 March 2019, §§ 100-105, 108-109. Section 102 states that the Chamber considered it unnecessary to express a position on the validity of the Supreme Court's interpretation; § 105 calls the ruling a "loyal interpretation" taken "in good faith"; §§ 100, 108-109 invoke the execution/deference logic of *Hutchinson v. United Kingdom* [GC], no. 57592/08. <https://hudoc.echr.coe.int/eng?i=001-191702>

far beyond the approach taken so far in international criminal law.” At paragraph 5 she noted that Lithuania had been the first State to add political and social groups to its domestic genocide definition.³⁹

Motoc therefore supplies independent judicial confirmation of the phenomenon, though not a holding that this article’s thesis is legally correct. From inside the deciding court she identified the practical result that the majority declined to characterize doctrinally: expansion beyond the prior approach of international criminal law, international recognition in effect, and the likelihood of diffusion to other states. The tension between § 102 and her dissent is central: the majority withheld substantive validation while the dissent described the practical consequence as doctrinal expansion.

Ranzoni: old wine, timing, and complicity

Judge Carlo Ranzoni attacked the mechanism from a different direction. At paragraph 12 he asked whether the national-ethnic-political formulation amounted to “old wine in new bottles.” At paragraphs 22-23 he questioned whether a partisan movement whose active armed phase had largely ended by 1953 retained the asserted national significance in October 1956. At paragraphs 25-29 he developed the separate accessory-versus-complicity problem.⁴⁰

The dissents are not holdings. They are valuable because they identify from inside the deciding court the precise vulnerabilities that a critical analysis must test: protected-group expansion, the temporal construction of qualitative significance, and the retroactive mode of liability.

Vasiliauskas and Drėlingas: remember the difference

Question	<i>Vasiliauskas</i>	<i>Drėlingas</i>
Conduct	2 January 1953 operation in which J.A. and A.A. were killed	11-12 October 1956 operation capturing Ramanauskas-Vanagas and Mažeikaitė
Domestic courts	Kaunas Regional Court, 4 February 2004; later appellate and cassation review	Charge 13 June 2014; Kaunas Regional Court 12 March 2015; Court of Appeal 10 July 2015; Supreme Court plenary 12 April 2016
Liability	Genocide conviction	Accessory to genocide, Articles 24 § 6 and 99; final punishment reduced to five months already served
Target category	Lithuanian partisans as a separate political group	Lithuanian partisans; courts retained political membership while adding national and ethnic characterization
Victim strength	Two partisans; no comparable national-leadership status established	Vanagas was one of the highest remaining resistance leaders; KGB records treated his capture as liquidation of leadership
Group issue	Political-group route tested against 1953 international law	Supreme Court reconstructed the protected-group reasoning after the 2015 <i>Vasiliauskas</i> judgment; lower proceedings predated it
National significance	Thin in the criminal judgments, although broader material existed in the Strasbourg record	Quantitative and qualitative national-significance findings, with internal inconsistencies in the resistance figures

³⁹ Motoc dissent, *Drėlingas*, §§ 1-2, 5-6. She argued that the case required Grand Chamber treatment, called the result the first international recognition of “ethno-political genocide,” warned that other countries could follow, and criticized expansion beyond international criminal law. <https://hudoc.echr.coe.int/eng?i=001-191702>

⁴⁰ Judge Ranzoni, dissenting opinion in *Drėlingas*, § 12 (“old wine in new bottles”), §§ 22-30 (1956 temporal problem and accessory/complicity issue). <https://hudoc.echr.coe.int/eng?i=001-191702>

Question	<i>Vasiliauskas</i>	<i>Drėlingas</i>
ECtHR outcome	Grand Chamber, 20 October 2015: Article 7 violation, 9-8	Fourth Section, 12 March 2019: no Article 7 violation, 5-2; Motoc and Ranzoni dissent; § 102 expressly declines to rule on validity
Doctrinal effect	Political-group route could not sustain the retroactive conviction as pleaded and adjudicated	Protected-group conversion survived Article 7 review through deference without the ECtHR endorsing the doctrine's validity

The cases should not be collapsed. *Drėlingas* involved a stronger victim, a later date, accessory liability, a much fuller national-significance record, and a reduced five-month punishment. It also produced a different kind of Strasbourg outcome: the Fourth Section allowed the domestic reconstruction to stand while expressly declining to decide whether the interpretation itself was valid.

What changed: evidence and adjudicative construction

Drėlingas added genuine factual material. Vanagas's leadership status and the KGB attention devoted to his capture were specific to a different victim. The Supreme Court also assembled population denominators and resistance-participation figures that had not carried the *Vasiliauskas* conviction, although its own 50,000/100,000 formulations were internally inconsistent.

Much of the wider historical narrative already existed in the *Vasiliauskas* Strasbourg record: approximately 20,000 partisan deaths, broad Soviet repression, the LLKS claim to national political authority, the 1949 declaration, and the Government's argument that the resistance represented the nation. What the earlier criminal judgments lacked was an adjudicated chain connecting those propositions to the Convention's protected-group requirement.

The Lithuanian Government's own submissions in *Drėlingas* capture the change. It told the ECtHR that domestic courts had "filled the gap created by the lack of argumentation" and described the new case law as producing "dual harmonisation" between domestic law, international law, and the Convention.⁴¹ The words come from the respondent State, not from a critic of Lithuania.

I use outcome-preserving judicial activism in a narrow, evidence-bound sense for this sequence. The term does not allege secret motive or coordination. It describes an observable pattern in which the legal classification—genocide—remained fixed after an adverse Strasbourg judgment while the doctrinal route was reconstructed to preserve that classification. The Government's own "filled the gap" and "dual harmonisation" language is the strongest adverse provenance for that description.

The 2016 Supreme Court made the inferential bridge explicit: political resistance membership, national and ethnic identity, qualitative significance, and the survival of the Lithuanian nation were placed into one legal chain. Outcome-preserving judicial activism describes that domestic reconstruction; expansion by deference describes what happened when European institutions allowed the reconstruction to carry legal consequences without a merits ruling on the validity of the underlying genocide interpretation.

