

**AGGRESSION OF THE RUSSIAN FEDERATION
AS GENOCIDE OF THE UKRAINIAN PEOPLE:
CRIMINAL-LEGAL QUALIFICATION**

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INTRODUCTION

Crimes such as genocide are among the most dangerous crimes against peace, human security and international law. For issues defined as genocide, the risk is determined by the fact that it threatens the existence of a certain group, based on national, ethnic, racial, religious or other characteristics, more detailed research is needed.

The issue of the objective side of criminal offenses provided for in Article 442 of the Criminal Code is devoted to the work of V.M. Kirichenko, M.Y. Korzhansky, V.K. Matviychuk, M.I. Khavronyuk, S.S. Yatsenko and others. However, there is still no comprehensive study of the objective sides of criminal offenses provided for in Article 442 of the Criminal Code of Ukraine.

Only in the middle of the twentieth century did the international community begin to recognize and legally assess the great public danger of criminal acts such as genocide. This resulted in the adoption of the UN Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948.

This Convention formulated the concept of genocide as an international crime and defined the principles and foundations of criminal responsibility for its commission. The effectiveness of the fight against these crimes cannot be ensured only by establishing responsibility for them at the international level. National criminalization of such criminal offenses ensures the success of such criminal acts.

The term “genocide” consists of two words: the Greek “genos” (kind, tribe) and the Latin “side” (murder). The term was introduced by Raphael Lemkin, a Polish lawyer who later became an American prosecutor at the Nuremberg Trials, in connection with the genocide of Armenians by the Turkish authorities in 1914 and 1918, as well as in the period between the two world wars.

Therefore, at the Fifth Conference on the Unification of International Criminal Law, held in Madrid in 1933, R. Lemkin stated that “destruction or acts intended to destroy a racial, religious or social group must be considered under international law.

He proposed declaring this a barbaric crime – “delicta juris gentium”.

He listed two groups of crimes:

1) Encroachment on the livelihoods of people and the economic basis of the existence of a certain group. A barbaric act that manifests itself in damage.

2) acts of destruction, including the destruction of cultural values by transferring children from one group to another, the forced and systematic deprivation of characteristic elements of the culture of certain groups, the prohibition of certain people; the use of the native language even in personal relationships, the systematic destruction of books written in the language of the group, the destruction of museums, schools, historical monuments, religious and other institutions, and cultural values of the group.

Thus arose the legal term "genocide", which was actually used on April 22, 1919, when a Turkish military tribunal accused the leaders of the Young Turk government of genocide against the Armenians.

In 1944, R. Lemkin used the term "genocide" in his book "Fascist Administration of Occupied Europe" and proposed creating a treaty that would consider offensive actions against national, religious or ethnic groups as international crimes. He argued that "this crime is a coordinated plan of various actions aimed at destroying the basic basis of the life of a national group and the national group itself". The purpose of such plans is the destruction of political and social institutions, culture, language, national feelings, religion, economic existence of groups, security, freedom, health, dignity of people and the very life of individuals belonging to them.

Consider the purpose of the criminal offense genocide, a criminal offense under Art. 442 of the Criminal Code of Ukraine. There is no consensus on the direct target of the criminal offense of genocide. Thus, I. G. Poplavsky understands the purpose of this criminal offense as "relations that develop in the process of ensuring peace and security of mankind".

1. The essence and content of genocide in the criminal-legal aspect

E.V. Rashchuk understands that the main and direct purpose of this criminal offense is "the security of the existence of a national, ethnic, racial or religious group as an element of human security", and also that

"depending on the committed socially dangerous act, the direct object of additional mandatory crimes may be life, health, freedom, honor and dignity of the person."

