Myroslava ANTONOVYCH

GENOCIDAL ACT OF TRANSFERRING CHILDREN FROM ONE GROUP TO ANOTHER: THE CASES OF THE HOLODOMOR AND THE ONGOING RUSSIAN GENOCIDE AGAINST THE UKRAINIAN NATION

Myroslava Antonovych
Doctor Iuris (Habilitatus),
Associate Professor, the National University of Kyiv-Mohyla Academy, Kyiv, Ukraine,
Professor, The Ukrainian Free University, Munich, Germany

Abstract
This article deals with Russia's forcible transfer of Ukrainian children to the Russian national group, and it identifies the elements of genocide in this act as defined by the UN Convention on the Prevention and Punishment of the Crime of Genocide. The author compares indirect acts of transferring Ukrainian children to other groups during the Holodomor-genocide in the first half of the XX century to the current transfer of Ukrainian children as direct acts of genocide in the ongoing Russian genocide against Ukrainians.
Keywords: *genocide, forcible transfer of children as an act of genocide, indirect and direct acts of transferring children from one national group to another.*

ГЕНОЦИДНА ДІЯ ПЕРЕДАЧІ ДІТЕЙ З ОДНІЄЇ ГРУПИ В ІНШУ: СПРАВИ ГОЛОДОМОРУ І ТРИВАЮЧОГО РОСІЙСЬКОГО ГЕНОЦИДУ ПРОТИ УКРАЇНСЬКОЇ НАЦІЇ

Мирослава Антонович
Доктор юридичних наук (габілітований),
доцентка, Національний університет «Києво-Могилянська академія», Київ, Україна,
професорка, Український Вільний Університет, Мюнхен, Німеччина

Анотація
У цій статті досліджено насильницьку передачу дітей Росією з української національної групи в російську, а також ідентифіковано елементи геноциду в цій дії відповідно до визначення геноциду в Конвенції ООН про запобігання злочинові геноциду і покарання за нього. Авторка порівнює непрямі акти передачі українських дітей до інших груп під час Голодомору-геноциду в першій половині XX століття з передачею українських дітей як прямими актами геноциду в триваючому російському геноциді проти українців.
Ключові слова: *геноцид, насильницька передача дітей як акт геноциду, непрямі і прямі акти передачі дітей з однієї національної групи в іншу.*

Introduction

The UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)[1] enumerates the acts that constitute genocide when committed with the intent to destroy any national, racial, ethnic, or religious group as such, particularly through the forcible transfer of children from one group to another. The Rome Statute of the International Criminal Court (ICC) and "The Elements of Crime" define the same genocidal acts, with the latter also specifying the material and mental elements of genocidal acts, as well as other crimes falling under the jurisdiction of the ICC. This article compares cases of transferring Ukrainian children to other groups during the Holodomor-genocide in the first half of the 20th century to cases of transferring Ukrainian children during the currently ongoing Russian war against Ukraine. It defines these acts as acts of genocide.

The elements of genocide in the forcible transfer of children from one group to another during the Holodomor-genocide

Article 2 (e) of the Genocide Convention and Article 6 (e) of the Rome Statute foresee the forcible transfer of children from one group to another as acts of genocide. The elements of genocide in this particular act are defined in the document "Elements of Crimes" adopted by states-parties to the Rome Statute and include:

1. The perpetrator forcibly transferred one or more persons.
2. Such a person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial, or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or else was conduct that could itself effect such destruction.[2]

From this list of elements, the most difficult to prove is the mental one: "The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such." The intent to destroy the Ukrainian national group

[1] Convention on the Prevention and Punishment of the Crime of Genocide, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Pre-vention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

[2] Elements of Crimes. International Criminal Court, 2011. P. 1. https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

as such through the transfer of Ukrainian children to other groups can be proven when examined in the context of other accompanying genocidal acts — killing, causing physical and mental harm, creating conditions of life calculated to destroy the group, preventing birth in the group — acts also directed against that group with the same intent.

