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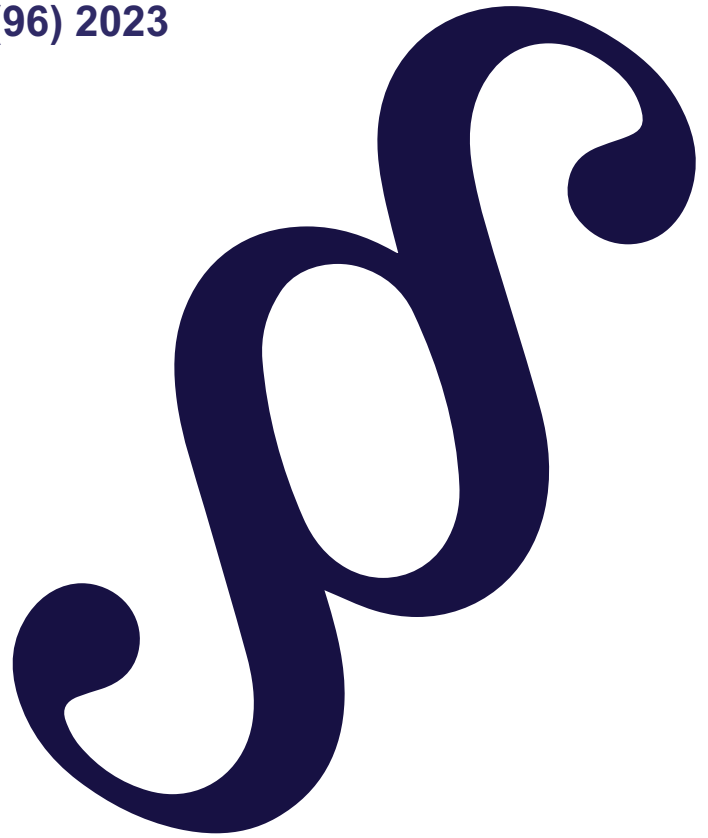

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Studia i artykuły /
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International human rights law in the era of digital disinformation and propaganda: case studies from Myanmar and Ukraine

Prawo międzynarodowe praw człowieka w dobie cyfrowej dezinformacji i propagandy. Analiza przypadków Mjanmy i Ukrainy

Международное право в области прав человека в эпоху цифровой дезинформации и пропаганды. Анализ примеров из опыта Мьянмы и Украины

Міжнародне право прав людини в епоху цифрової дезінформації та пропаганди. Анализ на прикладі М'янми та України

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Summary: Today, more than ever, the Internet and social media have become our primary sources of information, offering us a window to the world. However, this freedom to access and disseminate information has negative consequences, as it allows for a rapid spread of disinformation, propaganda, and hate speech. From the perspective of international human rights law, questions arise regarding the obligations and responsibilities of states. In this discussion, the authors argue that one of the primary tasks of states is to take necessary and appropriate measures to simultaneously protect the freedom of expression and prevent the spread of propaganda and disinformation. Balancing these conflicting interests is a complex challenge. To better understand them, the authors analyse selected examples from international and domestic jurisprudence and practice, such as the Rohingya genocide in Myanmar and the war in Ukraine. These cases serve to illustrate how state-sponsored propaganda and disinformation can lead to violence and result in grave human rights violations.
Key words: freedom of expression, disinformation, propaganda, Myanmar, Ukraine, human rights

Streszczenie: Internet i media społecznościowe stały się naszymi głównymi źródłami informacji, otwierając nam okno na świat. Jednak wolność dostępu do informacji i łatwość jej rozpowszechniania niesie ze sobą negatywne konsekwencje w postaci szybkiego rozprzestrzeniania się dezinformacji, propagandy i mowy nienawiści. Z perspektywy prawa międzynarodowego praw człowieka pojawiają się pytania dotyczące obowiązków i odpowiedzialności państw. W niniejszym artykule autorzy argumentują, że zadaniem państw jest podjęcie niezbędnych i odpowiednich działań zarówno w celu ochrony wolności wypowiedzi, jak i zapobiegania rozprzestrzenianiu się propagandy i dezinformacji. Rozróżnienie wypowiedzi podlegających ochronie od tych przekraczających dopuszczalne granice wolności słowa niekoniecznie jest oczywiste i może stanowić

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trudne wyzwanie. Aby lepiej zrozumieć te kwestie, autorzy koncentrują się na analizie dwóch przykładów, tj. ludobójstwa muzułmańskiej mniejszości Rohingya w Mjanmie oraz wojny w Ukrainie. Stanowią one ilustrację tego, jak państwowa propaganda i dezinformacja mogą prowadzić do przemocy i poważnych naruszeń praw człowieka.

Słowa kluczowe: wolność słowa, dezinformacja, propaganda, Mjanma, Ukraina, prawa człowieka

Резюме: Интернет и социальные сети стали для нас основными источниками информации, открыв нам окно в мир. Однако свобода доступа к информации и возможность ее распространения влекут за собой негативные последствия в виде быстрого распространения дезинформации, пропаганды и языка вражды. С точки зрения международного права в области прав человека возникают вопросы об обязанностях и ответственности государств. В данной статье авторы утверждают, что в обязанности государств входит принятие необходимых и надлежащих мер как для защиты свободы выражения мнений, так и для предотвращения распространения пропаганды и дезинформации. Разграничение между защищаемой речью и речью, выходящей за допустимые пределы свободы выражения мнений, не всегда очевидно и может представлять определенную сложность. Чтобы лучше понять эти вопросы, авторы сосредоточились на анализе двух примеров – геноцида мусульманского меньшинства рохинджа в Мьянме и войны в Украине. Они наглядно показывают, как государственная пропаганда и дезинформация могут приводить к насилию и серьезным нарушениям прав человека.

Ключевые слова: свобода слова, дезинформация, пропаганда, Мьянма, Украина, права человека

Резюме: Інтернет та соціальні мережі стали нашими основними джерелами інформації, відкриваючи вікно у світ. Однак свобода доступу до інформації та легкість її поширення призводить до негативних наслідків у вигляді швидкого поширення дезінформації, пропаганди та мови ворожнечі. З точки зору міжнародного права прав людини виникають питання щодо обов'язків та відповідальності держав. У цій статті автори стверджують, що саме на державах лежить відповідальність за вжиття необхідних і належних заходів як для захисту свободи вираження поглядів, так і для запобігання поширенню пропаганди та дезінформації. Різниця між захищеним мовленням і мовленням, яке перевищує допустимі межі свободи вираження поглядів, не завжди очевидна і може бути складною. Щоб краще зрозуміти ці питання, автори зосереджуються на аналізі двох прикладів, а саме геноциду мусульманської меншини Рохінджа в М'янмі та війни в Україні. Вони ілюструють, як державна пропаганда та дезінформація можуть призвести до насильства та серйозних порушень прав людини.

Ключові слова: свобода слова, дезінформація, пропаганда, М'янма, Україна, права людини

Introduction

Information warfare is not a new phenomenon. Throughout history, information and its presentation have consistently represented valuable assets and instruments of influence over individuals and societies.[1] This influence becomes particularly potent in times of war, conflict and crisis, and it should not be underestimated.[2] In recent decades, rapid technological development

1 On the role played by the media, in particular the audiovisual media see, e.g.: Judgment of the ECtHR of 17 September 2009, Manole and Others v. Moldova, application no. 13936/02, § 97; Judgment of the ECtHR of 16 June 2015, Delfi AS v. Estonia, application no. 64569/09, § 134.

2 J. Fox, D. Welch, *Justifying War: Propaganda, Politics and the Modern Age*, in: *Justifying War*, eds. J. Fox, D. Welch, London 2012, pp. 1–20.

has enabled the rapid and widespread dissemination of information. During World War II, propaganda was disseminated through traditional media, such as newspapers, radio, posters, and leaflets. Today, however, the scale is different. Almost everyone owns a smartphone, tablet, or laptop, allowing them to capture, share and consume information. The World Wide Web has emerged as the predominant channel for communication and information, prompting states to apply measures to control and censor undesirable content.[3] Techniques such as blocking webpages and suspending social media accounts have become standard procedures to fight "terrorist propaganda," "external influence" or political critique.[4]

However, this paper does not aim to delve into these extensively well-researched phenomena infringing the freedom of expression. Instead, it will focus on another problem, i.e. on situations where the state or state-affiliated or inspired actors actively promote disinformation and propaganda, incite war and violence, or deliberately manipulate societies. In the domain of political – but also legal – discourse, disinformation is often labelled as propaganda. Political actors who produce disinformation masqueraded as news do so to influence public perception, whether it pertains to specific issues, individuals, or global views of the world.[5] Identifying a message or news as propaganda inherently implies a negative and dishonest connotation. Synonyms for propaganda include terms such as falsehood, distortion, deceit, manipulation, mind control, psychological warfare, and brainwashing.[6] A specific subset of this phenomenon is propaganda for war, which serves to incite or encourage aggression, hostility, and participation in armed conflicts.

The problem is significant, because disinformation, fake news, and propaganda are universally recognised as substantial security threats, particularly when they are state-sponsored.[7] As observed by the human rights organisation Article 19, digital technologies have transformed the ways of state-led disinformation and

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3 Internet disruptions, shutdowns and suspension of social media have been recorded in many countries around the globe. See: *Amnesty International Report 2021/22: The State of the World's Human Rights*, pp. 23, 36, 55, 111, 140–141, 191, 197, 216, 264, https://www.amnesty.org/en/documents/pol10/4870/2022/en/ [access: 5.09.2023].

4 E. Bechtold, G. Phillipson, *Glorifying Censorship? Anti-Terror Law, Speech, and Online Regulation*, in: *The Oxford Handbook of Freedom of Speech*, eds. A. Stone, F. Schauer, Oxford 2021 [online edition: Oxford Academic, 10.02.2021], pp. 518–541.

5 B. Kalsnes, *Fake News*, in: *Oxford Research Encyclopedias: Communication*, ed. J. Nussbaum, https://doi.org/10.1093/acrefore/9780190228613.013.809 [access: 10.09.2023].

6 G.S. Jowett, V.J. O'Donnell, *Propaganda and Persuasion*, 5th ed., London 2012, pp. 2–3.

7 B. Baade, *Fake News and International Law*, European Journal of International Law 2018, vol. 29, no. 4, pp. 1357–1376.

propaganda: not only expanding its scale and speed but also utilising state-sponsored troll farms, bots, deep fakes and impersonation of media outlets.[8]

The article is divided into three parts, followed by conclusions. The first section provides a normative overview of international law standards regarding freedom of expression, propaganda, and disinformation. The authors analyse the types of state conduct prohibited by international law and reflect on whether it violates the freedom of expression and information. The subsequent sections present two recent case studies of state-sponsored propaganda and disinformation: the situation of Rohingya in Myanmar and the Kremlin's propaganda related to the war in Ukraine.

The central issue we consider in this article is how international law currently addresses such state conduct. Is there a need for standardised definitions? How can we best prevent the misuse of the Internet and new digital technologies? What role do international organisations and the international community play in curbing state-sponsored propaganda and disinformation? Finally, do restrictions on state-inspired propaganda violate freedom of expression and information? We argue that the unprecedented rise of fake news and intentional disinformation calls for an interpretation of freedom of expression that encompasses the right to access reliable and unmanipulated information. The two case studies presented in the article effectively illustrate the power of propaganda. While we acknowledge that censorship and free speech restrictions should be approached cautiously, their appropriateness depends on the context. It is crucial to distinguish between situations in which a state limits its citizens' freedom of expression and situations in which it deliberately seeks to manipulate them. Without access to reliable information, democracies will struggle to function, and protecting human rights becomes challenging. The right of people to speak freely on matters of public concern is rightly viewed as essential to the formation of democratic public opinion through which the people control the government.[9] However, ensuring this right may not suffice when governments actively employ propaganda.

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8 *Article 19's Submission: Response to the Consultations of the UN Special Rapporteur on Freedom of Expression on Her Report on Disinformation*, https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/disinformation/2-Civil-society-organisations/ARTICLE19.pdf [access: 12.09.2023].

9 A. Bhagwat, J. Weinstein, *Freedom of Expression and Democracy*, in: *The Oxford Handbook*…, pp. 82–105.

1. Freedom of expression v. propaganda for war and disinformation (normative level)

Freedom of expression is universally recognised as one of the core civil and political freedoms guaranteed by fundamental global[10] and regional[11] human rights instruments. Nonetheless, this freedom is not absolute and can be subject to limitations[12] or even a derogation in times of public emergency.[13] In recent decades, freedom of expression has been an area of increased interest as reflected in the activities of various stakeholders, including the UN Special Rapporteur on freedom of opinion and expression,[14] the Human Rights Committee,[15] and, on the regional level, through the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR), which has been evolving since the late 1970s.[16]

While normative and jurisprudential standards pertaining to freedom of expression have been well-established, much less attention has been paid to phenomena that can be seen as the misuse or abuse of this freedom, such as the dissemination of propaganda for war and disinformation. Nevertheless, the international community's efforts to establish norms preventing states from inciting to war through radio transmissions date back to the 1930s. During this period, under the auspices of the League of Nations, nearly thirty states adopted the International Convention Concerning the Use of Broadcasting in the Cause of Peace.[17]

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10 International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (hereinafter: ICCPR), Article 19 (2): "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

11 Convention for the Protection of Human Rights and Fundamental Freedoms (adopted on 4 November 1950), Article 10; American Convention on Human Rights (adopted on 22 November 1969); OAS Treaty Series no. 36, Article 13; African Charter on Human and Peoples' Rights (adopted on 27 June 1981, entered into force 21 October 1986), (1982) 21 ILM 58, Article 9 (2).

12 Cf. ICCPR, Article 19 (3); European Convention of Human Rights (hereinafter: ECHR), Article 10 (2).

13 The freedom of expression does not belong to the catalogue of non-derogable rights, see: ICCPR, Article 4; ECHR, Article 15 (2).

14 The mandate of the UN Special Rapporteur was established by the Human Rights Commission in 1993, UN Doc. E/CN.4/1993/L.48, currently operating under the Resolution of the Human Rights Council 52/9 of 2023.

15 UN Human Rights Committee, General Comment no. 34, UN Doc. CCPR/C/GC/34, 12.09.2011, Article 19: Freedoms of opinion and expression.

16 Cf. J.-F. Flauss, *The European Court of Human Rights and the Freedom of Expression*, Indiana Law Journal 2009, vol. 84, pp. 809–849; W.A. Schabas, *The European Convention on Human Rights. A Commentary*, Oxford 2015, pp. 444–481.

17 Adopted on 23 September 1936, League of Nations Treaty Series 1938, vol. 186, no. 4319.

Article 2 of this treaty obliged States Parties "to ensure that transmissions from stations within their respective territories shall not constitute an incitement either to war against another High Contracting Party or to acts likely to lead thereto." The 1936 Convention entered into force in 1938, although its significance can only be described as mediocre. Nonetheless, it did reflect valid concerns about using the then-modern technology (radio broadcasting) to disseminate propaganda.

In the post-war evolution of international human rights law, one should remember the explicit reference to "propaganda for war" in Article 20 of the International Covenant on Civil and Political Rights (ICCPR). This provision prohibits "any propaganda for war" (§ 1) and obliges States Parties to establish statutory prohibitions of "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (§ 2). However, it is noteworthy that this standard has been barely explained in the practice of the Human Rights Committee and legal doctrine, at least until certain scholars took a closer look at the prohibition of war propaganda.[18] General Comment no. 11, which provides guidance on Article 20 of the ICCPR, does not define or offer examples of the various forms of propaganda. Instead, it only clarifies the ultimate consequence of it, namely the threat of aggression or a resulting act of aggression or breach of the peace contrary to the Charter of the United Nations.[19]

The obligations arising from Article 20 of the ICCPR are considered largely 'horizontal' in nature and require state efforts to protect the essence of this right (i.e. not to be subjected to propaganda for war or incitement to discrimination, hostility, or violence) by private individuals.[20] General Comment no. 34 of the Human Rights Committee, which addresses freedom of expression, does not explore the essence of Article 20 in detail. However, it does highlight the compatibility of Article 20 with the broader guarantee enshrined in Article 19.[21] Moreover, it points out that "what distinguishes the acts addressed in Article 20 from other acts that may be subject to restriction under Article 19 § 3, is that for the acts addressed in Article 20, the Covenant indicates the specific response required from the State: their prohibition by

18 M.G. Kearney, *The Prohibition of Propaganda for War in International Law*, Oxford 2007, passim.

19 CCPR, General Comment no. 11, 29.07.1983, Article 20: Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred, § 2.

20 M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed., Kehl am Rhein 2005, XXI. See also: P.M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge 2020, pp. 579–590.

21 *Supra* note 15, § 50.

law."[22] It is crucial to approach such often highly repressive legislation with caution due to its potential misuse. This legislation typically does not target the speech of state organs, but focuses on political opposition and activists.

Legally speaking, the prohibition of war propaganda has a well-defined status in international human rights law. It serves as a standard that prioritises the maintenance of peace and security over the misuse of freedom of expression, which runs counter to the most elementary principles of international order. Less clear, however, is how international law addresses the problem of disinformation. In her recent report, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conducted an analysis of this phenomenon and offered numerous recommendations.[23] She emphasised that while there is no universally accepted definition of 'disinformation,' the term generally refers to "false information that is disseminated intentionally to cause serious social harm."[24] The European Union (EU) employs a broader definition, understanding disinformation as "verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm."[25] Notwithstanding these differences, there is a common understanding that disinformation can be extremely harmful to human rights, particularly in the context of modern digital technologies that enable a rapid and sophisticated spread of distorted information. Addressing this challenge – which has thus far received limited attention – must involve various stakeholders, including states and private companies.

In essence, international human rights law recognises the dangers of disseminating propaganda and disinformation. The existing legal framework, including Articles 19 and 20 of the ICCPR, attempts to strike a balance between the legitimate exercise of freedom of expression and the potential for its misuse. It is not coincidental that Article 19 (3) of the ICCPR recalls the "special duties and responsibilities" that come with the exercise of this freedom. However, as illustrated below, states and other actors engage in the active use of propaganda and disinformation, which ultimately leads to violence, war, and human suffering.

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22 Ibidem, § 51.

23 Disinformation and freedom of opinion and expression – Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, A/HRC/47/25, 13.04.2021.

24 Ibidem, §§ 11–15.

25 Communication on tackling online disinformation, COM (2018) 236, Brussels, 26.04.2018.

2. Case study: anti-Rohingya propaganda in Myanmar

The Rohingya are a Muslim ethnic minority group, although they are not officially recognised as such in Myanmar and face statelessness. They have lived in the predominantly Buddhist Myanmar for centuries. The Rohingya have endured discrimination and persecution for many decades,[26] but the most significant exodus occurred in August 2017 following armed attacks, widespread killings, and violence that began in October 2016.[27] As observed by the UN High Commissioner for Human Rights, the primary catalyst behind this escalation can be traced to "the dramatic expansion of public access to social media [that] has enabled extremist and ultra-nationalist movements to propagate messages inciting hatred and violence, fuelling communal tensions."[28] The case of anti-Rohingya propaganda serves as a compelling illustration of how powerful the Internet has become and underscores that states cannot afford to remain passive. Instead, states need to take all measures necessary, while fully respecting human rights and fundamental freedoms, to counter any incitement to hatred or violence by publicly condemning such acts and holding those who commit them accountable under criminal law. These obligations are, however, not new and have been previously voiced by various human rights bodies in the context of addressing hate speech.[29] In essence, states are expected to act as reasonable regulators, setting standards for social media platforms and website administrators while implementing preventive measures and effectively combating hate speech.

The case of Myanmar is far from straightforward due to the direct and active involvement of public officials in propaganda activities. According to statements from former military officials, researchers, and civilian officials, members of the Myanmar military played a central role in the systematic anti-Rohingya campaign

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26 Situation of human rights of Rohingya Muslims minority and other minorities in Myanmar – Report of the United Nations High Commissioner for Human Rights, A/HRC/43/18, 27.01.2020. The report addresses the root causes of the violations and abuses suffered by ethnic and religious minorities in Myanmar, including the Rohingya.

27 Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, 18.09.2018, §§ 1069–1095. It is estimated that between 2016 and 2018 there could have been as many as 25,000 casualties.

28 Statement by Michelle Bachelet, United Nations High Commissioner for Human Rights at the Human Rights Council 43rd Session, 27.02.2020, https://www.ohchr.org/en/statements/2020/02/high-commissioner-report-rohingya-and-other-minorities-myanmar [access: 15.09.2023].

29 Cf. Decision of ECtHR of 27 June 2017, Belkacem v. Belgium, application no. 34367/14; Decision of ECtHR of 20 April 2010, Le Pen v. France, application no. 18788/09; Decision of ECtHR of 8 February 2018, Abedin Smajić v. Bosnia and Herzegovina, application no. 48657/16; ECRI General Policy Recommendation no. 15 on Combating Hate Speech, CRI(2016)15, 8.12.2015, Strasbourg.

on Facebook that spanned half a decade. Facebook itself admitted that there were clear and deliberate efforts to covertly disseminate propaganda directly linked to the Myanmar military.[30] The United Nations Mission also reported the involvement of several key actors, including nationalist political parties and politicians, prominent monks, academics, influential individuals, and members of the government, who 'weaponised' Facebook and other media for "a carefully crafted hate campaign [to] develop a negative perception of Muslims among the broad population in Myanmar."[31]

Myanmar's case demonstrated a need to ensure that social media platforms, including Facebook and X (formerly Twitter), uphold human rights and adhere to due diligence standards, as envisaged in the United Nations Guiding Principles on Business and Human Rights (UNGPs).[32] It also underscored how states may manipulate Internet in violation of their human rights obligations. In November 2019, Gambia instituted proceedings against Myanmar at the International Court of Justice (ICJ) for breaching its obligations under the Genocide Convention.[33] It seeks to hold Myanmar accountable for the crime of genocide against the Rohingya, and part of the application addresses the issue of hate propaganda against the Rohingya group.[34] Under Article III of the Genocide Convention, the commission of the acts listed therein, other than genocide itself, is also prohibited by the Convention. This includes a direct and public incitement to commit genocide. On 23 January 2020, the ICJ indicated provisional measures,[35] obliging Myanmar to ensure that its military, as well as any irregular armed units it may direct or support and any organisations and persons that may be subject to its control, direction or influence, do not commit acts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to

30 P. Mozur, *A Genocide Incited on Facebook, With Posts From Myanmar's Military*, The New York Times, 15.10.2018, https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html [access: 24.09.2023].

31 Report of the Detailed Findings…, § 696.

32 Report of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/40/68, 2.05.2019, p. 19. See also: M. Gajos, *Facebook in Myanmar: The Challenges and Promises of Applying the United Nations Guiding Principles on Business and Human Rights to a Social Media Company*, Review of International, European and Comparative Law 2020, vol. 18, pp. 121–148.

33 The Gambia v. Myanmar (Application instituting proceedings and request for provisional measures, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, filed on 11 November 2019), https://www.icj-cij.org/public/files/case-related/178/178-20191111-APP-01-00-EN.pdf [access: 26.09.2023].

34 Ibidem, §§ 37–46.

35 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 3.

commit genocide, or of complicity in genocide.[36] As of December 2023, the case is pending before the ICJ. On 22 July 2022, the Court delivered its Judgment on the preliminary objections raised by Myanmar, finding that is had jurisdiction and that the application was admissible.[37]

Alongside the proceedings before the ICJ, Gambia initiated a civil action against Facebook at the US District Court for the District of Columbia. Pursuant to Title 28 of the United States Code § 1782, Gambia sought access to the content removed by Facebook for use as evidence in its litigation against Myanmar at the ICJ. Gambia intended to use these records to prove the genocidal intent necessary to establish responsibility for the genocide of the Rohingya. Gambia's request for de-platformed content and related internal investigation documents was granted by the Court's order of 22 September 2021. The US court emphasised that "Facebook can act now. It took the first step by deleting the content that fuelled a genocide […]. Locking away the requested content would be throwing away the opportunity to understand how disinformation begat genocide of the Rohingya and would foreclose a reckoning at the ICJ."[38]

While much of the academic and public discourse regarding the Rohingya focused on Myanmar's accountability for the genocide, including state responsibility and individual criminal responsibility,[39] other vital aspects received relatively less attention. It seems no less essential to encourage a discussion on possible pathways for prevention and the role of the international community, as well as UN special procedures and other bodies. UN reports have highlighted the root causes and long-standing systemic discrimination against the Rohingya,[40] which has been overlooked not only by Myanmar but also by the international community as a whole.[41]

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36 Ibidem, § 80.

37 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 447.

38 US District Court for the District of Columbia, The Republic of Gambia v. Facebook, Inc., Order of 22 September 2021, https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/10/In-re-Gambia-v-Facebook.pdf [access: 12.09.2023].

39 Cf. M. Ramsden, *Accountability for Crimes against the Rohingya: Strategic Litigation in the International Court of Justice*, Harvard Negotiation Law Review 2021, vol. 26, pp. 153–191; K. Rapp, *Social Media and Genocide: The Case for Home State Responsibility*, Journal of Human Rights 2021, vol. 20, no. 4, pp. 486–502. See also: ICC Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27, 14.11.2019.

40 *Supra* note 31, § 458.

41 Ibidem, § 747: The UN Mission concluded that already in 2012 and 2013 violence in Rakhine State was pre-planned and instigated and that the Myanmar security forces were actively involved and

Given the fine line between systemic discrimination and hate speech that can ultimately lead to violence or even genocide, it is imperative that such 'campaigns' ring an early warning bell.[42] Facebook has faced criticism for being too slow to act, but at the same time, it has been accused of restricting freedom of speech on many different occasions. This raises the critical question of who should be entrusted with the authority to make such decisions. The question of *who* is crucial because the question of *how* is well-grounded in human rights standards. As reflected in a well-established case law of the ECtHR: "any measure taken by State authorities or private-sector actors to block, filter or remove internet content […] must in particular be prescribed by a law which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct. They must at the same time be necessary in a democratic society and proportionate to the legitimate aim pursued."[43] In other words, it is crucial *who* will assess the intention (*mens rea* criteria), context, causal link, and potential harm requirements and take responsible and adequate decisions.

3. Case study: Russia's war propaganda

Russia's information war against Ukraine had started well before 24 February 2022, when the former launched full-scale military aggression.[44] While engaging in disinformation in international relations is, in and of itself, neither new nor illegal, Russia took it to the next level by orchestrating a propaganda campaign in support of the war of aggression. This campaign was strictly interlinked with the use of force in blatant violation of the United Nations Charter.[45] Even though official and media statements have avoided using the term 'war' and instead employed the phrase

complicit.

42 The Report of the Special Rapporteur on the situation of human rights in Myanmar (A/71/361, 29.08.2016, § 67) mentions systemic discrimination and deprivation of basic human rights of Muslim minority, as well as incidents of hate speech, incitement to hatred and violence and religious intolerance.

43 See: Council of Europe, *Thematic Factsheet on Freedom of Expression, the Internet and New Technologies*, June 2018, https://rm.coe.int/freedom-of-expression-internet-and-new-technologies-14june2018-docx/16808b3530 [access: 8.08.2023].

44 A. Aliaksandrau, *Brave New War: The Information War between Russia and Ukraine*, Index on Censorship 2014, vol. 43, no. 4, pp. 54–60. See also: OHCHR Report on the human rights situation in Ukraine, 15.04.2014, §§ 72–76, https://www.ohchr.org/en/press-releases/2014/04/ukraine-misinformation-propaganda-and-incitement-hatred-need-be-urgently [access: 27.09.2023].

45 B. Asrat, *Prohibition of Force Under the UN Charter: A Study of Art. 2 (4)*, Uppsala 1991, p. 139.

'special military operation', it is indisputable that Russia's actions constituted a crime of aggression. Russia's allegations of genocide have been used as a pretext for invading Ukraine, and this case awaits judicial assessment through Ukraine's application to the International Court of Justice.[46] The justifications for Russia's aggression, presented at domestic and international fora, exemplify the instrumentalisation of international law.

It is disappointing, although not entirely surprising, that Russian propaganda has not been strongly condemned by the UN General Assembly (UNGA) and the UN Security Council. Opposition to such propaganda has been voiced by the Human Rights Council (HRC) and various expert bodies, which have called on the Russian Federation to immediately cease its unlawful practices of propaganda for war and promotion of national hatred.[47] In a resolution addressing the war in Ukraine, the HRC emphasised that "disinformation spread by States and state-sponsored actors can accompany serious violations of international law and can have a far-reaching negative impact on the enjoyment of human rights, in particular in times of emergency, crisis and armed conflict." In the resolution, the HRC also demanded an immediate cessation of disinformation, propaganda for war, and national hatred related to the aggression against Ukraine.[48]

Before adopting the aforementioned HRC resolution, the Council of the European Union took a significant step on 1 March 2022 by suspending the distribution of state-owned disinformation outlets Russia Today and Sputnik across the EU.[49] Even before this decision, several regulators in EU Member States had taken action against these outlets, including Estonia, Latvia, Lithuania, and Poland. Germany also prohibited broadcasting the German edition of Russia Today due to a lack of a licence.[50] EU sanctions were comprehensive, covering all means of transmission and distribution, including cable, satellite, IPTV, platforms,

46 Ukraine v. Russian Federation, Application instituting proceedings filed on 26 February 2022, https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf [access: 2.08.2023].

47 Ukraine: Joint statement on Russia's invasion and importance of freedom of expression and information, 4.05.2022, https://www.ohchr.org/en/statements-and-speeches/2022/05/ukraine-joint-statement-russias-invasion-and-importance-freedom [access: 4.08.2023].

48 Human Right Council Resolution S-34/1 on the deteriorating human rights situation in Ukraine stemming from the Russian aggression, 12.05.2022.

49 Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, OJ L 65, 2.03.2022, pp. 1–4 and Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, OJ L 65, 2.03.2022, pp. 5–7.

50 *Ukraine: Sanctions on Kremlin-backed outlets Russia Today and Sputnik*, https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1490 [access: 12.08.2023].

websites, and apps. All licences, authorisations, and distribution arrangements were suspended.

While these sanctions can be seen as legal countermeasures to address the Russian Federations' illegal conduct, they raised some concerns about their necessity and proportionality.[51] Russia challenged these measures before the General Court.[52] Some commentators argued that the EU's decisions violated the right to access information because they were overly broad and covered all content broadcasted by these outlets rather than targeting only propaganda information.[53] Admittedly, some justifications for the sanctions may be viewed as too general and do not specifically refer to the war in Ukraine. Instead, they focus on a systematic, international campaign of media manipulation and distortion of facts to reinforce Russia's strategy of destabilising its neighbouring countries as well as the EU and its Member States.[54] Another argument against the proportionality of EU's sanctions was that misleading and manipulative information is not equivalent to propaganda and that only false information qualifies as such.[55] However, such an interpretation is legally unfounded. In our opinion, future distinctions should be based on the intent/aim of a particular information and the source and author of the information. Secondary dissemination and use of false information by private individuals,[56] as well as expressing opinions that may "shock, offend or disturb" on issues that fall within the realm of political discourse and are of public

51 Ukraine: Joint statement on Russia's invasion…

52 Action brought on 8 March 2022, RT France v. Council, T-125/22, OJ C 148/64, 4.04.2022.

53 I. Popović, *The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression*, EJIL: Talk!, 30.03.2022, https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/ [access: 13.08.2023].

54 Recital (6) of Council Regulation continues that "In particular, the propaganda has repeatedly and consistently targeted European political parties, especially during election periods, as well as targeting civil society, asylum seekers, Russian ethnic minorities, gender minorities, and the functioning of democratic institutions in the Union and its Member States", see *supra* note 49.

55 *Supra* note 53.

56 As observed by the ECtHR: "Article 10 of the Convention as such does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful. To suggest otherwise would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression set forth in Article 10 of the Convention," see: Judgment of 6 September 2005, Salov v. Ukraine, application no. 65518/01, § 113. In the said case, the applicant was apprehended for having disseminated false information about the alleged death of a presidential candidate, the incumbent President Mr Leonid D. Kuchma. This statement of fact was not made or published by the applicant himself and was referred to by him in conversations with others as a personal assessment of factual information, the veracity of which he doubted.

interest,[57] is different from producing or inspiring false or manipulated content by public authorities.

The CJEU has assessed the latter situation in the Kiselev case. The Court observed that "large-scale media support for the actions and policies of the Russian Government destabilising Ukraine, provided, in particular during very popular television programmes, by a person appointed by a decree of President Putin as Head of RS, a news agency that the applicant himself describes as a 'unitary enterprise' of the Russian State could be covered by the criterion based on the concept of 'active support,' provided that the resulting limitations on the freedom of expression comply with the other conditions that must be satisfied in order for that freedom to be legitimately restricted."[58]

It can be further argued that even if specific information does not meet the definition of propaganda for war, it may still be subject to legitimate censorship or banning, provided that these measures have a legal basis, pursue a legitimate aim, and are deemed necessary and proportional. Although it should be noted that the ECtHR has asserted that the wholesale blocking of access to an entire website is an "extreme measure" akin to banning a newspaper or television station, this statement cannot be used as an argument against sanctioning Russian media outlets. The context it referred to was entirely different.[59] In the case of Russia's aggression, information is deliberately intended to mislead both the domestic population and the international community; to provide false justifications for invasion (such as claims of genocidal denazification); to incite violence, discrimination, or hostility against Ukrainians; and to furnish 'arguments' for further attacks (e.g. claims of the presence of biological weapons in Ukraine).[60] Therefore, the adoption of restrictive measures against media outlets or individuals actively supporting the Russian Government's actions and policies destabilising Ukraine served the general objective referred to in Article 21 (2) (c) of the Treaty on European Union, which is to preserve peace, prevent conflicts, and strengthen international security in accordance with the purposes and principles of the United Nations Charter.

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57 See: Judgment of ECtHR of 8 July 1999, Ümit Erdogdu v. Turkey and Selami Ince v. Turkey, applications no. 25067/94 and 25068/94, § 47.

58 Judgment of the Court of 15 June 2017, Dmitrii Konstantinovich Kiselev v. Council of the European Union, T-262/15, ECLI:EU:T:2017:392, § 76.

59 A Russian executive agency has been given so broad a discretion to censor and block websites that it carried a risk of content being blocked arbitrarily and excessively, see: Judgment of ECtHR of 23 June 2020, Vladimir Kharitonov v. Russia, application no. 10795/14.

60 Meetings coverage, Security Council, *United Nations Not Aware of Any Biological Weapons Programmes, Disarmament Chief Affirms as Security Council Meets to Address Related Concerns in Ukraine*, 11.03.2022, https://press.un.org/en/2022/sc14827.doc.htm [access: 20.08.2023].

The Russian 'special operation' propaganda falls within the scope of Article 20 (1) of the ICCPR, which "extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations."[61] The exception to the prohibition, which covers advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations, is obviously not applicable to the case study under review.[62] Moreover, state-sponsored advocacy of hatred that calls for the 'denazification of Ukraine' and questions the existence of the Ukrainian nation violates Article 20 (2) ICCPR.[63]

Russian propaganda also contravenes the provisions of the International Convention Concerning the Use of Broadcasting in the Cause of Peace of 1936.[64] Although this treaty cannot be used as a legal avenue before the ICJ,[65] the principles and goals it was designed to pursue are worth remembering.

Conclusions

It is undisputed that international law provides for the prohibition of propaganda for war as well as incitement to discrimination and violence, even though this prohibition seems to be mostly disregarded by some significant global actors. Nevertheless, this prohibition remains a firmly established norm of general international law, and the international community should constantly insist on recalling the illegality of spreading war propaganda and hate speech.

The right to receive credible and unmanipulated information is integral to freedom of expression. The importance of "providing and promoting access to independent, factual and evidence-based information to counter disinformation" has

61 *Supra* note 19, § 2.

62 Ibidem.

63 Ibidem: "paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned."

64 League of Nations Treaty Series 1938, vol. 186, no. 4319, p. 302, https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20186/v186.pdf [access: 28.09.2023].

65 T. de Souza Dias, *Russia's "Genocide Disinformation" and War Propaganda Are Breaches of the International Convention Concerning the Use of Broadcasting in the Cause of Peace and Fall within the ICJ's Jurisdiction*, EJIL: Talk! 4.03.2022, https://www.ejiltalk.org/russias-genocide-disinformation-and-war-propaganda-are-breaches-of-the-international-convention-concerning-the-use-of-broadcasting-in-the-cause-of-peace-and-fall-within-the/ [access: 10.08.2023].

surged due to the proliferation of digital technologies. UNGA resolutions have acknowledged this fact.[66] It should be emphasised that disinformation can not only adversely affect the right to seek, receive, and impart information but also violate other human rights and fundamental freedoms. This includes, for instance, the right to free elections or even the right to life.[67] The obligation to combat propaganda should not be confined solely to the knowing and reckless dissemination of false statements by public officials and other state-related actors. It should also cover manipulated and misleading information, depending on the aim it seeks to achieve, its impact, and its scale.

The international community should avail of all existing measures and, if necessary, establish new ones to counter disinformation and state-sponsored propaganda. When a state entity, an official, or an authority – including public broadcasters or private entities whose conduct can be attributed to the State – violates its international legal obligations regarding propaganda, this violation engages the international responsibility of the State for an internationally wrongful act (Article 4 ARSIWA).[68] Well-known past cases adjudicated by the International Military Tribunal at Nuremberg or the International Criminal Tribunal for Rwanda prove that there are pathways for bringing individuals responsible for disseminating hate speech and propaganda to international justice.[69]

Regrettably, initiating an inter-state complaint mechanism before the Human Rights Committee is not feasible in either of the cases analysed.[70] There are, how-

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66 UNGA Resolution 76/227 on the countering disinformation for the promotion and protection of human rights and fundamental freedoms, 24.12.2021.

67 CCPR General Comment no. 36, UN Doc. CCPR/C/GC/36, 30.10.2018, Article 6: The Right to Life, § 59: "A particular connection exists between article 6 and article 20, which prohibits any propaganda for war and certain forms of advocacy constituting incitement to discrimination, hostility or violence. Failure to comply with these obligations under article 20 may also constitute a failure to take the necessary measures to protect the right to life under article 6."

68 ILC, Responsibility of States for Internationally Wrongful Acts, 2001, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf [access: 27.09.2023].

69 G.S. Gordon, *The Propaganda Prosecutions at Nuremberg: The Origin of Atrocity Speech Law and the Touchstone for Normative Evolution*, Loyola of Los Angeles International and Comparative Law Review 2017, vol. 39, no. 1, pp. 209–245. With regard to the ICTR, the seminal Media Case is particularly noteworthy, see: Judgment Appeals Chamber of International Criminal Tribunal for Rwanda of 28 November 2007, Nahimana et al. v. The Prosecutor, case no. ICTR-99-52-A. See also a critical discussion concerning problems with proving instigation: R.A. Wilson, *Propaganda on Trial: Structural Fragility and the Epistemology of International Legal Institutions*, in: *Palaces of Hope: The Anthropology of Global Organizations*, eds. R. Niezen, M. Sapignoli, Cambridge 2017, pp. 266–293.

70 Myanmar is not a Party to the ICCPR and Russian Federation has not made a declaration recognising the competence of the Committee in this regard.

ever, other possibilities for action that may be discussed. For instance, establishing a new early warning oversight mechanism could be a valuable solution. The Special Rapporteur on freedom of opinion and expression plays a crucial role in this regard. Drawing from historical lessons, it is imperative to ensure that incitement to violence and hostility, akin to situations witnessed in Rwanda or Myanmar, are met with zero tolerance, thus setting a universal standard. Achieving this necessitates meaningful cooperation between international mechanisms and the private sector, encompassing both 'old' and 'new' media. Relying solely on business self-regulation and voluntary commitments may prove insufficient.[71] In this context, the significance of Article 19 (3) of the ICCPR, which stipulates the "special duties and responsibilities" of those whose right to freedom of expression must be safeguarded, has transcended rhetorical use. Following the development of the UN Guiding Principles on Business and Human Rights in 2011,[72] there is a growing recognition that corporations should act with due diligence to identify, prevent, and mitigate "human rights risks."[73]

There is a need for more meaningful support of civil society initiatives aimed at suppressing disinformation and propaganda. By way of example, open-source intelligence (OSINT) represents a laborious process of verifying videos and photographs using open sources and social media for investigative purposes.[74] There are already many examples of successful exposure of disinformation spread by Russia in the context of the war in Ukraine,[75] as well as related to other conflicts.[76] Furthermore, Russia's disinformation campaigns have been routinely monitored and

71 Such as the World Economic Forum Global AI Action Alliance (GAIA), https://www.weforum.org/impact/a-new-alliance-is-ensuring-responsible-global-ai/ [access: 3.10.2023].

72 UNHCR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, New York–Geneva 2011.

73 A. Callamard, *The Human Rights Obligations of Non-State Actors*, in: *Human Rights in the Age of Platforms*, ed. R.F. Jørgensen, Cambridge 2019, p. 202.

74 K. Vick, *Bellingcat's Eliot Higgins Explains Why Ukraine Is Winning the Information War*, Time, 9.03.2022, https://time.com/6155869/bellingcat-eliot-higgins-ukraine-open-source-intelligence/ [access: 7.10.2023].

75 N. Waters, *'Exploiting Cadavers' and 'Faked IEDs': Experts Debunk Staged Pre-War 'Provocation' in the Donbas*, Bellingcat, 28.02.2022, https://www.bellingcat.com/news/2022/02/28/exploiting-cadavers-and-faked-ieds-experts-debunk-staged-pre-war-provocation-in-the-donbas/ [access: 3.10.2023].

76 N. Mustafayev, *Azerbaijan v. Armenia before the European Court of Human Rights: Revisiting the Effective Control Test after the "44-Day War"*, Opinio Juris, 8.04.2022, http://opiniojuris.org/2022/04/08/azerbaijan-v-armenia-before-the-european-court-of-human-rights-revisiting-the-effective-control-test-after-the-44-day-war/ [access: 10.10.2023].

exposed by the East Stratcom Task Force set up as a part of the Strategic Communications and Information Analysis Division of the European External Action Service.[77]

While it is both legitimate and desired to ensure the prevention and discouragement of disinformation and propaganda, it is crucial to acknowledge the potential slippery slope that such measures may entail. In other words, the suppression of certain forms of (mis)information and expression, if not carefully managed, may result in the limitation of the freedom of expression itself. The two case studies presented here are very illustrative in this regard. The process often starts with the suppression of free media and critical thinking under the guise of, i.a. national security and public safety. The second step involves state-sponsored propaganda and indoctrination. The third – and final – can be described as 'digital dictatorship.'[78]

Interestingly, this threat, albeit not inherently 'digital', has been reflected in one of the early UNGA resolutions, i.e. Resolution 381 of 17 November 1950 "Condemnation of propaganda against peace." This document defines propaganda as including not only incitement to conflicts or acts of aggression but also "measures tending to isolate the peoples from any contact with the outside world, by preventing the press, radio and other media of communication from reporting international events, and thus hindering mutual comprehension and understanding between peoples."[79] This kind of isolation has been experienced by several countries behind the 'Iron Curtain' and some are still experiencing it today.

Ultimately, what matters is that state-sponsored abusive speech, disinformation, and propaganda are not tolerated and do not enjoy any protection under international law. On the contrary, international law should be expected to be considered

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77 https://www.eeas.europa.eu/eeas/questions-and-answers-about-east-stratcom-task-force_en#11232 [access: 21.09.2023].

78 Russia is censoring Internet content, blocking 'external' social media, such as Facebook, and suppressing independent media, see: A. Nußberger, *Report on Russia's Legal and Administrative Practice in Light of Its OSCE Human Dimension Commitments*, 22.09.2022, https://www.osce.org/files/f/documents/7/5/526720.pdf [access: 2.10.2023]. In Myanmar, following the February 2021 coup, the junta blocked access to social media and messaging platforms and imposed rolling nationwide internet shutdowns. A draft Cyber Security Law would ban the use of VPNs, with users facing up to three years' imprisonment, and empower authorities to block online content or restrict internet access without judicial oversight, see: Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, A/HRC/49/76, 16.03.2022, p. 16, §§ 78–79.

79 https://digitallibrary.un.org/record/209541 [access: 24.09.2023].

a shield against these forms of abusive speech. And it is a legitimate expectation that the international community should have the right to name and shame disinformation and propaganda when it sees it.

Bibliography

Aliaksandrau A., *Brave New War: The Information War between Russia and Ukraine*, Index on Censorship 2014, vol. 43, no. 4.

Amnesty International Report 2021/22: The State of the World's Human Rights, https://www.amnesty.org/en/documents/pol10/4870/2022/en/ [access: 5.09.2023].

Asrat B., *Prohibition of Force Under the UN Charter: A Study of Art. 2 (4)*, Uppsala 1991.

Baade B., *Fake News and International Law*, European Journal of International Law 2018, vol. 29, no. 4, DOI: 10.1093/ejil/chy071.

Bechtold E., Phillipson G., *Glorifying Censorship? Anti-Terror Law, Speech, and Online Regulation*, in: *The Oxford Handbook of Freedom of Speech*, eds. A. Stone, F. Schauer, Oxford 2021 [online edition: Oxford Academic, 10.02.2021], DOI: 10.1093/oxfordhb/9780198827580.013.28.

Bhagwat A., Weinstein J., *Freedom of Expression and Democracy*, in: *The Oxford Handbook of Freedom of Speech*, eds. A. Stone, F. Schauer, Oxford 2021 [online edition: Oxford Academic, 10.02.2021], DOI: 10.1093/oxfordhb/9780198827580.013.5.

Callamard A., *The Human Rights Obligations of Non-State Actors*, in: *Human Rights in the Age of Platforms*, ed. R.F. Jørgensen, Cambridge 2019.

Flauss J.-F., *The European Court of Human Rights and the Freedom of Expression*, Indiana Law Journal 2009, vol. 84.

Fox J., Welch D., *Justifying War: Propaganda, Politics and the Modern Age*, in: *Justifying War*, eds. J. Fox, D. Welch, London 2012.

Gajos M., *Facebook in Myanmar: The Challenges and Promises of Applying the United Nations Guiding Principles on Business and Human Rights to a Social Media Company*, Review of International, European and Comparative Law 2020, vol. 18.

Gordon G.S., *The Propaganda Prosecutions at Nuremberg: The Origin of Atrocity Speech Law and the Touchstone for Normative Evolution*, Loyola of Los Angeles International and Comparative Law Review 2017, vol. 39, no. 1.

Jowett G.S., O'Donnell V.J., *Propaganda and Persuasion*, 5th ed., London 2012.

Kalsnes B., *Fake News*, in: *Oxford Research Encyclopedias: Communication*, ed. J. Nussbaum, https://doi.org/10.1093/acrefore/9780190228613.013.809 [access: 10.09.2023].

Kearney M.G., *The Prohibition of Propaganda for War in International Law*, Oxford 2007.

Mozur P., *A Genocide Incited on Facebook, With Posts From Myanmar's Military*, The New York Times, 15.10.2018, https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html [access: 24.09.2023].

Mustafayev N., *Azerbaijan v. Armenia before the European Court of Human Rights: Revisiting the Effective Control Test after the "44-Day War"*, Opinio Juris, 8.04.2022, http://opiniojuris.

org/2022/04/08/azerbaijan-v-armenia-before-the-european-court-of-human-rights-revisiting-the-effective-control-test-after-the-44-day-war/ [access: 10.10.2023].

Nowak M., *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed., Kehl am Rhein 2005.

Nußberger A., *Report on Russia's Legal and Administrative Practice in Light of Its OSCE Human Dimension Commitments*, 22.09.2022, https://www.osce.org/files/f/documents/7/5/526720.pdf [access: 2.10.2023].

Popović I., *The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression*, EJIL: Talk!, 30.03.2022, https://www.ejiltalk.org/the-eu-ban-of-rt-and-sputnik-concerns-regarding-freedom-of-expression/ [access: 13.08.2023].

Ramsden M., *Accountability for Crimes against the Rohingya: Strategic Litigation in the International Court of Justice*, Harvard Negotiation Law Review 2021, vol. 26.

Rapp K., *Social Media and Genocide: The Case for Home State Responsibility*, Journal of Human Rights 2021, vol. 20, no. 4, DOI: 10.1080/14754835.2021.1947208.

Schabas W.A., *The European Convention on Human Rights. A Commentary*, Oxford 2015.

de Souza Dias T., *Russia's "Genocide Disinformation" and War Propaganda Are Breaches of the International Convention Concerning the Use of Broadcasting in the Cause of Peace and Fall within the ICJ's Jurisdiction*, EJIL: Talk!, 4.03.2022, https://www.ejiltalk.org/russias-genocide-disinformation-and-war-propaganda-are-breaches-of-the-international-convention-concerning-the-use-of-broadcasting-in-the-cause-of-peace-and-fall-within-the/ [access: 10.08.2023].

Taylor P.M., *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge 2020.

UNHCR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, New York–Geneva 2011.

Vick K., *Bellingcat's Eliot Higgins Explains Why Ukraine Is Winning the Information War*, Time, 9.03.2022, https://time.com/6155869/bellingcat-eliot-higgins-ukraine-open-source-intelligence/ [access: 7.10.2023].

Waters N., *'Exploiting Cadavers' and 'Faked IEDs': Experts Debunk Staged Pre-War 'Provocation' in the Donbas*, Bellingcat, 28.02.2022, https://www.bellingcat.com/news/2022/02/28/exploiting-cadavers-and-faked-ieds-experts-debunk-staged-pre-war-provocation-in-the-donbas/ [access: 3.10.2023].

Wilson R.A., *Propaganda on Trial: Structural Fragility and the Epistemology of International Legal Institutions*, in: *Palaces of Hope: The Anthropology of Global Organizations*, eds. R. Niezen, M. Sapignoli, Cambridge 2017.

EUROPEAN CONSERVATIVES AND REFORMISTS

STUDIA PRAWNICZE KUL
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Unveiling the necessity for a new international criminal court (ICC). A personal perspective amidst 21st century international law crimes in Ukraine linked to Russian Federation aggression

O zasadności powołania nowego MTK. Zarys stanowiska własnego na tle zbrodni prawa międzynarodowego popełnionych na terytorium Ukrainy w XXI w. w związku z agresją Federacji Rosyjskiej

О целесообразности создания нового Международного уголовного суда (МУС). Изложение собственной позиции на фоне преступлений международного права, совершенных на территории Украины в XXI веке в связи с агрессией Российской Федерации

Щодо доцільності створення нового МКС. Зазначення власної позиції на тлі злочинів міжнародного права, скоєних на території України у 21 столітті у зв'язку з агресією Російської Федерації

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Summary: On 24 February 2022, troops of the Russian Federation crossed the borders of Ukraine, a sovereign and independent European country. The war that followed the coronavirus pandemic shook the foundations of the entire world, which suddenly ceased to exist in the way modern societies had known it by then. Russian aggression brought not only full-scale war, but also atrocities unknown since 1945 involving mass crimes under international law, including the crime of genocide – or at least a reasonable suspicion of its commitment. The spectre of a global conflict hung over the world again and the civilised part of it was faced with the challenge to account for the immeasurable harm and misery caused by officials of the Russian Federation and its allied forces. The response to the crimes committed in Ukraine was the issuing by the International Criminal Court in The Hague of an arrest warrant against those indisputably responsible for them. The Court took decisive action, but it is limited by the legal framework established for its competence. That framework; however, appears to be insufficient to prosecute those responsible for the war in Europe. For that reason, it is necessary to establish an international criminal court to try the crimes under international law committed in Ukraine, which would have the power to prosecute the crimes inspired by the Kremlin and the representatives of Vladimir Putin's regime more effectively. It is those crimes and the need to eradicate and counteract them more efficiently that this study is devoted to. Therefore, the subject of the research is the analysis of the current state of international criminal justice to determine its effectiveness and usefulness for judging the crimes committed in Ukraine and

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to present basic concepts, including the concept of genocide, as preliminary considerations. The purpose of the article is to demonstrate the need to establish a new criminal court. To achieve the research goal, the historical-legal method with elements of the historical-philosophical method, the method of logical and conceptual analysis of legal institutions (including functional exploration), the axiological method (including teleological exploration) and the systemic method were used. Due to the nature of the work, the dogmatic (formal-legal) method was applied to a limited extent, but sufficiently enough to achieve the research goals.

Key words: war, Russia, Ukraine, crime under international law, genocide, international criminal court/ICC

Streszczenie: W dniu 24 lutego 2022 r. wojska Federacji Rosyjskiej przekroczyły granice Ukrainy, suwerennego i samodzielnego państwa europejskiego. Wojna, która przyszła po pandemii COVID-19, wstrząsnęła podwalinami całego świata, który nagle przestał istnieć w takim wymiarze, w jakim współczesne społeczeństwa znały go wcześniej. Agresja rosyjska przyniosła nie tylko pełnoskalową wojnę, lecz także nieznane od 1945 r. okrucieństwa, obejmujące masowo popełniane zbrodnie prawa międzynarodowego, w tym zbrodnię ludobójstwa, a w każdym razie – uzasadnione podejrzenie ich popełnienia. Nad światem znów zawisło widmo globalnego konfliktu, a przed cywilizowaną jego częścią stanęło wyzwanie rozliczenia bezmiaru krzywd i nieszczęść wyrządzonych przez funkcjonariuszy Federacji Rosyjskiej i sił z nimi sprzymierzonych. Odpowiedzią na zbrodnie popełniane w Ukrainie stało się wydanie przez Międzynarodowy Trybunał Karny w Hadze nakazu aresztowania osób bezsprzecznie za nie odpowiedzialnych. Trybunał ten podjął stanowcze działania, są one jednak ograniczone prawnymi ramami wyznaczonymi dla jego kompetencji. Niemniej ramy te zdają się niewystarczające dla ścigania winnych pożogi wojennej w Europie. Z tego powodu konieczne jest powołanie międzynarodowego trybunału karnego dla osądzenia zbrodni prawa międzynarodowego popełnionych w Ukrainie, który zostałby wyposażony w uprawnienia służące skuteczniejszemu ściganiu zbrodni inspirowanych przez Kreml i zajmujących go przedstawicieli reżimu Władimira Putina. To właśnie tym zbrodniom oraz potrzebom efektywniejszego ich zwalczania i przeciwdziałania poświęcony jest tekst niniejszy. Przedmiotem badań jest zatem przeprowadzenie analizy aktualnego stanu międzynarodowego sądownictwa w sprawach karnych, ustalenia ich skuteczności i przydatności dla osądzenia zbrodni popełnionych w Ukrainie oraz przedstawienie podstawowych pojęć, w tym pojęcia ludobójstwa, tytułem rozważań wstępnych. Celem artykułu jest wykazanie konieczności powołania nowego trybunału karnego. W studium zastosowano metodę historycznoprawną z elementami metody historyczno-filozoficznej, metodę analizy logicznej i pojęciowej instytucji prawnych (z uwzględnieniem eksplanacji funkcjonalnej), metodę aksjologiczną (z uwzględnieniem eksplanacji teleologicznej) oraz metodę systemową. Ze względu na charakter pracy metoda dogmatyczna (formalno-prawna) wykorzystana została w ograniczonym, lecz wystarczającym dla osiągnięcia celów badawczych zakresie.

Słowa kluczowe: wojna, Rosja, Ukraina, zbrodnia prawa międzynarodowego, ludobójstwo, międzynarodowy trybunał karny

Резюме: 24 февраля 2022 года войска Российской Федерации пересекли границы Украины, суверенного и независимого европейского государства. Война, последовавшая за пандемией COVID-19, потрясла основы всего мира, который внезапно перестал существовать в том виде, в каком его знали современные общества. Российская агрессия принесла не только полномасштабную войну, но и невиданные с 1945 года жестокие преступления, влекущие за собой массовые преступления по международному праву, в том числе преступление геноцида, или, во всяком случае, обоснованные подозрения в их совершении. Над миром вновь нависла угроза глобального конфликта, и перед цивилизованными его частям встал вызов привлечения к ответственности за неизмеримый вред и страдания, причиненные должностными лицами Российской Федерации и союзных ей сил. Ответом на преступления, совершенные в Украине, стала выдача Международным уголовным судом в Гааге ордера на арест тех, кто без сомнений несет за них ответственность. Этот суд предпринял решительные действия, но они ограничены правовыми рамками, установленными для его компетенции. Однако этих рамок, как представляется, недостаточно для привлечения к ответственности лиц, виновных в развязывании войны в Европе. Поэтому для рассмотрения преступлений по международному праву, совершенных в Украине, необходимо создать международный уголовный суд, который был бы наделен полномочиями для более эффективного преследования преступлений, инспирированных Кремлем и занимающими его представителями режима Владимира Путина. Именно этим преступлениям и необходимости более эффективного противодействия им и борьбы с ними посвящен настоящий текст. Таким образом, объектом исследования является анализ современного

состояния международного уголовного правосудия, установление его эффективности и полезности для осуждения преступлений, совершенных в Украине, а также представление основных понятий, включая понятие геноцида – в качестве вступительных соображений. Цель статьи - показать необходимость создания нового уголовного суда. В исследовании использован историко-правовой метод с элементами историко-философского метода, а также метод логико-смыслового анализа правовых институтов (включая функциональное толкование), аксиологический метод (включая телеологическое толкование) и системный метод. В силу характера работы догматический (формально-юридический) метод использовался в ограниченном, но достаточном для достижения целей исследования объеме.

Ключевые слова: война, Россия, Украина, преступление международного права, геноцид, международный уголовный суд

Резюме: 24 лютого 2022 року війська Російської Федерації перетнули кордони України, суверенної та незалежної європейської держави. Війна, що послідувала за пандемією COVID-19, похитнула основи всього світу, який раптово перестав існувати в тому вигляді, в якому сучасні суспільства знали його раніше. Російська агресія принесла не лише повномасштабну війну, але й небачені з 1945 року звірства, що включають масові злочини міжнародного права, у тому числі злочин геноциду, або, в усякому разі, обґрунтовану підозру в їх скоєнні. Над світом знову нависла примара глобального конфлікту, а перед цивілізованою частиною світу постало завдання відповісти за незмірну шкоду і страждання, заподіяні посадовими особами Російської Федерації та союзними з ними силами. Реакцією на злочини, скоєні в Україні, стала видача Міжнародним кримінальним судом у Гаазі ордеру на арешт осіб, які несуть за них беззаперечну відповідальність. Суд вдався до рішучих дій, але вони обмежені правовими рамками, встановленими для його компетенції. Однак ці рамки не видаються достатніми для притягнення до відповідальності винних у розпалюванні війни в Європі. З цієї причини необхідно створити міжнародний кримінальний суд для розгляду злочинів за міжнародним правом, скоєних в Україні, який був би наділений повноваженнями для більш ефективного переслідування злочинів, інспірованих Кремлем і представниками режиму Володимира Путіна, що окупували її. Саме цим злочинам і необхідності більш ефективної боротьби та протидії їм присвячено цей текст. Об'єктом дослідження є, таким чином, аналіз сучасного стану міжнародного кримінального правосуддя, встановлення його ефективності та можливості засудження злочинів, скоєних в Україні, а також попередній розгляд основних визначень, зокрема геноциду. Мета статті – продемонструвати необхідність створення нового кримінального суду. У дослідженні використано історико-правовий метод з елементами історико-філософського методу, метод логіко-концептуального аналізу правових інститутів (у тому числі функціональний), аксіологічний метод (у тому числі телеологічний) та системний метод. Догматичний (формально-юридичний) метод використовувався обмежено, але в достатній мірі для досягнення поставлених завдань дослідження.

Ключові слова: війна, Росія, Україна, злочин міжнародного права, геноцид, міжнародний кримінальний суд

Introduction

In a scientific text,[1] its lexical layer and among the methodological instruments, there is no place for affective language or any exalted expositions. Without pre-

[1] The article reports strictly academic ambitions. However, it adopts a general perspective, based on the outline of the author's own position on the establishment of a new ICC, closer to the philosophy of law than considerations from the purely dogmatic sphere. Such a deliberate and intentional approach to the topic has determined the choice of research methods, among which the formal-dogmatic method is used – only to a limited extent. The purpose of this text is not an exhaustive analysis of legal provisions but a certain general perspective concerning a new ICC, which it was intended to outline.

tentiousness; however, it is fair to say that the world definitely changed in March 2020.[2] The changes are neither temporary nor superficial, but permanent and fundamental. They have influenced almost all areas of life: from the subjectively perceived comfort of the societies of the West to objective geopolitical changes and the reorientation of the entire system of European security architecture. The changes follow the coronavirus pandemic and the war in the eastern part of Europe. They have affected all layers of society, regardless – to give just a few examples – of their wealth level, education, age or sexual orientation.

1. The war between the Russian Federation and Ukraine

It is assumed that the conflict between the Russian Federation (Russia) and Ukraine began in 2013, and that it grew against the background of Ukraine's accession aspirations to the European Union. In reality; however, Russia has always been in open or hidden conflict with Ukraine, or at least since its western borders came into its range after the Pereiaslav Agreement in 1654. Russia, regardless of its official name, system or reigning ruler (government), has never recognised the Ruthenian (Kyiv) lands as politically or territorially independent. The armed conflict, which began with Russian aggression on 24 February 2022, was only the culmination of Russia's centuries-old protective policy towards Ukraine. The conflict became the first full-scale war after 1945, which (indirectly) involved almost all European states. There is a well-founded suspicion that during the conflict, officials, or at least people acting under the inspiration of the Russian Federation, committed the crime of genocide.[3] Such an allegation; however, is not completely obvious to everyone in the normative layer. The conclusion that the acts committed by the Russian Federation

[2] The symbolic end of prosperity and security in Poland in connection with the coronavirus epidemic was first marked by the Regulation of the Minister of Health of 13 March 2020 on the declaration of an epidemic threat in the territory of the Republic of Poland, consolidated text: Journal of Laws [Dziennik Ustaw] of 2020 item 433, and then, the Regulation of the Minister of Health of 20 March 2020 on the declaration of an epidemic state in the territory of the Republic of Poland, consolidated text: Journal of Laws of 2022 item 340.

[3] This is also the main thesis of the article, from which arguments are derived in favour of the legitimacy (need) of establishing a new ICC.

constitute the crime of genocide is not a clear-cut issue, due to the interpretative ambiguity of basic concepts. Therefore, it is appropriate to begin with them in the remainder of the text and to return to the main thesis of the article later on.

