

*Dovilė Sagatiene**

CHAMPIONING ACCOUNTABILITY: LITHUANIA'S LEADERSHIP IN INVESTIGATING RUSSIAN CRIMES IN UKRAINE

Abstract: *This article explores the role of Lithuania in seeking accountability for Russia's crimes in Ukraine since 2022. This small Baltic state, being both an EU and NATO member for twenty years now, is advocating on behalf of their Ukrainian colleagues in many international arenas and forums. However, more than two years into the brutal war, some organisational and legal challenges have started to emerge. These include the challenges resulting from the complex international institutional framework, as well as legal ones related to universal jurisdiction and the scope of crimes included under current criminal investigations.*

Keywords: Lithuania, Ukraine, accountability, justice, international crimes, universal jurisdiction, genocide, Russia, Soviet Union

INTRODUCTION

Since 2022, following Russia's invasion in Ukraine, Lithuania has been actively advocating for justice and accountability across several platforms globally.¹ As was noted by Dr. G. Grigaitė-Daugirdė (Deputy Minister of Justice of Lithuania), "Lithuania has repeatedly advocated the need to establish a special tribunal and use legal mechanisms to implement the states' obligations to international law, to

* Postdoctoral Researcher (Ph.D.); Centre for Military Studies, Department of Political Science, Copenhagen University (Denmark); email: dovile.sagatiene@gmail.com; ORCID: 0000-0002-9842-667X. The preparation of this article has been supported by the Volkswagen Foundation research grant no. 120221 allocated for the consortium project MEMOCRACY (2021–2024).

¹ J.H. Anderon, *Why Lithuania is at the forefront of the Ukrainian lawfare*, JusticeInfo.Net, 9 September 2022, available at: <https://www.justiceinfo.net/en/106188-why-lithuania-forefront-ukrainian-lawfare.html> (accessed 30 August 2024).

ensure the criminal responsibility of the regimes of Russia and Belarus.² Moreover, in 2022 the Lithuanian Parliament adopted a resolution which recognised the actions of the Russian Federation in Ukraine as genocide, and further urged for the establishment of a special international tribunal to investigate the crime of Russian aggression.³

After Russia invaded Ukraine, Lithuania led the way in mobilising governments to defend Ukraine through international law: Lithuania first referred the Ukrainian situation to the International Criminal Court (ICC, 2002);⁴ it pushed for the establishment of the Joint Investigative Team (JIT) at Eurojust (European Union Agency for Criminal Justice Cooperation),⁵ which is gathering evidence for potential war crimes trials; has sent teams of investigators to work with their Ukrainian colleagues;⁶ has lobbied for the establishment of a special tribunal to prosecute Russian aggression;⁷ and supported Ukraine's case against Russia at the International Court of Justice (ICJ) regarding the false allegations by Russia that Ukraine was engaged in an ongoing genocide against Russian-speaking people in the eastern

² G. Grigaitė-Daugirdė in *Kyiv: it's time to move faster to achieve justice for Ukraine*, 15min.Lt, 23 August 2023, available at: <https://www.15min.lt/naujiena/aktualu/lietuva/g-grigaitė-daugirdė-kyjivė-laikas-zengti-sparciau-siekiant-teisingumo-ukrainai-56-2099952>; G. Grigaitė-Daugirdė: *named principles for ensuring responsibility for aggression against Ukraine*, 15Min.Lt, 12 September 2023, available at: <https://www.15min.lt/naujiena/aktualu/lietuva/g-grigaitė-daugirdė-ivardinti-principai-uztikrinti-atsakomybei-uz-agresija-pries-ukraina-56-2109776> (both accessed 30 August 2024).

³ Parliament of the Republic of Lithuania Resolution of 5 October 2022 on the Recognition of the actions of the Russian Federation in Ukraine as genocide and the establishment of the Special International Criminal Tribunal to investigate the crime of Russian aggression, XIV-1070, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/4152dc40d03b11ecb1b39d276e924a5d> (accessed 30 August 2024).

⁴ AFP, *ICC: Historic state referrals accelerate opening of an investigation on Ukraine*, JusticeInfo.Net, 2 March 2022, available at: <https://www.justiceinfo.net/en/88144-icc-historic-state-referrals-accelerates-opening-investigation-ukraine.html> (accessed 30 August 2024).

