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DEPORTATION OF THE CRIMEAN TATAR PEOPLE AS THE CONTINUOUS INTERNATIONAL CRIME THAT HAS NO LIMITATION PERIOD

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Issue of the impartial legal qualification of such phenomenon as a forcible deportation of an ethnic group from its traditional area of residence is extremely important due to corresponding terrible actions of states during the 20th century, in particular because of governmental policy of USSR and modern Russia concerning the Crimean Tatar People.

The problem of the illegal deportation of ethnic groups by the Soviet authorities has repeatedly become the subject of legislative activity in the law of Ukraine since 1992. In acts of the President and the Government of this state the legal assessment of the corresponding actions of the Soviet government has not been given for a long time.

Thus, concerning the issue of the deportees, in the Resolution of the Cabinet of Ministers of Ukraine of March 14, 1992 No. 132 it was only about the "elimination of distortions and deformations made in the 40s in the area of national policy", in decrees of the President of Ukraine of April 14, 1994 No. 165/94 and of April 27, 1999 No. 457/99 it was exceptionally specified about "honouring the memory of the victims of the deportation" and the need to "restore their rights"; concerning the anniversary of the deportation of the Crimean Tatars, in the Directive of the President of Ukraine of September 15, 2003 No. 286/2003 it was mentioned about the "honouring the memory of the innocent victims of the totalitarian regime"[1].

At the same time, in the Decree of the President of Ukraine of April 30, 2009 No. 281/2009 concerning the anniversary of deportation of the Crimean Tatars it was mentioned about condemning actions of the totalitarian regime[2], and in the Decree of the President of Ukraine of May 16, 2014 No. 472/2014 it was specified about the deportation "in consequence of the actions of the former Soviet Union's totalitarian regime"[3], but this deportation was not recognized as a crime. The Decree of the President of Ukraine of March 24, 2015 No. 169/2015 refers to "perpetuate the memory of ...the victims ...of

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[1] *Resolution On the Formation of the Fund of the Deported People of Crimea 1992* (Cabinet of Ministers of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/132-92-п> (2016, May, 29) ; *Decree On Measures to Honor the Memory of Victims of the Deportation from Crimea 1994* (President of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon.rada.gov.ua/laws/show/165/94> (2016, May, 29) ; *Decree On Measures to Honor the Memory of Victims of the Deportation from Crimea 1999* (President of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon.rada.gov.ua/laws/show/457/99> (2016, May, 29) ; *Directive On the 60th Anniversary of the Deportation of the Crimean Tatars and Other Nationalities 2003* (President of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/286/2003-рп> (2016, May, 29).

[2] *Decree On Measures in Connection With the 65th Anniversary of Deportation from the Crimea of the Crimean Tatars and Other Persons On a National Basis 2009* (President of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/281/2009> (2016, May, 29).

[3] *Decree On the Day of Struggle for the Rights of the Crimean Tatars 2014* (President of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/472/2014> (2016, May, 29).

deportations and crimes against humanity committed during the war"[1], thereby, the content of the deportation was separated from crimes against humanity.

Parliamentary acts of the Verkhovna Rada of Ukraine on issues of the deportation generally defined such actions of the Soviet authorities as criminal ones for a long time. Thus, the recommendations of the parliamentary hearings on deportees, approved by the Verkhovna Rada of Ukraine of April 20, 2000 No.1660-III, stated that "the Ukrainian state certainly condemns the criminal acts against people and national minorities, who were subjected to forced deportation"[2] without a clear linkage of this thesis exactly with the deportation from Crimea. According to Art. 1 of the Law of Ukraine No. 1223-VII of 17 April 2014 'On the Restoration of the Rights of Persons Deported on Ethnic Grounds', the deportation is defined as the forced migration on ethnic grounds of people, minorities and individuals from their permanent residence on the basis of decisions made by the state authorities of the former USSR or its republics. Under Art. 3 of the Act, Ukraine recognizes such deportation as illegal and criminal acts committed against the peoples, minorities and individuals. At the same time, it is stated that Ukraine recognizes acts of the former Soviet Union government concerning rehabilitation of the deported persons forcibly displaced from their places of residence, and restoration of their rights[3].