2. The concept of 'genocide' as a crime under international law

The concept of genocide was first introduced into the lexicon by a Polish jurist – Rafał Lemkin. Lemkin developed the term and its meaning based on the research and analysis of the Axis occupation forces, focusing mainly on German crimes committed in Europe during Second World War.[4] The concept of genocide was, and still remains, an ambiguous and vague term, to the scope of which there is no universal agreement. In such a setting, it is not surprising that, at the level of international law, the concept and meaning of genocide give rise to doctrinal disputes, especially when it comes to the qualification to that category of the war crimes in question. Thus, at the normative level, there is no agreement as to what exactly genocide is and what acts should be treated as meeting its characteristics. This assumption is not undermined by the adoption by the UN of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, where genocide is defined as a crime against humanity that consists in the planned and deliberate destruction of all or parts of national, ethnic, racial or religious communities, especially since the practice of applying that definition in subsumptive processes seems to be inconsistent. According to the provisions of the Convention, genocide includes acts such as: the attempt to kill members of a national group, causing serious bodily or mental harm to members of a national group, the deliberate introduction of living conditions designed to physically destroy members of a national group – in whole or in part, the use of measures designed to prevent a nation from reproducing, the forced transfer of children from one national group to another.[5]

At an intuitive level, genocide is associated with the destruction, or at least an attempt to destroy the existential foundations of a nation. In fact; however, it is a broader concept, since it may mean not only the destruction of a nation or an ethnic group by mass murder but also organised actions with the purpose of

4 See: R. Lemkin, *Axis Rule in Occupied Europe. Laws of Occupation, Analysis of Government, Proposals for Redress*, New York 1944, pp. 79–95.

5 See: Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948, ratified under the Act of 18 July 1950, consolidated text: Journal of Laws of 1952 no. 2, item 9.

destroying the foundations of life of a given nation or ethnic group combined with the annihilation of such a group.[6] In turn, there is no dispute that genocide does not refer to political groups. Similarly, it does not refer to linguistic groups, for a language cannot be annihilated in a public space.[7]

It is assumed that genocide can be committed by a state and by non-state groups. Genocide is always justified in some way as its purpose is to gain or maintain power, an area (territory), or it is committed to obtain other benefits, most often political or economic. In qualitative and quantitative terms (in terms of victims), the ideological factor seems to be decisive, as was the case during the Holocaust. Many scientific theories have been formulated to explain the phenomenon of genocide – its aetiology, justification and effects. Among the numerous concepts, it is usually indicated that the basis of genocide is an ethnic, political, territorial, economic, religious and, as mentioned above, ideological conflict. In terms of the aetiology of genocide, research also involves attempts to identify specific factors and events influencing the formation of genocidal ideology and the course of genocide, including the role of political leaders, propaganda and ideology, social culture, coincidence with armed conflict or the importance of the international community and international interventions as factors preventing genocide.[8]

3. The concept of 'genocide" in the Polish Penal Code of 1997

In the introduction to this article, it was mentioned that this is not a text dealing with classic issues of the so-called hard dogmatics of criminal law or even dogmatics as such. From the methodological point of view; however, it would not be appropriate to completely omit the analysis of the definition of the crime of genocide found in the Polish Criminal Act in force, since it provides for a type of prohibited act relevant to the topic under discussion and the basic premises of the article.

The Polish Penal Code of 1997 defines the crime of genocide in Article 118. In retrospect, it is apparent that the provision had no equivalent in the earlier

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6 More in: A. Matulewska, D.J. Gwiazdowicz, *In Quest of Genocide Understanding: Multiple Faces of Genocide*, International Journal for the Semiotics of Law 2022, vol. 35, pp. 1425–1443.

7 More in: R. Blum, G.H. Stanton, S. Sagi, E.D. Richter, *"Ethnic Cleansing" Bleaches the Atrocities of Genocide*, European Journal of Public Health 2007, vol. 18, no. 2, pp. 204–209. The mere attempt to annihilate a language can at most be regarded as a kind of cultural genocide, but that category escapes even the broadest framework of genocide understood in strictly juridical terms.

8 Cf. A. Matulewska, D.J. Gwiazdowicz, *In Quest of Genocide*…, pp. 7 et seq.

codifications of Polish criminal law. However, Poland's obligation to prosecute genocide crimes results from the provisions of the aforementioned United Nations Convention of 9 December 1948 on the prevention and punishment of the crime of genocide. According to Article I, "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish."

The individual object of protection, designated by the provision of Article 118 of the Penal Code, is the life and health of people during hostilities and in occupied or seized areas, as well as in other territories, provided that those people enjoy international protection. In turn, the generic object of protection remains an ethnic, national, racial, political or ideological group.[9]

The subject of genocide defined in Article 118 of the Penal Code, according to its elements, consists in killing or causing serious bodily harm to persons who belong to a specific group described in that provision. From the point of view of the criterion of effect, it is a material crime, and from the point of view of the form of the act – crime by action. The recognition of the set of elements makes genocide an attempted crime, punishable according to the rules set out in Article 14 and 15 of the Penal Code. The description of the subjective side of genocide indicates that it can only be committed with direct and specific intent, and its perpetrator may be anyone who exterminates a specific category of people and is capable of bearing criminal liability under general principles. The subject of the crime of genocide may be, in particular, its organiser and leader, but also a military commander executing an order or a commander of the armed forces in general who acts on own initiative or only follows an order. Finally, the perpetrator of the crime of genocide may be the head of a state running the extermination programme, who takes the decisions that constitute the impetus for extermination.[10] In that context, it seems obvious that, first and foremost, specific people should be held criminally responsible for all crimes committed in Ukraine – from a private soldier, through their commander, to the leader of the aggressor state.

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9 See: P. Hofmański, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Komentarz*, ed. M. Filar, Warszawa 2016, p. 852.

10 T. Bojarski, *Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwo wojenne*, in: *Kodeks karny. Komentarz*, ed. T. Bojarski, Warszawa 2016, p. 334. See also: M. Budyn-Kulik, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2014, pp. 325–327. Cf. M. Szewczyk, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Część szczególna*, vol. 2. *Komentarz do art. 212–277d*, ed. A. Zoll, Warszawa 2008, pp. 21–25. See more: D. Dróżdż, *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Część szczególna*, vol. 1. *Komentarz do art. 117–221*, eds. M. Królikowski, R. Zawłocki, Warszawa 2013, pp. 9–18.

In the literature on the subject, it is indicated that in Article 118 of the Penal Code the legislator provided for two forms of genocide, with its scope being broader than in the conventional definition. Such a conclusion already follows from a cursory comparison of Article 118 § 1 and 2 of the Penal Code with Article II of the Convention.[11] The definition of genocide can also be found in Article 6 of the ICC Statute. In its basic framework, it is consistent with the primary criminalisation of genocide as defined in Article 118 of the Penal Code, the formulation of which is derived from the entire body of international law. With reference to the Convention provisions discussed above, Article 6 of the ICC Statute defines genocide as an act committed with the intent to destroy, in whole or part, a national, ethnic, racial or religious group, e.g. the murder of members of a group; causing serious bodily or mental harm to members of a group; the deliberate introduction of living conditions designed to physically destroy members of a group, in whole or part; the use of measures designed to prevent a group from reproducing; the forced transfer of children from one group to another.[12]

Given the principles of application of the Polish Criminal Act in terms of time, place and persons, it could become an independent basis for prosecuting crimes committed in Ukraine. For political reasons; however, it should be assumed, or rather stated unambiguously, that it is not going to happen.[13]

4. Is genocide one of the crimes under international law committed on the territory of Ukraine in the 21st century in connection with the aggression of the Russian Federation? An attempt to give a categorical answer

It is beyond the scope of this text to analyse in detail the essence and normative meaning of genocide. However, there is no doubt that any discourse on that topic must begin with a reference to Lemkin and often, despite the passage of years, may end at that point. This article, although not without possible reservations, accepts the validity of Lemkin's proposal assuming that its general framework can still be maintained as correct. In that view, genocide is a crime against humanity that consists in the planned and deliberate destruction of national, ethnic, racial or religious

11 Cf. K. Wierczyńska, *Konwencja w sprawie zapobiegania i karania zbrodni ludobójstwa. Komentarz*, 2008 [LEX database], Commentary on Article II.

12 See: T. Hofmański, *Rozdział XVI*…, pp. 853 et seq.

13 *Sit venia verbo*, which only emphasises the need for the establishment of a new ICC.

communities, in whole or in part.[14] Moreover, the definition of genocide developed by the UN remains valid, as does (in the legal sense) the definition contained in the Polish Criminal Act, as well as the principles of the prosecution of genocide. Still, it was necessary to perform the dogmatic analyses as they were important for the verification of the main research thesis, which, in a way, determines the postulated need of the establishment of a new ICC, and therefore justifies the sense of the entire argument presented here.

Having presented the dogmatic analyses of the definition of genocide, it is necessary to relativise them to the possible subsumptions of the factual circumstances found in war-torn Ukraine. The first step is to remind what was stated at the beginning of this article, i.e. that there is a reasonable suspicion that the Russian Federation (or at least persons acting on its inspiration) committed the crime of genocide during the full-scale aggression on the territory of Ukraine, pointing out at the same time that such a qualification in the normative layer is not completely obvious to everyone. However, it must be admitted that the restraint in the legal assessment of the acts committed by the Russians (and their allies) results rather from the caution derived from the procedural and constitutional principle of the presumption of innocence (see Article 5 Code of Criminal Procedure and Article 42 of the Constitution of the Republic of Poland) than from justified conclusions based on the provisions and definitions referred to above. Indeed, in the light of the provisions and definitions presented here, even if their dogmatic analysis was not the basic research task of the text, it can be said that the Russian crimes, revealed and already well documented, meet the assumptions of genocide. Obviously, doubts can be raised about such subsumption (which is natural in any legal discourse), particularly given the reservations raised earlier regarding the way of approaching the set of elements that constitute the definition of genocide. At the level of subsumptive processes, it may even be difficult to indicate exactly which group of the population the genocide was committed against and in which categories to view such a group – national?, ethnic?, other? Such doubts and difficulties are an immanent feature of almost every interpretation of the law; however, in the case of the conduct discussed here, they do not exclude its qualification as the crime of genocide.

If the reports from the front are true, and their veracity is confirmed not only by the accounts of war correspondents but also by captured video and audio recordings of verified authenticity, then there is no doubt that the genocide committed against the inhabitants of Ukraine goes far beyond the mere deportations of the population. Bucha, Irpin, Motyzhyn or Hostomel have become eloquent symbols

14 R. Lemkin, *Axis Rule*…, passim.

of the extermination of Ukrainians. However, those are only symbolic examples as there are many more such places throughout Ukraine. It is irrelevant whether one uses Lemkin's concept or the definitions of genocide derived from UN legal acts or the Polish Criminal Act as proof of the truthfulness of the thesis about genocide against Ukrainians. It does not matter, because in all cases the outcome of factual research juxtaposed with the results of dogmatic analyses determines the truthfulness of the thesis about the Russian genocide committed against Ukrainians. Coordinated actions undertaken with the intention of destroying a nation or ethnic group -in whole or part, such as killing Ukrainians; causing serious bodily harm and disruption to health, including mental health; introducing conditions that devastate even the flimsiest existential basis of the Ukrainian population, including blocking humanitarian corridors and bombing entire cities, cannot be considered otherwise. The world saw the bodies of murdered civilians, often previously tortured, mutilated or raped. Morevover, the veracity of the genocide thesis is confirmed by the reactions of countries such as Poland,[15] Lithuania,[16] Latvia,[17] Estonia and the Czech Republic,[18] which were among the first to recognise the actions of the Russian military forces as genocide against the Ukrainian people.

5. International criminal courts – general characteristics

Just as Lemkin is a constant point of reference for all considerations on the concept of genocide, the International Military Tribunal in Nuremberg is an enduring model in the discourse on the functions, principles and actual meaning of transnational prosecution in criminal cases, including the effectiveness and efficiency. It was the experience of the Nuremberg Tribunal, despite its ephemeral existence,

15 See press release (without the author's data) concerning the Resolution adopted by the Sejm of the Republic of Poland on 7 April 2022 during the 52 session, https://www.sejm.gov.pl/sejm9.nsf/komunikat.xsp?documentId=F1C8C323BBE5152BC125881D007641CA [access: 31.07.2023].

16 See press release (without the author's details): *The Verkhovna Rada of Ukraine Officially Recognises Russian Crimes as Genocide*, Wprost, 14.04.2022, https://www.wprost.pl/polityka/10688815/rada-najwyzsza-ukrainy-oficjalnie-uznala-rosyjskie-zbrodnie-za-ludobojstwo.html [access: 31.07.2023].

17 See press release (without the author's details): *Estonia Recognises Russia's Actions in Ukraine as Genocide*, Rzeczpospolita, 21.04.2022, https://www.rp.pl/polityka/art36118711-estonia-uznaje-dzialania-rosji-na-ukrainie-za-ludobojstwo [access: 31.07.2023].

18 See press release (without the author's details): *Czech Senate Recognises Russia's Crimes in Ukraine as Genocide*, Rzeczpospolita, 11.05.2022, https://www.rp.pl/konflikty-zbrojne/art36275871-czeski-senat-uznal-zbrodnie-rosji-na-ukrainie-za-ludobojstwo [access: 31.07.2023].

that provided the basis for the development of standards, rules and principles in the field of criminal liability for crimes under international law. The Nuremberg Principles, taught in university departments of criminal law, even as part of basic course lectures,[19] became the normative and axiological foundation for defining the category of crimes under international law, the rules of criminal liability at the international legal level, as well as the standards of protection of the individual subject to criminal liability for committing crimes under international law. Irrespective of the passage of time, the principles formulated then remain valid to this day, at least in their basic framework.[20]

Over the past decades, there was no need to form new criminal courts with the competence to try crimes against humanity and related ones. Only the experience of the 1990s and the change in the way of approach to human rights brought about a reorientation of previous axioms and needs, which led to the creation of the International Criminal Tribunal for the Former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994),[21] the permanent International Criminal Tribunal (1998) or the Special Court for Sierra Leone (2002).[22]

Contemporary international criminal courts, from the point of view of the criterion of their establishment, can be divided into the following groups: (I) tribunals established on an *ad hoc* basis by the UN Security Council to try perpetrators (individuals) accused of crimes committed in a specific conflict (e.g. the International Criminal Tribunal for the Former Yugoslavia[23] or the International Criminal Tribunal for Rwanda[24]); (II) mixed (hybrid) tribunals, established based on international agreements between states (e.g. the ECCC[25]) or the Special Tribunal for Lebanon;[26] a permanent tribunal established by a statute adopted by the States Parties at an

19 See, e.g.: L. Gardocki, *Prawo karne*, Warszawa 2021, p. 4. More details: idem, T. Gardocka, Ł. Majewski, *Prawo karne międzynarodowe. Zarys systemu*, Warszawa 2017, particularly pp. 30–153.

20 See: T. Dubowski, *Czynnik czasu w funkcjonowaniu międzynarodowych trybunałów karnych – wybrane aspekty*, Białostockie Studia Prawnicze 2010, no. 7, p. 135.

21 Both of the tribunals will be discussed later in the text.

22 See: D. Heidrich, *Przyszłość międzynarodowych trybunałów karnych ad hoc. Strategie zakończenia oraz rozwiązania rezydualne, ze szczególnym uwzględnieniem Międzynarodowego Trybunału Karnego dla byłej Jugosławii*, Studia Europejskie 2013, no. 3, pp. 159–184, particularly pp. 159–160.

23 The International Criminal Tribunal for the Former Yugoslavia was established by the United Nations Security Council by Resolution 808 of 22 February 1993 (SC/Res/22.02.1993) and Resolution 827 of 25 May 1993 (SC/Res/25.05.1993).

24 The International Criminal Tribunal for Rwanda was established by the United Nations Security Council by Resolution 955 of 8 November 1995 (SC/Res/08.11.1995).

25 Extraordinary Chambers in the Courts of Cambodia.

26 See more: M. Płachta, *Międzynarodowe trybunały karne: próba typologii i charakterystyki*, Państwo i Prawo 2004, no. 3.

international conference. In turn, from the point of view of the temporal criterion, international criminal courts (tribunals) can be divided into courts (tribunals) established on a temporary basis (*ad hoc* and mixed tribunals) and permanent ones.[27] To date, only one international court of a permanent nature has been established – the International Criminal Court in The Hague.

6. The International Criminal Court in The Hague – a critical analysis

From the point of view of the topic of this article, of fundamental importance is the status of the International Criminal Court in The Hague, established on 17 July 1998, which – as a permanent court – is to prosecute crimes under international law committed around the world. By virtue of the Rome Statute,[28] its jurisdiction does not extend to crimes committed before 1 July 2002, which; however, remains irrelevant to criminal liability for crimes committed in Ukraine. Instead, its *ratione materiae* jurisdiction covers the most drastic violations of international law, including crimes against humanity, war crimes, crimes of aggression and genocide. On the subjective side, the jurisdiction of the International Criminal Court in The Hague covers natural persons, not states as such. The Court's jurisdiction is complementary to national bodies. This means that the Court's jurisdiction to adjudicate becomes effective only in the event of the inactivity of state authorities responsible for prosecuting crimes under international law. The International Criminal Court in The Hague, despite its permanent nature, is not a universal court. It derives its power to administer criminal justice from the Rome Statute, which has not been ratified by many states, and a lot of states that had ratified the Statute are free to withdraw from it.[29] This makes the Court non-global and it seems that this state of affairs is not going to change. Those are the imperfections of the Hague Court that restrict its freedom of action in response to the situation in Ukraine, which will be discussed further down in the text.

The International Criminal Court in The Hague opened the proceedings on the Russian Federation's aggression against Ukraine on 2 March 2022, and on 17 March 2023, an arrest warrant was issued for Vladimir Putin and Maria Lvova-Belova,

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27 See: T. Dubowski, *Czynnik czasu*…, pp. 133–134.

28 Rome Statute of the International Criminal Court, drawn up in Rome on 17 July 1998, Journal of Laws 2003 no. 78, item 708.

29 Cf. K.E. Smith, *Acculturation and the Acceptance of the Genocide Convention*, Cooperation and Conflict 2013, vol. 48, no. 3, pp. 358–377.

the Plenipotentiary to the President of the Russian Federation for the Rights of the Child, charging them with the crime of deporting children from occupied Ukraine. There is no doubt that enforcing the liability of Putin or Lvova-Belova will be the most serious challenge for the Court since its creation and will be the basis for assessing its actual usefulness for trying crimes under international law. The fundamental issue is the voluntary nature of ratification of the Rome Statute, and yet neither Russia nor Ukraine is a party to the founding treaties. The Court's jurisdiction would result from Ukraine's voluntary submission to the Court's jurisdiction with the simultaneous accession of Russia. However, the latter condition is not fulfilled. Moreover, the International Criminal Court in The Hague, unlike the International Military Tribunal in Nuremberg, has no power to try in absentia. This means that unless Vladimir Putin voluntarily comes before the tribunal or is arrested on the territory of a country that recognises the jurisdiction of the Hague Court, his liability will not be enforced.

Moreover, in terms of the proceedings of the International Criminal Court in The Hague, a fundamental question arises: why did the Court issue an arrest warrant for the deportation of children from the territories of occupied Ukraine, even though the world had seen the Bucha massacre and other mass murders of civilians? Even if both acts, i.e. the deportations and murders, fall into the category of genocide, there is – without diminishing the immensity of the tragedy of the displaced population and their families – a clear asymmetry of goods between murder and deportation. The answer to that question arises from the nature of the evidentiary proceedings before the International Criminal Court in The Hague. Namely, in the case of Russia and Putin, the Court decided to issue arrest warrants choosing the relatively easiest crime to conduct under evidentiary proceedings, which is the deportation of Ukrainian children.[30] This not only fails to capture the full content of the criminal lawlessness contained in the Russian acts committed in Ukraine but also drastically narrows the category of prosecuted acts, including their perpetrators. Contrary to intuitive perceptions, it is not about the Court's fear of blasphemy resulting from the impotence in the actual implementation of prosecution, but a realistic calculation at the level of assessing the capacity of evidentiary proceedings, which, in the case of actual genocide, could fail. This, of course, does not

[30] Obviously, this is not just a question of evidence as that would be an oversimplification. In fact, it is accurate to note that the acts committed against Ukrainians, especially the deportation of children, undoubtedly fall within the conventional definition of genocide. It is also right to note that the evidentiary proceedings are only a consequence of correct subsumption (but the effectiveness of prosecution is measured not only by the correctness of the legal qualification, but also by the possibility of actually apprehending and judging the perpetrator to execute the punishment).

exclude the possibility of a later expansion of the brought charges, but it proves the current limitations of the Court. Invariably; however, the fundamental difficulty, in the absence of competence to try in absentia, will be the actual bringing of the defendants before the Court to judge them. For this, at least in the current climate in Russia, seems absolutely out of the question. Furthermore, the International Criminal Court in The Hague is not part of any international organisation, but an independent international court. This means that, by issuing arrest warrants, it has undoubtedly strengthened its position as an organ of international criminal justice. However, if it does not enforce the liability of those being prosecuted, it will be left with nothing but a façade and the label of a court for Black African states.

In view of the above, the question arises whether the International Criminal Court in The Hague is a body capable of trying crimes under international law committed in Ukraine (?). The answer to that question seems to be negative. Political correctness aside, one must conclude that international criminal courts have ultimately proven to be inefficient in general. Such a conclusion also applies to Nuremberg, even if it is considered a model for that type of court, after all, no more than 2% of German Nazi criminals were held criminally liable for the committed crimes, and the number of those sentenced within that 2% includes not only those tried by the IMT.[31]

Likewise, still rejecting political correctness, one must honestly admit, thus putting forward the fundamental thesis of this text, that the International Criminal Court in The Hague is not suitable to try crimes under international law committed in Ukraine. The Court has neither the legal nor the factual tools to do it effectively. Obviously, the issuing of the arrest warrants for Putin and Lvova-Belova was necessary from the point of view of public expectations and adequate to the legal capability of the Court, but it was rather a voice crying in the wilderness than an announcement of real action.

The veracity of the above diagnosis is evidenced by several critical features of the International Criminal Court in The Hague, which justify the assumption that it is not and cannot be an effective body to judge the crimes that have happened and are still happening in Ukraine. First, as has already been mentioned, a necessary condition for the activation of the repressive apparatus administered by the International Criminal Court in The Hague is voluntary submission to its jurisdiction – the Russian Federation is not a party to the Rome Statute and, as such, it is not subject to the jurisdiction of the Court. From the point of view of international law, voluntary membership in any supranational organisation is understandable, but from the

31 This acronym means the International Military Tribunal at Nuremberg.

point of view of strictly understood criminal law, it is completely incredible. Indeed, in practice, this means the requirement to obtain a criminal's consent to be tried, while it is clear, even on a common-sense level, that there will be no such consent. Second, as has also been mentioned, the Court's jurisdiction is complementary to the national one. In the current political situation in Russia, there is no possibility of any initiative on the part of the national criminal justice authorities, which are, after all, absolutely subordinate to President Putin's administration, to start prosecuting acts committed by the regime of which they remain a part. At this point, it is necessary to break with the false axiom that in Russia only the apparatus of power remains criminal and completely detached from European traditions. All media reports and opinion polls conducted by credible bodies clearly indicate that Vladimir Putin enjoys consistently high support from citizens. That support is not shaken, at least not visibly, neither by reports of failures on the front nor by news of crimes committed by Russian soldiers. Russia, in its historical identity, was and remains a criminal state which, in pursuit of a policy of Pan-Slavism, has always sought, under various pretexts, to subjugate neighbouring states and people. In that context, as has also already been mentioned, the armed aggression against Ukraine should not come as a surprise as it is a natural consequence of Russia's way of approaching geopolitical arrangements. At the same time, third, the experience of previously established courts shows that proceedings before such tribunals are lengthy, complicated – especially at the level of evidentiary procedure, and, simply speaking, expensive. A clumsy symbol of the above remains the prosecution ordered by the International Criminal Court in The Hague – for deportation instead of extermination. Fourth, as has already been mentioned, and what is surprising – especially in the light of the Nuremberg experience, the International Criminal Court in The Hague does not have the authority to judge in absentia. From the perspective of criminal law, this is surprising. That astonishment cannot be nullified by any slogans formulated under the banner of the specificity of international law, and the best evidence of the possibility of trial in absentia is the trial of Martin Bormann by the International Military Tribunal at Nuremberg. Finally, fifth, the International Criminal Court in The Hague does not have the competence to hold the state, but only individual persons, accountable. At the level of a collective entity, that limitation may be understandable; however, it does not facilitate criminal prosecution procedures.

7. Nuremberg 2.0 – is it possible?

Obviously, the above theses are critical of the International Criminal Court in The Hague. However, the negative assessment is not related to the activity of the Court's judges, for they have done as much as they could within their power. This; however, is not enough. Therefore, it is a criticism of the very normative foundations of the Court. The foundations restrict its freedom of action and limit its real significance. It seems that the Nuremberg Tribunal was better suited to the goals set before it than the Hague Tribunal is adapted to the current needs of judging crimes in Ukraine. Does this mean that Nuremberg 2.0 is possible? Definitely not. The International Military Tribunal could exist in its form only in the conditions of the disintegration of the state and the collapse of the entire system of the Third Reich. It could only be created on the ruins of national socialism, and in the very heart of its ideology – in Nuremberg, under the conditions of control of the whole territory of a criminal and defeated country, completely dependent on the will of the victorious powers. It was not only about the general (although not obvious and easy to obtain) agreement of the allies on the method of settling German crimes and the general social legitimacy to convict the guilty, but also about the actual possibility of apprehending and prosecuting them. The International Military Tribunal at Nuremberg was not free of flaws, also at the level of its axiology or the general principles of criminal law, but it definitely was a triumph of law over primitive retaliation and, on many levels, a model worthy of emulation.

8. International criminal court for judging crimes under international law committed in Ukraine – basic assumptions of own proposal

Given what has been written above, including the circumstances and climate in which the International Military Tribunal at Nuremberg was formed, the current political and military situation in Europe rules out Nuremberg 2.0. Even if Russia loses the war in Ukraine, its statehood is not likely to collapse, as was the case with the Third Reich. Since Nuremberg cannot be repeated, does the International Criminal Court in The Hague remain the only judicial body empowered to prosecute Russian crimes under international law? The answer to this question is affirmative: yes, at the moment it is the only body.[32] Should that state of affairs be

[32] In this context, doubt may arise as to whether, given the existence of the Hague Tribunal as an international court, it is even possible to establish a new *ad casum* tribunal. This is, of course, an issue worthy

accepted? In the opinion of the author of this article: no, it should not. So what instead? It seems that only *an ad hoc* tribunal could be appropriate for the current geopolitical situation in Europe. The International Criminal Court in The Hague may not be an anachronism; however, the legal foundations determining the scope and modes of its proceedings do not guarantee judgment of what is happening in Ukraine. Obviously, establishing a new court is not possible immediately and without obstacles, as this would require the consent of Russia and China in the UN Security Council. However, to say (write) that this cannot be done is to give consent to further murder and humiliation of Western civilisation, unable to properly respond to a war going on not somewhere at the far end of the world – but here: in Europe, on the border of the European Union and NATO. Therefore, if the establishment of a new tribunal were to encounter (obviously expected) resistance from Russia (and China?), then the removal of Russia (and China) from the UN Security Council should be considered. There is no shortage of reasons why that option was already taken into account. The author of this article is a researcher at a Polish university and a practising lawyer who understands the nuances, complexity and sensitivity of international politics; therefore also understands the difficulties and possible consequence of removing Russia (and China?) from the Security Council. If the above, for one reason or another, were to prove impossible, then the very institution of the veto would need to be changed so that Russia (and China?) could not block the establishment of a new court. There is also another option apart from that involving changes in the Security Council – establishing an international criminal court to try crimes under international law committed in Ukraine outside the UN mandate. Russia's aggression against Ukraine, contrary to Putin's expectations and initial difficulties, united the entire Western European world in defence of its fundamental values. In such a situation, the new court could be legitimised not by a UN mandate, but by a general consensus of the countries forming the anti-Russian coalition. The number and importance of the countries constituting a coalition against the war are sufficient to create the basis for the functioning of a new court. After all, the International Military Tribunal in Nuremberg did not draw its strength, vitality or formal powers from the discredited League of Nations, but from the consent of other states to judge unprecedented German crimes.

What should such a court be like if it were actually established? There is no doubt that it should be multinational in terms of its composition of judges. There

of broader consideration; however, it cannot be accommodated within the limited framework of this work. Suffice it to say that there is no provision of positive law or, at least it seems, no other norm or custom that would oppose such a new tribunal.

is no consent to exclude the "smaller" ones, including Poland and the Baltic states, which played a key role in building a global support system for fighting Ukraine. Such a tribunal should be competent to judge in absentia. The above-mentioned example of Martin Bormann, tried in absentia in Nuremberg, is sufficient to demonstrate the truth of the thesis that this can be done. Learning from the experience of earlier tribunals, including Nuremberg, although, sadly, those are rather grim conclusions, the selectivity of prosecution should be reduced as much as possible. Modern technology facilitating the collection of evidence, a correspondingly smaller group of perpetrators than was the case with the officers of the Third Reich and the rejection of the possibility of subsequent cooperation with detained Russian criminals, as was the case after Second World War in the face of the arms race with regard to German criminals, make it unjustifiable to narrow down the categories of perpetrators subject to prosecution. Two rules would serve to implement such an idea: the adoption of the well-known criminal law principle of chain-incitement with the simultaneous adoption of the well-established rule of "thinking bayonets", and the principle of commander's responsibility. The first rule would make it possible to extend criminal liability for crimes even to a private soldier, while the second would cover the very top of power, headed by Vladimir Putin.

There is no doubt that the new international criminal court should be based on completely new principles and, at least to some extent, a new axiology forced by the new situation. This does not mean; however, that it should be completely detached from the experience and rules developed by previous *ad casum* tribunals. Drawing conclusions in that area should include both negative experience that should not be repeated and patterns worth repeating. In that respect, particularly interesting are the models developed by the above-mentioned International Criminal Tribunals: for the Former Yugoslavia and Rwanda. In both cases, the following should be assessed as positive: (I) the priority of jurisdiction over national courts combined with the right to demand that national courts transfer their competence at every stage, (II) the definition of the concepts of genocide and crimes against humanity in the statutes of both tribunals – in accordance with the political and criminal needs of the time; (III) the expansion of the catalogue of basic acts subject to prosecution to include rape and torture; (IV) granting competence to prosecute violations of legal interests in the event of an infringement; (V) acknowledging that an order is not a circumstance excluding criminal liability; (VI) allowing tribunal judges to establish norms regulating the principles of operation of tribunals.[33] Not all of the princi-

[33] See: S. Karowicz-Bienias, *Standardy międzynarodowego procesu karnego a polskie postępowania karne w sprawach o zbrodnie przeciwko ludzkości popełnione w latach 1939–1956*, Białystok 2021

ples governing the two tribunals were entirely innovative (non-exculpatory order), indisputable (new definitions of crimes in the context of the prohibition of retroactivity of law to the detriment of the perpetrator) or obvious (lack of competence to pronounce the death penalty). They should certainly be taken into account in the discourse on the possible establishment of a new ICC.

Obviously, the above assumptions are of a general nature and the author of this text is aware of the enormity of normative doubts and political difficulties in establishing a new tribunal. However, in the face of what happened in Ukraine, the world cannot remain silent, for extraordinary situations justify extraordinary responses. As was written at the beginning of the article, the world known before the year 2020 has changed completely. The principles and axiology of law developed after Second World War need to be revised under changed conditions as the system has been re-evaluated. Its basic assumptions were formed under the "no more war" slogan in the 1950s, and in the 1990s – on the wave of euphoria following the collapse of the USSR. Today, the world is once again on the brink of war and the empire of the Red Tsar[34] is being reborn before the eyes of Europe. Thus, the two circumstances open a discourse on the catalogue of penalties that can be imposed by the new court and on the manner of their execution.

Regarding the first issue, it should be noted that the author of this text, neither as a scientist nor as a lawyer, is a supporter of the death penalty at the level of state legislation. Leaving aside the moral and ethical layer of the discourse on the admissibility of the death penalty, it can be said (written) that there are many arguments against its application, in particular the correctly diagnosed excessive risk of a miscarriage of justice with the simultaneous lack of possibility of restitution for the damage caused by the conviction and doubts as to the preventive significance of such a punishment. However, in the case of the death penalty for crimes under international law, all arguments derived from the level of state law either fade or lose their relevance. In the case of a mass murderer, the risk of a miscarriage of justice is essentially zero. In that case, it is also not about rehabilitation but about elimination. Obviously, the arguments from the aforementioned sphere of morality and ethics remain valid. However, have morals and ethics changed so much over the last 80 years to justify dividing genocidaires into superior (Russo-genocidaires unworthy of the ultimate punishment) and inferior (Nazi-genocidaires worthy of the ultimate punishment)? Is the European sense of justice, especially that of the Ukrainian people, so drastically different from

[unpublished doctoral thesis], pp. 30, 45, 84. See also: L. Gardocki, T. Gardocka, Ł. Majewski, *Prawo karne*…, pp. 194–203.

34 The similarity of this expression to the title of the work by S. Montefiore *Stalin. The Court of the Red Tsar*, Warszawa 2021, is not coincidental as the crimes of Putin, eagerly referring to Stalin, including his imperialist ideology, are comparable.

the justice demanded by the suffering of the millions of people who had everything taken away by Adolf Hitler so that it could be satisfied in another way? Those are, of course, unanswered questions, and the author of this article certainly does not provide affirmative answers to them, from which one could derive the postulate of equipping a possible new court with the competence to pronounce the death penalty. However, it seems that the old abolitionist trends in this regard have lost their relevance and the discourse on that issue should be opened anew, taking into account the position of the authorities and the people of Ukraine. At the same time, the author of this article is aware of the European normative achievements in the field of abolition of the death penalty, including Poland's international legal obligations. Nevertheless, those achievements stem from positive law and certain norms established by people. If the norms lose their axiological justification, they may be subject to change. Whether Europe is ready for such changes today remains an open question, and the question certainly should not be automatically rejected.

In any arrangement, the question also arises about the actual possibility of implementing the sentence imposed by the international criminal court established to judge crimes under international law committed in Ukraine. This is a fundamental difficulty already faced by the tribunals for Yugoslavia and Rwanda, inter alia. The limited volume of that text does not allow for an extended discussion on that issue, therefore it is enough to point to, out of necessity – in a somewhat simplified form – previous historical experience proving the real possibility of trying the perpetrators of such crimes. Let us recall the example of Israel, which – despite the understandable outrage of international opinion – brought in and tried Adolf Eichmann on its territory, or the domestic example of the Polish Underground State, which was able to carry out sentences under the conditions of German occupation.[35]

Therefore, a new *ad hoc* tribunal to try crimes of international law committed in Ukraine is a necessity that can be implemented in the current legal state and social climate despite the normative and factual difficulties that its establishment could certainly pose.

Conclusions

Every generation is accompanied by the conviction of the uniqueness of the times in which it lives; many fear an impending cataclysm and are convinced that the

[35] Regarding the sentences on the so-called "blackmailers", see: P. Szopa, *Wyroki na szmalcowników*, Przystanek Historia, 24.01.2021, https://przystanekhistoria.pl/pa2/tematy/polskie-panstwo-podziem/78076,Wyroki-na-szmalcownikow.html [access: 31.07.2023].

generation following it is degenerate, or at least worse, whatever that means. Whatever one's theory of history, the fact is that Europe has awakened from its dream of prosperity and universal peace. There is war in Europe again, and the present generations have lived to see exceptional times and the cataclysm prophesied by some. The uniqueness of these times and the fear of the cataclysm of global conflict force contemporary generations to take actions that were thought to never be necessary again. Among the primary actions of that type is the settlement of Russian crimes in Ukraine. The currently functioning International Criminal Court in The Hague does not have sufficient competence to effectively judge those responsible for such crimes, despite the most commendable efforts of the Judges, including the Pole who heads it. What is needed is a new court, established outside the UN mandate if necessary, which would be capable of dealing efficiently with crimes that no one expected to be committed in Europe, just beyond the borders of Poland. What happened a few decades ago must not be forgotten, otherwise everything will be repeated.

Bibliography

Blum R., Stanton G.H., Sagi S., Richter E.D., *'Ethnic Cleansing' Bleaches the Atrocities of Genocide*, European Journal of Public Health 2007, vol. 18, no. 2.

Bojarski T., *Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwo wojenne*, in: *Kodeks karny. Komentarz*, ed. T. Bojarski, Warszawa 2016.

Budyn-Kulik M., *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2014.

Czech Senate Recognises Russia's Crimes in Ukraine as Genocide, Rzeczpospolita, 11.05.2022, https://www.rp.pl/konflikty-zbrojne/art36275871-czeski-senat-uznal-zbrodnie-rosji-na-ukrainie-za-ludobojstwo [access: 31.07.2023].

Dróżdż D., *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Część szczególna*, vol. 1. *Komentarz do art. 117–221*, eds. M. Królikowski, R. Zawłocki, Warszawa 2013.

Dubowski T., *Czynnik czasu w funkcjonowaniu międzynarodowych trybunałów karnych – wybrane aspekty*, Białostockie Studia Prawnicze 2010, no. 7.

Estonia Recognises Russia's Actions in Ukraine as Genocide, Rzeczpospolita, 21.04.2022, https://www.rp.pl/polityka/art36118711-estonia-uznaje-dzialania-rosji-na-ukrainie-za-ludobojstwo [access: 31.07.2023].

Gardocki L., *Prawo karne*, Warszawa 2021.

Gardocki L., Gardocka T., Majewski Ł., *Prawo karne międzynarodowe. Zarys systemu*, Warszawa 2017.

Heidrich D., *Przyszłość międzynarodowych trybunałów karnych ad hoc. Strategie zakończenia oraz rozwiązania rezydualne, ze szczególnym uwzględnieniem Międzynarodowego Trybunału Karnego dla byłej Jugosławii*, Studia Europejskie 2013, no. 3.

Hofmański P., *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Komentarz*, ed. M. Filar, Warszawa 2016.

Karowicz-Bienias S., *Standardy międzynarodowego procesu karnego a polskie postępowania karne w sprawach o zbrodnie przeciwko ludzkości popełnione w latach 1939–1956*, Białystok 2021 [unpublished doctoral thesis].

Lemkin R., *Axis Rule in Occupied Europe. Laws of Occupation, Analysis of Government, Proposals for Redress*, New York 1944.

Matulewska A., Gwiazdowicz D.J., *In Quest of Genocide Understanding: Multiple Faces of Genocide*, International Journal for the Semiotics of Law 2022, vol. 35, DOI: 10.1007/s11196-021-09847-5.

Montefiore S., *Stalin. The Court of the Red Tsar*, Warszawa 2021.

Płachta M., *Międzynarodowe trybunały karne: próba typologii i charakterystyki*, Państwo i Prawo 2004, no. 3.

Smith K.E., *Acculturation and the Acceptance of the Genocide Convention*, Cooperation and Conflict 2013, vol. 48, no. 3.

Szewczyk M., *Rozdział XVI. Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, in: *Kodeks karny. Część szczególna*, vol. 2. *Komentarz do art. 212–277d*, ed. A. Zoll, Warszawa 2008.

Szopa P., *Wyroki na szmalcowników*, Przystanek Historia, 24.01.2021, https://przystanekhistoria.pl/pa2/tematy/polskie-panstwo-podziem/78076,Wyroki-na-szmalcownikow.html [access: 31.07.2021].

The Verkhovna Rada of Ukraine Officially Recognises Russian Crimes as Genocide, Wprost, 14.04.2022, https://www.wprost.pl/polityka/10688815/rada-najwyzsza-ukrainy-oficjalnie-uznala-rosyjskie-zbrodnie-za-ludobojstwo.html [access: 31.07.2023].

Wierczyńska K., *Konwencja w sprawie zapobiegania i karania zbrodni ludobójstwa. Komentarz*, 2008 [LEX database], Commentary on Article II.

EUROPEAN CONSERVATIVES AND REFORMISTS

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Some legal aspects of Russian policy towards neighbouring countries

Wybrane aspekty prawne rosyjskiej polityki wobec państw sąsiednich

Отдельные правовые аспекты политики России в отношении соседних государств

Окремі правові аспекти російської політики щодо сусідніх держав

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Summary: Russia's policy towards neighbouring countries and nations has always been dictated by imperialist and expansionist goals. To achieve them, Russia used brutal methods, including direct military aggression, inciting ethnic conflicts, genocide and ethnic cleansing. There are many examples of this in history in the form of the genocide of the Caucasian nations in the 19th century, the Holodomor against Ukrainian people, Soviet repressions, the ethnic cleansing of Georgians in the Abkhazia and Tskhinvali region at the end of the 20th and the beginning of the 21st century, and others. Nevertheless, Russia has not been held accountable for its actions. The war against Ukraine, which started in February 2022, dispelled all illusions of the democratic world towards Russia. Today, the democratic world is united, and the primary basis of this unity is the values, which it must bear responsibility for protecting. For this purpose, all international legal levers and institutions should be used. Russia's leadership must be brought to justice, and the country must be held financially accountable. The only way for peace between Russia and the world is the democratisation of Russia, which is only possible through international legal coercion, as happened in the case of Nazi Germany. This article is an attempt to present the specific facts of Russia's aggressive and imperialist policy towards neighbouring countries, especially towards Georgia, the specific legal levers for combating this policy, and future perspectives.

Key words: Russia, Nazi, genocide, ethnic cleansing, responsibility, Ukraine, Georgia, Abkhazia, South Ossetia

Streszczenie: Polityka Rosji wobec sąsiednich państw i narodów zawsze była podyktowana imperialistycznymi i ekspansjonistycznymi celami. Aby osiągnąć te cele, Rosja stosowała brutalne metody, w tym uciekała się do bezpośredniej agresji zbrojnej, podżegania do konfliktów etnicznych, ludobójstwa i czystek etnicznych. Jest na to wiele przykładów z historii, takich jak ludobójstwo narodów kaukaskich w XIX w., Holodomor na Ukrainie, represje sowieckie, czystki etniczne Gruzinów w Abchazji i regionie Cchinwali pod koniec XX i na początku XXI w. Rosja nigdy nie została pociągnięta do odpowiedzialności za swoje działania. Wojna przeciwko Ukrainie, która rozpoczęła się w lutym 2022 r., rozwiała wszelkie złudzenia demokratycznego świata wobec Rosji. Dziś demokratyczny świat jest zjednoczony, a główną podstawą tej jedności są wartości, za których ochronę musi wziąć odpowiedzialność. W tym celu należy wykorzystać wszystkie międzynarodowe instytucje i instrumenty prawne. Winni przywódcy Rosji muszą zostać postawieni przed sądem, a państwo musi zostać pociągnięte do odpowiedzialności finansowej. Jedynym sposobem na osiągnięcie pokoju w Rosji i na świecie jest demokratyzacja Rosji, która jest możliwa tylko za sprawą międzynarodowego przymusu prawnego, tak jak to miało miejsce w przypadku nazistowskich Niemiec. Artykuł jest próbą przedstawienia poszczególnych faktów agresywnej

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i imperialistycznej polityki Rosji wobec państw sąsiednich, zwłaszcza wobec Gruzji, oraz konkretnych instrumentów prawnych służących zwalczaniu tej polityki, jak również perspektyw na przyszłość.

Słowa kluczowe: Rosja, nazizm, ludobójstwo, czystki etniczne, odpowiedzialność, Ukraina, Gruzja, Abchazja, Osetia Południowa

Резюме: Политика России в отношении соседних государств и народов всегда диктовалась империалистическими и экспансионистскими целями. Для достижения этих целей Россия использовала жестокие методы, в том числе прибегала к прямой вооруженной агрессии, разжиганию межнациональных конфликтов, геноциду и этническим чисткам. Примеров тому из истории много: геноцид кавказских народов в XIX веке, Голодомор на Украине, советские репрессии, этнические чистки грузин в Абхазии и Цхинвальском регионе в конце XX – начале XXI века. Россия никогда не была привлечена к ответственности за свои действия. Война против Украины, начавшаяся в феврале 2022 года, разрушила все иллюзии демократического мира в отношении России. Сегодня демократический мир объединен, и главной основой этого единства являются ценности, за защиту которых он должен взять на себя ответственность. Для этого должны быть задействованы все международные институты и правовые инструменты. Виновные руководители России должны быть привлечены к ответственности, а государство – нести финансовую ответственность. Единственным путем достижения мира в России и во всем мире является демократизация России, которая возможна только путем международного правового принуждения, как это было в случае с нацистской Германией. Данная статья является попыткой представить отдельные факты агрессивной и империалистической политики России в отношении соседних стран, особенно Грузии, и конкретные правовые инструменты противодействия этой политике, а также перспективы на будущее.

Ключевые слова: Россия, нацизм, геноцид, этнические чистки, ответственность, Украина, Грузия, Абхазия, Южная Осетия

Резюме: Політика Росії щодо сусідніх держав і народів завжди була продиктована імперіалістичними та експансіоністськими цілями. Для досягнення цих цілей Росія використовувала жорстокі методи, включаючи пряму збройну агресію, розпалювання міжнаціональних конфліктів, геноцид та етнічні чистки. Існує багато прикладів з історії, таких як геноцид кавказьких народів у 19-му столітті, Голодомор в Україні, радянські репресії та етнічні чистки грузинів в Абхазії та Цхінвальському регіоні наприкінці 20-го та на початку 21-го століть. Росія ніколи не була притягнута до відповідальності за свої дії. Війна проти України, що розпочалася в лютому 2022 року, зруйнувала будь-які ілюзії демократичного світу щодо Росії. Сьогодні демократичний світ єдиний, і головною основою цієї єдності є цінності, за захист яких він має взяти на себе відповідальність. Для цього мають бути задіяні всі міжнародні інституції та правові інструменти. Винні керівники Росії мають бути притягнуті до відповідальності, а держава – нести фінансову відповідальність. Єдиний спосіб досягти миру в Росії та світі – це демократизація Росії, яка можлива лише через міжнародно-правовий примус, як це було у випадку з нацистською Німеччиною. Ця стаття є спробою представити окремі факти агресивної та імперіалістичної політики Росії по відношенню до сусідніх країн, особливо до Грузії, та конкретні правові інструменти боротьби з цією політикою, а також перспективи на майбутнє.

Ключові слова: Росія, нацизм, геноцид, етнічні чистки, відповідальність, Україна, Грузія, Абхазія, Південна Осетія

Introduction

Russian aggression in Ukraine exposed the whole civilised world to the cruelty of Russia's imperialist aspirations. If this was somewhat of a shock to the Western democratic countries, this was nothing new for Russia's neighbouring countries and peoples, who, throughout the history of their relations with Russia, have re-

peatedly faced Russian aggression. Yet, the aggressor has never been punished for it. Moreover, the victims of the aggression tended to need a lot of time and energy to prove the veracity of their claims.

Terms such as ethnic cleansing, genocide and crimes against humanity are increasingly being used in reference to Russia, the Russian military or high-ranking officials, including, most importantly, the Russian president. These terms are used not only by politicians for political purposes but, first of all, from a legal point of view, by international courts. In this regard, there have been several important decisions of the International Criminal Court and the European Court of Human Rights. It can be said with confidence that this is only the beginning. The time is coming when the organisers and direct perpetrators of crimes against humanity will be held accountable for the atrocities committed, and Russia, as an aggressor and sponsor of terrorism, will fully compensate for the damage caused to neighbouring countries.

On 7 June 2023, the conference called The Crime of Genocide in International Law and in the Work of the European Parliament, organised by the European Conservatives and Reformists Group and the Faculty of Law, Canon Law and Administration, John Paul II Catholic University of Lublin, was held at the European Parliament in Brussels. Despite the general title, the conference was devoted mainly to Russian aggression. The fact that a conference with such focus was held in the office of the European Parliament is in itself an important event itself. Perhaps, before the Russo-Ukrainian war, no one in Western Europe thought of such a conference, not to mention the place where it would be held, despite Russia's numerous acts of aggression in Georgia, Crimea and other parts of the world during the last two decades.

In fact, the topic is so extensive that it is impossible to tackle it within the framework of one article. Hundreds of dissertations can be written on it. Thus, this article is an attempt, on the basis of the academic literature and factual data, to present the specific facts of Russia's aggressive and imperialist policy towards neighbouring countries, especially Georgia, the specific legal levers for combating this policy, and future perspectives.

1. Crimes against humanity in the Russian history

1.1. Genocide of the Circassians

On 20 May 2011, the Parliament of Georgia adopted Resolution no. 4701-I recognising the genocide of the Circassians by the Russian Empire, due to which "Georgia

became the first country to recognise as genocide Tsarist Russia's nineteenth century mass deportations and massacres of the Circassians of the Northwest Caucasus."[1] According to the resolution, based on international norms, the mass destruction and expulsion of Circassians (Adyghe) from their historic homeland during the Russo-Caucasian War (1763–1864) were recognised as an act of genocide, and the Circassians deported during the said war were later declared refugees. The resolution states that it is based on long-term research that has established both the fact and intent of genocide in this case and that even many official documents of the Russian Empire itself confirm the aggressive actions of the military units of the empire during the Russo-Caucasian War, in particular, artificially arranged hunger strikes and epidemics, which were aimed at the physical destruction of the civilian population of the Circassian nationality. The political and military leadership of the Russian Empire pre-planned and subsequently carried out ethnic cleansing in the Circassian territories and deliberately settled other ethnic groups in the areas emptied of them. As a result of numerous punitive military expeditions, more than 90% of the Circassian population was physically destroyed or expelled from their homeland.[2]

It must be said that the persecution of Circassians did not end in 1864. Historians distinguish a second phase when, in 1878, the Russians chased nearly half the survivors out of their new homes in the Balkans.[3]

Genocide and ethnic cleansing is one of the proven methods of Russian imperialism. Therefore, Circassians were not an exception. Many other nations have also experienced Russian brutality.

1.2. Similarities between Nazism and the Soviet system

Nazism is a symbol of extreme evil and cruelty in the history of humankind, but no less evil was the Soviet system. Both systems deliberately exterminated the civilian population. Even comparing the Holocaust and the Holodomor is sufficient as an example of the similarities between Communism and Nazism. The Nazis organised the Holocaust, which, according to various estimates, killed 5 to 6 million people.[4]

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1 M. Catic, *Circassians and the Politics of Genocide Recognition*, Europe-Asia Studies 2015, vol. 67, no. 10 (December), p. 1685.

2 See: Resolution no. 4701-I of the Parliament of Georgia of 20 May 2011 on the Recognition of Genocide of the Circassians by the Russian Empire.

3 W. Richmond, *The Circassian Genocide*, New Brunswick 2015, p. 8.

4 *The Holocaust Encyclopedia*, eds. W. Laqueur, J.T. Baumel-Schwartz, New Haven 2001, p. XIV.

The number of victims of the Holodomor carried out by the Bolsheviks is several million. According to some scholars, between 1932 and 1933, 3.3 million people died of hunger in Ukraine,[5] but some historians believe that up to 5 million Ukrainians perished during the Holodomor.[6] It must be noted that the Communists organised the Holodomor between 1932 and 1933, when the Nazis were starting their criminal activities.[7] Thus, Communist evil can even be considered a precursor of Nazism. It should be noted that many states, including the USA, France, Belgium, Ireland, the Czech Republic, Brazil and others, have already recognised the Holodomor as a genocide of the Ukrainian people.[8] The European Union also recognised it as genocide.[9]

Communism was characterised by repression and slaughter. Millions of people were shot in 1936 and 1937 across the nations of the USSR; we can also mention the mass murders known as the Katyn Massacre at the beginning of 1940, involving the mass killing of 25,000 Polish soldiers and officials,[10] etc.

1.3. Imperialist passions of modern Russia

The end of the Cold War and the collapse of the Soviet Union were perceived as the beginning of a new, all-out liberal democratic world,[11] but the expectations were not met. It soon became apparent that the Russian Federation, the legal successor of the USSR, instead of becoming a liberal democracy, set the goal of reviving the empire on the ruins of the USSR. This was especially evident during the presidency of Vladimir Putin. Professor John Mearsheimer of the University of Chicago, a renowned representative of realpolitik, considers this fact controversial and says that there is no evidence for this.[12] A detailed discussion of Professor Mearsheimer's

5 P. Wolny, *Holodomor: The Ukrainian Famine-Genocide*, New York 2018, p. 34.

6 Ibidem, p. 36.

7 Hitler was sworn in as Reich Chancellor on 30 January 1933. See: R.J. Evans, *The Coming of the Third Reich*, New York 2004, p. 307.

8 https://holodomormuseum.org.ua/en/recognition-of-holodomor-as-genocide-in-the-world/ [access: 20.07.2023].

9 European Parliament Resolution of 15 December 2022 on 90 years after the Holodomor: Recognising the Mass Killing through Starvation as Genocide, 2022/3001(RSP).

10 T. Urban, *The Katyn Massacre 1940: History of a Crime*, Barnsley 2020, p. VI.

11 See: F. Fukuyama, *End of History?*, The National Interest 1989, no. 16 (Summer), pp. 3–18.

12 See: J.J. Mearsheimer, *Why the Ukraine Crisis Is the West's Fault: The Liberal Delusions That Provoked Putin*, Foreign Affairs 2014, vol. 93, no. 5, p. 85; idem, *Uncommon Core: The Causes and Consequences of the Ukraine Crisis*, lecture, University of Chicago, June 2015, https://www.youtube.com/watch?v=-JrMiSQAGOS4&t=25s [access: 20.06.2023], etc.

opinions is beyond the scope of this article, especially since his views on the issue have been criticised in the scientific literature in a rather argumentative manner.[13] However, many facts speak against Mearsheimer.

Russian President Putin's nostalgia for the USSR is well known. In the first year of his presidency, the national anthem of the Russian Federation was changed.[14] The music of the national anthem of the Soviet Union was restored, and the new lyrics were written by one of the authors of the old Soviet national anthem, Sergey Mikhalkov.[15] In 2005, Putin stated that the Soviet Union collapse was the greatest geopolitical catastrophe of the century;[16] the words that the collapse of the Soviet Union was a whole-national tragedy of the greatest scale were also uttered by him.[17]

In 2008, Russian scholar Andrey Zakharov wrote that the imperial spirit was rising in Russia, which needed expansionism. In other words, every state that feels like an empire must act accordingly, that is, must acquire new territories, because empire implies a constant expansion of its borders, and the mechanism for packaging this imperial expansionism is federalism.[18] In this period, discussions about Russian imperialism became more frequent in Russian scientific literature, and such an antinomian term as "imperial federalism" is increasingly appearing in the Russian scientific and political lexicon.[19]

A famous Sovietologist and historian, Stephen D. Shenfield, notes that Russia certainly has a tradition of autocracy, imperialism, militarism and genocide. Both Ivan the Terrible and Stalin belong to this tradition, not to mention such lesser "luminaries" as Danilevsky and Gumilyov.[20] We must consider Russian President Vladimir Putin a successor of this tradition. He became the president of Russia thanks to the cruel "second war" against the Chechen people and the mass

13 See: R. Kuźniar, *Mearsheimer and the Poverty of His Realism*, Polish Quarterly of International Affairs 2014, no. 4, pp. 141–152.

14 See: Federal'nyj konstitucionnyj zakon ot 25.12.2000g. no. 3-FKZ "O Gosudarstvennom gimne Rossijskoj Federacii."

15 B. Havkin, *Nostal'giâ po stalinskoj imperii v postsovetskom diskurse*, Forum novejšej vostočnoevropejskoj istorii ikul'tury – Russkoe izdanie 2010, no. 1, p. 187, http://www1.ku-eichstaett.de/ZIMOS/forum/inhaltruss13.html [access: 20.07.2023].

16 Poslanie Prezidenta RF V.V. Putina Federal'nomusobraniû RF. 25 aprelâ 2005 g., http://kremlin.ru/events/president/transcripts/22931 [access: 20.07.2023].

17 A. Filippov, *Novejšaâ istoriâ Rossii 1945–2006gg*, Moskva 2007, p. 325.

18 A. Zaharov, *Unitarnaâ federaciâ. Pât' Ètûdov o rossijskom federalizme*, Moskva 2008, pp. 127–128.

19 For details on Imperial Federalism, see: G. Goradze, *Federalism Prospects in Georgia. Critical Analysis*, Tbilisi 2012, pp. 133–150; idem, *Imperial Federalism, Actual Problems of Law*, in: *Materials of I International Scientific Conference*, 10–11 July, Tbilisi 2014, pp. 80–82.

20 S.D. Shenfield, *Russian Fascism: Traditions, Tendencies, Movements*, New York 2001, p. 46.

extermination of Chechens.[21] Putin showed a willingness to use violence against perceived enemies, especially in Chechnya, where there were tens of thousands of casualties, both combatant and civilian.[22] The tragedies of the Nord-Ost siege and Beslan are connected with his name[23] as well.

The methods used by Putin against neighbouring countries in ordert o expand Russia's territories are typical of the Soviet and Nazi systems. For example, the so-called "passportisation", which refers to the mass granting of Russian citizenship to the population of other (neighbouring) countries, was used by Russia in Georgia (Abkhazia, South Ossetia), Ukraine (Crimea and Donbas) and Moldova (Transnistria).[24] With this, Russia fabricated a precondition to claim the protection of its compatriots abroad.[25] It was the passportisation process that became the basis for Russia's statement that it invaded Georgia to protect "Russian citizens."[26] "Protecting the Russian-speaking population" has been the main justification for the Russian aggression in Ukraine.[27] Hitler also occupied part of Czechoslovakian territory under the pretext of protecting the Sudeten Germans.[28]

Also, managing the region through conflicts is a Soviet method that modern Russia has always used. During the Soviet period, the tried-and-tested method of the Kremlin was to rehabilitate and resettle various ethnic groups and transfer territories, which created good grounds for conflicts. This was a "reliable lever" in the future if any republic or ethnic group showed "disobedience" to the Kremlin.[29] Bolsheviks deliberately created (especially in the South Caucasus) matryoshka-like political institutions in the areas of potential conflict.[30] After the collapse of the USSR, through the "mines" planted by the Soviet Union, Russia incited conflicts in many neighbouring countries and then ensured the long-term presence of its

21 S. Malashkhia, *Anatomy of Conflicts*, Tbilisi 2011, p. 659.

22 D.J. Kramer, *Back to Containment: Dealing with Putin's Regime*, Washington 2017, p. 20.

23 S. Malashkhia, *Anatomy*…, p. 659.

24 T. Hoffmann, A. Chochia, *The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies*, in: *Russia and the EU: Space of Interaction*, eds. T. Hoffman, A. Makarychev, London 2018, p. 226.

25 R. Värk, *Russia's Legal Arguments to Justify Its Aggression against Ukraine*, Tallin 2022, p. 7.

26 *Civilians in the Line of Fire: The Georgian-Russian Conflict*, Amnesty International Publications, 2008, p. 11, https://www.amnesty.org/en/wp-content/uploads/2021/06/eur040052008kat.pdf [access: 20.07.2023].

27 O. Tsekhanovska, L. Tsybulska, *Evolution of Russian Narratives about Ukraine and Their Export to Ukrainian Media Space*, p. 13, https://www.estdev.ee/wp-content/uploads/sites/73/2022/06/HWAG_report_Eng_online.pdf [access: 20.07.2023].

28 S. Malashkhia, *Anatomy*…, p. 665.

29 Ibidem, pp. 200–201.

30 A. Saparov, *From Conflict to Autonomy in the Caucasus. The Soviet Union and the Making of Abkhazia, South Ossetia and Nagorno Karabakh*, London 2015, p. 126.

military troops in the territory as a peacekeeper or occupier. For example, this happened in Abkhazia, the Tskhinvali region, Transnistria, Nagorno-Karabakh, etc. In these territories, Russia applied various methods, starting from passportisation and ending with terror, occupation, ethnic cleansing, etc. It is significant that as soon as Russia's influence in the South Caucasus weakened due to the war with Ukraine, left without Russia's support, the self-declared republic of Nagorno-Karabakh announced it would cease to exist on New Year's Day 2024.[31]

Due to Russia's invasion of Ukraine and the start of the war in February 2022, the Bucha massacre, the unlawful deportation and transfer of Ukrainian children, the bombing of populated areas and other crimes against humanity, no one doubts that Russia is the aggressor and its leaders are criminals. However, Georgia was aware of it earlier, and the Russian aggression has taken place there much earlier, but it took a long time to prove it anyway.

1.4. Russia's policy towards Georgia

In the late 1980s, in parallel with the activation of the national liberation movement in Georgia, the Kremlin inspired separatist movements in Abkhazia and on the territory of the so-called former South Ossetian Autonomous Region. As a result, long-term conflicts began in which Russia was directly involved.

It should be stressed that both conflicts are the result of the deliberate policy of Russia. Abkhazia is a clear example of this. The related Georgians and Abkhazians lived together for thousands of years, and 70% of modern Abkhazians have Georgian surnames.[32] There was no Georgian family in Abkhazia that did not have an Abkhazian relative and vice versa.[33] Before the conflict began, 40% of the marriages registered on the territory of Abkhazia were mixed Georgian-Abkhaz.[34] The Abkhazian population had such a high degree of autonomy that nothing comparable could be found anywhere in the world. In particular, on 9 July 1991, the Georgian government made unprecedented concessions. A law was adopted, according to which the majority of mandates in the representative body of Abkhazia's autonomy – the Supreme Council – were given to the ethnic minority when Georgians constituted the majority

31 M. Hyde, *The Guardian View on Nagorno-Karabakh's Exodus: Many Have Fled, but Protection Is Still Needed*, The Guardian, 28.08.2023, https://t.ly/I77Eh [access: 20.10.2023].