⁵ J. Crawford, *Ukraine, ICC and EuroJust: How will that work*, JusticeInfo.Net, 5 May 2022, available at: <https://www.justiceinfo.net/en/91763-ukraine-icc-eurojust-how-will-that-work.html>; *EuroJust, Press conference – Joint investigation team on alleged core intl. crimes in Ukraine*, YouTube, 31 May 2022, available at: https://www.youtube.com/watch?v=_HW9AcF-AxI&t=351s; *Two years on – A timeline of Eurojust's response to the war in Ukraine*, EuroJust, 29 February 2024, available at: <https://www.eurojust.europa.eu/sites/default/files/assets/two-years-on-a-timeline-of-eurojust-s-response-to-the-war-in-ukraine-en.pdf>; *Agreement to extend the joint investigation team into alleged core international crimes in Ukraine for two years*, Press release, EuroJust, 29 February 2024, available at: <https://www.eurojust.europa.eu/news/agreement-extend-joint-investigation-team-alleged-core-international-crimes-ukraine-two-years> (all accessed 30 August 2024).

⁶ J.H. Anderson, *A Nuremberg for Russia's Crime of Aggression?*, JusticeInfo.Net, 22 April 2022, available at: <https://www.justiceinfo.net/en/91135-nuremberg-russia-crime-of-aggression.html> (accessed 30 August 2024).

⁷ *MEPs back Lithuanian resolution on tribunal for Russia*, LRT.Lt, 19 January 2023, available at: <https://www.lrt.lt/en/news-in-english/19/1870870/meps-back-lithuanian-resolution-on-tribunal-for-russia> (accessed 30 August 2024).

part of the country.⁸ Given that the results from cases in the international legal arena – including the decisions by the ICJ of 2 February 2024 in two cases against Russia initiated by Ukraine regarding terrorism financing and racial discrimination, as well as genocide allegations – are not very encouraging, many challenges remain for Lithuania to continue its legal efforts.⁹ The increasing organisational and legal challenges behind these efforts include issues caused by a complex international institutional framework, as well as legal complications related both to universal jurisdiction and the scope of the crimes included under current investigations.

1. THE CHALLENGES OF A COMPLEX INSTITUTIONAL FRAMEWORK

The international institutional framework for the prosecution of international crimes at the moment consists of several different types of institutions; the prime among them being the ICC, the Hague-based tribunal which has itself issued arrest warrants for Putin and Maria Lvova-Belova – Russia’s Commissioner for Children’s Rights – for deporting Ukrainian children to Russia.¹⁰ War crimes are also prosecuted in Ukraine’s own courts.¹¹ Up until April 2023, approximately 80,000 incidents of potential war crimes have been registered, and to date 31 Russians have been convicted of war crimes in Ukrainian courts.¹² Several countries are conducting their

⁸ M. Quell, T. Cruvellier, *The International Court of Justice orders Russia to stop its invasion of Ukraine*, JusticeInfo.Net, 17 March 2022, available at: <https://www.justiceinfo.net/en/88936-international-court-of-justice-orders-russia-stop-invasion-ukraine.html>; *Readout of Assistant Attorney General Kenneth A. Polite, Jr.’s Trip to Lithuania*, US Department of Justice – Office of Public Affairs, 17 April 2023, available at: <https://www.justice.gov/opa/pr/readout-assistant-attorney-general-kenneth-polite-jr-s-trip-lithuania>. ICJ, *Allegations of Genocide under the convention on the prevention of punishment of the crime of genocide’ (Ukraine v. Russian Federation)*, Written observations of the Republic of Lithuania, 5 July 2023, ICJ Rep 2023, available at: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20230705-wri-11-00-en.pdf> (all accessed 30 August 2024).

⁹ ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Judgment, 2 February 2024, ICJ Rep 2024.

¹⁰ *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, International Criminal Court, 17 March 2023, available at: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (accessed 30 August 2024).

¹¹ G. Nuridzhanian, *Prosecuting war crimes: are Ukrainian courts fit to do it?*, EJIL: Talk!, 11 August 2022, available at: <https://www.ejiltalk.org/prosecuting-war-crimes-are-ukrainian-courts-fit-to-do-it/> (accessed 30 August 2024).

¹² *Ukraine War Crimes Investigations and Prosecutions: More Support Needed*, American Bar Association, 24 May 2023, available at: https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/may-23-wl/ukraine-0523wl/ (accessed 30 August 2024).

own investigations under universal jurisdiction, namely: Germany,¹³ Lithuania,¹⁴ Estonia,¹⁵ and Latvia. By September 2022, Norway, Poland, Slovakia, Spain, Sweden, and Switzerland all declared their intentions of starting similar investigations.¹⁶ Until November 2023, cases have been opened in Spain¹⁷ and Sweden.¹⁸ As of January 2023, the competent authorities of 20 countries have started their own investigations or collections of evidence to investigate Russia's commission of international crimes.¹⁹ There are also ongoing discussions to create an International Criminal Tribunal for the Russian Federation as an *ad hoc* international criminal tribunal aimed at prosecuting the Russian Federation and senior Russian and Belarusian leaders for the Russian invasions of Ukraine for one or more crimes of aggression, as a complement to the existing ICC investigation in Ukraine.²⁰

