

GENOCIDE IN UKRAINE: PROBLEMS OF PROOF

Garsymiv Olena, Marko Serhiy, Ryashko Olena

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Annotation. The article emphasizes that genocide was first criminalized immediately after the Second World War, precisely in 1948 when the UN General Assembly unanimously adopted the Convention on the Prevention of Genocide. In terms of severity, it is undoubtedly the most serious crime for both peacetime and wartime, and it is also the most difficult to prove. First of all, it is argued that in order to establish the very fact of genocide, it is necessary to have the intention to destroy, in whole or in part, any national, ethnic, racial or religious group, as well as for this destruction to be carried out by killing, inflicting grievous injuries, creating intolerable conditions life, prevention of childbirth or forced transfer of children to another group.

The main focus of the article is on the fact that crimes against humanity most often occur during war. In order for the underlying crimes—such as murder, torture, extermination, sexual violence, and other acts—to qualify as crimes against humanity, they must be part of a widespread or systematic attack on civilians. Unfortunately, trials for genocide and crimes against humanity take forever. An example is the events in Srebrenica, proceedings in several genocide cases are still ongoing. Genocide, as well as crimes against humanity, are most clearly defined in legal terms in the Rome Statute of 1998, which became the foundational document of the International Criminal Court.

Both crimes were also included in the criminal codes of many countries, the Criminal Code of Ukraine (Articles 442, 437) was not an exception. However, until now, there is no responsibility for crimes against humanity in national legislation. Therefore, currently the criminal actions of the combatants can only be qualified as war crimes. Many states have integrated the crime of genocide into national legislation, but not all have used the UN definition. Many states have also included crimes against humanity in their criminal codes. It is quite clear that both genocide and crimes against humanity are systematic crimes, to prove which it is not enough to confirm with evidence the commission of individual acts.

Both crimes are committed within a system, often wide-ranging, and both contain elements that require proof of relevant intent or awareness on the part of the perpetrators, for example, in the case of genocide, by proving that the perpetrators knew of an express or implied plan.

Key words: genocide, investigation, evidence, destruction, intent.

1. Introduction.

Although separate testimonies of deliberate inhuman cruelty of crimes are not sufficient evidence of either genocide or crimes against humanity, investigators, during the pre-trial investigation, should, as completely and reliably as possible, record the testimony of the victims. We will dwell on the reasons why this is fundamentally important.

First of all, the crime of genocide and crimes against humanity are most often committed by military personnel, but military units and their leaders are reluctant to leave behind documents that can testify to their intentions and plans, which is completely understandable. However, the evidence base of such crimes is usually based on the testimony of witnesses and victims, from which criminal intentions are clearly visible. Secondly, the experience of many victims who, fortunately, survived, directly indicates the connection and systematicity of crimes against a specific group, which in itself leads to concrete and logical conclusions.

The key element in the recognition of genocide is precisely to prove the presence of the intention to destroy (total or partial) a nation, ethnic group, etc. An element of intent to destroy a group is the collective nature of the victim - the destruction of an entire community due to hatred for it. It is important that the crime of genocide cannot be committed by accident.

2. Analysis of scientific publications.

Scientists such as M.M. Gerasimenko, O.V. Krasnikova, S.V. Kulchytskyi, and R.I. Rebrish were engaged in the analysis of the signs and essence of genocide, as well as the problems of proving this crime, whose scientific works became the basis of this study.

3. The purpose of the work.

The purpose of the work is to study the essence of genocide in Ukraine today and the problematic issues of its proof.

4. Review and discussion.

Among the former Soviet republics, only the courts of Estonia, Latvia and Lithuania have applied the norms of international criminal law and convicted those who deported the population of these countries in 1941 and 1949 and participated in other mass repressions on charges of crimes against humanity or genocide. An interesting aspect is that in the national legislation of one group of post-Soviet countries, the norm regarding genocide was introduced in the same wording as in the Convention on Genocide, in another - in a slightly different definition from the international legal definition. In particular, in the Criminal Code of Estonia, the definition of the crime of genocide includes, in addition to national, ethnic, racial and religious groups included in the Convention on Genocide, also groups of resistance to the occupation regime or other social groups [1, p.128]

Trials of international crimes—genocide and crimes against humanity, but also war crimes, for example against civilians or prisoners of war—are often heard in special or hybrid courts (national courts with an international component). These include, in particular, the International Residual Mechanism for International Tribunals, finally, the largest number of trials for international crimes committed during the war (in particular genocide and crimes against humanity) are heard in local courts. However, this does not mean that only the courts of those states where grave international crimes were committed can deal with such cases, because there is still universal jurisdiction. For example, dozens of cases of crimes against humanity committed in Syria are currently being considered in courts arious European countries, in particular Germany and the Netherlands, where the defendants, victims or survivors currently live.