32 S. Malashkhia, *Anatomy*…, p. 650.

33 Ibidem.

34 Ibidem.

of the population.[35] In particular, according to the USSR census of 1989, the population of Abkhazia was approximately 525,100. Of those, 45.7% were Georgians, 17.8% Abkhazians, 14.6% Armenians, 14.2% Russians, 2.8% Greeks, 2.2% Ukrainians, etc.[36] In such conditions, almost three times less numerous Abkhazians were given 28 seats in the representative body and Georgians – 26 seats. Representatives of other ethnic groups were given 11 seats in total. It was also determined that the chairman of the Supreme Council of Abkhazia should be an ethnic Abkhazian, who would have two deputies – one Georgian and one from another ethnic group, and a Georgian would be appointed as the chairman of the Council of Ministers.[37] This law was clearly discriminatory towards Georgians, the largest ethnic group in Abkhazia, which gave disproportionate power to the Abkhaz minority, even though this concession somewhat stabilised the situation[38] but only for a short time. Abkhazian schools, theatre, television, Abkhazian sector in state universities functioned in Abkhazia, and Abkhazian language was given the status of official language along with Georgian in the territory of Abkhazian autonomy.[39]

Later, on 28 March 2008, that is, a few months before the August 2008 Russo-Georgian War, the then president of Georgia, Mikheil Saakashvili, proposed a new peace plan to the proxy regime in Sukhumi. The offer included international guarantees of the unlimited autonomy and security for Abkhazia, as well as a number of constitutional and legal guarantees, including the position of vice president of Georgia, which would be heldd by an Abkhazian by nationality, guaranteed representation of Abkhazians in the Georgian parliament and government, and granting the Abkhazian deputation the right to veto all bills related to key issues of Abkhazia.[40] The offer also included the creation of a free economic zone in Abkhazia and more.[41] However, a thorough discussion on the status of Abkhazia never began because, first of all, Russia had an interest in keeping the conflict unresolved.[42]

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35 A. Saparov, *From Conflict to Autonomy*…, p. 157.

36 Judgment of the ECHR of 7 March 2023, Mamasakhlisi and Others v. Georgia and Russia, application no. 29999/04, 41424/04 [HUDOC database].

37 S. Malashkhia, *Anatomy*…, p. 95.

38 A. Saparov, *From Conflict to Autonomy*…, p. 157.

39 S. Malashkhia, *Anatomy*…, p. 673. According to Article 2 (3) of the Constitution of Georgia, the Abkhazian language along with Georgian even today is declared the official language in the territory of Abkhazia's autonomy.

40 Ibidem, pp. 673–674.

41 S.E. Cornell, J. Popjanevski, N. Nilsson, *Russia's War in Georgia: Causes and Implications for Georgia and the World*, Central Asia-Caucasus Institute & Silk Road Studies Program Joint Center, August 2008, p. 8.

42 R.D. Asmus, *A Little War That Shook the World. Georgia, Russia, and the Future of the West*, New York 2010, p. 216.

In response, in August 2008, Russia invaded Georgia and started a war, the real reason of which was Georgia's desire for freedom, getting out of its quasi-colonial relationship with Russia, and trying to become part of the democratic West.[43] This Russian aggression was followed by the ethnic cleansing of the Georgian population and the occupation of territories, which many international organisations confirmed. For instance, according to the report of the Independent International Fact-Finding Mission on the Conflict in Georgia, "ethnic cleansing was indeed practised against ethnic Georgians in South Ossetia both during and after the August 2008 conflict."[44]

Moreover, on 26 August 2008, the President of the Russian Federation Dmitry Medvedev signed a decree on the recognition of the independence of South Ossetia and Abkhazia.[45] This meant that Russia formally recognised Georgia's two breakaway regions as independent states. This recognition not only violated norms of international law regarding the sovereignty and territorial integrity of an independent country, but since the ethnic cleansing of Georgians took place in these territories, which is confirmed by a number of international documents, the recognition of these territories as independent states should be considered, at least, as an encouragement of ethnic cleansing by Russia.

The European Parliament (EP) was one of the first to respond to the Russian aggression. The EP, with its resolution P6 TA (2008)0396 of 3 September 2008, noted the fact of Russia's violation of international law and called on Russia to respect the sovereignty and territorial integrity of Georgia, and therefore strongly condemned the recognition by the Russian Federation of the independence of the breakaway Georgian regions as contrary to international law.[46] The resolution also mentioned refugees' rights of return and respect for their property (§ N.3.). § N.4 of the resolution was also important, stating that the EP condemned the unacceptable and disproportionate military action by Russia and its deep incursion into Georgia, which violated international law; it stressed that there was no legitimate reason for Russia to invade Georgia, to occupy parts of it and to threaten to override the government of a democratic country.

In terms of recognition of the occupation and ethnic cleansing, the NATO Parliamentary Assembly was one of the first, which, with its Resolution no. 382 of

43 Ibidem.

44 *Independent International Fact-Finding Mission on the Conflict in Georgia, Report*, vol. 1, September 2009, p. 27.

45 See: Statement by President of Russia Dmitry Medvedev of 26 August 2008, SEC.DEL/213/08.

46 European Parliament Resolution of 3 September 2008 on the situation in Georgia, P6 TA (2008)0396, § N.2.

16 October 2010, confirmed the fact of Russia's occupation of Abkhazia and the so-called South Ossetia.[47] The same resolution recognised the ethnic cleansing of Georgians that took place in these territories.

It is very important to note that the European Parliament resolution, passed on 17 November 2011, recognised Abkhazia and South Ossetia as occupied territories. The resolution stated that Russia continued to occupy the Georgian regions, which violated the fundamental norms and principles of international law, noting that ethnic cleansing and forcible demographic changes had taken place in the areas under the effective control of the occupying force, which bore the responsibility for human rights violations in these areas.[48] Actually, with this resolution, the European Parliament directly stated Russia's responsibility regarding the ethnic cleansing that took place in this territory.

From a legal point of view, the most important thing is the Judgment of the European Court of Human Rights of 21 January 2021 in the case of *Georgia v. Russia (II)*, in which the court recognised the occupation after the Russo-Georgian War of 2008.[49]

With this decision, the European Court, together with the mass violation of human rights and the facts of ethnic cleansing in the Tskhinvali region, established the fact of Russia's occupation of Georgian territories and effective control of these territories after the ceasefire and, therefore, the responsibility of the Russian Federation.

Of particular importance is the Judgment of the European Court of Human Rights of 7 March 2023 in the case of *Mamasakhlisi and Others v. Georgia and Russia*, which for the first time established Russia's responsibility for human rights violations committed in the occupied territories before the 2008 war, as Russia had already exercised effective control over Abkhazia even before the 2008 war. The Strasbourg Court emphasised that according to international law, Abkhazia was an integral part of Georgia, even though it had not been under the control of the central government of Georgia since the 1990s due to decisive military, economic and political intervention by Russia, meaning that Russia exercised effective control and decisive influence on the territory of Abkhazia. It is also worth noting that the occupation of the Democratic Republic of Georgia by Soviet Russia in 1921 and

47 S. Malashkhia, *Anatomy*…, pp. 46–47.

48 See: European Parliament Resolution of 17 November 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU--Georgia Association Agreement, 2011/2133(INI).

49 Judgment of the ECHR of 21 January 2021, Georgia v. Russia (II), application no. 38263/08 [HUDOC database].

Russia's direct involvement in the military conflict in favour of the Abkhazians in the 1990s were already legally confirmed by the same decision.[50]

The fact that the European Court of Human Rights recognised the effective control of the territory of Abkhazia by Russia before the aggression of 2008 and its direct involvement in the military conflict in favour of the Abkhazians in the 1990s is fundamental because, in the 1990s, ethnic cleansing of Georgians took place on the territory of Abkhazia, which is confirmed by a number of documents. For example, this is mentioned in the 1994 Budapest,[51] 1996 Lisbon[52] and 1999 Istanbul[53] documents of the OSCE. It is also worth noting that Resolution no. 62/249, adopted at the 62nd session of the UN General Assembly on 15 May 2008, directly recorded the ethnic cleansing carried out on the territory of Abkhazia and expressed concern about the change in the demographic situation that existed before the conflict, and unambiguously recognised the rights of the internally displaced persons to return to Abkhazia and their property rights. It stressed the urgent need for the rapid development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes in Abkhazia and requested the Secretary-General to submit to the General Assembly at its next session a comprehensive report on the implementation of the present resolution.[54] This resolution was one of the reasons for Russia's invasion and occupation of Georgia in 2008 because presenting a specific plan for the return of IDPs in the autumn of the same year and then implementing it posed a real threat to Russia's interests in Abkhazia. It should be noted that during the war in the 1990s, due to the exodus, as well as the ethnic cleansing of Georgians, the population of Abkhazia decreased by approximately 85%.[55]

Why are these two cases important?

According to the case law of the European Court of Human Rights, any country that exercised effective control over any territory is responsible for all violations of human rights in that territory.[56] Based on this statement, the *Georgia v. Russia (II)*

50 Judgment of the ECHR of 7 March 2023, Mamasakhlisi and Others v. Georgia and Russia, application no. 29999/04, 41424/04 [HUDOC database].

51 Budapest Decisions, CSCE Budapest Document 1994 "Towards a Genuine Partnership in a New Era", 21 December 1994, p. 7.

52 Lisbon Summit Declaration, OSCE Lisbon Document 1996, 3 December 1996, p. 8.

53 Istanbul Summit Declaration, Istanbul Document 1999, January 2000, p. 49.

54 See: United Nations Resolution adopted by the General Assembly on 15 May 2008, no. 62/249, Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia.

55 T. Hoffmann, A. Chochia, *The Institution of Citizenship*…, p. 227.

56 See: Judgment of the ECHR of 23 March 1995, Loizidou v. Turkey, application no. 15318/89 [HUDOC database]; Judgment of the ECHR of 8 July 2004, Ilaşcu and Others v. Moldova and Russia, application no. 48787/99 [HUDOC database].

and *Mamasakhlisi* cases provide the possibility for each displaced person forced to leave their real estate in Abkhazia and so-called South Ossetia and not having an opportunity to use it since the 1990s to apply to the European Court of Human Rights against Russian Federation. Also, any violation of human rights in the occupied territories committed until 16 September 2022 should become the basis for new lawsuits against Russia.[57]

2. The Responsibility of the Democratic World

It took a long time to prove Russia's criminal activities against Georgia. If someone blamed Georgia for starting the war in August 2008[58] and perhaps explained the reasons for the war with the impulsiveness of the then president of Georgia,[59] Russia's seizure of Crimea without a fight in 2014 and its subsequent annexation showed that it does not matter to Russia whether a state is behaving "good" or "bad" or "impulsively", Russia simply pursues its expansionist intentions.

This was finally revealed by Russia's invasion of Ukraine and the start of a full-scale war in February 2022. Due to the atrocities committed in Ukraine, all illusions about Russia have disappeared. Many states have declared Russia a terrorist state or a state sponsor of terrorism,[60] and several states have recognised Russia's actions in Ukraine as genocide.[61] The resolution of the European Union Parliament of 23 November 2022 is of high importance, as it recognises Russia as a state sponsor of terrorism, as well as a state that has committed war crimes and crimes against humanity in Ukraine, which is very telling. It also calls on the EU and its Member States to provide the appropriate support for the establishment of a special tribunal dealing with the

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57 Due to the fact that the Russian Federation ceased to be a High Contracting Party to the European Convention on Human Rights on 16 September 2022, the European Court of Human Rights stated that "The Court remains competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022." See: Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights of 22 March 2022.

58 See, e.g.: O. Kobakhize, *Pro-Russian Labels: Georgia's Political Actors in Search of Kremlin Agents*, in: *Georgian-Russian Relations: The Role of Discourses and Narratives*, Tbilisi 2021, p. 15.

59 Ibidem, p. 16.

60 However, some scholars, from a purely legal point of view, question the validity of declaring the state a terrorist. In this regard, see: Z. Parcels, *Opinion – Is Russia a 'Terrorist State'?*, E-International Relations, February 2023, https://www.e-ir.info/2023/02/26/opinion-is-russia-a-terrorist-state/ [access: 20.07.2023].

61 *The Evolution of Russia's Genocide against the Ukrainian People, Analytical Report*, Kyiv 2022, p. 39.

crime of aggression by Russia against Ukraine. The resolution also encourages EU Member States to make even wider use of the principle of universal jurisdiction and to step up their support for international efforts to investigate and prosecute all the perpetrators of, and persons responsible for, war crimes in Ukraine.[62]

Of particular note is the arrest warrant against the President of the Russian Federation, Vladimir Putin, for the war crime of unlawful deportation of population (children) and the unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation issued by the International Criminal Court on 17 March 2023.[63] The European Union welcomed this effort and declared that the EU sees this decision as the beginning of the process of holding Russian leaders accountable and responsible for the crimes and atrocities they are ordering, enabling or committing in Ukraine.[64]

"Pushing back against Putin's threatening behavior and policies is not only necessary but also the right, moral thing to do."[65] The above-mentioned statement of 17 March 2023 of the European Union, together with the resolution of the European Parliament of 23 November 2022 and the efforts of the International Criminal Court, shows the determination of the democratic world to hold Russia accountable for its crimes. However, Russia, its leaders and other criminals should be tried not only for the war and crimes against humanity committed in Ukraine, but also for all the similar crimes they have committed in other countries, especially for the ethnic cleansing of Georgians in Georgia, which was carried out in several waves. The sentence must also include imposing financial responsibility on Russia for all the destruction and misfortune it has inflicted on other countries. The legal basis for this is, inter alia, provided by the above-mentioned decisions of the European Court of Human Rights. However, it must be said that the special tribunal indicated in the resolution of the European Union Parliament of 23 November 2022 in relation to Ukraine should be extended and cover crimes of aggression and crimes against humanity both in Ukraine and Georgia.

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62 See: European Parliament Resolution of 23 November 2022 on Recognising the Russian Federation as a State Sponsor of Terrorism, 2022/2896(RSP).

63 International Criminal Court, *Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, 17.03.2023, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and [access: 20.07.2023].

64 EEAS Press Team, *Russia/Ukraine: Statement by the High Representative Following the ICC Decision Concerning the Arrest Warrant against President Putin*, 19.03.2023, https://www.eeas.europa.eu/eeas/russiaukraine-statement-high-representative-following-icc-decision-concerning-arrest-warrant_en [access: 20.07.2023].

65 D.J. Kramer, *Back to Containment*…, p. 13.

The only way to peace the Russia and the whole world is Russia's democratisation. It is only possible through international legal coercion, as it happened in the case of Nazi Germany. International law must step in with all its might and have the last word. Only this, and not cosmetic changes in the Russian government, is the way to democratise a Russia prone to imperialism.

Conclusion

Russia, be it tsarist, Soviet or modern "democratic" Russia, has always been guided by imperialist and expansionist considerations towards its neighbouring countries. Russia did not shy away from ethnic cleansing, genocide, forced migration of people and more. History knows many examples of the above.

Along with many similarities, there are also differences between the Nazi and Soviet systems: Nazism has been tried (at the Nuremberg trials), while the Soviet system has been spared the same fate. This is one of the main reasons for the revived imperial aspirations in Russia, and until it is held to account, there will always be a danger of relapse. That is why it will never be enough to make only a political assessment of Russia's actions or cosmetic changes in the Russian government. The perpetrators of these heinous crimes against humanity should be tried by an international court/tribunal and the Russian state should be held financially responsible for all the misery it has caused in neighbouring countries.

Today, the whole civilised world is united, and this unity is not based only on economic or political interests but mainly on values, which gives the basis for a firm belief that the democratic world will bring the struggle to an end and finally defeat the last evil empire. In David Kramer's words, Russia and its leaders must be made to understand that those days are over.[66]

Bibliography

Asmus R.D., *Little War That Shook the World. Georgia, Russia, and the Future of the West*, New York 2010.

Catic M., *Circassians and the Politics of Genocide Recognition*, Europe-Asia Studies 2015, vol. 67, no. 10 (December).

[66] Ibidem, p. 14.

Civilians in the Line of Fire: The Georgian-Russian Conflict, Amnesty International Publications, 2008, https://www.amnesty.org/en/wp-content/uploads/2021/06/eur040052008kat.pdf [access: 20.07.2023].

Cornell S.E., Popjanevski J., Nilsson N., *Russia's War in Georgia: Causes and Implications for Georgia and the World*, Central Asia-Caucasus Institute & Silk Road Studies Program Joint Center, August 2008.

EEAS Press Team, *Russia/Ukraine: Statement by the High Representative Following the ICC Decision Concerning the Arrest Warrant against President Putin*, 19.03.2023, https://www.eeas.europa.eu/eeas/russiaukraine-statement-high-representative-following-icc-decision-concerning-arrest-warrant_en [access: 20.07.2023].

Evans R.J., *The Coming of the Third Reich*, New York 2004.

The Evolution of Russia's Genocide against the Ukrainian People, Analytical Report, Kyiv 2022.

Filippov A., *Novejšaâ istoriâ Rossii 1945–2006gg*, Moskva 2007.

Fukuyama F., *End of History?*, The National Interest 1989, no. 16 (Summer).

Goradze G., *Federalism Prospects in Georgia. Critical Analysis*, Tbilisi 2012.

Goradze G., *Imperial Federalism, Actual Problems of Law*, in: *Materials of I International Scientific Conference*, 10–11 July, Tbilisi 2014.

Havkin B., *Nostal'giâ po stalinskoj imperii v postsovetskom diskurse*, Forum novejšej vostočnoevropejskoj istorii ikul'tury – Russkoe izdanie 2010, no. 1, http://www1.ku-eichstaett.de/ZIMOS/forum/inhaltruss13.html [access: 20.07.2023].

Hoffmann T., Chochia A., *The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies*, in: *Russia and the EU: Space of Interaction*, eds. T. Hoffman, A. Makarychev, London 2018.

The Holocaust Encyclopedia, eds. W. Laqueur, J.T. Baumel-Schwartz, New Haven 2001.

Hyde M., *The Guardian View on Nagorno-Karabakh's Exodus: Many Have Fled, but Protection Is Still Needed*, The Guardian, 28.08.2023, https://t.ly/I77Eh [access: 20.10.2023].

International Criminal Court, *Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, 17.03.2023, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and [access: 20.07.2023].

Kobakhidze O., *Pro-Russian Labels: Georgia's Political Actors in Search of Kremlin Agents*, in: *Georgian-Russsian Relations: The Role of Discourses and Narratives*, Tbilisi 2021.

Kramer D.J., *Back to Containment: Dealing with Putin's Regime*, Washington 2017.

Kuźniar R., *Mearsheimer and the Poverty of His Realism*, Polish Quarterly of International Affairs 2014, no. 4.

Malashkhia S., *Anatomy of Conflicts*, Tbilisi 2011.

Mearsheimer J.J., *Uncommon Core: The Causes and Consequences of the Ukraine Crisis*, lecture, The University of Chicago, June 2015, https://www.youtube.com/watch?v=JrMiSQAGOS4&t=25s [access: 20.07.2023].

Mearsheimer J.J., *Why the Ukraine Crisis Is the West's Fault: The Liberal Delusions That Provoked Putin*, Foreign Affairs 2014, vol. 93, no. 5.

Parcels Z., *Opinion – Is Russia a 'Terrorist State'?*, E-International Relations, February 2023, https://www.e-ir.info/2023/02/26/opinion-is-russia-a-terrorist-state/ [access: 20.07.2023].

Richmond W., *The Circassian Genocide*, New Brunswick 2015.

Saparov A., *From Conflict to Autonomy in the Caucasus. The Soviet Union and the Making of Abkhazia, South Ossetia and Nagorno Karabakh*, London 2015.
Shenfield S.D., *Russian Fascism: Traditions, Tendencies, Movements*, New York 2001.
Tsekhanovska O., Tsybulska L., *Evolution of Russian Narratives about Ukraine and Their Export to Ukrainian Media Space*, https://www.estdev.ee/wp-content/uploads/sites/73/2022/06/HWAG_report_Eng_online.pdf [access: 20.07.2023].
Urban T., *The Katyn Massacre 1940: History of a Crime*, Barnsley 2020.
Värk R., *Russia's Legal Arguments to Justify Its Aggression against Ukraine*, Tallin 2022.
Wolny P., *Holodomor: the Ukrainian Famine-Genocide*, New York 2018.
Zaharov A., *Unitarnaâ federaciâ. Pât' Ètûdov o rossijskom federalizme*, Moskva 2008.
https://holodomormuseum.org.ua/en/recognition-of-holodomor-as-genocide-in-the-world/ [access: 20.07.2023].

EUROPEAN CONSERVATIVES AND REFORMISTS

STUDIA PRAWNICZE KUL
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European Parliament's response to the war in Ukraine

Stanowisko UE wobec agresji Rosji przeciw Ukrainie

Позиция ЕС в отношении агрессии России против Украины

Позиція ЄС щодо агресії Росії проти України

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Summary: The military incursion by the Russian military, with the partial occupation of sovereign Ukrainian territory, is an unprecedented event on a global scale. The civilian casualties, the disregard for the need to create humanitarian corridors for the population fleeing the areas occupied by the enemy military, or the forced displacement could be treated like a war movie scenario. However, as of 24 February 2022, such events have become a reality and require strong condemnation from the world.

This article aims to interpret the resolutions issued by the European Parliament since Russia's military aggression against Ukraine and their impact on the actions of the EU institutions. The exegesis presented here focuses on the most important issues raised by the Parliament in its resolutions. This article is a legal analysis using the dogmatic-legal method. Resolutions, as non-binding acts, represent so-called soft law issued in situations requiring ad hoc action or reaction by the EU institutions. Through its resolutions, Parliament seeks to draw the attention of Member States and the international community to the economic and humanitarian consequences of war. In almost all its resolutions, Parliament condemns Russia's actions, points out human rights violations and emphasises its solidarity with the Ukrainian people.

Key words: war, Ukraine, human rights, resolutions, European Parliament

Streszczenie: Napaść zbrojna rosyjskich wojsk, z częściową okupacją suwerennego terytorium Ukrainy jest bezprecedensowym wydarzeniem w skali światowej. Ofiary wśród ludności cywilnej, ignorowanie potrzeby tworzenia korytarzy humanitarnych dla ludności uciekającej z terenów okupowanych przez wrogie wojsko czy przymusowe wysiedlenia można by potraktować jak scenariusz filmu wojennego. Jednak od 24 lutego 2022 r. takie wydarzenia stały się faktem i wymagają zdecydowanej reakcji potępiającej ze strony świata.

Celem niniejszego artykułu jest interpretacja rezolucji wydawanych przez Parlament Europejski od momentu zbrojnej agresji Rosji przeciw Ukrainie i ich wpływu na działania instytucji unijnych. Prezentowany wywód koncentruje się wokół najważniejszych zagadnień poruszanych przez Parlament w swoich rezolucjach. Artykuł stanowi analizę prawniczą sporządzoną przy wykorzystaniu metody dogmatyczno-prawnej. Rezolucje, jako akty niewiążące, zaliczane są do tzw. prawa s*oft law*, które wydawane jest w sytuacjach wymagających doraźnych działań lub reakcji ze strony instytucji UE. Parlament poprzez swoje rezolucje pragnie zwrócić uwagę państw członkowskich i społeczności międzynarodowej na skutki, jakie wojna wywołuje w wymiarze gospodarczym i humanitarnym. W niemalże wszystkich rezolucjach Parlament potępia działania Rosji, wskazuje przypadki łamania praw człowieka i podkreśla swoją solidarność z narodem ukraińskim.

Słowa kluczowe: wojna, Ukraina, prawa człowieka, rezolucje, Parlament Europejski

Резюме: Вооруженное нападение российских войск с частичной оккупацией суверенной территории Украины – беспрецедентное событие мирового масштаба. Жертвы среди мирного населения,

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игнорирование необходимости создания гуманитарных коридоров для населения, покидающего оккупированные вражескими военными территории, принудительное выселение – все это можно было бы отнести к сценарию военного фильма. Однако с 24 февраля 2022 года подобные события стали реальностью и требуют решительной осуждающей реакции со стороны всего мира.

Цель данной статьи – интерпретация резолюций, принятых Европарламентом после военной агрессии России против Украины, и их влияния на деятельность институтов ЕС. Представленная аргументация сосредоточена на наиболее важных вопросах, затронутых Европарламентом в своих резолюциях. Статья представляет собой юридический анализ, выполненный с использованием догматико-правового метода. Резолюции, как необязательные акты, относятся к категории, так называемого, «soft law» и издаются в ситуациях, требующих специальных действий или реакции со стороны институтов ЕС. С помощью своих резолюций Европарламент стремится привлечь внимание государств-членов и международного сообщества к экономическим и гуманитарным последствиям войны. Практически во всех резолюциях Европарламент осуждает действия России, указывает на нарушения прав человека и подчеркивает свою солидарность с украинским народом.

Ключевые слова: война, Украина, права человека, резолюции, Европарламент

Резюме: Збройний наступ російських військових з частковою окупацією суверенної території України є безпрецедентною подією світового масштабу. Жертви серед цивільного населення, ігнорування необхідності створення гуманітарних коридорів для населення, яке тікає з окупованих ворожими військовими територій, вимушене переселення – все це можна було б розглядати як сценарій військового фільму. Однак з 24 лютого 2022 року такі події стали реальністю і вимагають рішучої засуджувальної реакції з боку світової спільноти.

Метою цієї статті є інтерпретація резолюцій, ухвалених Європейським парламентом після початку збройної агресії Росії проти України, та їхній вплив на дії інституцій ЄС. Представлена аргументація фокусується на найважливіших питаннях, порушених Європарламентом у своїх резолюціях. Стаття є правовим аналізом, виконаним із застосуванням догматико-юридичного методу. Резолюції, як необов'язкові акти, класифікуються як "м'яке право", які видаються в ситуаціях, що вимагають спеціальних дій або реакції з боку інституцій ЄС. Своїми резолюціями Парламент прагне привернути увагу держав-членів та міжнародної спільноти до економічних та гуманітарних наслідків війни. Майже у всіх резолюціях Парламент засуджує дії Росії, вказує на порушення прав людини та підкреслює свою солідарність з українським народом.

Ключові слова: війна, Україна, права людини, резолюції, Європейський парламент

Introduction

On 24 February 2022, the political and social situation in Europe changed radically. Russia's invasion of Ukraine made everyone realise that war could break out in the 21st century. It would seem that after the Second World War, the rulers of European countries would avoid such actions. Russian President Vladimir Putin, in a speech, announced the launch of a "special military operation" in defence of the self-proclaimed republics (Luhansk and Donetsk) that had emerged in eastern Ukraine. Russia recognised them as independent, autonomous states.

The international community mostly strongly condemns Russian aggression. UN Secretary-General Antonio Guterres and members of the UN Security Council have commented on the war as an unjustified and sad action. The European Union,

too, condemns Russia's brutal armed assault on Ukraine and the illegal annexation of the Ukrainian regions of Donetsk, Luhansk, Zaporizhzhia and Kherson. In addition, the Union does not accept Belarus' involvement in Russian military aggression.[1] In response to Russia's actions, the Union has introduced sanctions against it.

This article aims to demonstrate how resolutions issued by the European Parliament can have practical consequences. This raises the question of whether Parliament's resolutions are merely informative or whether their significance is more substantial. Do Parliament's resolutions reflect the views of the Member States of the European Union, or, in internal relations, can they be seen as an instrument of informal pressure on the European Union institutions and the Member States?

However, to avoid too detailed reporting, their analysis will be based on a presentation of the most important issues raised by the European Parliament. The impulse to write this article was the desire to present the position of the European Parliament on issues of importance to both EU Member States and the organisation itself.

1. Soft law and its role in the EU legal system

Soft law is defined as law that does not have a legally binding effect but can nevertheless have practical effects.[2] Furthermore, resolutions are adopted by a vote in plenary, which means that they reflect the views of the majority of the members of the institution.[3] The literature points out that soft law is an instrument for achieving objectives that are important for the European Union (EU) and the Member States in a complex situation.[4] Soft law is seen as a new form of governance in the EU, which derives from a pragmatic approach to law and is intended to respond to the problems of contemporary society.[5]

1 Council of EU, *EU Response to Russia's Invasion of Ukraine*, https://www.consilium.europa.eu/pl/policies/eu-response-ukraine-invasion/ [access: 10.07.2023].

2 N.M. Hart, *A 'Legal Eccentricity': The European Parliament, Its Non-binding Resolution and the Legitimacy of the EU's Trade Agreements*, University of Bologna Law Review 2020, vol. 5, no. 2, p. 329, https://bolognalawreview.unibo.it/article/view/12291 [access: 2.11.2023].

3 Ibidem.

4 T. Biernat, *Soft law a proces tworzenia prawa w Unii Europejskiej. Wpływ soft law na konstrukcję i treść uzasadnień aktów normatywnych*, Studia Prawnicze. Rozprawy i Materiały 2012, no. 2, p. 32, https://repozytorium.ka.edu.pl/items/e5fa748a-c0c0-4925-803e-b552d4bc89fa [access: 2.11.2023].

5 M. Pietrzyk, *Soft law i hard law w europejskim prawie administracyjnym: relacja alternatywy, uzupełnienia, wykluczenia oraz przejścia*, in: *Administracja publiczna wobec wyzwań i oczekiwań społecznych*, eds. M. Giełda, R. Raszewska-Skałecka, Wrocław 2015, http://www.repozytorium.uni.wroc.pl/Content/71675 [access: 2.11.2023].

In this case, European Parliament (EP) resolutions respond to the situation following Russia's military aggression against Ukraine, which necessitated the introduction of appropriate legal regulations. Parliament, using a resolution, presented its critical position in the circumstances.

EP resolutions, although non-binding, are not devoid of practical significance. Parliament can influence other EU institutions through these acts when there is a lack of political will to make legally binding commitments. The EP's opinion is important because of its strong democratic legitimacy. The Lisbon Treaty strengthened the EP's position within the EU institutions; it became a co-legislator, obtaining the right of indirect legislative initiative, which gives it a strong position vis-à-vis the European Commission. Therefore, it can be argued that EP resolutions can initiate legislative procedures and influence the direction of the Commission's political and legislative activities. It is believed that the EP, by asserting its democratic legitimacy, goes beyond the indicated framework and often takes a position on the international stage in all areas of EU competence.[6]

2. European Parliament Resolutions

Since the outbreak of the war in Ukraine, the EP has issued a number of resolutions.[7] All of these documents condemned Russia's aggression against Ukraine and its further escalation. Some resolutions are social in nature and relate to the protection of children and young people and women fleeing from Ukrainian territories. They signal human rights violations in the context of the forced deportation of Ukrainian civilians to Russia and the forced adoption of Ukrainian children. In others, Parliament addresses economic and business issues. It supports the implementation of sanctions against the Russian Federation and Belarus.

On 1 March 2022, an extraordinary plenary debate was held in Brussels, during which Parliament adopted a resolution calling on the EU institutions to take action to grant Ukraine European Union candidate status.[8] In this resolution, the EP indicated that it condemns in the strongest possible terms the illegal, unprovoked and unjustified military aggression of the Russian Federation against Ukraine and

6 A. Parol, *Pojęcie małżeństwa w pracach Parlamentu Europejskiego* [pending publication].

7 EP resolutions were taken from https://ukraine.europarl.europa.eu/en/documents/ep-resolutions [access: 10.07.2023].

8 EP Resolution of 1 March 2022 on the Russian aggression against Ukraine, 2022/2564(RSP), https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:52022IP0052 [access: 10.07.2023].

the invasion of Ukraine, as well as the participation of Belarus in this aggression. Parliament demands an immediate end to all military action in Ukraine, the withdrawal of military and paramilitary forces and full respect for the territorial integrity, sovereignty and independence of Ukraine within its internationally recognised borders. Parliament calls for dialogue and diplomacy, for efforts to stop Russian aggression against Ukraine and to find a peaceful solution based on respect for Ukraine's sovereignty and territorial integrity and the principles of international law, and on Ukraine's right to decide on future alliances without outside interference. Parliament condemned the unilateral recognition by the Russian Federation of the independence of the Russian-occupied territories of Ukraine in the Donetsk and Luhansk regions and called on all countries to refrain from recognising their independence.

In April 2022, EP adopted a resolution on the EU's protection of children and young people fleeing the war in Ukraine.[9] And in May, a resolution on the impact of the war in Ukraine on women.[10] In the resolution on children and young people, the EP pointed to examples of how the war has affected Ukrainian children. Secondary and higher education institutions were destroyed as a result of the war. Attacks on the Ukrainian population led to many individuals and families fleeing the war-torn areas, bringing immense suffering. Of the refugees fleeing Ukraine, 90% are women and children of school age. It is important to remember that children, often moving unaccompanied, are more vulnerable to violence, abuse and exploitation. There is a risk of them going missing and even being abducted for criminal purposes. In addition, according to data cited by Parliament, there were persons of undetermined nationality within Ukraine, while 55% of children born in Donetsk and Luhansk and 88% of children born in Crimea do not have Ukrainian birth certificates or personal documents, which can lead to statelessness. Due to the obstructed registration of births in their country of origin or during resettlement, such children are at risk of statelessness due to the lack of evidence of family ties. This, in turn, can lead to all kinds of abuse and exploitation of children.

The resolution provides guidance on reception conditions for vulnerable children, family reunification, relocation and integration. Parliament calls on each Member State to treat every child seeking refuge equally, regardless of their social and ethnic origin, gender, sexual orientation, ability, citizenship or migration status. In addition, it calls for the creation of safe passages and humanitarian corridors

9 EP Resolution of 7 April 2022, 2022/2618 (RSP), https://ukraine.europarl.europa.eu/en/documents/ep-resolutions [access: 20.07.2023].

10 EP Resolution of 5 May 2022, 2022/2633 (RSP), https://ukraine.europarl.europa.eu/en/documents/ep-resolutions [access: 20.07.2023].

for children fleeing conflict, whether unaccompanied or with families, as well as the provision of urgent assistance to children who are internally displaced, stranded in surrounding areas or unable to leave them. In response to this resolution, the European Commission indicated that, in the operational guidelines for the implementation of the Council Decision triggering the Temporary Protection Directive,[11] the Commission is taking action to encourage Member States of first entry to register unaccompanied children and refer these children to national child protection services.[12] The Commission's concrete action is the adoption of a decision to make EUR 248 million in emergency aid available to five Member States (Czech Republic, Hungary, Poland, Romania and Slovakia) facing exceptional pressure on their border management and reception of refugees.[13]

In its resolution on the impact of the war in Ukraine on women, Parliament drew attention to protection from sexual and gender-based violence and access to basic sexual and reproductive health services for all refugees fleeing Ukraine, including those still in the country. It stressed the need for specialised support for women and girls who have experienced or witnessed violence and sexual abuse. Parliament condemned the deportation, transportation and relocation of Ukrainian women and their children to Russia. It pointed out that this is incompatible with the Geneva Conventions and insists that all Ukrainian citizens who have been forcibly deported to Russia should be immediately returned to Ukraine. Parliament has expressed concern for the welfare and anxiety about the whereabouts of those imprisoned by Russian forces, in particular imprisoned women, due to their extreme vulnerability to specific types of gender-based violence. Therefore, EP calls on the International Committee of the Red Cross to try to identify the whereabouts of the female prisoners and ensure that they are treated fairly and humanely. Furthermore, Parliament asked the Commission to properly and fully implement the Temporary Protection Directive in all 27 Member States and to monitor that female refugees fleeing war in Ukraine fully enjoy the rights enshrined in the Directive.[14] It supported the Commission's launch of

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11 Communication from the Commission of 21 March 2023 on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01, OJ C 126/1, 21.03.2022, pp. 1–16, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29 [access: 22.07.2023].

12 The Commission's response is available at https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/2618(RSP) [access: 22.07.2023].

13 Ibidem.

14 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts

cooperation in the network of National Rapporteurs on Trafficking in Human Beings and, in this connection, the launch of police cooperation in the fight against trafficking in human beings, including EMPACT.[15] It should also be borne in mind that Member States can benefit from the assistance offered by EU agencies when it comes to the reception of female refugees. Parliament supported the Commission's proposal to create an EU-wide platform for the registration of persons seeking temporary protection, especially needed to assist in the tracing and reunification of unaccompanied minors and also to assist those at risk of trafficking. It strongly condemned the forced deportation of Ukrainian civilians, including children, to Russia.[16] Parliament demands that Russia cease its "filtration" operation of collecting and storing data on civilians. The collection of data during "filtration" includes interrogation, sometimes involving forced nudity and torture. Furthermore, Parliament calls on all states and international organisations to put pressure on Russia to respect the ban on forced displacement to facilitate the safe passage of civilians to their chosen destinations.[17]

In its resolution of 7 April 2022 on the conclusions of the European Council meeting of 24–25 March 2022, including the latest developments of the war against Ukraine and the EU sanctions against Russia and their implementation (2022/2560(RSP)),[18] Parliament once again condemned the war of aggression of the Russian Federation against Ukraine, as well as the participation of Belarus in this war. It expressed the need to hold the perpetrators of war crimes and other serious rights violations criminally responsible. It recalled that in cases of war crimes and genocide, the international community is obliged to act and should seek an investigation by the Prosecutor of the International Criminal Court into war crimes and crimes against humanity.[19] Parliament called on the EU institutions to take all

between Member States in receiving such persons and bearing the consequences thereof, OJ L 212/12. On 4 March 2022, the EU decided to apply the Temporary Protection Directive. This directive was adopted in 2001 in response to the massive influx of refugees into the Union, especially from Bosnia and Herzegovina and Kosovo, caused by the armed conflicts in the Western Balkans.

15 EMPACT stands for European Multidisciplinary Platform against Crime Threats. It introduces an integrated approach to EU internal security, https://www.europol.europa.eu/crime-areas-and-statistics/empact [access: 22.07.2023].

16 EP Resolution of 15 September 2022 on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia, 2022/2825(RSP), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0320_EN.html [access: 22.07.2023].

17 Ibidem, § 7 ff.

18 EP Resolution of 7 April 2022, 2022/2560 (RSP), https://ukraine.europarl.europa.eu/en/documents/ep-resolutions [access: 25.07.2023].

19 It reiterated and expanded its comments in this regard in its Resolution of 19 May 2022 on the fight against impunity for war crimes in Ukraine, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0218_EN.html [access: 25.07.2023].

necessary action within the institutions and proceedings before the International Criminal Court or other competent international tribunals or courts to challenge Putin's and Lukashenko's actions as war crimes and crimes against humanity. It advocated the establishment of a special UN tribunal to deal with crimes in Ukraine.[20] In Parliament's view, an international, impartial and independent mechanism should be used to assist international investigations into war crimes committed in Ukraine. The actions of the Union and Member States should be directed towards effectively countering impunity for those who committed or participated in war crimes. The European Commission, in its response to the above-mentioned EP resolution on the fight against impunity for war crimes in Ukraine, indicated that one of the main objectives of its action would be to bring those responsible for the crimes committed in Ukraine to justice.[21] The Commission assured that its efforts are focused on supporting national accountability mechanisms, in particular the Ukrainian criminal justice system, to address the atrocities committed in Ukraine. Furthermore, the Commission pointed out that 14 Member States have launched national investigations so far, and it expects this number to increase further. The Commission pointed out that Ukrainians are the main victims of Russian aggression and, therefore, their role in investigating and prosecuting crimes is crucial. A number of the Commission's services and projects support Ukrainian efforts at accountability for the crimes committed.

In the same resolution (7 April 2022), the EP supported the sanctions adopted by the Council and praised the unity of the EU institutions and Member States in response to Russia's aggression against Ukraine. It called on the Council to adopt further tough sanctions against the Russian Federation and urged it to intensify outreach efforts to countries that have not yet joined the sanctions introduced by the EU. For existing sanctions to be fully and effectively implemented across the EU and by the EU's international allies, the EP requires Member States to create an adequate legal basis to ensure full and effective compliance in national jurisdictions. In Parliament's view, the Commission and EU supervisory authorities should monitor the practical and comprehensive implementation of EU sanctions by Member

[20] The EP reiterated its position in its Resolution of 15 September 2022 on human rights violations…, § 19, in which it "[c]alls on the Commission and the Member States to provide political, legal, technical, financial and any other kind of support needed for the establishment of a special tribunal dealing with the crime of aggression by the Russian Federation against Ukraine." It further reaffirmed its position in its Resolution of 19 January 2023 on the establishment of a tribunal on the crime of aggression against Ukraine, 2022/3017(RSP), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0015_EN.html [access: 25.07.2023].

[21] The Commission's response is available at: https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/2655(RSP) [access: 25.07.2023].

States and investigate any circumvention practices. Parliament also calls for a total embargo on imports of oil, coal, nuclear fuel and gas from Russia, the complete abandonment of the Nordstream 1 and Nordstream 2 pipelines and a plan to further ensure the security of the EU's energy supply in the short term.

The EP also referred to economic issues in its statements. It stressed that the Russian military aggression against Ukraine and the sanctions being introduced against it and Belarus were damaging the EU's post-pandemic economic recovery and posed a serious threat to its reconstruction strategy, as well as to the integrity of the single market.[22] The hostilities are exacerbating an already severe energy crisis across Europe, affecting gas and electricity prices in Member States. Parliament considers it important to ensure energy sovereignty and independence from Russian supplies and greater strategic autonomy and energy security through modernisation and substantial investment in the EU's energy infrastructure.

Ukraine, devastated by war, requires financial assistance, which Parliament sees in the form of support for the reconstruction, repair and maintenance of critical functions and critical infrastructure, as well as aid to people in need and areas in need of material and social support, temporary housing and housing and infrastructure construction.[23] The need and willingness of the EU to provide financial assistance to Ukraine can be seen from the fact that the EP adopted the resolution at first reading with 522 votes in favour, 17 against and 25 abstentions. In this vote, Parliament resolved to provide additional macro-financial assistance in the form of a highly concessional long-term loan to support Ukraine's macro-financial stability and strengthen the country's resilience.[24] It also supported further financial assistance and support packages that will contribute to restoring critical infrastructure and maintaining essential public services.

In addition to financial support, the EP calls on Member States and other countries supporting Ukraine to increase military assistance to regain full control over

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22 EP Resolution of 19 May 2022 on the social and economic consequences for the EU of the Russian war in Ukraine – reinforcing the EU's capacity to act, 2022/2653(RSP), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0219_EN.pdf [access: 25.07.2023].

23 EP legislative Resolution of 7 July 2022 on the proposal for a decision of the European Parliament and of the Council providing exceptional macro-financial assistance to Ukraine (COM(2022)0450 – C9-0221/2022 – 2022/0213(COD)); EP position adopted at first reading on 7 July 2022 with a view to the adoption of Decision (EU) 2022/… of the European Parliament and of the Council providing exceptional macro-financial assistance to Ukraine, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0296_EN.html [access: 25.07.2023].

24 https://oeil.secure.europarl.europa.eu/oeil/popups/summary.do?id=1710888&t=d&l=en [access: 25.07.2023].

the entire territory of Ukraine and effectively defend it against Russian aggression.[25] It urges the coordination of arms supplies by the EU institutions through the clearing house mechanism of the European External Action Service (EEAS) and calls on EU leaders to build lasting unity among Member States and like-minded countries to fully and unconditionally support Ukraine against Russian aggression.[26]

In a resolution adopted on 23 November 2022, EP recognised the Russian Federation as a state sponsor of terrorism.[27] This attitude of Russia should result in its isolation in the international arena by excluding it as a member of international organisations and international bodies, limiting diplomatic relations with Russia and keeping contact with its official representatives at all levels to a minimum. Parliament calls for the inclusion of the Wagner Group and the 141st Special Motorised Regiment, also known as the Kadyrovites, to the EU terrorist list. It also calls to extend the scope of sanctions to Belarus.

Parliament supported Ukraine's bid for EU membership and, at the same time, welcomed the European Council's decision to grant it EU candidate status.[28] At the same time, it stipulated that Ukraine's accession to the EU must take place following the Treaty regulations, respecting the relevant procedures and subject to the fulfilment of the established criteria and the adoption and implementation of appropriate reforms, particularly in the areas of democracy, the rule of law, human rights, the market economy and the implementation of the Union acquis.[29] In its most recent resolution adopted on 29 June 2023, the EP reaffirmed its support for the applications of not only Ukraine but also of Moldova and Georgia to join the EU and for their right to decide their own future through democratic processes.[30] In the resolution, Parliament called on the EU and its Member States and the Eastern Partnership countries to cooperate as closely as possible to stop the Russian war of aggression against Ukraine, make every effort to stop Russian aggression and

25 EP Resolution of 6 October 2022 on Russia's escalation of its war of aggression against Ukraine, 2022/2851(RSP), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0353_EN.html [access: 25.07.2023].

26 Ibidem.

27 EP Resolution of 23 November 2022 on recognising the Russian Federation as a state sponsor of terrorism, 2022/2896(RSP), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0405_EN.html [access: 25.07.2023].

28 It expressed this view in the Resolution of 2 February 2023 on the preparation of the EU-Ukraine Summit, 2023/2509(RSP), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0029_PL.html [access: 25.07.2023], §§ 13–14.

29 Ibidem, § 13.

30 Resolution on supporting the path of Ukraine, Moldova and Georgia towards EU membership, OJ C 229/33, 29.06.2023, pp. 33–35, https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:22023P0629(07) [access: 25.07.2023].

maintain peace and security in Europe. It commends the efforts of Ukraine, Moldova and Georgia to implement reforms and measures to combat corruption and ensure the independence of the judiciary. Parliament stressed that good governance, the rule of law, a strong civil society and media freedom are key elements of the EU accession process. Parliament also asked the Commission to draw up tailored roadmaps to create a solid basis for the gradual accession of Ukraine, Moldova and Georgia to the EU single market and to improve the implementation of Association Agreements and the Deep and Comprehensive Free Trade Areas between the EU and these countries.[31]

3. The impact of soft law

The resolutions adopted by the EP reflect the attitudes of Member States to the war in Ukraine. The voting in the Parliament clearly shows the degree of support for particular issues. As an example, the results of the votes on the individual resolutions can be pointed out, and thus the resolution of 1 March 2022 on the Russian aggression against Ukraine was adopted with 637 votes in favour, 13 against and 26 abstentions.[32] The resolution of 7 April 2022 on the EU's protection of children and young people fleeing the war in Ukraine was adopted by Parliament with 509 votes in favour, 3 against and 47 abstentions. In the vote on the resolution of 23 November 2022 on recognising the Russian Federation as a state sponsor of terrorism, 495 MEPs voted in favour, 58 voted against, and 44 abstained.[33]

EP resolutions have also influenced concrete action by EU institutions. In 2022, EP adopted resolutions on the protection of children, young people and women fleeing war in Ukraine. In the same year, the EU Council launched a temporary protection mechanism for those fleeing war. The EU Council then decided to extend the effect of the temporary protection from 24 March 2024 to 4 March 2025.

In its resolutions, Parliament has repeatedly called on the EU to provide Ukraine with financial or military assistance. Meanwhile, the Council has decided to establish a Military Assistance Mission in support of Ukraine (EUMAM Ukraine). The Mission aims to increase the military capabilities of Ukraine's Armed Forces

31 Ibidem, § 21.

32 Source of information: https://oeil.secure.europarl.europa.eu/oeil/popups/sda.do?id=57795&l=en [access: 3.11.2023].

33 For information on votes on other resolutions, see: https://www.europarl.europa.eu/delegations/en/d-ua/documents/ep-resolutions [access: 25.07.2023].

so that they can effectively conduct military operations and defend the integrity of Ukrainian territory.[34] In its conclusions of 23–24 June 2022, the European Council stated that the EU is determined to provide further military support to Ukraine to help it exercise its inherent right of self-defence in the face of Russian aggression and defend its sovereignty and territorial integrity. It called on the EU Council to act swiftly on further increases in military support.[35]

In its resolution of 23 November 2022, the EP called for the inclusion of the Wagner Group and the 141st Special Motorised Regiment, also known as the Kadyrovites, to the EU terrorist list. On 23 April 2023, the EU Council added the Wagner Group and RIA FAN to the EU sanctions list for activities that undermine or compromise the territorial integrity, sovereignty and independence of Ukraine. The Council's decision completes the so-called "Wagner package" of 25 February 2023 and indicates the international dimension and gravity of the group's activities and its destabilising impact on the countries in which it operates.[36]

Furthermore, as indicated above, the EU's package of sanctions against Russia over Ukraine cannot be overlooked, which in their content coincides with the EP's position as expressed in its resolutions. In conclusion, it can be said that the Member States speak and take decisions through the various EU institutions. The outbreak of war in Ukraine intensified the dialogue between these institutions, which was then translated into concrete legal action.

Concluding remarks

The European Union, as a specific integration construct, operates within the strictly limited competences conferred upon it in the Treaties.[37] On the other hand, the EU institutions can go beyond these competences to a certain extent by issuing

34 Council of EU, *Ukraine: EU Sets up a Military Assistance Mission to Further Support the Ukrainian Armed Forces*, https://www.consilium.europa.eu/pl/press/press-releases/2022/10/17/ukraine-eu-sets-up-a-military-assistance-mission-to-further-support-the-ukrainian-armed-forces/ [access: 3.11.2023].

35 Ibidem.

36 Council of EU, *Russia's War of Aggression against Ukraine: Wagner Group and RIA FAN Added to the EU's Sanctions List*, https://www.consilium.europa.eu/pl/press/press-releases/2023/04/13/russia-s-war-of-aggression-against-ukraine-wagner-group-and-ria-fan-added-to-the-eu-s-sanctions-list/ [access: 3.11.2023].

37 Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 202, 7.06.2016, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL [access: 25.07.2023].

acts of a non-binding nature.[38] Parliament is the only EU institution with a direct democratic basis for action, so its voice appears significant. As an institution of a representative nature, it represents the citizens of the EU Member States, i.e. it expresses the views of Europeans.

EP resolutions should be classified as soft law acts, which have no binding effect but may produce certain indirect legal effects and, at the same time, have a purpose and may produce practical effects.[39] Parliament resolutions originated as an ad hoc reaction of this institution to the war in Ukraine. Nevertheless, they form an important part of the international discussion. This is particularly true of the resolution on the EU's protection of children and young people fleeing the war in Ukraine. In its response, the European Commission has indicated that it is taking specific action by providing financial assistance to the five EU Member States facing the largest wave of refugees. In addition, the Commission is encouraging Member States to compile registers of children crossing the border.

Through resolutions, the EP presented its position on the war, condemning the military aggression of the Russian Federation and demanding an immediate end to all hostilities in Ukraine. It supported the implementation of sanctions against Russia and Belarus and Ukraine's aspirations to be admitted as a member of the EU. Running through the resolution are the issues of human rights violations and the need for financial assistance to rebuild the country and to help strengthen economic growth. In most resolutions, Parliament salutes the courage of the Ukrainian people defending their country at the risk of their lives. It supports Ukraine's independence, sovereignty and territorial integrity within internationally recognised borders.

The EP's statements should also be seen as pressure of a political nature, and excellent examples of this are the parts of the resolution in which Parliament supports the sanctions imposed by the EU on Russia and calls on the Council to adopt further ones. It calls for a broad information campaign aimed at the countries that have not yet joined these sanctions. In addition, the wording on monitoring the effective and comprehensive implementation of EU sanctions by Member States or investigating any practice of non-compliance with these measures also fulfils the pressure and leverage on states.

In this respect, the EP resolutions fulfilled all the tasks indicated in the introduction. In a specific situation, they have become the "voice" of the representatives of

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38 P. Staszczyk, *Akty soft law jako reakcja instytucji unijnych na skutki pandemii COVID-19*, Europejski Przegląd Sądowy 2020, no. 7, p. 42.

39 Ibidem.

the Member States and have given legitimacy to further actions by other EU institutions through the governments of these countries. They have informally influenced and are influencing the decisions of the EU and the Member States.

Bibliography

Biernat T., *Soft law a proces tworzenia prawa w Unii Europejskiej. Wpływ soft law na konstrukcję i treść uzasadnień aktów normatywnych*, Studia Prawnicze. Rozprawy i Materiały 2012, no. 2.

Council of EU, *EU Response to Russia's Invasion of Ukraine*, https://www.consilium.europa.eu/pl/policies/eu-response-ukraine-invasion/ [access: 10.07.2023].

Council of EU, *Russia's War of Aggression against Ukraine: Wagner Group and RIA FAN Added to the EU's Sanctions List*, https://www.consilium.europa.eu/pl/press/press-releases/2023/04/13/russia-s-war-of-aggression-against-ukraine-wagner-group-and-ria-fan-added-to-the-eu-s-sanctions-list/ [access: 3.11.2023].

Council of EU, *Ukraine: EU Sets up a Military Assistance Mission to Further Support the Ukrainian Armed Forces*, https://www.consilium.europa.eu/pl/press/press-releases/2022/10/17/ukraine-eu-sets-up-a-military-assistance-mission-to-further-support-the-ukrainian-armed-forces/ [access: 3.11.2023].

Eliantonio M., Stefan O., *Soft Law Before the European Court: Discovering a 'Common Pattern'?*, Yearbook of European Law 2018, vol. 37.

Hart N.M., *A 'Legal Eccentricity': The European Parliament, Its Non-binding Resolution and the Legitimacy of the EU's Trade Agreements*, University of Bologna Law Review 2020, vol. 5, no. 2.

Parol A., *Pojęcie małżeństwa w pracach Parlamentu Europejskiego* [pending publication].

Pietrzyk M., *Soft law i hard law w europejskim prawie administracyjnym: relacja alternatywy, uzupełnienia, wykluczenia oraz przejścia*, in: *Administracja publiczna wobec wyzwań i oczekiwań społecznych*, eds. M. Giełda, R. Raszewska-Skałecka, Wrocław 2015.

Staszczyk P., *Akty soft law jako reakcja instytucji unijnych na skutki pandemii COVID-19*, Europejski Przegląd Sądowy 2020, no. 7.

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Use of genocide by the Russian Federation in the conduct of hybrid activities and warfare in Ukraine

Stosowanie ludobójstwa przez Federację Rosyjską w ramach prowadzenia działań hybrydowych i wojny na Ukrainie

Использование геноцида Российской Федерацией в рамках гибридных действий и войны в Украине

Застосування геноциду Російською Федерацією під час проведення гібридних операцій та війни в Україні

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Summary: Both the Russian hybrid activities and warfare include the use of genocide to strengthen the Kremlin's position and overcome Ukrainians. It can be observed within many spheres, but mainly as the Russian Federation falsely accuses Ukraine of committing genocide against Russians and claims that the West supports it. Russians commit war crimes that fulfil all the requirements to be considered genocide. The Kremlin uses genocide as a part of cognitive warfare, trying to influence not only the way the Ukrainians are thinking but also how they are behaving. In unofficial channels, there is much content showing Russian violence to generate fear and diminish the resilience of Ukrainians. Bearing in mind how much Russia has already lost with respect to the hybrid war in Ukraine, it is more and more likely that the Kremlin will focus in the future on hybrid activities and will try to exploit the potential of the threats that have already materialised. Principally, the hybrid warfare potential of genocide has been explored by Russians to various extend.

This work addresses chosen aspects of the use of genocide by the Russian Federation in the conduct of hybrid activities and warfare in Ukraine from 2022, as well as the motivation behind it.
Key words: genocide, hybrid activities, hybrid warfare, cognitive warfare, the war in Ukraine, Russian Federation

Streszczenie: Zarówno rosyjskie działania hybrydowe, jak i wojna hybrydowa obejmują wykorzystanie ludobójstwa w celu wzmocnienia pozycji Kremla i pokonania Ukrainy. Można to zaobserwować na wielu płaszczyznach, ale głównie w fałszywych rosyjskich oskarżeniach Ukrainy o popełnienie ludobójstwa na Rosjanach i Zachodu o wspieranie tego, również w faktach, że Rosjanie popełniają zbrodnie wojenne, które spełniają wszystkie przesłanki, aby uznać je za ludobójstwo, dodatkowo Kreml wykorzystuje ludobójstwo jako część wojny kognitywnej, próbując wpłynąć nie tylko na sposób myślenia Ukraińców, lecz także na ich zachowanie. W szczególności w nieoficjalnych kanałach pojawia się wiele treści pokazujących zbrodnie dokonane przez Rosjan w celu wywołania strachu i zmniejszenia odporności Ukraińców. Biorąc pod uwagę, jak wielkie straty Rosja poniosła w związku z wojną hybrydową na Ukrainie, jest coraz bardziej prawdopodobne, że Kreml skupi się w przyszłości na działaniach hybrydowych i spróbuje wykorzystać potencjał zagrożeń, które już się zmaterializowały. Zasadniczo, z uwzględnieniem powyższego, przydatność wykorzystania zbrodni ludobójstwa przy prowadzeniu działań hybrydowych była eksplorowana przez Rosjan w różnym zakresie.

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Niniejsze opracowanie dotyczy wybranych aspektów stosowania ludobójstwa przez Federację Rosyjską w ramach prowadzenia działań hybrydowych i wojny na Ukrainie od 2022 r., a także motywacji, która za tym stoi.
Słowa kluczowe: ludobójstwo, wojna hybrydowa, działania hybrydowe, wojna kognitywna, wojna w Ukrainie, Federacja Rosyjska

Резюме: Как российские гибридные действия, так и гибридная война России предполагают использование геноцида для укрепление позиций Кремля и поражения Украины. Это проявляется на многих уровнях, но главным образом в ложных обвинениях России в адрес Украины в геноциде россиян и Запада в поддержке этого, но также в том, что россияне совершают военные преступления, которые отвечают всем требованиям, чтобы считаться геноцидом. Кроме того, Кремль использует геноцид как часть когнитивной войны, пытаясь повлиять не только на мышление украинцев, но и на их поведение. В частности, на неофициальных каналах появляется множество материалов, показывающих преступления, совершенные россиянами, чтобы посеять страх и снизить сопротивляемость украинцев. Учитывая, какой большой ущерб Россия понесла в связи с гибридной войной в Украине, становится все более вероятным, что в будущем Кремль сосредоточится на гибридных действиях и попытается использовать потенциал уже реализовавшихся угроз. По сути, с учетом вышесказанного, целесообразность использования преступления геноцида в рамках проведения гибридных действий в том или ином объеме была исследована россиянами.

В данном исследовании рассматриваются отдельные аспекты использования Российской Федерацией геноцида в ходе гибридных действий и войны в Украине, начиная с 2022 года, а также мотивации, лежащей в его основе.
Ключевые слова: геноцид, гибридная война, гибридные действия, когнитивная война, война в Украине, Российская Федерация

Резюме: Як російські гібридні операції, так і гібридна війна передбачають використання геноциду для посилення влади Кремля та перемоги над Україною. Це можна побачити на багатьох рівнях, але головним чином у неправдивих російських звинуваченнях України у вчиненні геноциду проти росіян, а Заходу – у підтримці цього, а також у фактах вчинення росіянами воєнних злочинів, які відповідають усім передумовам, щоб вважатися геноцидом. Крім того, Кремль використовує геноцид як частину когнітивної війни, намагаючись вплинути не лише на мислення українців, але й на їхню поведінку. Зокрема, на неофіційних каналах з'являється багато контенту, який показує злочини, скоєні росіянами, щоб посіяти страх і знизити стійкість українців. З огляду на те, якої шкоди Росія зазнала від гібридної війни в Україні, стає все більш імовірним, що Кремль зосередиться на гібридних діях у майбутньому і намагатиметься використати потенціал загроз, які вже матеріалізувалися. По суті, з огляду на це, корисність використання злочину геноциду в проведенні гібридних операцій використовувалася росіянами в різному ступені.

У цьому дослідженні розглядаються окремі аспекти використання Російською Федерацією геноциду під час проведення гібридних операцій та війни в Україні з 2022 року і далі, а також мотивація, що стоїть за цим.
Ключові слова: геноцид, гібридна війна, гібридні операції, когнітивна війна, війна в Україні, Російська Федерація

Introduction and method

As scientists and politicians address the issues related to hybrid warfare, the discussion about the genocide in Ukraine is growing. Bearing in mind the use of Russian hybrid activities and warfare, different aspects of this phenomenon can be researched. The issues under scientific inquiry may include:

1. Russia's false accusations that Ukraine committed genocide against Russians living in Ukraine as an excuse to start the war.
2. Russia's false accusations that the West is supporting the genocide of Russians.
3. War crimes, including the genocide committed by Russians.
4. Russia's use of genocide as a part of cognitive warfare, trying to influence not only the way the Ukrainians are thinking but also how they are behaving:
   a. presenting the atrocities committed by Russians as an imminent crime that can happen to every Ukrainian and therefore spreading fear and decreasing morals among them,
   b. presenting the genocide committed by Russians as a provocation orchestrated by Ukrainians to destroy trust among Ukrainian citizens and try to undermine Ukraine's position in the international arena.

As the expectation that public international law will civilise relations between states, factually, more and more tensions emerge, and expansion of hybrid activities and warfare is observed, i.e. the use of uncontrolled movements of migrants, including refugees, is growing at the Belarusian border (Belarus acts as a proxy) with the EU, affecting Poland, Lithuania, and Latvia.[1]

Genocide is not only committed by Russians but also used by them as a part of the hybrid war, and due to the strong emotional charge, it is very likely this exploitation will continue.

Dealing with such a hideous crime, it is not difficult to understand its potential properly from the hybrid threat perspective. In cognitive warfare, the more emotions are engaged, the more damage can be done since the emotions can be incited to change perceptual and cognitive content to control masses. The Kremlin, familiar with these mechanisms, used even the concept of humanitarian intervention in order to twist the perception of their own and foreign citizens, aiming at getting away with another war started due to its revisionistic and imperialistic policy.[2] How they shape and use dissemination of the information regarding torture, killing, and abductions of Ukrainians (including children) is also an orchestrated bigger plan following their strategic documents.[3]

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1 W. Jakubczak, *Kryzys migracyjny na wschodniej granicy UE – rola Europolu we współpracy w bezpieczeństwie wewnętrznym*, Athenaeum. Polskie Studia Politologiczne 2021, vol. 70 (2), pp. 232, 229–244.

2 F. Hill, *How Vladimir Putin's World View Shapes Russian Foreign Policy*, in: *Russia's Foreign Policy*, eds. D. Cadier, M. Light, New York 2015.

3 *Strategy for the Development of the Information Society in the Russian Federation for 2017–2030, Указ Президента Российской Федерации О Стратегии развития информационного общества в Российской Федерации на 2017–2030 годы.*

The research methodology was based on an analysis of scientific investigations of the legal texts and reports. The author aimed to exploit the desk research method to the fullest by preparing a complex yet synthetic description of the key conclusions based on the review of the literature and documents.

Since the scientific area explored here has been exponentially growing, garnering increasing interest from many experts, politicians, and media, the author decided to include numerous online resources. To summarise, the research methods used in this work include a critical analysis of the strategic documents, literature, comparative analysis, and analysis of the available data.