More specific institutional frameworks involve various institutions focusing on investigating Russian crimes in Ukraine. Chronologically, within a month of the start of the war in Ukraine, the following institutions have taken action. including Eurojust, actively supported the setting up of the JIT by the Lithuanian, Polish

¹³ B. Pancevski, *Germany Opens Investigation Into Suspected Russian War Crimes in Ukraine*, The Wall Street Journal, 8 March 2022, available at: <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-03-08/card/germany-opens-investigation-into-suspected-russian-war-crimes-in-ukraine-bNCphaIWE30f2REH8BCi> (accessed 30 August 2024).

¹⁴ *Lithuanian prosecutors to probe filmmaker's killing in Ukraine as war crime*, LRT.Lt, 4 May 2022, available at: <https://www.lrt.lt/en/news-in-english/19/1662906/lithuanian-prosecutors-to-probe-filmmaker-s-killing-in-ukraine-as-war-crime>; *The Ministry of Justice asks the Prosecutor General's Office to launch a pre-trial investigation against Putin and Lukashenko*, LRV.Lt, 15 March 2022, available at: <https://tm.lrv.lt/en/news/the-ministry-of-justice-asks-the-prosecutor-generals-office-to-launch-a-pre-trial-investigation-against-putin-and-lukashenko> (both accessed 30 August 2024).

¹⁵ *Estonia's Internal Security Service also investigating war crimes committed in Ukraine*, The Baltic Times, 30 March 2022, available at: <https://tinyurl.com/z4vku4s8> (accessed 30 August 2024).

¹⁶ *Universal Criminal Jurisdiction in Ukraine: Country's legal community is putting public pressure on the prosecutor general, the president's office and the government to incorporate principles*, Institute for War & Peace Reporting, 20 September 2022, available at: <https://iwpr.net/global-voices/universal-criminal-jurisdiction-ukraine> (accessed 30 August 2024).

¹⁷ *Spain opens probe into 'serious violations' by Russia in Ukraine*, The Local: Spain, 8 March 2022, available at: <https://www.thelocal.es/20220308/spain-opens-probe-into-serious-violations-by-russia-in-ukraine> (accessed 30 August 2024).

¹⁸ *Sweden launches investigation into Ukraine war crimes*, The Local: Sweden, 5 April 2022, available at: <https://www.thelocal.se/20220405/sweden-launches-investigation-into-ukraine-war-crimes> (accessed 30 August 2024).

¹⁹ Poland, Estonia, Latvia, Slovakia, Romania, Belgium, Canada, Czech Republic, France, Germany, Ireland, Italy, Netherlands, Norway, Spain, Switzerland, Sweden, Great Britain, USA (K. Latysh, M. Rogers, *Universal Jurisdiction: current situation analysis in Lithuania*, Ministry of Justice of the Republic of Lithuania, Vilnius: 2023, p. 35, available at <http://bit.ly/47IJ5YR> (accessed 30 August 2024)).

²⁰ *Ukraine war: MEPs push for special tribunal to punish Russian crimes*, European Parliament News, 19 January 2023, available at: <https://www.europarl.europa.eu/news/en/press-room/20230113IPR66653/ukraine-war-meps-push-for-special-tribunal-to-punish-russian-crimes> (accessed 30 August 2024).

and Ukrainian authorities on 25 March 2022²¹ that now consists of Ukraine, six EU Member States, the ICC and Europol (European Union Agency for Law Enforcement Cooperation).²² Further, and in line with its mandate, Europol aims to provide analytical and forensic support to the members of the JIT through the collection and analysis of data legally obtained from open sources such as social media and broadcast television and radio – known collectively as open-source intelligence (OSINT).²³ Within the scope of OSINT, in November 2023 a new Operational Taskforce (OTF) was set up by Europol to assist the ongoing investigations²⁴ and to help identify suspects and their involvement in war crimes, crimes against humanity, or genocide committed in Ukraine.²⁵ The Office of the Prosecutor at the ICC became a participant in the JIT on 25 April 2022, Estonia, Latvia and Slovakia joined the JIT on 30 May 2022,²⁶ and Romania became a member on 13 October 2022. In addition, under the scope of Eurojust, a Core International Crimes Evidence Database (CICED) was established in February 2023, thereby recognising and accounting for the specific evidentiary challenges related to these types of investigations, and based on an urgent amendment of Eurojust's mandate.²⁷

The International Centre for the Prosecution of the Crime of Aggression Against Ukraine (ICPA), which the ICC cannot prosecute, has also been hosted by Eurojust

²¹ S. Maupas, *War in Ukraine: Some European prosecutors want to unite in the face of war crime*, Le Monde, 3 June 2022, available at: https://www.lemonde.fr/en/international/article/2022/06/03/war-in-ukraine-some-european-prosecutors-want-to-unite-in-the-face-of-war-crimes_5985507_4.html (accessed 30 August 2024).