Given that genocide and crimes against humanity are systemic in nature and require an understanding of the legal nuances, courts provide the primary platform for accessing evidence, gathering witness statements and understanding the complexities required to demonstrate the hallmarks of systemic nature of these crimes. Gathering evidence during trials of individual war criminals, such as low-level officials, can help demonstrate the wider scale of crimes, which may indicate that high-level leaders may be responsible for these crimes against humanity or genocide.

During the interrogation, the following circumstances must be clarified: date, time and place of commission of criminal acts; the circumstances of the crime; use of means of influence: verbal and physical; description of appearance and clothing of criminals; features of speech; information about witnesses; description of the damage suffered by the victim. It is impossible to keep silent about the fact that the investigation of genocide and the prosecution of those responsible for its commission is an extremely urgent process that requires special knowledge and skills in conducting the investigation. Officials who collect evidence as part of criminal proceedings find persons involved in the crime and conduct other procedural actions.

The investigation of serious, high-profile cases is under the control of the pre-trial investigation body, in which it is conducted, and the Ministry of Internal Affairs of Ukraine. Therefore, it is under the close attention of not only the leadership of the unit, but also the public and mass media. At the same time, the investigator and the prosecutor are entrusted with the highest degree of responsibility for the investigation, and their every action is under supervision. Such circumstances help establish that officials in criminal proceedings should create mechanisms for investigating crimes that are significant for society. Genocide belongs to the category of crimes, the investigation of which is followed by the whole country. This act is a crime against peace, human security and international legal order. The crime has a large number of victims whose rights and legitimate interests have been violated. The restoration of violated rights has reached a priority level [2, p. 399]

The key elements of effective prosecution of those responsible for the genocide against Ukrainians should be: meticulous and indisputable establishment of facts using modern investigation methods; clear legal definition of crimes; comprehensive legal analysis of all circumstances to be proven; clear and logical wording.

Genocide is the extreme form (stage) of fascism, the essence of which is the complete or partial destruction of individual population groups or entire nations. Genocide can be carried out by powerful representatives openly, for example, through the use of weapons (including mass destruction), or veiled. An example of the latter form can be the policy of the leadership of the CPSU(b) and the USSR government in 1932–1933, which led to the organization of an artificial famine and multi-million deaths among the rural population in the territory of the Ukrainian SSR and the Kuban.

At the same time, there are high needs for additional equipment for conducting numerous forensic examinations, storing numerous evidence; ballistics specialists, pathologists; specialists who know how to identify victims of sexual violence and convince them of the need to record the crimes committed against them, bring the perpetrators to justice; professional assistance for emotional support of victims of this type of crime and their full psychological recovery. The presence of both sexes among the victims of sexual violence crimes during the war determines the need to study the connections of masculinity with these types of crimes, as well as the perversions of consciousness of criminals who abused children. The sexual crimes of the Russian military are directed exclusively against the citizens of Ukraine. On a national basis, it absolutely correlates with homicidal mania and all their other war crimes.

War denies the constitutionally fixed axiological principle of the right to recognize a person as the dominant value in society, which, under the condition of proper socialization of people, becomes an integral attribute of the anthropocentric policy of the state, particularly in the field of international relations. A country that starts a war against another country contrary to the rules of war and peace of international law, by definition, demonstrates a critical level of actual inequality of people, detachment of the state from the entire population, decomposition of legal relations that determined development. The military aggressor, instead of parity and fair competition, tries to assume a monopoly position and dominate in the spiritual, economic, political, legal, informational, technological and all other spheres of international communication. This feature of the aggressor state is manifested in the pathological tendency of its military to commit crimes on the territory of the country against which they started the war [3, p.386]