The purpose of the research is to examine the link between genocide and hybrid activities and warfare in Ukraine. The research problem was expressed by the question: how genocide is used in hybrid activities and warfare in Ukraine? The following hypothesis is formulated: genocide is used as an element of hybrid activities and warfare in Ukraine.

1. Hybrid warfare and activities

While the discussion regarding hybrid warfare and activities or related terms like *grey zone activities* is still ongoing and the increasing involvement of many actors is observed with that respect, firstly, it is important to understand what a hybrid threat is. According to Frank Hoffman, a hybrid threat is posed by "any adversary that simultaneously employs a tailored mix of conventional weapons, irregular tactics, terrorism, and criminal behaviour in the same time and battlespace to obtain their political objectives."[4]

There are many other definitions of hybrid threats, i.e. by NATO,[5] EU[6] or experts.[7] The hybrid warfare definition in the shortest version might read as "the

4 F. Hoffman, *On Not-So-New Warfare: Political Warfare vs Hybrid Threats*, War on the Rocks, 28.07.2014, http://warontherocks.com [access: 7.07.2023].

5 NATO, *NATO's Response to Hybrid Threats*, https://www.nato.int/cps/en/natohq/topics_156338.htm [access: 22.09.2022].

6 *Hybrid Threats*, https://defence-industry-space.ec.europa.eu/eu-defence-industry/hybrid-threats_en [access: 7.07.2023].

7 M. Caliskan, *Hybrid Warfare and Strategic Theory*, Beyond the Horizon, ISSG, 25.04.2019, https://www.behorizon.org/hybrid-warfare-through-the-lensof-strategic-theory/ [access: 7.07.2023]; F. Bekkers, R. Meessen, D. Lassche, *Hybrid Conflicts: The New Normal?*, The Hague Centre for Strategic Studies 2018, pp. 7–8; R. Jakubczak, R.M. Martowski, *Powszechna obrona terytorialna w cyberobronie i agresji hybrydowej*, Warszawa 2017, pp. 129–152.

contemporary form of guerrilla warfare that employs both modern technology and modern mobilization methods."[8]

The more complex definition explains: Hybrid warfare is a modern variant of asymmetric conflict (guerrilla warfare) conducted with the synergetic use on the battlefield (including cyberspace and the media) of four types of aggression – warfare – conventional and irregular, terrorism and criminal activity, aimed at achieving political gains with significant difficulties in the attribution of the attacks carried out. It is conducted on many levels – military operations, information and covert operations (espionage, extortion, bribery), economic and political warfare. The conductor of hybrid warfare exploits the critical vulnerabilities of the adversary in order to achieve synergy and optimise the means used.[9]

Hybrid operations differ from a hybrid war by the time they are carried out – usually before the outbreak of a hybrid war, and they include all of the above except conventional operations. Therefore, hybrid warfare includes hybrid actions augmented by conventional actions.

Russia's hybrid warfare is a specific emanation of its internal problems, which stem from the fact that Russia has numerous political and sociodemographic problems, forcing it to employ a strategy of conquest in order to survive. Despite the largest territory in the world, vast natural resources, fossil fuels, and rare earth metals, an authoritarian regime that destroys its own citizens has enabled a group of oligarchs and politicians in Russia to loot the citizens and neighbouring countries and pose a threat to world peace instead of developing the country constructively. This undemocratic state, controlled by *de facto* mafia structures, pursues a policy of imperialist conquest and deep indoctrination of its citizens and applies an iron-fisted rule to it.

War is a *de facto* permanent feature of Russia's policy as part of the legacy of previous regimes. Currently, it functions mainly in the dimension of hybrid warfare (Rus. *gibridnaya voyna*). Russia's Gerasimov doctrine envisages the use of means termed hybrid (informational, psychological, political, economic, energy warfare), the use of which most often occurs either as a substitute for military action or in the phase preceding kinetic action. Their purpose is to take advantage of the adversary's vulnerability and weaken its defence potential and social resilience or even deprive it of the ability to defend itself effectively. The next stage involves introducing

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8 F. Hoffman, *Hybrid vs. Compound War*, http://armedforcesjournal.com/hybrid-vs-compound-war/ [access: 7.07.2023].

9 W. Jakubczak, *Działania hybrydowe elementem polityki Federacji Rosyjskiej – cyberataki, wojna informacyjna i nielegalna migracja*, in: *Wojna Federacji Rosyjskiej z Zachodem*, ed. M. Banasik, Warszawa 2022.

military action and transitioning to high-intensity armed conflict, with the involvement of modern technologies, including hybrid engagements, such as information and psychological warfare, diversion, and cyberattacks.[10]

The main regulation enabling a strong impact on the mentality of Russians – the key to conducting effective hybrid warfare is the Strategy for the Development of the Information Society in the Russian Federation for 2017–2030.[11] RF has a long history of creating propaganda narratives, which peaked in the Soviet period. Nowadays, Russian national narratives focus on impacting not only the external but, foremost, the internal audience. The main purpose of the Kremlin's propaganda campaigns is to create the belief that Russia represents a whole civilisation[12] with unique power, values, and culture way superior to the rest of the World,[13] especially pointing out the moral and cultural degradation and inferiority of the West.[14]

Putin understands how important it is to have support from society. Since the mafia-like regime makes it difficult to function for a typical Russian, it is necessary to add some mysticism to Russia's culture and force citizens to believe that they have to unite since the West is trying to destroy them. Nothing encourages people to come together more than a common threat. Moreover, a united society forced to think that the government's actions are righteous and necessary to overcome the enemy is essential to a successful non-democratic regime. The Strategy paragraphs that promote traditional Russian values are overused by RF conducting "humanitarian interventions" since the Kremlin's actual goal is to unify and militarise society and move away from any respect for human rights. The regime seeks to restrict freedom of expression or access to information for its citizens – an example is the restrictions widespread after the attack on Ukraine, which is officially called a "special operation" in Russia "conducted to denazificate and combat genocide".

In February 2022, Putin declared: "I decided to conduct a special military operation. Its goal is to protect people subjected to bullying and genocide by the Kiev regime for eight years. And for this, we will strive for the demilitarisation

10 M. Depczyński, L. Elak, *Rosyjska sztuka operacyjna w zarysie*, Warszawa 2020.

11 *Strategy for the Development of the Information Society in the Russian…*

12 F. Linde, *The Civilizational Turn in Russian Political Discourse: From Pan-Europeanism to Civilizational Distinctiveness*, The Russian Review 2016, vol. 75, no. 4, pp. 604–625.

13 F. Hill, *How Vladimir Putin's World View…*, pp. 48–49.

14 *Analysis of Russia's Information Campaign against Ukraine*, Riga 2015, https://stratcomcoe.org/cuploads/pfiles/russian_information_campaign_public_12012016fin.pdf [access: 1.07.2023]; D. Gorenburg, *Chapter 15: Strategic Messaging: Propaganda and Disinformation Efforts*, in: *Russia's Global Reach: A Security and Statecraft Assessment*, ed. G.P. Herd, Garmisch-Partenkirchen 2021, https://www.marshallcenter.org/en/publications/marshall-center-books/russias-global-reach-security-and-statecraft-assessment/chapter-15-strategic-messaging-propaganda-and [access: 7.07.2023].

and denazification of Ukraine, as well as bringing to justice those who committed numerous, bloody crimes against civilians, including citizens of the Russian Federation."[15]

Russians initiated studies on both the use of hybrid activities and warfare. Undeniably, Evgeny Messner, one of the pioneers of the theory of hybrid wars, stressed the blurring of the boundaries between peacetime and wartime, as well as the distinction between the military and non-military spheres and the engagement of state and non-state actors.

Under Messner's theory, the basic form of combat in *rebel wars* are irregular actions (Rus. *irreguliarstwo*), with such varieties as a diversion, terror, guerrilla, and insurgency. Messner, giving an example of rebel warfare, pointed to the activity of the Polish resistance movement (1939–1945).[16] In *rebel wars*, the distinction between legitimate and unlawful (from the point of view of international law) means of warfare is blurred.[17]

Russian Hybrid Warfare Toolkit includes "information operations, cyber activities, states/intermediaries, economic influence, covert means (espionage, bribery, extortion) and political influence. […], behind which lies the threat of Russian conventional force and, in extreme cases, nuclear force."[18]

A simplified definition of hybrid warfare can emphasize that its "key feature is the synchronous interaction or combination of conventional and unconventional instruments of force and diversion when conducting warfare to achieve synergy. Successful operations of this type enable the most optimal exploitation of the opponent's weaknesses and to achieve a better position."[19] It is important to note the possibility of achieving the greatest objectives with relatively small resources, which were achievable before only with the involvement of large-scale kinetic activities. This is evident in hybrid actions – activities carried out below the threshold of war. Examples of RF's aggressions camouflaged as pseudo-interventions were also successful cases of hybrid

15 *Full Text: Putin's Declaration of War on Ukraine*, The Spectator, 24.02.2022, https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine/ [access: 7.07.2023].

16 E. Messner, *Hočeš' mira, pobedimâteževojnu. Tvorčeskoe nasledie E.È. Messnera*, Moskva 2005, pp. 90–91.

17 L. Sykulski, *Rosyjska koncepcja wojen buntowniczych Jewgienija Messnera*, Przegląd Geopolityczny 2015, vol. 11.

18 C.S. Chivvis, *Understanding Russian "Hybrid Warfare" and What Can Be Done About It*, Testimony presented before the House Armed Services Committee on 22 March 2017, RAND Corporation, Santa Monica, California 2017.

19 W. Jakubczak, *Działania hybrydowe…*

warfare.[20] The political successes were real and proved that hybrid warfare is close to Sun Tzu's principle of defeating the enemy without fighting.[21]

RF understands hybrid warfare as a more broad phenomenon than the West does. Its strategy highlights that it encompasses the entire space where actors in the international arena can compete with one another or even fight. The concept of *gibridnaya voyna* previews the use of economic, informational, and diplomatic tools and engagement of subversion and military forces factually exceeding the upper threshold taken within the concept of the grey zone activities.

Accordingly, RF links the use of diplomatic measures to the information warfare execution "the efforts […] have included covert actions through social media, including election interference."[22] "There was a sharp increase in activities on international news and social media sites, as well as promotion of Russian culture or support for pro-Russian think tanks abroad."[23]

The Kremlin hybrid warfare includes adaptive efforts directed to "[a]dapt traditional military theories and doctrines to enable the Russian military to conduct hybrid wars as a core mission", "[c]onduct society-wide information campaigns to improve 'patriotic consciousness'" and [i]ncrease the adaptability and impact of Russian information campaigns to successfully conduct hybrid wars over many years."[24]

RF's intentions to conduct offensive hybrid warfare, as seen in Ukraine, are easy to notice. Russian war theory experts openly and frequently highlight the importance of offensive hybrid warfare in the strategic and doctrinal documents.

RF is setting its hopes on hybrid warfare as a major military development rather than a temporary solution. In view of the immense losses in the war in Ukraine, there is a high probability that the promotion of hybrid actions without the involvement of military forces – conducted below the threshold of war – will increase. This is the most optimal way of destroying the opponent, where significant results can be achieved at low expense, also avoiding international costs such as sanctions. The Kremlin argues that RF should shape its military and national security tools to optimise for hybrid activities, not only because they are increasingly common but also because they are now more practical and effective than conventional warfare.

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20 E. Iszmayilov, *Russia's Military Interventions in Georgia and Ukraine: Interests, Motives, and Decision-Making*, New York 2020, p. 122; L. Milevski, *Little Green Men in the Baltic States Are an Article 5 Event*, (FPRI) Foreign Policy Research Institute Baltic Bulletin, 5.01.2016.

21 Sun Tzu, *The Art of War. A New Translation by Michael Nylan*, New York 2020, p. 56.

22 R. Hutchings, J. Suri, *Modern Diplomacy in Practice*, Londyn 2020, p. 137.

23 S. Saari, *Russia's Post-Orange Revolution Strategies to Increase Its Influence in Former Soviet Republics: Public Diplomacy 'po russkii'*, Europe-Asia Studies 2014, vol. 66, no. 1, p. 54.

24 M. Clark, *Russian Hybrid Warfare*, Institute for the Study of War, Washington 2020, p. 9.

As there is no legal definition of hybrid warfare, the easiest way to prove that the war in Ukraine started by Russia is a hybrid war is to address particular aspects highlighted by various security experts as follows:

- the war started without a formal declaration,
- the RF uses internal animosities (between Ukrainians and the Russian minority in Ukraine) to achieve its political goals,
- the cooperation between the RF and Wagner Group is observed (co-op of state and non-state actors),
- the combination of different dimensions – military and economic, social and cyber,
- disinformation campaign aimed at misleading the civilian population and the armed forces of the Ukraine,
- previous difficulties in defining the adversary, etc.

The UN Charter prohibits aggression, as any use of force without a legal basis is forbidden. Article 2 (4) *expressis verbis* secures the state's freedom from any threat or use of force against their territorial integrity or political independence.[25] "Prohibited uses of force encompass, but need not reach, the level of an armed attack, the basis for self-defense under Article 51 of the UN Charter (as well as the collective defense provision contained in Article 5 of NATO's Atlantic Charter)."[26]

Use of force violating Article 2 (4) usually requires the involvement of military/kinetic activities, such as state or non-state armed forces.[27] The UN framework enables adjustment to situational challenges as needed with respect to the means used by parties at war.

From the legal perspective, hybrid warfare occurs when the kinetic component is involved; any other actions below the war threshold are usually considered hybrid activities that might later evolve into hybrid warfare. Still, due to the complex nature of the matter, it will be further explored.

Due to various circumstances, understanding the difference between war and peace and differentiating between permissible uses of force or not, the general aim of the international law of armed conflict is to stabilise expectations expressed by

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25 United Nations Charter (full text), https://www.un.org/en/about-us/un-charter/full-text [access: 9.11.2023].

26 D. Cantwell, *Hybrid Warfare: Aggression and Coercion in the Gray Zone*, American Society of International Law 2017, vol. 21, no. 14, https://www.asil.org/insights/volume/21/issue/14/hybrid-warfare-aggression-and-coercion-gray-zone [access: 9.11.2023].

27 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States), 1986 I.C.J. Rep. 14, 202, 195 (June 27) 1986; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168 (Dec. 19) 2005; Legality of the Use or Threat of Nuclear Weapons, 1996 I.C.J. Rep. 226 (July 8) 1996.

the warring parties. While actors deciding to explore the advantages of hybrid warfare exploit the legal regulations. The stabilising function of the law cannot be executed as the adversaries do not want to pay the price for taking a military advantage over their victims. Legally, the perpetrator fails "to meet the relevant normative expectations, by using a range of means, including noncompliance with the applicable rules, by instrumentalizing legal thresholds, and by taking advantage of the structural weaknesses of the international legal order, while counting upon the continued adherence of their opponents to these expectations. […] At the same time, the instrumentalization of law poses profound challenges to the post–Second World War international legal order. Nations committed to that order cannot afford to respond to hybrid threats by adopting the same means and methods as their hybrid adversaries without contributing to its decay can be considered."[28]

A hybrid war is not a standard set of various types of confrontations, and sometimes, it is a disorganised opposition of radial shape, which is not governed by any military tactician and is not seeking to obtain military victory but creates its own environment of war – usually completely ignoring the *ius in bello* and other regulations.

The concept of hybrid warfare is not a legal term and has not been regulated *expressis verbis* in any act of international law. On the other hand, the absence of such a definition is not the same as the fact that other definitions contain features relevant to the validity of international law norms. On the contrary, in view of the increasing popularity of both operations and hybrid warfare, these phenomena should be frequently discussed in legal terms so as to lead to the development of appropriate legal regulations. For the time being, the concept under discussion functions mainly in the sphere of international relations and security sciences. What is of the highest importance: "Hybrid war does not change the nature of war, it only changes the ways in which forces are involved in its conduct. […] History shows that hybrid war in one form or another can be rather normal human conflict rather than the exception."[29]

2. Genocide in Ukraine

There are several aspects to be taken into consideration while researching genocide during the war in Ukraine. First, it is important to address the accusations

[28] A. Sari, *Hybrid Warfare, Law, and the Fulda Gap*, in: *Complex Battlespaces: The Law of Armed Conflict and the Dynamics of Modern Warfare*, eds. W.S. Williams, C.M. Ford, New York 2019.

[29] V. Vlasiuk, *Hybrid War, International Law and Eastern Ukraine*, Evropský politický a právní diskurz 2015, vol. 2, no. 4.

of Ukraine committing genocide against the native Russian population in east Ukraine with support from the West. Regarding these accusations, it is important to remember that "Putin fielded a query on discrimination against Russian speakers beyond Russia's borders: 'I have to say that Russophobia is a first step towards genocide […] You and I know what is happening in Donbass […]. It certainly looks like genocide.'"[30]

As an excuse to start the war in 2022, Putin said that the "People's Republics of Donbass approached Russia with a request for help. In connection therewith […] I made the decision to hold a special military operation […] to protect the people that are subjected to abuse, genocide from the Kiev regime for eight years, and to this end, we will seek to demilitarize and denazify Ukraine and put to justice those that committed numerous bloody crimes against peaceful people, including Russian nationals."[31] There are voices that Putin deliberately used the word *denazify* as a part of conducting psychological warfare since it has a strong emotional charge.[32]

The Facebook statement of RF's Foreign Affairs Minister also expressed similar (dis)information: "Russia didn't start the war, it's ending it. […] The humble silence of the world community and the ignorance of the bloody catastrophe that resulted from the unconstitutional coup in Ukraine 2014, carried out with the direct participation of the United States, EU, Germany, Poland, Lithuania, Estonia, Latvia and other NATO countries, have only encouraged the Kiev regime to continue destroying its own population."[33]

The Wagner Group head said: "The ministry of defence is trying to deceive the public and the president and spin the story that there was insane levels of aggression from the Ukrainian side and that they were going to attack us together with the whole NATO block."[34]

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30 *Putin Says Conflict in Eastern Ukraine 'Looks Like Genocide'*, RFI, 9.12.2021, https://www.rfi.fr/en/Putin-says-conflict-in-eastern-ukraine-looks-like-genocide [access: 11.06.2023].

31 *Decision Taken on Denazification, Demilitarization of Ukraine – Putin*, Tass, 24.02.2022, https://tass.com/politics/1409189 [access: 11.06.2023]; M. Fisher, *Putin's Baseless Claims of Genocide Hint at More Than War*, The New York Times, 19.02.2022, https://www.nytimes.com/2022/02/19/world/europe/putin-ukraine-genocide.html [access: 17.05.2023]; *Ukraine Crisis: Vladimir Putin Address Fact-checked*, BBC News, 22.02.2022, https://www.bbc.com/news/60477712 [access: 17.05.2023].

32 O.B. Waxman, *Historians on What Putin Gets Wrong about 'Denazification' in Ukraine*, Time, 3.03.2022, https://time.com/6154493/denazification-putin-ukraine-history-context/ [access: 11.06.2023].

33 *Zakharova Accuses West of Supporting "Genocide in Ukraine"*, https://www.facebook.com/maria.zakharova.167/posts/10227769395810054 [access: 11.06.2023].

34 P. Sauer, *Wagner Chief Accuses Moscow of Lying to Public about Ukraine*, The Guardian, 23.06.2023, https://www.theguardian.com/world/2023/jun/23/Wagner-chief-accuses-moscow-of-lying-to-public-about-ukraine-yevgeny-prigozhin [access: 11.06.2023].

When addressing the issue of intervention in the internal affairs of another state, it is worth taking into account the body of work, both in terms of literature,[35] international practice and the rulings of international courts.[36] This makes it possible to understand how the non-democratic regimes conduct pseudo-interventions that emanate the manipulative camouflage of crimes against peace and humanity.

The ongoing hybrid war in Ukraine provides an opportunity to discuss the harmful use of the provisions of international law by non-democratic regimes.

War crimes committed by Russians in Ukraine, considered genocide, are still investigated by the International Criminal Court[37] – abductions of Ukrainian children to reeducate and push them into involuntarily cultural assimilation and numerous attacks on civilian infrastructure located away from the battlefields.[38] Their descriptions meet the legal prerequisites of genocide.[39]

Since the Russian 2022 invasion, several investigations have started to verify whether the genocide took place lawfully. The International Court of Justice,[40] International Criminal Court,[41] Joint Investigation Team (Poland, Lithuania, Ukraine, Eurojust)[42] and European Court of Human Rights (ECHR) are involved.[43] The UN

35 R.B. Lillich, *Humanitarian Intervention through the United Nations: Towards the Development of Criteria*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 1993, vol. 53, p. 559; J. Czaja, *Interwencja humanitarna w prawie i polityce międzynarodowej*, Studia Prawnicze. Rozprawy i Materiały 2018, no. 2 (23), p. 5.

36 N.S. Rodley, *Human Rights and Humanitarian Intervention: The Case Law of the World Court*, The International and Comparative Law Quarterly 1989, vol. 38, no. 2, pp. 321–333; J.E.S. Fawcett, *Intervention in International Law: A Study of Some Recent Cases*, Recueil des cours – Académie de Droit International de La Haye 1961, vol. 103, no. 2, pp. 347–348.

37 European Parliament, *Russia's War on Ukraine: Investigating and Prosecuting International Crimes*, https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733525/EPRS_BRI(2022)733525_EN.pdf [access: 17.05.2023]; International Criminal Court, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states [access: 7.07.2023].

38 M. Simons, *International Court to Open War Crimes Cases Against Russia, Officials Say*, The New York Times, 13.03.2023, https://www.nytimes.com/2023/03/13/world/europe/icc-war-crimes-russia-ukraine.html?action=click&pgtype=Article&state=default&module=styln-russia-ukraine [access: 17.06.2023].

39 Article II of Convention on the Prevention and Punishment of the Crime of Genocide, Paris 1948.

40 M. Quell, *Top UN Court Allows a Record 32 Countries to Intervene in Ukraine's Genocide Case against Russia*, AP, 9.06.2023, https://apnews.com/article/ukraine-russia-genocide-court-un-cc9d2e9781b948e268389065aa703de7 [access: 17.06.2023].

41 Rome Statute of the International Criminal Court, A/CONF.183/9 of 17 July 1998.

42 European Parliament, *Russia's war on Ukraine*…

43 European Court of Human Rights, The European Court grants urgent interim measures in application concerning Russian military operations on Ukrainian territory, Strasbourg, ECHR 068 (2022).

Human Rights Monitoring Mission in Ukraine (HRMMU) collects evidence of international human rights and humanitarian law violations.[44]

A report by the OSCE's ad hoc mission[45] proves many acts constitute crimes against humanity.[46] UN experts agree that RF activities are focused on the eradication of Ukrainian identity, culture, history, and language.[47]

RF uses systemic violence against the Ukrainian population[48] and at the same time, it accuses Ukrainians of committing genocide against ethnic Russians. False claims and calling Ukraine citizens "Nazis" were used by RF as a justification for the 2022 war.[49]

OHCHR, in its report, "is gravely concerned by the summary execution of 77 civilians (72 men and 5 women) while they were arbitrarily detained by the Russian Federation, and the further death of one detainee (a man) as a result of torture, inhumane detention conditions and/or denial of necessary medical care."[50] Ukrainian security forces' actions are also being assessed – OHCHR stated that at least 75 individuals were unlawfully detained, and 23 Russians were convicted due to the implementation of vague legal regulations.[51]

Within the cognitive warfare framework, the content proving atrocities committed by Russians can be used to generate fear and diminish the resilience of

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44 United Nations, *Report on the Human Rights Situation in Ukraine (1 August 2022 – 31 January 2023)*, 24.03.2023, https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-august-2022-31-january-2023 [access: 7.07.2023].

45 OSCE, *Human Dimension Mechanisms*, https://www.osce.org/odihr/human-dimension-mechanisms [access: 7.07.2023].

46 OSCE, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine since 24 February 2022*, https://www.osce.org/files/f/documents/f/a/515868.pdf [access: 7.07.2023].

47 United Nations, *Targeted Destruction of Ukraine's Culture Must Stop: UN Experts*, 22.02.2023, https://www.ohchr.org/en/press-releases/2023/02/targeted-destruction-ukraines-culture-must-stop-un-experts [access: 7.07.2023].

48 T. Law, *Is Russia Committing Genocide in Ukraine? Here's What Experts Say*, Time, 15.03.2023, https://time.com/6262903/russia-ukraine-genocide-war-crimes/ [access: 7.07.2023]; K. Kaveh, A.R. Nathaniel, C.N. Howarth, *Russia's Systematic Program for the Re-education and Adoption of Ukraine's Children*, New Haven 2023; *UN Documents Summary Execution of 77 Ukrainian Civilians*, Al Jazeera, 27.06.2023, https://www.aljazeera.com/news/2023/6/27/un-documents-summary-execution-of-77-ukrainian-civilians [access: 11.06.2023].

49 M. Fisher, *Putin's Baseless Claims*…

50 OHCHR, *Detention of Civilians in the Context of the Armed Attack by the Russian Federation against Ukraine, 24 February 2022 – 23 May 2023*, 27.06.2023, https://www.ohchr.org/en/documents/country-reports/detention-civilians-context-armed-attack-russian-federation-against [access: 29.06.2023].

51 UN documents summary execution…

Ukrainians.[52] RF understands the power of psychological and cognitive warfare and plans to return to its strategic paradigms, where informational warfare is considered superior to kinetic warfare. They turn to social media like Telegram to spread false information and influence people.[53] Discussion regarding cognitive warfare is ongoing,[54] and most authors agree that it aims to impact targeted populations' actions.[55]

In view of the rise of hybrid threats, it is necessary to examine the extent to which society's resilience to them can be strengthened, especially with regard to aspects of cognitive warfare, as it can potentially affect them in a decidedly negative way and threaten democracy.

Pointing out analogies with the previous judgments, it is crucial to mention that the International Criminal Tribunal for the former Yugoslavia (ICTY) held that: "a case of internal armed conflict, breaking out on the territory of a State, may become international […] if some of the participants in the internal armed conflict act on behalf of another State."[56] RF not only attacked Ukraine but also supported rebel groups, "The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals (IRMCT) tried 20 individuals for crimes committed in Srebrenica in July 1995 and found that the mass killings of Bosnian Muslim men and boys from Srebrenica constituted the crime of genocide."[57] The Special Court for Sierra Leone in the Taylor case stated: "anyone who provides arms to the government forces or to armed opposition groups who is aware of the substantial likelihood that they would be used to

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52 United Nations, *Detentions of Civilians in the Context of the Armed Attack by the Russian Federation against Ukraine*, 27.06.2023, https://www.ohchr.org/en/statements-and-speeches/2023/06/detentions-civilians-context-armed-attack-russian-federation [access: 17.07.2023].

53 NISOS, *Russian's RT Leads a Global 'Information Militia' on Social Media to Bypass Censorship on Ukraine-Related Disinformation*, 5.10.2022, https://www.nisos.com/blog/russia-today-info-militia-report/ [access: 7.07.2023].

54 R. Di Pietro, S. Raponi, M. Caprolu, S. Cresci, *New Dimensions of Information Warfare*, Cham 2021; J. Serrano-Puche, *Digital Disinformation and Emotions: Exploring the Social Risks of Affective Polarization*, International Review of Sociology 2021, vol. 31, no. 2.

55 M.C. Libicki, *The Convergence of Information Warfare*, in: *Information Warfare in the Age of Cyber Conflict*, eds. C. Whyte, A.T. Thrall, B.M. Mazanec, London 2020; G. Pocheptsov, *Cognitive Attacks in Russian Hybrid Warfare*, Information & Security: An International Journal 2018, vol. 41; A. Borgeaud dit Avocat, *Cognitive Warfare: The Battlefield of Tomorrow?*, in: *New Technologies, Future Conflicts, and Arms Control*, eds. A. Borgeaud dit Avocat, A. Haxhixhemajli, M. Andruch, Prague 2021.

56 Prosecutor v. Tadic, International Criminal Tribunal for Former Yugoslavia, http://www.icty.org/x/cases/tadic/tjug/en/tad-tsj70507JT2-e.pdf [access: 7.10.2023]; A. Bianchi, Y. Naqvi, *International Humanitarian Law and Terrorism*, Oxford 2011.

57 IRMCT, *Srebrenica. Timeline of a Genocide*, https://www.irmct.org/specials/srebrenica/timeline/en/ [access: 7.10.2023].

commit international crimes may themselves be guilty of aiding and abetting those crimes."[58] This is relevant in Ukraine as "Russia has armed, trained, and led the separatist forces."[59] Downing the MH-17 flight by the Russian Federation soldiers and a separatist operating a Russian anti-aircraft missile was such a case[60] – providing DPR separatists with arms should be considered interference with Ukrainian state sovereignty. All of the above can be considered the steps that helped the RF feel free from responsibility.

Russia's denials of massacres by its soldiers and the Wagner Group mercenaries paid by Russia committing in Ukraine appear eerily similar to the Srebrenica genocide denial.

Conclusions and recommendations

The purpose of the research – examination of the link between genocide and hybrid activities and warfare in Ukraine – was achieved.

The research problem expressed by the question of how genocide is used in hybrid activities and warfare in Ukraine was answered – RF uses a broad spectrum of hybrid activities to use genocide to their strategic advantage. First, Russia does not abstain from trying to physically destroy Ukrainians by killing civilians and abducting children. RF falsely accuses Ukraine of committing genocide against Russians living in Ukraine. This was the RF's excuse to start the war. At the same time, RF's false accusations that the West is supporting the genocide of Russians are still propagated and expanded. Russians use genocide as a part of cognitive warfare in order to influence not only the way the Ukrainians are thinking but also how they are behaving. The genocide committed by Russians is presented as an imminent crime that can happen to every Ukrainian. This is done to spread fear and decrease morals among Ukrainians. Last but not least, the genocide committed by Russians is presented as a provocation orchestrated by Ukrainians to not only destroy trust among them but also to undermine Ukraine's position in the international arena. Due to

58 R. Thakur, *The United Nations, Peace, and Security*, Cambridge 2006.

59 I.D. Loshkariov, A.A. Sushentsov, *Radicalization of Russians in Ukraine: From 'Accidental' Diaspora to Rebel Movement*, Journal of Southeast European and Black Sea Studies 2016, vol. 16, no. 1.

60 Netherlands Public Prosecution Service, *JIT MH17: Strong Indications That Russian President Decided on Supplying Buk*, 8.02.2023, https://www.prosecutionservice.nl/topics/mh17-plane-crash/news/2023/02/08/jit-mh17-strong-indications-that-russian-president-decided-on-supplying-buk [access: 7.10.2023].

the nature of the genocide and international law procedures, despite large evidence against Russians, the international community is still waiting to receive an official legal verdict on whether the crime of genocide took place. Still, it is only a matter of time due to a clear link between the nature of the Russian actions and the criteria listed in international law for the crime of genocide. Therefore, the hypothesis that genocide is used as an element of hybrid activities and warfare in Ukraine was proven right.

Due to growing tensions between democratic and non-democratic countries and the People's Republic of China flexing its muscles, the growing interest in using hybrid activities will be observed. Russian invasion turning to war proved how costly it is to conduct kinetic warfare. This is another argument convincing both Russia and other entities to turn to hybrid activities as a tool to weaken their enemies.

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Bibliography

Analysis of Russia's Information Campaign against Ukraine, Riga 2015, https://stratcomcoe.org/cuploads/pfiles/russian_information_campaign_public_12012016fin.pdf [access: 1.07.2023].

Bekkers F., Meessen R., Lassche D., *Hybrid Conflicts: The New Normal?*, The Hague Centre for Strategic Studies 2018.

Bianchi A., Naqvi Y., *International Humanitarian Law and Terrorism*, Oxford 2011.

Borgeaud dit Avocat A., *Cognitive Warfare: The Battlefield of Tomorrow?*, in: *New Technologies, Future Conflicts, and Arms Control*, eds. A. Borgeaud dit Avocat, A. Haxhixhemajli, M. Andruch, Prague 2021.

Caliskan M., *Hybrid Warfare and Strategic Theory*, Beyond the Horizon, ISSG, 25.04.2019, https://behorizon.org/hybrid-warfare-through-the-lens-of-strategic-theory/ [access: 7.07.2023].

Cantwell D., *Hybrid Warfare: Aggression and Coercion in the Gray Zone*, American Society of International Law 2017, vol. 21, no. 14, https://www.asil.org/insights/volume/21/issue/14/hybrid-warfare-aggression-and-coercion-gray-zone [access: 9.11.2023].

Chivvis C.S., *Understanding Russian "Hybrid Warfare" and What Can Be Done About It*, Testimony presented before the House Armed Services Committee on 22 March 2017, RAND Corporation, Santa Monica, California 2017.

Clark M., *Russian Hybrid Warfare*, Institute for the Study of War, Washington 2020.

Czaja J., *Interwencja humanitarna w prawie i polityce międzynarodowej*, Studia Prawnicze. Rozprawy i Materiały 2018, no. 2 (23).

Decision Taken on Denazification, Demilitarization of Ukraine – Putin, Tass, 24.02.2022, https://tass.com/politics/1409189 [access: 11.06.2023].

Depczyński M., Elak L., *Rosyjska sztuka operacyjna w zarysie*, Warszawa 2020.

Di Pietro R., Raponi S., Caprolu M., Cresci S., *New Dimensions of Information Warfare*, Cham 2021.

European Parliament, *Russia's War on Ukraine: Investigating and Prosecuting International Crimes*, https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733525/EPRS_BRI(2022)733525_EN.pdf [access: 17.05.2023].

Fawcett J.E.S., *Intervention in International Law: A Study of Some Recent Cases*, Recueil des cours – Académie de Droit International de La Haye 1961, vol. 103, no. 2.

Fisher M., *Putin's Baseless Claims of Genocide Hint at More Than War*, The New York Times, 19.02.2022, https://www.nytimes.com/2022/02/19/world/europe/putin-ukraine-genocide.html [access: 17.05.2023].

Full Text: Putin's Declaration of War on Ukraine, The Spectator, 24.02.2022, https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine/ [access: 7.07.2023].

Gorenburg D., *Chapter 15: Strategic Messaging: Propaganda and Disinformation Efforts*, in: *Russia's Global Reach: A Security and Statecraft Assessment*, ed. G.P. Herd, Garmisch-Partenkirchen 2021.

Hill F., *How Vladimir Putin's World View Shapes Russian Foreign Policy*, in: *Russia's Foreign Policy*, eds. D. Cadier, M. Light, New York 2015.

Hoffman F., *Hybrid vs. Compound War*, http://armedforcesjournal.com/hybrid-vs-compound-war/ [access: 7.07.2023].

Hoffman F., *On Not-So-New Warfare: Political Warfare vs Hybrid Threats*, War on the Rocks, 28.07.2014, http://warontherocks.com [access: 7.07.2023].

Hutchings R., Suri J., *Modern Diplomacy in Practice*, London 2020.

Hybrid Threats, https://defence-industry-space.ec.europa.eu/eu-defence-industry/hybrid-threats_en [access: 7.07.2023].

IRMCT, *Srebrenica. Timeline of a Genocide*, https://www.irmct.org/specials/srebrenica/timeline/en/ [access: 7.10.2023].

Iszmayilov E., *Russia's Military Interventions in Georgia and Ukraine: Interests, Motives, and Decision-Making*, New York 2020.

Jakubczak W., *Działania hybrydowe elementem polityki Federacji Rosyjskiej – cyberataki, wojna informacyjna i nielegalna migracja*, in: *Wojna Federacji Rosyjskiej z Zachodem*, ed. M. Banasik, Warszawa 2022.

Jakubczak W., *Kryzys migracyjny na wschodniej granicy UE – rola Europolu we współpracy w bezpieczeństwie wewnętrznym*, Athenaeum Polskie Studia Politologiczne 2021, vol. 70 (2).

Jakubczak R., Martowski R.M., *Powszechna obrona terytorialna w cyberobronie i agresji hybrydowej*, Warszawa 2017.

Kaveh K., Nathaniel A.R., Howarth C.N., *Russia's Systematic Program for the Re-education and Adoption of Ukraine's Children*, New Haven 2023.

Law T., *Is Russia Committing Genocide in Ukraine? Here's What Experts Say*, Time, 15.03.2023, https://time.com/6262903/russia-ukraine-genocide-war-crimes/ [access: 7.07.2023].

Libicki M.C., *The Convergence of Information Warfare*, in: *Information Warfare in the Age of Cyber Conflict*, eds. C. Whyte, A.T. Thrall, B.M. Mazanec, London 2020.

Lillich R.B., *Humanitarian Intervention through the United Nations: Towards the Development of Criteria*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 1993, vol. 53.

Linde F., *The Civilizational Turn in Russian Political Discourse: From Pan-Europeanism to Civilizational Distinctiveness*, The Russian Review 2016, vol. 75, no. 4.

Loshkariov I.D., Sushentsov A.A., *Radicalization of Russians in Ukraine: From 'Accidental' Diaspora to Rebel Movement*, Journal of Southeast European and Black Sea Studies 2016, vol. 16, no. 1.

Messner E., *Hočeš' mira, pobedimâteževojnu. Tvorčeskoe nasledie E.È. Messnera*, Moskva 2005.

Milevski L., *Little Green Men in the Baltic States Are an Article 5 Event*, (FPRI) Foreign Policy Research Institute Baltic Bulletin, 5.01.2016.

NATO, *NATO's Response to Hybrid Threats*, https://www.nato.int/cps/en/natohq/topics_156338.htm [access: 22.09.2022].

Netherlands Public Prosecution Service, *JIT MH17: Strong Indications That Russian President Decided on Supplying Buk*, 8.02.2023, https://www.prosecutionservice.nl/topics/mh17-plane-crash/news/2023/02/08/jit-mh17-strong-indications-that-russian-president-decided-on-supplying-buk [access: 7.10.2023].

NISOS, *Russian's RT Leads a Global 'Information Militia' on Social Media to Bypass Censorship on Ukraine-Related Disinformation*, 5.10.2022, https://www.nisos.com/blog/russia-today-info-militia-report/ [access: 7.07.2023].

OHCHR, *Detention of Civilians in the Context of the Armed Attack by the Russian Federation against Ukraine, 24 February 2022 – 23 May 2023*, 27.06.2023, https://www.ohchr.org/en/documents/country-reports/detention-civilians-context-armed-attack-russian-federation-against [access: 29.07.2023].

OSCE, *Human Dimension Mechanisms*, https://www.osce.org/odihr/human-dimension-mechanisms [access: 7.07.2023].

OSCE, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine since 24 February 2022*, https://www.osce.org/files/f/documents/f/a/515868.pdf [access: 7.07.2023].

Pocheptsov G., *Cognitive Attacks in Russian Hybrid Warfare*, Information & Security: An International Journal 2018, vol. 41.

Putin Says Conflict in Eastern Ukraine 'Looks Like Genocide', RFI, 9.12.2021, https://www.rfi.fr/en/putin-says-conflict-in-eastern-ukraine-looks-like-genocide [access: 11.06.2023].

Quell M., *Top UN Court Allows a Record 32 Countries to Intervene in Ukraine's Genocide Case against Russia*, AP, 9.06.2023, https://apnews.com/article/ukraine-russia-genocide-court-un-cc9d2e9781b948e268389065aa703de7 [access: 17.06.2023].

Rodley N.S., *Human Rights and Humanitarian Intervention: The Case Law of the World Court*, The International and Comparative Law Quarterly 1989, vol. 38, no. 2.

Saari S., *Russia's Post-Orange Revolution Strategies to Increase Its Influence in Former Soviet Republics: Public Diplomacy 'po russkii'*, Europe-Asia Studies 2014, vol. 66, no. 1.

Sari A., *Hybrid Warfare, Law, and the Fulda Gap*, in: *Complex Battlespaces: The Law of Armed Conflict and the Dynamics of Modern Warfare*, eds. W.S. Williams, C.M. Ford, New York 2019.

Sauer P., *Wagner Chief Accuses Moscow of Lying to Public about Ukraine*, The Guardian, 23.06.2023, https://www.theguardian.com/world/2023/jun/23/wagner-chief-accuses-moscow-of-lying-to-public-about-ukraine-yevgeny-prigozhin [access: 11.06.2023].

Serrano-Puche J., *Digital Disinformation and Emotions: Exploring the Social Risks of Affective Polarization*, International Review of Sociology 2021, vol. 31, no. 2.

Simons M., *International Court to Open War Crimes Cases Against Russia, Officials Say*, The New York Times, 13.03.2023, https://www.nytimes.com/2023/03/13/world/europe/icc-war-crimes-russia-ukraine.html?action=click&pgtype=Article&state=default&module=styln-russia-ukraine [access: 17.06.2023].

Sun Tzu, *The Art of War. A New Translation by Michael Nylan*, New York 2020.

Sykulski L., *Rosyjska koncepcja wojen buntowniczych Jewgienija Messnera*, Przegląd Geopolityczny 2015, vol. 11.

Thakur R., *The United Nations, Peace, and Security*, Cambridge 2006.

Ukraine Crisis: Vladimir Putin Address Fact-checked, BBC News, 22.02.2022, https://www.bbc.com/news/60477712 [access: 17.05.2023].

UN Documents Summary Execution of 77 Ukrainian Civilians, Al Jazeera, 27.06.2023, https://www.aljazeera.com/news/2023/6/27/un-documents-summary-execution-of-77-ukrainian-civilians [access: 11.06.2023].

United Nations, *Detentions of Civilians in the Context of the Armed Attack by the Russian Federation against Ukraine*, 27.06.2023, https://www.ohchr.org/en/statements-and-speeches/2023/06/detentions-civilians-context-armed-attack-russian-federation [access: 17.07.2023].

United Nations, *Report on the Human Rights Situation in Ukraine (1 August 2022 – 31 January 2023)*, 24.03.2023, https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-august-2022-31-january-2023 [access: 7.07.2023].

United Nations, *Targeted Destruction of Ukraine's Culture Must Stop: UN Experts*, 22.02.2023, https://www.ohchr.org/en/press-releases/2023/02/targeted-destruction-ukraines-culture-must-stop-un-experts [access: 7.07.2023].

Vlasiuk V., *Hybrid War, International Law and Eastern Ukraine*, Evropský politický a právní diskurz 2015, vol. 2, no. 4.

Waxman O.B., *Historians on What Putin Gets Wrong about 'Denazification' in Ukraine*, Time, 3.03.2022, https://time.com/6154493/denazification-putin-ukraine-history-context/ [access: 11.06.2023].

Zakharova Accuses West of Supporting "Genocide in Ukraine", https://www.facebook.com/maria.zakharova.167/posts/10227769395810054 [access: 11.06.2023].

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Crime of ecocide in Ukraine – environmental consequences of Russian military aggression

Zbrodnia ekobójstwa w Ukrainie – skutki środowiskowe rosyjskiej agresji zbrojnej

Преступление экоцида в Украине – последствия российской военной агрессии для окружающей среды

Злочин екоциду в Україні – наслідки російської збройної агресії для навколишнього середовища

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Summary: Even though the definition of the crime of ecocide was proposed by the Independent Expert Panel in 2021 it has not been incorporated into any international agreement yet. The Russian military aggression in Ukraine has demonstrated that the concept of ecocide is still relevant. The aim of the article is to analyse the concept of ecocide and to show that certain actions of the Russian army directed against the natural environment in Ukraine meet the criteria of the crime of ecocide, and therefore that these actions were unlawful, intentional, and committed with the awareness that they may result in serious and long-term or widespread damage to the environment.

Key words: crime of ecocide, Russian military aggression, Ukraine, environmental damage

Streszczenie: Mimo że definicja zbrodni ekobójstwa została opracowana przez Niezależny Panel Ekspertów w 2021 r., nie została jeszcze przyjęta w żadnym dokumencie międzynarodowym. Rosyjska agresja zbrojna pokazała, że pojęcie ekobójstwa jest nadal aktualne. Celem artykułu jest analiza pojęcia ekobójstwa i pokazanie, że poszczególne działania armii rosyjskiej skierowane przeciwko środowisku naturalnemu na Ukrainie wypełniają przesłanki zbrodni ekobójstwa, a zatem działania te były bezprawne, umyślne i popełnione ze świadomością, że mogą skutkować poważnymi i długotrwałymi lub rozległymi szkodami w środowisku.

Słowa kluczowe: zbrodnia ekobójstwa, rosyjska agresja zbrojna, Ukraina, szkody w środowisku naturalnym

Резюме: Несмотря на то, что определение преступления экоцида было разработано группой независимых экспертов в 2021 году, оно до сих пор не было принято ни в одном международном документе. Российская военная агрессия показала, что понятие экоцида по-прежнему актуально. Цель данной статьи – проанализировать понятие экоцида и показать что отдельные действия российской армии против окружающей среды в Украине отвечают предпосылкам преступления экоцида, и поэтому эти действия были противоправными, умышленными и совершенными с осознанием того, что они могут привести к серьезному и долгосрочному или масштабному нанесению ущерба окружающей среде.

Ключевые слова: преступление экоцида, российская военная агрессия, Украина, ущерб окружающей среде

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Резюме: Хоча визначення злочину екоциду було розроблено Незалежною групою експертів у 2021 році, воно досі не прийняте в жодному міжнародному документі. Російська військова агресія показала, що концепція екоциду досі актуальна. Метою статті є аналіз поняття екоциду та показання того, що окремі дії російської армії, спрямовані проти навколишнього природного середовища в Україні, відповідають вимогам злочину екоциду, а тому ці дії були протиправними, умисними та вчиненими з усвідомленням того, що вони можуть призвести до серйозної та довгострокової або широкомасштабної шкоди навколишньому середовищу.

Ключові слова: злочин екоциду, російська збройна агресія, Україна, шкода навколишньому природному середовищу

Introduction

The full-scale Russian military aggression in Ukraine leads not only to the death and suffering of people, but also to the destruction of infrastructure, cultural and material objects, and, consequently, to the deterioration of Ukraine's economic situation.[1] The loss of people and the destruction of infrastructure always go along with the damage to the natural environment. Unfortunately, the question of the damage that the Russian military aggression in Ukraine causes to the natural environment, which may constitute ecocide, remains unexplored because the crime of ecocide has not been adopted in any international agreement yet. Meanwhile, this enables the potential prosecution of individuals responsible for committing that crime. Such crimes are therefore out of international "reach" due to the lack of inclusion of the term ecocide (from Greek *οικος* – 'habitat' and Latin *caedo* – 'to kill') into relevant documents of international law.

The aim of this article was to analyse the concept of ecocide proposed by the Independent Experts Panel and to identify, referring to specific examples of acts committed by the Russian armed forces in Ukraine, which were aimed not only at the exclusive destruction of environment, but also at the deterioration of living conditions of Ukrainians, whether these acts may constitute the crime of ecocide. In order to accomplish the aforementioned aim the legal and dogmatic method was applied. Relevant data on the extent of the environmental damage on the Ukrainian territory was presented.

[1] See more: T. Cak, I. Bìl'o, Û. Tkačuk, *Ekologo-ekonomìčnì naslìdki rosìjs'ko-ukraïns'koï vìjni*, Ekonomìka ta suspìl'stvo 2022, vol. 38.

1. The concept of ecocide in international law

The concept of crimes against the natural environment has not evolved recently,[2] but was proposed after the Vietnam War.[3] The term 'ecocide' is a new legal term, whose definition is currently subject to international discussion as a result of several acts that may fulfill the most basic criteria of crimes against the natural environment, which has a destructive impact on the people residing in the area. The first attempt to establish a legal definition of crime against the environment was made by the United Nations International Law Commission, which proposed in its report to add to the Rome Statute of International Criminal Court the following "willful and severe damage to the environment" as one of the most serious crimes of international character.[4] The core of the proposed definition was "[…] widespread, long-term and severe damage to the natural environment […],"[5] therefore emphasising the long-term character of the damage, which may influence not only the living generation but also the future generations. Despite a long discuse sion during the conference, the proposed definition was not adopted into the text of the Rome Statute of the International Criminal Court.[6] The only explicit reference to the crimes against the natural environment in the Rome Statute is the Article 8 (2) b (iv), which contains a definition of a war crime in the form of "intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."[7] Consequently, the international criminal law establishes criminal liability for an individual who commits a crime against the natural environment based on Article 8 (2) b (iv) of the Rome Statute.

The term 'ecocide' was presented to the United Nations International Law Commission in 2010, where it was defined as "extensive weakening, destruction or loss

2 A. Bustami, M.-Ch. Hecken, *Perspectives for a New International Crime against the Environment: International Criminal Responsibility for Environmental Degradation under the Rome Statute*, Goettingen Journal of International Law 2021, vol. 11, no. 1, pp. 154–155.

3 L. Minkova, *The Fifth International Crime: Reflections on the Definition of "Ecocide"*, Journal of Genocide Research 2023, vol. 25, no. 1, p. 69.

4 Report of the ILC on the work of its 47th session, UN Doc. A/50/10, 21 July 1995, Article 26, §§ 119–121.

5 Ibidem.

6 The Statute of the International Criminal Court, adopted on 17 July 1998, 2187 U.N.T.S. 3 (hereinafter: the Rome Statute).

7 Article 8 (2) b (iv) of the Rome Statute.

of the ecosystem of a given territory, whether as a result of human activity or other causes, which led to the possibility of the peaceful use of a given territory being severely diminished."[8] This definition refers not only to the time of armed activities or military conflict but also to the time of peace, which has opened a new perspective to the circumstances, in which this crime may be committed.

The most recent definition of ecocide, which was elaborated by the Independent Experts Panel "Stop Ecocide International," was presented in 2021 to the international community with the view to having it adopted and introduced to the Rome Statute. The panel proposed the whole "art. 8 ter" that may be directly adopted and incorporated to the Rome Statute. The proposed article reads as follows:

1) For the purpose of this Statute, ecocide means unlawful or wanton acts committed with the knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.
2) For the purpose of paragraph 1. "Wanton" means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated; 2. "Severe" means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources; 3. "Widespread" means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings; 4. "Long-term" means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time; 5. "Environment" means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.[9]

According to the commentary published by the Panel, the first threshold requires that "there must exist a substantial likelihood that the conduct (act or omission) will cause severe and either widespread or long-term damage to the environment", while the second threshold requires "proof that the acts are unlawful or wanton."[10]

In the meantime, the issue of criminal liability for crimes against the natural environment was raised at the Council of Europe. In 1998, the Committee of Ministers of the Council of Europe adopted the Convention on the Protection of the

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8 A. Greene, *The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?*, Fordham Environmental Law Review 2019, vol. 30, no. 3, pp. 2–3.

9 The text of the definition is available on the following website: https://www.stopecocide.earth/legal-definition [access: 12.10.2023].

10 Stop Ecocide Foundation, *Independent Expert Panel for the Legal Definition of Ecocide. Commentary and Core Text*, Amsterdam 2021.

Environment through Criminal Law.[11] The Convention established in Article 2 that "each Party shall adopt such appropriate measures as may be necessary to establish as criminal offenses under its domestic law." Ukraine is a Member State of the Council of Europe. The crimes against the environment were defined in Article 2 of the Convention as follows:

> (a) the discharge, emission or introduction of a quantity of substances or ionizing radiation into air, soil or water which: (i) causes death or serious injury to any person, or (ii) creates a significant risk of causing death or serious injury to any person; (b) the unlawful discharge, emission or introduction of a quantity of substances or ionizing radiation into air, soil or water which causes or is likely to cause their lasting deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants; (c) the unlawful disposal, treatment, storage, transport, export or import of hazardous waste which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; (d) the unlawful operation of a plant in which a dangerous activity is carried out and which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; (e) the unlawful manufacture, treatment, storage, use, transport, export or import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants, when committed intentionally.[12]

Even if the Convention is not universally binding and does not introduce individual criminal liability at the international level, it suggests what actions may cause severe damage to the environment and establishes fundamental standards for environmental protection.

For the purpose of this article it may be useful to analyse, in order to identify similarities with other, the definition of crimes against the natural environment that are established in the Criminal Code of Ukraine. Chapter 7 of the Code establishes criminal liability for those, who commit crimes against the environment on the territory of Ukraine.[13] According to the Criminal Code of Ukraine the following, among others, constitute a crime against the environment: violation of environmental safety rules, failure to take measures to eliminate the consequences of environmental pollution, concealment or misrepresentation of information about

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11 Convention on the Protection of the Environment through Criminal Law, adopted on 4 November 1998, European Treaty Series no. 172 (hereinafter: the Convention on the Protection of the Environment).

12 Article 2 of the Convention on the Protection of the Environment.

13 Кримінальний кодекс України, Відомості Верховної Ради України (ВВР), 2001, no. 25–26, p. 131.

the environmental status or morbidity of the population, contamination or damage to land, air pollution, sea pollution, destruction or damage to flora and fauna. Additionally, according to Article 441 of the Criminal Code of Ukraine 'ecocide' means "mass destruction of flora or fauna, poisoning of the atmosphere or water resources, as well as other actions that may cause an environmental disaster." It is therefore clear that the definition of ecocide established in the Ukrainian Criminal Code does not provide for widespread or long-term damage and does not explicitly provide for the intentions of committing such a crime. The full-scale Russian military aggression influenced the perception of ecological issues in Ukraine, which currently are considered to be among the elements of Ukrainian national security.[14]

2. Acts committed by Russians on the territory of Ukraine that may constitute the crime of ecocide

Based on the definition of ecocide formulated by the Independent Experts Panel "Stop Ecocide International" in "art. 8 ter" it becomes clear that there are strong grounds to consider Russia's crimes committed against the environment in Ukraine as ecocide.[15] Back in 2022, some researchers (taking into account the deliberate nature of the criminal actions of the Russian occupiers and the scale of the environmental damage caused) considered the environmental crimes of the Russian military forces as large-scale ecocide.[16] As of May 2022, there were 245 documented eco-crimes committed by the Russian army against the natural environment in Ukraine.[17] As of November 2022, more than 700 cases of crimes against the environment in Ukraine were recorded.

Currently, according to the collected data, there can be 1421 identified cases of crimes against the environment in Ukraine. If we try to establish the elements of ecocide in relation to individual components of environmental protection, among the cases of crimes against the environment in Ukraine established as of September

14 V. Ukolova, Ê. Ukolova, *Problema ekocidu âk ekologìčnogo zločinu: ukraïns'kij ta mìžnarodnij dosvìd*, Ûridičnij naukovije elektronnij žurnal 2021, no. 10, p. 355.

15 L. Minkova, *The Fifth International Crime: Reflections on the Definition of Ecocide*, Journal of Genocide Research 2023, vol. 25, no. 1, p. 67.

16 K. Gnedìna, P. Nagornij, *Zagrozi ekologìčnìj bezpecì: realìï voênnogo času ta ekonomìčne stimulûvannâ povoênnogo ekologìčnogo vìdnovlennâ Ukraïni*, Problemiì perspektivi ekonomìki ta upravlìnnâ, teoretičnì problemi rozvitkunacìonal'noï ekonomìki 2022, vol. 4, no. 32, pp. 41–43.

17 H. Bazhenova, *The War in Ukraine: Crimes against the Environment (Part 1)*, Instytut Europy Środkowej – IEŚ Commentaries 2022, no. 605 (117).

2023, it can be observed that the largest number of these crimes were committed in relation to the following components of environmental protection: damage to industrial facilities (528 cases – 37.2%), energy security (426 cases – 30.0%), direct impact on ecosystems (384 cases – 27.0%), nuclear safety (48 cases – 3.4%), others (35 cases – 2.4%).[18]

Based on the definition of ecocide elaborated by the Independent Experts Panel as of September 2023, the territorial distribution of ecocide evidence was quite heterogeneous. Thus, regions that suffered environmental damage from the actions of the occupiers included the following: Dnipropetrovsk (330 cases), Mykolaiv (247), Kharkiv (189), Zaporizhzhya (100), Sumy (99), Donetsk (84), Luhansk (57), Kyiv (40), Odesa (76), Kherson (59), Chernihiv (27), Khmelnitsky (20), Zhytomyr (17), Poltava (12), Lviv (11), Vinnytsia (10), Cherkasy (10), and other. The greatest numbers of cases that can be classified as acts of ecocide were recorded in the eastern and southern regions.[19] Published statistical data reveal the large scale of ecocide of the Russian army in Ukraine.[20]

As of 5 May 2022, the destruction of ecosystems in particular regions of Ukraine, an increase in the area of forest fires compared to 2021, and the destruction of protected areas of Ukraine (e.g. national parks) are the damages that Ukrainian researchers, such as T.V. Sak, I. O. Bilyo, and Y.E. Tkachuk, list as the most long-lasting damages to the environment as a result of the Russian military aggression.[21]

Among the most severe crimes against the environment committed by the Russian army in Ukraine as of 5 May 2022, are the following:

i. ammonia leak caused by the shelling of the Sumykhimprom enterprise;
ii. a projectile hitting a warehouse with polyurethane foam in the village of Chayki near Kyiv;
iii. shelling of the treatment facilities of the Vasylkivsk water supply and drainage department;
iv. shelling of the industrial enterprises of the Avdiyiv coke-chemical plant and the oil refinery in the Luhansk region.

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18 The materials are available on the following website: https://ecoaction.org.ua/warmap.html [access: 12.10.2023].

19 Ibidem.

20 The materials are available on the following websites: https://armyinform.com.ua/2022/06/20/ekoczyd-ukrayinyta-zagroza-golodu-u-sviti-yak-rosijska-agresiya-vplyvaye-na-klimatychni-zminy [access: 12.10.2023]; https://eco.rayon.in.ua/topics/506221-ekotsid-naslidki-itsina-rosiyskoi-agresii [access: 15.10.2023].

21 https://economyandsociety.in.ua/index.php/journal/article/view/1261 [access: 15.10.2023].

All of the abovementioned acts were wanton and caused severe and long-term damage to the environment, natural ecosystems, and biodiversity in the region. Additionally, all of them violated international agreements.[22]

According to the Ecodozor organisation, which publishes monthly damage records that may constitute the crime of ecocide, in March 2022, 240 industrial or critical infrastructure facilities in Ukraine were damaged or disrupted by Russian aggressive military actions, whose exclusive aim was to cause damage and suffering to the Ukrainians. During the following months the number of damaged facilities was as follows: April 2022 – 156, May 2022 – 60, June 2022 – 65, July 2022 – 71, August 2022 – 55, September 2022 – 50, October 2022 – 137, November 2022 – 68, December 2022 – 48, January 2023 – 39, February 2023 – 39, March 2023 – 42, April 2023 – 37, May 2023 – 66, June 2023 – 252, July 2023 – 48, August 2023 – 57, September 2023 – 51. Starting from 24 February 2022 until the end of September 2023, the average monthly number of damaged facilities was 83.[23]

Among facilities targeted by the Russian army during the military aggression the following may be identified as those that are more environmentally sensitive and therefore unsafe, since the consequences in case of their severe damage may be irreversible: the Chornobyl Nuclear Power Plant, the Zaporizhzhia Nuclear Power Plant, the Kyiv Hydropower Plant, the Experimental nuclear subcritical installation "Neutron source," the Skadovsk Sea Trading Port, the Kakhovsk Hydropower Plant, Toretsk Phenol Plant, the Avdiivka Coke and Chemical Plant, the Azovstal Metallurgical Plant, Toretsk Mine, the South Ukraine Nuclear Power Plant, the Severodonetsk "Skloplastik," the Polohivsky Chemical Plant "Coagulant," the Vuhlehirsk Thermal Power Plant, the Slovyansk Filtration Station, the Kharkiv TPP-3, the Terminal-UPSS, the Kharkiv TPP-5, the Dnipro Hydropower Plant, the Kremenchuk Hydropower Plant, the Khmelnytsk Nuclear Power Plant, the Rivne Nuclear Power Plant, the Ochakiv Port, the TS "Kreminska" – 500/220/35 KV, the Institute for Nuclear Research of the National Academy of Sciences of Ukraine, the O.O. Skochynskyi Mine, the Galychyna Oil Refinery, the Pivdennodonbas No. 1 Mine, the Beryslav Machine-Building Plant, the Crimean Titan, the Nikopol Ferroalloy Plant, the International Airport "Kyiv," the Ilyich Iron and Steel Works of Mariupol, the Port Point "Buhaz," the Reni Sea Trade Port, the Izmail Sea Trade Port.[24] Their en-

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22 Ministry of the Foreign Affairs of Ukraine, https://mfa.gov.ua/en/searchresult?site_id=1&key=statements+geneva+conventions [access: 13.10.2023]; *Geneva Conventions: How Does Russia Violate Them And Blame Ukraine? Explains VoxCheck* (in Ukrainian), https://voxukraine.org/zhenevski-konventsiyi-yak-yih-po-rushuye-rosiya-a-zvynuvachuye-v-tsomu-ukrayinu [access: 13.10.2023].

23 Ecodozor. Інформаційна платформа, https://ecodozor.org/ [access: 12.10.2023].

24 Ibidem.

tire list is presented in chronological order. The consequences of any damage to the abovementioned facilities are severe and long-term, influencing the lives of residents of the region. If any damage was done to the Chornobyl Nuclear Power Plant or the Zaporizhzhia Nuclear Power Plant in March 2022, its effects would have been felt until now and in the future. This applies especially to radiation.

Due to the limited length of the article, it is not possible to analyse every instance of damage caused by the Russian military aggression to the environment in Ukraine and establish if the criteria for potential ecocide are met. By the end of 2022, the Office of the Prosecutor General conducted procedural management in more than 190 criminal proceedings regarding crimes against the environment. One of the most significant pre-trial criminal investigations concerns violation of the laws and customs of war and potential ecocide caused by the detonation by the Russian army of the dam on Kakhovska HPP in the Kherson region, which, as the evidence has confirmed, will have long-term environmental and health impacts on the residents in the region.[25]

Kakhovska HPP Dam is currently controlled by the Russian army, which has full access to the internal underground gallery of the power plant. Having full access to all the facilities on the dam, the Russian army deliberately and intentionally provoked an explosion on 8 June 2023, which released a rising wall of water. It reached a peak of 5.6 m in Kherson on June 8 and swept through the river valley below the hydroelectric power station to the Black Sea over a distance of more than 200 km. Water supplies were cut off for extensive agricultural areas, several large cities and towns, and major power stations, including the Zaporizhzhya nuclear power plant.[26] More than 80 towns and villages downstream from the dam were flooded on the right bank of the river (52 people died as a result). The ecocide caused by the Russians' detonation of the Kakhovska HPP dam has many dimensions. Severe and long-term damage to the environment caused by the destruction of the Kakhovska dam implies:

1) the loss of irrigation water for households and farms and the drying of the landscape (according to the Ministry of Agriculture of Ukraine, the destruction of the dam will leave 584,000 hectares of land without irrigation, turning them into a "desert");

25 G. Leclerc, *Russia's War on Ukraine: High Environmental Toll*, European Parliamentary Research Service, PE 751.427 – July 2023, p. 1.