Let me point out, that there is no definition of the term "children" in the Genocide Convention, however international law defines children as those under the age of 18 years. It is precisely children, who suffered the most during the 1932–33 famine and comprised one-third to one half of all Holodomor victims.[3] In 1933, more than 300,000 homeless children were recorded in Kyiv region alone. Since orphanages and children's shelters were overcrowded, most of these children lived on the streets and subsequently died of starvation or disease.[4]

In contrast to the case of the Armenian genocide, the Holodomor and the Holocaust did not include any significant direct attempt to forcibly transfer Ukrainian or Jewish children to other groups. We are not considering here cases of starving Ukrainian parents giving away their children to save them, or Jewish children being passed as Christians in orphanages for the same reason. In the case of starving Ukrainian peasants, they were "piled up at railway stations looking for a way to get out; however, the Soviet authorities blocked flight out of Ukraine and sought to push starving peasants out of cities."[5] The situation in rural areas became desperate, famine was raging. In response, many Holodomor parents from rural regions took their children to cities and left them there — at crowded places like railway stations, markets, near kindergartens — to save them from a painful and slow death by starvation. Reports prepared by local governmental bodies of Kharkiv and Kyiv alone mirror the growing scale of homeless children: thousands of homeless children appeared on the streets brought by relatives and parents and left there in the hope that the children could survive.[6] These acts can be seen as "forcible transfer of children from one group to another group" (article II € of the Genocide Convention), which includes also acts of cultural genocide.

The statistics are striking. Orphanages in Ukrainian cities were overcrowded and there was mass child mortality in these institutions during the Holodomor. In Zaporizhzhia city alone circa 800 children aged 1 week to 7 years were

---

[3] Antonovych, Myroslava "Women and Children as Victims of Genocidal Acts" in *the Holodomor of the Ukrainian Nation.*

[4] Victims of the Holodomor Commemorated at the United Nations December 13, 2010 http://wfuwo.org/2010/12/victims-of-the-holodomor-commemorated-at-the-united-nations/

[5] Benjamin Lieberman, *The Holocaust and Genocides in Europe* (Lnd., New Delhi, N.Y., Sydney: Bloomsbury, 2013), at 93 (96–97).

[6] Marochko V. I. "Dity — naychyslennishi zhertvy holodomoru" / Vasyl' Marochko // *Holod 1932–1933 rokiv v Ukraini: prychyny ta naslidky* [red. rada: V. A.Smoliy (holova) ta in.]. — Kyiv: Naukova dumka, 2003. — S. 562–568, 565.

officially reported as having died during the period of May 1932 to November 1933. "The Book of Registered Death Certificates for Civilians Residing in the Stalin District" (Книга реєстрації актів цивільного стану про смерть по Сталінському району) of 1932–33 registers a number of data: age of those who died (from 7 days, 10 days, two weeks and up to 8 years); date of death (at least 2 deaths each day, with an increase to 5 deaths a day from spring 1933 through the end of spring-summer 1933). All deaths were registered by one doctor named Falko.[7] The majority of those who died were Ukrainians, although among the dead were also children of other ethnicities. The reasons for death indicated in the records differed: "exhaustion", "intoxication", "innate weakness, "intestinal gastric catarrh," pneumonia and measles. Notably, there was no diagnosis of "hunger" listed.[8] Scholars Fedir Turchenko and Inna Shuhalyova analyzed the lists of deceased children as registered in this Register. They noticed that some names were nicknames for foundlings, other children were given the names of famous writers. For example, one child was registered as Bernard Shaw and died from hunger a week after the writer Bernard Shaw visited the Soviet Union and wrote in the preface to his play "On the Rocks" that he had not seen any people who were starving, and children were surprisingly chubby.[9]

As children did not participate in collective farming, they did not receive 100–300 grams of bread per a working person, and became the least protected group.[10] Under the 1926 census, children aged under 14 constituted 38 % of the rural population of Ukraine. Starting with spring 1931, the People's Commissariat on Education, Ukrainian SSR, learned that 180 districts had not fulfilled their grain storage plan and as a result children's shelters in those districts had been deprived of centralized food supplies. Leaders of the People's Commissariat informed higher authorities about the catastrophic situation in Ukrainian orphanages, where there were no food supplies and children were running away to avoid starvation, thus increasing the numbers of homeless children.[11]

There remain many letters from children, teachers, parents in which they begged for help as they were dying from hunger. These letters were addressed to the head of the All-Ukrainian Central Executive Committee, Petrovsky. They

[7] Turchenko F., Shuhal'ova I. "Dytiacha smertnist' u roky Holodomoru 1932–1933 rokiv u Zaporizhzhi" // *Holodomor 1932–1933 rokiv: vtraty ukrains'koi natsii: Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii* (Kyiv, 4 zhovtnia 2016). — K.: Vydavets' Oleh Filiuk, 2016. — S. 109–115, 111–112.