Although according to Art. 4, the deportee can be recognized only by the person deported from the place of permanent residence, that is the territory of modern Ukraine (primarily, it refers to the Germans deported from Crimea in 1941 and the Crimean Tatars, ethnic Bulgarians, Armenians and Greeks, persons without citizenship of the USSR in 1944, and Ukrainians deported from Western Ukraine in 1939-1953), the action of the Art. 1 and Art. 3 of this law can also be extended to cases of the deportation by the Soviet authority from other regions: the Germans in 1941 and 1945-1947, Latvians, Lithuanians, Estonians in the 1940-1953, the ethnic groups of the Caucasus (Azerbaijanians, Balkars, Ingush, Karachai, Kurds, Turks, Khemshils and Chechens) in 1943-1944. Some acts of the authorities of the USSR, mentioned in Art. 3 of the Law of Ukraine No. 1223-VII concerning the rehabilitation of the deportees, determine such deportations as a crime. It was "unconditionally" condemned "the practice of forced relocation of entire nations as the most serious crime that contradicts the international law, the humanistic nature of the socialist system" and contained the definition of the deportation as "a neglect of human rights and humanitarian norms at the state level" in the Declaration of the Supreme Soviet of the USSR of November 16, 1989 No.772-I[4].

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[1] *Decree On the Measures to Celebrate in 2015 the 70th Anniversary of Victory Over Nazism in Europe and the 70th Anniversary of the Second World War 2015* (President of Ukraine). Official *web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/169/2015> (2016, May, 29).

[2] *Resolution On recommendations of parliamentary hearings "Problems of legislative regulation and implementation of state policies to ensure the rights of the Crimean Tatars and national minorities deported and voluntarily returned to Ukraine" 2000* (Verkhovna Rada of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/1660-14> (2016, May, 29).

[3] *Law On the Restoration of the Rights of Persons Deported on Ethnic Grounds 2014* (Verkhovna Rada of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/1223-18> (2016, May, 29).

[4] *Declaration On the Recognition As Illegal and Criminal of the Repressive Acts Against People Subjected to the Forced Resettlement, and Ensuring Their Rights 1989* (Supreme Soviet of the USSR). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/v0772400-89> (2016, May, 29).

To implement the requirements of this Declaration, the Decree of the Supreme Soviet of the USSR No. 2013-I of March 7, 1991 abolished all the acts of the Supreme Soviet of the USSR about restrictions of rights of the deportees and elimination of their national autonomies; the executive authorities of the USSR were assigned to abolish corresponding regulations of the 40-60's of the XXth century on issues of the deportation and restriction of the deportees' rights[1]. It was specified about the "policy of arbitrariness and lawlessness, which was practiced at the state level in relation to these people" by the Law of the Russian Soviet Federative Socialist Republic (RSFSR) 'On the Rehabilitation of Repressed Peoples' of April 26, 1991. Art. 1 of this Law assigned to rehabilitate all repressed peoples of the RSFSR by "recognizing the illegal and criminal repressive acts against these people". This Law retains its validity in modern Russia, it contains references to the mentioned Declaration of the Supreme Soviet of the USSR No.772-I[2].

After the collapse of the Soviet Union some intergovernmental agreements in the post-Soviet space returned to the issue of the qualification of the deportation. Thus, in its preamble the Agreement of October 9, 1992 'On Issues Related to the Restoration of Rights of Deported Persons, National Minorities and Peoples' unconditionally condemned "the existed in past the totalitarian practice of the forced resettlement of people, ethnic minorities and individual citizens of the former USSR" as "crimes that are contrary to universal, humane principles"[3]. This agreement, concluded between the CIS countries, has not been ratified by Russia and became invalid for acceded states (Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan) on June, 2013. The current Agreement between the Governments of Ukraine and Uzbekistan of 20 February 1993 'On Cooperation Regarding the Voluntary Organized Return of Deportees, National Minorities and Peoples to Ukraine in the preamble recognizes "repressive acts against individuals, national minorities and peoples who have suffered from forcible resettlement" as illegal and criminal[4].

Thus, deportations of ethnic groups by the Soviet authorities were recognized as a crime in the normative acts of the latest years of existence of the USSR, they are defined as criminal in the national legislation and in some international agreements. The issue of the criminal qualification of the deportations of Soviet period as a crime remains unsolved, because all the mentioned Soviet and post-Soviet normative acts bypass it. National and international judicial practice on the criminal qualification of the Soviet deportations is absent. International humanitarian law undoubtedly considers the deportation of civilians as an international crime. Even in Art. 23 of the Lieber Code of 1863 it is contained the

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[1] *Decree On the Abolition of Legislative Acts in connection with the Declaration of the Supreme Soviet of 14 November 1989 "On the Recognition As Illegal and Criminal of the Repressive Acts Against People Subjected to the Forced Resettlement, and Ensuring Their Rights" 1991* (Supreme Soviet of the USSR). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/v2013400-91> (2016, May, 29).