26 V. Vyshnevsky, S. Shevchuk, V. Komorin, Y. Oleynik, P. Gleick, *The Destruction of the Kakhovka dam and Its Consequences*, Water International 2023, vol. 48, no. 5, pp. 633–634.

2) the loss of water supply and drainage services in cities and other settlements (the reservoir provided drinking water to more than 700,000 residents of southern Ukraine);
3) health problems due to cholera and other diseases related to environmental pollution that may develop over time.

However, above all, this is a massive loss of habitats in the ecosystem (at least 43 species of fish lived in the reservoir, 20 of which were of industrial importance) and long-term degradation of ecosystems and reduction in the number of aquatic species and biodiversity. The condition of the benthos, which is of crucial importance not only for the river food chain but also for achieving the desired "good" ecology ical status of all water bodies in the Kakhovsky Reservoir and downstream (which Ukraine must achieve under the transposed EU Water Framework Directive) has been catastrophically disturbed.[27] Fish spawning, birds nesting, feeding and resting places of large flocks of migratory waterfowl have been irreversibly damaged. Several very important habitats at the mouth of the Dnipro River, which are protected under the Ramsar Convention on Wetlands of International Importance, including the Black Sea Biosphere Reserve (UNESCO Biosphere Reserve), have been seriously degraded and highly polluted.

The water from the reservoir carried with it agricultural fertilisers and pesticides from the fields. This will further prolong the period of unfavorable ecological conditions for the flora and fauna of the Black Sea coast, in particular for migratory species of fish and birds that depend on the Dnipro River marshes as places of rest and feeding. An additional potential problem is that the water has washed, mixed, and carried downstream radionuclides from the Chernobyl accident that have been buried in the bottom sediment layers of the Kakhovsky Reservoir for the past 37 years. They are now redeposited in estuarine marshes and pose a threat by accumulating in food chains.[28] The above-mentioned damage to the environment is not only severe, long-term, and widespread but also irreversible.

Signs of committing ecocide can be also established regarding the Biosphere Reserve of the National Academy of Agrarian Sciences of Ukraine "Askania-Nova," which was created by Friedrich Falz-Fein in 1898 and later was the first to receive the legal status of a reserve in 1919. The reserve was awarded a UNESCO certificate in 1985. This is the largest area of virgin steppes that has never been plowed

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27 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, pp. 1–73.

28 Є. Стахів, А. Демиденко, *Екоцид: катастрофічні наслідки руйнування дамби Каховського водосховища*, Аналітика Суспільство 2023, https://voxukraine.org/ekotsyd-katastrofichni-naslidky-rujnuvannya-damby-kahovskogo-vodoshovyshha [access: 12.10.2023].

in Ukraine. Since October 2022, when the Russian occupation armed forces were deployed in the area of the "Askania-Nova," stressful conditions have been created for the animals living in the reserve due to overflights of aviation, which causes panic in wild animals and may even lead to their death. More than 1,500 ungulates living here are the descendants of animals brought to the Black Sea steppes during the time of Friedrich Falz-Fein. These are acclimatised animals that are adapted to the climate and landscapes of the Ukrainian steppes. Due to the wanton and deliberate acts of the Russian soldiers in 2022, three fires broke out on the territory of "Askania-Nova" on a total area of almost 1.4 thousand hectares. What is more, many trenches were dug on the territory of the Reserve. As reported by the Ministry of Environmental Protection, "Askania-Nova" will continue to suffer from fires. The Russian occupiers set up their training ground on the territory of the reserve. Part of the reserve was mined and dug up.[29]

In total, more than 800,000 hectares of legally protected areas of Ukraine are under Russian occupation. The damage to biodiversity is difficult to estimate, however, its consequences will be seen in the near future and will not be possible to reverse until full control over the area is restored.

Another crime against the environment that may constitute ecocide was committed on the territory of "Kinburn Split,"[30] which belongs to the Black Sea Biosphere Reserve. The Russian aggression and military activities intentionally caused long-term damage to the flora and fauna in that region. The damage was caused by the movement of wheeled transport, and most of all by the fires in the forests breaking out as a result of the shelling of the occupiers and other armed activities.[31] The Kinburn Spit has a unique biodiversity, with dozens of species listed in the Ukrainian Red Book, and subject to protection. For example, there is a rare species of red-book ant Tapinoma kinburni (*Tapinoma kinburni*),[32] the area is covered with a unique rare steppe species of plants listed in the Red Book of the International Union for Conservation of Nature and the Red Book of Ukraine.[33]

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29 Біосферний заповідник "Асканія-Нова" захоплений окупантами – Ukraine War Environmental Consequences Work Group, https://uwecworkgroup.info/uk/askania-nova-biosphere-reserve-captured-by-invaders/ [access: 13.10.2023].

30 In Ukrainian: Кінбурнська коса.

31 Кінбурнський півострів, https://suspilne.media/260281-kinburnskij-pivostriv-sob-vidnoviti-spaleni-zacotiri-misaci-lisi-potribni-desatilitta-direktor-parku/ [access: 14.10.2023].

32 Червона книга України. 2010–2023, https://redbook-ua.org/item/tapinoma-kinburni-karawajew/ [access: 13.10.2023].

33 C.B. Tarasûk, G.V. Kolomiêc', O.M. Derkač, Â.I. Movčai, I.I. Mojsiênko, M.M. Parafilo, O.C. Abduloyêva, *Kînburn: Perspektivi zbalansovanogo rozvitku*, Kïïv 2008, p. 50.

The most terrible and severe in terms of the consequences for the environment and residents of the area could be any potential direct damage to a nuclear plant. One of the greatest threats to Ukraine's environmental security is related to the radioactive facilities located in the area of military activities or territory temporarily occupied by the aggressor state and its troops. Indications of radiation safety violations during the Russian aggression are associated with the Chernobyl Nuclear Power Plant and the Zaporizhzhia NPP. On 24 February 2022, the Chernobyl NPP was occupied and Russian troops turned this facility into a war arena. The Chernobyl zone is the storage of spent nuclear fuel. The Russian occupiers destroyed the laboratory in the "Ecocenter" and also broke into the storage of ionising radiation sources, which stored sample radioactive solutions and calibration sources. The Russian army stole and damaged 133 sources of ionising radiation with an activity of approximately 7 million Becquerels, which is comparable to 700 kg of radioactive waste with the presence of beta and gamma radiation. More than 95% of the territory of the exclusion zone of the Chernobyl NPP can be mined by the Russian army, which poses a threat to animals and people, who may step on a mine or are under the influence of the spread radiation.[34]

Zaporizhzhya NPP is another example of deliberate actions of the Russian army, that threatens the lives of Ukrainian people and pose a severe threat to the environment. As of October 2023, Zaporizhzhya NPP has remained under the control of the occupiers from 4 March 2022. Before it was shelled with artillery, the building of the reactor department of the power unit and the site of spent nuclear fuel were damaged. The international community warned about the threat of the "second Chornobyl," while the President of Ukraine Volodymyr Zelenskyy denounced the actions of the Russians as "nuclear terrorism." The Russian troops placed equipment with explosives next to four power units of the nuclear power plant (the Zaporizhzhya NPP is the largest and most powerful nuclear power plant in Europe).[35] There was evidence that proved cases of non-compliance with safety regulations by the occupiers, as spare parts and other consumables were practically absent at the station, individual cooling pools were being drained, etc.[36] At the same time, any accident at the Zaporizhzhya NPP could lead to the greatest nuclear disaster in the recent history.

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34 *Понад 95% ЧАЕС може бути заміновано – Крамаренко*, https://suspilne.media/461144-ponad-95-caes-moze-buti-zaminovano-kramarenko/ [access: 12.10.2023].

35 P. Pereira, F. Bašić, I. Bogunovic, D. Barcelo, *Russian-Ukrainian War Impacts the Total Environment*, Science of the Total Environment 2022, vol. 837, pp. 155–865.

36 *Росіяни замінували ЗАЕС. Які можуть бути наслідки аварії та що каже влада*, https://suspilne.media/515545-rosiani-zaminuvali-zaes-aki-mozut-buti-naslidki-avarii-ta-so-kaze-vlada/ [access: 15.10.2023].

It is important to mention that the abovementioned facilities were destroyed or partially destroyed and the consequences of this prove that those acts committed by Russian army may constitute a crime of ecocide. Nevertheless, there are numerous objects that have been partially destroyed and mined by the Russian troops. These acts should be regarded as threats to the natural environment and residents of the areas concerned. The "Crimean Titan" is the largest manufacturer of titanium dioxide pigment in Eastern Europe. The city of Armyansk, where Titan is located, lies in the red risk zone. Due to the destruction of the Kakhovskaya HPP and as a result of the lack of water in the North Crimean Canal, production processes at the "Crimean Titan" facility have been disrupted to a critical level. The Russians have brought explosives to the chemical factory and are mining it along with the surrounding area. The Secretary of the National Security and Defense Council of Ukraine O. Danilov stated that the "Crimean Titan" and the Zaporizhzhya NPP are the main facilities which the Russians may attack with the aim of causing severe damage in the area. Almost 200 tons of technological ammonia are used in the "Crimean Titan" for refrigerating equipment. In case of an explosion at that facility, depending on the direction of the wind, the ammonia cloud , may contaminate the surrounding areas. Thus, not only the Crimean Peninsula but also the neighbouring southern regions of the Kherson Oblast will be under threat and may suffer severe and long-term damage to their environment. This would mean a man-made catastrophe, with severe consequences.[37] According to Arthur H. Westing, a pioneer in the field of research on the relationship between war and the environment, the consequences of targeted military destruction and modification of ecosystems on agricultural lands are more noticeable, especially in those regions where a significant number of the population is involved in agriculture and depends on its development.[38] Ukraine has a high level of agricultural land use (60% compared to the level of 20–30% in the EU countries), which further intensifies the effects of Russia's ecocide on the lands and landscapes of Ukraine.[39]

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37 Russia is preparing a "man-made catastrophe" at the *Titan* chemical *plant* in annexed Crimea, Kyiv's military intelligence agency, https://www.newsweek.com/russia-man-made-catastrophe-crimea-titan-chemical-plant-1805977 [access: 12.10.2023].

38 A. Westing, *Arms Control and the Environment: Proscription of Ecocide*, Bulletin of the Atomic Scientists 1974, vol. 30, no. 1, pp. 24–27.

39 M. Solokha, P. Pereira, L. Symochko, N. Vynokurova, O. Demyanyuk, K. Sementsova, M. Inacio, D. Barcelo, *Russian-Ukrainian War Impacts on the Environment. Evidence from the Field on Soil Properties and Remote Sensing*, Science of The Total Environment 2023, vol. 902, pp. 166–122.

In Ukraine, agriculture plays a significant role in economic well-being and food security.[40] However, due to the Russian aggression, the crops were uprooted, and many agricultural lands are in the war zone or are targeted with mines and intense shelling by the Russian army. According to Arthur H. Westing, such actions meet the criteria of ecocide, when the object of destruction is the environment itself. This situation is combined with the Russian naval blockade, which disrupts the export of Ukrainian grain, as well as the theft of grain stocks from warehouses and vegetable crops located on the temporarily occupied territories of Ukraine,[41] destruction of granaries, and massive destruction of granaries in Ukrainian ports.

It is worth emphasising that there is an obvious relation between ecocide and genocide, where the latter is defined as an "intent to destroy, in whole or in part, a national, ethnic, racial or religious group" by *inter alia* deliberately "inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."[42]

Conclusion

Based on the analysis conducted above, it can be concluded that the Russians are responsible not only for committing most serious international crimes specified in the Rome Statute, but also for committing crimes against the natural environment in Ukraine, which, at least in cases analysed in this article, meet the criteria of and therefore may constitute the crime of ecocide as defined by the Independent Expert Panel in the proposed "art. 8 ter." However, in order to effectively prosecute individuals for committing crimes of ecocide in Ukraine at the international level, the definition of ecocide requires a formal approval and has to be incorporated into the Rome Statute, which unfortunately may take time and may depend on the "political" consensus.

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40 See more: P.R. Chowdhury, H. Medhi, K.G. Bhattacharyya, Ch.M. Hussain, *Severe Deterioration in Food-Energy-Ecosystem nexus Due to Ongoing Russia-Ukraine War: A Critical Review*, Science of the Total Environment 2023, vol. 902.

41 T. Gardashuk, *Is Russian Aggression in Ukraine Ecocide?*, Envigogika 2022, vol. 17, no. 1; D. Rawtani, G. Gupta, N. Khatri, P.K. Rao, C.M. Hussain, *Environmental Damages Due to War in Ukraine: A Perspective*, Science of the Total Environment 2022, vol. 850, pp. 157–932.

42 Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948, 78 U.N.T.S. 277.

As was demonstrated in this article, the Russian aggression in Ukraine bears clear signs of ecocide. According to the definition proposed by the Independent Expert Panel in 2021, the term ecocide means unlawful or wanton acts committed with the knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts. It has to be emphasised that the cases of potential ecocide committed by Russian troops in Ukraine, that were analysed in this article, were unlawful, and therefore constituted violations of both Ukrainian and international law, especially humanitarian law. All facilities that were targeted by the Russian armed forces were not military facilities or facilities used for military purposes. Finally, it must be remembered that the Russian army is the army of the state which, according to the international law, is an aggressor state. What is more, incidents analysed in this article were wanton and committed with the knowledge that there is a substantial likelihood of severe and long-term damage to the environment. If the Russian occupiers effectively controlled Kakhovska NPP Dam and detonated explosives on the Dam, it is not possible to argue that they were not aware of the severe and long-term damage to the environment caused by their actions. Other examples of potential cases of ecocide were also committed deliberately in similar circumstances, with the full awareness of severe and either widespread or long-term damage to the environment.

Bibliography

Bazhenova H., *The War in Ukraine: Crimes against the Environment (part 1)*, Instytut Europy Środkowej – IEŚ Commentaries 2022, no. 605 (117).

Bustami A., Hecken M.-Ch., *Perspectives for a New International Crime against the Environment: International Criminal Responsibility for Environmental Degradation under the Rome Statute*, Goettingen Journal of International Law 2021, vol. 11, no. 1.

Cak T., Bìl'o I., Tkačuk Û., *Ekologo-ekonomìčnì naslìdkirosìjs'ko-ukraïns'koï vìjni*, Ekonomìka ta suspìl'stvo 2022, vol. 38.

Chowdhury P.R., Medhi H., Bhattacharyya K.G., Hussain Ch.M., *Severe Deterioration in Food-Energy-Ecosystem nexus Due to Ongoing Russia-Ukraine War: A Critical Review*, Science of the Total Environment 2023, vol. 902.

Gardashuk T., *Is Russian Aggression in Ukraine Ecocide?*, Envigogika 2022, vol. 17, no. 1.

Gnedìna K., Nagornij P., *Zagrozi ekologìčnìj bezpecì: realìï voênnogo času ta ekonomìčne stimulûvannâ povoênnogo ekologìčnogo vìdnovlennâ Ukraïni*, Problemiì perspektivi ekonomìki ta upravlìnnâ, teoretičnì problemi rozvitkunacìonal'noï ekonomìki 2022, no. 4 (32).

Greene A., *The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?*, Fordham Environmental Law Review 2019, vol. 30, no. 3.

Leclerc G., *Russia's War on Ukraine: High Environmental Toll*, European Parliamentary Research Service, PE 751.427 – July 2023.

Minkova L., *The Fifth International Crime: Reflections on the Definition of Ecocide*, Journal of Genocide Research 2023, vol. 25, no. 1.

Pereira P., Bašić F., Bogunovic I., Barcelo D., *Russian-Ukrainian War Impacts the Total Environment*, Science of the Total Environment 2022, vol. 837.

Rawtani D., Gupta G., Khatri N., Rao P.K., Hussain Ch.M., *Environmental Damages Due to War in Ukraine: A Perspective*, Science of the Total Environment 2022, vol. 850.

Report of the ILC on the work of its 47th session, UN Doc. A/50/10, 21 July 1995.

Solokha M., Pereira P., Symochko L., Vynokurova N., Demyanyuk O., Sementsova K., Inacio M., Barcelo D., *Russian-Ukrainian War Impacts on the Environment. Evidence from the Field on Soil Properties and Remote Sensing*, Science of the Total Environment 2023, vol. 902.

Stop Ecocide Foundation, *Independent Expert Panel for the Legal Definition of Ecocide. Commentary and Core Text*, Amsterdam 2021.

Tarasûk C.B., Kolomiêc' G.V., Derkač O.M., Movčai Â.I., Mojsiênko I.I., Parafilo M.M., Abduloyêva O.C., *Kìnburn: Perspektivi zbalansovanogo rozvitku*, Kiïv 2008.

Ukolova V., Ukolova Ê., *Problema ekocidu âk ekologìčnogo zločinu: ukraïns'kij ta mìžnarodnij dosvìd*, Ûridičnij naukovije elektronnij žurnal 2021, no. 10.

Vyshnevsky V., Shevchuk S., Komorin V., Oleynik Y., Gleick P., *The Destruction of the Kakhovka dam and Its Consequences*, Water International 2023, vol. 48, no. 5.

Westing A.H., *Arms Control and the Environment: Proscription of Ecocide*, Bulletin of the Atomic Scientists 1974, vol. 30, no. 1.

EUROPEAN CONSERVATIVES AND REFORMISTS

STUDIA PRAWNICZE KUL
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Does Putin have immunity from criminal liability before Ukrainian court?

Czy Putin posiada immunitet karny przed ukraińskim sądem?

Обладает ли Путин иммунитетом от уголовного преследования перед украинским судом?

Чи має Путін імунітет від кримінальної відповідальності перед українським судом?

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Summary: The question about criminal liability for waging this cruel war has been actualized since the beginning of the Russian-Ukrainian war in 2014, and especially since the large-scale Russian invasion of Ukraine in 2022. It is commonly recognized that such acts are crimes according to international criminal law and that liability must come under international judiciary bodies. By the same token, Ukrainian national legislation also provides for liability for those acts. At the same time, there are attempts to prove the fact that Putin and other senior officials are not liable under Ukrainian criminal law since allegedly they have functional immunity and ordinary perpetrators of the aggression are not personally liable under Ukrainian law due to the so-called functional immunity.

The publication aims to prove the wrongfulness of the statement that the abovementioned immunity status prevents criminal prosecution in Ukraine, as in the state against which the aggression was committed. The arguments of "immunity theory" supporters are analyzed and counter-arguments are presented that such immunity is not valid in Ukraine and does not prevent prosecution under Ukrainian law.

It is concluded that, regarding the aggressive war in Ukraine, the functional immunity of senior officials of the Russian Federation does not have any moral, social or legal grounds and the individuals who allegedly have such immunities are criminally liable not only under international criminal law but also Ukrainian law as well.
Key words: criminal liability, immunity, head of state, aggression

Streszczenie: Kwestia odpowiedzialności karnej za prowadzenie trwającego, okrutnego konfliktu jest aktualna od początku wojny rosyjsko-ukraińskiej rozpoczętej w 2014 r., a zwłaszcza od 2022 r., czyli od inwazji na Ukrainę na pełną skalę. Zgodnie z międzynarodowym prawem karnym takie czyny stanowią zbrodnie prawa międzynarodowego i podlegają jurysdykcji międzynarodowych organów sądowych. Ukraińskie ustawodawstwo krajowe również przewiduje odpowiedzialność karną za rzeczone czyny. Jednocześnie podejmowane są próby udowodnienia, że Putin i inni wysocy urzędnicy nie podlegają orzecznictwu sądów ukraińskich na mocy ukraińskiego prawa karnego, ponieważ rzekomo posiadają immunitet funkcjonalny, a zwykli uczestnicy agresji zbrojnej również nie ponoszą osobistej odpowiedzialności na mocy prawa ukraińskiego z powodu posiadania immunitetu funkcjonalnego.

Celem publikacji jest udowodnienie niesłuszności twierdzenia, że wyżej wymienione immunitety uniemożliwiają pociągnięcie takich osób do odpowiedzialności karnej przez sądy w Ukrainie, czyli państwie, przeciwko któremu rozpoczęto agresję zbrojną. Przeanalizowano zarówno argumenty zwolenników „teorii immunitetu", jak i przedstawiono argumenty przemawiające za tym, że wskazane kategorie osób nie posiadają immunitetu na terytorium Ukrainy, a zatem możliwe jest ich ściganie na mocy prawa ukraińskiego.

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Stwierdzono, że w odniesieniu do agresji zbrojnej przeciwko Ukrainie immunitet funkcjonalny wyższych urzędników Federacji Rosyjskiej nie ma żadnych podstaw moralnych, społecznych i prawnych, a wymienione osoby, które rzekomo posiadają taki immunitet, ponoszą odpowiedzialność karną nie tylko na mocy międzynarodowego prawa karnego, lecz także prawa ukraińskiego.
Słowa kluczowe: odpowiedzialność karna, immunitet, głowa państwa, agresja

Резюме: Вопрос об уголовной ответственности за ведение непрекращающегося жестокого конфликта актуален с начала российско-украинской войны, начавшейся в 2014 году, и особенно после полномасштабного вторжения в Украину в 2022 году. Согласно международному уголовному праву, такие действия являются преступлениями по международному праву и подпадают под юрисдикцию международных судебных органов. Внутреннее законодательство Украины также предусматривает уголовную ответственность за указанные деяния. В то же время предпринимаются попытки доказать, что Путин и другие высшие должностные лица не подпадают под юрисдикцию украинских судов в силу украинского уголовного законодательства, поскольку якобы обладают функциональным иммунитетом, а рядовые участники вооруженной агрессии также не несут персональной ответственности в силу украинского законодательства, поскольку обладают функциональным иммунитетом.

Цель статьи – доказать ошибочность утверждения о том, что вышеуказанные иммунитеты не позволяют привлекать таких лиц к уголовной ответственности в судах Украины – государства, против которого была совершена вооруженная агрессия. Были проанализированы аргументы сторонников «теории иммунитета» и приведены аргументы в пользу того, что указанные категории лиц не обладают иммунитетом на территории Украины, а значит, их можно привлечь к ответственности в силу законодательства Украины.

Сделан вывод о том, что применительно к вооруженной агрессии против Украины функциональный иммунитет высших должностных лиц Российской Федерации не имеет моральных, общественных и правовых оснований, а названные лица, якобы обладающие таким иммунитетом, несут уголовную ответственность не только в силу международного уголовного права, но и по украинскому законодательству.
Ключевые слова: уголовная ответственность, иммунитет, глава государства, агрессия

Резюме: Питання кримінальної відповідальності за розв'язання та ведення агресивної війни актуальне від початку російсько-української війни у 2014 році, а, особливо, від 2022 році, коли відбулося повномасштабне вторгнення в Україну. Відповідно до міжнародного кримінального права такі діяння є міжнародними злочинами та підлягають юрисдикції міжнародних судових органів. Українське законодавство також передбачає кримінальну відповідальність за вказані діяння. Водночас є спроби довести, що Путін та інші вищі керівники російської федерації не підлягають кримінальній відповідальності за українським кримінальним правом, оскільки ніби-то наділені функціональним імунітетом.

Метою цієї публікації є доведення помилковості тези про те, що вказаний імунітет перешкоджає притягненню до кримінальної відповідальності в Україні як державі, проти якої вчинена агресія.

Розглянуті доводи прихильників «теорії імунітету» та наведені аргументи щодо того, що він не діє в Україні щодо вищих керівників держави-агресора та не перешкоджає притягненню їх до відповідальності за українським кримінальним правом.

Зроблений висновок, що щодо агресивної війни в Україні функціональний імунітет вищих керівників російської федерації не має моральних, соціальних та юридичних підстав, а вказані особи підлягають кримінальній відповідальності не лише за міжнародним кримінальним правом, але й за правом України.
Ключові слова: кримінальна відповідальність, імунітет, керівник держави, агресія

Introduction

The question about the liability of people who waged this aggressive war and took part in it has been raised since the beginning of the Russian-Ukrainian war in 2014.

Unfortunately, it was not discussed extensively enough in Ukrainian literature – almost all Ukrainian scholars believed that it would not be resolved in the near future, and even if it was, liability would arise under international criminal law and before international justice bodies. Foreign scholars did not emphasize this problem either.

Since the beginning of the full-scale war on 24 February 2022, the issue of liability of Russian war criminals has been actualized and has become a practical issue. In this case, there are several approaches to solving it. Among them, two are the most common. The proponents of the first argue that organizers and leaders of military aggression against Ukraine are immune from criminal liability and are not subject to criminal prosecution under Ukrainian criminal law and before Ukrainian criminal justice bodies. The proponents of the second approach argue that these immunities do not limit the usage of national criminal law even if it exists in international criminal law, so leaders of aggression against Ukraine are criminally liable under Ukrainian criminal law and before Ukrainian courts for crimes committed against Ukraine. In accordance with the principle of universal jurisdiction, those people can be liable under the law of any state which practices the rule of law and principle of justice.

This publication is aimed at analyzing the positions described above and proving that bringing Putin and other senior leaders of the Russian Federation to criminal liability under Ukrainian legislation and by Ukrainian criminal justice authorities is not only possible but also a priority because:

- international judicial bodies will not be physically able to look into the cases of thousands of Russian war criminals. Therefore, the main burden of investigating and prosecuting crimes committed in the course of Russia's aggression against Ukraine will fall on the Ukrainian judicial authorities;
- the actions of Putin and other senior leaders of the Russian Federation are crimes under both international and national criminal law. However, some acts are considered to be crimes under the criminal law of Ukraine, but not under international criminal law (in particular, the International Criminal Court does not currently exercise jurisdiction[1] over the crime of aggression in accordance with Part 2 of Article 5 of its Statute, but it is punishable under Article 437 of the Criminal Code of Ukraine – hereinafter: CC of Ukraine[2]). At the same time,

1 The Rome Statute of the International Criminal Court, https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf [access: 16.11.2023].

2 The Criminal Code of Ukraine, https://zakon.rada.gov.ua/laws/show/2341-14#n2405 [access: 16.11.2023].

there are no acts that constitute crimes under international criminal law and are not seen as such by Ukrainian criminal law;

- international and national criminal law are not competitors, but partners in prosecuting Russian war criminals. Under the principle of complementarity, international criminal law is applied when a state is unwilling or unable to use national criminal law – Article 17 (a) of the Statute of the International Criminal Court provides that a case is accepted by the Court when a state is unwilling or unable to properly conduct an investigation or prosecution. Accordingly, when the state seeks to prosecute the perpetrators of offences against its interests and is able to do so, international jurisdictional bodies do not intervene in the case, but leave it to the jurisdiction of national authorities;
- criminal liability of senior Russian leaders for aggression against Ukraine may occur either in the event of their detention or in in absentia proceedings. Under Ukrainian law, in absentia proceedings can be conducted[3] but the Statute of the International Criminal Court does not provide for this;[4]
- domestic legislation does not provide grounds for a state to fail to fulfil its obligations under international law. At the same time, international criminal law may not restrict the application of national criminal law to a greater extent than is directly provided for in international agreements that Ukraine or another state has ratified or acceded to. After all, the absence of relevant provisions in an international agreement or its non-ratification means the absence of relevant international legal obligations.

This publication is not intended to analyze the criminal liability immunity of state representatives and officials from the perspective of international criminal law, including issues related to the number of persons who may benefit from such immunity, the grounds for overcoming it, etc. The research aim is limited to finding out whether such immunity, based on international legal provisions, can pose an obstacle to the prosecution of senior leaders of a foreign state under the national criminal law of another state that has been the object of aggression. Specifically, the article deals with the situation in Ukraine. The article puts forward the hypothesis that the international legal immunity of Russian state representatives does not extend to the scope of application of Ukrainian criminal law, and, accordingly, that

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3 Articles 297-1 to 297-5 of the Criminal Procedure Code of Ukraine, https://zakon.rada.gov.ua/laws/show/4651-17#n5118 [access: 16.11.2023].

4 Part 1 of Article 63 of the Rome Statute of the International Criminal Court: "Trial in the Presence of the Accused" of the Statute of the International Criminal Court expressly states that the accused must be present at the trial.

they may be held criminally liable for aggression against Ukraine under the criminal law of this state.

The research methods are determined by the purpose stated above. The article provides a dogmatic analysis of the national legislation of Ukraine, including the relevant constitutional provisions, acts determining the scope of international agreements of Ukraine and the Ukrainian criminal law. Using the comparative method, the article assesses which sources of international law are applicable in Ukraine. The arguments put forward by the opponents of the position argued in this article were also systematically examined. At the same time, the author does not refer to or analyze the publications of experts in the field of international criminal law on the immunity of state representatives. Among them, there are such authors as Watts (1994), N. Kofele-Kale (1995), A. Cassese (2002), N. Fox (2002), R. van Alebeek (2008) and R. O'Keefe (2015). With all respect to the authors and their positions, it needs to be stated that their publications were primarily published at a time when the issue of criminal liability of Putin as the head of the Russian state, the head of the Russian government and the Minister of Foreign Affairs of this state was not acute and that these works do not directly address the issue of liability before the national court of a state that has become a victim of aggression. They are mainly devoted to clearly identifying the range of persons covered by such immunity and the grounds and procedure for overcoming it in international law. This also applies to the most recent paper published in 2023,[5] which also covers the issue of immunity of senior Russian officials before the International Criminal Court or a potential special tribunal. Moreover, these publications consider the immunity of senior officials as an element of normal international relations and a means of ensuring good neighbourliness, which is the exact opposite of current Russian-Ukrainian relations. Therefore, well-known publications referred to above cannot be used to solve the problem at stake.

The methodology used to prepare this article includes an assessment of Ukraine's law enforcement practices and demonstrates that it is unacceptable to rely on precedents of criminal prosecution of state representatives in other national and international cases which differ from the current situation in Ukraine with Russian aggression due to specific factual circumstances and legal grounds. At the same time, given the peculiarity of the conditions of the Russian-Ukrainian war that began in 2014 and their significant difference from the conditions in which other wars were

5 R. van Alebeek, L. van den Herik, C. Ryngaer, *Prosecuting Russian Officials for the Crime of Aggression: What About Immunities?*, European Convention on Human Rights Law Review 2023, no. 4, https://brill.com/view/journals/eclr/4/2/article-p115_002.xml [access: 16.11.2023].

waged and whose organizers were brought to justice, the author considers it inappropriate to use the historical method. Sociological methods were also not used. The author considers it inappropriate at this stage to conduct a survey to identify supporters and opponents of a particular solution, given the lack of clear legislative regulation, established practice and insufficient awareness of the arguments among possible respondents, as well as the acute emotional charge that the issue carries for respondents from Ukraine. Such a survey is possible in the future, in particular, after the end of the war, when emotional tension subsides and the level of awareness increases among respondents.

The main material

As already noted, in Ukraine it is commonly believed that the current leaders of the Russian Federation are not subject to criminal liability under the criminal law of Ukraine due to the existence of immunity from criminal liability granted under the provisions of international law.

It is noteworthy that the position is expressed not in publications, but in oral speeches and discussions. In particular, in his speech to the students of the OSCE-organized school for young criminal law teachers in 2016, Mykola Hnatovskyi (an associate professor at the Shevchenko National University of Kyiv at that point, and now a judge of the European Court of Human Rights), expressed a view opposed to the present author's opinion that Putin's actions regarding the annexation of Crimea should be assessed as crimes under Articles 437 and 438 of the Criminal Code of Ukraine. He referred to the fact that there is a custom in international criminal law not to prosecute a sitting head of state.

The position of Ukrainian law enforcement authorities as to their practice on the issue of liability of senior Russian officials has not been formulated – no relevant criminal proceedings have been opened so far. In the legally homogeneous issue of the liability of Russian military personnel, this practice is at least controversial. Since the beginning of Russia's full-scale aggression on 24 February 2022, and until mid-March 2022, more than 9 000 proceedings have been opened against Russian servicemen and on their commission of acts under the Criminal Code of Ukraine under articles on murder, illegal crossing of the state border of Ukraine with the use of weapons, smuggling, etc. However, on 17 March 2022, the Office of the Prosecutor General of Ukraine sent an act entitled "Letter of guidance on the application of the provisions of international humanitarian law on the treatment of prisoners

of war and the specifics of qualification of their actions under the Criminal Code of Ukraine" to the regional prosecutors of Ukraine, which contained an instruction to close all such proceedings on the obviously far-fetched ground that the actions of such persons did not constitute a crime.[6] Although such an instruction is clearly illegal and groundless, it is being implemented – previously initiated criminal proceedings have been closed and no new ones have been started. As a result, case law simply cannot be formed, as the relevant materials are not submitted to the court for consideration on the merits.

Thus, opponents of the prosecution of the leaders of Russia's military aggression against Ukraine put forward essentially the same argument against criminal prosecution under Ukrainian criminal law. In their opinion, there are customs in international criminal law that do not allow for criminal liability as the current head of state and other senior leaders of the state have immunity (unless their immunity is lifted by an international court).

In their opinion, international legal customs prevent the application of the provisions of national criminal law.

There is also an approach (also expressed in oral statements and discussions) according to which the custom of granting immunity from criminal liability of senior leaders of a foreign aggressor state in Ukraine is justified by references to the United Nations Charter. Indeed, part 2 of Article 105 of the Charter states: "Representatives of Members of the Organization and its officials shall also enjoy the privileges and immunities necessary for the independent exercise of their functions in connection with the activities of the Organization."[7] However, it does not follow from this passage that this immunity is absolute and applies to any activity of persons authorized to represent the state, which would make it identical to a medieval indulgence. After all, the quoted provision directly and unambiguously refers to such immunities as are necessary for the performance of functions related to the activities of the UN. The activities of the United Nations, as expressly stated in the Preamble to the UN Charter, Section I of this Charter, which sets out the purposes and principles of the Organization, are aimed at maintaining peace and international security, resolving international conflicts, and developing friendly relations among nations. Part 4 of Article 2 of the said Charter provides for the obligation of the members of

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6 Office of the Prosecutor General of Ukraine, Letter of guidance on the application of the provisions of international humanitarian law on the treatment of prisoners of war and the specifics of qualifying their actions under the Criminal Code of Ukraine, 17.03.2022, https://drive.google.com/file/d/1Mlp-7zfpiVzdoir2YCWyyYkPL2gimwLP/view [access: 16.11.2023].

7 The Charter of the United Nations, https://www.un.org/en/about-us/un-charter/full-text/ [access: 16.11.2023].

the Organization to refrain from the threat or use of force in international relations. The actions of the senior leaders of the Russian Federation, which raise the question of their criminal liability under Ukrainian criminal law, are undoubtedly not only unrelated to the performance of UN functions but, on the contrary, directly contradict the goals of the Organization.

Therefore, the reference to the UN Charter, which in the analyzed situation allegedly provides for the immunity of the president of the Russian Federation, the head of the Russian government, the minister of foreign affairs or other officials of the Russian Federation, is absolutely unacceptable. In fact, the UN Charter does not establish such an immunity for preparing for, starting, and waging an aggressive war.

Neither directly nor indirectly does any applicable international treaty provide for such immunity. At least, the author of this article is not aware of any such treaty ratified by Ukraine that would provide for the relevant obligations to establish and maintain the respective immunity of a state representative.

Without relying on international treaties in force and binding on Ukraine, supporters of the concept that the head of the Russian state, the head of the Russian government and the minister of foreign affairs of the state are not subject to criminal liability under Ukrainian law and before a Ukrainian court put forward primarily formal arguments. They refer to the existence of a legal custom according to which such persons are immune from criminal liability for acts committed in connection with their office. They also refer to the positions of foreign scholars who substantiate the existence and necessity of taking such immunity into account, as well as to certain examples from foreign law enforcement practice.

This approach does not seem convincing.

First of all, there is no legal custom in Ukraine related to granting criminal liability immunity to representatives of foreign states for acts committed during their tenure. Ukrainian law enforcement agencies have simply not considered such cases.

The case of former Georgian President Saakashvili, who was granted asylum and even acquired Ukrainian citizenship at the same time as his criminal prosecution in absentia was taking place in Georgia, has some similarities to the matter discussed. However, the actual circumstances of Saakashvili's case are fundamentally different from those of Putin and other senior Russian leaders. After all, Saakashvili was charged and convicted in Georgia, he was charged with actions committed while he was President of that country. He did not commit any offences against the interests of Ukraine or the rights and freedoms of Ukrainian citizens. The Ukrainian criminal justice authorities did not consider the issue of Mr Saakashvili's liability at all. The law enforcement situation analyzed in this publication concerns

encroachments against Ukraine and its citizens and the acceptability of assessing such acts and bringing their perpetrators to justice under Ukrainian law.

The legal customs of other states which have resolved the issues of criminal liability of state leaders under national law are, of course, interesting and instructive, and can be taken into account in the aspect of *de lege ferenda*. However, they are not a source of law in Ukraine and cannot be taken into account in the course of law enforcement. This fact does not require proof, as it is as obvious as the existence of state sovereignty, which includes the functioning of its own, and not a foreign, legal system.

If one considers the international legal custom of granting immunity from criminal liability to persons who, at the time of committing the incriminated acts, were acting as representatives or officials of a foreign state, it is also not applicable in Ukraine.

One of the principles in the legislation of Ukraine, like in legislations of other countries, is the primacy of international law over national law. This is enshrined in the Ukrainian Constitution and several legislative acts. However, certain reservations do exist. At least in the Constitution of Ukraine[8] (part 1, Article 9), the Criminal Code of Ukraine (part 5, Article 3) and special laws on the effect of international legal acts,[9] it is clearly stated that the following sources of law are binding upon Ukraine: a) international treaties ratified by Ukraine and b) the case law of the European Court of Human Rights. No other sources of international criminal law, such as memoranda, protocols of intent, customs, precedents, etc. are binding. There is a clear explanation for this: national sovereignty implies that a state waives its rights or assumes additional responsibilities only within the limits defined when ratifying relevant international treaties or in other clearly defined cases (such as the case law of the European Court of Human Rights). Ukraine has not signed any treaty that would provide for the waiver of criminal prosecution under its national legislation of the organizers and participants of Russian aggression.

Thus, international legal customs, including the custom of granting immunity from criminal prosecution, can and should be applied where they have been established – in international law and international jurisdictional bodies. At the

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8 The Constitution of Ukraine, Law of Ukraine of 28.06.1996, no. 254к/96-BP (Revision as of 1.01.2020), https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text [access: 16.11.2023].

9 On International Treaties of Ukraine, Law of Ukraine of 29.06.2004, no. 1906-IV (as of 15.02.2022), https://zakon.rada.gov.ua/laws/show/1906-15#Text [access: 16.11.2023]; On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights (Article 17), Law of Ukraine of 23.02.2006, no. 3477-IV (as of 2.12.2012), https://zakon.rada.gov.ua/laws/show/3477-15#Text [access: 16.11.2023].

same time, they should not be extended to include the national system. At least for Ukraine, which has not committed itself to taking such immunity into account. This legal custom, which is not inherent in the national legal system, is alien to it, contrary to the requirements of the state legislation, and cannot be implemented by force of pressure. In particular, by those who believe that "there is no need to provoke Putin," that he should be given the opportunity to "save face," etc. Article 2 of the UN Charter provides that in order to achieve its purposes, the Organization and its Members shall act in accordance with certain principles, one of which is formulated in part 7 of the said article and prescribes that the UN shall not interfere in matters within the domestic jurisdiction of any state. The grounds for criminal liability, its limits, and the competence of criminal justice authorities are precisely within the domestic competence of the state and are the subject of its sovereignty. Sovereignty, in turn, can be limited only with the consent of the state, expressed in the signing and ratification of international treaties.

From the above, it seems to follow that neither national (those of other states) nor international legal customs, including those related to granting immunity from criminal prosecution, should be taken into account as a mandatory source when deciding on criminal liability under national criminal law. At least in Ukraine, where the legislation explicitly specifies which international legal instruments are binding for its legal system.

Another argument of the supporters of the theory of immunity from criminal liability is to refer to the positions set forth by other authors. There is no shortage of publications in the literature concerning the theory of immunity of senior state officials from criminal liability for acts committed during their tenure. Their number is increasing with every new case related to the relevant situation. However, all of the publications known to the author on the immunity of state representatives and officials who have committed offences during and in connection with the use of the powers vested in them are written from the perspective of international criminal law and are related to the possibility of liability before international jurisdictional bodies and based on international legal acts. Therefore, despite the expertise of the authors of such publications and the weight of their arguments in favour of certain positions (ultimately, the application or non-application of criminal liability immunity to specific individuals and in specific cases), the approaches expressed in the literature are not directly related to the issue covered in this article, which relates purely to the field of national criminal law. Therefore, the points of view already expressed in the literature on the solution of the problem of immunities in international criminal law are deliberately not analyzed here. Similarly, the author deliberately does not stop on the provisions set out in a special study, which

is a memorandum of the International Law Commission of the Secretariat of the United Nations "Immunity of State officials from foreign criminal jurisdiction," adopted at the sixtieth session of this body, held on 5–6 May, 6 June and 8 July 2008 in Geneva.[10] This voluminous and multifaceted document contains considerations related to the solution of the analyzed issue in international criminal law and does not cover provisions related to national law.

Therefore, reference to the positions expressed in publications on the problem of another branch of law cannot be a convincing argument as to whether the relevant immunity exists in national criminal law.

Finally, another argument of the supporters of the theory of immunity as an institution of national criminal law is the provision of examples of its application in specific cases. All of these cases relate to proceedings that took place in international jurisdictional bodies or foreign courts. In addition, each case has many individual characteristics and does not generically coincide with the upcoming case of Putin and other senior Russian leaders. After all, it involves liability for a crime against a foreign state and its citizens in a situation where the existence of aggression was recognized by the UN in the General Assembly resolution "Aggression against Ukraine" of 2 March 2022, and when the armed attack continued and intensified even after the UN demanded that Russia immediately cease the use of its force against Ukraine.[11] Examples of the application/non-application of criminal liability immunity to senior state leaders, as well as other sources, contain a lot of useful information. However, they cannot serve as a source for solving the relevant problem in Ukraine. Because these are decisions of foreign or international jurisdictional bodies that do not have the value of precedent in Ukraine in accordance with the principles of its national legal system. The only exception is, as already mentioned, the case law of the European Court of Human Rights, which is a source of law in Ukraine.[12] However, first, this Court is not a criminal court, and second, it has not yet considered cases related to the observance of human rights in terms of the application/non-application of immunity of state representatives. Therefore, its practice is not relevant here.

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10 Memorandum of the Secretariat of the International Law Commission of the United Nations "Immunity of State officials from foreign criminal jurisdiction", adopted at the sixtieth session of the body, held on 5–6 May, 6 June and 8 July 2008 in Geneva, A/CN.4/596, https://www.refworld.org/docid/48abd597d.html [access: 16.11.2023].

11 UN General Assembly, Resolution ES-11/1. Aggression against Ukraine, 2.03.2022, https://digitallibrary.un.org/record/3965290?ln=ru [access: 16.11.2023].

12 On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights (Article 17), Law of Ukraine of 23.02.2006, no. 3477-IV, https://zakon.rada.gov.ua/laws/show/3477-15#Text [access: 16.11.2023].

Therefore, it can be stated that the argument concerning the practice of applying the provisions on the immunity of state representatives from criminal liability before a national court does not work in favour of the criticized legal position.

In general, such arguments (the existence of a legal custom of granting immunity to state representatives, support for the relevant position in publications, and the availability of examples from practice) are subject to criticism and do not seem convincing.

There are also substantive considerations in favour of recognizing immunity and granting it to state representatives. They are generally recognized and therefore do not require reference to sources. Such arguments are reduced to several provisions. The main one is that the granting of the immunity analyzed in this article is a manifestation of respect for the state and the people who authorized the respective persons for representation, recognising that both the state and its representatives are full participants in international relations. The ability to act without regard to possible criminal liability before an international or foreign court is a prerequisite for effective representation and mutually beneficial international relations. Another line of reasoning is based on the fact that in the presence of international conflicts, someone must represent the state that is a party to such a conflict, and bringing the head of state, head of government, or minister of foreign affairs to criminal liability deprives them of their subjectivity.

Of course, such arguments are legitimate. And in certain situations, they provide grounds for granting the appropriate immunity. Namely, when states maintain diplomatic relations or are at least ready to negotiate with each other. Therefore, it would not be surprising if immunity from criminal liability was granted to Russian leaders by China or Belarus under their national laws.

But the situation with Ukraine is completely different. Ukraine has become a victim of Russian aggression, and diplomatic relations between the two countries have been severed. Even at the beginning of Russia's full-scale aggression, Ukraine was ready to negotiate with Putin.[13] Obviously, this also meant a willingness to grant him immunity from prosecution. However, after the discovery of the bloody crimes committed in Ukraine by the Russian military (with Putin as its commander-in-chief) and the announcement of the Russian annexation of the occupied Ukrainian regions of Donetsk, Luhansk, Kherson, and Zaporizhzhia, the position changed. Ukraine, represented by its President and Foreign Minister, has

[13] *Negotiations with Putin Are Impossible: How Zelensky's Position Has Changed*, Slovo i Dilo. Analytical Portal, 4.10.2022, https://www.slovoidilo.ua/2022/10/04/infografika/polityka/perehovory-putinym-nemozhlyvi-yak-zminyuvalasya-pozycziya-zelenskoho [access: 16.11.2023].

repeatedly stated that negotiations with Putin are impossible. This position was also enshrined at the regulatory level – the Decree of the President of Ukraine of 30 September 2022 enacted the Decision of the National Security and Defense Council of Ukraine "On Ukraine's Actions in Response to the Russian Federation's Attempt to Annex the Territories of Our State, in Order to Guarantee the Security of the Euro--Atlantic Area, Ukraine and Restore Its Territorial Integrity." The first paragraph of the Decision states "the impossibility of holding negotiations with the President of the Russian Federation Vladimir Putin." It is also worth mentioning that on 17 March 2023, the International Criminal Court issued an arrest warrant for Russian president Vladimir Putin.[14] This also makes it impossible for him to participate in negotiations with Ukraine and perform representative functions.

The decision of the Parliamentary Assembly of the Council of Europe of 13 October 2023 to recognize Putin as illegitimate after the end of the current presidential term in 2024, and Russia as a dictatorship, cannot be ignored either.[15] This decision means that even if he can claim immunity from criminal liability for now, the grounds for this will disappear completely after the specified date.

It should be noted that the position in favour of immunity in the matter at hand means denial of generally recognized principles of both national and international criminal law. This is, first of all, the principle that holding an official position by the perpetrator does not exclude their criminal liability.[16] Therefore, supporting the applicability of immunity from criminal liability is not consistent with this provision.

In such circumstances, there is no reason to grant Putin, and other senior Russian leaders, immunity from criminal liability in Ukraine. After all, in no case is it about good neighbourly relations, peaceful resolution of conflicts, and other goals enshrined in the UN Charter regarding relations with Russia under Putin's leadership.

Thus, it can be stated that arguments that would explain and justify granting Putin and other representatives of Russia immunity from criminal liability in Ukraine either do not exist at all, or they are subject to reasonable criticism, or they may not be valid in the conditions that currently determine relations between Ukraine and Russia.

Moreover, any immunity, even if it exists, can be overcome. International legal immunity can be overcome by an international jurisdictional body (as the

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14 *Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and [access: 16.11.2023].

15 Resolution of the Parliamentary Assembly of the Council of Europe of 13 October 2023, Examining the legitimacy and legality of the ad hominem term-limit waiver for the incumbent President of the Russian Federation, https://pace.coe.int/en/files/33150 [access: 16.11.2023].

16 Rome Statute of the International Criminal Court, Article 27 § 1.

International Criminal Court has already done with regard to Putin), while national immunity – by the national criminal justice system. At least, when Putin is brought before a Ukrainian court, this court will be able to reasonably assess the relevant claims of immunity from criminal liability in Ukraine.

To criticize the arguments in favour of Putin's and other Russian leaders' immunity from criminal prosecution in Ukraine under Ukrainian legislation is a necessary part of this analysis but it is not enough to solve the problem. No less important is to put forward arguments demonstrating that Putin and other representatives of the aggressor state are subject to criminal liability in Ukraine. In fact, the justification for the absence of special conditions, in particular of immunity, means that a person should be held criminally liable on general grounds. This also applies to representatives of a foreign state to whom Article 95 (2) of the UN Charter does not apply, as was demonstrated above.

In other words, a person who does not enjoy immunity or for whom there are no other grounds for exemption from criminal liability provided for by criminal law is liable under national legislation like any other person. The necessary condition for such liability in Ukraine is the commission of a socially dangerous act that contains all the essential elements of a criminal offence under the Criminal Code (Article 2 (1) of the Criminal Code of Ukraine). The question as to which crimes are present in the actions of Putin and other senior Russian leaders has to be resolved during the pre-trial investigation and trial with strict observance of all procedural guarantees. This requires evidentiary information obtained in accordance with the procedure established by the criminal procedure law. Therefore, it is premature to speak in detail about the qualification of the actions committed by these individuals. However, the information available in the public domain is the grounds to talk about incriminating the commission of at least crimes under Article 437, i.e. "Planning, preparation and waging of an aggressive war," Article 438 "Violation of rules of the warfare" and Article 444 "Criminal offences against internationally protected persons and institutions" of the Criminal Code of Ukraine. Moreover, these crimes were initially committed in 2014, during the aggression in Crimea and its occupation (their criminal law assessment under Ukrainian legislation has already been provided in the literature[17]). The commission of these crimes continued in the period 2014–2022 during the participation of Russian troops in hostilities in Donbas. New and the most expressive and brazen violations of the laws and customs of war, as well as the continuation of the aggressive war, have been committed

[17] V.O. Navrotskyi, *What Did Putin & Co. Do against Ukraine?*, Yurydychnyy visnyk of Ukraine 2014, no. 12 (22–28.03.2014), pp. 6–7.

since the beginning of the full-scale invasion of Ukraine on 24 February 2022. It should be noted in passing that the actions of Putin and other senior Russian leaders resulting in aggression against Ukraine are crimes not only under the Criminal Code of Ukraine. Responsibility for them is also provided for in Article 353 "Planning, Preparing, Unleashing, or Waging an Aggressive War," Article 354 "Public Appeals to Unleash an Aggressive War," Article 356 "Use of Banned Means and Methods of Warfare" (in particular: cruel treatment of prisoners of war or civilians, deportation of civilian populations, plunder of national property in occupied territories) and Article 360 "Assaults on Persons or Institutions Enjoying International Protection" of the Criminal Code of the Russian Federation.

In Ukraine, the principle of inevitability of criminal liability is reflected in two interrelated provisions: a) an act that constitutes a criminal offence must be punishable, thus the perpetrator has to be criminally liable; b) the grounds for not imposing the liability provided for by the Criminal Code of Ukraine. At the same time, the criminal law of Ukraine does not provide for any grounds on which aggression against Ukraine and grave crimes committed against it and its citizens could be left unpunished. The Criminal Code of Ukraine does not contain the concept of immunity from criminal liability at all, and the relevant international custom, as shown above, is not applicable in Ukraine.

The argument that it is impossible to approach the solution of modern problems with the standards of long past centuries seems relevant to the matter discussed. This includes the problem of immunity of representatives of a state and its officials from criminal liability, which is absolutized without proper grounds and is interpreted in fact as an indulgence for any act whatsoever. The thesis of the right to war and unpunished participation in it was formulated in the Middle Ages, when almost all monarchs were relatives (and "one's own" were not judged), and war participants had limited information and choice of behaviour. Now the situation is radically different. In the twenty-first century, humanity has progressed to divide wars into just (defensive) and aggressive (invasive) wars. Any aggressive war is criminal, and all its participants, especially its initiators and organizers, should be held criminally liable.

Finally, one cannot ignore the fact that Ukraine is a victim of aggression and has the right to decide on the criminal liability of the perpetrators. If the outdated theories of immunity of the head of state and other participants in the aggression impede the establishment of justice, then new approaches are needed, including those that involve resolving issues of responsibility for aggression and other crimes committed during the war under the legislation of the state that is a victim of an aggressive war.

Conclusion

The world community's close attention to the Russian-Ukrainian war also touches upon the question of responsibility for its outbreak. One of the conditions for ending the war is the fair punishment of those who started it and who committed crimes during the aggression. This gives confidence that the perpetrators will not escape fair punishment.

Various concepts have been put forward to ensure the prosecution of Russian war criminals. Some speak about the crucial role of the International Criminal Court, others about the need to establish a Special International Tribunal (which will obviously operate under its own specially created Charter – which will in turn require time and additional effort), and still others propose the idea of a hybrid tribunal that will operate under Ukrainian legislation, but with the participation of representatives of the international community. At all events, one cannot and should not exclude the use of the criminal justice system of Ukraine or, in accordance with the universal principle, of any other state.

In the end, the greatest importance should be attached not to which body will try Putin and the perpetrators of his criminal will, but to bringing the perpetrators to justice and passing a fair sentence on them. National criminal law and international criminal law should be partners, not competitors in resolving this issue.

It should be noted that the jurisdiction of international criminal justice bodies over Putin and other senior Russian leaders in the case of aggression against Ukraine should not prevent them from being held accountable by the Ukrainian justice system. The purpose of immunities is not to avoid responsibility, but to facilitate international relations and cooperation between states.

Hopefully, Putin and his henchmen will not hide from criminal liability behind immunities, the presumption of innocence, standards of proof, and other instruments of modern civilized criminal law.

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Bibliography

Alebeek R. van, Herik L. van den, Ryngaer C., *Prosecuting Russian Officials for the Crime of Aggression: What About Immunities?*, European Convention on Human Rights Law Review 2023, no. 4, https://brill.com/view/journals/eclr/4/2/article-p115_002.xml [access: 16.11.2023].

Navrotskyi V.O., *What Did Putin & Co. Do against Ukraine?*, Yurydychnyy visnyk of Ukraine 2014, no. 12 (22–28.03.2014).

Negotiations with Putin Are Impossible: How Zelensky's Position Has Changed, Slovo i Dilo. Analytical Portal, 4.10.2022, https://www.slovoidilo.ua/2022/10/04/infografika/polityka/perehovory-Putinym-nemozhlyvi-yak-zminyuvalasya-pozycziya-zelenskoho [access: 16.11.2023].

Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-Putin-and [access: 16.11.2023].

Materiały i glosy /
Materials and commentaries

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Assessment the effectiveness of international legal instruments in interpreting and developing the definition of genocide

Ocena skuteczności międzynarodowych instrumentów prawnych w interpretowaniu i rozwijaniu definicji ludobójstwa

Оценка эффективности международных правовых инструментов в толковании и разработке определения понятия геноцида

Оцінка ефективності міжнародно-правових інструментів у тлумаченні та вдосконаленні визначення геноциду

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Summary: The issues of the most serious national and international crimes committed in human history and the political and legal measures taken by states to prevent their commission, as well as the question of the justice system responsible for these acts have been discussed by countless authors. However, there has been no attempt to present a set of interdependent elements that make it possible to organise this topic.

The validity of the proposed research is based on the opinion that has been formulated after reviewing extensive documentation and supported by research already conducted, that the crime of genocide is usually committed by the ruling elite against the ruled, regardless of whether the ruling elite has the support of the majority of a given society. On the other hand, the authors of the article propose to examine the effectiveness of international legal instruments in the interpretation and development of the definition of genocide.

Key words: international crimes, genocide, war, international instruments, governance

Streszczenie: Kwestia najpoważniejszych zbrodni krajowych i międzynarodowych popełnionych w historii ludzkości, podejmowanych przez państwa działań o charakterze politycznym i prawnym w celu zapobieżenia ich popełnieniu oraz kwestia wymiaru sprawiedliwości odpowiedzialnego za te czyny była dyskutowana przez niezliczonych autorów, lecz nie podjęto próby przedstawienia zespołu współzależnych elementów, które pozwalają uporządkować tę tematykę.

Aktualność proponowanych badań opiera się na opinii, sformułowanej po zapoznaniu się z obszerną dokumentacją i popartej prowadzonymi już badaniami, że zbrodnia ludobójstwa jest zwykle popełniana przez elitę władzy przeciwko rządzonym, niezależnie od tego, czy rządzący mają poparcie większości danego społeczeństwa. Z drugiej strony, autorzy artykułu proponują zbadanie skuteczności międzynarodowych instrumentów prawnych w interpretacji i rozwoju definicji ludobójstwa.

Słowa kluczowe: zbrodnie międzynarodowe, ludobójstwo, wojna, instrumenty międzynarodowe, rządzenie

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Резюме: Вопрос о самых тяжких национальных и международных преступлениях, совершенных в истории человечества, о политических и правовых мерах, предпринимаемых государствами в целях предотвращения их совершения, и о системе правосудия, устанавливающей ответственность за эти деяния, обсуждался многочисленными авторами, однако до сих пор не было предпринято попытки представить совокупность взаимозависимых элементов для придания порядка в данной предметной области.

Обоснованность предлагаемого исследования базируется на мнении, сформулированном после изучения обширной документации и подкрепленном уже проведенными исследованиями, что преступление геноцида обычно совершается правящей элитой против управляемых, независимо от того, пользуются ли эти правители поддержкой большинства данного общества. С другой стороны, авторы статьи предлагают изучить эффективность международных правовых инструментов в толковании и разработке определения понятия геноцида.

Ключевые слова: международные преступления, геноцид, война, международные инструменты, правление

Резюме: Питання про найтяжчі національні та міжнародні злочини, скоєні в історії людства, політичні і правові заходи, вжиті державами для запобігання їх вчиненню, а також питання про систему правосуддя, відповідальну за ці діяння, обговорювалося незліченною кількістю авторів, але не було спроби представити сукупність взаємозалежних елементів, які б упорядкували цю тему.

Актуальність пропонованого дослідження ґрунтується на думці, сформульованій після вивчення великої кількості документації та підтвердженій вже проведеними дослідженнями, що злочин геноциду, як правило, вчиняється правлячою елітою проти керованих, незалежно від того, чи мають ці правителі підтримку більшості суспільства, про яке йде мова. З іншого боку, автори статті пропонують дослідити ефективність міжнародно-правових інструментів у тлумаченні та вдосконаленні визначення геноциду.

Ключові слова: міжнародні злочини, геноцид, війна, міжнародні інструменти, управління

War is not at just a man-to-man relationship, but a state-to-state relationship, in which private individuals are enemies only incidentally, never as men, never even as citizens, but only as soldiers
Jean Jacques Rousseau, *Le contract social*

Introduction

Since their emergence as entities in their own right, States have been linked to each other, at first sporadically and incidentally, but gradually expanding over time to reach their present dimensions, which encompass all areas of social life. From the very beginning, these relations have taken two main forms – collaboration and struggle, confrontation.

Recently, criminal law has been extended to cover acts that are contrary to the international community, and this extension has been prompted by the experience of mankind in recent decades. In this period, it has gone through a series of major armed conflicts, or other trials, when the human being was denied belonging to

humanity. The international crimes were defined as acts contrary to international law and, moreover, so harmful to the interests protected by the law, that a rule was established in relations between States which made the criminal offences require or justify their repression by criminal law.

In the context of the above, the present study proposes to conduct comprehensive research on the conceptual evolution of genocide. Moreover, the main objective is to analyse the evolution of national and international legal instruments approaching this phenomenon. As a secondary objective, it is proposed to develop a detailed study on the normative enshrinement of genocide, and to assess the gaps that could lead to the ineffectiveness of existing regulations.

1. Methods and materials applied

To elucidate this institution as well as possible, the method of analytical research was mainly used. However, to fully complete the subject, the analytical method is not sufficient, so the practical aspect is studied from a historical-comparative point of view. In addition to comparative analysis, other methods were used such as analysis and synthesis of structural-systematic logic, history, legal-comparative, and other methods of scientific knowledge.

2. The United Nations' efforts towards better implementation of international instruments on genocide

The term *genocide* comes from the Greek *genos* meaning race and the Latin *cide* meaning to kill. History has recorded and continues to record numerous acts of physical, biological or cultural extermination carried out against human communities for various reasons throughout the world.[1]

The analysis of war crimes and crimes against humanity using an a priori algorithm requires an approach to the general concept of wrongful international acts. International crimes are acts contrary to international law, consisting of an act or omission to act, the essential element of which is the danger to international peace

[1] O. Balan, V. Rusu, V. Nour, *Drept internațional umanitar (The International Humanitarian Law)*, Chisinau 2003, p. 297.

and security and to other supreme values of humanity, and which necessarily entail liability and the application of sanctions.[2]

In accordance to a doctrinal opinion, the crime of genocide constitutes a special category of war crimes, in this sense, due to the gravity of the facts that configure its objective side and the specific objective of those who commit it, i.e. the destruction and complete physical extermination of an ethnic or religious group, etc.[3]

Certainly, the crime of genocide is the most serious international crime among crimes against humanity. By analysing the ways in which it has been carried out over time, it has become clear that only by the joint efforts of States this scourge can be combated.

The United Nations (UN), through its principal and subsidiary bodies, has been working to achieve this goal by a wide-ranging campaign to adopt international instruments to ensure, as far as possible, the protection of human rights and fundamental freedoms.

In addition, the UN trains its structures to monitor the situation, to intervene when the situation in some regions is unstable and international involvement is required. The key point, however, is that laws exist everywhere, what really matters is that they are actually respected.

Genocide, according to the 1948 Genocide Convention, is the act of attacking members of a particular target group with the intent to destroy this target group 'as such.'[4] Meanwhile, a target group of genocide must constitute a stable group that can be described as a "national, ethnic, racial or religious group." The members of a political group cannot, therefore, be the target of genocide, though political affiliation may well overlap with such a group.

Although the title of the Convention on the Prevention and Punishment of the Crime of Genocide[5] indicates that its main purpose is both to combat and punish the commission of acts constituting the objective side of this crime, a study of the substance of the provisions of this instrument shows that greater emphasis is placed on the objective of prevention. Undoubtedly, the punishment of a crime is organically linked to its prevention, since the defensive function of criminal law requires

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2 St.-V. Bădescu, *Umanizarea dreptului umanitar (The Humanity of Humanitarian Law)*, Bucharest 2007, p. 291.

