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SELECTED ASPECTS OF THE LEGAL EVALUATION OF THE 1932–1933 HOLODOMOR-GENOCIDE IN SOUTHERN UKRAINE

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The article examines specific legal aspects related to the evaluation of the 1932–1933 Holodomor in Southern Ukraine.

This topic is extremely relevant, because on November 28, 2006, the Verkhovna Rada of Ukraine adopted the Law “On the Holodomor of 1932–1933 in Ukraine”, which recognizes its events as genocide of the Ukrainian people, but of course this very tragic chapter of our history still requires a thorough study within the context of our people’s historical traumas and an interdisciplinary approach to understanding these processes.

Historians and scholars from other fields of knowledge (lawyers, managers, etc.) have collected a huge number of documents attesting to the repressions and other criminal actions of the Soviet government that led to the deaths of millions of Ukrainians during the Holodomors of 1921–1923, 1928–1929, 1932–1934, and 1946–1947. However, we emphasize that at the moment there is a lack of research on the legal assessment of the Holodomor that would facilitate its international recognition, as well as an insufficiently developed legal mechanism for rehabilitation, compensation for moral and material damage to victims of genocide and their descendants.

An integrated interdisciplinary approach to the study of certain legal aspects of the Holodomor of 1932–1933 in Southern Ukraine will allow: to investigate the legal norms that de iure and de facto guided the Soviet authorities in their activities; to identify those that have signs of a crime against the Ukrainian people; to examine and identify the institutions that exercised repressive functions and to determine the degree of responsibility for their activities; to make a legal analysis of the facts of repression against citizens of the Ukrainian SSR.

In fact, Ukraine has found itself in a situation where it is responsible for criminal acts against its citizens during these periods. At the same time, the Russian Federation, which is the successor to the USSR, is trying to rehabilitate J. Stalin, the main perpetrator of the genocide. This state of affairs raises the question of Russia’s legal responsibility for the genocide of Ukrainians.

Key words: Holodomor, Holodomor-genocide, rehabilitation, historical memory, tragedy, family law, peasants, food, law, legal responsibility, definition, historical and legal research, destruction, legal acts, historiography.

Правоторова О. М., Бойко Л. М. Окремі аспекти правової оцінки подій Голодомору-геноциду 1932–1933 років на території півдня України

Наукова стаття присвячена окремим правовим аспектам оцінки Голодомору 1932–1933 рр. на території Півдня України.

Тематика є надзвичайно актуальною, адже ще 28 листопада 2006 року Верховна Рада України ухвалила закон «Про Голодомор 1932–1933 років в Україні», який визнає його події геноцидом українського народу, але звісно ця дуже сумна сторінка нашої історії, ще потребує ґрунтовного дослідження і в контексті історичних травм нашого народу міждисциплінарного підходу до цих процесів.

Істориками та вченими з інших галузей знань (юристами, управлінцями тощо) зібрана величезна кількість документів, які засвідчують репресії та інші злочинні дії радянської влади, що призвели до загибелі мільйонів українців під час Голодоморів 1921–1923,

1928–1929, 1932–1934, 1946–1947 років. Проте, акцентуємо увагу, що на даний момент відчувається брак досліджень з правовою оцінкою подій Голодомору, яка б сприяла його визнанню на міжнародному рівні, а також недостатньо розроблений правовий механізм реабілітації, відшкодування моральних та матеріальних збитків постраждалим внаслідок геноциду та їх нащадкам.

Інтегрований міждисциплінарний підхід до вивчення проблеми окремих правових аспектів оцінки Голодомору 1932–1933 рр. на території Півдня України дозволить: дослідити правові норми, якими *de iure i de facto* керувались у своїй діяльності радянські органи влади; визначити такі, що мають ознаки злочину проти українського народу; дослідити та скласти перелік органів, що мали репресивні функції та з'ясувати ступінь відповідальності за їх діяльність; зробити правовий аналіз фактів репресій проти громадян УСРР.

По факту Україна опинилась в ситуації, коли відповідальність за злочинні дії проти її громадян у вказані періоди, несе лише вона сама. Поряд з цим, російська федерація, котра є спадкоємицею СРСР, намагається реабілітувати Й. Сталіна – головного винуватця геноциду. Подібний стан речей викликає питання про правову відповідальність РФ за геноцид українців.

Ключові слова: Голодомор, Голодомор-геноцид, реабілітація, історична пам'ять, трагедія, сімейне законодавство, селяни, продовольство, закон, правова відповідальність, дефініція, історико-правове дослідження, знищення, правові акти, історіографія.