²² *Eurojust and the war in Ukraine*, EuroJust, available at: <https://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine>; *Europol participates in joint investigation team into alleged core international crimes in Ukraine*, Europol, 5 October 2023, available at: <https://www.europol.europa.eu/media-press/newsroom/news/europol-participates-in-joint-investigation-team-alleged-core-international-crimes-in-ukraine> (both accessed 30 August 2024).

²³ *Europol's solidarity with Ukraine*, Europol, 16 October 2023, available at: <https://www.europol.europa.eu/europol%E2%80%99s-solidarity-ukraine>; *Europol participates in joint investigation team into alleged core international crimes in Ukraine*, EuroJust, 5 October 2023, available at: <https://www.eurojust.europa.eu/news/europol-participates-joint-investigation-team-alleged-core-international-crimes-ukraine> (both accessed 30 August 2024).

²⁴ *Europol sets up OSINT taskforce to support investigations into war crimes committed in Ukraine*, Europol, 21 November 2023, available at: <https://www.europol.europa.eu/media-press/newsroom/news/europol-sets-osint-taskforce-to-support-investigations-war-crimes-committed-in-ukraine> (accessed 30 August 2024).

²⁵ Participating countries: Belgium, France, Germany, Ireland, Italy, Lithuania, The Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Norway, United Kingdom, United States of America.

²⁶ *Estonia, Latvia, Slovakia join Lithuania-initiated war crime probe team*, LRT.Lt, 31 May 2022, available at: <https://www.lrt.lt/en/news-in-english/19/1707622/estonia-latvia-slovakia-join-lithuania-initiated-war-crime-probe-team> (accessed 30 August 2024).

²⁷ *Core International Crimes Evidence Database (CICED)*, EuroJust, 23 February 2023, available at: <https://www.eurojust.europa.eu/publication/core-international-crimes-evidence-database-ciced> (accessed 30 August 2024).

since February 2023.²⁸ The ICPA includes prosecutors from Ukraine, the European Union, and the ICC.²⁹ In addition to Ukraine, five of the JIT members (Lithuania, Latvia, Estonia, Poland and Romania) are participating in the ICPA's start-up phase, which is a unique judicial hub fostering cooperation between national prosecutors, and enabling the exchange of evidence and a common prosecution strategy.³⁰ The US, which is not an ICC member, is also part of the initiative.

This prolonged engagement with extensive international procedures constitutes a significant strain on resources and manpower, potentially resulting in limited outcomes in the investigations conducted. With Lithuania assuming a leadership position within the JIT, the responsibility for equitable participation becomes particularly challenging due to limited resources, both in terms of cost and workload. On 1 March 2022, the Lithuanian Prosecutor General's Office initiated a pre-trial investigation into aggression, war crimes, and crimes against humanity committed in Ukraine.³¹ So far, over 300 witnesses have been interviewed and more than 90 individuals have been officially recognized as victims.³² Moreover, the work on this pre-trial investigation significantly increases the usual workload of prosecutors. As the Prosecutor General explains: "There is a lot of work here. (...) It is not enough to interview people, you need to communicate with them, you need to convince them to testify. All circumstances are important to us; we have to interview people and help Ukraine collect as much evidence as possible so that they can submit it to the ICC."³³

Another challenge is the dual role of the selected national prosecutors, necessitating their simultaneous contributions to distinct formats. At the moment, four Lithuanian prosecutors are appointed as European-delegated prosecutors; three prosecutors participate in missions; one prosecutor currently works at the ICC and

²⁸ *International Centre for the Prosecution of the Crime of Aggression against Ukraine*, EuroJust, available at: <https://www.eurojust.europa.eu/international-centre-for-the-prosecution-of-the-crime-of-aggression-against-ukraine> (accessed 30 August 2024).

²⁹ *The Hague: Center to probe Russia's war in Ukraine opens*, Deutsche Welle, 7 March 2023, available at: <https://www.dw.com/en/russia-invasion-ukraine-investigation-the-hague/a-66097700> (accessed 30 August 2024).

³⁰ *Eurojust and the war in Ukraine*, EuroJust, available at: <https://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine> (accessed 30 August 2024).