3 Cauia A., *Drept internațional umanitar (The International Humanitarian Law)*, Chisinau 2020, p. 294.

4 Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948. The term 'as such' conveys the special intent *(dolus specialis)* requirement of the crime.

5 https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf [access: 12.07.2023].

that the detection and appropriate and prompt punishment of a crime contributes to preventing its future commission.

The 1948 Genocide Convention is, of course, not the only lens through which genocidal violence can be understood.[6] Dirk Moses has observed that the Convention can play a role in "depoliticising" how genocidal violence is spoken about and understood.[7] The central question for students of genocide must be to understand why such violence occurs. Genocide, as argued by Helen Fein, is committed to achieve political goals,[8] while Martin Shaw proposes that genocide is best understood as a "form of war" implemented to destroy "the power of an enemy social group."[9] Focusing purely on proving whether or not a particular case of genocidal violence meets the stringent definitional requirements of the Convention can limit this discussion to a narrow semantics-based debate.[10]

Moreover, the criminalisation of related acts such as complicity in genocide, attempted genocide and, last but not least, public and direct incitement to genocide implies a clear preventive dimension, which is sufficiently imposing, even if the specialists who contributed to the drafting of the Convention decided to exclude from the text of this section acts such as hate speech or racist organisations.

An important role in preventing the crime of genocide has been given to the UN bodies. While opinions have emerged that only the General Assembly and the Security Council have the competence to become involved in situations of suspected genocide, it would be wrong to ignore other bodies, such as the Economic and Social Council (ECOSOC), particularly given the work of the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights. The UN's involvement during the genocide in Rwanda was not only through its main bodies (General Assembly, Security Council, ECOSOC, etc.), but also through its subsidiary bodies.

Referring to the undeniable importance of the General Assembly in shaping the concept of genocide, it should be noted that the starting point is the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide.[11]

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6 J. Melvin, *Mechanics of Mass Murder: A Case for Understanding the Indonesian Killings as Genocide*, Journal of Genocide Research 2017, vol. 19, no. 4.

7 A.D. Moses, *The Problems of Genocide*, Cambridge 2021.

8 H. Fein, *Revolutionary and Antirevolutionary Genocides: A Comparison of State Murders in Democratic Kampuchea, 1975 to 1979, and in Indonesia, 1965 to 1966*, Comparative Studies in Society and History 1993, vol. 35, no. 4, p. 801.

9 M. Shaw, *War and Genocide: Organised Killing in Modern Society*, Oxford 2003, pp. 44–45.

10 J. Melvin, *Mechanics of Mass Murder*…

11 Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948. Entry into force: 12 January 1951, in accordance with article XIII,

Subsequently, the General Assembly developed the concept by adopting a series of resolutions.

Accordingly, referring to the situation in the former Yugoslavia, the General Assembly cited the Convention on the Prevention and Punishment of the Crime of Genocide, drawing a parallel between genocide and ethnic cleansing. The merit of the General Assembly in this context lies in determining to what extent ethnic cleansing remains a crime against humanity and when it can be treated as a form of genocide.

Furthermore, a series of resolutions were adopted by the General Assembly condemning the acts of genocide that took place in 1994 on the territory of Rwanda.[12]

In 1996, a significant step forward was taken by recognising, in certain circumstances, rape and sexual violence as a way of committing genocide. In 1997, the General Assembly, in its resolution on human rights in Cambodia, expressed its "willingness of the United Nations to assist in efforts to investigate the tragic events in Cambodia, including holding accountable those responsible for international crimes such as genocide and crimes against humanity."[13]

The following is a highlight of the General Assembly's subsidiary body – the International Law Commission, which studied a huge amount of material on the concept of genocide, particularly at the stage of drafting the Code of Crimes against the Peace and Security of Mankind.

In 1954, the Commission concluded that the definition accepted by the above-mentioned Convention should be amended, particularly with regard to the acts forming the objective side of the crime, suggesting that the list should be illustrative rather than exhaustive. However, the Commission subsequently changed its mind and opted for the original text of the Convention, stressing the need to comply with a text widely accepted by the international community and the States Parties which participated in the drafting of the document.

In this context, the important role of the UN Security Council in shaping and developing the concept of genocide should also be emphasised. The Security Council's first contribution to the prevention and punishment of the crime of genocide dates back to 1992, when it intervened in the conflict in Bosnia and Herzegovina. Although the Commission of Experts was set up by the Council, it did not have an

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https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf [access: 12.07.2023].

12 Resolution adopted by the General Assembly on 23 December 2003, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/508/56/PDF/N0350856.pdf?OpenElement [access: 12.07.2023].

13 W.A. Schabas, *Genocide in International Law*, Cambridge 2000, p. 457.

express mandate to investigate the crime of genocide, its members considered it to be beyond any doubt within their remit to investigate the events that had taken place on the territory of the former Yugoslavia. The conclusions of the Commission of Experts formed the basis for the decision to set up an ad hoc tribunal to examine the events that took place and to judge those responsible. Although the resolution of 8 May 1993 establishing the International Criminal Tribunal for the former Yugoslavia omitted the use of the reference to genocide, the Tribunal's statute nevertheless recognised the crime of genocide as falling within its jurisdiction.

The Security Council used the term "genocide" to define the peak of the crisis in Rwanda, and this only after whole sessions of debate. The Council considered it imperative to recognise the events which began to unfold in Rwanda in April 1994 as acts of genocide on a wider scale, since their recognition as such would prompt international structures and Member States which have ratified the Convention[14] not only to take a stand but also to act to repress this scourge. Consequently, the number of victims had risen to hundreds of thousands, the Council authorised the deployment of an assistance mission of 5,500 soldiers under the aegis of the UN. According to the data, proposals for assistance came from the USA, Ethiopia, Nigeria, Zambia, Zimbabwe, etc. But the debates continued, which seems strange to say the least: while thousands of Tutsi were being massacred in Rwanda every day, UN members were discussing how to define the theoretical term 'genocide' more accurately and how to adopt a strategic military tactic. Finally, in May 1994, a resolution authorised the intervention of the assistance mission for Rwanda.

However, the preamble to the resolution, while borrowing the definition of genocide stipulated in the Convention, omitted to use the term expressly, stating that "the killing of members of an ethnic group with intent to destroy that group, in whole or in part, constitutes a crime under international law." Subsequent reports have stated that "beyond any doubt, the events unfolded in Rwanda amount to the crime of genocide, as they are marked by large-scale killings of ethnically identified communities and families."

Following these reports, the Security Council established the International Criminal Tribunal for Rwanda on 8 November 1994. Unlike the resolution establishing the International Criminal Tribunal for the former Yugoslavia, in the case of Rwanda, it (the resolution) expressly mentioned "the deep concern caused by the findings of the experts that acts of genocide and other serious violations of

[14] Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277. Adopted in Republic of Moldova on 26 April 1993, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf n [access: 12.07.2023].

international humanitarian law have occurred in Rwanda." The Tribunal also gave itself the prerogative of sentencing the persons responsible for the above violations.

A major contribution in the area of concern with the definition of genocide is recognised in the work of the Economic and Social Council, particularly through its subsidiary bodies. The great merit of the Economic and Social Council in ordering the preparation of a report on the crime of genocide should be emphasised. The Sub-Commission on the Promotion and Protection of Human Rights has been entrusted with this task, specifically, the representative of the United Kingdom of Great Britain and Northern Ireland, Benjamin Whitaker. After a long period of study and research, the report was presented to and accepted by the Sub-Commission in 1985. The report addressed the controversial issue of the Armenian genocide, concluding that the genocide had taken place, based on military tactics, eyewitness testimony and archived official records. B. Whitaker's report was also marked by the formulation of a number of groundbreaking but controversial conclusions. For example, the expert proposed a number of amendments to the Convention, such as the inclusion of political groups, groups identified by sexual orientation within the scope of potential victims of the crime of genocide, the exclusion of responsibility for the execution of superior orders, the extension of the scope of the Convention to cultural genocide, ethnocide and ecocide, amendments which, although they did not lead to a revision of the *Convention*, cannot be denied their high theoretical value.[15]

Research into incitement to hatred and genocide through the media, carried out in 1995, is another merit of the Sub-Commission's investigation. The resolution took as its point of reference the case of "Radio Democratie – La Voix du Peuple," broadcasting in Uvira – a region of Zaire (now Congo), a radio station found responsible for inciting hatred and provoking genocide. Referring to both the Convention on the Elimination of All Forms of Racial Discrimination[16] and the Convention on the Prevention and Punishment of the Crime of Genocide,[17] the Sub-Commission ordered the authorities of *Zaire* – a State Party to

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15 B. Whitaker, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, http://preventgenocide.org/prevent/UNdocs/whitaker [access: 12.07.2023].

16 International Convention on the Elimination of All Forms of Racial Discrimination adopted on 21 December 1965. Adopted in Republic of Moldova on 25 February 1993, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial [access: 12.07.2023].

17 Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948. Entry into force: 12 January 1951, in accordance with Article XIII, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20

the above-mentioned instruments – to take steps to close down the radio station, investigate the situation, collect evidence, and bring the guilty parties before a competent court.

By another resolution in 1995, the Sub-Commission also concluded that "a veritable genocide was committed on a massive, widespread and systematic scale against the civilian population of Bosnia and Herzegovina, often in the presence of the *United Nations forces*."[18] The Human Rights Commission continued its investigations by adopting a series of resolutions on genocide. Thus, in the 1992 resolution, referring to the situation in the former Yugoslavia, the Commission strongly condemned the concept and practice of ethnic cleansing. Although the Commission omitted to use the term 'genocide' expressly, it is clear that this is what it meant, based on a contextual interpretation of the preamble to the resolution: "the destruction of national, ethnic, racial or religious groups," a phrase clearly transcribed from Article 2 of the Convention.

The Commission also became involved in May 1994 at the request of Canada, which asked the Commission to comment on the genocide in Rwanda. An expert, Rene Degni-Segui, was immediately appointed and, after visiting Rwanda, presented his report with the relevant conclusions on the events in that country: "From the definition of the crime of genocide set out in Article 2 of the Convention, it follows that this crime has three constituent elements: it constitutes a criminal act, it is committed with intent to destroy, in whole or in part, a particular group identified as such. While the first condition is not in doubt, given the fact that the massacres were committed and the perpetrators were subjected to cruel, inhuman and degrading treatment, the second condition was even more difficult to establish, given the clear and unequivocal intention resulting from the continuous incitement to killings, launched through the media (in particular radio, television, manifestos). But even in their absence, the intention could be deduced from numerous conclusive facts: preparatory acts of massacres through the distribution of firearms, the training of soldiers, the large number of Tutsi victims. The third condition linking the destruction to the determination of the victim's membership of a particular group, without any other objective and a reason being established, is only apparently and not really problematic, given that the persons were victimised on the basis

on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf [access: 12.07.2023].

18 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), https://www.icj-cij.org/case/91 [access: 12.07.2023].

of selection by Hutu members." Thus, the expert concluded, the crime of genocide took place in Rwanda.[19]

The Commission's intention to enhance the preventive role of the Convention by creating an early warning and intervention system in regions where the political situation is identified as "unstable and volatile" is particularly valuable.

The work of the UN bodies is undoubtedly of colossal importance in defining and punishing the crime of genocide, but the following reference will be made to other ways which, although not reflected in the wording of the Convention, cannot be ignored.

Thus, in one of the drafts of the Convention, it was stated: "Any form of public propaganda which tends, by its systematic and deeply hostile character, to promote genocide or to treat its outbreak as a necessity, or as a legitimate or excusable act, shall be punished." In support of this formulation, it has been argued that this type of propaganda differs in character and resonance from public incitement to genocide (which is treated as a distinct form of the crime in question) in that the author of the propaganda does not simply incite to commit genocide but, if successful, convinces the audience by instilling hatred and enmity in people's consciousness that genocide is objectively necessary, the only solution in the specific case. From this point of view, such propaganda is even more dangerous than incitement to genocide, precisely because of its profound implications for the consciousness of the masses. Moreover, genocide can only take place, if a certain state of mind, a psychological element that can mobilise the perpetrator to commit the crime of genocide, has previously occurred. The representative of the United States of America argued against this wording, citing the right to free expression, which can only be limited, if there is a real and imminent danger of violation of other rights and freedoms. Following the same idea, the condition of real and imminent danger would be met only in the case of incitement, which is already criminalised, whereas propaganda is too abstract. However, the wording in question was also supported, particularly by the USSR, which warned that propaganda of enmity, if not stopped in time, would degenerate into incitement to racial, national or religious hatred, which is essentially a prerequisite for the crime of genocide.

However, despite all the pros, hate speech remained outside the Convention because of its abstract and hard-to-define nature. It was considered that any hostile statement targeting a particular human group could be grounds for prosecution

[19] Report on the situation of human rights in Rwanda / submitted by René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994, https://digitallibrary.un.org/record/228462 [access: 12.07.2023].

for committing a form of the crime of genocide. This would considerably limit the freedom of the press and the right of citizens to information. In addition, during armed conflicts, campaigns to support and raise the morale of the participants in the fighting by discrediting the enemy take place, the aim of these campaigns being to mobilise forces to weaken the enemy and not to propagate the crime of genocide. Last but not the least, this provision could be used as a pretext to justify abuses by governments that do not tolerate criticism, particularly from the press.

The Convention's shortcoming regarding the illegality of hate speech has been filled by other international instruments in the field of human rights protection. For example, Article 7 of the Universal Declaration of Human Rights (UDHR) states: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."[20] Also Article 29 (2) refers to the exceptional situations in which fundamental rights guaranteed by the UDHR may be restricted: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The International Convention on the Elimination of All Forms of Racial Discrimination,[21] adopted in 1965, in Article 4 expressly prohibits any propaganda to promote hatred, reads as follows: "States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of

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20 Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A), https://www.un.org/en/about-us/universal-declaration-of-human-rights [access: 12.07.2023].

21 Adopted on 21 December 1965 by UN General Assembly resolution 2106 (XX), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial [access: 12.07.2023].

another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination."

The International Convention on the Elimination of All Forms of Racial Discrimination has been ratified by more than 150 States. Moreover, these States are subject to a monitoring mechanism in that they are obliged to submit regular reports to the Committee on the Elimination of Racial Discrimination.[22]

Conclusion

In this context we can deduce the main ideas:

- Genocide is the intentional act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, namely: the killing of members of the group; serious injury to the physical or mental integrity of members of the group; the intentional subjection of members of the group to conditions of life calculated to bring about their physical destruction in whole or in part; measures aimed at reducing the birth rate within the group; the forcible transfer of children belonging to another group.
- In the context of international crimes, genocide, because of the values it protects and the involvement of the State as organiser, is an international crime.
- Crimes against humanity, and by implication genocide – as the most serious of these categories of crimes, are more serious than war crimes.
- The Draft Code of Crimes against Peace and Security of Mankind makes it clear that crimes against humanity are more serious than war crimes because of the presence of specific elements (systematic and widespread commission of the acts and awareness of the nature of the acts in question) – which are regarded as aggravating factors.

[22] The Universal Declaration of Human Rights adopted on 10 December 1948. Adopted in Republic of Moldova on 28 July 1990, https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf [access: 12.07.2023].

- The difference in the gravity of the two categories of crimes is also reflected in the provisions of some national laws, which stipulate more severe penalties for crimes against humanity than for war crimes.
- The Rome Statute contains at least three provisions (possibility of self-defence, execution of superior's order and jurisdiction), the analysis of which shows that crimes against humanity and crimes of genocide are more serious than war crimes. A similar view has been taken by the International Criminal Tribunals for the former Yugoslavia and Rwanda.
- Criminal conduct classified as a crime against humanity attracts punishment according to the degree of danger it presents, whereas the same act (with the same material element) classified as a war crime will attract a similar punishment only if aggravating circumstances are found to exist.
- Due to its specific purpose (to destroy all or part of a particular group), genocide has been separated from crimes against humanity as an aggravated case of the latter.
- The principle of non-applicability of the statute of limitations to crimes against the peace and security of mankind, as well as war crimes, reflected in the legislation of the Republic of Moldova, needs to be brought into line with the provisions of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, by excluding the phrase or other crimes provided for in international treaties, to which the Republic of Moldova is a party, from Article 60 (8) and the phrase provided for in Articles 135 to 137, 139, 143 and Article 97 (4).
- With regard to the distinction between the crime of genocide and other similar criminal acts, we deduce that, on the basis of the specific purpose, which is a qualifying sign of genocide, this component is different from the so-called cultural genocide, ethnic cleansing, ecocide, apartheid, biocide – acts that remain criminally punishable under the rules of crimes against humanity or war crimes.
- The UN, through its competent bodies, has helped to develop the concept of genocide, to establish its legal framework and to close a number of gaps by adopting a series of international conventions. By setting up commissions, it tries to ensure monitoring in regions with unstable situations.

The fundamental goal of humanity is to eliminate war from future human history. Until then, no effort must be spared to make war less violent, easing the plight of those who become its victims. Of course, it happens that the best rules are not followed. It is certainly not the fault of those who drafted them. In no legal system are violations treated as evidence that the rules broken were not necessary. On the contrary, human imperfection makes the rule necessary. For a rule to be found to

be violated, such rule must first exist. In the current stage of development of the law of armed conflict, which is constantly extending its reach, it is not the rules that are lacking, but the will to respect them.

Bibliography

Balan O., Rusu V., Nour V., *Drept internațional umanitar (The International Humanitarian Law)*, Chisinau 2003.

Bădescu St.-V., *Umanizarea dreptului umanitar (The Humanity of Humanitarian Law)*, Bucharest 2007.

Cauia A., *Drept internațional umanitar (The International Humanitarian Law)*, Chisinau 2020.

Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), https://www.icj-cij.org/case/91 [access: 12.07.2023].

Fein H., *Revolutionary and Antirevolutionary Genocides: A Comparison of State Murders in Democratic Kampuchea, 1975 to 1979, and in Indonesia, 1965 to 1966*, Comparative Studies in Society and History 1993, vol. 35, no. 4.

The International Convention on the Elimination of All Forms of Racial Discrimination Adopted on 21 December 1965 by UN General Assembly resolution 2106 (XX), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial [access: 12.07.2023].

Melvin J., *Mechanics of Mass Murder: A Case for Understanding the Indonesian Killings as Genocide*, Journal of Genocide Research 2017, vol. 19, no. 4.

Moses A.D., *The Problems of Genocide*, Cambridge 2021.

Schabas W.A., *Genocide in International Law*, Cambridge 2000.

Shaw M., *War and Genocide: Organised Killing in Modern Society*, Oxford 2003.

Report on the situation of human rights in Rwanda / submitted by René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994, https://digitallibrary.un.org/record/228462 [access: 12.07.2023].

Resolution adopted by the General Assembly on 23 December 2003, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/508/56/PDF/N0350856.pdf?OpenElement [access: 12.07.2023].

The Universal Declaration of Human Rights adopted on 10 December 1948. Adopted in Republic of Moldova on 28 July 1990, https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf [access: 12.07.2023].

Whitaker B., *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, http://preventgenocide.org/prevent/UNdocs/whitaker [access: 12.07.2023].

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The validity of R. Lemkin's notion of genocide in the context of Russia's war in Ukraine

Aktualność pojęcia ludobójstwa Rafała Lemkina w kontekście działań Rosji w Ukrainie

Актуальность понятия геноцида Рафаэля Лемкина в контексте действий России в Украине

Актуальність поняття геноциду Рафала Лемкіна в контексті дій Росії в Україні

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Summary: The article presents the figure of the outstanding lawyer Rafał Lemkin. It focuses on his work in the Second Polish Republic, on the international forum until 1939, and outside Poland after 1940. Rafał Lemkin is recognised as the author of the concept and the term 'genocide' and the main animator of the United Nations Convention of December 9, 1948 on the Prevention and Punishment of the Crime of Genocide. The text discusses the evolution of the concept of 'genocide' taking into account Lemkin's social sensitivity. Not only does it cover the influence of Rafał Lemkin's works on the final shape of the definition of genocide but also indicates an analogy between the definition of genocide and the ongoing war in Ukraine, as well as the relevance of his canon to the current times taking into account the threats of new technologies and cultural transformations. Attention was also drawn to his approach to the crime of genocide, which is perceived as controversial in some circles. It was written in response to the need for further exploration of Lemkin's work and with the view to developing research on new areas that may become "crime of crimes" in the present day.

Key words: genocide, Lemkin, international law, Russia, armed conflict

Streszczenie: W artykule przedstawiono sylwetkę wybitnego prawnika Rafała Lemkina. Skupiono się na jego działalności w II Rzeczypospolitej, na forum międzynarodowym do roku 1939 oraz działalności po roku 1940 poza granicami Polski. Rafał Lemkin uważany jest za twórcę pojęcia i terminu „ludobójstwa" oraz głównego animatora Konwencji Organizacji Narodów Zjednoczonych z dnia 9 grudnia 1948 r. w sprawie zapobiegania i karania zbrodni ludobójstwa. W tekście omówiono proces ewolucji pojęcia „ludobójstwa" z uwzględnieniem aspektu wrażliwości społecznej Rafała Lemkina. Poruszono kwestię wpływu dzieł tego autora na końcowy kształt definicji ludobójstwa. Wskazano analogię między zdefiniowaniem ludobójstwa przez Lemkina a trwającą wojną na Ukrainie, podkreślono aktualność jego dzieł w kontekście współczesności, uwzględniając zagrożenia nowych technologii oraz przemian kulturowych. Przywołano nowatorskie i odbierane jako kontrowersyjne w niektórych kręgach podejście Lemkina do przestępstwa zbrodni ludobójstwa. Zwrócono także uwagę na konieczność dalszego prowadzenia studiów nad pracami Lemkina oraz rozwijania badań nad nowymi obszarami, które mogą stać się „zbrodnią zbrodni" w obecnych czasach.

Słowa kluczowe: ludobójstwo, Rafał Lemkin, prawo międzynarodowe, konflikt zbrojny

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Резюме: В данной статье представлена личность выдающегося юриста Рафаэля Лемкина. Основное внимание уделено его деятельности во Второй Речи Посполитой, на международной арене до 1939 г., а также его деятельности после 1940 г. за пределами Польши. Рафаэль Лемкин считается создателем понятия и термина «геноцид» и главным инициатором принятия Конвенции ООН от 9 декабря 1948 г. о предупреждении преступления геноцида и наказании за него. В тексте рассматривается процесс эволюции понятия «геноцид» с учетом аспекта социальной чувствительности Рафаэля Лемкина. Рассматривается вопрос о влиянии работ этого автора на окончательное формирование определения геноцида. Отмечена аналогия между определением геноцида Лемкина и продолжающейся войной в Украине, подчеркнута актуальность его работ в современном контексте, с учетом угроз новых технологий и культурных трансформаций. Напоминается о новаторском и, как считают некоторые, спорном подходе Лемкина к преступлению геноцида. Также обращается внимание на необходимость дальнейшего изучения трудов Лемкина и развития исследований в новых областях, которые могут стать «преступлением преступлений» в наши дни.

Ключевые слова: геноцид, Рафаэль Лемкин, международное право, вооружённый конфликт

Резюме: У статті представлено образ видатного правника Рафала Лемкіна. Основна увага приділяється його діяльності у Другій Речі Посполитій, на міжнародній арені до 1939 року та діяльності після 1940 року за межами Польщі. Рафал Лемкін вважається творцем поняття та терміну "геноцид" і головним натхненником Конвенції Організації Об'єднаних Націй від 9 грудня 1948 року про запобігання та покарання злочину геноциду. У тексті розглядається процес еволюції поняття "геноцид", беручи до уваги аспект соціальної чутливості Рафала Лемкіна. Порушується питання про вплив праць цього автора на остаточний вигляд визначення геноциду. Вказано на аналогію між визначенням геноциду Лемкіна та війною, що триває в Україні, а також підкреслено актуальність його праць у сучасному контексті з огляду на загрози нових технологій та культурних трансформацій. Згадано про новаторський і сприйнятий як суперечливий у деяких колах підхід Лемкіна до злочину геноциду. Також звертається увага на необхідність подальшого вивчення творчості Лемкіна та розвитку досліджень у нових сферах, які можуть стати "злочином злочину" в сучасному світі.

Ключові слова: геноцид, Рафал Лемкін, міжнародне право, збройний конфлікт

Introduction

The phenomenon of genocide has always been present in human history. This can be inferred from archaeological research or ancestral accounts. However, the reaction of state law to this phenomenon came relatively late. Its specificity, i.e. the sanctioning and justification of one group against another, eluded the classical principles of responsibility for a crime.

In the graves found at Helibron, dating to 5,000 BC, many skulls of adults and children were found with clear signs of stone axe blows, but was this genocide in the sense we know it today? Numerous studies suggest that it was. Prehistoric battles and wars between individual peoples as well as entire civilisations were not only aimed at acquiring food or "living space" as was the case in the early 20th century, but also at destroying entire tribes simply because they practised a different lifestyle or belief.

Despite many historical crimes and wars of the 18th century, such as the "extermination of the Vendée" or the 19th century "Black War," i.e. the extermination of the Tasmanian aborigines and the extermination of the population in the Belgian Congo, it was the 20th century, when the world seemed to have reached the peak of its civilisational achievements, that proved to be both the most brutal and the most permeated by the crime of genocide.

There are many examples of it, the most important being the Cambodian Fields, the Sabra and Shatila Massacre, the Katyn Massacre, the Holocaust, the Volhynia Massacre, the Palmiry Massacre, the Srebrenica Massacre, or the Rwandan Genocide.

Unfortunately, the 21st century also began to write its history with tragedies such as the Uyghur genocide, the Darfur Conflict, or the massacres in Ukrainian towns such as Bucha and Izium.

Russia's attack on Ukraine on 24 February 2022 gave rise to the need to analyse this concept. Some commentators, lawyers, and politicians accuse their interlocutors of being too ready to use the term which denotes the gravest crimes and carries the most serious consequences. Similar debates, although not as polarised, were part of the line of defence of the German authors of the greatest human tragedy of the 20th century which was the Second World War. Despite the obvious intentions and consequences of the Holocaust, during the Nuremberg trials, the Germans tried to diminish their guilt and its legal burden, shifting responsibility to their superiors and commanders, whose orders they were "merely" carrying out. The terminology used in the indictments and speeches was also a very important element of the trial. As it is well known, the defendants were convicted for the creation of the extermination machine and the murder of millions of people, and their sentences were carried out, but the term 'genocide' was not mentioned in the indictment itself. This became the reason for combating genocide in international law, so that a similar line of "defence" by arguing that genocide is not formally prohibited would not be adopted again.

That task was undertaken by Rafał Lemkin one of the most eminent Polish lawyers, nominated for the Nobel Peace Prize ten times.[1] He introduced the concept of *genocide* into international law,[2] marking the beginning of the evolution of the term.

1 https://www.nobelprize.org/nomination/archive/show_people.php?id=5366 [access: 10.08.2023].

2 K. Orzeszyna, *Human Rights and Public International Law*, in: *International Human Rights Law*, eds. K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, Warszawa 2023, p. 19.

1. The definition of genocide in Lemkin's work

Lemkin, a Pole of Jewish origin, was born in Grodno. The literature on the subject, especially published in the West, often overlooks the fact that this eminent lawyer began his education and work in Poland. Yet, this was the country that shaped him. His academic views and political activity were clearly influenced by the crimes of the Nazi German regime in Poland. But Rafał Lemkin had already recognised the problem before the outbreak of the Second World War, which indicates that he was inspired by education and Polish culture.

Thanks to the persistence, talent, and dedication of the Polish lawyer, genocide was given a legal definition. How important and needed it was at the time was demonstrated by the words of British Prime Minister Winston Churchill. In his radio address of 24 August 1941, he said: "Since the Mongol invasions of Europe in the Sixteenth Century, there has never been methodical, merciless butchery on such a scale, or approaching such a scale. And this is but the beginning. Famine and pestilence have yet to follow in the bloody ruts of Hitler's tanks. We are in the presence of a crime without a name."[3]

Despite Lemkin's life challenges and the scepticism which he initially encountered, the nameless crime was with time described and included in international and criminal law, but before this happened Rafał Lemkin had to go a long way.[4] Rafał Lemkin, being formed in Polish society, was sensitive to the problem of extermination of certain groups. He confirmed in his biography that Polish literature influenced his academic future. Rafał Lemkin pointed directly to his fascination with the works of Henryk Sienkiewicz, as evidenced by the reminiscence he included at the beginning of his autobiography: "As soon as I could read, I started to devour books on the persecution of religious, racial, or other minority groups. I was startled by the description of the destruction of the Christians by Nero. They were thrown to the lions while the emperor sat laughing on the Roman arena. The Polish writer Henryk Sienkiewicz's book on this subject. 'Quo Vadis', made a strong impression on me, and I read it several times and talked about it often. I realized, vividly, that if a Christian could have called a policeman to help he would not have

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3 J.T. Fussel, *"A Crime without a Name" Winston Churchill, Raphael Lemkin and the World War II Origins of the Word "Genocide"*, http://www.preventgenocide.org/genocide/crimewithoutaname.htm [access: 10.08.2023].

4 T. Lachowski, *Rafał Lemkin – uparty prorok, twórca pojęcia „ludobójstwo" w prawie międzynarodowym*, Instytut De Republica, https://iderepublica.pl/znani-nieznani/indeks/rafal-lemkin/ [access: 5.08.2023].

received any protection. Here was a group of people collectively sentenced to death for no reason except that they believed in Christ. And nobody could help them."[5]

Further on in his autobiography, he described the impression made on him by literature in these words: "Thus my basic mission in life was formulated: to create a law among nations to protect national, racial, and religious groups from destruction."[6]

Reflecting on the significance of Lemkin's youthful sensibility in the evolution of the concept of genocide, it is important to note that without it, and without his innate need to help other people, to ensure their protection, the term would never have arisen, and if it appeared in law at all, it would probably function today in a very truncated form, given the years of resistance to Lemkin's concept. Rafał Lemkin emphasised that danger for several years. And yet the obvious regulation was created with great reluctance.

In October 1933, the Fifth Conference for the Unification of Criminal Law took place in Madrid.[7] Officially, Lemkin was unable to attend it due to financial reasons, but the actual reason was most likely the fact that the Minister of Foreign Affairs did not approve of the trip. Despite this, Lemkin sent his paper entitled "Acts of general (inter-state) danger recognised as crimes of the law of nations." He was determined not to be stopped, and he found a delegate who agreed to present his proposal on his behalf.[8]

It was the demand for the prosecution of "acts of barbarism" that proved to be the foundation of the concept of the crime of genocide promulgated later. Lemkin's innovative focus on violence against a group, rather than against an individual, paved the way for the definition and legitimisation of the Churchillian concept of the "nameless crime." After the outbreak of the Second World War, Lemkin made his way to the United States, where he began working at The Duke University Law School in Durham. Having learnt that most of his fifty relatives had not survived the Holocaust, he resigned from his post and devoted himself unreservedly to his book *Axis Rule in Occupied Europe*, which soon proved to be a breakthrough in genocide research.

Almost at the same time, the Allied states, struck by the scale of the German atrocities, were taking action to punish those guilty of war crimes. On 13 January 1942, a conference at London's Saint James Palace was held. It was organised on

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5 R. Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin*, ed. D.-L. Frieze, New Haven–London 2013, p. 1.

6 Ibidem, p. 2.

7 P. Sands, *Ku pamięci sprawiedliwości: Nieoczekiwane miejsce Lwowa w prawie międzynarodowym – osobista historia*, Palestra 2012, no. 11–12, p. 16.

8 D. Eshet, *Totally Unofficial: Raphael Lemkin and the Genocide Convention*, Brookline, MA 2007, p. 10.

the initiative of Poland and Czechoslovakia and was also attended by the representatives of Belgium, France, Greece, Luxembourg, the Netherlands, Norway, and Yugoslavia.[9] After the conference, chaired by the Polish Prime Minister, General Władysław Sikorski, a declaration was announced. For the first time, the declaration did not stop on condemnation, but explicitly put forward a demand for the judicial punishment of those guilty of violating international law. It was the first voice demanding an ordinary trial of war criminals. The declaration… emphasised that one of the aims of the war from now on was also to punish war criminals by means of the normal judicial procedure, regardless of whether these people had given orders to commit the crimes, whether they themselves had committed them, or whether they had assisted others in committing them.[10] Still, the word 'genocide' was not mentioned.

Rafał Lemkin approached the US political leaders asking them to draft an international treaty criminalising the destruction of entire peoples and their cultures. He succeeded in meeting with Vice President Henry Wallace but failed to obtain his support. So, he wrote a letter to President Roosevelt, urging him to help create a treaty making the extermination of an entire people a "crime above crimes."[11] In response, Roosevelt asked Lemkin for patience. "Patience is good when one is building a road and not looking for a way to save the people being murdered" – Lemkin wrote at the end of 1942. At this time, his parents were sent to the gas chambers of Treblinka.[12]

In January 1944, the United Nations Commission on War Crimes set up by the anti-Hitler coalition began its work. This Commission drafted the Statute of the International Criminal Court, modelled on the Statute of the Hague Tribunal.[13]

In November 1944, Rafał Lemkin's comprehensive book *Axis Rule in Occupied Europe* went to print. It is in this work that the term genocide, formed from the Greek *genos* (race, genus) and Latin *cide* (to kill), appeared for the first time. He titled Chapter 9 *Genocide – A New Term and a New Concept for Destruction of Nations*. It emphasised that: "New concepts need new terms. By 'genocide' we mean

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9 T. Mielcarek, *Ocena sprawności polskiego powojennego wymiaru sprawiedliwości w osądzaniu zbrodni prawa międzynarodowego na przykładzie prac wykonanych przez Główną Komisję Badania Zbrodni Niemieckich w Polsce na terenie obozu karno-śledczego w Żabikowie i wykorzystaniu ich w procesie Arthura Greisera*, Czasopismo Prawno-Historyczne 2019, vol. 71, no. 1, p. 261.

10 *Materiały norymberskie*, eds. T. Cyprian, J. Sawicki, Warszawa 1948, p. 17.

11 S. McFarland, K. Hamer, *Jak ludobójstwo zostało uznane za zbrodnię – dziedzictwo Rafała Lemkina*, Civitas et Lex 2016, vol. 10, no. 2, p. 75.

12 A. Fedorowicz, *Samotny wojownik Lemkin*, Polityka 2015, no. 26, p. 58.

13 E. Rojowska, *Komisja Narodów Zjednoczonych do spraw Zbrodni Wojennych i działalność Polski w ramach jej prac. Zarys problemu*, Studia Prawnoustrojowe 2013, no. 22, pp. 23–24.

the destruction of a nation or ethnic group. This new word, created by the author according to the old principle in the new edition, was formed from the Greek word 'genos' (race, tribe) and the Latin 'cide' (killing), and thus in a similar way to the words 'tyrannicide' (bullying), 'homicide' (murder), 'infanticide' (infanticide) and so on. […] It is intended to signify a coordinated plan of various actions aimed at destroying the basic foundations of the life of national groups, with the aim of annihilating these groups."[14]

Lemkin's conviction of the need for new insights and the creation of new terms probably stemmed from his family and academic experiences. According to Raffael Scheck, the development of the concept (probably between December 1942 and November 1943) was influenced by three factors. First, Lemkin shared a peculiar understanding of the Nazi regime's motives in the Second World War, namely the idea that Hitler, by waging a war on foreign peoples rather than states, was cynically calculating that even a militarily defeated Germany would dominate an impoverished and decimated Europe after the war.[15] Lemkin had already made that conclusion in the introduction to his work *Axis Rule*: "The picture of coordinated German techniques of occupation must lead to the conclusion that the German occupant has embarked upon a gigantic scheme to change, in favor of Germany, the balance of biological forces between it and the captive nations for many years to come. The objective of this scheme is to destroy or to cripple the subjugated peoples in their development so that, even in the case of Germany's military defeat, it will be in a position to deal with other European nations from the vantage point of numerical, physical, and economic superiority. Despite the bombings of Germany, this German superiority will be fully evident after hostilities have ceased and for many years to follow, when, due to the present disastrous state of nourishment and health in the occupied countries, we shall see in such countries a stunted post-war generation, survivors of the ill fed children of these war years."[16]

Lemkin's thesis about Germany's aims and actions was so shocking to representatives of such powers as the US that it was either disbelieved or ignored. Unfortunately, these words turned out to be prophetic, as could be observed when looking at the German state even many years after the war. Lemkin's conclusions should

14 R. Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation Analysis of Government, Proposals for Redress*, Carnegie Endowment for International Peace, Division of International Law, Washington 1944, p. 79.

15 R. Scheck, *Raphaël Lemkin's Derivation of Genocide from His Analysis of Nazi-Occupied Europe*, Genocide Studies and Prevention: An International Journal 2019, vol. 13, no. 1, pp. 113–129.

16 R. Lemkin, *Axis Rule in Occupied Europe*…, p. XI.

serve as an argument for states that are now making legal demands for reparations from Germany. Unfortunately, they do not.

Moreover, Lemkin claimed that the German plan for the war, whether won or not, had already been adopted before the war began: Thus the German people in the post-war period would be in a position to deal with other European peoples from the vantage point of biological superiority.[17] He repeated his thesis in his autobiography: "Hitler intends to change the whole population structure of Europe for a thousand years – which means virtually forever. Certain nations and races will disappear completely or be crippled indefinitely. Even in the case of German defeat, the Germans have it planned that these remaining nations will have to lean on Germany to stay alive. The Germans are trying to defeat and destroy not governments, but peoples."[18]

Nowadays the same seems to be true about Russia, whose actions at this stage of the war are aimed at isolating Ukraine and preventing Ukrainians from joining the EU or NATO, thus making Ukraine dependent on Russia for years, even if Russia loses the war. On 17 March 2023, the International Criminal Court issued an arrest warrant on Vladimir Putin and the Russian Children's Rights Advocate Maria Lvova-Belova. The judges found that there were real grounds to believe that Putin was responsible for war crimes involving the unlawful deportation of children from the occupied territories of Ukraine to Russia.[19] This indicates Rafał Lemkin's complete and systemic grasp of the issue. The course of the war in Ukraine confirms that the same patterns of action are used and the same motivations are behind it.

It is important to note that Lemkin's original 1944 definition was: "Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an

17 Ibidem, p. 81.

18 R. Lemkin, *Totally Unofficial*…, p. 109.

19 *Międzynarodowy Trybunał Karny wydał nakaz aresztowania Putina*, Polska Agencja Prasowa, 17.03.2023, https://www.pap.pl/aktualnosci/news%2C1549962%2Cmiedzynarodowy-trybunal-karny-wydal-nakaz-aresztowania-putina.html [access: 16.08.2023].

entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group."[20]

Jonathan Hobson pointed out: "The first significant appearance of the term genocide after Lemkin's inception of the term in 1944 was during the trials in Nuremburg and Tokyo after the Second World War. These trials were based on two important pieces of legislation: the 'Charter of the International Military Tribunal,' which was presented in June 1945 and formed the basis for the trials of Nazi party members at Nuremburg, and in September 1945, the 'International Military Tribunal for the Far East Charter,' which was the basis for trials of Japanese prisoners in Tokyo. […] The legislation adopted as part of the trials at Nuremburg and Tokyo were important for several reasons. Common to both trials was a list of three crimes: crimes against peace, war crimes, and crimes against humanity, one of the first occasions on which such serious acts of widespread violence, aggression, and destruction were codified at an international level."[21]

Also during the closing speeches, the term was used by the British and French prosecutors, and during the trial itself Lemkin's book was very often referred to.[22] Rafał Lemkin took further steps to criminalise genocide. He devoted himself entirely to the work of having the UN implement a convention that would prevent the "crime above crimes."

According to Sam McFarland and Catherine Hamer: "Following the conclusion of the Nuremberg trials, Lemkin set about persuading the newly formed United Nations to recognise genocide as a violation of international law. In early 1946, he travelled to Lake Success (New York), where the initial UN meetings were held. He was there 'totally unofficial' (totally unofficial), as the title of his autobiography says, but this did not prevent him from continuing his struggle. He accosted delegates and correspondents in the corridors, puzzling them, saying: 'You and I must change the world.'"[23]

Lemkin himself wrote: "First, I wrote a draft resolution on the soft sofa in the Delegates' Lounge. Then I let it be mimeographed by the U.N. because it is easier to talk about a draft proposal with the document before one's eyes. The draft resolution modestly asked the U.N. to study genocide with the view of establishing it as an

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20 R. Lemkin, *Axis Rule in Occupied Europe*…, p. 79.

21 J. Hobson, *Prosecuting Lemkin's Concept of Genocide: Successes and Controversies*, Genocide Studies and Prevention: An International Journal 2019, vol. 13, no. 1, p. 20.

22 R. Szawłowski, *Rafał Lemkin (1900–1959) polski prawnik, twórca pojęcia „ludobójstwo"*, in: *Zbrodnie przeszłości. Opracowania i materiały prokuratorów IPN*, vol. 2. *Ludobójstwo*, eds. R. Ignatiew, A. Kura, Warszawa 2008, p. 15.

23 S. McFarland, K. Hamer, *Jak ludobójstwo*…, p. 78.

international crime, like piracy, trade in children, and slavery. I stressed that genocide had happened throughout history and inflicted great losses on mankind and culture. I thought the draft should not demand too much, so that the delegations might make it stronger. The main thing is not to frighten by too-bold demands."[24]

The definition was so broad that it found its opponents; mainly the Soviet Union, where large-scale killings and persecution of political dissidents were the norm, but also Britain, which feared the consequences of its colonial past, and which described the convention as a complete waste of time, given that if genocide was occurring somewhere, it was in conditions where no international convention would apply.[25] As Alexa Stiller reminds us, a UN resolution on genocide was successfully adopted on 11 December 1946. In contrast to the later Convention for the Prevention of Genocide of December 1948, the 1946 resolution was not limited to mass murder and still contained the cultural extermination of groups. At the same time, however, the aspect of forced resettlement and forced assimilation, unlike Lemkin's original concept, had already disappeared…[26]

Lemkin's reactions were described in detail by Samantha Power: "When reporters looked for Lemkin immediately after the Convention was passed on December 9, 1928, they could not find him in any way. At last, they found him in the evening, sitting alone and weeping, or rather, sobbing. And this man, who had previously imposed himself directly on journalists, now asked them to leave him alone… In doing so, he described the Convention as an 'epitaph on the grave of his mother, who died in Poland at the hands of the Germans' and as a token of recognition that 'she and many millions of lives did not die in vain.'"[27]

Despite this, Lemkin felt disappointed and bitter because of being unaware of what fruit his work would bear in the future. William Schabas pointed out an important aspect in the context of the progressive effects of Lemkin's work over time: "Since 1948, the law concerning crimes against humanity has evolved substantially. That crimes against humanity may be commited in time of peace as well as war has been recognized in the case law of the *ad hoc* international tribunals, and codified in the Rome Statute. Arguably, the obligations upon States found in the Genocide Convention now apply *mutatis mutandis*, on a customary basis, in the case of crimes against humanity. Therefore, the alleged gap between crimes against

24 R. Lemkin, *Totally Unofficial*…, p. 122.

25 J. Cooper, *Raphael Lemkin and the Struggle for the Genecide Covention*, New York 2008, p. 94.

26 A. Stiller, *The Mass Murder of the European Jews and the Concept of 'Genocide' in the Nuremberg Trials: Reassessing Raphaël Lemkin's Impact*, Genocide Studies and Prevention: An International Journal 2019, vol. 13, no. 1, p. 163.

27 S. Power, *"A Problem from Hell": America and the Age of Genocide*, New York 2002, p. 60.

humanity and genocide has narrowed considerably. Speaking of the relative gravity of crimes against humanity, the International Commission of Inquiry on Darfur said: 'It is indisputable that genocide bears a special stigma, for it is aimed at the *physical obliteration* of human groups. However, one should not be blind to the fact that some categories of crimes against humanity may be similarly heinous and carry an equally grave stigma.'"[28]

Professor Lemkin, a great legal mind, nominated for the Nobel Prize ten times, died on 28 June 1959 in New York after he collapsed at a bus stop. He was returning from a publishing house preparing his autobiography, in which he told the story of his life and his fight to prevent the crime of genocide. Only four people attended his funeral.

Conclusion

Although Lemkin passed away alone, his legacy has forever changed international law and the understanding of what the 'Crime of Crimes' is. The timeliness of his work is particularly striking now, more than 80 years after the outbreak of the Second World War. Lemkin can be boldly called a prophet of law, especially when we analyse his theories on cultural genocide in the present day. Lemkin's innovative approach shocked his academic and political contemporaries. One thing is certain: there is a great need to develop his legal thought. To paraphrase the great jurist, these times call for another, new perspective on the processes taking place in societies around the world.

There are online tools used to stupefy entire nations under the guise of entertainment. The fact that the popular Chinese platform TikTok has been banned and blocked in many countries and European institutions is a wake-up call. Citing national security reasons, India has blocked access to 59 Chinese smartphone apps. The blocking of TikTok, which has 120 million users in India, is expected to be the most severe. The sanctions are a response to the border conflict with China. In a statement cited by *The Indian Express* daily newspaper, the Indian Ministry of Information Technology quotes the theft and sending of users' data to servers outside India as the reason for blocking mobile apps. The collection and profiling of this data by elements hostile to India's national security and defence, which strikes at India's sovereignty and integrity, requires extraordinary countermeasures, the ministry wrote.[29]

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[28] W. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed., New York, 2009, pp. 14–15.

[29] U. Gwiazda, *TikTok w Indiach zablokowany. Powód? Względy bezpieczeństwa*, RMF24, 30.06.2020, https://www.rmf24.pl/fakty/swiat/news-tiktok-w-indiach-zablokowany-powod-wzgledy-bezpieczenstwa,nId,4583984#crp_state=1 [access: 20.08.2023].

The proliferation of destructive content changes culture and identity, and increasingly leads to the death of people who, influenced by "online trends," engage in life-threatening behaviours to feel part of a fictitiously created "community." A similar threat is posed by the propagation of religious sects, mainly in the radical Islamist trend, or the drug cartels created by left-wing extremists in Colombia. Venezuelan President Hugo Chavez, who died in 2013, was pursuing a plan to flood the US with drugs from the Colombian leftist guerrilla Revolutionary Armed Forces of Colombia (FARC), the Madrid daily El Mundo reported. This was thought to be a form of warfare against the US.[30] These threats may seem distant and exotic, but they are an ongoing process and, in the long run, a real threat to the integrity of societies. Europe, which is experiencing a crisis of the family, has been promoting militant atheism and the greatest of crimes, abortion, for many years. Thus, it is also putting itself in danger of self-destruction. In view of the changing world, new tools and systems of political and cultural warfare, a system of effective war reparations, but also ways of preventing non-military destruction, must be constantly developed. This is why it is important to return to the work of Lemkin, who described very clearly what we face as a world: "Genocide is the destruction of a particular national and ethnic group […] it does not necessarily mean the immediate destruction of a nation, except when carried out by the mass murder of all members of the group. Rather, it is meant to imply a coordinated plan of diverse actions aimed at the annihilation of the group itself. The aim of such a plan would be to disintegrate the political and social institutions, culture, language, national sentiments, religion and economic basis of existence of national groups, as well as to take away the personal security, freedom, health, dignity and even the lives of individuals belonging to such groups. Genocide is directed against the national group as a whole, and its actions are directed against individuals not as individuals but as members of the national group. […] Genocide has two phases: the first, the destruction of the national ways of life of the oppressed group; the second, the imposition of the national ways of life of the oppressor."[31]

Genocide is a process, not an event. What distinguishes the 'Crime of Crimes' from other crimes is the *dolus specialis*; the special intention, which informs the perpetrators about their responsibility when they commit specific acts of violence. Lemkin noted the homicidal processes of his time and predicted that they would

30 M. Zatyka, *Media: Prezydent Wenezueli chciał zalać USA narkotykami od FARC*, Bankier.pl, 13.09.2019, https://www.bankier.pl/wiadomosc/Media-Prezydent-Wenezueli-chcial-zalac-USA-narkotykami-od-FARC-7737985.html [access: 20.08.2023].

31 R. Lemkin, *Rządy państw Osi w okupowanej Europie. Prawa okupacyjne, analiza rządzenia, propozycje zadośćuczynienia*, trans. A. Bieńczyk-Missala et al., Warszawa 2013, p. 110.

recur. This is precisely why he was so concerned about countering genocide. Over 136 states have committed themselves to the prevention of genocide, and the prohibition of genocide is *ius cogens*; that is, a peremptory norm so fundamental that no state can deviate from it. It is only up to us to recognise new destructive processes…

Bibliography

Cooper J., *Raphael Lemkin and the Struggle for the Genocide Covention*, New York 2008.

Eshet D., *Totally Unofficial: Raphael Lemkin and the Genocide Convention*, Brookline, MA 2007.

Fedorowicz A., *Samotny wojownik Lemkin*, Polityka 2015, no. 26.

Fussel J.T., *"A Crime without a Name" Winston Churchill, Raphael Lemkin and the World War II Origins of the Word "genocide"*, http://www.preventgenocide.org/genocide/crimewithoutaname.htm [access: 10.08.2023].

Gwiazda U., *TikTok w Indiach zablokowany. Powód? Względy bezpieczeństwa*, RMF24, 30.06.2020, https://www.rmf24.pl/fakty/swiat/news-tiktok-w-indiach-zablokowany-powod-wzgledy-bezpieczenstwa,nId,4583984#crp_state=1 [access: 20.08.2023].

Hobson J., *Prosecuting Lemkin's Concept of Genocide: Successes and Controversies*, Genocide Studies and Prevention: An International Journal 2019, vol. 13, no. 1, DOI: 10.5038/1911-9933.13.1.1640.

Lachowski T., *Rafał Lemkin – uparty prorok, twórca pojęcia „ludobójstwo" w prawie międzynarodowym*, Instytut De Republica, https://iderepublica.pl/znani-nieznani/indeks/rafal-lemkin/ [access: 5.08.2023].

Lemkin R., *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, Carnegie Endowment for International Peace, Division of International Law, Washington 1944.

Lemkin R., *Rządy państw Osi w okupowanej Europie. Prawa okupacyjne, analiza rządzenia, propozycje zadośćuczynienia*, trans. A. Bieńczyk-Missala et al., Warszawa 2013.

Lemkin R., *Totally Unofficial: The Autobiography of Raphael Lemkin*, ed. D.-L. Frieze, New Haven–London 2013.

Materiały norymberskie, eds. T. Cyprian, J. Sawicki, Warszawa 1948.

McFarland S., Hamer K., *Jak ludobójstwo zostało uznane za zbrodnie – dziedzictwo Rafała Lemkina*, Civitas et Lex 2016, vol. 10, no. 2, DOI: 10.31648/cetl.2306.

Mielcarek T., *Ocena sprawności polskiego powojennego wymiaru sprawiedliwości w osądzaniu zbrodni prawa międzynarodowego na przykładzie prac wykonanych przez Główną Komisję Badania Zbrodni Niemieckich w Polsce na terenie obozu karno-śledczego w Żabikowie i wykorzystaniu ich w procesie Arthura Greisera*, Czasopismo Prawno-Historyczne 2019, vol. 71, no. 1.

Międzynarodowy Trybunał Karny wydał nakaz aresztowania Putina, Polska Agencja Prasowa, 17.03.2023, https://www.pap.pl/aktualnosci/news%2C1549962%2Cmiedzynarodowy-trybunal-karny-wydal-nakaz-aresztowania-putina.html [access: 16.08.2023].

The Nobel Prize, Nomination archive, https://www.nobelprize.org/nomination/archive/show_people.php?id=5366 [access: 10.08.2023].

Orzeszyna K., *Human Rights and Public International Law*, in: K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *International Human Rights Law*, Warszawa 2023.

Power S., *"A Problem from Hell": America and the Age of Genocide*, New York 2002.

Rojowska E., *Komisja Narodów Zjednoczonych do spraw Zbrodni Wojennych i działalność Polski w ramach jej prac. Zarys problemu*, Studia Prawnoustrojowe 2013, no. 22.

Sands P., *Ku pamięci sprawiedliwości: Nieoczekiwane miejsce Lwowa w prawie międzynarodowym – osobista historia*, Palestra 2012, no. 11–12.

Schabas W., *Genocide in International Law: The Crime of Crimes*, 2nd ed., New York 2009.

Scheck R., *Raphaël Lemkin's Derivation of Genocide from His Analysis of Nazi-Occupied Europe*, Genocide Studies and Prevention: An International Journal 2019, vol. 13, no. 1, DOI: 10.5038/1911-9933.13.1.1584.

Stiller A., *The Mass Murder of the European Jews and the Concept of 'Genocide' in the Nuremberg Trials: Reassessing Raphaël Lemkin's Impact*, Genocide Studies and Prevention: An International Journal 2019, vol. 13, no. 1, DOI: 10.5038/1911-9933.13.1.1610.

Szawłowski R., *Rafał Lemkin (1900–1959) polski prawnik, twórca pojęcia „ludobójstwo"*, in: *Zbrodnie przeszłości. Opracowania i materiały prokuratorów IPN*, vol. 2. *Ludobójstwo*, eds. R. Ignatiew, A. Kura, Warszawa 2008.

Zatyka M., *Media: Prezydent Wenezueli chciał zalać USA narkotykami od FARC*, Bankier.pl, 13.09.2019, https://www.bankier.pl/wiadomosc/Media-Prezydent-Wenezueli-chcial-zalac-USA-narkotykami-od-FARC-7737985.html [access: 20.08.2023].

Materiały źródłowe / Source materials

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Jedenasta nadzwyczajna sesja specjalna
5 punkt porządku
Pismo Stałego Przedstawiciela Ukrainy przy ONZ
z dnia 28 lutego 2014 r. skierowane do Przewodniczącego Rady Bezpieczeństwa (S/2014/136)

Rezolucja przyjęta przez Zgromadzenie Ogólne w dniu 23 lutego 2023 r. *[Bez odniesienia do Komitetu Głównego (A/ES-11/L.7)]* ES–11/6. Zasady Karty Narodów Zjednoczonych stanowiące podstawę powszechnego, sprawiedliwego i trwałego pokoju na Ukrainie

Resolution adopted by the General Assembly on 23 February 2023
ES-11/6. Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine

Резолюция, принятая Генеральной Ассамблеей ООН 23 февраля 2023 года
ES-11/6. Принципы Устава Организации Объединённых Наций, лежащие в основе достижения всеобъемлющего, справедливого и прочного мира на Украине

Резолюція прийнята Генеральною Асамблеєю 23 лютого 2023 року
ES-11/6. принципи Статуту Організації Об'єднаних Націй, що забезпечують основу для загального, справедливого і тривалого миру в Україні

tłum. z j. ang. EDYTA KRZYSZTOFIK
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Zgromadzenie Ogólne,
przywołując cele i zasady zawarte w Karcie Narodów Zjednoczonych,

przywołując również wynikające z artykułu 2 Karty Narodów Zjednoczonych zobowiązanie wszystkich państw do powstrzymywania się w swoich stosunkach międzynarodowych od groźby użycia siły lub użycia jej przeciwko integralności terytorialnej lub niepodległości politycznej któregokolwiek państwa, lub w jakikolwiek inny sposób niezgodny z celami Organizacji Narodów Zjednoczonych, oraz do rozstrzygania sporów międzynarodowych środkami pokojowymi,

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potwierdzając, że żadne zajęcie terytorium wynikające z groźby użycia siły lub użycia siły nie będzie uznawane za legalne,

przywołując istotne rezolucje przyjęte podczas jedenastej nadzwyczajnej sesji specjalnej oraz rezolucję 68/262 z dnia 27 marca 2014 r.,

podkreślając, że rok po inwazji na Ukrainę na pełną skalę osiągnięcie powszechnego, sprawiedliwego i trwałego pokoju stanowiłoby znaczący wkład we wzmocnienie międzynarodowego pokoju i bezpieczeństwa,

przywołując postanowienie Międzynarodowego Trybunału Sprawiedliwości z dnia 16 marca 2022 r.[1],

ubolewając nad strasznymi konsekwencjami dla praw człowieka i skutkami humanitarnymi agresji Federacji Rosyjskiej na Ukrainę, w tym ciągłymi atakami na infrastrukturę krytyczną w całej Ukrainie o niszczycielskich skutkach wobec ludności cywilnej, oraz wyrażając poważne zaniepokojenie dużą liczbą ofiar wśród ludności cywilnej, w tym kobiet i dzieci, liczbą osób wewnętrznie przesiedlonych i uchodźców potrzebujących pomocy humanitarnej, a także popełnionymi w stosunku do dzieci i znęcaniem się nad dziećmi,

odnotowując z głębokim zaniepokojeniem niekorzystny wpływ wojny na światowe bezpieczeństwo żywnościowe, energię, ochronę i bezpieczeństwo nuklearne oraz na środowisko,

1. *Podkreśla* potrzebę jak najszybszego osiągnięcia powszechnego, sprawiedliwego i trwałego pokoju w Ukrainie zgodnie z zasadami Karty Narodów Zjednoczonych;
2. *Przyjmuje i podkreśla* zdecydowane wsparcie dla wysiłków Sekretarza Generalnego i Państw Członkowskich na rzecz promowania powszechnego, sprawiedliwego i trwałego pokoju w Ukrainie, zgodnego z Kartą, w tym z zasadami suwerennej równości i integralności terytorialnej państw;
3. *Wzywa* państwa członkowskie i organizacje międzynarodowe do podwojenia wsparcia dla wysiłków dyplomatycznych na rzecz osiągnięcia powszechnego, sprawiedliwego i trwałego pokoju w Ukrainie, zgodnego z Kartą;
4. *Potwierdza* swoje zaangażowanie na rzecz suwerenności, niepodległości, jedności i integralności terytorialnej Ukrainy w jej granicach uznanych na arenie międzynarodowej, włączając w ten zakres również jej wody terytorialne;
5. *Ponawia* swoje żądanie, aby Federacja Rosyjska natychmiast, całkowicie i bezwarunkowo wycofała wszystkie swoje siły zbrojne z terytorium Ukrainy w jej granicach uznanych przez społeczność międzynarodową i wzywa do zaprzestania działań wojennych;

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[1] Zob. *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 4* (A/77/4), paras. 189–197.

6. *Żąda*, aby traktowanie przez strony konfliktu zbrojnego wszystkich jeńców wojennych było zgodne z postanowieniami Konwencji Genewskiej dotyczącymi traktowania jeńców wojennych z dnia 12 sierpnia 1949 r.[2] oraz I Protokołu dodatkowego do Konwencji Genewskich z 1949 r.[3], a także wzywa do całkowitej wymiany jeńców wojennych, uwolnienia wszystkich bezprawnie przetrzymywanych osób oraz powrotu wszystkich internowanych i ludności cywilnej przymusowo przewożonej i deportowanej, w tym dzieci;
7. *Wzywa* do pełnego wywiązania się stron konfliktu zbrojnego z ich zobowiązań wynikających z międzynarodowego prawa humanitarnego do stałej dbałości o oszczędzenie ludności cywilnej i obiektów cywilnych, zapewnienia bezpiecznego i niezakłóconego dostępu pomocy humanitarnej do osób potrzebujących oraz powstrzymywania się od atakowania, niszczenia, usuwania lub czynienia bezużytecznymi przedmiotów niezbędnych do przetrwania ludności cywilnej;
8. *Wzywa* także do natychmiastowego zaprzestania ataków na infrastrukturę krytyczną Ukrainy oraz wszelkich celowych ataków na obiekty cywilne, w tym budynki mieszkalne, szkoły i szpitale;
9. *Podkreśla* potrzebę zapewnienia poniesienia odpowiedzialności za najpoważniejsze przestępstwa prawa międzynarodowego popełnione na terytorium Ukrainy w drodze odpowiednich, sprawiedliwych i niezależnych dochodzeń oraz ścigania na szczeblu krajowym lub międzynarodowym, a także zapewnienia sprawiedliwości wszystkim ofiarom i zapobiegania przyszłym przestępstwom;
10. *Nakłania* wszystkie państwa członkowskie do współpracy w duchu solidarności w celu zajęcia się globalnym skutkami wojny dla bezpieczeństwa żywnościowego, energii, finansów, środowiska oraz ochrony i bezpieczeństwa nuklearnego, podkreśla, że ustalenia dotyczące powszechnego, sprawiedliwego i trwałego pokoju w Ukrainie powinny uwzględnić te czynniki i wzywa państwa członkowskie do wspierania Sekretarza Generalnego w jego wysiłkach mających na celu zaradzenie tym skutkom;
11. *Postanawia* odroczyć czasowo XI nadzwyczajną sesję specjalną Zgromadzenia Ogólnego i upoważnić Przewodniczącego Zgromadzenia Ogólnego do wznowienia jej posiedzeń na wniosek Państw Członkowskich.

19. posiedzenie plenarne
23 lutego 2023 r.

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2 United Nations, *Treaty Series*, t. 75, nr 972.
3 Tamże, t. 1125, nr 17512.

Recenzje i artykuły recenzyjne / Reviews and review articles

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Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of that State. Commentary, ed. Witold Klaus, Wolters Kluwer, Warsaw 2022, pp. 492

Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz, red. Witold Klaus, Wolters Kluwer, Warszawa 2022, ss. 492

Закон «О помощи гражданам Украины в связи с вооружённым конфликтом на территории этого государства». Комментарий, ред. Витольд Клаус, Wolters Kluwer, Варшава 2022, 492 с.

Закон Про допомогу громадянам України у зв'язку зі збройним конфліктом на території цієї держави. Коментар, ред. Вітольд Клаус, Wolters Kluwer, Варшава 2022, сс. 492

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On 24 February 2022, a momentous event occurred that left an indelible mark on Europe and the global community. After eight years of persistent conflict, Russia launched a full-scale aggression against Ukraine. The ramifications of this shocking episode were profound, prompting the displacement of over 6 million refugees from Ukraine, with a staggering 5 million seeking refuge in Europe.[1] Notably, this crisis engendered an unprecedented response from the Polish populace, who exhibited exceptional altruism by assisting their newly arrived neighbours. The extent of Polish engagement spanned various facets, encompassing transportation from border areas to major urban centers, provision of lodgings in private residences, aid in securing employment, and a myriad of other supportive activities.