S. S. Yatsenko "understood the security of humanity as the immediate goal, and the life and health of entire national, ethnic, racial and religious groups as an additional one." T. M. Tertychenko follows this position and does not mention additional direct objects. The most acceptable position regarding the direct purpose of this law is the position of E. V. Rashchuk about demographic groups, and not about human safety or something that follows from the nature of art. Article 442 of the Criminal Code. However, this position also cannot be deduced from the composition of the subject of this criminal offense or the form of expression of this act, therefore it requires further research. In general teachings on the composition of a criminal offense, the victim belongs to the signs that

characterize the object of this act. Follow Art. 55 of the Criminal Procedure Code of Ukraine defines: “A victim in criminal proceedings may be a natural person who has suffered mental, physical or property damage as a result of a crime, or a legal entity whose property has been damaged as a result of a crime.

The victim is an essential feature of the subject of a criminal offense, provided for in Art. 442 of the Criminal Code. Direct instructions on this are contained in Part 1 of Art. 442 of the Criminal Code stipulates that the victim of this act is a national, ethnic, racial or religious group. At the same time, victims of genocide are not persons endowed with individual characteristics, but representatives of certain groups named in the essence of the article.

Determining whether a person is a victim of genocide requires establishing whether the person is a member of a national, ethnic, racial or religious group, and therefore it is necessary to determine the characteristics of the population. In modern conditions, it is difficult to define national, ethnic, racial or religious groups according to precise scientific criteria. In this regard, the Rwandan Chamber of Justice stated, that, since there is currently no internationally recognized concept of a nation, ethnicity, race or religious group, they vary depending on the specific political, social and cultural circumstances determined in each particular case¹.

According to the UN Convention of December 9, 1948 “On the Prevention and Punishment of the Crime of Genocide”, national groups should be understood primarily as nationalities. Additional factors that should be taken into account in this case are common history, customs, culture and language. A typical example of a national group is the so-called national minority. It does not include political or social groups. For each ethnic group, the authors of the treaty include groups that are essentially similar or identical to a national, racial or religious group. Some of them believe that ethnic groups fall under the category of national groups.

According to another point of view, the concept of ethnicity coincides with the concept of race. Ethnic groups are characterized by special cultural traditions and a common history. Members of this group speak the same language and share common customs and ways of life. Such groups often live in specific geographical areas. Common “racial” characteristics are not necessary to define an ethnic group. racial group. According to the Convention, the concept of race is subject to abuse and does not lend itself to simple definition; it is a society whose members are distinguished by uniform, visible, inherited physical characteristics, such as skin color or appearance, which are used to describe the population. Tribal groups also fall into this category.

¹Про гарантії держави щодо виконання судових рішень: Закон України від 05.06.2012 р. № 4901-VI /Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/4901-17#Text> (дата звернення: 11.06.2026).

Religious groups were already mentioned in the 1946 General Assembly resolution as possible victims of genocide, and they also figure in all drafts of the crime. The drafters of the Convention on the Prevention and Punishment of the Crime of Genocide recognized that although membership in a religious group is voluntary, religious groups have historically developed in the same way as national or ethnic groups, and were assumed to have certain characteristics. and to have a stable identity. Today, a national group is understood as "a community of people of a certain historical form, united by a single language and territory, deep economic ties within the country, and certain cultural and character characteristics."

Based on this definition, the main features of a national group are common citizenship, country of origin, and economic ties. Important pay attention to the fact that the language, lifestyle, culture, spirituality of representatives of one ethnic group may be different, but at the same time they belong to the same ethnic group. The concept of "ethnic group" is understood in different ways. For example, the founder of ethnic theory S.M. Shirogorov defined it as "a group of people who speak the same language, have a common place of origin, have a set of customs, way of life and traditions that distinguish them. from other similar groups, I understand that a group of people. E. Khavronyuk defines such groups as "historically formed, stable social groups characterized by the unity of culture and spirituality, the originality of way of life and customs."

Thus, the identity of an ethnic group is determined by common cultural traditions, language and heritage, in contrast to a national group, whose identity concerns the common citizenship or country of origin of its members. This indicates that the features that characterize a nation may not be characteristic of an ethnic group. For example, nationality consists of a set of ethnic groups (Boyks, Hutsuls, Lemkos, Sevrusks, Lithuanians, Opoleans, Transnistrians, Sotaks, Cherkassians, Pinchuks, Polishchuks, etc.). E. Khavroniuk defines racial groups as "united by common origin and initial settlement, commonality in hereditary physical characteristics (skin, hair and eye color, skull shape, hair pigmentation, height, etc.)", "a large, historically formed group". people".