³¹ *The ambassador of Ukraine to Lithuania also urges the witnesses of war crimes in Ukraine to contact the Lithuanian law enforcement*, Lietuvos Respublikos Prokuratūros, 6 May 2022, available at: <https://www.prokuraturos.lt/lt/karo-nusikaltimu-ukrainoje-liudytojus-kreiptisilietuvos-teisesauga-ragina-ir-ukrainos-ambasadorius-lietuvoje/8362> (accessed 30 August 2024).

³² I. Jačauskas, *Lithuania's investigation recognises 90 people as victims of war crimes in Ukraine*, LRT.Lt, 30 March 2023, available at: <https://www.lrt.lt/en/news-in-english/19/1950516/lithuania-s-investigation-recognises-90-people-as-victims-of-war-crimes-in-ukraine> (accessed 30 August 2024).

³³ E. Kubilius, *Grunskienė apie nepakankamą finansavimą prokuratūrai: kalbėsiu tol, kol valdžia mane išgirs* [Grunskienė on insufficient funding for the prosecutor's office: I will speak until the government hears me], LRT.Lt, 30 March 2023, available at: <https://www.lrt.lt/naujienos/lietuvoje/2/1950295/grunskiene-apie-nepakankama-finansavima-prokuraturai-kalbesiu-tol-kol-valdzia-mane-iscirs> (accessed 30 August 2024).

helps investigate the Ukraine case; and two prosecutors are delegated to Eurojust.³⁴ The same persons usually also need to address the tasks required by other institutions, including the ICPA, which “should contribute to the exchange and analysis of evidence”,³⁵ and Eurojust, which should provide operational, legal, financial, and logistical support.

2. THE INVESTIGATIONS OF RUSSIAN CRIMES IN UKRAINE BY LITHUANIAN AUTHORITIES

2.1. Local struggles of universal jurisdiction

Lithuania was among the first states to open domestic investigations, relying on universal jurisdiction to investigate Russian crimes in Ukraine. One case is now open regarding war crimes committed in Ukraine, and another two regard crimes against humanity (specifically, torture) committed in Belarus after the 2020 protests.³⁶ This case, which now includes 90 victims, may face many challenges based on universal jurisdiction, which were described in detail in a recent project commissioned by the Ministry of Justice of the Republic of Lithuania and authored by Dr. Kateryna Latysh and Dr. Monika Rogers.³⁷ The list of potential obstacles includes:

- the quality of evidence and the sharing of it;
- the presence and rights of the accused;
- immunities from prosecution and amnesties as means of impunity;
- the lack of specific knowledge about International Criminal Law;
- (Russian) refusal to comply with arrest warrants to extradite;
- not enough focus on the victim-driven perspective;
- financial costs;
- human resources.³⁸

³⁴ M. Gaučaitė-Znutienė, *Vienam prokurorui – ir 80 bylių, o dėl užsitęsusių tyrimų nukentės žmonės: Grunskienė išdėstė didžiausias prokuratūros bėdas* [One prosecutor has 80 cases, and people will suffer as a result of protracted investigations: Grunskienė outlined the biggest problems of the prosecutor’s office], LRT.Lt, 3 July 2023, available at: <https://tinyurl.com/mwv5mcd9> (accessed 30 August 2024).

³⁵ *Ukraine: International Centre for the prosecution of Russia’s crime of aggression against Ukraine starts operations today*, European Commission, 3 July 2023, available at: <https://tinyurl.com/mpt8buc5> (accessed 30 August 2024).

³⁶ *Lithuanian prosecutors launch probe into regime violence in Belarus*, LRT.Lt, 12 September 2020, available at: <https://www.lrt.lt/en/news-in-english/19/1294884/lithuanian-prosecutors-launch-probe-into-regime-violence-in-belarus>; BNS, *Lithuania launches probe after Belarusian border guard enters its territory*, LRT.Lt, 13 April 2023, available at: <https://www.lrt.lt/en/news-in-english/19/1961773/lithuania-launches-probe-after-belarusian-border-guard-enters-its-territory> (both accessed 30 August 2024).

³⁷ K Latysh, M. Rogers, *Universal Jurisdiction*, Kurk Lietuvai, 3 March 2023, available at: <https://kurk.lt/projektai/visuotine-universali-jurisdikcija?lang=en> (accessed 30 August 2024).

³⁸ Latysh, Rogers, *supra* note 19, pp. 28–31.