⁴¹ *Drėlingas*, Government submissions, §§ 88 and 92. The Government said the domestic courts had "filled the gap created by the lack of argumentation" and described the post-*Vasiliauskas* development as "dual harmonisation." <https://hudoc.echr.coe.int/eng?i=001-191702>

The portable mechanism: protected-group conversion

I use protected-group conversion for a specific legal operation: a population selected through a characteristic excluded from Article II is treated as part of a protected national, ethnic, racial, or religious group because the excluded population is said to carry enough quantitative or qualitative importance to the protected whole.

The mechanism differs from ordinary substantiality analysis. If perpetrators select Bosnian Muslims in Srebrenica because they are Bosnian Muslims, the protected characteristic already defines the target; substantiality asks whether the selected part is large or prominent enough. If perpetrators select armed political resisters because they are armed political resisters, and a later court treats those resisters as a national or ethnic part because they represented the nation's leadership, culture, or survival, qualitative importance is doing additional taxonomic work.

The 2016 Lithuanian judgment preserved political affiliation as an operative characteristic rather than erasing it. Its own formulation that political affiliation "historically may not be assessed separately" from national and ethnic membership supplies the conversion. The 2019 Chamber allowed that reasoning to stand under Article 7 while refusing to decide its validity.

Article II acts, substantiality, and *dolus specialis* remain independent requirements. The narrower claim here concerns the first gate: protected-group membership becomes easier to satisfy when an excluded political or social population can be recharacterized through national significance. The stress tests below ask how far that logic travels when it is applied without a Lithuania-specific stopping rule.

The two genocides were not treated alike

The Lithuanian cases cannot be understood only as abstract jurisprudence. They emerged from a state project that devoted sustained legal energy to maximizing recognition of Soviet crimes against Lithuanians as genocide. That institutional persistence has to be placed beside the post-independence record concerning Lithuanian participation in the destruction of Lithuanian Jews.

The comparison requires precision. Independent Lithuania did prosecute Holocaust-related cases and opened additional pre-trial investigations. I do not claim that Lithuania simply refused to investigate or prosecute every Holocaust perpetrator. The narrower result is documented: the best-known adjudicated cases against Lithuanian Holocaust perpetrators produced no enforced punishment, while Soviet-crime proceedings produced convictions and custodial sentences.⁴²

Lileikis, Gimžauskas, and Dailidė

Much of the evidentiary work in the three emblematic cases was driven by the United States. The U.S. Department of Justice developed archival cases concerning the Lithuanian Security Police (Saugumas) and the transfer of Jewish civilians into German custody and the killing system.⁴³

⁴² U.S. Department of State, 2008 Country Report on Human Rights Practices: Lithuania. The report records approximately 80 investigations of crimes against humanity/war crimes, including Holocaust-related investigations; three former Soviet officers convicted of crimes against humanity, two with custodial sentences of five and eight years and the third pardoned as infirm; and the 4 July 2008 Court of Appeal disposition in the Dailidė case.

<https://www.refworld.org/country/2CCOI%2C%2C%2CLTU%2C%2C49a8f1762%2C0.html>

⁴³ U.S. Department of Justice, 26 June 1996, Gimžauskas case and documentary evidence concerning the Saugumas; U.S. Department of Justice, 9 October 2003, Dailidė proceedings and related Lithuanian Security Police records.

<https://www.justice.gov/archive/opa/pr/1996/Jun96/302crm.htm> https://www.justice.gov/archive/opa/pr/2003/October/03_crm_558.htm

Aleksandras Lileikis, wartime chief of the Vilnius Saugumas, was stripped of U.S. citizenship and returned to Lithuania. Lithuanian proceedings were repeatedly interrupted by disputes over his health. He died in September 2000 before the case reached a completed judgment.⁴⁴

Kazys Gimžauskas, Lileikis's deputy, had already moved back to Lithuania while the U.S. investigation was under way; a U.S. court revoked his citizenship in 1996. A Lithuanian court found him guilty on 14 February 2001, but no punishment was imposed because the court considered him medically incapable.⁴⁵ I omit the frequently repeated claim that he "died soon afterward" because I have not verified a reliable death date sufficient for citation.

Algimantas Dailidė served in the Vilnius Saugumas. U.S. proceedings documented his participation in arrests of Jews who had escaped or attempted to escape the Vilnius ghetto and the Saugumas machinery through which Jewish detainees were delivered into German-controlled punishment and killing structures.⁴⁶ Lithuania convicted him in 2006. The court did not impose punishment because of age, health, and changed circumstances; on 4 July 2008, the Court of Appeal left the non-custodial outcome intact.⁴⁷

These cases establish outcomes, not an exhaustive negative proposition about every Lithuanian Holocaust investigation. State Department reporting recorded multiple Nazi-era and Holocaust-related pre-trial investigations by Lithuanian prosecutors. The three cases are used here because they are the most prominent adjudicated cases with documented outcomes and because the evidentiary record was extensively developed in prior U.S. proceedings.⁴⁸

Jewish partisans under investigation

During the same period, the Prosecutor General's Office investigated Jewish anti-Nazi partisans. In 2006 it opened an investigation involving Yitzhak Arad, Holocaust survivor, partisan, historian, and former chairman of Yad Vashem. Prosecutors sought Israeli assistance to question him about wartime partisan violence; the investigation was terminated in September 2008 for insufficient evidence after extensive witness interviews.⁴⁹

Rachel Margolis and Fania Brancovskaja, elderly Jewish survivors and former partisans, were also drawn into public prosecutorial inquiries concerning Soviet-partisan violence.⁵⁰ Their status as Holocaust survivors did not immunize them from legitimate investigation. The relevance here is

⁴⁴ U.S. Department of State, 2000 Country Reports on Human Rights Practices: Lithuania, recording Lileikis's death in September 2000 while proceedings remained unfinished. <https://2009-2017.state.gov/j/drl/rls/hrrpt/2000/eur/691.htm>