In the absence of special intent, the mass crimes committed by the military of the Russian Federation against the Ukrainian people can be regarded as crimes against humanity. Unlike the terminology of genocide, which requires proven "intent", crimes against humanity do not consider the psychological component of the perpetrator, but only require proof of the objective aspect of the crime. The second difference is that in crimes against humanity the target is "any civilian population". Unlike crimes against humanity, the victim of the crime of genocide must be a target because of his membership in a certain group [4, p.686]

Independent international investigations have proven that there is a serious risk of genocide in the Ukrainian territories occupied by Russia. The presence of this fact causes the convention obligation of all states to prevent this crime outside their territories. The given study provides grounds for making a reasonable conclusion that Russian society is responsible for direct and public incitement to commit genocide and for cruel acts carried out with the intention of destroying the Ukrainian national group, which is genocide itself [5, p.412]



Historical examples of real prosecution of persons for genocide are the decisions of the Nuremberg Military Tribunal regarding persons involved in crimes and mass murders during the Second World War, the International Tribunals for Yugoslavia and Rwanda. Accusations of the crime of genocide have become quite common in international and national judicial tribunals during the last half century. Courts established the facts of the commission of genocide, the guilty persons, accused and convicted of committing acts of genocide [6, p.54]

A genocidal regime uses some of the following techniques: denies the existence of a certain state; denies the existence of the people; dehumanizes a certain people; denies the genocides of the past; supports the idea of ousting some nations by others; The “postmodern indicator” can also be used, when society is so overloaded with distorted information that it begins to overlook the genocide it is committing.

Although judicial proof, unlike political statements, is very difficult and there are not many cases when it was possible to prove that genocide took place in an international court. For example, it succeeded in the case of the Holocaust. But at the same time, this issue was considered by national courts, not international. It succeeded in the episode concerning Srebrenica, where the male population between 16 and 60 was exterminated. Then both the International Tribunal for the former Yugoslavia and the International Court of Justice of the United Nations qualified it as genocide. But these are isolated examples. Because, for example, when representatives of Croatia tried to prove at the UN International Court of Justice that Serbs committed genocide in Vukovar, they failed. Despite the fact that relevant political assessments were heard.

In order to directly record crimes and carry out forensic activities, one must have appropriate training and procedural status. This should be done primarily by forensic experts, ballistics experts, forensic medical experts, etc. Carry out an examination of the bodies of the dead, record the injuries of those, who survived, ballistics examinations, interviewing witnesses, establishing all the circumstances, taking high-quality photo and video recording. After all, all this evidence will have to be presented in court. But people can help with this by pointing to the information they have.

The fact that Russian troops are committing such atrocities in Ukraine is not surprising for three main reasons. First, the Russian military has a terrible record of directly attacking or indiscriminately victimizing civilians in both Chechnya and Syria. Second, the Kremlin has wrapped itself in a hard-line ultra-nationalist ideology that views the Western-leaning Ukrainian state as an illegitimate and significant political and cultural threat to Russia, shattering the long-standing myth that President Putin is pragmatic, not ideological. This is precisely the worldview commonly associated with the perpetrators of the atrocities, and which, as leading historian Timothy Snyder notes, involves the effective erasure of any sense of Ukraine’s independent national identity, which Putin presents as an artificial deviation from the mythical unified Russian nation. Third, Russia’s war effort has devolved into a stagnant campaign in which conventional tactics have failed to achieve Putin’s goals. This is a classic scenario, similar to the Soviet invasion of Afghanistan between 1979 and 1989, in which rather brutal governments often resort to atrocities to terrorize their opponents into surrender [7]

Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide stipulates that “genocide is the following acts committed with the intent to destroy, in whole or in part, any national, ethnic, religious or racial group as such: killing members of such group; causing serious bodily or mental harm to members of such a group; the deliberate creation for any group of living conditions designed for total or partial physical destruction; measures designed to prevent childbirth in the environment of such a group; forcible transfer of children from one group to another. Indiscriminate shelling of one Ukrainian settlement after another - destruction of residential areas, infrastructure facilities, medical institutions, mass murders, torture and rape, deportation of children. Genocide is called the “crime of all crimes”.

It involves the intention not just to harm the life and health of people, but to purposefully destroy, in whole or in part, a separate group of persons that can be identified by nationality, ethnicity, race or religion. It is precisely because of the necessity and difficulty of proving such an intention that the committed crimes are initially classified as crimes against humanity or war crimes, and only later, after obtaining evidence of the specified special intention, they are reclassified as genocide.