Considering the context given in the previous chapter of this paper, the most pressing challenges now are likely those linked with costs, as well as the presence and rights of the accused. Criminal investigations and prosecutions under universal jurisdiction are expensive, as they require a lot of material resources, i.e. travelling to the location where the crime was committed; building international and trans-institutional connections; hiring experts, etc.³⁹ The imperative to start including financing for the process of prosecuting war crimes within the funding packages that the European Union and United States provide to Ukraine as support was stressed as early as 2022.⁴⁰ So far, only the ICPA, which is focusing on the crime of aggression, is generously funded by the European Commission's Service for Foreign Policy Instruments (within an initial funding amount of EUR 8.3 million).⁴¹ However, it is very unrealistic to expect positive results when the leading member of the JIT (and the ICPA) is struggling to ensure the mobility of national prosecutors to travel to Ukraine. The first group of officers delegated by Lithuanian law enforcement institutions arrived in Ukraine in May 2022⁴², but some Lithuanian prosecutors are going to the war zone without any insurance: "We encountered a series of problems when the prosecutor had to go to Ukraine, because we did not receive funding and we did not have the opportunity to properly dress the prosecutor, buy all the supplies and equipment for the war zone. The prosecutor left without insurance, because no insurance company agreed to provide insurance," said Nida Grunskienė.⁴³

The present requirements to open an investigation or to seek extradition, and requirements of dual criminality, may also affect the expected results through the use of universal jurisdiction. The scope of universal jurisdiction is conceived in two ways:

- conditional universal jurisdiction, which requires the presence of the accused in the prosecuting state;
- absolute universal jurisdiction, under which the presence of the accused is not mandatory (trial in absentia). As enunciated by the Princeton Principles, absolute universal jurisdiction covers crimes that are committed by non-nationals,

³⁹ M. Kersten, *Universal Jurisdiction in Ukraine: States should commit to using their own courts to address Russian atrocities*, Justice in Conflict, 17 October 2022 available at: <https://tinyurl.com/m52kzjv9> (accessed 30 August 2024).

⁴⁰ M. Venneri, *War crimes in Ukraine: Failure to prosecute Russia will damage international security for years to come*, Middle East Institute, 22 November 2022, available at: <https://www.mei.edu/publications/war-crimes-ukraine-failure-prosecute-russia-will-damage-international-security-years> (accessed 30 August 2024).

⁴¹ *International Centre for the Prosecution...*, *supra* note 28.

⁴² *Į Ukrainą atvyko Lietuvos teisėsaugos institucijų pareigūnai* [Officials of Lithuanian law enforcement institutions arrived in Ukraine], Lietuvos Respublikos Prokuratūros, 5 May 2022, available at: <https://www.prokuraturos.lt/lt/naujienos/prokuraturos-aktualijos/i-ukraina-atvyko-lietuvos-teisesaugos-instituciju-pareigunai/8354> (accessed 30 August 2024).

⁴³ G. Pankūnas, *Grunskienė: dėl lėšų trūkumo prokuroras į karo zoną Ukrainoje vyko be jokio draudimo* [Grunskienė: due to lack of funds, the prosecutor went to the war zone in Ukraine without any insurance], LRT.Lt, 6 October 2022, available at: <https://tinyurl.com/4sa67dbn> (accessed 30 August 2024).

against non-nationals on foreign soil where the state exercising jurisdiction does not have a security or other type of interest.⁴⁴

As the Lithuanian “case of January 13” has shown, not only the application of universal jurisdiction, but also use of some procedural elements of it (such as the peculiarities of issuing the arrest warrant for criminals who were not nationals and lived abroad, and/or trials *in absentia*) can be a complicated and dangerous task.⁴⁵ During the crackdown of 13 January 1991, after failing to seize control of important institutions in Vilnius, Soviet forces killed 14 individuals and injured hundreds more in a bloody massacre. Only on 30 June 2022 were 12 convicts sentenced following final judgment by the Supreme Court of Lithuania for this crime. However, since Russia and Belarus would not agree to the extradition of the suspects, and since the majority was tried *in absentia*, there is very little chance that their sentences will ever be carried out. Still, Lithuania stands out from other countries who suffered Soviet violence in the 1990s (for example, the massacres in Baku, Azerbaijan, and in Tbilisi, Georgia) by having managed to deliver a final judicial decision in a criminal case where USSR officials were prosecuted.⁴⁶

As has already been witnessed in the case of the 13 January 1991 crackdown in Vilnius,⁴⁷ Russia had intentions to use international arrest warrants and other instruments available through Interpol to crack down on Lithuanian officials working on the aforementioned case. Russia announced publicly in the UN that it intends to launch pre-trial investigations into Lithuanian prosecutors and judges working on the case of 13 January 1991; investigations which were completed in August 2023.⁴⁸ This risk might reduce the motivation of the national prosecutors to apply universal jurisdiction. For this reason, the Lithuanian authorities have resorted to taking political sanctions against Belarusian officials, including Lukashenko, for the crimes by the regime after the 2020 protests - rather than initiating criminal cases against them.⁴⁹

⁴⁴ S.D. Roper, *Applying Universal Jurisdiction to Civil Cases: Variations in State Approaches to Monetizing Human Rights Violations*, 24(1) *Global Governance* 103 (2018).