⁴⁵ U.S. Department of Justice, 26 June 1996, reporting citizenship revocation proceedings against Gimžauskas after he had returned to Lithuania; U.S. Department of State, 2001 Country Reports on Human Rights Practices: Lithuania, recording the 14 February 2001 finding of guilt and non-imposition of punishment because of medical incapacity. <https://www.justice.gov/archive/opa/pr/1996/Jun96/302crm.htm> <https://2009-2017.state.gov/j/drl/rls/hrrpt/2001/eur/8287.htm>

⁴⁶ U.S. Department of Justice, Dailidė denaturalization/removal materials; U.S. Department of State 2008 Lithuania report, noting the 4 July 2008 Court of Appeal ruling. https://www.justice.gov/archive/opa/pr/2003/October/03_crm_558.htm <https://www.refworld.org/country%2CCOI%2C%2C%2CLTU%2C%2C49a8f1762%2C0.html>

⁴⁷ U.S. Department of State, 2008 Country Report on Human Rights Practices: Lithuania, Dailidė appellate outcome. <https://2009-2017.state.gov/j/drl/rls/hrrpt/2008/eur/119090.htm>

⁴⁸ U.S. Department of State, 2008 Country Report on Human Rights Practices: Lithuania, Holocaust-related investigations. <https://2009-2017.state.gov/j/drl/rls/hrrpt/2008/eur/119090.htm>

⁴⁹ U.S. Department of State, 2007 and 2008 Country Reports on Human Rights Practices: Lithuania, recording the Arad investigation, Israeli assistance request, and termination in September 2008. <https://www.refworld.org/reference/annualreport/usdos/2008/en/56934> <https://www.refworld.org/country%2CCOI%2C%2C%2CLTU%2C%2C49a8f1762%2C0.html>

⁵⁰ Jewish Telegraphic Agency, 21 August and 26 September 2008, on the Margolis/Brancovskaja controversy and termination of the Arad investigation. <https://www.jta.org/2008/08/21/global/will-lithuania-leader-stop-probe-of-partisans> <https://www.jta.org/archive/lithuanias-prosecutor-general-dropped-a-war-crimes-inquiry>

institutional allocation: Lithuanian prosecutors were prepared to investigate Jewish partisan violence while the emblematic Lithuanian Holocaust cases produced no punishment.

A contemporaneous control, including the inconvenient fact

The U.S. State Department's 2008 human-rights report provides a contemporaneous control. It recorded three former Soviet officers convicted of crimes against humanity: two received custodial sentences of five and eight years, while the third was pardoned as infirm. The same report recorded that Dailidė remained out of prison and that the Arad investigation had been terminated.⁵¹

Age and incapacity were therefore not considerations applied only to Holocaust defendants. Nor did the emblematic *Drėlingas* case produce a long final sentence: although the trial court imposed five years, execution was suspended in January 2016 and the Supreme Court reduced the punishment in April to five months already served.⁵² The asymmetry I rely on is institutional rather than a claim that every Soviet-crime defendant served a substantial prison term. Lithuanian institutions repeatedly altered statutes, constitutional doctrine, and appellate reasoning to preserve genocide recognition for Soviet crimes, while the best-known adjudicated Holocaust cases identified in the DOJ, State Department, and Lithuanian appellate records cited here ended without enforced punishment.

The Lithuanian state expended extraordinary legislative, constitutional, prosecutorial, and appellate effort to maximize the legal recognition of Soviet crimes against Lithuanians as genocide, while its best-known adjudicated cases concerning Lithuanian participation in the genocide of Jews produced no enforced punishment.

That proposition does not require a single hidden intention shared by every official. It is an observable institutional asymmetry.

The Holocaust context: destruction rate and local agency

The destruction rate must be stated with its denominators rather than as a single false precision. The United States Holocaust Memorial Museum estimates that about 90 percent of Lithuanian Jews were murdered. Other scholarship, using different territorial and population denominators, has produced figures around 95-96 percent, including a 96.4 percent figure associated with Dina Porat's demographic accounting.⁵³ The exact percentage moves with borders, date, and denominator; the underlying historical point does not: Lithuanian Jewry suffered one of the highest, and by several scholarly calculations the highest, proportional murder rates in Europe.

The agency question also requires named formations rather than a collective noun. German invasion, occupation, and the SS/Einsatzgruppen killing program created and directed the broader machinery of the Final Solution. Lithuanian participation was nevertheless operationally indispensable in major

⁵¹ U.S. Department of State, 2008 Country Report on Human Rights Practices: Lithuania, Soviet-officer convictions, infirm pardon, Dailidė, and Arad. <https://2009-2017.state.gov/j/drl/rls/hrrpt/2008/eur/119090.htm>

⁵² *Drėlingas*, §§ 40, 45-46: five-year trial sentence; execution suspended in January 2016; Supreme Court reduced punishment to five months already served on 12 April 2016. <https://hudoc.echr.coe.int/eng?i=001-191702>

⁵³ United States Holocaust Memorial Museum, "Lithuania," estimating that about 90 percent of Lithuanian Jews were murdered. <https://encyclopedia.ushmm.org/content/en/article/lithuania>. For the higher figure, see Dovid Katz, "The Extraordinary Recent History of Holocaust Studies in Lithuania," *Dapim: Studies on the Holocaust* 31, no. 3 (2017), n. 19, citing Dina Porat, "The Holocaust in Lithuania: Some Unique Aspects," in David Cesarani, ed., *The Final Solution: Origins and Implementation* (Routledge, 1994), 159-174, and giving approximately 96.4 percent with variations depending on method and borders. <https://www.tandfonline.com/doi/abs/10.1080/23256249.2017.1395530>. The article states the denominator problem rather than treating 90 and 96.4 percent as interchangeable point estimates.

phases of persecution and killing. Christoph Dieckmann and Saulius Sužiedėlis document the interaction of German authorities with Lithuanian political, police, military, and local structures in the summer and fall of 1941.⁵⁴ Arūnas Bubnys documents the role of the TDA/First Lithuanian Police Battalion and its companies in the Hamann mobile killing detachment and other murder operations.⁵⁵ The Vilnius Saugumas and the Ypatingasis būrys supplied Lithuanian personnel for arrest, custody, and mass shooting at Paneriai.⁵⁶

The broader question of Lithuanian primary culpability is larger than I can prove in a few paragraphs and belongs to my wider research program. The proposition needed here is narrower and fully supportable: named Lithuanian formations were indispensable local agents in persecution and mass murder, while post-Soviet state institutions later expended exceptional legal effort to classify Soviet repression of Lithuanians as genocide.