Accusations of genocide require strong evidence, and the procedure for proving it can be long and very difficult. The standard of proof for the crime of genocide is extremely high.

With regard to each of the accused, it will be necessary to prove that such persons committed criminal acts, being aware of the general genocidal intent towards the Ukrainian people. Otherwise, it will be crimes against humanity or war crimes, which is also a severe violation of international law [8]

Below are some actions that may indicate the intention to destroy Ukrainians as a separate group. 1. Killing members of such a group. The reports of independent documentarians record numerous murders of civilians committed in territories occupied by Russian troops.

2. Causing serious bodily harm or mental disorder to members of such a group. Documentaries recorded cases of torture, public executions and forcing children or parents to watch.

3. Deliberate creation for any group of living conditions designed for its complete or partial physical destruction. The Russian military commits a large number of actions, aimed in general at creating such living conditions, which are calculated to destroy Ukrainians. On a larger scale, these are targeted shelling of civilian neighborhoods and infrastructure, deprivation of housing, freedom of movement, access to gas, electricity, and water to persons who are in the shelled or occupied territories.

4. Measures designed to prevent childbirth in the environment of such a group. Rape can be a measure designed to prevent childbearing in a group setting, when the victim of this crime refuses childbearing as a result.

5. Forcible transfer of children from one human group to another. Today, different figures are given regarding the number of children who were illegally taken to Russia, but the number is not an argument for qualification. The greatest danger is the removal of 2,000 orphans or children deprived of parental care, taking into account the planned changes to the legislation of the Russian Federation on simplifying the procedure for the adoption of Ukrainian children by Russian families [9]

5. Conclusions.

Genocide scares international lawyers a lot. Because genocide is a crime of crimes, difficult to prove and difficult to understand. The goal of the Rashists was the destruction of Ukrainian identity. Isn't this a sign of genocide? Violence, terror, intimidation, aggression are just a tool for realizing one's inhuman, sick desires. They invaded here with only one goal - to erase Ukraine from the world map and to desecrate it. The enemy does not even hide his intentions to destroy our statehood and identity.

Genocide is the denial of the right of a certain group to exist: when the world community tries to deprive a certain group based on cultural, ethnic, national, religious affiliation. Putin and the Russians openly say that Ukraine does not exist. That Ukraine is an artificial entity and we are the same as Russians. They do not recognize our right and the fact that Ukrainians are a separate group from them. Therefore, they are trying with all their might to destroy us.

Genocide is a crime that impresses not only by the number of innocent victims, but also by the audacity of its perpetrators, the cynicism of the executioners and the doom of the victims, because the civilian population who is unable to protect itself from criminals perishes [10, p.163]

Thus, officials who, as part of criminal proceedings, conduct pre-trial investigations, collect evidence, identify persons involved in the crime and carry out all possible actions to establish the truth in the case, have a huge burden of responsibility in the form of proof. The investigation process consists of a set of necessary investigative (search) actions and covert investigative (search) actions and must meet the requirements for their conduct. Trained employees who have knowledge in this field and can clearly formulate an investigation plan and move in the specified direction should be involved in the investigation.

That is why the genocide investigation is a consistent logical structure of the pre-trial investigation, which contains a significant amount of procedural actions. The persons conducting the investigation must have the necessary knowledge and be highly qualified in this field.

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Olena Garsymiv,

*Candidate of Law Sciences, Associate
Professor., Associate Professor, Department of Criminal Procedure and Criminalistics,
Lviv State University of Internal Affairs
E-mail: garsymiv_ukr.net
ORCID: 0000-0002-4588-9531*

Serhiy Marko,

*Candidate of Law Sciences, Associate
Professor., Associate Professor, Department of Criminal Procedure and Criminalistics,
Lviv State University of Internal Affairs
E-mail: marko.sergii@gmail.com
ORCID: 0000-0002-9778-0570*

Olena Ryashko,

*Candidate of Law Sciences, Associate
Professor., Associate Professor, Department of Criminal Procedure and Criminalistics,
Lviv State University of Internal Affairs
E-mail: olena_ryashko@ukr.net
ORCID: 0000-0001-5500-5223*