⁴⁵ Latysh, Rogers, *supra* note 19.

⁴⁶ D. Sagatienė, J. Žilinskas, *Gorbachev's Legacy in Lithuania*, *Verfassungsblog*, 8 September 2022, available at: <https://verfassungsblog.de/gorbachevs-legacy-in-lithuania/> (accessed 30 August 2024).

⁴⁷ *January 13, 1991: The night when Lithuania faced Soviet troops – through the eyes of ordinary people*, LRT.Lt, 12 January 2021, available at: <https://tinyurl.com/mmexyf24>; I. Steniulienė, *Vilnius court sends Gorbachev documents of January 1991 crackdown case*, LRT.Lt, 17 May 2022, available at: <https://www.lrt.lt/en/news-in-english/19/1696408/vilnius-court-sends-gorbachev-documents-of-january-1991-crackdown-case> (both accessed 30 August 2024).

⁴⁸ *Russia convicts Lithuanian judges who handed down verdicts in Soviet crackdown case*, LRT.Lt, 28 August 2023, available at: <https://tinyurl.com/mwdsuwnw> (accessed 30 August 2024).

⁴⁹ BNS, *Lithuania sanctions 30 Belarusian officials including Lukashenko*, LRT.Lt, 1 August 2020, available at: <https://tinyurl.com/49whxjn3> (accessed 30 August 2024).

2.2. The problem of genocide and the role of Lithuanian historical cases at the ECtHR

In June 2023, Lithuania's Prosecutor General opened a pre-trial investigation into the alleged criminal transfer of Ukrainian children to Belarus, which could also potentially form a key component in investigating the crime of genocide: the accompanying documents indicate that more than 2,000 Ukrainian children, mostly orphans, have been illegally transferred from occupied Ukrainian territories to camps in Belarus, allegedly following orders by the Belarusian regime.⁵⁰ However, this investigation is grounded not on the crime of genocide (Art. 99), but on Art. 102 (Deportation or relocation of civilians)⁵¹ and Art. 100² (Separation of children).⁵²

The main challenge in investigating and prosecuting the acts of genocide in Ukraine is the central hurdle of establishing a genocidal intent; which is a complex and debated aspect of prosecuting such cases within Lithuania's legal framework. Two cases at the European Court of Human Rights (ECtHR, 1959) – namely *Vasiliauskas v. Lithuania* (No. 35343/05),⁵³ and *Drėlingas v. Lithuania* (No. 28859/16)⁵⁴ – have delved into the post-war concept of genocide as defined by the Genocide Convention and succeeded in proving genocidal intent from indirect evidence in the latter case. The genocidal intent of the USSR against Lithuanian partisans was proven predominantly through clarifying the ideological background of the USSR and the structural system for implementing communist ideology; i.e. both the Soviet security institution and its individual officers implemented parts of the Sovietization plan, which was designed to destroy undesirable nationalities using clear methodologies and instructions. In the case of *Drėlingas v. Lithuania*, where the ECtHR concluded that national courts brought clarification to the need to establish intent, the Court stated (para. 108), that:

the annihilation of the participants in the armed national resistance, namely Lithuanian partisans, their connections and supporters, by the occupying power and its repressive bodies, was systematic, consistent, based on a clear methodology and instructions. The acts of repression were directed against the most active and advanced part of the Lithuanian nation as a national, ethnic group. Such extermination had the clear aim of influencing the demographic changes of the Lithuanian nation and its very survival, as well as at facilitating the sovietisation of the occupied Lithuania.⁵⁵

⁵⁰ BNS, *Lithuania launches probe into deportation of Ukrainian children to Belarus*, LRT.Lt, 12 June 2023, available at: <https://www.lrt.lt/en/news-in-english/19/2011196/lithuania-launches-probe-into-deportation-of-ukrainian-children-to-belarus> (accessed 30 August 2024).

⁵¹ *Lietuvos Respublikos baudžiamasis kodeksas* [Criminal code of the Republic of Lithuania], Infolex, Art. 102, available at: <https://www.infolex.lt/ta/66150:str102> (accessed 30 August 2024).

⁵² *Ibidem*, Art. 100².

⁵³ ECtHR, *Vasiliauskas v. Lithuania* (App. No. 35343/05), 20 October 2015.

⁵⁴ ECtHR, *Drėlingas v. Lithuania* (App. No. 28859/16), 12 March 2019.

⁵⁵ *Ibidem*, para. 54.