That juxtaposition is evidence of asymmetry, not proof of psychological motive. The explanation belongs to the next section.

Memory conflation, the Genocide Equalization Doctrine and ‘Holocaust-envy’

Jelena Subotić supplies the broader interpretive frame. In *Yellow Star, Red Star*, she describes Lithuania as the Baltic state that most aggressively pursued “memory conflation”: Holocaust and Soviet-occupation memory were drawn together within a “double genocide” framework, while postwar international-justice architecture associated with the Holocaust was repurposed for the Soviet past.⁵⁷

I use Genocide Equalization Doctrine for the institutional project examined here. The term does not deny Soviet terror. It identifies a process in which historically and legally different systems of atrocity are moved toward the same apex classification so that Soviet victimhood acquires the legal and symbolic authority attached to Holocaust genocide.

Sagatienė’s transitional-justice study organizes the debate between “restrictivists” and “expansionists” and records critics’ accusation of “Holocaust-envy.”⁵⁸ I retain that term only as an attributed historiographical concept. Competitive victimhood, post-Soviet state-building, ordinary transitional-justice incentives, regional convergence, anti-Russian geopolitics, and genuine dissatisfaction with the Convention’s narrowness are serious rival explanations. If those rivals prevent proof of psychological

⁵⁴ Christoph Dieckmann and Saulius Sužiedėlis, *The Persecution and Mass Murder of Lithuanian Jews during Summer and Fall 1941: Sources and Analysis* (Vilnius: Margi raštai, 2006). Bibliographic record: <https://www.worldcat.org/title/persecution-and-mass-murder-of-lithuanian-jews-during-summer-and-fall-of-1941-sources-and-analysis/oclc/85885891>.

⁵⁵ Arūnas Bubnys, “The First (13th) Lithuanian Police Battalion and the Killing of Jews in 1941,” *Genocidas ir rezistencija* 2(20) (2006): 31-52, DOI 10.61903/GR.2006.202; see also Arūnas Bubnys, *Lithuanian Police Battalions 1941-1945* (Vilnius, 2017). <https://doi.org/10.61903/GR.2006.202>

⁵⁶ United States Holocaust Memorial Museum, “Ponary,” on the Ypatingasis būrys and mass shooting site; DOJ records concerning the Vilnius Saugumas in the Lileikis, Gimžauskas, and Dailidė cases. <https://encyclopedia.ushmm.org/content/en/article/ponary> <https://www.justice.gov/archive/opa/pr/1996/Jun96/302crm.htm>

⁵⁷ Jelena Subotić, *Yellow Star, Red Star: Holocaust Remembrance after Communism* (Cornell University Press, 2019), Lithuania chapter, describing Lithuania as pursuing “memory conflation” particularly aggressively. <https://academic.oup.com/cornell-scholarship-online/book/30854/chapter-abstract/262488584>

⁵⁸ Sagatienė, “Transformation of Lithuanian Memories of Soviet Crimes to Genocide Recognition,” 396-415, discussing restrictivist/expansionist positions and the criticism of “Holocaust-envy.” <https://academic.oup.com/ijtj/article/16/3/396/6776207>

“envy,” the legal claim does not collapse. Memory conflation plus documented doctrinal expansion is sufficient.

The comparative Baltic literature also limits an overbroad Lithuania-only claim. Latvia and Estonia confronted Soviet crimes too. What distinguishes Lithuania here is the conjunction of a domestic statute protecting political and social groups, the *Vasiliauskas* Grand Chamber collision, the seventeen-judge *Drėlingas* reconstruction, the Committee of Ministers closure, and a later ECtHR judgment that allowed the reconstruction to stand without ruling on its validity.⁵⁹

Lithuania also participated in the European politics of equalized totalitarian remembrance. The [European Parliament’s 2 April 2009 resolution](#) acknowledged the uniqueness of the Holocaust while calling for Europe-wide remembrance of victims of totalitarian and authoritarian regimes and a 23 August remembrance day.⁶⁰ Political remembrance is not itself an expansion of Article II, but it forms part of the institutional environment in which genocide became the preferred apex label for Soviet victimhood.

Article 170², introduced in 2010, added criminal-memory regulation by penalizing specified forms of public approval, denial, or gross trivialization of defined international crimes and Soviet/Nazi crimes, subject to statutory conditions.⁶¹ I do not claim that a scholar who agrees with Berster’s conclusion thereby commits an offence. The narrower proposition is that Lithuania attached criminal regulation to parts of the public treatment of the same expanded historical-crime field.

The Drėlingas stress test

Judge Motoc herself opened the comparative door. In paragraph 3 of her dissent she invoked Stalin, Mao Tse-tung, and Pol Pot as examples of mass ideological or political killing that international genocide law has not absorbed.⁶² I use those comparisons as a boundary test rather than as retrospective indictments.

The question is whether protected-group conversion generates plausible genocide arguments in cases conventionally classified outside the crime because the target population was political or social. If the mechanism makes those cases cross the protected-group gate, the comparison can still fail on intent, substantiality, *actus reus*, or another element. What has changed is the limiting work performed by the protected-group taxonomy.

Mao and the Great Leap Forward

The Great Leap Forward and resulting famine killed tens of millions. Vaclav Smil’s demographic review places the best reconstructions around 30 million deaths and describes the catastrophe as

⁵⁹ Mälksoo, “Judging History,” 19-22; Sagatienė, “The Debate about Soviet Genocide in Lithuania,” 776-791.

https://www.researchgate.net/publication/344496637_Judging_History_The_European_Court_of_Human_Rights_and_the_Qualification_of_Soviet_Crimes_in_the_Baltic_States <https://www.cambridge.org/core/journals/nationalities-papers/article/debate-about-soviet-genocide-in-lithuania-in-the-case-law-of-the-european-court-of-human-rights/71CF0CAF617D1B43A867019C3F6792EF>

⁶⁰ European Parliament resolution of 2 April 2009 on European conscience and totalitarianism.

https://www.europarl.europa.eu/doceo/document/TA-6-2009-0213_EN.html

⁶¹ Lithuanian Criminal Code Article 170², introduced by Law XI-901 of 15 June 2010, effective 29 June 2010.