[2] *Law On the Rehabilitation Repressed Peoples 1991*. (Supreme Soviet of the Russian Federative Socialist Republic). <https://www.referent.ru/1/4956> (2016, May, 29).

[3] *Agreement On the Issues Relating to Restoration of Rights of Deported Persons, National Minorities, and Peoples 1992. Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/997_090> (2016, May, 29).

[4] *Agreement between the Governments of Ukraine and Uzbekistan On Cooperation Regarding the Voluntary Organized Return of the Deportees, National Minorities and Peoples to Ukraine 1993. Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/860_341> (2016, May, 29).

prohibition of the forceful expulsion of civilians to "remote areas"[1]. The mention of the forced resettlement (deportation) as a war crime was in the Declaration signed at St. James's palace, London, 1942[2]. According to Art. 6 "b" and "c" of the Charter of the International Military Tribunal of 1945, deportation to slave labor or for any other purpose of civilian population of or in occupied territory is a war crime and deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal is a crime against humanity[3]; in the sentence of the Nuremberg Trial there is a reference to the deportation of the population of the occupied territories attached to Germany by its state's authorities as an international crime[4].

According to Art. 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948[5], which was signed by the Ukrainian SSR on December 16, 1949, ratified with reservations on July 22, 1954 and withdrawn of the reservations in the Decree of Ukrainian Parliament of March 14, 1989 No. 7248-XI[6], genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

According to Art. 3 of this Convention, the following acts shall be punishable: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide. The mentioned element of a crime does not envisage directly the deportation as a form of genocide; to qualify the deportation as genocide it is necessary to prove at least the intention of the organizers of such deportation to the full or partial destruction of the corresponding ethnic group as a result of the deportation and directly related processes. This thesis of the need to prove the

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[1] *Instructions for the Government of Armies of the United States in the Field (Lieber Code) 1863. Official web-site of ICCR.* <https://www.icrc.org/applic/ihl/ihl.nsf/xsp/.ibmmodres/domino/OpenAttachment/applic/ihl/ihl.nsf/A25AA5871A04919BC12563CD002D65C5/FULLTEXT/IHL-L-Code-EN.pdf> (2016, May, 29).

[2] *Allied Declaration Condemning German Atrocities in Occupied Territories; Proposal for the Creation of A United Nations Comission for the Investigation of War Crime 1942* <http://images.library.wisc.edu/FRUS/EFacs/1942v01/reference/frus.frus1942v01.i0006.pdf> (2016, May, 29).

[3] *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal 1945* <http://zakon4.rada.gov.ua/laws/show/998_201> (2016, May, 29).

[4] *Нюрнбергский процесс: в 2-х томах (Том 2);* Горшенин, К.П.; Руденко, Р.А.; Никитченко, И.Т. и др. (1954). Москва, 1160.

[5] *Convention on the Prevention and Punishment of the Crime of Genocide 1948* <http://zakon4.rada.gov.ua/laws/show/995_155> (2016, May, 29).

[6] *Decree On the Removal of the Previously Made Reservations by the Ukrainian SSR of the Non-Recognition of the Compulsory Jurisdiction of the International Court of Justice in Disputes Concerning the Interpretation and Application of a Number of International Treaties 1989* (Presidium of the Supreme Soviet of the Ukrainian SSR). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/7248-11> (2016, May, 29).

intent of the organizers of the deportation was particularly contained in paragraph 214 of the Sub-Commission's on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights preliminary report 'The Human Rights Dimensions of Population Transfer, including the Implantation of Settlers' of July 6, 1993 E/CN.4/Sub.2/1993/17[1] and in paragraph 23 of the preliminary UN report with the same name of June 30, 1994 E/CN.4/Sub.2/1994/18[2].

The authors of the mentioned UN report of 1993 noted that the cumulative effects of population transfer appear to coincide with the ethnocidal process as characterized to involve a State destroying or usurping control over the vital cultural elements or resources of a distinct population, people or nation, up to and including the ultimate elimination of such elements (paragraph 100) and the cumulative effects of population transfer may, therefore, coincide with one or more of the definitions of genocide (paragraph 101 of the report). It is specified in paragraph 215 of the report of 1993 that awareness of the destructive effects of the transfer on the affected group, concurrent with continued governmental involvement or failure to undertake action to terminate the transfer, would render ineffective a Government's claim to lack of intent.