[8] Id., 112.

[9] Tsiupyn B. Zapliushchuvaty ochi. *Vydatni zakhidni intelektualy, iaki ne vytrymaly perevirky Holodomorom* // Den'. — 2012. — 24 lyst.

[10] Marochko V. I. "Henotsyd ukrains'koho narodu (1932–1933 rr.)" // Veselova O. M., Marochko V. I., Movchan O. M. *Holodomory v Ukraini, 1921–1923, 1932–1933, 1946–1947: Zlochyny proty narodu*. — 2-e vyd., dopov. — K.; New York: Vyd-vo M. P. Kots', 2000. — S. 121.

[11] Id.

expressed hope that the Soviet government, the "dear communist party," would save them, but that party in fact organized (condoned) their starvation and death. As Vasyl Marochko writes in one of his articles, in each of the 55,000 villages, hundreds of children died from hunger.[12]

In March 1933, a selective investigation of 20 village councils in the Prylutsk district of the Chernihiv region took place. Out of the 2,850 people who starved, 1800 were children with swollen bellies whom it was impossible to save.[13]

The threatening level of child homelessness made the government take some measures, and on 6 May 1933, the Central Committee of the Communist Party of Bolsheviks adopted the Decree "On Struggling with Child Homelessness".[14] To implement this Decree an All-Ukrainian commission was created and charged with addressing the issue of child homelessness. It had competence to create and organize care at children's shelters for homeless children.[15] Rumors about this spread quickly and many peasants traveled to cities and towns to leave their children at such shelters to save them from starvation. Other desperate mothers took their children from the villages to the nearest railway stations, district centers, or towns to simply leave them there in the hope that state bodies or other people would care about their survival.[16] "Mothers took their children from homes and left them at stations near children's shelters to save them from swelling with hunger. They told their children that they go to buy some food and left them all in tears. After some time, they came to check whether their children were still there, but not all of them were still there".[17]

Many older children left for Moscow in search of jobs. They told one of the officials in the Italian Embassy in Moscow about the extremely sad conditions of their life in Ukraine, and about the hundreds and thousands Ukrainian peasants who were driven away from villages and congested the streets of Moscow.[18]

There were cases of authorities rounding up homeless children. As the Italian Ambassador to the USSR Attoliko (1930–35) wrote in his letter to Soviet Central

---

[12] Marochko V.I. "Henotsyd ukrains'koho narodu (1932–1933 rr.)" // Veselova O.M., Marochko V.I., Movchan O.M. *Holodomory v Ukraini, 1921–1923, 1932–1933, 1946–1947: Zlochyny proty narodu*. — 2-e vyd., dopov. — K.; N'iu-York: Vyd-vo M.P. Kots', 2000. — S. 121. Id, at 123.

[13] Id, at 125.

[14] Id, at 126.

[15] Id.

[16] Kis' O. "Perezhyty smert', rozkazaty nevymovne: henderni osoblyvosti zhinochoho dosvidu Holodomoru *Ukrainoznavchyy al'manakh*. Vyp. 6. S. 105 (101–107).

[17] *Knyha pam'iati zhertv Holodomoru na Trostianechchyni* [uporiad. S.K. Shur]. — Vinytsia: Knyha–Veha, 2008. — 144 c. at 27.

[18] *Lysty z Kharkova. Holod v Ukraini ta na Pivnichnomu Kavkazi v povidomlenniakh italiys'kykh dyplomativ 1932–1933 roky* / Uporiad. Andrea Hratsiozi. — Kharkiv: Folio, 2007. — S. 87 (Translated from "Lettere da Kharkov". La carestia in Ukraina e nel Caucaso del Nord nei rapporti dei diplomatici italiani, 1932–33. A cura di Andrea Graziosi. Torino, Elinaudi, 1991).

authorities in Moscow on 23 August 1932, beggars and homeless children, who were rather numerous in Moscow, were extremely numerous in Kharkiv. As he had been informed by the Italian Royal consul in Kharkiv, Sergio Gradenigo, all those homeless children were suddenly caught and driven out in an unknown direction, most likely to islands of the Caspian Sea. They were all branded on the left arm and ordered not to appear in Moscow or Kharkiv or they would be shot dead.[19]

Those were indirect acts of forcibly transferring children from their parents during the Holodomor-genocide, often to other ethnic or national groups, which includes an act of cultural genocide.