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.375951>

⁶² Motoc dissent, *Drėlingas*, § 3, discussing Stalin, Mao Tse-tung, Pol Pot, political groups, and ideological mass killing.

<https://hudoc.echr.coe.int/eng?i=001-191702>

overwhelmingly man-made and ideological.⁶³ The event is not ordinarily treated as Convention genocide of the Chinese national group because the lethal policies were directed through collectivization, production, class, rural status and political coercion, not an intent to destroy Chinese people as Chinese.

Apply *Drélingas*. Chinese peasants constituted an enormous and indispensable part of the Chinese nation. They were the demographic base of the country, the producers of its food and carriers of rural culture. If qualitative importance can convert a politically or socially defined target into a significant national part, the Great Leap Forward becomes an easy candidate for protected-group conversion.

But if the Great Leap Forward still is not genocide—and under the conventional Article II analysis there are strong reasons why it is not—then the reason exposes the problem. Being a huge and indispensable part of a nation does not make class-directed or policy-directed destruction destruction of the nation as such. The same caution must apply to Lithuania.

Stalin, the peasantry and the Holodomor

The Stalinist cases are even closer to the Lithuanian problem because the political and social classifications were explicit. Kulaks, political enemies, clergy, intellectuals and resistant peasants could all be described as crucial strata of the nations in which they lived. Once qualitative significance performs the legal conversion, the protected-group question becomes remarkably easy to answer.

A 2026 *Journal of International Criminal Justice* article on the Holodomor illustrates the continuing line-drawing problem. Leanid Kazyrytski concludes that the famine can satisfy objective aspects of genocide but not the subjective requirement under international law; in his analysis, the principal target of Stalinist repression was the peasantry as a social class rather than Ukrainians as a national or ethnic group.⁶⁴

Drélingas makes that conclusion unstable. Ukrainian peasants were unquestionably a major, perhaps foundational, part of the Ukrainian national group. If social targeting plus national indispensability is sufficient to cross the protected-group gate, the distinction relied upon here collapses. One may favor that result as reform. But it is reform, whether openly enacted or judicially smuggled through “significant part.”

Cambodia: the best doctrinal control

Cambodia is the clearest demonstration of why the protected-group boundary does actual legal work. The Khmer Rouge murdered and brutalized populations on ethnic, religious, political, professional and social grounds. The Extraordinary Chambers in the Courts of Cambodia distinguished these categories. In Case 002/02, Nuon Chea was convicted of genocide against the Cham and the Vietnamese, while Khieu Samphan was convicted of genocide against the Vietnamese; the much broader field of murder, extermination, enslavement, political persecution, and other Khmer Rouge atrocities was prosecuted through crimes against humanity and related offences.⁶⁵

⁶³ Vaclav Smil, “China’s Great Famine: 40 Years Later,” *BMJ* 319 (1999): 1619, estimating roughly 30 million deaths and describing the famine as largely man-made and ideological. <https://pmc.ncbi.nlm.nih.gov/articles/PMC1127087/>

⁶⁴ Leanid Kazyrytski, “Extermination by Starvation and Genocide in Ukraine, 1932-1933,” *Journal of International Criminal Justice* 24, no. 1 (2026): 93-111. <https://academic.oup.com/jicj/article-abstract/24/1/93/8504212>

⁶⁵ Extraordinary Chambers in the Courts of Cambodia, Case 002/02 judgment materials. Nuon Chea was convicted of genocide against the Cham and Vietnamese; Khieu Samphan was convicted of genocide against the Vietnamese. <https://www.eccc.gov.kh/en/cases/charged-profile/khieu-samphan>
<https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/>

That distinction does not mean the Cambodian intellectual murdered because he was an intellectual suffered less than a Vietnamese victim murdered because of ethnicity. It means the crimes had different legal elements.

Now apply *Drélingas*: intellectuals and urban professionals were bearers of Cambodian institutional knowledge; former officials represented political continuity; targeted social strata were important to national economic and cultural life. If those characteristics can convert politically or socially defined victims into significant parts of the Khmer national group, the ECCC's distinction becomes difficult to defend. The legal genocide category expands toward the colloquial description of the entire Khmer Rouge catastrophe as genocide.

The Cambodian division between genocide and other atrocity crimes therefore supplies a doctrinal control for the restrictivist/expansionist debate.⁶⁶

North Korea: the political-group reduction

The United Nations Commission of Inquiry on North Korea found crimes against humanity directed at people considered threats to the political system: political-prison-camp inmates, other political prisoners, defectors, Christians and other religious believers, and people thought to introduce subversive influences. It also found starvation-related crimes arising from policies adopted with knowledge that they would worsen starvation and deaths.⁶⁷

The *Drélingas* conversion is almost effortless. Dissidents preserve an alternative Korean political consciousness. Christians preserve religious communities. Defectors and independent information networks challenge state monopoly over culture and national identity. Political prisoners can be characterized as a significant segment of the Korean national group because the regime treats them as a threat to the nation it seeks to monopolize.

If that is enough, the crimes against humanity become genocide. If it is not enough, the principled reason why should also constrain *Drélingas*.