Paragraph 213 of the mentioned report of 1993 states that when removal of people... is accompanied by more obvious measures of physical destruction vis-à-vis that particular group, such as forced abortions, prohibition of the use of an original language, imprisonment, killings and torture, the connection of population transfers to genocide becomes most evident. Characteristically, while stating in paragraph 211 that several cases of transfer of the population in the twentieth century may relate to the definition of genocide, provided in the Convention of 1948, the UN report's of 1993 authors referred to examples of the forced transferring of Baltic peoples from their countries by the USSR in 1941-1952. In the Final Report of the mentioned UN Sub-Commission on Prevention of Discrimination and Protection of Minorities 'Human Rights and Population Transfer' of June 27, 1997 E/CN.4/Sub.2/1997/23[3], which summarized the results of processing of the mentioned UN reports of 1993 and 1994, according to Paragraph 11, deportations under the guise of national security or other military imperative can be identified as a form of the forced transfer, also in paragraph 65 of this report of the UN it is said that acts such as ethnic cleansing, dispersal of minorities or ethnic populations from their homeland within or outside the State, and the implantation of settlers are unlawful, and engage State responsibility and the criminal responsibility of individuals.

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[1] *The Human Rights Dimensions of Population Transfer, Including the Implantation of Settlers. Preliminary report prepared by Mr. A.S. Al-Khasawneh and Mr. R. Hatano E/CN.4/Sub.2/1993/17, Sub-Commission on Prevention of Discrimination and Protection of Minorities 1993* (UN Comission on Human Rights). *UN official database.* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/142/08/PDF/G9314208.pdf?OpenElement> (2016, May, 29).

[2] *The Human Rights Dimensions of Population Transfer, Including the Implantation of Settlers. Progress report prepared by Mr. Awn Shawhat Al-Khasawneh, Special Rapporteur E/CN.4/Sub.2/1994/18 Sub-Commission on Prevention of Discrimination and Protection of Minorities 1994* (UN Comission on Human Rights). *UN official database.* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/131/62/PDF/G9413162.pdf?OpenElement> (2016, May, 29).

[3] *Human Rights and Population Transfer. Final report of the Special Rapporteur, Mr. Al-Khasawneh E/CN.4/Sub.2/1997/23 Sub-Commission on Prevention of Discrimination and Protection of Minorities 1997* (UN Comission on Human Rights) *UN official database.* < https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/129/24/PDF/G9712924.pdf?OpenElement> (2016, May, 29).

The Resolution 1997/29 'Freedom of Movement and Population Transfer' of August 28, 1997 of the mentioned Sub-Commission, which was approved due to the results of the mentioned reports of 1993-1997, recognized practices of forcible exile, mass expulsion and deportations, forcible population exchange, unlawful evacuation, 'ethnic cleansing' and other as forms of the forcible displacement of populations within a country or across borders not only deprive the affected populations of their rights to freedom of movement but also threaten the peace and security of States[1].

The above processes in the UN institutions have influenced the codification of international criminal law embodied in the Rome Statute of the International Criminal Court of July 17, 1998[2]. In particular, Art. 6 of the Rome Statute, signed but not ratified by Ukraine, contains a definition of genocide that is completely identical to the one given in the Convention of 1948. At the same time, Art. 7 of the Rome Statute envisages separate from the genocide element of crimes against humanity in the form of deportation or another forcible transfer of population, that is defined as forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law. Such a crime should be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Art. 8 of the Rome Statute points at such international war crime different from genocide as unlawful deportation or transfer or unlawful confinement as a serious violation of Geneva Conventions of 1949 when it is committed as part of a plan or policy or as part of a large-scale commission of such crimes. In articles 49 and 147 of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of August 12, 1949[3] there is a prohibition of the deportation committed by authorities of the belligerent State exceptionally in relation to the population of the occupied territories, or other categories of people of the opposite side of an international armed conflict, but not relatively to its own population, as it mainly was in the USSR.