In addition to the grassroots efforts of Polish citizens, international initiatives were also conspicuous. Foremost among these was the activation of Directive 2001/55/EC[2] on 4 March 2022, by the Council of the EU at the behest of the European Commission. Enacted on 20 July 2001, this directive outlines minimum standards for granting

1 Data as of 11 July 2023, provided by the Office of the UN High Commissioner for Refugees, UNHCR, https://data.unhcr.org/en/situations/ukraine [access: 12.11.2023].

2 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212/12, 7.07.2001, pp. 12–23.

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temporary protection during mass influxes of displaced persons, with an emphasis on fostering an equitable distribution of efforts among Member States. Significantly, this marked the inaugural implementation of the directive, which seeks to streamline the provision of temporary protection for those fleeing affected regions through a less formalized and more expedited administrative process. Additionally, member states are obligated to furnish social assistance, accommodation, medical care, and educational support to the displaced individuals.

Independently of these commendable international endeavors, the Polish legislature proactively addressed the issue by enacting a bespoke law on 12 March 2022. Entitled the "Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of that State,"[3] this legislation reflects a responsive and expeditious approach to addressing the emergent, critical, and challenging situation. The urgency of the legislative process is underscored by the date of enactment, 12 March 2022, indicating a swift and decisive response to the unfolding crisis.

In response to the emergence of legislation which, albeit new, was immediately used in practice, as early as in 2022 a publication appeared entitled *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz* (*Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of that State. Commentary*) edited by Dr. habil. Witold Klaus, Professor of the Polish Academy of Sciences. The book is co-authored by Rafał Cieślak, Marcin Górski, Małgorzata Jaźwińska, Ewa Kacprzak-Szymańska, Agnieszka Kwaśniewska-Sadkowska, Patrycja Mickiewicz, Marcin Princ, and Katarzyna Słubik. As the authors point out in the introduction, the commentary was prepared by a team of specialists who have experience in migration law, administrative law, criminal law, foster care, and public finance. A great advantage of this team of authors is that each of them has many years of experience in work involving support for refugees and migrants.

The book was published by Wolters Kluwer Publishing House and has 492 pages including a table of contents, a list of legal acts, literature, an introduction, 116 articles commented consecutively, a list of primary sources, and a detailed description of the authors. The standard commentary's intuitive layout is to be commended, along with "bold text," which allows the reader to quickly find the needed issue. In addition, the commented articles have small tables of contents below the text, which makes navigating through the commentary even easier.

[3] Act of 12 March 2023, Law on Assistance to Citizens of Ukraine in Connection with Armed Conflict on the Territory of Ukraine, Journal of Laws [Dziennik Ustaw] of 2022 item 583 as amended.

Although the book has no chapters, one can undertake to specify the topics it discusses based on the law it comments on. Thus, the commentary discusses the following issues: the principles of legalization and registration of residence, access to the labor market, social benefits, health care, education, legal assistance, organization of aid activities by public agencies, and provisions authorizing institutions to undertake or finance specific activities resulting from the presence of refugees from Ukraine in Poland.

The systematized structure of the commentary also deserves praise. What is more, the authors discuss each issue with remarkable thoroughness. Each commented article begins with an introduction and normative context. In the following stages, very often, if necessary, the exact scope of the subject of the provision is discussed. This is followed by a discussion of the issues relevant to the provision being commented on. With each such analysis, the authors focus on obscurities by providing a range of information that becomes useful for interpretation. Thus, one can see the realization of the authors' assumption indicated in the introduction. The authors of the commentary explain the provisions of the law in detail and offer their interpretation. In the reviewer's opinion, however, the number of references and the accuracy of the analyses carried out do not exclude the reader's independent conclusion.

Due to the comprehensiveness of the work, this review is limited to discussing only its most relevant elements.

In the beginning, the authors focus on a thorough discussion of the scope of the law's subject matter. A very thorough description is offered with the indication of interpretative and practical problems, as well as the amendments made in this area. A further part of the publication discusses the provisions on the legalization of residence of Ukrainian refugees, with detailed guidelines for registration, assigning a PESEL number, taking appropriate photographs, creating a trusted profile, and activating the mObywatel application. In addition, the authors thoroughly discuss the possibilities that offices and institutions can use to implement the indicated tasks.

In the area of employment, of utmost importance is the commentary on Article 22 – the right to work and to register as an unemployed person or job seeker and Article 23 – the right to undertake and carry out economic activity by Ukrainian citizens. From a practical perspective, Ukrainian citizens ask many questions in this area. The authors synthesize the rights and obligations, also accurately presenting the construction of application forms, formalities necessary to meet, or possible penalties. In the content of the commentary, one can also find numerous references to other laws, including those on migrants and refugees. As a result, explanations of

the application of the law to migrants with a different basis for legal residence are also frequently offered.

In the field of child custody, one of the themes thoroughly discussed by the authors is the temporary custody of children. This issue was a completely new solution raising many doubts. However, temporary guardianship is necessary because it enables minor Ukrainian citizens who have been separated from their parents or legal guardians to receive the necessary care in Poland. Thanks to the comprehensive study in the commentary, the reader learns exactly who can be a guardian, and what conditions must be met. Given the novelty of this solution, as well as the extremely rapid dynamics of action towards unaccompanied minors, the commentary becomes an accessible instruction that can be used by everyone.

Given the new difficult situation, allowing Ukrainian citizens to use benefits helps to start a new stage in life. The commentary provides a detailed description of benefits such as family benefits, care benefits, the "500+" child-rearing benefit, Family care capital, and subsidized nursery care. Each benefit is discussed in detail with an indication of who can apply for it and how. This is a great advantage of this work since refugees are unfamiliar with these benefits. It is therefore necessary to indicate exactly what benefits are provided by the Polish legislator, how they can be applied for, as well as to whom they are due and to what extent.

Regarding health care for Ukrainian citizens residing in Poland, the editors discuss in detail key aspects of access to medical benefits. The authors provide a detailed analysis of the various types of healthcare benefits available to Ukrainian citizens covered by the special law. They also explain the principles of providing such benefits and the required documents. This is a comprehensive source of information on health care for Ukrainian citizens in Poland, and the meticulousness of the analysis and the practical tips presented by the authors make this commentary a valuable guide for anyone not only for lawyers but also for civil servants, entrepreneurs or healthcare workers.

According to the law, refugees from Ukraine are guaranteed educational rights on the same basis as Polish citizens. The commentary discusses the scope of these rights, which include preschool education, education in various types of schools, and higher education. The condition for Ukrainian citizens to receive education in Poland is the possession of a document proving identity and Ukrainian citizenship, but the lack of such a document does not exclude the possibility of education, as this can be accessed based on a statement on arrival from the territory of Ukraine due to armed conflict. The authors discuss in detail the types of education and the rules and the necessary documents for being admitted to them. This is a comprehensive guide to educational issues, highlighting key information such as the right

to study at the expense of the state, the possibility of admission on various grounds, and the readiness of Polish schools to integrate with migrants.

To benefit from legal assistance, Ukrainian citizens must submit an application, which may be in written or oral form. The authors discuss in detail the different types of legal aid, explaining the principles of its provision and the required documents. It is a comprehensive source of information on free legal assistance for Ukrainian citizens in Poland upon arrival after 24 February 2022. Reviewers emphasize that this assistance is crucial for migrants, enabling them to resolve issues related to their situation in Poland in a manner consistent with applicable law.

The collective work edited by Dr. habil. Witold Klaus, prof. PAN, entitled *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz*, stands as a commendable and timely contribution to the legal discourse surrounding the humanitarian crisis triggered by Russia's full-scale aggression against Ukraine on 24 February 2022. The commentary is extremely practical. It provides a detailed explanation of each of the concepts. In doing so, the authors use clear and transparent language that can be understood by everyone. The authors themselves point out that the addressees of the commentary are not only lawyers but also government and local government officials, and entrepreneurs. In the author's opinion, the commentary is a perfect instruction for everyone on how to navigate the new situation. The thorough analysis, presented in an exceptionally clear manner, greatly facilitates the understanding of the procedures. It is impossible not to agree with the words of the book's reviewer quoted on the cover of the book by Prof. Dr. habil. Irena Rzeplińska, *Every official implementing the speculative law should have this manual on their desk*.

The commentary merits a positive reception. It is a valuable study and the only one in this area. It does not provide an extensive bibliography or case law, as this is impossible due to the novelty of the legislation. Nevertheless, the authors show their expertise and practical experience by discussing the problems in great detail, along with referring to relevant legislation. As a result, each issue seems to be discussed comprehensively which deserves special praise. As a reviewer who knows the previous achievements of the authors, I can say that the structure chosen for the book is ideal for coping with such a difficult task of preparing a commentary on completely new developments in such a remarkably short time.

Sprawozdania / Reports

STUDIA PRAWNICZE KUL
4 (96) 2023

Nationwide Scientific Conference "Elections and Electoral Law. Standards, Safeguards, Practice", Poznań, 2–3 March 2023

Ogólnopolska Konferencja Naukowa „Wybory i prawo wyborcze. Standardy, gwarancje, praktyka", Poznań, 2–3 marca 2023 r.

Общепольская научная конференция «Выборы и избирательное право. Стандарты, гарантии, практика», Познань, 2–3 марта 2023 года

Загальнопольська наукова конференція "Вибори та виборче право. Стандарти, гарантії, практика", Познань, 2–3 березня 2023 р.

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On 2–3 March 2023, the Faculty of Political Science and Journalism of the Adam Mickiewicz University, Poznań, hosted a scientific conference, "Elections and Electoral Law. Standards, Safeguards, Practice." It was organised by lawyers and political scientists who deal with the issues of elections and electoral law on a daily basis. It is worth noting that this was already the seventh edition of this very important and well-recognised scientific undertaking among election researchers. The event was held under the patronage of local authorities, including Marshal of the Wielkopolska Region, District Governor of Poznań, Mayor of Poznań; local legal professional associations: District Chamber of Legal Advisers in Poznań, Wielkopolska Bar Association, Chamber of Notaries in Poznań and Chamber of Bailiffs in Poznań. Due to the subject matter of the conference, the patrons of the event included, as in previous years, the National Electoral Commission and the National Electoral Office. Other patrons included the Polish Society of Constitutional Law and the Polish Political Science Association. Interestingly, for the first time, the organisers have also invited the Batory Foundation to co-organise the event, entrusting it with the status of an expert partner.

In keeping with the organisers' intentions, the purpose of the conference was to exchange opinions and views and to present the results of research into the broader issues of elections and electoral law, in particular standards and safeguards for democratic elections, electoral behaviour, the practice of applying electoral law, and threats to the electoral process.[1] Addressing these issues ap-

[1] *Elections and Electoral Law. Standards, Safeguards, Practice*, https://wnpid.amu.edu.pl/strona-glowna/kalendarz-wydarzen/wydarzenia/konferencja-naukowe/wybory-i-prawo-wyborcze.-standardy,-gwarancje,-praktyka-2023 [access: 27.03.2023].

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pears eminently justifiable, given both the experience of elections held in recent years and the great dynamics of changes in electoral law. The indicated topics during the conference were considered both in the theoretical and practical context, which was undoubtedly influenced by the choice of speakers. They included not only the representatives of the academic community but also election administration (National Electoral Commission, electoral commissioners, employees of the National Electoral Office), judges, lawyers, representatives of non-governmental organisations and politicians. The two-day conference consisted of ten panels.

The conference began with an opening panel, during which representatives of the organisers and patrons welcomed participants and unanimously stressed the importance of the event for electoral law and practice. The following spoke in turn: Prof. Tadeusz Wallas – Vice-Rector of the Adam Mickiewicz University, Poznań; Prof. Andrzej Stelmach, Dean of the Faculty of Political Sciences and Journalism of the Adam Mickiewicz University; Sylwester Marciniak, Chairperson of the National Electoral Commission; Marek Gola, Deputy Chairperson of the Wielkopolska Regional Assembly; Jan Grabkowski, District Governor of Poznań; Grzegorz Ganowicz, Chairperson of the Poznań City Council; Zbigniew Tur, Deputy Chairperson of the National Council of Legal Advisers; Marek Jessa, Chairperson of the Council of the Chamber of Bailiffs in Poznań; Dr. Andrzej Rataj, President of the Chamber of Notaries in Poznań; and Dr. Katarzyna Golusińska, Treasurer of the Poznań Regional Bar Council.

After the opening part, Plenary Session I was scheduled, chaired by the Honorary President of the Venice Commission, Prof. Dr. habil. Hanna Suchocka (Adam Mickiewicz University). After a brief introduction to the panel's subject matter, the floor was given to Sylwester Marciniak, Chairperson of the National Electoral Commission. The speaker presented the issue of the functioning of the National Electoral Commission, analysing historical experience and referring to future perspectives. The second speaker, Prof. Dr. habil. Jarosław Flis (Jagiellonian University) presented key dilemmas related to proposals to introduce mixed electoral law in Poland. In a sense, this issue was continued by another guest speaker, Prof. Dr. habil. Bartłomiej Michalak (Nicolaus Copernicus University in Toruń), presenting a paper entitled "A mixed system of personalised proportionality in elections to the Sejm of the Republic of Poland." In the last of the speeches scheduled in Session I, Dr. habil. Jacek Zaleśny addressed the problem of the extension of the term of office of local government bodies. This paper, given the many controversies that the adoption of the Act of 29 September 2022 on the extension of the term of

office of local government bodies,[2] was an extremely timely and important voice in the discussion on the value of cyclicity and periodicity of elections in a democratic state under the rule of law.

The next plenary session (II) was moderated by Prof. Dr. habil. Andrzej Szmyt (University of Gdańsk). The first speaker, Prof. Dr. habil. Marek Chmaj (SWPS University, Warsaw) discussed the issue of *vacatio legis* in the case of enacted electoral laws. This issue should be regarded as particularly important in view of the fact that the Polish legislator has not attached importance to this institution and its safeguarding role in the electoral process for many years. The subject of changes in electoral law was continued in his paper by Prof. Dr. habil. Krzysztof Skotnicki (University of Lodz). The Professor discussed the issue of legislative silence in the electoral law. This issue also seems highly topical as the Polish legislator, with almost every subsequent change to the electoral law, disregards the Tribunal and European standards prohibiting making significant changes to the electoral regulations at least six months[3] or a year before the elections.[4] The floor was then taken by Prof. Dr. habil. Ryszard Balicki (University of Wrocław), who gave a speech entitled "Electoral thresholds – the democratic purpose of an undemocratic institution." Panel Session II concluded with a speech delivered by Prof. Dr. habil. Magdalena Musiał-Karg (Adam Mickiewicz University). Prof. Musiał-Karg presented the issue of electoral silence, giving an interesting account of both the theoretical and practical aspects of the functioning of the institution in question.

Plenary Session III was chaired by Prof. Dr. habil. Sławomir Patyra (Maria Curie-Skłodowska University). Three speeches on different aspects of the principles of electoral law were presented during the panel. The first was by Prof. Dr. habil. Krzysztof Urbaniak (Adam Mickiewicz University). The speaker discussed the issue of canvassing in the light of the current Electoral Code, referring mainly to the controversies brought about by the changes in the wording of Article 106 of the said Act. Prof. Dr. habil. Jacek Sobczak (University of Economics and Human Sciences in Warsaw) took the floor as the second speaker in this session, analysing the issue of the principle of directness in electoral law. Panel III ended with a speech

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2 Act of 29 September 2022 on the extension of the term of office of local government bodies, Journal of Laws [Dziennik Ustaw] of 2022 item 2418.

3 The Constitutional Tribunal's judgments: Judgment of the Constitutional Tribunal of 3 November 2006, K 31/06, LEX no. 231197, Judgment of the Constitutional Tribunal of 28 October 2009, Kp 3/09, LEX no. 525654 and Judgment of the Constitutional Tribunal of 20 July 2011, K 9/11, LEX no. 936458.

4 See § II.2.65 of the Explanatory Report to the Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report Adopted by the Venice Commission at its 52nd Plenary Session, 18–19 October 2002, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev2-cor-e [access: 26.03.2023].

by Prof. Dr. habil. Andrzej Stelmach (Adam Mickiewicz University), who tried to find an answer to the question of whether elections in Poland are equal.

Panel Session IV was slightly different. It was organised by the Batory Foundation, the patron of the conference. This panel was special because it was a debate moderated by Dr. Anna Materska-Sosnowska. The participants jointly sought to identify the main threats to the electoral process in Poland while trying to develop recommendations for the future. Debate participants included Krzysztof Izdebski (Batory Foundation), Prof. Jacek Haman (Batory Foundation, University of Warsaw), Prof. Dr. habil. Wojciech Łączkowski (former Chairperson of the National Electoral Commission, Adam Mickiewicz University), Prof. Dr. habil. Bartłomiej Michalak (Batory Foundation, Adam Mickiewicz University) and Judge Jerzy Stępień (retired judge of the Constitutional Tribunal, former President of the Constitutional Tribunal, Lazarski University).

After four highly interesting plenary sessions, identifying a number of legal and practical problems in the organisation of elections and compliance with the standards of the democratic electoral process, parallel panel sessions began. The first of these, moderated by Dr. Natasha Lubik-Reczek (Adam Mickiewicz University), featured several interesting and thematically diverse speeches. First, the floor was taken by Prof. Dr. habil. Joanna Rak (Adam Mickiewicz University), presenting "Medical populism of the ruling camp before and after the 2020 presidential elections in Poland." This was followed by a scheduled speech by Prof. Dr. habil. Przemysław Żukiewicz (University of Wrocław) entitled "Party switching and parliamentarism and democracy: Why inter-party transfers do not violate the so-called 'electoral contract'?" Dr. Tomasz Gąsior (National Electoral Office) discussed the recent changes to the Electoral Code regarding the financing of political parties and election campaigns. The last of the speeches scheduled in this session was by Prof. Dr. habil. Jacek Wojnicki (University of Warsaw) entitled "Never ending story. In search of a parliamentary majority – the case of Bulgaria and Slovakia."

A parallel Panel Session II was held, with Dr. Norbert Gill (Adam Mickiewicz University) as moderator. The topics of the panel focused on vital institutions of electoral law. First, Prof. Dr. habil. Mariusz Jabłoński (University of Wrocław) presented the problem "The person of trust as a personal data controller within the meaning of the GDPR." This topic is undoubtedly worth a broad discussion in connection with the recent amendment of the Electoral Code and the changes to the provisions relating to the processing of voters' data obtained in connection with the social control of the electoral process. The next two papers presented by Grzegorz Gąsior (National Electoral Office) and Dr. Agata Pyrzyńska (University of Szczecin) concerned the institution of the Central Electoral Register, which was introduced

by the Act of 26 January 2023 on amending the Act – Electoral Code and certain other acts.[5] The first speaker discussed the path and rationale for introducing this solution into the Polish legal system, referring to similar institutions operating in other countries. Dr. Agata Pyrzyńska, on the other hand, focused on the advantages of the introduction of the Central Register of Voters for Polish electoral practice and presented controversies related to the contentious mode of entry into force of the provisions on the Register and the entity to which the legislator decided to entrust its maintenance. The last speech of this panel, presented by Dr. Anna Materska-Sosnowska (University of Warsaw) and Dr. Michał Mistygacz (University of Warsaw), dealt with the issue of the dysfunctionality of election protests in Poland in the light of the standard of fair elections.

The second day of the conference saw four panel sessions (III–VI), which were also held in parallel. During Session III, moderated by Prof. Dr. habil. Elżbieta Lesiewicz (Adam Mickiewicz University), four papers were presented. The first, devoted to the situation of visually impaired voters, was delivered by Dr. Radosław Zych (University of Szczecin). Then, Paweł Ruksza, M.A. (Jan Dlugosz University, Częstochowa) discussed "Voters' use of postal voting and voting by proxy in the example of Częstochowa." The next paper by Dr. Marek Woźnicki was "Parliamentary elections in Commonwealth realms." The panel concluded with a speech by Dr. Tomasz Kowalczyk (Kujawy and Pomorze University in Bydgoszcz) on the issue of the hierarchisation of the so-called fundamental principles of electoral law in Poland.

Panel Session IV was moderated by Prof. Dr. habil. Jędrzej Skrzypczak (Adam Mickiewicz University). The programme of the panel included four speeches by Dr. Agata Hauser (Adam Mickiewicz University) entitled "International and European standards concerning the settlement of disputes related to the electoral process," Dr. Robert Kropiwnicki (Member of the Polish Parliament) entitled "Amendment of the Electoral Code of 2023," Dr. Wojciech Mojski (Maria Curie-Skłodowska University) – "The problem of proportionality of the use of big data mechanisms in an election campaign," Dr. Natasza Lubik-Reczek (Adam Mickiewicz University) and Dr. habil. Rafał Reczek (Institute of National Remembrance) entitled "State security organs as an element of the electoral process in the People's Republic of Poland between 1947 and 1989."

The last part of the panel sessions was moderated by Prof. Joanna Rak (Adam Mickiewicz University; Panel V) and Dr. Klaudia Gołębiowska (Adam Mickiewicz University; Panel VI), respectively. Panel V began with a presentation by Dr. Marcin

[5] The Act of 26 January 2023 on amending the Act – Electoral Code and certain other acts, Journal of Laws of 2023 item 497.

Łukaszewski (Adam Mickiewicz University) entitled "No alternative. The specifics of parliamentary elections in Monaco." Then, Wojciech Dąbrówka, M.A. (University of Bialystok) presented "Postal voting in selected European countries. A comparative legal analysis." The next speaker, Rafał Świergiel, M.A. (Adam Mickiewicz University), presented a paper entitled "Parliamentary elections 1989–1997 and the dynamics of the constitutional moment in Poland." The last speaker, Szymon Mankowski, M.A. (Adam Mickiewicz University), focused on the issue of political communication in social media during the 2020 presidential campaign in Poland.

Panel VI opened with a speech by Prof. Dr. habil. Artur Ławniczak (University of Wrocław) entitled "Is secret balloting a dubious and disastrous solution in political law?" This was followed by Prof. Dr. habil. Marcin Rachwał (Adam Mickiewicz University), who discussed the issue of factors affecting the level of voter turnout and formal civic education. At the end of the panel, Prof. Dr. habil. Ivan Pankevych (University of Zielona Góra) gave an interesting speech entitled "Postal voting in selected European countries: a comparative legal analysis."

The conference "Elections and Electoral Law. Standards, Safeguards, Practice" was an excellent opportunity to exchange views, diagnose problems and develop future electoral law proposals. Similarly to previous editions, an incredible value of this event was the opportunity to engage in an interdisciplinary discussion involving lawyers, political scientists and those dealing with electoral issues in theory and practice. Looking at the key problems of the electoral process and electoral law regulation in this way has an excellent scientific effect, as it allows the issues under discussion to be assessed from different perspectives and viewpoints. The issues discussed at the conference showed that elections and electoral law, not least because of their significant variability, are fascinating research areas. We hope that the organisers will also take the trouble to hold another, i.e. eighth, edition of this cyclical, valuable scientific event next year.

Z życia Wydziału /
Faculty activities

STUDIA PRAWNICZE KUL
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DIARIUSZ
Kalendarium ważniejszych wydarzeń naukowych z udziałem pracowników Wydziału Prawa, Prawa Kanonicznego i Administracji KUL kwiecień – czerwiec 2023 r.

DIARY
Calendar of major scientific events with the participation of academic staff of the Faculty of Law, Canon Law and Administration of the John Paul II Catholic University of Lublin
April – June 2023

КАЛЕНДАРЬ МЕРОПРИЯТИЙ
Главные научные события с участием сотрудников Факультета права, канонического права и администрации Люблинского католического университета Иоанна Павла II
апрель – июнь 2023 года

ЖУРНАЛ ПОДІЙ
Календар головних наукових заходів за участю співробітників факультету Права, Канонічного Права та Адміністрації Люблінського католицького університету Івана Павла II
квітень – червень 2023 р.

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Kwiecień

4 kwietnia 2023 r. – ks. dr **Paweł Lewandowski** podczas II Międzynarodowej Konferencji Naukowej nt. *Wartości chrześcijańskie w społeczeństwie cyfrowym* pod honorowym patronatem Ministra Edukacji i Nauki oraz Rektora Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, zorganizowanej przez Wyższą Szkołę Gospodarki Euroregionalnej im. Alcide De Gasperi w Józefowie, Uniwersytet Kardynała Stefana Wyszyńskiego w Warszawie, Katedrę Kościelnego Prawa Publicznego i Konstytucyjnego Katolickiego Uniwersytetu Lubelskiego Jana Pawła II oraz Menedżerską Akademię Nauk Stosowanych w Warszawie, wygłosił referat pt. *Warunki dobrej komunikacji według papieża Franciszka na podstawie orędzi na Światowe Dni Środków Społecznego Przekazu*.

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18 kwietnia 2023 r. – ks. dr **Paweł Lewandowski** podczas Międzynarodowej Konferencji Naukowej nt. *Wolność wiele ma twarzy i imion*, zorganizowanej przez Akademię Wojsk Lądowych im. generała Tadeusza Kościuszki oraz Fundację Campus, wygłosił referat pt. *Stefan Kardynał Wyszyński jako krzewiciel dążeń wolnościowych Polaków*.

27 kwietnia 2023 r. – dr **Paweł Widerski**, podczas XV International Scientific-Practical Conference "Transcarpathian Legal Readings. Law as an Instrument of Resilience and Development in Modern Civilization Challenges", zorganizowanej przez Uzhhorod National University; Comenius University in Bratislava; John Paul II Catholic University of Lublin; Masaryk University; Trnava University in Trnava; University of Cologne; Charles University; University of Graz; "Vasile Goldiș" Western University of Arad; Legal Aid Center for the people who suffered from military invasion, National Academy of Legal Sciences of Ukraine; SHEI "Uzhhorod National University" oraz Center for Ukrainian and European Scientific Cooperation, wygłosił referat pt. *Taking up and pursuit of business activity in the Republic of Poland by a citizen of Ukraine as an individual entrepreneur on the basis of the act of March 12, 2022 on assistance to citizens of Ukraine in connection with armed conflict on the territory of that country*.

28 kwietnia 2023 r. – dr hab. **Elżbieta Szczot**, prof. KUL, podczas XII International Ecumenical-Legal Conference nt. *Decade of Hope. Ten Years of Pope Francis Pontificate*, wygłosiła referat pt. *Dopuszczanie do Komunii św. wiernych rozwiedzionych żyjących w ponownych związkach. Między "Familiaris consortio" a "Amoris laetitia"*.

Maj

5 maja 2023 r. – podczas Międzynarodowej Konferencji Naukowej nt. *Ideologies and State-Church Relations Legal Framework*, zorganizowanej przez Wydział Prawa Uniwersytetu Trnawskiego w Trnavie we współpracy z Uniwersytetem Warmińsko-Mazurskim – Filia w Ełku, Instytutem Nauk o Polityce i Administracji Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach, a także Katedrą Kościelnego Prawa Publicznego i Konstytucyjnego oraz Katedrą Prawa Wyznaniowego na Wydziale Prawa, Prawa Kanonicznego i Administracji KUL, dr **Aneta Maria Abramowicz** wygłosiła referat pt. *Axiological foundations of the constitutional principle of equal rights of religious organizations in Poland*, ks. dr **Paweł Lewandowski** wygłosił referat pt. *The Holy See towards international organizations*, a dr **Agnieszka Romanko** wygłosiła referat pt. *Concordat as an implementation of the principle of cooperation between Church and State*.

8–12 maja 2023 r. – ks. dr **Paweł Lewandowski**, w ramach stypendium z funduszy programu Erasmus+, odbył wyjazd szkoleniowy w Universidade Católica Editora, Universidade Católica Portuguesa w Lizbonie.

9 maja 2023 r. – ks. dr **Paweł Lewandowski**, podczas Międzynarodowej Konferencji Naukowej nt. *Trendy w badaniach naukowych XXI wieku*, zorganizowanej przez Akademię Wojsk Lądowych im. generała Tadeusza Kościuszki we Wrocławiu oraz Fundację Campus w Stalowej Woli, wygłosił referat pt. *Aktualne obszary badawcze w dyscyplinie prawo kanoniczne*.

10 maja 2023 r. – podczas Kongresu Ruchu „Europa Christi" nt. *Kościół – Edukacja – Wychowanie*, zorganizowanego przez Fundację „Myśląc Ojczyzna" im. ks. Infułata Ireneusza Skubisia, Katedrę Kościelnego Prawa Publicznego i Konstytucyjnego KUL, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego oraz Fundację Wigry Pro, ks. prof. dr hab. **Mirosław Sitarz** wygłosił referat pt. *Obowiązek zrodzenia i wychowania potomstwa według Kodeksu Prawa Kanonicznego z 1983 r.*, natomiast dr **Agnieszka Romanko** wygłosiła referat pt. *Szkolnictwo wyższe w prawie Stolicy Apostolskiej*.

11 maja 2023 r. – prof. dr hab. **Dariusz Dudek** podczas VII Międzynarodowej Konferencji Naukowej nt. *Problemy międzynarodowego i krajowego bezpieczeństwa prawnego państw demokratycznych wobec agresji Rosji na Ukrainę: Polska – Słowacja – Ukraina – Niemcy*, zorganizowanej przez Komisję Prawniczą Polskiej Akademii Nauk Oddział w Lublinie, Instytut De Republica w Warszawie, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Wydział Prawa, Prawa Kanonicznego i Administracji KUL, Wydział Prawa i Administracji UMCS w Lublinie, Fundację Polskiej Akademii Nauk, Wydział Prawa Uniwersytetu Trnawskiego w Trnawie na Słowacji, Wydział Prawa Państwowego Uniwersytetu Spraw Wewnętrznych we Lwowie na Ukrainie, Wydział Nauk Prawnych Towarzystwa Naukowego KUL, wygłosił referat pt. *Zmiana Konstytucji RP jako odpowiedź na agresję Rosji na Ukrainę*. Ponadto dr **Karol Adamczewski** podczas Ogólnopolskiej Konferencji Naukowej nt. *Ecclesia vivit lege Romana: drogi przenikania, formy dialogu*, zorganizowanej przez Wydział Prawa i Administracji Uniwersytetu Szczecińskiego, wygłosił referat pt. *Prawo Lameka, zasada talionu, prawo ewangelicznego wybaczenia*.

12 maja 2023 r. – dr hab. **Krzysztof Wiak**, prof. KUL, podczas VII Międzynarodowej Konferencji Naukowej nt. *Problemy międzynarodowego i krajowego bezpieczeństwa prawnego państw demokratycznych wobec agresji Rosji na Ukrainę: Polska – Słowacja – Ukraina – Niemcy*, zorganizowanej przez Komisję Prawniczą Polskiej Akademii Nauk Oddział w Lublinie, Instytut De Republica w Warszawie, Stowarzyszenie

Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Wydział Prawa, Prawa Kanonicznego i Administracji KUL, Wydział Prawa i Administracji UMCS w Lublinie, Fundację Polskiej Akademii Nauk, Wydział Prawa Uniwersytetu Trnawskiego w Trnawie na Słowacji, Wydział Prawa Państwowego Uniwersytetu Spraw Wewnętrznych we Lwowie na Ukrainie, Wydział Nauk Prawnych Towarzystwa Naukowego KUL, wygłosił referat pt. *Ludobójstwo i zbrodnie przeciwko ludzkości w kontekście inwazji Rosji na Ukrainę*.

18 maja 2023 r. – dr **Zuzanna Gądzik** podczas Ogólnopolskiej Konferencji Naukowej nt. *Zwierzęta i prawo*, zorganizowanej przez Uniwersytet Kazimierza Wielkiego w Bydgoszczy, wygłosiła referat pt. *Prawnokarna ochrona zwierząt wykorzystywanych do celów sportowych*.

19 maja 2023 r. – prof. dr hab. **Dariusz Dudek** podczas VI Międzynarodowej Konferencji Naukowej nt. *Władza sądownicza a bezpieczeństwo prawne w państwach demokratycznych w procesie integracji europejskiej: Polska – Słowacja – Ukraina – Niemcy*, zorganizowanej przez Komisję Prawniczą Polskiej Akademii Nauk Oddział w Lublinie, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Wydział Prawa, Prawa Kanonicznego i Administracji KUL, Wydział Prawa i Administracji UMCS w Lublinie, Fundację Polskiej Akademii Nauk, Wydział Prawa Uniwersytetu Trnawskiego w Trnawie na Słowacji, Wydział Prawa Państwowego Uniwersytetu Spraw Wewnętrznych we Lwowie na Ukrainie, Wydział Nauk Prawnych Towarzystwa Naukowego KUL, wygłosił referat pt. *Trybunał Konstytucyjny a Europejski Trybunał Praw Człowieka z perspektywy Konstytucji RP*.

22 maja 2023 r. – dr **Zuzanna Gądzik** wspólnie z dr. **Damianem Szeleszczukiem** podczas Ogólnopolskiej Konferencji Naukowej nt. *Reforma Kodeksu karnego z 7 lipca 2022 r.*, zorganizowanej przez Katedrę Prawa Karnego KUL, wygłosili referat pt. *Okoliczności łagodzące i obciążające jako dyrektywy wymiaru kary*. Dr hab. **Małgorzata Wąsek-Wiaderek**, prof. KUL, podczas Międzynarodowej Konferencji Naukowej nt. *Judicial Protection in EU Crossborder evidence gathering*, zorganizowanej przez Szwedzką Sieć Europejskich Studiów Prawniczych, Uniwersytet w Uppsali oraz KU Leuven, wygłosiła referat pt. *Cooperation of Poland with EPPO in evidence taking*. Ks. dr **Paweł Lewandowski** podczas XVII Ogólnokrajowej Konferencji Naukowej nt. *Młodzi Naukowcy w Polsce – Badania i Rozwój*, zorganizowanej przez Wydawnictwo Młodzi Naukowcy, wygłosił referat *Wizytacje kanoniczne przeprowadzone przez Biskupa Tarnowskiego Jerzego Ablewicza*. Ponadto odbyła się publiczna obrona rozprawy doktorskiej mgr **Izabeli Moroz** pt. *Koncepcja racjonalnego prawodawcy w orzecznictwie Trybunału Konstytucyjnego*. Promotor: dr hab. Jadwiga Potrzeszcz, prof. KUL.

22–24 maja 2023 r. – ks. prof. dr hab. **Piotr Stanisz** podczas XX Ogólnopolskiego Sympozjum Prawa Wyznaniowego nt. *Wolność sumienia i religii w Polsce. W 450. rocznicę uchwalenia Konfederacji Warszawskiej i 25. rocznicę ratyfikacji Konkordatu*, zorganizowanego przez Instytut Wymiaru Sprawiedliwości oraz Polskie Towarzystwo Prawa Wyznaniowego, wygłosił referat pt. *„Wyznawanie" pastafarianizmu w świetle orzecznictwa sądów polskich i Europejskiego Trybunału Praw Człowieka*.

23 maja 2023 r. – dr **Aneta Maria Abramowicz** podczas XX Ogólnopolskiego Sympozjum Prawa Wyznaniowego nt. *Wolność sumienia i religii w Polsce. W 450. rocznicę uchwalenia Konfederacji Warszawskiej i 25. rocznicę ratyfikacji Konkordatu*, zorganizowanego przez Instytut Wymiaru Sprawiedliwości oraz Polskie Towarzystwo Prawa Wyznaniowego, wygłosiła referat pt. *Realizacja konstytucyjnej zasady równouprawnienia kościołów i innych związków wyznaniowych w obowiązujących przepisach prawnych*. Ponadto ks. dr **Paweł Lewandowski** podczas Międzynarodowej Konferencji Naukowej nt. *Drogi pedagogizacji współczesnego młodego pokolenia*, zorganizowanej przez Akademię Wojsk Lądowych im. generała Tadeusza Kościuszki we Wrocławiu oraz Fundację Campus w Stalowej Woli, wygłosił referat pt. *Wychowanie młodego pokolenia według Stefana Kardynała Wyszyńskiego*.

25 maja 2023 r. – prof. dr hab. **Dariusz Dudek** podczas Konferencji Naukowej nt. *Wyzwania dla legislacji. Rola Rady Legislacyjnej, jej osiągnięcia oraz nowe perspektywy*, zorganizowanej przez Rządowe Centrum Legislacji oraz Radę Legislacyjną, wygłosił referat pt. *Prezydenci Rzeczypospolitej a zmiany Konstytucji z 1997 r. – bilans 25-lecia*.

26 maja 2023 r. – dr hab. **Włodzimierz Broński**, prof. KUL, podczas Ogólnopolskiej Konferencji Naukowej nt. *Aktualne problemy mediacji w Polsce*, zorganizowanej przez Uniwersytet Technologiczno-Humanistyczny w Radomiu, wygłosił referat pt. *Profil kompetencyjny mediatora*.

30 maja 2023 r. – prof. dr hab. **Dariusz Dudek** podczas Ogólnopolskiej Konferencji Naukowej nt. *Procedury prawodawcze – znaczenie, zmiany, wyzwania*, zorganizowanej przez Stowarzyszenie Naukowe Pro Scientia Iuridica oraz Centrum Badań nad Parlamentaryzmem, wygłosił referat pt. *Prewencyjna kontrola konstytucyjności ustaw – efektywność instrumentu w świetle założeń ustrojowych i realnej praktyki*.

31 maja 2023 r. – dr **Aneta Maria Abramowicz** podczas Konferencji Naukowej nt. *Konstytucja. Konkordat. Prawo kanoniczne – o relacjach Rzeczypospolitej Polskiej i Kościoła katolickiego w 30. rocznicę podpisania konkordatu*, zorganizowanej przez Katedrę Prawa Konstytucyjnego oraz Katedrę Teorii i Filozofii Prawa Wydziału Prawa i Administracji Uniwersytetu Łódzkiego, wygłosiła referat pt. *Konstytucyjna*

zasada równouprawnienia kościołów i innych związków wyznaniowych i jej realizacja w obowiązującym ustawodawstwie.

Czerwiec

1 czerwca 2023 r. – dr **Ilona Grądzka** podczas X Międzynarodowej Interdyscyplinarnej Konferencji Naukowej nt. *Miejsce Wilna i Warszawy w procesach integracji (dezintegracji) regionalnej i euroatlantyckiej – postępy, wyzwania, perspektywy*, zorganizowanej przez Stowarzyszenie Naukowców Polaków Litwy (SNPL), wygłosiła referat pt. *Obywatelstwo UE jako uzupełnienie i rozszerzenie obywatelstwa krajowego*.

2 czerwca 2023 r. – dr **Katarzyna Miaskowska-Daszkiewicz** podczas Międzynarodowej Konferencji Naukowej nt. *Challenges and Perspectives of the Development of Legal Systems in the XXI Century*, zorganizowanej przez Faculty of Law of the Unie versity of Banja Luka, wygłosiła referat pt. *De minimis non curat lex? – Challenges and achievements in supporting the availability of orphan and pediatric drugs*.

5 czerwca 2023 r. – dr **Aneta Maria Abramowicz** podczas XVII Colloquium Prawno-Historycznego nt. *Wolność a bezpieczeństwo. Aspekty historyczne i współczesne*, zorganizowanego przez Katedrę Nauk o Państwie i Prawie Instytutu Nauk Prawnych Uniwersytetu Opolskiego, wygłosiła referat pt. *Podstawowe standardy ochrony wolności religijnej zawarte w Zaleceniach – dokumentach wydanych w ramach działalności Organizacji Bezpieczeństwa i Współpracy w Europie*.

6 czerwca 2023 r. – odbyła się publiczna obrona rozprawy doktorskiej mgr. **Jakuba Polivki** pt. *Ochrona życia nienarodzonych jako element dobra potomstwa w katolickim prawie małżeńskim*. Promotor: dr hab. Anna Słowikowska.

8–9 czerwca 2023 r. – dr hab. **Krzysztof Wiak**, prof. KUL, podczas VI Międzynarodowej Konferencji Naukowej nt. *Law and Global Security*, zorganizowanej przez Sulkhan-Saba Orbeliani University, wygłosił referat pt. *Genocide in Polish Criminal Law*.

9 czerwca 2023 r. – dr **Robert Tabaszewski** podczas Międzynarodowej Konferencji Naukowej Praw Człowieka nt. *DIGITAL WELL-BEING – A Concern for the Quality of Life*, zorganizowanej przez Wyższą Szkołę Gospodarki Euroregionalnej im. Alcide De Gasperi w Józefowie oraz Uniwersytet im. Aldo Moro w Bari, wygłosił referat pt. *New technologies and the Protection of cultural property under International Humanitarian Law*.

15 czerwca 2023 r. – dr hab. **Elżbieta Szczot**, prof. KUL, podczas Międzynarodowej Konferencji Naukowej nt. *War in Ukraine: Religious, Geopolitical and Cultural Dimensions of Value-Worldview Clashes at the Beginning of the XXI Century*, zorga-

nizowanej przez Wołyńską Prawosławną Akademię Teologiczną, wygłosiła referat pt. *Pomoc humanitarna w czasie wojny*.

16 czerwca 2023 r. – dr hab. **Piotr Zakrzewski**, prof. KUL, podczas IX Ogólnopolskiego Seminarium Naukowego z Prawa Rodzinnego nt. *Współczesne problemy prawa rodzinnego*, zorganizowanego przez Wydział Prawa i Administracji Uniwersytetu w Gdańsku oraz Instytut Nauk Prawnych PAN, wygłosił referat pt. *Wolność umów w umownych ustrojach majątkowych*. Ponadto dr **Katarzyna Miaskowska-Daszkiewicz** podczas XXII Konferencji Naukowej nt. *Administracja wobec współczesnych zagrożeń*, zorganizowanej przez Stowarzyszenie Edukacji Administracji Publicznej, wygłosiła referat pt. *O potrzebie intensyfikacji ograniczeń w dostępności produktów leczniczych zawierających środki odurzające lub substancje psychotropowe*.

21–23 czerwca 2023 r. – dr **Robert Tabaszewski** podczas Międzynarodowej Konferencji Naukowej nt. *Consortium of Catholic Law Schools in Central and Eastern Europe* wygłosił referat pt. *On distinctive scholarship and research: ideas and thoughts*.

23 czerwca 2023 r. – dr hab. **Anna Słowikowska** podczas Ogólnopolskiego Seminarium Naukowego z warsztatami środowiskowymi nt. *Wyzwania medyczne i środowiskowo-społeczne a zdrowie publiczne*, zorganizowanego przez Nadnotecki Instytut UAM w Pile, wygłosiła referat pt. *„Grzech ekologiczny" jako kategoria normatywna mająca znaczenie dla społecznej odpowiedzialności uczelni w dobie zmian klimatu*.

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Bibliography of academic staff of the Faculty of Law, Canon Law and Administration of the John Paul II Catholic University of Lublin for 2019 – Institute of Legal Studies

Библиография научных трудов сотрудников Факультета права, канонического права и администрации Люблинского католического университета Иоанна Павла II за 2019 год – Институт юридических наук

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Przyjęto następującą klasyfikację: I. Opracowania książkowe; II. Artykuły i studia; III. Hasła encyklopedyczne; IV. Glosy; V. Recenzje i noty; VI. Sprawozdania; VII. Inne.

Abramowicz Aneta

II

Abramowicz A., *Naczelne stanowisko wyznania rzymskokatolickiego a równouprawnienie wyznań w prawie II Rzeczypospolitej*, Przegląd Prawa Wyznaniowego 2019, t. 11, s. 5–21.

Abramowicz A., *The Principle of Equal Rights of Religious Organizations in the Jurisprudence of the Polish Constitutional Tribunal*, Quaderni di Diritto e Politica Ecclesiastica 2019, nr 3, s. 883–898.

Abramowicz A., *Ulgi podatkowe z tytułu darowizn na kościelną działalność charytatywno-opiekuńczą*, Studia z Prawa Wyznaniowego 2019, t. 22, s. 201–232.

Barankiewicz Tomasz

II

Barankiewicz T., *Legal and Ethical Conditions for Properly Marketing Dietary Supplements*, Prawo i Więź 2019, t. 8, nr 2, s. 7–18.

Barankiewicz T., *Przełamanie zasady clara non sunt interpretanda – „terapia" czy rekonstrukcja normy prawnej (podejście semiotyczno-kulturowe)*, w: *Wykładnia prawa. Aspekty*

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teoretyczne i praktyczne, red. J. Potrzeszcz, B. Liżewski, Wydawnictwo KUL, Lublin 2019, s. 23–36.

Barankiewicz T., Przywora B., *O możliwości wyodrębnienia neoweberowskiego modelu administracji publicznej (pamięci Profesora Michała Kuleszy w piątą rocznicę śmierci)*, Państwo i Prawo 2019, nr 1, s. 104–116.

Barankiewicz T., Przywora B., *Rola Kodeksu Etyki Służby Cywilnej w kształtowaniu etosu urzędniczego*, w: *Polski korpus służby cywilnej i jego zmiany. Prace studialne Warszawskiego Seminarium Aksjologii Administracji*, red. Z. Cieślak, W. Drobny, Wydawnictwo Instytutu Nauk Prawnych PAN, Warszawa 2019, s. 115–126.

Barszcz Tomasz

II

Barszcz T., *Decyzja prawna jako determinant argumentacji prawniczej*, w: *Wymiary prawa. Teoria. Filozofia. Aksjologia*, red. M. Hermann, M. Krotoszyński, P. Zwierzykowski, C.H. Beck, Warszawa 2019, s. 259–272.

Barszcz T., *Institution of Marriage – Support for Spouses who Are Victims or at Risk of Violation of Rights*, w: *Marriage, Children, and Family. Modern Challenges and Comparative Law Perspective*, red. G. Blicharz, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 109–148.

Barszcz T., *Protection of the Institution of Marriage as a Union of a Woman and a Man*, w: *Marriage, Children, and Family. Modern Challenges and Comparative Law Perspective*, red. G. Blicharz, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 33–74.

Barszcz T., *Skreślenie obwinionego z listy studentów a umorzenie postępowania dyscyplinarnego w sprawach studentów*, Forum Prawnicze 2019, nr 5, s. 88–101.

Barszcz T., *Wykładnia prawa a argumentacja prawnicza*, w: *Wykładnia prawa. Aspekty teoretyczne i praktyczne*, red. J. Potrzeszcz, B. Liżewski, Wydawnictwo KUL, Lublin 2019, s. 49–64.

Bednaruk Waldemar

I

Bednaruk W., *Przestępczość ubezpieczeniowa w międzywojennej Polsce*, Wydawnictwo KUL, Lublin 2019, ss. 346.

Bednaruk W., *Sejmiki lubelskie w okresie stanisławowskim (1764–1794)*, wyd. 2, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, ss. 427.

Z dziejów polskiej bankowości, red. W. Bednaruk, J. Dworas-Kulik, Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego 2019, Lublin 2019, ss. 187.

II

Bednaruk W., *Dziecko w prawie staropolskim*, Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego 2019, t. 14, nr 16 (1), s. 7–16.

Bednaruk W., *Status pośrednika ubezpieczeniowego w okresie II Rzeczypospolitej*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 1, s. 31–39.

Biały Aneta

II

Biały A., *Accident Compensation System jako przykład systemu naprawienia szkody na osobie w Nowej Zelandii – wybrane zagadnienia w ujęciu historycznym*, Studia Prawnicze KUL 2019, nr 3, s. 7–20.

Bień-Węgłowska Iwona

II

Bień-Węgłowska I., *Wątpliwości co do poczytalności obwinionego a obowiązkowy udział obrońcy w postępowaniu w sprawach o wykroczenia*, w: *Rocznik Towarzystwa Prawniczego w Lublinie. Zeszyt historyczno-wspomnieniowy 2019*, red. K. Kukuryk, Polihymnia, Lublin 2019, s. 131–151.

Bień-Węgłowska I., *Zasada równości broni a inicjatywa dowodowa sądu w postępowaniu w sprawach o wykroczenia*, w: *Realizacja zasad prawa w postępowaniu cywilnym, karnym, administracyjnym i kanonicznym*, red. K.O. Pokorski, Wyższa Szkoła Administracji Publicznej w Szczecinie, Szczecin 2019, s. 45–58.

Broński Włodzimierz

I

Własność intelektualna i jej efektywne wykorzystanie w działalności przedsiębiorstwa. Aktualne problemy, red. W. Broński, K. Mełgieś, Wydawnictwo KUL, Lublin 2019, ss. 390.

II

Broński W., *Efektywność mediacji w postępowaniu administracyjnym*, Studia Prawnicze KUL 2019, nr 3, s. 47–68.

Broński W., *Prawnoautorskie aspekty kazania*, Studia z Prawa Wyznaniowego 2019, t. 22, s. 101–117.

Broński W., Sławicki P., *Rola adwokata w ugodowym załatwieniu sporu cywilnego*, w: *Rocznik Towarzystwa Prawniczego w Lublinie. Zeszyt historyczno-wspomnieniowy 2019*, red. K. Kukuryk, Polihymnia, Lublin 2019, s. 153–164.

Broński W., Golema K., Sławicki P., Asłanowicz M., Waląg M., Włodarczyk W., Guizeng (Wayne) L., Hauser M., Schaugg L., *ADR jako narzędzie w zarządzaniu własnością intelektualną*, w: *Własność intelektualna i jej efektywne wykorzystanie w działalności przedsiębiorstwa. Aktualne problemy*, red. W. Broński, K. Mełgieś, Wydawnictwo KUL, Lublin 2019, s. 313–353.

Bucoń Paweł

II

Bucoń P., *Konstytucyjne podstawy wspierania rodziny przez władze publiczne w Polsce*, Przegląd Prawa Konstytucyjnego 2019, nr 4, s. 113–130.

IV

Bucoń P., *Glosa do postanowienia Sądu Najwyższego z 6.06.2019 r., II DSI 21/19*, Rejent 2019, nr 11, s. 104–117.

Bucoń P., *Glosa do wyroku Sądu Apelacyjnego w Krakowie z dnia 27 marca 2019 r., sygn. akt I AGa 503/18 (niepubl.)*, Prawo i Więź 2019, t. 8, nr 3, s. 137–150.

Burzec Marcin

II

Burzec M., *Koncepcja podatku turystycznego nakładanego we Włoszech*, Studia Prawnicze KUL 2019, nr 2, s. 15–38.

Burzec M., *Opłata miejscowa – relikt przeszłości czy efektywne źródło dochodów gmin*, Kwartalnik Prawno-Finansowy 2019, nr 3, s. 7–24.

Burzec M., *Opłata miejscowa jako danina nakładana na turystów*, Samorząd Terytorialny 2019, nr 6, s. 83–93.

Ciepły Filip

II

Ciepły F., *Aksjologiczna i prawna ocena przymusowego leczenia uzależnień*, w: *Małżeństwo, dzieci, rodzina. Współczesne wyzwania w perspektywie prawnoporównawczej*, red. G. Blicharz, M. Delijewski, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 385–437.

Ciepły F., *Anthropological Foundations of Polish Penal Law in the Light of the 1997 Constitution of the Republic of Poland*, Nowa Kodyfikacja Prawa Karnego 2019, t. 52, s. 55–64.

Ciepły F., *Axiological and Legal Evaluation of Compulsory Treatment of Addictions*, w: *Marriage, Children, and Family. Modern Challenges and Comparative Law Perspective*, red. G. Blicharz, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 399–449.

Ciepły F., *Criminal Law Instruments for the Protection of Freedom from Unwanted Sexualization: Polish, English and Australian Regulations*, w: *Marriage, Children, and Family. Modern Challenges and Comparative Law Perspective*, red. G. Blicharz, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 219–271.

Ciepły F., *Paradygmatyczne założenia racjonalnej sankcji karnej*, w: *Racjonalna sankcja karna w systemie prawa*, red. P. Góralski, A. Muszyńska, Instytut Wydawniczy EuroPrawo, Warszawa 2019, s. 19–38.

Ciepły F., *Penalizacja mowy nienawiści – kontekst polityczny i normatywny*, w: *Wolność słowa. Współczesne wyzwania w perspektywie prawnoporównawczej*, red. G. Blicharz, M. Delijewski, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 391–445.

Ciepły F., *Penalization of Hate Speech – Political and Normative Context*, w: *Freedom of Speech. A Comparative Law Perspective*, red. G. Blicharz, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 405–458.

Ciepły F., *Prawnokarne instrumenty ochrony wolności od niechcianej seksualizacji z uwzględnieniem regulacji polskich, angielskich oraz australijskich*, w: *Małżeństwo, dzieci, rodzina. Współczesne wyzwania w perspektywie prawnoporównawczej*, red. G. Blicharz, M. Delijewski, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 231–285.

Ciepły F., *Środki zabezpieczające*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 631–664.

Czarnek Przemysław

II

Czarnek P., *„Prawo naturalne w Europie – fundament czy zapomniana rzeczywistość?"*, w: *Prawo a wartości w Europie. II Międzynarodowy Kongres Ruchu „Europa Christi". Wizja Europy w ujęciu św. Jana Pawła II, 17 października 2018 r. Lublin. Teksty kongresowe*, red. I. Skubiś, M. Sitarz, Fundacja „Myśląc Ojczyzna", Częstochowa 2019, s. 35–52.

Czarnek P., *Natural Law in Europe – Foundation or a Forgotten Reality?*, Zeszyty Społeczne Klubu Inteligencji Katolickiej w Lublinie 2019, nr 22, s. 81–95.

Czech-Jezierska Bożena

II

Czech-Jezierska B., *Milan Bartošek i problem „właściwej metody" w badaniach nad prawem rzymskim*, w: *In varietate concordia. Księga jubileuszowa z okazji XXX-lecia pracy naukowej Profesora Bronisława Sitka*, red. K. Ciućkowska, J. Szczerbowski, Wydawnictwo Uniwersytetu SWPS, Warszawa 2019, s. 199–225.

Czech-Jezierska B., *Rzym i prawo rzymskie w powieściach Józefa Ignacego Kraszewskiego*, w: *Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce*, red. A. Dębiński, M. Jońca, I. Leraczyk, Wydawnictwo KUL, Lublin 2019, s. 27–48.

Czech-Jezierska B., *Trudne początki i bariery powojennej romanistyki polskiej*, Zeszyty Naukowe Uniwersytetu Rzeszowskiego. Seria Prawnicza. Prawo 2019, t. 26, nr 107, s. 24–39.

Czech-Jezierska B., *Utilitas rei publicae contra misericordiam. Justinian's Criminal Legislation in Borys Łapicki's View*, Studia Prawnicze KUL 2019, nr 4, s. 57–73.

Czech-Jezierska B., *Wolność i godność w starożytnym Rzymie – dobra osobiste czy społeczne? Kilka uwag na tle poglądów Borysa Łapickiego*, Studia Prawnoustrojowe 2019, nr 46, s. 51–67.

Czelny Michał

II

Czelny M., *Historical Overview of Pastoral Care in Prison in Poland (1550–1956)*, Roczniki Nauk Prawnych 2019, t. 29, nr 4, s. 23–36.

Czepczyńska Emilia

II

Czepczyńska E., *Wpływ konwenansów na ewolucyjne powstawanie konstytucji Wielkiej Brytanii (XVII–XX w.)*, Społeczeństwo i Polityka 2019, nr 2, s. 61–72.

Ćwikła Leszek

II

Ćwikła L., *Legal Aspects of Territorial Restrictions in Water Tourism due to Environmental Protection*, Internetowy Przegląd Prawniczy TBSP UJ 2019, nr 1 (45), s. 5–17.

Dąbrowski Marek

I

Dąbrowski M., *Mediacja w świetle przepisów kodeksu postępowania cywilnego*, Wydawnictwo KUL, Lublin 2019, ss. 359.

IV

Dąbrowski M., *Kryterium wiedzy i umiejętności jako wymóg dla stałych mediatorów – glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Poznaniu z dnia 25 stycznia 2018 r., III SA/Po 634/17*, Studia Prawnicze KUL 2019, nr 3, s. 211–231.

Dębiński Antoni

I

Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce, red. A. Dębiński, M. Jońca, I. Leraczyk, Wydawnictwo KUL, Lublin 2019, ss. 393.

Dobieżyński Krzysztof

II

Dobieżyński K., *Ochrona organizatorów wydarzeń sportowych w środowisku cyfrowym – poszukiwanie nowych rozwiązań prawnych w Unii Europejskiej*, Acta Universitatis Wratislaviensis nr 3977. Prawo 2019, nr 329, s. 459–468.

IV

Dobieżyński K., *Powaga rzeczy osądzonej i powództwo wzajemne. Glosa do wyroku Sądu Apelacyjnego w Warszawie z 8.02.2017 r., I ACa 1453/15*, Państwo i Prawo 2019, z. 1, s. 151–155.

Dobrowolski Marek

II

Dobrowolski M., *Suwerenność narodu – ewolucja pojęcia w polskim prawie konstytucyjnym*, w: *Niepodległość, suwerenność, podmiotowość. Polskie projekty polityczne 1918–2018*, red. W. Paruch, Wydawnictwo Sejmowe, Warszawa 2019, s. 11–39.

Doktór-Bindas Kamila

II

Doktór-Bindas K., *Referendum konstytucyjne we Włoszech z 4.12.2016 r. – kolejna próba rewizji konstytucji Republiki Italii*, Państwo i Prawo 2019, z. 1, s. 59–72.

IV

Doktór-Bindas K., *Odesłanie prejudycjalne włoskiego Sądu Konstytucyjnego w sprawie przeciwko M.A.S. i M.B. (tzw. Taricco bis). Glosa do wyroku Trybunału Sprawiedliwości z 5.12.2017 r., C-42/17*, Państwo i Prawo 2019, z. 7, s. 147–156.

Dróżdż-Chmiel Kinga

I

Dróżdż-Chmiel K., *Status prawny osób trzecich w procesie cywilnym*, C.H. Beck, Warszawa 2019, ss. 288.

Duda-Hyz Michalina

I

Duda-Hyz M., *Gry hazardowe urządzane przez sieć Internet i ich opodatkowanie w prawie polskim oraz innych krajów europejskich*, Wydawnictwo KUL, Lublin 2019, ss. 578.

II

Duda-Hyz M., *Podatek od gier*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 350–361.

Duda-Hyz M., *Podatek od towarów i usług*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 280–334.

Duda-Hyz M., *Tworzenie prawa podatkowego*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 47–58.

Duda-Hyz M., *Źródła i zasady tworzenia prawa podatkowego*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 30–46.

Dudek Dariusz

II

Dudek D., *Aksjologia Konstytucji Rzeczypospolitej Polskiej*, w: *Prawo a wartości w Europie. II Międzynarodowy Kongres Ruchu „Europa Christi". Wizja Europy w ujęciu św. Jana Pawła II, 17 października 2018 r., Lublin. Teksty kongresowe*, red. I. Skubiś, M. Sitarz, Fundacja „Myśląc Ojczyzna", Częstochowa 2019, s. 143–162.

Dudek D., *Konstytucja i tajemnica adwokacka*, Palestra 2019, nr 7–8, s. 26–49.

Dudek D., *Prawo i zaufanie*, Palestra Świętokrzyska 2019, nr 47–48, s. 41–54.

Dudek D., *Profesja sędziego a wolność wypowiedzi*, w: *Rocznik Towarzystwa Prawniczego w Lublinie. Zeszyt historyczno-wspomnieniowy 2019*, red. K. Kukuryk, Polihymnia, Lublin 2019, s. 79–101.

Dudek D., *Refleksje o Kodeksie Etyki Adwokackiej*, w: *Rocznik Towarzystwa Prawniczego w Lublinie. Zeszyt historyczno-wspomnieniowy 2019*, red. K. Kukuryk, Polihymnia, Lublin 2019, s. 103–121.

Dworas-Kulik Judyta

I

Dworas-Kulik J., *Prawne regulacje dotyczące bigamii w Polsce w latach 1918–1939*, Wydawnictwo KUL, Lublin 2019, ss. 312.

Z dziejów polskiej bankowości, red. W. Bednaruk, J. Dworas-Kulik, Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego 2019, Lublin 2019, ss. 187.

II

Dworas-Kulik J., *Kredytowanie należności celnych na gruncie ustawy z dnia 31 lipca 1924 roku w przedmiocie uregulowania stosunków celnych*, Roczniki Nauk Prawnych 2019, t. 29, nr 4, s. 57–66.

Dworas-Kulik J., *Ubezpieczenie niskiego wkładu własnego w orzecznictwie dotyczącym tzw. kredytów frankowych*, w: *Z dziejów polskiej bankowości*, red. W. Bednaruk, J. Dworas-Kulik, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, s. 131–148.

Dyjakowska Marzena

II

Dyjakowska M., *Влияние римского права на правовую культуру в Польше*, Публічне Право 2019, nr 3, s. 114–129.

Dzierżanowska Joanna

I

Dzierżanowska J., Studzińska J., *Biegli w postępowaniu sądowym cywilnym i karnym. Praktyczne omówienie regulacji z orzecznictwem*, wyd. 2, Wolters Kluwer, Warszawa 2019, ss. 508.

II

Dzierżanowska J., *Kompetencje biegłego sądowego w polskim procesie karnym*, Forum Prawnicze 2019, nr 1, s. 66–75.

Fajgielski Paweł

I

Fajgielski P., *Prawo ochrony danych osobowych. Zarys wykładu*, Wolters Kluwer, Warszawa 2019, ss. 304.

II

Fajgielski P., *Dokumentacja naruszeń ochrony danych osobowych*, w: *Dokumentacja ochrony danych osobowych ze wzorami*, red. M. Jagielski, Wolters Kluwer, Warszawa 2019, s. 174–183.

Fajgielski P., *Dostosowanie krajowych przepisów do wymogów ogólnego rozporządzenia o ochronie danych*, w: *Polskie przepisy o ochronie danych osobowych. Aktualne problemy prawnej ochrony danych osobowych 2019*, Monitor Prawniczy (dodatek) 2019, nr 22, s. 4–8.

Fajgielski P., *Inspektor ochrony danych w sektorze publicznym*, w: *Administrator i inspektor ochrony danych osobowych. Pozycja prawna*, red. T. Wyka, M. Mielczarek, Wolters Kluwer, Warszawa 2019, s. 151–162.

Fajgielski P., *Obowiązek informowania o przetwarzaniu danych osobowych*, Prawo i Więź 2019, nr 4, s. 49–62.

Fajgielski P., *Przetwarzanie danych osobowych przez firmy szkoleniowe*, Informacja w Administracji Publicznej 2019, nr 4, s. 16–18.