In addition, one should also agree with the opinion of the legal literature that "humanity consists of four major races: Caucasoids, Mongoloids, Negroids and Australoids".

Therefore, races, unlike nations or ethnic groups, are characterized by biological characteristics that do not depend on language, religion, culture, historical and economic conditions of coexistence. In addition, one should agree with M.I. Khavronyuk who describes "a religious group (from the Latin religio – piety, holiness, object of worship) as a set of spiritual ideas about the supernatural (as a result of a certain level of scientific development), which are imposed on "This is a group of people". which exist". This group is characterized by worship.

In this case, it does not matter whether the religion has a global character or regional significance.

Objective aspects of the criminal offense of genocide. Of all the components of the criminal structure, it is the objective aspect that contains the most information necessary to qualify an act as a criminal one. The signs of the objective aspect characterize the external manifestation of socially dangerous acts that violate the objects of criminal law protection. The objective circumstances of this invasion largely determine the social danger of a criminal offense. The most important signs of social danger are the nature of the act, the manner of its commission, the place and time, the circumstances of the commission of the criminal act, the severity of the socially dangerous consequences that have occurred. In the context of this norm, the deprivation of the life of a representative of a national, ethnic, racial or religious group is recognized as intentional murder and falls under the signs of Art. 115 of the Criminal Code of Ukraine².

Since genocide involves the killing of a large number of people by various means, it seems to fully cover both simple and qualified types of intentional murder. Most scientists hold a similar opinion.

2. Legal principles of genocide

Genocide in the form of infliction of serious bodily harm consists in inflicting such harm to representatives of a certain group, the manifestations of which are defined in Part 1 of Article 121 of the Criminal Code of Ukraine (such that, when occurring, pose a threat to life or cause loss of organs or their functions, mental illness or other health disorder and are accompanied by a persistent loss of working capacity of at least one person) 3 Art., or termination of pregnancy or irreparable facial deformation). Serious bodily harm according to the signs specified in Part 2 of Article 121 of the Criminal Code of Ukraine.

A crime committed with the use of special torture or by a group, with the aim of intimidating the victim or other persons, or on order, or causing death. The victim content is fully covered by Part 1 of Article According to Article 442 of the Criminal Code of Ukraine, additional qualification is not required. This position is also confirmed by science.

Genocide in the form of deprivation of life or infliction of grievous bodily harm is a crime with a material component, and the crime is completed from the moment of occurrence of socially dangerous consequences. Ukrainian legal literature does not give a clear answer regarding the exact number of victims necessary for the qualification of genocide in the form of murder and infliction of grievous bodily harm.

² Про органи та осіб, які здійснюють примусове виконання судових рішень і рішень інших органів: Закон України від 02.06.2016 р. № 1403-VIII / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1403-19#Text> (дата звернення: 11.06.2026).

damage as complete. The only opinion is that the number of people killed or injured during the commission of an act of genocide is irrelevant for qualification.

Genocide in the form of death of people or causing serious bodily harm should be considered complete, even if the consequences have been suffered by one or more members of the group. The creation of living conditions aimed at the complete or partial physical destruction of a national, ethnic, racial or religious group is defined as "under certain circumstances (for example, the spread of infectious diseases, forced relocation of the population to areas that are inaccessible or particularly inconvenient for members of this group, detention in concentration camps where unfavorable living conditions are created, poisoning of water supplies, organization of organizations, blockades, etc., contamination of the territory with harmful substances)".

Such a situation will not necessarily lead to the immediate destruction of the group, but allowing it to act independently can gradually cause the death of its members. Genocide in this form is the creation of living conditions for one or more persons belonging to a national, ethnic, racial or religious group, calculated to bring about the complete or partial physical destruction of such a group from the moment of its completion. Genocide in the form of reducing or preventing the birth rate in a national, ethnic, racial or religious group is very controversial. We believe that measures aimed at preventing the birth of children as signs of genocide do not involve the infliction of serious physical harm and are applied independently only under conditions of forcible birth prevention. We firmly adhere to the position that this is possible.