The foregoing proclaims that depending on circumstances of its realization, the deportation of groups of population is considered by contemporary international law as a crime against humanity or a war crime, other than genocide. The deportation by the Soviet authorities of ethnic groups generally may be qualified as a crime against humanity, other than genocide. Thus, for instance, it is difficult to imagine that while deporting ethnic Armenians from the Crimea in 1944, the USSR aimed to destroy this ethnic group (after all, no restrictions on rights regarding Armenians lived at that time in the Armenian SSR, and in other regions of the USSR were imposed by the Soviet authorities nor in 1944 or later). At the same time, such deportation of the Crimean Tatars may be qualified as genocide as long as proving intent of the Soviet authorities that implemented the

[1] *Freedom of movement and population transfer : Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1997/29, 1997* (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities). <http://www.refworld.org/pdfid/404350a94.pdf> (2016, May, 29).

[2] *The Rome Statute of the International Criminal Court 1998. Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/995_588> (2016, May, 29).

[3] *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 1949. Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/995_154> (2016, May, 29).

deportation to implement full or partial destruction of the corresponding ethnic group as indigenous people through depriving its historical homeland and also destroying its national elite during continuous repressions.

Afterwards, the deportation of the Crimean Tatars has been recognized as genocide by the Verkhovna Rada's of Ukraine Resolution of November 12, 2015 No. 792-VIII. This act of the Parliament of Ukraine referred to the provisions of the Convention on the Prevention and Punishment the Crime of Genocide, and at the same time stated that "systematic pressure on the Crimean Tatars, repressions of citizens of Ukraine on a national basis, organization of prosecutions of the Crimean Tatars motivated ethnically and politically, their bodies such as the Mejlis and Kurultai of Crimean Tatars is a conscious policy of ethnocide of the Crimean Tatars in the temporarily territory of Ukraine occupied by the state authorities of the Russian Federation beginning from the date of temporary occupation"[1].

Later these theses of the Resolution No. 792-VIII were expanded in the parliamentary Resolution 'On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the OSCE Parliamentary Assembly, World Leaders and All Members of the International Community regarding the Commemoration of the Victims of the Genocide of the Crimean Tatar People and the Condemnation of Violations by the Russian Federation of the Rights and Freedoms of Crimean Tatars' approved by the parliament on May 11, 2016. The paradox in this situation is the fact that the criminal legislation of Ukraine does not envisage a specific qualification of such a crime against humanity as ethnocide; comparison of the categories of "ethnocide policy" and genocide is possible only on the results of a detailed investigation of the situation judicially.

In the absence of the proved by court current fact of the implementation of genocide of the deported Crimean Tatars as a goal of the Soviet authority, criminal qualification of this deportation precisely as a crime of genocide or other crimes against humanity may have legal consequences only if such qualification is implemented in conditions of criminal proceedings by court and authorities with appropriate jurisdiction for crimes against humanity according to criminal procedure legislation of Ukraine – namely by the Security Service of Ukraine and the Prosecutor's Office of Ukraine. Therefore an issue of a correct applying of substantive and procedural criminal law concerning a possible statute of limitations of the crime of deportation, a possibility of an extension of the current criminal legislation of Ukraine or valid at the time of deportation the legislation of the Soviet Union in such conditions by the mentioned bodies.

As for the statute of limitations, there should be stated the following. According to Art. 1 of the Convention 'On the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity' of 1968, ratified by the Ukrainian SSR on 25 March 1969, no statutory limitation shall apply to the "grave breaches" enumerated in the Geneva Conventions of 1949 and to the war crimes and crimes against humanity defined in the

[1] *Resolution On Recognition of the Genocide of the Crimean Tatars 2015* (Verkhovna Rada of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon3.rada.gov.ua/laws/show/792-19> (2016, May, 29).

Charter of the International Military Tribunal, Nurnberg, and also to the facts of "eviction by armed attack or occupation" and separately to the acts of genocide.

In accordance with the requirements of the Convention of 1968 and the Part 5 of Art. 49 of the Criminal Code of Ukraine, the possibility of criminal proceedings on the facts of any deportation on ethnic grounds is independent of limitations that have passed since the period of the respective events. In particular, the statute of limitations is not applied in Ukraine in case of committing crimes against the peace and security of mankind[1]. Moreover, crime of deportation as a form of forced resettlement cannot be considered as completed after the completion of the forced relocation. Standing of the deported population in locations where they were forcibly relocated to, without providing to the representatives of such population a possibility of the return if they so wish on the territory of traditional residence, is the logical continuation of forced resettlement, and it is combined with the resettlement through the single intent and purpose.