Statement of the problem. In the context of the full-scale invasion of the Russian federation against Ukraine and the actual genocidal war, as well as the acceleration of globalization, when Ukraine is actively focusing on integration with the world and European community, there is a need to increase attention to rethinking historical memory. But in the case of the Holodomor, every effort should be made to ensure that this terrible event is not forgotten and that it is correctly interpreted and treated as a systematic destruction of Ukrainian identity in their research, both by the scientific community and the public, and therefore, there is a need for theoretical and methodological research into these processes.

It should be emphasized that the widespread use of interdisciplinary methods by researchers in the study of the Holodomor is objectively determined by a number of factors.

It refers to the logical and consistent development of social knowledge, which is characterized by a tendency to generalize and synthesize the contributions of social sciences, historical and legal disciplines.

The Holodomor-genocide was multifaceted and systemic phenomenon. As conceived by the Bolshevik leadership, it aimed to fundamentally change all major spheres of Ukrainian peasant life, ultimately reducing it to a mere instrument within the framework of the communist utopia.

Of course, this is a combination of tragic factors, but that is why the study of the Holodomor is of interest to many researchers from various fields: lawyers, psychologists, historians, sociologists, and many other scholars.

Analysis of recent research and publications. Many Ukrainian and foreign scholars have dealt with the issues of individual legal aspects of the assessment of the Holodomor of 1932–1933 in the territory of Southern Ukraine as a whole, and its study from various angles, and its qualification as a crime of genocide in the light of the Convention on the Prevention and Punishment of the Crime of Genocide (of December 9, 1948), as well as in the aspects of the destruction of civil society institutions and public administration in those years. Among such researchers there could be mentioned J. Bruski, L. Vovchuk, S. Vodotyka, A. Graziosi, V. Danylenko, J. Mace, O. Dudorov, S. Kornovenko, N. Kuzovova, V. Marochko, M. Melnyk and many others.

The purpose of the article. The purpose of this scientific article is to conduct a historical and legal study of the terrible tragedy of the Ukrainian people, and analyze

certain legal aspects of the assessment of the Holodomor of 1932–1933 in the territory of Southern Ukraine.

Presentation of the main material. Ukrainian history does not know a more large-scale and terrible crime of the ruling power against their own people than the Holodomor of 1932–1933. It was the most tragic period in the history of Ukraine, and the consequence of the brutal actions of the authorities was the murder of millions of peasants who were tormented by hunger. This crime is recognized as genocide, since it was provoked by a purposeful artificial famine carried out by the Soviet leadership, the purpose of which was to ensure total control of state bodies over all segments of the population [1].

At the time when this terrible tragedy occurred, the term ‘genocide’ did not yet exist in legal reality, and it was only in 1943 that Raphael Lemkin began his work “Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposal for Redress” [2], which was to become an act accusing Nazi Germany of a crime that humanity had not yet known. He analyzed in detail a significant number of regulations issued and implemented by Germany and its allies throughout the territory of the newly formed “Third Reich” and described, using legal terms, and classified all manifestations of violence, arbitrariness, and destruction. R. Lemkin believed that the crime taking place in Europe was unprecedented in its scale and cruelty; therefore it did not yet have its own name in legal science. To emphasize the importance of condemnation, punishment and prevention of similar events in the future, R. Lemkin introduced a new term – “genocide”. «New conceptions require new terms. By “genocide” we mean the destruction of a nation or of an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing), thus corresponding in its formation to such words as tyrannicide, homicide, infanticide, etc.», describes R. Lemkin [2].

In his scholarly works, R. Lemkin emphasizes that the goal of genocide is not necessarily the destruction of an entire nation, although the physical destruction of all members of a nation is undoubtedly genocide. But the presence of a plan or set of actions, “technologies of genocide”, as R. Lemkin called them, aimed at destroying the foundations of the existence of a nation: the collapse of political and social institutions, the destruction of culture, language, national feelings, religion and economic foundations of the existence of national groups and the destruction of personal security, freedom, health, dignity, and even the lives of people belonging to such groups – is also genocide. In this work, he identifies six technologies of genocide: political; social; cultural; economic; biological; physical.

There was no sphere of life untouched by the Holodomor of 1932–1933 – it affected family life, culture, the disappearance of Ukrainian traditions, and many other aspects of everyday life, medicine, responsibility for crimes, etc.