According to Article 442 of the Criminal Code, the term "manufacture" means "to be, to be". To understand the term "produce", we must turn to the term "produce". This term is interpreted as follows: "... to produce, to do something.

It should be noted that this action is characteristic of all forms of this action. Such calls for genocide should be understood as follows: To address by any material means. Information on flyers, slogans, flash drives, cassettes, computer CDs, floppy disks, manufactured appeals or mobile equipment, computers, etc. The essential feature of a criminal offense in this form should be the subjective side, for example, the purpose of distributing materials calling for genocide among the population. Instead, the word "distribute" means "...1. To distribute, transfer... etc. to many people for acquisition, distribution, etc.; to spread among many specific ideas...", etc.

This means that the act of distributing materials calling for genocide should be understood as the act of transferring such materials to a large number of people, an indefinite number of people, or a certain number of people on any material medium.

From the content of this form it is clear that these appeals are aimed at getting used to genocide:

1) By mail, sending via computer networks, mobile communication devices, pasting leaflets on the walls of houses and shop windows, in the premises of state institutions and institutions

2) Pasting leaflets in mailboxes, pasting them on bulletin boards, distributing leaflets in mailboxes, as well as sending letters to specific groups of persons or to addresses

Issues related to the subject of criminal offenses provided for in Art. 442 are of great importance both for the theory and for the existing practice of criminal law, however, due to its outstanding successes in the study of theoretical and methodological issues related to criminal offenses.

The system of punishments provided for in the criminal legislation of Ukraine is one of the most important and severe means of influencing persons who have committed criminal offenses. The institution of punishment occupies a central place in criminal law, since punishment must perform important functions. Among them are the establishment of social justice, the protection of the general interests of society, the exercise of punitive influence, and others.

The main purpose of punishment is not only to punish the offender, but also to correct his behavior, prevent the re-commitment of criminal offenses, and restore justice in society.

Thus, the institution of punishments in Ukraine is at the stage of transformation, striving to meet the modern requirements of society and international standards. The development process requires constant improvement of legislation, adaptation to new challenges, and ensuring the protection of human rights³.

Despite thorough philosophical and theoretical research, the institution of punishments remains an area that requires not only rethinking, but also detailed analysis at the present stage. This is necessary, in particular, for an adequate response to new challenges and changes in society.

Historically, the institution of punishment has gone through a long transformation, from the punitive methods of the ancient world to the more humane and rehabilitative approaches of the present. However, in the context of dynamic changes in social and political structures that affect public safety, the question of the effectiveness of existing punishment systems arises. Modern research conducted by leading scholars such as V. S. Bunyak, V. M. Gospodarenko, N. O. Gutarova, V. V. Derbak, O. O. Knyzhenko and others creates the basis for a critical analysis of existing approaches. Their works not only consider the historical development and theoretical aspects of punishment, but also propose new models that can be integrated into the modern justice

³ Про Національну безпеку України : Закон України від 21 черв. 2018 р. № 2469-VIII / Верховна Рада України. URL : <https://zakon.rada.gov.ua/laws/show/2469-19#n355> (дата звернення: 10.06.2026).

system. For example, V. S. Bunyak in his works focuses on the moral and ethical aspects of punishment, exploring how they affect the rehabilitation of offenders. V. M. Gospodarenko, in turn, analyzes the effectiveness of different types of punishment from the point of view of social justice and prevention of recidivism. N. O. Gutarova explores the psychological aspects of the impact of punishment on the personality, studying how different methods affect the mental state and socialization of convicts.

Thanks to deep and comprehensive research, these scientists make a significant contribution to understanding how the institution of punishment can adapt to new challenges. Rethinking existing approaches and introducing new models can not only increase the effectiveness of the justice system, but also contribute to the creation of a more humane society, where punishment not only punishes, but also promotes rehabilitation and social integration.