Part of the Crimean Tatars and other deported ethnic groups still live in areas of Central Asia; the opposition of their return to the historical homeland was consistently realized by state authorities of the USSR in various forms from 1944 to 1989; such opposition has been realized by authorities of the Russian Federation in the temporarily occupied territories of Ukraine since March 2014. There are numerous facts of the repeated deportation in 2014-2016, thus, authorities of the Russian Federation prohibit the Crimean Tatars an entry to the Crimea and create conditions for their departure from the peninsula in order to save their lives and freedoms by concocting criminal proceedings, proclaiming "fight against extremism" and "fight against terrorism".

As we have seen above, the international criminalization of forced resettlements occurred in 1945, of genocide in 1948, of war crimes against civilian population in 1949; the USSR and the Ukrainian SSR joined the relevant agreements in 1955 in the period when all limitations regarding the deported ethnic groups acted in the USSR in the same scope as at the time of deportation.

Non-alignment of Ukraine to the Rome Statute that criminalizes a crime of deportation as a crime against humanity is a certain problem, because in the section XX "Crimes against Peace, Human Security and the International Rule of Law" of the current Criminal Code of Ukraine[2] the corresponding norms of the Rome Statute have not been implemented so far, and the Criminal Code establishes liability for aggression, war crimes (Art. 436-440) and genocide (Art. 442), but not for other crimes against humanity. In criminal legislation of the Soviet period the liability for crimes against humanity and genocide was not established; the Criminal Code does not explicitly provide for the possibility of retroactive application. At the moment of the deportation from Crimea the corresponding actions were under the jurisdiction of the Criminal Code of RSFSR of 1926[3], it established liability at least for abuse of authority or official position, abuse of power or official authority, that resulted in a violation of legally protected rights and

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[1] *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity 1968. Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/995_168> (2016, May, 29).

[2] *Criminal Code of Ukraine 2001* (Verkhovna Rada of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/2341-14> (2016, May, 29).

[3] *Criminal Code of the RSFSR 1927* (Central Executive Committee). <https://ru.wikisource.org/wiki/Уголовный_кодекс_РСФСР_1926_года/> (2016, May, 29).

interests of citizens (articles 109 and 110, respectively, envisaging imprisonment for an indefinite period of not less than 6 months); violence and use of weapons, painful actions and the ones insulting dignity envisaged the liability including shooting at the time of the specified abuse (Part 2 of Art. 110).

Brigandage that contributed to the death of the victim and a premeditated murder for the purpose of facilitating the commission of another crime, according to the Code of 1926, envisaged the liability to 10 years of imprisonment (item "G" of Art. 136, Part 3 of Art. 167). The mentioned Code envisaged the imprisonment for a term not less than one year for exceeding of granted rights by the military of command, administrative, economic and political staff, and for abuse of rights, that caused important consequences (Articles 193-12), meanwhile, illegal violence against the civilian population committed by military personnel in wartime under aggravating circumstances envisaged uncontested highest measure of social protection – the shooting (Articles 193-18). These norms have been put into the Criminal Code of republics due to the All-Union Provisions on War Crimes of July 27, 1927 approved by the Soviet Central Executive Committee and the Council of People's Commissars[1] and they were valid in the mentioned edition until the reform of 1957-1961.

Being important for solving the problem of jurisdiction, articles 14 and 16 of the Code of 1926 proclaim that the statute of limitations for the crimes listed above is 10 years since the commission; however, the Code of 1926 circumvented the problem of the time of commission of having prolonged character crimes. According to the notes to the Art. 14, added on June 6, 1927, it was added that the revision of the statute of limitations for committing counterrevolutionary crimes was imposed on the court's consideration (without the right of applying the shooting in such cases), and regarding perpetrators of "actions and an active struggle against the working class and the revolutionary movement" before 1917 and during the Civil War of 1918-1922 there was envisaged the possibility of applying retroactive norms of the Code of 1926, both the revision of the statute of limitations and the possibility of shooting the convicted person were decided in court. At the same time, according to Art. 16 of the Code of 1926, "if one or another socially dangerous act is not directly provided by this Code, the foundation and limits of the liability for it are determined by reference to the articles of the Code, providing for the most similar crime by the nature".