Sri Lanka: the closest modern structural analogy

Sri Lanka supplies a different kind of test. The LTTE was a political and military organization overwhelmingly associated with the Tamil ethnic population and claiming to represent Tamil national aspirations. The Sri Lankan state sought to destroy it militarily. The OHCHR Investigation on Sri Lanka documented patterns of unlawful killings, disappearances, torture, sexual violence, attacks on civilians and other conduct that, if established in court, could constitute war crimes and crimes against humanity; the international accountability record has generally proceeded through those categories rather than an adjudicated genocide of Tamils.⁶⁸

The structural analogy to Lithuania is uncomfortable. An armed resistance or separatist movement is politically and militarily defined; it is overwhelmingly composed of members of a protected ethnic

20181217%20Summary%20of%20Judgement%20Case%20002-02%20ENG_FINAL%20FOR%20PUBLICATION.pdf

⁶⁶ Tatiana E. Sainati, "Toward a Comparative Approach to the Crime of Genocide," *Duke Law Journal* 62 (2012): 161-202. <https://scholarship.law.duke.edu/dlj/vol62/iss1/4/>

⁶⁷ United Nations Commission of Inquiry on Human Rights in the DPRK, report materials and Q&A, documenting crimes against humanity against political prisoners, defectors, religious believers, and others considered threats to the political system. <https://seoul.ohchr.org/en/node/400> <https://seoul.ohchr.org/sites/default/files/2022-01/coi-dprk-q-and-a.pdf>

⁶⁸ OHCHR, "Report of the OHCHR Investigation on Sri Lanka (OISL)," A/HRC/30/CRP.2 (2015). <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session30/documents/a-hrc-30-crp-2.pdf>

group; it claims to embody that group's political future; and its destruction can be narrated as destruction of a significant political leadership stratum of the ethnic group. If Lithuania's anti-Soviet partisans cross the boundary through national significance, a legal system applying the same technique could construct the Tamil resistance as a qualitatively significant part of the Tamil ethnic group.

The comparison does not convert the destruction of the LTTE into genocide; it demonstrates that *Drélingas* makes the conversion argument available.

The outer limit

The same exercise can be pushed further—to Syrian opposition populations, victims of anti-drug campaigns, officer corps, professional classes, religious dissidents and other groups. At some point the comparison becomes absurd, which identifies the work performed by a limiting rule: it stops analogy before distinct crimes collapse into one category.

The protected-group requirement was one such stopping rule. *Drélingas* did not formally delete it; the judgment made the boundary more negotiable.

Gaza: the control case

Gaza is the control because the protected-group problem does not exist. Palestinians are a national group protected by Article II, and Palestinians in Gaza plainly constitute a legally serious part of that group. The disputed element for present purposes is specific intent.

The ICJ has not adjudicated genocide on the merits

The [International Court of Justice case, *South Africa v. Israel*](#), remains pending. The Court's 2024 orders were provisional-measures decisions, not merits judgments. The 26 January 2024 order found *prima facie* jurisdiction and plausible Convention rights and did not determine the merits.⁶⁹

Israel filed its Counter-Memorial on 12 March 2026. The subsequent public procedural record states that it includes objections to jurisdiction and admissibility as well as Israel's response. The written pleadings are not public. On 21 May 2026 the ICJ ordered a second round: South Africa's Reply is due 22 November 2027 and Israel's Rejoinder 22 May 2029.⁷⁰ I therefore cannot test the full adversarial evidentiary record now before the Court.

No ICJ merits judgment has found Israel responsible for genocide in Gaza.

The Commission of Inquiry's intent chain

The strongest contrary public legal analysis must be engaged on its own terms. In A/HRC/60/CRP.3 of 16 September 2025, the UN Independent International Commission of Inquiry concluded that Israeli authorities and security forces had committed genocide in Gaza. Its reasoning combines

⁶⁹ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 26 January 2024, especially paras. 30-32, 54, and 84. <https://www.icj-cij.org/node/203447>

⁷⁰ South African Presidency, 15 March 2026, confirming Israel filed its response on 12 March 2026; Presidency, 2 June 2026, reporting that Israel's March filing was a Counter-Memorial containing jurisdictional objections and that written pleadings remain confidential; ICJ Order of 21 May 2026 setting 22 November 2027 and 22 May 2029 deadlines. <https://www.thepresidency.gov.za/south-africa-notes-israels-response-filing-icj> <https://thepresidency.gov.za/presidency-notes-icj-order-21-may-2026-matter-between-government-republic-south-africa-and-state> <https://www.icj-cij.org/case/192>

statements treated as direct evidence of intent with an inference from the overall pattern of conduct. The Commission acknowledged Israel's stated objectives – self-defence, neutralizing Hamas's military and governing capabilities, and securing the release of hostages – but concluded that those objectives did not provide a reasonable alternative inference from the totality of the conduct. It therefore treated genocidal intent as the only reasonable inference.⁷¹

The legal dispute lies in that inferential step. The Commission does not deny that alternative objectives were asserted; it rejects them as reasonable explanations of the conduct from which it infers an intent to physically or biologically destroy Palestinians in Gaza as such.

The existing ICJ rule

In *Croatia v. Serbia*, paragraph 148, the ICJ held that where genocidal intent is inferred from a pattern of conduct, the genocidal inference must be the only reasonable inference from the acts.⁷² The Court found extensive *actus reus* in parts of Croatia but rejected genocide because the required specific intent had not been proved. The judgment also distinguished forced displacement from physical or biological destruction and declined to convert even grave campaigns of removal and violence into genocide without the required destructive intent.⁷³

Multiple purposes are possible in principle. A military purpose does not logically preclude a simultaneous genocidal purpose. The evidentiary question is whether the destructive purpose required by Article II has actually been established and, where it is inferred from a pattern, whether reasonable alternative inferences have been excluded under the Court's existing rule.

The dispute over changing the intent rule is public

Adil Ahmad Haque defends Amnesty International's genocide analysis and argues that military and genocidal purposes can coexist.⁷⁴ Amichai Cohen and Yuval Shany argue that Amnesty's treatment of intent effectively seeks a broader rule than the ICJ currently applies, a proposition that can be defended as *lex ferenda* but should not be presented as settled *lex lata*.⁷⁵ Kenneth Roth has criticized the ICJ's restrictive treatment of alternative purposes and urged doctrinal change.⁷⁶

Those interventions establish an observable point: part of the contemporary disagreement is about whether the existing inferential rule should change. The consistency test should therefore be empirical. Do advocates of a broader intent rule apply the same rule across defendants and atrocity settings?

⁷¹ Independent International Commission of Inquiry on the Occupied Palestinian Territory, "Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide," A/HRC/60/CRP.3, 16 September 2025, especially paras. 177-179, 218-220, 251-255. The Commission acknowledges Israel's stated objectives, rejects them as reasonable alternative explanations on its totality analysis, and concludes that genocidal intent is the only reasonable inference.