Focusing on Soviet family legislation of this period, it should first be noted that the revolutionary events of 1917 left a significant imprint on this area. After a long period of restriction of women’s rights, the principles of liberating women from social, economic and spiritual dependence began to spread in society, thereby equating them with men in political and public rights. That is why, after the Bolsheviks came to power, radical changes were made to marriage and family legislation – new marriage and family legislation of the RSFSR, and later the Ukrainian SSR, was developed and approved, represented by the first family code: “Code of Laws on Civil Status Acts, Marriage, Family and Guardianship Law.” According to it, traditional marriage and family relations have been transformed, an updated model of behavior has been formed, etc. [3].

When examining some legal aspects of the assessment of the Holodomor of 1932–1933 in the territory of Southern Ukraine, it should be noted that later, under totalitarian rule – including the regime responsible for provoking the Holodomor of 1932–1933 – personal life, morality, and everyday activities came under the absolute control of the party apparatus. The basic principles of party life were applied to marital and family relations, regulating them. During the same period, the traditional principles of family law were formed, becoming the basis for the creation of the Soviet family model. Unfortunately, even the tradition of family rituals was influenced by the Holodomor, because when there is nothing to eat, it automatically becomes impossible to hold wedding ceremonies and celebrations.

Under Soviet conditions, a totalitarian dictatorship developed in the Ukrainian SSR and, naturally, there is no need to talk about all of the above. Thus, the first article of the Constitution of the Ukrainian Socialist Soviet Republic (1919) declared that it was “an organization of the dictatorship of the working and exploited masses of the proletariat and the poorer peasantry over their age-old oppressors and exploiters” [Article 1]. It is noteworthy that the text of this document is known only in Russian.

The task of this dictatorship was proclaimed to be “the transition to socialism through socialist transformations and the systematic suppression of all counter-revolutionary encroachments by the wealthy classes (a more adequate translation is the owners of the means of production), as milestones on the path to communism” [Article 2]. In Soviet Ukraine, the liquidation of private ownership of land and all other means of production was proclaimed. No less significant is the fact that power was reserved exclusively for the “working masses.” They were these “working masses” that were supposed to have political rights. Citizens who used hired labor, lived on “unearned” income, former police officers, gendarmes, officers, priests, etc. were deprived of these rights.

In May 1929, the 6th All-Ukrainian Congress of Councils of Workers’, Peasants’ and Red Army Deputies of the Ukrainian SSR (this was the name of the highest legislative body of Soviet Ukraine) adopted a new Constitution of the Ukrainian SSR, which was in force until 1937. Article 1 of this constitution proclaimed Soviet Ukraine a ‘socialist state of workers and peasants’ [Article 1], while Article 4 declared all land, forests, and waters to be ‘socialist state property on the grounds determined by law.’ The political disenfranchisement of the so-called ‘exploiting classes’ – referred to in everyday language as the ‘dispossessed’ – initially proclaimed in 1919, was reaffirmed. Traditionally for Soviet law, the constitution declared for the working people all possible political rights and freedoms (of speech, press, assemblies, rallies, demonstrations, unions, etc.), which the authorities never intended to implement. The proclamation of the right of nations to self-determination looks no less blasphemous. However, let’s give credit to the authors of the constitution – the basic law did not mention the inviolability of the person, home, secrecy of correspondence, and other “antics of bourgeois law.”

Moving directly to the key independent source of family law, it is worth noting that it was also prevalent during the Holodomor of 1932–1933 (until 1936, when fundamental changes were made to family legislation). This is the updated Family Code of May 30, 1926: “Code of Laws on Family, Guardianship, Marriage and Civil Status Acts of the Ukrainian SSR” [4, p. 27].

The outlined family code strengthens the property and personal rights of family members, primarily women and children. According to its provisions, illegitimate children are fully equalized with those born in marriage, and the procedure for establishing paternity in relation to illegitimate children is also prescribed in detail. In such cases, where the mother had sexual relations with multiple men at the time of conception, the

court would recognize one as the legal father and impose joint financial responsibility for the child's maintenance on the others. A special place is given to the regulation of guardianship and trusteeship, in particular: the procedure for establishing and removing guardianship and trusteeship is provided; the procedure for appointing and dismissing guardians is detailed; a clear list of the rights and obligations of guardians and trustees is offered. In addition, the Family Code enshrines the principle of equality of rights and obligations of spouses, as well as the independence of spouses, for example: to choose a common surname; to own joint and separate property; to independently conclude contracts and other agreements; to provide maintenance to a spouse on the grounds of incapacity (for an indefinite period), etc. In addition, it should be noted that during this period a special social role was assigned to mothers, and therefore special attention was paid to maternity insurance (i.e., each nursing mother received financial assistance from the state, the expenditure of which was under strict control) [4, pp. 31–33].