Thus, this code envisaged the fundamental possibility of both the retroactive application of its norms without considering the limitation period and application of its provisions by analogy. Regarding deportation on ethnic grounds, these principles may reasonably be applied at the same time by analogy concerning retroactivity of penalties and the non-application of the statute of limitations (deportation has common features with "counterrevolutionary crimes") and by analogy with crimes envisaged by Articles 109 and 110, item "G" of Art. 136, Part 3 of Art. 167, Articles 193-12, 193-18 of the Criminal Code of 1926 concerning establishing limitation of liability of guilty persons. It leads to the possible criminal punishment for the crime of deportation even according to the Criminal Code of Ukraine, 2001 (and it is obviously more gentle concerning sanctions for the

[1] *Provision on War Crimes 1927* (Central Executive Committee and the Council of People's Commissars of the USSR) <http://www.libussr.ru/doc_ussr/ussr_3325.htm> (2016, May, 29).

relevant crimes) in accordance with the principles of nullum crimen sine lege and nullum poena sine lege.

The application of the criminal legislation concerning the crimes committed by the Soviet authorities should be implemented by taking into account the Case Kononov v. Latvia that had been considered by the European Court of Human Rights concerning the fact of the application of Articles 6-1, 45-1, 68-3 of the Criminal Code of Latvia of 1961 to the war crimes, committed by the Soviet partisan in 1944. Under the mentioned articles imposed by laws of Latvia in 1993, it was envisaged the retroactive effect of the criminal law for war crimes and crimes against humanity (including deportation) and abolished the statute of limitations. In the Decision of the European Court of Human Rights of 24 July 2008 the application of the mentioned norms in the Case of Kononov in 2004 was recognized as the violation of Art. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950[1].

This fundamental Convention specifies in Art. 7 'No Punishment without Law" that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. At the same time, in Part 2 of this article it is permitted a possibility of the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations[2].

The appeal of Latvia of this Case to the Grand Chamber of the ECHR regarding the application in this case of Part 2 of the Art. 7 of the Convention of 1950 led to significant consequences. Having analyzed the Criminal Code of the RSFSR of 1926, the ECHR specified in the Judgement of the Grand Chamber of 17 May 2010 that Art. 14 of the Criminal Code of 1926 with its limitation periods applicable to crimes foreseen by that Code only, and "could have had no application to war crimes sourced under international law"; there was no provision in that Code saying that its prescription provisions could have had any such application (Paragraph 230 of the Judgement). Therefore, being based on analysis of the RSFSR Criminal Code of 1926, in 2004 the ECHR decided that finding the Soviet partisan guilty of war crimes of 1944 is not a violation of the requirements of Paragraph 1, Art. 7 of the Convention of 1950[3].

In the Judgement, the ECRH stated that a domestic prosecution for war crimes in 1944 would have required from Latvian courts the reference to international law, not only as regards the definition of such crimes, but also as regards the determination of any applicable limitation period. However, international law in 1944 was silent on the subject; previous international declarations on the responsibility for, and obligation to prosecute

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[1] *Judgement of the European Court On Human Rights on Case of Kononov v. Latvia (Application no. 36376/04) 2008* (European Court On Human Rights). *Official web-site of ECoHR.* <URL: http://europeancourt.ru/uploads/ECHR_Kononov_v_Latvia_24_07_2008.pdf> (2016, May, 29).

[2] *Convention for the Protection of Human Rights and Fundamental Freedoms 1950* (CoE). *Official web-site of Verkhovna Rada of Ukraine*. <http://zakon4.rada.gov.ua/laws/show/995_004> (2016, May, 29).

[3] *Judgement of the Grand Chamber of the on Case of Kononov v. Latvia (Application no. 36376/04) 2010* (European Court On Human Rights). *Official web-site of ECoHR.* <http://europeancourt.ru/uploads/ECHR_Kononov_v_Latvia_17_05_2010.pdf> (2016, May, 29).

and punish, war crimes did not refer to any applicable limitation periods. Herewith, the ECHR did not pay attention to the Art. 16 of the Code of 1926, which could be its additional argument; at the same time, the coerced position of the ECHR can be easily applied as an additional legal basis to the issue of justifying the criminal proceedings for deportation on ethnic grounds of the Soviet period.

The important is Paragraph 241 of the Judgement of the ECHR of 17 May 2010, in which the court pointed out that “it is legitimate and foreseeable for a successor State to bring criminal proceedings against persons who have committed crimes under a former regime”. Herewith, “successor courts cannot be criticised for applying and interpreting the legal provisions in force at the material time during the former regime, but in the light of the principles governing a State subject to the rule of law and having regard to the core principles on which the Convention system is built”.