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session60/advance-version/a-hrc-60-crp-3.pdf>

⁷² ICJ, *Croatia v. Serbia*, Judgment, 3 February 2015, para. 148 (genocidal intent inferred from a pattern must be the only reasonable inference); see also paras. 132-148 on physical/biological destruction and inference. <https://www.icj-cij.org/case/118>

⁷³ ICJ, *Croatia v. Serbia*, Judgment, 3 February 2015, especially paras. 417-440 on the alleged pattern of destruction and displacement, read with para. 148's "only reasonable inference" test. <https://www.icj-cij.org/case/118>

⁷⁴ Adil Ahmad Haque, "The Amnesty International Report on Genocide in Gaza," *Just Security*, 16 December 2024, defending the compatibility of simultaneous military and genocidal purposes. <https://www.justsecurity.org/105629/amnesty-international-gaza-genocide-report/>

⁷⁵ Amichai Cohen and Yuval Shany, "A 'Cramped Interpretation of International Jurisprudence'? Some Critical Observations on the Amnesty International Genocide Report on Gaza," *Just Security*, 16 December 2024, distinguishing *lex lata* from a broader *lex ferenda* approach to intent. <https://www.justsecurity.org/105790/critical-amnesty-international-gaza-genocide/>

⁷⁶ Kenneth Roth, "Why the reluctance to recognize Israel's genocide in Gaza?", *The Guardian*, 24 July 2025, criticizing the ICJ's restrictive treatment of alternative purposes and urging doctrinal change. <https://www.theguardian.com/commentisfree/2025/jul/24/israel-genocide-gaza>

Past institutional classifications illustrate why that question cannot be answered by presumed motive. In September 2017, while Kenneth Roth headed Human Rights Watch, HRW characterized the Burmese military's campaign against the Rohingya as crimes against humanity and ethnic cleansing in the publication cited here.⁷⁷ In June 2021, Amnesty International concluded that China's abuses against Uyghurs, Kazakhs, and other Muslim minorities supplied a factual basis for at least the crimes against humanity of imprisonment, torture, and persecution.⁷⁸ Those earlier classifications do not prove inconsistency in later Gaza analysis; the facts, evidence, institutions, and legal arguments differ. They show how to test the defendant-specific hypothesis: compare the rule actually proposed and applied across cases rather than infer an agenda from the identity of the defendant.

The bounded conclusion I can defend

Because Israel's 2026 Counter-Memorial and the complete written record are not public, I do not claim to have adjudicated the pending merits case. The conclusion I can defend from the public legal record is narrower and still consequential:

Genocide has not been legally established in Gaza under the existing ICJ merits standard. A future genocide judgment would have to prove the Convention's existing elements, including dolus specialis, on the full record. Proposals to alter the inferential rule should be identified and defended as changes in the law, then tested for cross-defendant consistency; they cannot be treated as though the proposed rule were already the settled standard.

The symmetry with Lithuania is methodological. Lithuanian courts could not make the protected-group limitation disappear merely because it obstructed the Soviet-genocide classification. Gaza accusers cannot make the specific-intent requirement disappear merely because civilian destruction is immense. Each limiting element retains legal force when it prevents a genocide conclusion that an advocate believes the facts morally deserve.

My September 2026 essay "[The Évian Test for Israel's Genocide Accusers](#)" developed this argument publicly before this piece; I cite it as intellectual provenance, not as authority for the underlying law.⁷⁹

How genocide inflation destroys genocide

Jordan Pope identifies the moral pressure behind expansion: genocide carries a stigma and symbolic authority that other international crimes do not, so atrocity labeling gravitates toward it.⁸⁰ Pope's response is formal reform. The Lithuanian sequence shows what happens when expansion occurs through interpretation while Article II's text remains nominally unchanged.

The result is a predictable pressure on every limiting element. A social group can be redescribed as a national subgroup. Political leadership becomes national essence. Cultural importance becomes

⁷⁷ Human Rights Watch, "Crimes against Humanity by Burmese Security Forces Against the Rohingya Muslim Population in Northern Rakhine State since August 25, 2017," 25 September 2017, characterizing the campaign as crimes against humanity and ethnic cleansing. <https://www.hrw.org/news/2017/09/25/crimes-against-humanity-burmese-security-forces-against-rohingya-muslim-population>

⁷⁸ Amnesty International, "Like We Were Enemies in a War: China's Mass Internment, Torture, and Persecution of Muslims in Xinjiang," 10 June 2021, concluding that the evidence established at least the crimes against humanity of imprisonment, torture, and persecution. <https://www.amnesty.org/en/documents/asa17/4137/2021/en/>

⁷⁹ Grant Arthur Gochin, "The Évian Test for Israel's Genocide Accusers," Substack, 11 September 2026. Cited for intellectual provenance, not as independent legal authority. <https://grantgochin.substack.com/p/the-evian-test-for-israels-genocide>

⁸⁰ Pope, "And Then They Came for Us," 289-307. <https://academic.oup.com/jicj/article/24/2/289/8551294>

substantiality. Displacement is pressed toward destruction. Knowledge and foreseeable civilian death are pressed toward specific intent. Each move may arise from a genuine desire to recognize suffering, but the cumulative effect is to weaken the distinctions that make genocide a separate crime.

If genocide comes to cover the Holocaust, Srebrenica, protected-minority destruction, political purges, class extermination, catastrophic famine, counterinsurgency, ethnic cleansing, forced displacement, urban warfare, and every mass-casualty campaign to which maximal moral condemnation attaches, the term no longer identifies which crime occurred. It becomes a superlative rather than a classification.

The law does not dishonor victims by distinguishing crimes. Murder is not less criminal because it is not torture. Crimes against humanity are not lesser crimes because genocide requires a protected-group structure and a special destructive intent. Legal categories retain meaning because some terrible conduct falls outside them.

Return to Lithuania

Retroactivity forced Lithuanian institutions to show each step of the legal construction.