Based on the above, we suggest turning to “dry” statistics taken from open sources. Thus, during the famine of 1932–1933, the number of registered marriages in Ukraine decreased by as much as 40% compared to 1929 and in rural areas by as much as 50%. The overall marriage rate (the average number of marriages per 1,000 citizens) decreased sharply: in rural areas in the period 1929–1932, it decreased almost by half, in cities – by 26%. It follows that the famine caused not only a decrease in the population within rural areas, but also the total elimination of its normal life and natural processes of reproduction (as happens after large-scale wars and social disasters). Despite the fact that in subsequent years the number of marriages increased slightly due to the compensatory rise of 1934–1936, overall the marriage rate was marked by a significant decrease, as a result – the marriage potential among the rural population of Ukraine was finally and forever lost [5, p. 724].

In the Kherson region, documents about party purges and eyewitness accounts mention drunkenness, abuse of the population, and theft of property.

Eyewitness accounts often tell of people searching for grain and taking away the last food supplies. We have already written about the “chief” aid brigades, whose “raids” in the villages of the Kherson rural district were regular and recorded in archival sources. Who took the last provisions: our own or outsiders? What prompted them to do this? Who is to blame for the Holodomor, according to eyewitnesses? “Stalin, the authorities, the famine, “leaders who were in power,” “taxes,” drought, “I don’t know” – such answers are typical of the questionnaires [10].

“I endured three hunger strikes in 1920, 1933, and 1947. We ate baked beets, and for 3 months I didn’t eat or see bread. There was sabotage; they tore the very early crops with their hands. There was no cannibalism. They couldn’t hide the food, because they stabbed everyone with bayonets. There were those who didn’t starve, these were the bosses. I’ll go to the storekeeper Ponomarenko, and he’ll give me a scoop of flour. In 1930 I was in an orphanage, an orphan, living with an aunt, and when they founded a collective farm, I went to work there. There was a store, but there was nothing to buy. We were fined for ears of grain, we sowed cotton and nightshade grew there, but we were not allowed to tear it up. We earned 8 kilograms of bread in 2 months on the collective farm, and the district authorities came and told us to give 5 kilograms to the district and keep 3 kilograms for ourselves, so we started screaming, but no one listened to us. There was a church. “I believe that sons of kulaks were guilty, they got into the party and took revenge on us... They forced us to work, and if you didn’t go, they imposed a fine (witness Vasyl Hrinchenko, born in 1917, Velelynske village).

Residents of Bilozerka (memories were recorded incorrectly, no names, no year of birth of respondents, only questionnaires) recall a group of 5–6 people, mostly from neighboring villages: Oleksandrivka, Arkhangel'ske (Borozny), Dmytrivka, Veremiivka, or others: "Some criminals came, but I don't know who they were" [10].

Witnesses rarely mention the surnames of those who carried out the dispossession; they simply recall that their homes and belongings were taken away. The victims still believe that those who carried out the dispossession took the confiscated property for themselves. And in some ways, they are right: cases of misappropriation of belongings subject to confiscation for non-payment of taxes are not uncommon. But Soviet legislation provided for this shameful "tithe" – 10% of the confiscated amount, as a payment: "The defendant Demchenko Ivan, taking advantage of the fact that the head of the village council, Netovkanyi, did not manage the work of the village council, used this for his benefit, namely, when removing property, he did not register it, did not draw up inventories of the removed property, carried out the removal of property without any resolutions to this effect, removed property from persons who owed various debts, as well as from those who had absolutely no debts, chasing after receiving 10% of the collected amounts. He listed the most valuable items that were taken for himself and for distribution to his people, while putting up for auction the less valuable items. The auctions were attended by persons appointed by him, such as firefighters, and the commercial bills and deeds were forged. Thus, as established by the case materials and the interrogation of a number of witnesses, the shortage of seized property reaches over 10,000 rubles. This especially applies to food and household items, flour, lard, butter, potatoes, and livestock – pigs, cows, etc. As for the embezzlement of 13,000 rubles, from the submitted documents this amount is reduced by 8,800 rubles, the latter amount consists of the 10% illegally obtained by him, as provided by law, thus, this amount was embezzled with the direct connivance of the defendant Netovkanyi" [11, p. 591–592].