The above undoubtedly confirms practical possibility of implementation in Ukraine criminal proceedings concerning deportations of Ukrainians and Crimean Tatars on ethnic grounds, committed by the Soviet authorities in 1939-1953. This possibility has become almost confirmed, when on December, 2015, the Investigation Department of the Prosecutor's Office of the Autonomous Republic of Crimea (which is based in Kiev now) initiated criminal proceedings under Art. 442 ‘Genocide’ of the Criminal Code of Ukraine on the fact of deportation of the Crimean Tatars.

As it followed from the response of the head of the Security Service of Ukraine (SSU) to the deputy inquiry of May 5, 2015 № 24/5/Г-28, in 2009 the SSU jointly with the Prosecutor General’s Office of Ukraine started pre-investigation of the facts of illegal resettlement of ethnic groups of Crimea in 1944; the special department was established in the Investigation Department of the Head-Office of the SSU of the Autonomous Republic of Crimea by the order of the Chairman of the SSU. The investigators of this department collected evidences of the illegal deportation of the indigenous population of Crimea until 2010, but after that the work of the investigators has been suspended, the subdivision was disbanded, the materials collected in 2014 were not taken out by the SSU from the occupied Crimea and were captured by the Russian Federation authorities.

Hence, the proceedings of the Prosecutor's Office of the Autonomous Republic of Crimea are actually started from scratch and need the assistance of the remedial structures. These proceedings are practically feasible in Ukraine, particularly in the conditions of inhabitation of some victims of the corresponding deportation or their legal representatives in Ukraine, the presence of numerous historical data, etc. Ukrainian citizens, who were victims of the deportation from its beginning or became such victims by being born in locations of special settlements, are still alive; also there are witnesses and co-participants of the deportation of 1944 and of unlawful actions to counteract the return of deportees and their descendants to Crimea in 1954-1989 by the Soviet authorities, party organs and structures of the KGB of the Ukrainian SSR, and they live now in Ukraine.

According to the Provision on the Ukrainian Institute of National Remembrance approved by the governmental Resolution of December 12, 2014 No. 684, this Institute, as the authorized central executive body, assigned with the function of submission of proposals to the Minister of Culture to provide assessment of forced deportations, actions of organizers and executors of these crimes and the consequences of their actions for

Ukraine and the world[1]. According to the letter of the Institute of April 22, 2015 No. 01/301, this body has confirmed an opportunity and recognized the implementation of the proper legal qualification of the deportation on ethnic grounds as expedient.

Therefore, material processing of relevant criminal proceedings should be implemented by bodies of the SSU, prosecution and trial with the interaction of representatives of the Ukrainian Institute of National Remembrance and other similar institutions. Moreover, considering the role of military personnel and commanders of the Soviet Army and the NKVD, the Ministry of International Affairs, the Ministry of State Security and the KGB of the USSR in the processes of organizing the deportation, detenting the deportees in a special settlement regime in 1944-1956 and countering to their return in the Ukrainian Crimea in 1956-1989 (by the way, since 1967 such countering have become illegal by the Soviet legislation), there should be noted a certain role of the military prosecutor's offices in the relevant processes. Institutional arrangements for such cooperation may become the basis for the new scientific research.

Consequently, the deportation of Crimean Tatars from the Crimea is an international crime, which has no statute of limitations, and is such that still lasting. Ukraine has the proper substantive and procedural jurisdiction for its investigation and the final qualification; legal recognition of this deportation as genocide will become ultimate after the commencement of the relevant decision of the competent court.

Taking into consideration the lasting occupation of Crimea by the Russian Federation, it is necessary for ODIHR OSCE, OSCE Special Monitoring Mission to Ukraine, OSCE Project Co-ordinator in Ukraine, to assist the relevant criminal investigation of the Ukrainian authorities with cooperation with UN bodies and agencies, ICC, remedial structures, historical institutions, representative and social structures of the Crimean Tatars and other indigenous peoples.

[1] *Resolution On Some questions of the Ukrainian Institute of National Remembrance 2014* (Cabinet of Ministers of Ukraine). *Official web-site of Verkhovna Rada of Ukraine.* <http://zakon4.rada.gov.ua/laws/show/684-2014-п> (2016, May, 29).