In the context of Russia's crimes in Ukraine, however, a genocidal plan can be observed directly – especially since February 2022. This constitutes a significant difference to the prosecutor when proving genocidal intent. In as much as the established legal doctrine indicates that genocidal declarations are among the most powerful forms of evidence of genocidal intent, it is useful to analyse them in light of recent ECtHR case law dealing with historical cases of Soviet genocide in order to establish a link between the executors of these crimes and the current Russian ideology towards Ukrainians. Perhaps the most notable high-level public declarations which could be considered as genocidal are the following: a) Putin's essay of July 2021;⁵⁶ b) Putin's speech before the invasion on 21 February 2022;⁵⁷ c) an RIA Novosti editorial entitled "What Russia should do with Ukraine", published on 3 April 2022;⁵⁸ and d) a Telegram post by Dmitry Medvedev of 5 April 2022.⁵⁹ Each of these can be seen as elements of the Russian genocidal plan. However, the divisions among genocide scholars in establishing a potential genocidal intent in the case of Ukraine remain considerable, with opinions varying significantly, with some scholars more optimistic on this matter⁶⁰ than others.⁶¹

⁵⁶ V. Putin, *On the Historical Unity of Russians and Ukrainians*, President of Russia, 12 July 2021, available at: <http://en.kremlin.ru/events/president/news/66181> (accessed 30 August 2024); Putin added that his position is not driven by some short-term considerations or prompted by the current political context.

⁵⁷ *Address by the President of the Russian Federation*, President of Russia, 21 February 2022, available at: <http://en.kremlin.ru/events/president/news/67828> (accessed 30 August 2024).

⁵⁸ T. Sergeytsev, *Čto Rossiâ dolžna sdelat' s Ukraïnoj* [What Russia should do with Ukraine], RIA Novosti, 3 April 2022, available at: <https://ria.ru/20220403/ukraina-1781469605.html> (accessed 30 August 2024).

⁵⁹ D. Medvedev, *O fejkah i nastoščej istorii* [About fake and real history], Telegram, 5 April 2022, available at: https://t.me/medvedev_telegram/34 (accessed 30 August 2024).

⁶⁰ T.D. Snyder, *Russia's genocide handbook*, Thinking about..., 8 April 2022, available at: <https://snyder.substack.com/p/russias-genocide-handbook>; E. Finkel, *What's happening in Ukraine is genocide. Period*, The Washington Post, 5 April 2022, available at: <https://www.washingtonpost.com/opinions/2022/04/05/russia-is-committing-genocide-in-ukraine/>; G.H. Stanton, *The Ten Stages of Genocide*, Genocide Watch, available at: <https://www.genocidewatch.com/tenstages>; G. Wright, *Ukraine war: Is Russia committing genocide?*, BBC News, 13 April 2022, available at: <https://www.bbc.com/news/world-europe-61017352>; D. Bilyk, *Expert: Russian actions in Mariupol can be called genocide*, Deutsche Welle, 24 March 2022, available at: <https://www.dw.com/en/nemeckij-jekspert-dejstvija-rf-v-mariupole-mozhno-nazvat-genocidom/a-61247449>; Y. Trofimov, J. Marson, *Russian Forces Kill Civilians, Loot for Supplies in Occupied Ukraine, Residents Say*, The Wall Street Journal, 14 March 2022, available at: <https://www.wsj.com/articles/russian-forces-kill-civilians-loot-for-supplies-in-occupied-ukraine-residents-say-11647267560> (all accessed 30 August 2024).

⁶¹ W.A. Schabas, *Genocide and Ukraine: Do Words Mean What We Choose them to Mean?*, 20(4) *Journal of International Criminal Justice* 843 (2022), pp. 843–857; K.J. Heller, *Can International Law Bring a Measure of Justice to Ukraine?*, *Russian Matters*, 22 March 2023, available at: <https://www.russianmatters.org/analysis/can-international-law-bring-measure-justice-ukraine> (accessed 30 August 2024); I. Marchuk, A. Wanigasuriya, *Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine's Prospects in Its Pursuit of Justice at the ICJ*, 25(3–4) *Journal of Genocide Research* 256 (2022).

CONCLUSIONS

The international institutional framework for addressing Russian crimes in Ukraine since 2022 poses significant challenges, and clear coordination and resource allocation for successful and legitimate investigations by different states, including a leading Lithuania, need to be established. Moreover, the application of universal jurisdiction in the Lithuanian cases against Russia is complicated by numerous resource constraints, as well as by the legal complexities regarding the accused's presence. At the same time, successful results in establishing Russian accountability cannot escape the need to address the potential crime of genocide, in the same way that Lithuania's investigations regarding the transfer of Ukrainian children to Belarus echo historical cases at the ECtHR – all of which emphasise the potential significance of recent Russian declarations towards Ukraine in establishing a current genocidal intent.