The 1998 legislature broadened the domestic crime beyond Article II. The 2014 Constitutional Court recognized that political/social-group genocide could not be projected backward and articulated the significant-part bridge. The 2015 Grand Chamber held that the *Vasiliauskas* conviction had not lawfully crossed that bridge. In February 2016, *M.M.* demonstrated a genuine limiting application: political-group genocide alone could not be imposed retroactively and special intent still had to be proved. In April 2016, the Supreme Court used a different route in *Drėlingas*, connecting political affiliation to national and ethnic membership and building a fuller case from leadership, culture, identity, survival, and contested resistance figures. In October it annulled the old *Vasiliauskas* conviction while preserving the new theory. The Committee of Ministers closed execution supervision in December 2017. In 2019 the Fourth Section held there was no Article 7 violation but expressly declined to decide whether the Supreme Court's interpretation was valid.

The sequence supports a bounded conclusion without a theory of hidden coordination:

The Lithuanian legal system encountered a limiting rule of the Genocide Convention, legislated beyond it domestically, and developed a judicial route by which an excluded political population could be treated as a significant national and ethnic part when retroactivity made the broader domestic definition unavailable. At the domestic level, the sequence is properly described as outcome-preserving judicial activism: the genocide classification remained fixed while the doctrinal route was reconstructed. European institutions then allowed that reconstruction to carry legal consequences through deference without an international court deciding the validity of the underlying protected-group interpretation.

Motoc's dissent supplies the internal warning: she treated the result as the first international recognition of "ethno-political genocide," described the majority as expanding genocide beyond international criminal law, and warned that other countries could follow.⁸¹ Pope's later scholarship

⁸¹ Motoc dissent, *Drėlingas*, §§ 1-2, 5-6. She argued that the case required Grand Chamber treatment, called the result the first international recognition of "ethno-political genocide," warned that other countries could follow, and criticized expansion beyond international criminal law. <https://hudoc.echr.coe.int/eng?i=001-191702>

reads *Drèlingas* in expansionary terms as well.⁸² The doctrine therefore has an afterlife beyond the sentence imposed on one former Soviet officer.

Conclusion: if this is genocide, what isn't?

Soviet mass repression does not require euphemism. Mao's famine does not require euphemism. Khmer Rouge extermination, North Korean political terror, Sri Lankan wartime atrocities, and Palestinian civilian suffering do not become minor because one element of genocide is absent. International criminal law already contains categories for mass killing, extermination, persecution, torture, deportation, starvation-related crimes, and crimes against humanity.

Vasiliauskas preserved a boundary by refusing to sustain a retroactive genocide conviction whose domestic core was a separate political-group theory. *Drèlingas* produced a different route: the political criterion remained operative, but the Supreme Court connected it to national and ethnic membership and qualitative significance. The factual case was stronger because Vanagas was a major leader. The resulting legal technique was broader because it made political selection compatible with Convention membership through national importance.

The ECtHR's contribution must be stated with the same precision demanded of Lithuania. The Fourth Section did not hold that the Supreme Court's interpretation was valid genocide law. It expressly declined to decide that question. Yet the conviction survived, after the Committee of Ministers had already treated the domestic response to *Vasiliauskas* as sufficient for execution purposes. I call that institutional pathway expansion by deference: protected-group conversion acquired European legal effect without substantive international validation.

That pathway is capable of travel. If political resistance can become a protected national part because it carries national leadership, culture, consciousness, or survival, the same argument becomes available for many political and social populations deliberately excluded from Article II. Motoc herself pointed toward Stalin, Mao, and Pol Pot. Cambodia shows why the distinction matters: the law can condemn political extermination as crimes against humanity while reserving genocide for destruction of protected groups as such.

Gaza tests the reciprocal limit. Palestinians already satisfy the protected-group requirement; the contested element is specific intent. Under existing ICJ doctrine, catastrophic consequences do not dispense with the requirement to establish the destructive intent defined by Article II. If scholars or institutions want a broader inferential rule, they can argue for it openly and apply it consistently across defendants.

Genocide acquired exceptional legal and moral force because it named a particular crime rather than every atrocity at the summit of moral condemnation. Inflation weakens that discriminatory power. Lithuania's litigation did not formally erase Article II. It demonstrated how one of its deliberate limits could become negotiable through protected-group conversion, how an adverse judgment could be met by outcome-preserving judicial reconstruction, and how that reconstruction could survive European review through deference without a merits ruling on its validity. That combination is the damage examined here.

⁸² Pope, "And Then They Came for Us," 289-307. <https://academic.oup.com/jicj/article/24/2/289/8551294>

Author's note and positionality

I am not a lawyer. I am a participant-author with an openly adversarial history in disputes over Lithuanian Holocaust memory and state historical institutions. My ECtHR application, *Gochin v. Lithuania*, no. 10930/21, was filed in 2021, later declared inadmissible, and is closed. In earlier Lithuania-related litigation I was represented by William Schabas and Arthur Traldi. I am a former Chairman and primary donor of the Maceva Project, which restores Lithuanian Jewish cemeteries.

In 2026 I applied twice for the position of Director General of the Lithuanian Genocide and Resistance Research Centre: an initial application process began in February 2026, with a consolidated dossier submitted on 6 March; the Council declined that candidacy on 8 April on procedural/documentary grounds. I transmitted a second application on 17 July 2026; I have not located an institutional disposition of that second application.⁸³

I have also published related public arguments, including “[Lithuania’s Genocide Inflation](#)” on 25 April 2026 and “[The Évian Test for Israel’s Genocide Accusers](#)” on 11 September 2026. Those publications disclose intellectual provenance and overlap; they are not used as authority for the underlying historical or legal claims. The analysis here rests on independently citable judicial records, statutes, official materials, and scholarship.

⁸³ Author disclosure. *Gochin v. Lithuania*, ECtHR Application No. 10930/21, is closed as inadmissible. The dates of the 2026 LGGRTC Director General applications derive from the author’s application record: initial process beginning 22 February 2026, consolidated dossier 6 March 2026, Council refusal 8 April 2026, and second application transmitted 17 July 2026. Related public publications include “[Lithuania’s Genocide Inflation](#)” (25 April 2026) and “[The Évian Test for Israel’s Genocide Accusers](#)” (11 September 2026). The disclosure identifies these relationships; they are not authority for the article’s underlying claims.