Fajgielski P., *Przetwarzanie szczególnych kategorii danych w świetle ogólnego rozporządzenia o ochronie danych*, w: *Internet. Przetwarzanie danych osobowych. Processing of Personal Data*, red. G. Szpor, K. Czaplicki, C.H. Beck, Warszawa 2019, s. 103–112.

Fundowicz Sławomir

II

Fundowicz S., *Przedsiębiorca w świetle personalistycznej koncepcji administracji publicznej*, Acta Universitatis Wratislaviensis nr 3977. Prawo 2019, Prawo nr 329, s. 145–156.

Gadkowski Andrzej

II

Gadkowski A., Boisson de Chazournes L., *The External Relations of the OSCE*, w: *The Legal Framework of the OSCE*, red. M. Steinbrück Platise, C. Moser, A. Peters, Cambridge University Press, Cambridge 2019, s. 199–214.

Gałązka Małgorzata

I

Gałązka M., *Prawnokarne granice nowatorskiej interwencji medycznej*, Wydawnictwo KUL, Lublin 2019, ss. 855.

Gałązka M., Wiak K., Hałas R., Hypś S., Szeleszczuk D., *Prawo karne. Repetytorium*, wyd. 3, C.H. Beck, Warszawa 2019, ss. 448.

II

Gałązka M., *Genetics*, w: *Medical Law*, red. L. Bosek, C.H. Beck, Warszawa 2019, s. 511–540.

Gałązka M., *Medical Experiments*, w: *Medical Law*, red. L. Bosek, C.H. Beck, Warszawa 2019, s. 457–483.

Gałązka M., *Medically Assisted Procreation*, w: *Medical Law*, red. L. Bosek, C.H. Beck, Warszawa 2019, s. 555–572.

Gałązka M., *Organ Transplantation*, w: *Medical Law*, red. L. Bosek, C.H. Beck, Warszawa 2019, s. 485–509.

Gałązka M., *Status of a Patient*, w: *Medical Law*, red. L. Bosek, C.H. Beck, Warszawa 2019, s. 177–209.

Ganczar Małgorzata

I

Ganczar M., Szewczak M., Bis D., Ostrowska A., Kwiatosz K., *A nemzetközi önkormányzati együttműködés lengyel-magyar modellje*, Towarzystwo Naukowe KUL, Lublin 2019, ss. 114.

Ganczar M., Szewczak M., Bis D., Ostrowska A., Kwiatosz K., *Model polsko-węgierskiej samorządowej współpracy międzynarodowej*, Towarzystwo Naukowe KUL, Lublin 2019, ss. 114.

II

Ganczar M., *Analityka danych publicznych dla diagnoz i prognoz dotyczących przedsiębiorców*, w: *Internet. Analityka danych*, red. G. Szpor, K. Czaplicki, C.H. Beck, Warszawa 2019, s. 188–200.

Ganczar M., *Ocena skutków planowanych operacji przetwarzania dla ochrony danych osobowych*, w: *Internet. Przetwarzanie danych osobowych. Processing of Personal Data*, red. K. Czaplicki, G. Szpor, C.H. Beck, Warszawa 2019, s. 36–49.

Ganczar M., *Zgoda na rozpowszechnianie wizerunku*, Przetargi Publiczne 2019, nr 5, s. 56–59.

Gapska Edyta

II

Gapska E., *Legal and Historical Perspective on Public Character of Cassation Complaint in Polish Civil Procedure*, Studia Iuridica 2019, nr 81, s. 267–301.

Gapska E., *Przeciwdziałanie nadużyciom prawa procesowego w znowelizowanym Kodeksie postępowania cywilnego. Cz. I – Klauzula generalna*, Monitor Prawniczy 2019, nr 15, s. 813–820.

Gapska E., *Przeciwdziałanie nadużyciom prawa procesowego w znowelizowanym Kodeksie postępowania cywilnego. Cz. II – Powództwo oczywiście bezzasadne*, Monitor Prawniczy 2019, nr 16, s. 865–873.

Gapska E., *Przeciwdziałanie nadużyciom prawa procesowego w znowelizowanym Kodeksie postępowania cywilnego. Cz. III – szczegółowe przejawy nadużycia prawa procesowego*, Monitor Prawniczy 2019, nr 17, s. 918–924.

Gapska E., *Przyzwoitość na marginesie demokracji*, w: *Historia, ludzie i miejsca. Księga pamiątkowa Profesora Henryka Gapskiego*, red. R. Kozyrski, Wydawnictwo KUL, Lublin 2019, s. 203–223.

Gapski Maciej

IV

Gapski M.P., *Rozstrzyganie wniosków o przywrócenie terminu o charakterze materialnym na gruncie Kodeksu postępowania administracyjnego. Glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Kielcach z dnia 29 marca 2018 r., I SA/Ke 645/17*, Orzecznictwo Sądów Polskich 2019, nr 6, s. 113–125.

Gapski M.P., *Zbieg prawa do zasiłku stałego z prawem do emerytury. Glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Gliwicach z dnia 21 października 2016 r., IV SA/Gl 112/16*, Orzecznictwo Sądów Polskich 2019, nr 1, s. 163–174.

Gądzik Zuzanna

II

Gądzik Z., *Criminal Aspects of Human Embryo Donation under Surrogacy Arrangements*, Zeszyty Prawnicze 2019, z. 19.3, s. 275–291.

Gądzik Z., *Ochrona humanitarna zwierząt utrzymywanych w ogrodach zoologicznych*, Studia Prawnicze KUL 2019, nr 2, s. 113–132.

Gądzik Z., *Prawnokarna ocena samobójstw popełnianych z motywów religijnych*, Acta Iuris Stetinensis 2019, nr 25, s. 27–47.

Gądzik Z., *Prawnokarna ochrona zwierząt domowych przed znęcaniem się nad nimi*, Przegląd Uniwersytecki 2019, nr 6, s. 38–39.

Gądzik Z., *Środki karne, przepadek zwierzęcia i nawiązka w ustawie z dnia 21 sierpnia 1997 r. o ochronie zwierząt*, Prokuratura i Prawo 2019, nr 3, s. 75–95.

Gądzik Z., Hałas R., *Przestępstwa przeciwko bezpieczeństwu powszechnemu*, w: *Kodeks karny. Komentarz,* red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 937–963.

Golema Kamil

II

Broński W., Golema K., Sławicki P., Asłanowicz M., Waląg M., Włodarczyk W., Guizeng (Wayne) L., Hauser M., Schaugg L., *ADR jako narzędzie w zarządzaniu własnością intelektualną*, w: *Własność intelektualna i jej efektywne wykorzystanie w działalności przedsiębiorstwa. Aktualne problemy*, red. W. Broński, K. Mełgieś, Wydawnictwo KUL, Lublin 2019, s. 313–353.

Grądzka Ilona

II

Grądzka I., *Sejm i Senat wobec wyzwań Unii Europejskiej*, Przegląd Europejski 2019, nr 2, s. 103–114.

Haładyj Anna

I

Haładyj A., *Odmowa udostępnienia informacji o środowisku i jego ochronie*, C.H. Beck, Warszawa 2019, ss. 141.

II

Haładyj A., *Odpowiedzialność dyscyplinarna jako odpowiedzialność sui generis*, w: *Administrowanie i zarządzanie w sektorze publicznym. Teoria i praktyka*, red. T. Bojar-Fijałkowski, Wydawnictwo Uniwersytetu Kazimierza Wielkiego, Bydgoszcz 2019, s. 255–267.

Haładyj A., *Uznanie produktu ubocznego pochodzenia zwierzęcego za odpad – kryteria i skutki*, Roczniki Nauk Prawnych 2019, t. 29, nr 3, s. 21–39.

Haładyj A., Kułak-Krzysiak K., *Positive Silence to the Removal of Trees – an Analysis of a Legal Institution*, Review of European and Comparative Law 2019, t. 36, nr 1, s. 7–26.

Haładyj A., Tokarczyk-Dorociak K., Kazak J., Szewrański Sz., Swiąder M., *Effectiveness of Strategic Environmental Assessment in Poland*, Impact Assessment and Project Appraisal 2019, t. 37, nr 3–4, s. 279–291.

Haładyj A., Tokarczyk-Dorociak K., Kazak J.K., Szewrański Sz., Szkudlarek Ł., Chrobak G., van Hoof J., *On the Usefulness of Guidelines and Instructions for Environmental Assessment – a Qualitative Study of the Helpfulness Perceived by Polish Practitioners*, Impact Assessment and Project Appraisal 2019, t. 37, nr 2, s. 150–164.

Hałas Radosław

I

Hałas R., Wiak K., Gałązka M., Hypś S., Szeleszczuk D., *Prawo karne. Repetytorium*, wyd. 3, C.H. Beck, Warszawa 2019, ss. 448.

Hypś Sławomir

I

Hypś S., Wiak K., Gałązka M., Hałas R., Szeleszczuk D., *Prawo karne. Repetytorium*, wyd. 3, C.H. Beck, Warszawa 2019, ss. 448.

II

Hypś S., *Przestępstwa przeciwko czci i nietykalności cielesnej*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1140–1170.

Hypś S., *Przestępstwa przeciwko rodzinie i opiece*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1092–1140.

Hypś S., *Przestępstwa przeciwko wolności*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 998–1032.

Hypś S., *Przestępstwa przeciwko wolności seksualnej i obyczajności*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1043–1092.

Hypś S., *Przestępstwa przeciwko wolności sumienia i wyznania*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1032–1043.

Hypś S., *Środki związane z poddaniem sprawcy próbie*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 522–592.

Herbet Andrzej

II

Herbet A., *Is This the End of Share Capital? Limited Company Law Reforms in Poland and Other European Countries*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 2, s. 109–125.

Jarota Maciej

II

Jarota M., *Prawna ochrona zdrowia pracownika w środowisku pracy z nanocząstkami. Uwagi na temat zasadności wprowadzenia europejskich regulacji prawnych*, Medycyna Pracy. Workers' Health and Safety 2019, t. 70, nr 5, s. 633–647.

Jędrzejczyk Michał

I

Jędrzejczyk M., *Wieloletnia prognoza finansowa w jednostkach samorządu terytorialnego*, Towarzystwo Naukowe KUL, Lublin 2019, ss. 317.

II

Jędrzejczyk M., *Ewolucja planowania finansowego w Polsce w latach 1945–1990*, Prawo Budżetowe Państwa i Samorządu 2019, t. 7, nr 1, s. 167–186.

Jędrzejczyk M., *Wieloletnie planowanie finansowe na szczeblu Unii Europejskiej*, Studia Prawnicze KUL 2019, nr 2, s. 157–178.

Jońca Maciej

I

Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce, red. A. Dębiński, M. Jońca, I. Leraczyk, Wydawnictwo KUL, Lublin 2019, ss. 393.

II

Jońca M., *Ekscepcja Adama*, Edukacja Prawnicza 2018/2019, nr 3, s. 63–66.

Jońca M., *Francis de Zulueta – romanista i przyjaciel Polaków*, Edukacja Prawnicza 2018/2019, nr 2, s. 62–65.

Jońca M., *Imitatio et aemulatio. Kilka uwag na temat nauki i nauczania prawa rzymskiego we współczesnej Polsce*, Acta Iuridica Resoviensia 2019, t. 26, z. 107, s. 62–80.

Jońca M., *Sąd Ostateczny jako ordalium – wizja Hansa Memlinga*, w: *Sąd Ostateczny Hansa Memlinga. Losy – prawo – symbole*, red. J. Kamień, B. Możejko, J. Zajadło, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2019, s. 167–180.

Jońca M., *Sprawiedliwość Trajana. Legenda, sztuka i prawo*, w: *Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce*, red. A. Dębiński, M. Jońca, I. Leraczyk, Wydawnictwo KUL, Lublin 2019, s. 125–148.

Jońca M., *Szekspirolog. Przyczynek do biografii Leona Pinińskiego*, w: *Prawo i literatura. Parerga*, red. J. Kamień, J. Zajadło, K. Zeidler, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2019, s. 119–212.

Jońca M., *The Last Judgement as ordalium. Hans Memling's Vision*, Studia Prawnicze KUL 2019, nr 4, s. 75–89.

VII

Jońca M., *Ustawa Konstantyna przeciw korupcji w prowincjonalnym wymiarze sprawiedliwości (CTH. 1,16,7). Tekst–tłumaczenie–komentarz*, Zeszyty Prawnicze 2019, z. 19.1, s. 271–282.

Kasprzak Sylwester

I

Kasprzak S., *The Theological and Legal Dimension of Canon Law*, Wydawnictwo KUL, Lublin 2019, ss. 311.

II

Kasprzak S., *Strengths and Weaknesses in the Operation of Administrative law*, Acta Iuridica Resoviensia 2019, t. 27, z. 108, s. 72–92.

Kasprzak S., *The Values and the Rules of Law*, Roczniki Nauk Prawnych 2019, t. 29, nr 3, s. 73–87.

III

Kasprzak S., *Anatema*, w: *Leksykon Prawa Kanonicznego*, red. M. Sitarz, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, s. 124–126.

Kasprzak S., *Apostolskie Listy*, w: *Leksykon Prawa Kanonicznego*, red. M. Sitarz, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, s. 159–161.

Kasprzak S., *Biskup Misyjny*, w: *Leksykon Prawa Kanonicznego*, red. M. Sitarz, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, s. 315–318.

Kasprzak S., *Kardynał Kamerling, Kamerling Świętego Kościoła Rzymskiego*, w: *Leksykon Prawa Kanonicznego*, red. M. Sitarz, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, s. 1145–1153.

Kasprzak S., *Milczenie*, w: *Leksykon Prawa Kanonicznego*, red. M. Sitarz, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, s. 1740–1747.

Kasprzak S., *Misje*, w: *Leksykon Prawa Kanonicznego*, red. M. Sitarz, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2019, s. 1751–1756.

Kędzierski Piotr

I

Kędzierski P., *Powstanie i rejestracja sp. z o. o., której umowę zawarto przy użyciu wzorca umowy (spółki s-24)*, C.H. Beck, Warszawa 2019, ss. 348.

Kisała Magdalena

II

Kisała M., *Granice decentralizacji*, w: *Decentralizacja i centralizacja administracji publicznej. Współczesny wymiar w teorii i praktyce*, red. B. Jaworska-Dębska, E. Olejniczak-Szałowska, R. Budzisz, Wolters Kluwer, Wydawnictwo Uniwersytetu Łódzkiego, Warszawa–Łódź 2019, s. 64–75.

Kisała M., *The Influence of Public-Private Partnership on the Implementation of the Principle of Sustainable Development in Local Government Units*, Economic and Environmental Studies 2019, t. 19, nr 1, s. 55–70.

Kisała M., *Rola formalizacji w funkcjonowaniu administracji publicznej*, w: *Standardy współczesnej administracji i prawa administracyjnego*, red. Z. Duniewska, M. Stahl, A. Rabiega-Przyłęcka, Wolters Kluwer, Wydawnictwo Uniwersytetu Łódzkiego, Warszawa–Łódź 2019, s. 186–200.

Kisała M., *Skuteczność jako determinanta działań organów jednostek samorządu terytorialnego*, Studia Prawnicze KUL 2019, nr 2, s. 179–199.

Kisała M., Wrzosek S., *Interdisciplinary Approach in Research on the Role of Local Government Units in Environmental Protection*, Ekonomia i Środowisko 2019, t. 70, nr 3, s. 197–206.

Kosińska Anna

I

Kosińska A., *Cultural Rights of Third-Country Nationals in EU Law*, Palgrave Macmillan, Cham 2019, ss. 291.

II

Kosińska A., *Case of Bistieva and Others v. Poland*, Polish Review of International and European Law 2019, t. 8, nr 2, s. 129–139.

Kosińska A., *Fascii littori – reminiscencje prawa rzymskiego w architekturze czasów Mussoliniego*, w: *Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce*, red. A. Dębiński, M. Jońca, I. Leraczyk, Wydawnictwo KUL, Lublin 2019, s. 177–192.

Kosińska A., *The Problem of Migration Security in the Current Case-Law of the CJEU – the Perspective of Member States*, Rocznik Integracji Europejskiej 2019, nr 13, s. 175–188.

Kosińska A., *Rola unijnych agencji migracyjnych w kreowaniu standardów zarządzania bezpieczeństwem migracyjnym w dobie europejskiego kryzysu migracyjnego*, Studia Migracyjne. Przegląd Polonijny 2019, t. 45, nr 2, s. 101–129.

Kosińska A., *The Role of the CJEU in Ensuring Migrants' Security – Analysis of the Post-Crisis Case Law*, Review of European and Comparative Law 2019, t. 37, nr 2, s. 97–120.

Kosińska A., *Standard bezpieczeństwa migracyjnego w świetle aktualnego orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej w sprawach dublińskich*, Rocznik Instytutu Europy Środkowo-Wschodniej 2019, t. 17, z. 2, s. 277–291.

Kosińska A., Mikołajczyk B., *Does the Right to Migration Security Already Exist? Considerations from the Perspective of the EU's Legal System*, European Journal of Migration and Law 2019, t. 21, nr 1, s. 83–116.

IV

Kosińska A., *Odmowa przyznania lub cofnięcie statusu uchodźcy – glosa do wyroku Trybunału Sprawiedliwości z 14.05.2019 r., sprawy połączone M przeciwko Ministerstwo vnitra (C-391/16) oraz X (C-77/17) i X (C-78/17) przeciwko Commissaire général aux réfugiés et aux apatrides*, Europejski Przegląd Sądowy 2019, nr 9, s. 40–46.

Krzysztofik Edyta

II

Krzysztofik E., *Prawa pobytowe obywateli państw nieuznanych w Unii Europejskie*j, w: *Problem państw nieuznawanych we współczesnym świecie*, red. V. Serzhanova, J. Wilk, K. Nowak, J. Plis, Wydawnictwo Sejmowe, Warszawa 2019, s. 304–315.

Krzysztofik E., *Problem nazwisk obywateli migrujących w orzecznictwie Trybunału Sprawiedliwości Unii Europejskiej*, w: *Prawo międzynarodowe publiczne. Studia i materiały*, t. 2, red. K. Stasiak, W. Staszewski, A. Szarek-Zwijacz, Towarzystwo Naukowe KUL, Lublin 2019, s. 41–56.

Krzysztofik E., Serzhanova V., *Pochodny charakter obywatelstwa Unii Europejskiej*, w: *In varietate concordia. Księga jubileuszowa z okazji XXX-lecia pracy naukowej Profesora Bronisława Sitka*, red. K. Ciućkowska, J. Szczerbowski, Wydawnictwo Uniwersytetu SWPS, Warszawa 2019, s. 271–284.

IV

Krzysztofik E., *Gloss to the Judgement of the Court of Justice of the European Union in Case C 673/16 Relu Adrian Coman, Robert Clabourn Hamilton v. Inspectoratul General pentru Imigrari*, Przegląd Prawa Konstytucyjnego 2019, nr 5, s. 429–439.

Kucia-Guściora Beata

II

Kucia-Guściora B., *Rola Ministra Finansów w zaciąganiu zobowiązań finansowych w imieniu Skarbu Państwa. Część I*, Roczniki Nauk Prawnych 2019, t. 29, nr 4, s. 81–98.

Kucia-Guściora B., *Rozdział IX. Międzynarodowe prawo podatkowe*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 534–580.

Kucia-Guściora B., *Rozdział V, § 19. Interpretacje przepisów prawa podatkowego*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 246–255.

Kucia-Guściora B., *Rozdział V, § 20. Postępowanie w sprawie porozumień w sprawach ustalania cen transferowych*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 256–261.

Kucia-Guściora B., *Rozdział VII, § 31. Podatek dochodowy od osób prawnych*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 406–437.

Kucia-Guściora B., *Rozdział X, § 50 pkt III. Podatki pośrednie od gromadzenia kapitałów, § 51. Harmonizacja podatków bezpośrednich*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 597–619.

Kucia-Guściora B., *Ustalenie i zmiana rezydencji podatkowej – skutki dla osób fizycznych*, Krytyka Prawa. Niezależne Studia nad Prawem 2019, t. 11, nr 4, s. 182–209.

Kucia-Guściora B., *Węzłowe problemy preferencji podatkowych dla grup producentów rolnych*, Wieś i Rolnictwo 2019, nr 1, s. 25–43.

Kucia-Guściora B., *„Wolne środki" w ustawie o finansach publicznych z perspektywy kompetencji Ministra Finansów*, Prawo Budżetowe Państwa i Samorządu 2019, t. 7, nr 2, s. 21–43.

Kuć Małgorzata

I

Mazur J., Kuć M., *Marginalizacja – ujęcie wielowymiarowe. Przejawy, skutki, przeciwdziałanie*, Wydawnictwo Naukowe Scholar, Warszawa 2019, ss. 200.

II

Kuć M., *Praca socjalna w kontekście prewencji kryminalnej*, w: *Współczesne wyzwania i dylematy w pracy socjalnej. Polityka społeczna – edukacja – zdrowie publiczne*, red. A. Cygan, M. Olejniczak, Państwowa Wyższa Szkoła Zawodowa w Koninie, Konin 2019, s. 115–125.

Kuć M., *Terrorist Suicide as a Tactical Method of Asymmetric Warfare*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 2, s. 181–191.

Kułak-Krzysiak Katarzyna

II

Kułak-Krzysiak K., *Administracyjne kary pieniężne a odpowiedzialność karna – problemy wybrane*, Administracja. Teoria – Dydaktyka – Praktyka 2019, z. 1, s. 73–89.

Kułak-Krzysiak K., *Mediacja jako sposób dochodzenia praw w postępowaniu administracyjnym i sądowoadministracyjnym*, Opolskie Studia Administracyjno-Prawne 2019, t. 17, nr 1, s. 125–139.

Kułak-Krzysiak K., Haładyj A., *Positive Silence to the Removal of Trees – an Analysis of a Legal Institution*, Review of European and Comparative Law 2019, t. 36, nr 1, s. 7–26.

Kwiecień Sebastian

II

Kwiecień S., *Prawo przemysłowe*, w: *Prawo handlowe i gospodarcze II Rzeczypospolitej*, red. R. Jastrzębski, Wolters Kluwer, Warszawa 2019, s. 312–350.

Leraczyk Izabela

I

Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce, red. A. Dębiński, M. Jońca, I. Leraczyk, Wydawnictwo KUL, Lublin 2019, ss. 393.

II

Leraczyk I., *Non enim crimen dicitur, quod mortis adegit impulsus – notes on the C. Th. 15,14,14*, Studia Prawnicze KUL 2019, nr 4, s. 111–129.

Leraczyk I., *On some International Regulations in Gaius's Institutes*, Review of European and Comparative Law 2019, t. 39, nr 4, s. 99–119.

Leraczyk I., *Wierność zaklęta w metalu. Uwagi wokół rewersu lokryjskiej didrachmy (SNG ANS 531)*, w: *Ius est ars Boni et Aequi. Sztuka w prawie, prawo w sztuce*, red. A. Dębiński, M. Jońca, I. Leraczyk, Wydawnictwo KUL, Lublin 2019, s. 229–239.

Lis Wojciech

I

Lis W., Sadowska M., *Ustawa o zawodach pielęgniarki i położnej. Komentarz*, Wolters Kluwer, Warszawa 2019, ss. 424.

II

Lis W., *Konstytucyjne źródła prawa rodzinnego*, w: *Pedagogika rodziny*, red. M. Marczewski, Wyższa Szkoła Społeczno-Ekonomiczna w Gdańsku, Gdańsk 2019, s. 327–363.

Lis W., *The Polish Minority in Armenia*, Studia Polonijne 2019, t. 40, s. 47–62.

Lis W., *Rozdział 8. Mieszkania i inne należności funkcjonariuszy*, w: M. Karpiuk, W. Lis, M. Sadowska, E. Tkaczyk, M. Wieczorek, *Ustawa o Służbie Ochrony Państwa. Komentarz do art. 130–207*, t. 5, cz. 3, Wydział Prawa i Administracji Uniwerystetu Warmińsko-Mazurskiego, Olsztyn 2019, s. 143–214.

Lis W., *Surrogate Birth in Light of the Fundamental Principles of Family Law*, w: *Fundamental Legal Problems of Surrogate Motherhood. Global perspective*, red. P. Mostowik, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 797–814.

Mełgieś Katarzyna

I

Własność intelektualna i jej efektywne wykorzystanie w działalności przedsiębiorstwa. Aktualne problemy, red. W. Broński, K. Mełgieś, Wydawnictwo KUL, Lublin 2019, s. 313–353.

II

Mełgieś K., *Działalność psychoterapeutów w perspektywie obowiązujących standardów*, w: *Standard wykonywania zawodów medycznych*, red. A. Górski, M. Grassmann, E. Sarnacka, C.H. Beck, Warszawa 2019, s. 201–221.

Mełgieś K., *Hurtownie farmaceutyczne*, w: *System Prawa Medycznego*, t. 4. *Prawo farmaceutyczne*, red. J. Haberko, C.H. Beck, Warszawa 2019, s. 881–976.

Mełgieś K., *Licencje jako narzędzie transferu technologii i źródło innowacji*, w: *Własność intelektualna i jej efektywne wykorzystanie w działalności przedsiębiorstwa. Aktualne problemy*, red. W. Broński, K. Mełgieś, Wydawnictwo KUL, Lublin 2019, s. 209–230.

Mełgieś K., *Nadzór nad bezpieczeństwem produktów leczniczych*, w: *System Prawa Medycznego*, t. 4. *Prawo farmaceutyczne*, red. J. Haberko, C.H. Beck, Warszawa 2019, s. 617–674.

Mełgieś K., *Państwowa Inspekcja Farmaceutyczna*, w: *System Prawa Medycznego*, t. 4. *Prawo farmaceutyczne*, red. J. Haberko, C.H. Beck, Warszawa 2019, s. 97–154.

Mełgieś K., *Zawód fizjoterapeuty – aspekty prawne*, w: *Zawody medyczne – ciągłość i zmiana*, red. A. Majchrowska, J. Pawlikowski, W. Piątkowski, Universitas, Kraków 2019, s. 175–188.

Mełgieś K., Miaskowska-Daszkiewicz K., *Wykorzystanie systemów informacji w nadzorze nad dostępnością i dystrybucją produktów leczniczych*, w: *Telemedycyna i e-zdrowie. Prawo i informatyka*, red. I. Lipowicz, G. Szpor, M. Świerczyński, Wolters Kluwer, Warszawa 2019, s. 218–242.

Mełgieś K., Świerczyński M., *Obrót produktami leczniczymi*, w: *System Prawa Medycznego*, t. 4. *Prawo farmaceutyczne*, red. J. Haberko, C.H. Beck, Warszawa 2019, s. 789–832.

Miaskowska-Daszkiewicz Katarzyna

II

Miaskowska-Daszkiewicz K., *Dopuszczanie do obrotu produktów leczniczych*, w: *System Prawa Medycznego*, t. 4. *Prawo farmaceutyczne*, red. J. Haberko, C.H. Beck, Warszawa 2019, s. 465–566.

Miaskowska-Daszkiewicz K., *Farmaceuta i technik farmaceutyczny*, w: *System Prawa Medycznego*, t. 4. *Prawo farmaceutyczne*, red. J. Haberko, C.H. Beck, Warszawa 2019, s. 35–96.

Miaskowska-Daszkiewicz K., *Ocena zgodności z Konstytucją przepisów ustawy o zawodach lekarza i lekarza dentysty w zakresie udostępniania pytań z egzaminów lekarskich*, Zeszyty Prawnicze Biura Analiz Sejmowych 2019, nr 3, s. 279–296.

Miaskowska-Daszkiewicz K., *Recepty w postaci elektronicznej*, w: *System Prawa Medycznego*, t. 4. *Prawo farmaceutyczne*, red. J. Haberko, C.H. Beck, Warszawa 2019, s. 1019–1026.

Miaskowska-Daszkiewicz K., *Standardy wykonywania zawodu farmaceuty zatrudnionego w aptece ogólnodostępnej*, w: *Standard wykonywania zawodów medycznych*, red. A. Górski, M. Grassmann, E. Sarnacka, C.H. Beck, Warszawa 2019, s. 149–172.

Miaskowska-Daszkiewicz K., *Zawody medyczne w Polsce – problemy interpretacyjne i wyzwania regulacyjne*, w: *Zawody medyczne – ciągłość i zmiana*, red. A. Majchrowska, J. Pawlikowski, W. Piątkowski, Universitas, Kraków 2019, s. 15–26.

Misztal-Konecka Joanna

I

Misztal-Konecka J., *Postępowanie zabezpieczające i egzekucyjne w sprawach cywilnych*, Wolters Kluwer, Warszawa 2019, ss. 594.

Misztal-Konecka J., *Ugoda w postępowaniu cywilnym. Studium z zakresu prawa polskiego na tle prawa rzymskiego*, Wydawnictwo KUL, Lublin 2019, ss. 506.

II

Misztal-Konecka J., *Czy wniesienie pozwu w sprawie cywilnej przeciwko sędziemu może stanowić nadużycie prawa procesowego? Zarys problemu*, w: *Nadużycie prawa procesowego cywilnego*, red. P. Grzegorczyk, M. Walasik, F. Zedler, Wolters Kluwer, Warszawa 2019, s. 72–96.

Misztal-Konecka J., *Inne środki dowodowe*, w: *Kodeks postępowania cywilnego*, t. 2. *Komentarz. Art. 205^1–424^{12}*, red. A. Marciniak, C.H. Beck, Warszawa 2019, s. 461–499.

Misztal-Konecka J., *Postępowanie dowodowe. Przepisy ogólne (komentarz do art. 235–243)*, w: *Kodeks postępowania cywilnego*, t. 2. *Komentarz. Art. 205^1–424^{12}*, red. A. Marciniak, C.H. Beck, Warszawa 2019, s. 172–247.

Misztal-Konecka J., *Prawnorzeczowe skutki działania wód powierzchniowych w prawie polskim na tle regulacji prawa rzymskiego*, w: *In varietate cooncordia. Księga jubileuszowa z okazji XXX-lecia pracy naukowej Profesora Bronisława Sitka*, red. K. Ciućkowska, J. Szczerbowski, Wydawnictwo Uniwersytetu SWPS, Warszawa 2019, s. 113–129.

Misztal-Konecka J., *Prawo pomocy w postępowaniu w sprawach cywilnych w Polsce i Hiszpanii. Zadanie państwa z zakresu wymiaru sprawiedliwości czy administracji?*, Journal of Modern Science 2019, t. 2, nr 41, s. 87–109.

Misztal-Konecka J., *Przyczynek do analizy pojęć oczywistej i rażącej obrazy przepisów prawa w kontekście instytucji wytknięcia komornikowi rażącej obrazy przepisów*, w: *Scientia nobilitat. Rozważania o prawie i jego stosowaniu. Księga jubileuszowa z okazji 10-lecia Krajowej Szkoły Sądownictwa i Prokuratury*, red. M. Manowska, R. Pawlik, Krajowa Szkoła Sadownictwa i Prokuratury, Kraków 2019, s. 253–264.

Misztal-Konecka J., *Stwierdzenie oczywistego naruszenia prawa przez komornika sądowego*, w: *Komornicy sądowi i egzekucja w nowej rzeczywistości prawnej*, red. R. Kulski, Wydawnictwo Currenda, Sopot 2019, s. 93–109.

Misztal-Konecka J., *Wytknięcie rażącej obrazy przepisów w ustawie z dnia 22 marca 2018 r. o komornikach sądowych*, Forum Prawnicze 2019, nr 1, s. 38–52.

Misztal-Konecka J., *Zabezpieczenie dowodów*, w: *Kodeks postępowania cywilnego*, t. 2. *Komentarz. Art. 205^1–424^{12}*, red. A. Marciniak, C.H. Beck, Warszawa 2019, s. 499–519.

Münnich Monika

I

Stanowienie i stosowanie prawa podatkowego w Polsce. Granice opodatkowania, red. M. Münnich, Wydawnictwo KUL, Lublin 2019, ss. 254.

II

Münnich M., *Czynności sprawdzające*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 268–270.

Münnich M., *Elementy cywilistycznej klauzuli generalnej rozsądku w polskim prawie podatkowym*, w: *Prawo podatkowe w systemie prawa. Międzygałęziowe związki norm i instytucji prawnych*, red. A. Kaźmierczak, A. Franczak, Wolters Kluwer, Warszawa 2019, s. 129–139.

Münnich M., *Kontrola podatkowa*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 270–277.

Münnich M., *Ordynacja podatkowa – część procesowa*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 151–245.

Münnich M., *Postępowanie w sprawie wydawania zaświadczeń*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 277–279.

Münnich M., *Przyczyny i cele stosowania zwrotów niedookreślonych w przepisach prawa skarbowego w okresie dwudziestolecia międzywojennego w Polsce*, Czasopismo Prawno-Historyczne 2019, t. 71, z. 1, s. 167–186.

Münnich M., *Zryczałtowany podatek od wartości sprzedanej produkcji okrętowej*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 459–463.

Münnich M., Smoleń P., *Komentarz do art. 15* (s. 218–224); *art. 17* (s. 230–241); *art. 17a–17b* (s. 214–215); *18–18d* (s. 241–246); *art. 130–132a* (s. 884–893), w: *Ordynacja podatkowa. Komentarz*, red. H. Dzwonkowski, C.H. Beck, Warszawa 2019, ss. 1488.

Nowik Paweł

II

Nowik P., *Collective Bargaining as a Form of Trade Union Involvement in Regulating Working Conditions on Digital Labour Platforms*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 2, s. 251–266.

Orzeszyna Krzysztof

II

Orzeszyna K., *Prawo dziecka do wychowania przez ojca i matkę*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 2, s. 267–273.

Parchomiuk Jerzy

II

Parchomiuk J., *Judicial Review of Discretionary Powers in the Activity of Historical Monuments Protection Bodies in the Polish Legal System*, Baltic Journal of Law & Politics 2019, t. 12, nr 1, s. 87–114.

Parchomiuk J., *Kontrola kompetencji dyskrecjonalnych organów ochrony zabytków w orzecznictwie polskich sądów administracyjnych*, Zeszyty Naukowe Sądownictwa Administracyjnego 2019, nr 6, s. 51–75.

Parchomiuk J., *Prawne formy działania wojewódzkiego konserwatora zabytków w sferze wywłaszczenia zabytków*, Przegląd Prawa Publicznego 2019, nr 2, s. 35–51.

Potrzeszcz Jadwiga

I

Wykładnia prawa. Aspekty teoretyczne i praktyczne, red. J. Potrzeszcz, B. Liżewski, Wydawnictwo KUL, Lublin 2019, ss. 214.

II

Potrzeszcz J., *Child's Legal Security*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 1, s. 201–209.

Potrzeszcz J., *Conscience Clause of Service Providers on the Example of the Case of the Printer of Łódź in the Context of the Situation of Persons Performing Other Professions*, w: *Freedom*

of Conscience. A Comparative Law Perspective, red. G. Blicharz, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 49–91.

Potrzeszcz J., *Klauzula sumienia usługodawców*, w: *Wolność sumienia. Perspektywa prawnoporównawcza*, red. G. Blicharz, M. Delijewski, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 13–55.

Potrzeszcz J., *Wykładnia prawa a bezpieczeństwo prawne na przykładzie wybranych problemów stosowania prawa podatkowego*, w: *Wykładnia prawa. Aspekty teoretyczne i praktyczne*, red. J. Potrzeszcz, B. Liżewski, Wydawnictwo KUL, Lublin 2019, s. 149–163.

Potrzeszcz J., *Wymiary prawa a wymiary pewności prawa i bezpieczeństwa prawnego*, w: *Wymiary prawa. Teoria. Filozofia. Aksjologia*, red. M. Hermann, M. Krotoszyński, P. Zwierzykowski, C.H. Beck, Warszawa 2019, s. 19–29.

Skrobotowicz Grzegorz

II

Skrobotowicz G., *Klasyfikacja skazanych a indywidualizacja wykonywania kary pozbawienia wolności*, w: *Kryminalistyka i kryminologia*, red. M. Maciąg, K. Maciąg, Wydawnictwo Naukowe Tygiel, Lublin 2019, s. 106–118.

Skrobotowicz G., *Macierzyństwo w zakładzie karnym*, w: *Wybrane zagadnienia z zakresu nauk społecznych i mediów*, red. A. Surma, M. Śliwa, Wydawnictwo Naukowe Tygiel, Lublin 2019, s. 216–228.

Skrobotowicz G., *Social and Living Conditions in Polish Prisons in the Context of International Legal Regulations – Selected Issues*, Review of European and Comparative Law 2019, t. 39, nr 4, s. 169–186.

Skwarzyński Michał

II

Skwarzyński M., *Impact of the ECHR Case Law on the Use of Conscientious Objection in Poland*, w: *Contemporary Challenges to Conscience. Legal and Ethical Frameworks for Professional Conduct*, red. A. Stępkowski, Peter Lang, Berlin 2019, s. 127–142.

Skwarzyński M., *Protecting Conscientious Objection as the "Hard Core" of Human Dignity*, Ius Novum 2019, t. 13, nr 2, s. 270–291.

Sławicki Piotr

II

Sławicki P., *Czy potrzebna jest odrębna regulacja mediacji gospodarczej?*, w: *Ekonomia i Prawo – wybrane zagadnienia z zakresu zarządzania rozwojem przedsiębiorstwa*, red. P. Antonowicz, M. Chmielewski, P. Pisarewicz, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2019, s. 93–108.

Sławicki P., *Wpływ ustanowienia zarządu sukcesyjnego na postępowanie klauzulowe i egzekucyjne*, Roczniki Nauk Prawnych 2019, t. 29, nr 2, s. 79–91.

Sławicki P., Broński W., Golema K., Asłanowicz M., Waląg M., Włodarczyk W., Guizeng (Wayne) L., Hauser M., Schaugg L., *ADR jako narzędzie w zarządzaniu własnością intelektualną*, w: *Własność intelektualna i jej efektywne wykorzystanie w działalności przedsiębiorstwa. Aktualne problemy*, red. W. Broński, K. Mełgieś, Wydawnictwo KUL, Lublin 2019, s. 313–353.

Smarzewski Marek

II

Smarzewski M., *Granice dopuszczalności dowodów uzyskanych w sposób nielegalny w polskim procesie karnym*, Acta Iuridica Resoviensia 2019, t. 24, z. 105, s. 162–178.

Smarzewski M., *Granice prawa osoby podejrzanej do obrony w kontekście art. 233 § 1a k.k.*, w: *Ewolucja polskiego wymiaru sprawiedliwości w latach 2013–2018 w świetle standardów rzetelnego procesu*, red. C. Kulesza, A. Sakowicz, Wydawnictwo Temida 2, Białystok 2019, s. 533–547.

Smarzewski M., *Słuszność a celowość w kontekście stosowania obserwacji psychiatrycznej w polskim postępowaniu karnym*, Przegląd Sądowy 2019, nr 1, s. 43–54.

Smarzewski M., Banach M., *Prawo adwokata do obrony w postępowaniu karnym i dyscyplinarnym a tajemnica adwokacka*, Palestra 2019, nr 3, s. 40–54.

Smoleń Paweł

I

Prawo podatkowe, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, ss. 670.

II

Smoleń P., *Karta podatkowa*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 527–532.

Smoleń P., *Komentarz do art. 13, art. 13A, art. 16, art. 19, art. 20*, w: *Ordynacja podatkowa. Komentarz*, red. H. Dzwonkowski, C.H. Beck, Warszawa 2019, s. 115–129, 224–229, 246–249.

Smoleń P., *Koszty uzyskania przychodów nauczycieli akademickich*, w: *Współczesne problemy prawa podatkowego. Teoria i praktyka. Księga jubileuszowa dedykowana Profesorowi Bogumiłowi Brzezińskiemu*, t. 1, red. J. Głuchowski, Wolters Kluwer, Warszawa 2019, s. 484–493.

Smoleń P., *Podatek od spadków i darowizn*, w: *Prawo podatkowe*, red. P. Smoleń, W. Wójtowicz, wyd. 4, C.H. Beck, Warszawa 2019, s. 501–520.

Smoleń P., Świstak M., *Działalność twórcza pracownika badawczo-dydaktycznego. Aspekty prawnoautorskie i podatkowe*, w: *Prawo podatkowe w systemie prawa. Międzygałęziowe związki norm i instytucji prawnych*, red. A. Kaźmierczak, A. Franczak, Wolters Kluwer, Warszawa 2019, s. 337–350.

Smoleń P., Świstak M., *Kontrowersje wokół statusu prawnego i finansowania działalności Katolickiego Uniwersytetu Jana Pawła II*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 1, s. 283–299.

Smoleń P., Świstak M., *Praktyka opodatkowania wyrobisk górniczych po wyroku Trybunału Konstytucyjnego z dnia 13 września 2011 roku (P 33/09)*, Roczniki Nauk Prawnych 2019, t. 29, nr 3, s. 119–154.

Sobieraj Kamila

II

Sobieraj K., *Implementation of the European Union Requirement to Coordinate Activities of Public Administration Authorities in the Process of the Authorisation, Certification and*

Licensing of Renewable Energy Sources Investments, Review of European and Comparative Law 2019, t. 39, nr 4, s. 121–144.

Sobieraj K., *Skutki prawne przyjęcia i opublikowania konkluzji dotyczących najlepszych dostępnych technik na przykładzie regulacji dla dużych obiektów energetycznego spalania*, Ruch Prawniczy, Ekonomiczny i Socjologiczny 2019, t. 81, nr 1, s. 143–156.

Sobieraj K., *Utworzenie Państwowego Gospodarstwa Wodnego „Wody Polskie" jako przejaw koncentracji zadań i kompetencji w obszarze gospodarki wodnej – wybrane zagadnienia*, Studia Prawno-Ekonomiczne 2019, t. 111, s. 79–95.

Stanisz Piotr

II

Stanisz P., *Die Feiertagsrecht in der Polnischen Republik*, Österreichisches Archiv für Recht und Religion 2019, nr 2, s. 312–321.

Stanisz P., *L'art. 17 del Trattato sul funzionamento dell'Unione europea: malum necessarium o signum temporis?*, w: *Parola – Sacramento – Carisma. Scritti in onore di Libero Gerosa in occasione del suo 70° compleanno*, red. L. Bianchi, A. Cattaneo, G. Eisenring, Wydawnictwo Cantagalli, Siena 2019, s. 685–702.

Stanisz P., *Spiritual Care in Public Institutions in Poland: Searching for a Balanced Model*, w: *Spiritual Care in Public Institutions in Europe*, red. J.R. Tretera, Z. Horák, Berliner Wissenschafts-Verlag, Berlin 2019, s. 85–97.

Stanisz P., *The Status of Religious Organizations in Poland: Equal Rights and Differentiation*, w: *Religion, Pluralism, and Reconciling Difference*, red. W.C. Durham, D.D. Thayer, Routledge, New York 2019, s. 147–158.

Stanisz P., Dammacco G., *Przystąpienie do rokowań w sprawie ustawowej regulacji sytuacji prawnej związku wyznaniowego jako kompetencja rządu. Uwagi na kanwie wyroku włoskiego Sądu Konstytucyjnego nr 52 z 2016 r.*, Przegląd Sejmowy 2019, nr 3, s. 97–122.

Stanisz P., Ordon M., *Finansowanie związków wyznaniowych w Republice Włoskiej: zarządzanie środkami z asygnaty podatkowej (otto per mille) przedmiotem krytyki Trybunału Obrachunkowego*, Studia z Prawa Wyznaniowego 2019, t. 22, s. 379–429.

Stasiak Kinga

I

Prawo międzynarodowe publiczne. Studia i materiały, t. 2, red. K. Stasiak, W. Staszewski, A. Szarek-Zwijacz, Towarzystwo Naukowe KUL, Lublin 2019, ss. 266.

Staszewski Wojciech

I

Prawo międzynarodowe publiczne. Studia i materiały, t. 2, red. K. Stasiak, W. Staszewski, A. Szarek-Zwijacz, Towarzystwo Naukowe KUL, Lublin 2019, ss. 266.

W jakiej Unii Europejskiej Polska – jaka Polska w Unii Europejskiej. Instytucjonalizacja współpracy międzynarodowej, red. W. Staszewski, E. Cała-Wacinkiewicz, J. Menkes, J. Nowakowska-Małusecka, C.H. Beck, Warszawa 2019, ss. 396.

II

Staszewski W., *Bezpieczeństwo międzynarodowe w traktatach o przyjaźni i współpracy zawartych przez Polskę z państwami sąsiednimi*, Studia Prawnicze KUL 2019, nr 2, s. 201–231.

Staszewski W., *Polityka traktatowa Polski w zakresie umów o przyjaźni i współpracy po „Jesieni ludów" 1989 r.*, Rocznik Instytutu Europy Środkowo-Wschodniej 2019, t. 17, z. 1, s. 281–302.

Staszewski W., Cała-Wacinkiewicz E., *Integracja europejska w traktatach o przyjaźni i współpracy zawartych przez Polskę z państwami Wspólnot Europejskich/Unii Europejskiej*, w: *W jakiej Unii Europejskiej Polska – jaka Polska w Unii Europejskiej. Instytucjonalizacja współpracy międzynarodowej*, red. E. Cała-Wacinkiewicz, J. Menkes, J. Nowakowska-Małusecka, W. Staszewski, C.H. Beck, Warszawa 2019, s. 55–71.

Staszewski W., Szarek-Zwijacz A., *In Memoriam Kinga Cecylia Stasiak 1981–2019*, Studia Prawnicze KUL 2019, nr 2, s. 7–12.

Szarek-Zwijacz Anna

I

Prawo międzynarodowe publiczne. Studia i materiały, t. 2, red. K. Stasiak, W. Staszewski, A. Szarek-Zwijacz, Towarzystwo Naukowe KUL, Lublin 2019, ss. 266.

Szarek-Zwijacz A., Staszewski W., *In Memoriam Kinga Cecylia Stasiak 1981–2019*, Studia Prawnicze KUL 2019, nr 2, s. 7–12.

V

Szarek-Zwijacz A., *Grażyna Baranowska, Wymuszone zaginięcia w Europie. Kształtowanie się międzynarodowych standardów zapobiegania i egzekwowania odpowiedzialności państw, Wydawnictwo C.H. Beck, Warszawa 2017, ss. 267*, Studia Prawnicze KUL 2019, nr 2, s. 353–361.

Szeleszczuk Damian

I

Szeleszczuk D., Wiak K., Gałązka M., Hałas R., Hypś S., *Prawo karne. Repetytorium*, wyd. 3, C.H. Beck, Warszawa 2019, ss. 448.

II

Szeleszczuk D., *Kryminalizacja cofania liczników w świetle projektowanej nowelizacji KK z 5 lipca 2018 r.*, Prokuratura i Prawo 2019, nr 1, s. 80–97.

Szeleszczuk D., *Nieudana próba penalizacji usuwania filtrów cząstek stałych w dieslach*, Kontrola Państwowa 2019, nr 2, s. 176–186.

Szeleszczuk D., *Przepadek i środki kompensacyjne*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 447–487.

Szeleszczuk D., *Przepisy ogólne dotyczące żołnierzy*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1490–1533.

Szeleszczuk D., *Przestępstwa przeciwko mieniu wojskowemu*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1582–1594.

Szeleszczuk D., *Przestępstwa przeciwko obowiązkowi pełnienia służby wojskowej*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1533–1549.

Szeleszczuk D., *Przestępstwa przeciwko obronności*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 853–876.

Szeleszczuk D., *Przestępstwa przeciwko prawom osób wykonujących pracę zarobkową*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1170–1190.

Szeleszczuk D., *Przestępstwa przeciwko zasadom dyscypliny wojskowej*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1549–1564.

Szeleszczuk D., *Przestępstwa przeciwko zasadom obchodzenia się z uzbrojeniem i uzbrojonym sprzętem wojskowym*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1570–1577.

Szeleszczuk D., *Przestępstwa przeciwko zasadom pełnienia służby*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1577–1582.

Szeleszczuk D., *Przestępstwa przeciwko zasadom postępowania z podwładnymi*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1564–1570.

Szeleszczuk D., *Środki karne*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 376–447.

Szeleszczuk D., *Zmiany w zakresie środków karnych w świetle nowelizacji Kodeksu karnego z 13 czerwca 2019 r.*, Studia Prawnicze KUL 2019, nr 3, s. 183–207.

Szewczak Marcin

I

Ganczar M., Szewczak M., Bis D., Ostrowska A., Kwiatosz K., *A nemzetközi önkormányzati együttműködés lengyel-magyar modellje*, Towarzystwo Naukowe KUL, Lublin 2019, ss. 114.

Ganczar M., Szewczak M., Bis D., Ostrowska A., Kwiatosz K., *Model polsko-węgierskiej samorządowej współpracy międzynarodowej*, Towarzystwo Naukowe KUL, Lublin 2019, ss. 114.

Tabaszewski Robert

II

Tabaszewski R., *Achieving the Sustainable Development Goals in Europe and Asia: Role of Regional Organizations in Monitoring Human Right to Health and Well-Being*, Ius Novum 2019, t. 13, nr 2, s. 250–269.

Tabaszewski R., *Dopuszczalność egzekwowania klauzuli homogeniczności Unii Europejskiej w świetle zasady suwerenności państwa członkowskiego*, Journal of Modern Science 2019, t. 2, nr 41, s. 141–156.

Tabaszewski R., *Ewolucja zdrowia jako kategorii prawnej w systemie ochrony praw człowieka Rady Europy*, Studia Ełckie 2019, t. 21, z. 4, s. 319–330.

Tabaszewski R., *Głośne procesy sądowe w Nowym Sączu w okresie międzywojennym*, Rocznik Sądecki 2019, t. 46, s. 75–96.

Tabaszewski R., *Health as a Value in the Integration Policy of European and East Asian Countries. Historical and Legal Perspective*, Journal of European Integration History 2019, t. 25, nr 1, s. 99–110.

Tabaszewski R., *W Strasburgu*, Przegląd Uniwersytecki 2019, t. 31, nr 3, s. 16.

Telusiewicz Piotr

II

Telusiewicz P., *Foreign Surrogate Motherhood Procedures versus Legal Principles Regarding the Origin of the Child (Filiation)*, w: *Fundamental Legal Problems of Surrogate Motherhood. Global Perspective*, red. P. Mostowik, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 815–828.

Telusiewicz P., *Surrogate motherhood (urodzenie zastępcze) na tle fundamentów materialnego prawa rodzinnego*, w: *Fundamentalne prawne problemy surrogate motherhood. Perspektywa krajowa*, red. P. Mostowik, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, s. 497–508.

Trzebiatowski Marcin

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Trzebiatowski M., *Forma dochodzenia przeprosin za oczywiście bezzasadne powództwo z tytułu nieuczciwej konkurencji (art. 22 ust. 1 uznk), czyli analogiczny problem jak z wnioskiem na podstawie art. 423 § 2 ksh*, w: *Prawo handlowe. Między teorią, praktyką a orzecznictwem. Księga jubileuszowa dedykowana profesorowi Januszowi A. Strzępce*, red. E. Zielińska, P. Pinior, P. Relidzyński, W. Wyrzykowski, M. Żaba, C.H. Beck, Warszawa 2019, s. 545–554.

Trzebiatowski M., *Wykonanie obowiązku używania znaku towarowego w razie użycia łącznie kilku znaków (znaku złożonego) – w poszukiwaniu kryterium oceny*, w: *Znaki towarowe i ich ochrona*, red. R. Skubisz, C.H. Beck, Warszawa 2019, s. 341–363.

Trzewik Jacek

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Trzewik J., *Grant Contract as a Civil Law Form of Action of the Provincial Monument Conservator in the Polish Legal System*, Acta Universitatis Carolinae. Iuridica 2019, nr 2, s. 55–70.

Trzewik J., *O formie testamentu na tle regulacji rozporządzenia eIDAS*, Państwo i Prawo 2019, z. 10, s. 76–90.

Tunia Anna

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Tunia A., *Małżeństwo konkordatowe – litera i praktyka prawna*, w: *Konkordat polski 1993*, red. M. Winiarczyk-Kossakowska, C. Janik, P. Borecki, Wolters Kluwer, Warszawa 2019, s. 113–125.

Tunia A., *Realizacja uprawnień procesowych dziecka jako pokrzywdzonego w postępowaniu w sprawach o wykroczenia i ich ograniczenia*, Studia Prawnoustrojowe 2019, nr 45, s. 367–380.

Wąsek-Wiaderek Małgorzata

II

Wąsek-Wiaderek M., *Advisory Opinions of the European Court of Human Rights: Do National Judges Really Need This New Forum of Dialogue?*, w: *Judicial Power in Globalized World: Liber Amicorum Vincent De Gaetano*, red. P. Pinto de Albuquerque, K. Wojtyczek, Springer, Cham 2019, s. 637–652.

Wąsek-Wiaderek M., *Dostęp do adwokata na wczesnym etapie postępowania karnego w prawie Unii Europejskiej*, Europejski Przegląd Sądowy 2019, nr 1, s. 17–23.

Wąsek-Wiaderek M., *Dostęp oskarżonego pozbawionego wolności do kasacyjnego etapu postępowania karnego*, Forum Prawnicze 2019, nr 4, s. 66–78.

Wąsek-Wiaderek M., *Sprawa Kudła v. Poland z 2000 r.: prawo do skutecznego środka odwoławczego (art. 13 Konwencji)*, w: *Polska przed Europejskim Trybunałem Praw Człowieka. Sprawy wiodące: sprawa Kudła przeciwko Polsce z 2000 r.*, red. E. Morawska, C.H. Beck, Warszawa 2019, s. 161–184.

Wąsek-Wiaderek M., *Zasady intertemporalne w prawie karnym wykonawczym*, w: *Reguły intertemporalne w prawie karnym. Pokłosie XV Bielańskiego Kolokwium Karnistycznego*, red. J. Majewski, Wydawnictwo Naukowe UKSW, Warszawa 2019, s. 115–127.

Wąsek-Wiaderek M., *Złożenie wniosku o sporządzenie na piśmie i doręczenie uzasadnienia wyroku – wybrane problemy*, w: *Artes serviunt vitae sapientia imperat. Proces karny sensu largo. Rzeczywistość i wyzwania. Księga jubileuszowa Profesora Tomasza Grzegorczyka z okazji 70. urodzin*, red. R. Olszewski, D. Świecki, J. Kasiński, P. Misztal, K. Rydz-Sybilak, A. Małolepszy, Wolters Kluwer, Wydawnictwo Uniwersytetu Łódzkiego, Warszawa–Łódź 2019, s. 409–416.

Wąsek-Wiaderek M., Paprzycki L., *Overuse in the Criminal Justice System in Poland*, w: *Overuse in the Criminal Justice System. On Criminalization, Prosecution and Imprisonment*, red. P.H.M.C. van Kempen, M. Jendly, Intersentia, Cambridge–Antwerp–Chicago 2019, s. 509–527.

Wiak Krzysztof

I

Kodeks karny. Komentarz, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1644.

Wiak K., Gałązka M., Hałas R., Hypś S., Szeleszczuk D., *Prawo karne. Repetytorium*, wyd. 3, C.H. Beck, Warszawa 2019, ss. 448.

II

Wiak K., *Formy popełnienia przestępstwa*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 165–221.

Wiak K., *Ochrona Prezydenta Rzeczypospolitej Polskiej w Kodeksie karnym*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 1, s. 323–337.

Wiak K., *Odpowiedzialność za przestępstwa popełnione za granicą*, w: *Kodeks karny. Komentarz,* red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 720–743.

Wiak K., *Przestępstwa przeciwko pokojowi, ludzkości oraz przestępstwa wojenne*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 720–743.

Wiak K., *Przestępstwa przeciwko porządkowi publicznemu*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1264–1313.

Wiak K., *Przestępstwa przeciwko Rzeczypospolitej Polskiej*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 833–853.

Wiak K., *Przestępstwa przeciwko wymiarowi sprawiedliwości*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 1211–1256.

Wiak K., *Przestępstwa przeciwko życiu i zdrowiu*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 876–937.

Wiak K., *Stosunek do ustaw szczególnych*, w: *Kodeks karny. Komentarz*, red. A. Grześkowiak, K. Wiak, wyd. 6, C.H. Beck, Warszawa 2019, s. 803–807.

Widło Jacek

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Widło J., *Mortgage in International Private Law*, Review of European and Comparative Law 2019, t. 38, nr 3, s. 145–168.

Witczak Hanna

II

Witczak H., *Wybrane problemy związane ze statusem prawnym transmitariusza w polskim prawie spadkowym*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2019, t. 12, nr 2, s. 393–408.

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Witczak H., *Skutki wydziedziczenia dla zdolności do dziedziczenia wydziedziczonego. Glosa do wyroku s. apel. z dnia 28 maja 2013 r., I ACa 412/13*, Orzecznictwo Sądów Polskich 2019, z. 3, poz. 24.

Woch Katarzyna

II

Woch K., *Odwołanie od uchwały w sprawie wykluczenia z grona członków koła łowieckiego. Wybrane aspekty procesowe*, Journal of Modern Science 2019, t. 2, nr 41, s. 209–220.

Woś Paulina

II

Woś P., *Interwencja uboczna samoistna po stronie pozwanego a przekształcenie podmiotowe w trybie art. 194 § 3 Kodeksu postępowania cywilnego*, Studia Prawnicze KUL 2019, nr 1, s. 135–156.

Woś P., *O skutkach zawarcia ugody pomiędzy poszkodowanym a ubezpieczonym sprawcą szkody względem zakładu ubezpieczeń*, Rozprawy Ubezpieczeniowe. Konsument na Rynku Usług Finansowych 2019, nr 32, s. 50–61.

Wrzaszcz Paweł

I

Wrzaszcz P., *Status prawny wierzyciela rzeczowego w postępowaniu upadłościowym*, Wydawnictwo KUL, Lublin 2019, ss. 304.

IV

Wrzaszcz P., *Lista wierzytelności a umorzenie postępowania sądowego. Glosa do uchwały Sądu Najwyższego z dnia 18 stycznia 2019 r., sygn. akt III CZP 55/18*, Studia Prawnicze KUL 2019, nr 2, s. 327–341.

Wrzosek Stanisław

II

Wrzosek S., Kisała M., *Interdisciplinary Approach in Research on the Role of Local Government Units in Environmental Protection*, Ekonomia i Środowisko 2019, t. 70, nr 3, s. 197–206.

Zakrzewski Piotr

I

Prawo prywatne w służbie społeczeństwu. Księga poświęcona pamięci profesora Adama Jedlińskiego, red. P. Zakrzewski, D. Bierecki, Spółdzielczy Instytut Naukowy, Sopot 2019, ss. 334.

II

Zakrzewski P., *Komentarz do wyroku TK z 19.06.2018 r. SK 34/14, OTK-A, 2018, poz. 49*, Rocznik Orzecznictwa i Piśmiennictwa z Zakresu Prawa Spółdzielczego oraz Prawa Spółek Handlowych 2019, t. 9, poz. 4, s. 77–82.

Zakrzewski P., *Spór o korporacyjną (spółdzielczą), obligacyjną czy mieszaną naturę prawną spółdzielczych stosunków mieszkaniowych w prawie polskim na tle prawa niemieckiego*, Forum Prawnicze 2019, nr 4, s. 50–65.

Zakrzewski P., *Udostępnianie danych przez CEIGD*, w: *CEIDG. Rzecznik Małych i Średnich Przedsiębiorców. Przedsiębiorcy zagraniczni w obrocie gospodarczym. Komentarz*, red. G. Kozieł, C.H. Beck, Warszawa 2019, s. 129–148.

Zakrzewski P., *Wholesale Trade of Medicinal Products*, Prawo i Więź 2019, nr 2, s. 49–56.

Zakrzewski P., *Zmiana instytucji przedawnienia roszczeń w prawie polskim z 2018 r. (Change of the Statute of Limitations for Claims in Polish Law of 2018)*, w: *Закарпатські правові читання. Матеріали XI Міжнародної науково-практичної конференції (11–13 квітня 2019 року, м. Ужгород), Том 2 / Transcarpathian Legal Readings. Materials of the XI-th International Scholarly Conference (April 11–13, 2019, Uzhhorod), Chapter 2*, Uzhhorod National University, Uzhhorod 2019, s. 86–89.

Zakrzewski P., Buletsa S., *Limitation of Claims in Polish and Ukrainian Civil Code Against the Background of the Principles of European Contract Law and the German Civil Code*, Journal of Legal Studies 2019, t. 24, nr 38, s. 63–94.

Zdanikowski Paweł

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Zdanikowski P., *100 lat ewolucji regulacji struktury majątkowej spółki z o.o. w prawie polskim*, w: *Scientia nobilitat. Rozważania o prawie i jego stosowaniu. Księga jubileuszowa z okazji*

10-lecia Krajowej Szkoły Sądownictwa i Prokuratury, red. M. Manowska, R. Pawlik, Krajowa Szkoła Sądownictwa i Prokuratury, Kraków 2019, s. 213–231.

Zdanikowski P., *O pojęciu darowizny podlegającej zaliczeniu na schedę spadkową*, Przegląd Sądowy 2019, nr 3, s. 60–69.

Zdanikowski P., *Podział udziałów w spółce z o.o. po ustaniu wspólności ustawowej małżeńskiej*, Przegląd Prawa Handlowego 2019, nr 4, s. 35–43.

Zdanikowski P., *Simple Joint-Stock Company – A New Type of Polish Commercial Company Dedicated (Mostly) to New-Technology Entities*, Review of European and Comparative Law 2019, t. 39, nr 4, s. 79–97.

Zdanikowki P., *Sprzedaż egzekucyjna udziału w spółce z ograniczoną odpowiedzialnością, której umowa uzależnia zbycie udziałów od zgody spółki lub ogranicza zbycie w inny sposób (art. 185 k.s.h.)*, Przegląd Ustawodawstwa Gospodarczego 2019, nr 12, s. 34–42.

IV

Zdanikowski P., *Zawieszenie w wykonywaniu prawa do udziału w obradach zgromadzenia wspólników a prawo do wyrażenia sprzeciwu co do podjęcia uchwał bez formalnego zwołania. Glosa do wyroku Sądu Najwyższego z 23 maja 2019 r., II CSK 307/18*, Głos Prawa 2019, t. 2, nr 1, s. 89–94.

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