In 1934, repressions against local leadership not only did not stop, but also acquired new types and forms. Any activity could be interpreted as anti-state. Economic negligence was explained by political reasons: In the collective farm "Pamiyat Il'icha" of the Kakhovka district, a criminal sabotage group was exposed, which included: the head of the collective farm Evmenov – the brother of a White Guard who emigrated to France, a member of the board Hadylo, the foreman Vasylenko, and the storekeeper Shatokhin. To cause production difficulties and disrupt the spring sowing, the members of the group left 500 poods of beets in the field, which had become completely unusable, and in the same way, 200 poods of potatoes, 600 poods of hay, 150 poods of onions, etc. were rotted. To hide the traces of the crimes, the storekeeper Shatokhin destroyed the collective farm's reports. The members of the group have been brought to justice," the USPM report says.

The weakness of political accusations was reinforced by accusations of economic negligence and vice versa: "In the collective farm "Chervone Selo" of the Khorolsky district (This is an interesting case from the Poltava region) a counter-revolutionary group consisting of 8 Petliurists, led by Shtompelya, the land surveyor of the district land department, a former big kulak, was discovered. As a result of the group's activities, land use on the collective farm in 1934 was clearly mismanaged: one plot, designated for grain crops consisted of saline land typically flooded in spring, while the other five plots allocated were also entirely unsuitable for cultivation. The group members, having brought the collective farm youth under their influence, organized "national" evenings, where they sang Ukrainian chauvinistic songs, such as "Shche ne vmerly Ukrainy" etc., and held conversations on anti-Soviet topics [6].

Indeed, it is difficult to understand which of the accusations came first; perhaps they were formed mechanically without any basis, as political repressions began to take on a massive character.

In S. Markova's right view, the most important type of social memory is the nation's memory of its past. It sublimates into everyone's memory of their past, family, parents, childhood. The brain forces us to work through traumatic family events to live a quality life and build our own state [9]. An important step on this path was the adoption of the Law of Ukraine "On the Holodomor of 1932–1933 in Ukraine" (2006), Article 2 of which stipulates that "public denial of the Holodomor of 1932–1933 in Ukraine is recognized as an insult to the memory of millions of Holodomor victims, a humiliation of the dignity of the Ukrainian people and is unlawful." Currently, a number of countries around the world have recognized the Holodomor as an act of genocide against Ukrainians [7].

Conclusions. Having conducted a historical and legal study on individual legal aspects of the assessment of the Holodomor of 1932–1933 in the territory of Southern Ukraine, we concluded that a fatal destruction of all civil society institutions took place during those years. Naturally, it affected all spheres of social life, including the economic, family, political component, etc. The Holodomor of 1932–1933 was a terrible, large-scale tragedy of the Ukrainian people, the historical echo of which resounds in the memory of families and the pain from which does not subside even now in our hearts. Its consequences are felt in various spheres of law, everyday life, historical traditions, etc.

Overall, the tragic consequences of the Holodomor of 1932–1933 led to an increase in the number of divorces, a decrease in the birth rate, and contributed to the destruction of the institution of the family as such.

Soviet family legislation in the conditions of the catastrophic events of the Holodomor of 1932–1933 reflected the ideological doctrine of totalitarianism, changing traditional family and marital relations in Ukraine with the aim of raising a "new" Soviet society. The provisions of the 1926 Family Code, which was in force at the time, formally declared the principles of equal rights between men and women, clear regulation of guardianship and custody issues, and many other democratic norms. In practice, however, they were subject to total interference by the authorities, violating private life.

The events that took place in Southern Ukraine in 1932–1933 demonstrate that the strict centralization of governance in the USSR and the right to make all decisions related to the organization of the Holodomor belonged only to J. Stalin and a narrow circle of his trusted people. We can speak of the perpetrators of the Holodomor as an act of genocide on the ground, using the example of Southern Ukraine, but their main fault lies in the fact that they carried out the instructions of Stalin and his team.

The strict centralization of governance in the USSR and the right to make all decisions related to the organization of the Holodomor belonged only to J. Stalin and a narrow circle of his trusted people. This was not a general leadership; they controlled every pood of grain. The loyalty of J. Stalin's inner circle was ensured by a circular guarantee – with the loss of power by J. Stalin, his henchmen would have to answer for the repressive policy that led to millions in losses in the economy, the conviction of hundreds of thousands of innocent people and the death of millions during the Holodomor.

Most of the party officials, organizers of the Holodomor, were executed during the repressions of 1937–1938. Moreover, unlike those repressed for disseminating

information about the famine or attempting to aid the population, they were rehabilitated immediately after the death of Joseph Stalin. This provides the final clarification in the case of the Holodomor organizers in Ukraine.

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