O. O. Knyzhenko notes that the goals of criminal law influence, as well as the principles of criminal law, are key starting points in the process of forming the rules for constructing criminal law sanctions. These principles guide the legislator, helping to form a system of punishments that will meet social expectations and legal norms. Supporting this position, it can be noted that the goal that determines the direction of punishment must be formulated clearly and correctly.

Correction of criminals is an important aspect of the modern approach to criminal justice. Punishment as the basis of punishment was considered and justified in their works by many prominent philosophers, among whom one of the most famous was Immanuel Kant. His approach to punishment was based on the principles of justice and proportionality to the criminal offense committed. In his "Metaphysics of Morals", Kant emphasized that punishment should be imposed on the guilty only for the fact of committing a criminal offense. He emphasized that a person can never be considered only as a means to another person's end and cannot be equated with objects of real law. Kant wrote: "Punishment should only be imposed on a criminal because he has committed a criminal offense, because a person can never be treated only as a means to another's end and cannot be confused with objects of real law." In addition, he argued that the punitive law is a categorical imperative, and no benefits promised by the law can exempt a person from punishment or even from any part of it. He rejected attempts to justify the avoidance of punishment on grounds of public good, as the Pharisees did, saying: "It is better for one person to die than for the whole nation to perish." Kant believed that if justice disappears, then the lives of people on land will lose all value. Punishment, according to Kant, is an integral part of law and an important element of justice, which has no other purpose than to ensure this justice. His concept implies that any criminal offense must have an appropriate punishment that would be just and adequate to the act committed. This emphasizes the

importance of punishment as a moral imperative that stands above utilitarian considerations

CONCLUSIONS

According to scientific research in Ukraine, the subject of the criminal offense of genocide has not been sufficiently studied in existing publications. M. Khavronyuk noted: “The subject of this crime is general. As for the composition of the crime”, it is a crime against a representative of the so-called nominal nation or ethnic minority, the European race or a dark-skinned person. It is also unimportant whether the perpetrator and the victim belong to the same race, nationality, ethnicity or religion.

T.M. Tertychenko claims that “the subject of the analyzed crime may be an individual who has reached the age of 16”. If a person aged 14 to 16 years participates in an act of genocide, she is responsible for the crime actually committed against her, and responsibility begins at the age of 14.

E.V. Rashk calls the subject of this criminal offense a general.

S.S. Yatsenko claims that Article 442 of the Criminal Code applies to civil servants or private individuals who have reached the age of 16. The perpetrators of the crime of creating materials with calls for genocide are both the creators of such materials and the persons who carried out their technical creation.

Kibalnik A.G., Solomonenko I.G. If a person aged 14 to 16 participates in an act of genocide, he is accused of murder and intentional infliction of grievous bodily harm; I.I. Strokova is convinced that “the object of genocide is a physically sane person who has committed criminal liability in accordance with this Code.”

According to Article 22 of the Criminal Code, criminal liability for genocide begins at the age of 16. The targets of genocide can be divided into the following types: Targeting subjects, officials (heads of state or government, members of government or parliament, elected representatives or other officials) and authorized persons (military commands or representatives of military commands).

According to domestic and foreign criminal legislation, despite the fact that the subject of genocide is general, this crime is mainly committed by persons holding various positions and is used to attract people. It should be taken into account that human, financial and technical resources are required. Therefore, the objects of this crime are primarily officials or servicemen and military personnel.

SUMMARY

The problems of the criminal legal aspect of genocide can be defined as follows: the absence of criminal legal foundations of the criminal offense of genocide; the content of the national norm does not correspond to European legislation.

Based on the research conducted, such a criminal offense as genocide in the form of taking a person's life and causing serious bodily harm is a crime with signs of gravity, that is, the crime is complete from the moment of its commission. It has socially dangerous consequences. Genocide in the form of killing people or causing serious bodily harm should be considered complete, even if the consequences were suffered by one or more members of the group.

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