Kidnapping and deportations of Ukrainian children as acts of genocide in the ongoing Russian genocide

Russia's acts of genocide against Ukrainian children — kidnapping and deportations, are means by which Ukrainian children, residing in territories temporarily occupied by Russia, have been transferred to other national and ethnic groups, starting with 24 February 2022. This is one of the acts for which Russia's president Putin and Children Commissioner Maria Lvova Belova were issued an international arrest warrant by the ICC. As mentioned earlier, transferring children is only one among several other acts of genocide being committed by Russia.

For the acts of transferring children of one group to another to be considered acts of genocide under Article II (e) of the Genocide Convention, it is necessary to prove that they were committed with the specific intent to destroy in whole or in part the Ukrainian nation as such [See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia v. Serbia), judgment of 3 February 2015, where the ICJ denied the *dolus specialis*, para 440].

As stated in art. 30 of the Rome Statute "… a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. … 'knowledge' means awareness that a circumstance exists, or a consequence will occur in the ordinary course of events."

As stated by the Trial Chamber in the *Blagojević and Jokić Case* of the International Criminal Tribunal for the former Yugoslavia (ICTY), "[i]n relation to forcible transfer, Judge Shahabuddeen found that 'mere displacement' does not amount to genocide. However, he further found that displacement can constitute genocide when the consequence is dissolution of the group." Moreover, the Trial Chamber observed in this case that forcible transfer could be an additional means by which to ensure the physical destruction of the Bosnian Muslim community in Srebrenica. "The forcible transfer of the women, children and elderly is a manifestation of the specific intent to rid the Srebrenica enclave of its Bosnian Muslim

[19] *Lysty z Kharkova*. — Op. cit. — S. 104.

population. The manner in which the transfer was carried out — through force and coercion, by not registering those who were transferred, by burning the houses of some of the people, sending the clear message that they had nothing to return to, and significantly, through its targeting of literally the entire Bosnian Muslim population of Srebrenica, including the elderly and children — clearly indicates that it was a means to eradicate the Bosnian Muslim population from the territory where they had lived."[20] The parallels with Mariupol and other occupied cities and villages in Ukraine are clear.

As stated above, from the list of elements that define genocide, the most difficult to prove is the mental one: "The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such." Russian intent to destroy the Ukrainian nation as such through kidnapping and deportations of the Ukrainian children may be proved if seen within the context of other accompanying acts of genocide such as killing, causing physical and mental harm, creating conditions of life calculated to destroy the group, all committed with the same intent.

Similar thought was expressed by Yulia Ioffe: "There are two possible ways to prove the special intent in this case. One way to prove it is based on forcible transfers *per se* by demonstrating that serious physical and biological consequences of transferring Ukrainian children to Russia are construed as an act resembling compulsory measures to prevent reproduction and biological survival of Ukrainians. Alternatively, the intent of physical destruction of Ukrainians as a group may be manifested not only through Russia's policy of child removal, but as part of a larger programme for genocide of Ukrainians as a national group, provided the mental element can be proven with regard to one or more other punishable acts under Article II of the Genocide Convention."[21]

Dolus specialis in the acts of transferring Ukrainian children can be proven on the bases of either of these arguments, albeit the information presently available provides greater support for the latter argument. As Yulia Ioffe states, "previous litigation concerning forcible child transfers, categorized as genocide solely under paragraph (e), has been largely unsuccessful, which raises concerns regarding the potential effectiveness of employing the same argument in the context of Ukraine."[22]

There are indications that the Russian Federation is taking actions towards achieving such physical and biological consequences through a deliberate policy aimed to indoctrinate Ukrainian children and accelerate the dissolution of their

[20] Blagojevic and Jokic (Trial Chamber), Judgement of January 17, 2005, para. 660, 675.

[21] Yulia Ioffe, "Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?" (2023) *Journal of Genocide Research,* at 23.

[22] Id.

national identity (Deprivation of identity of Ukrainian children might separately constitute a violation of Article 8 of the Convention on the Rights of the Child),[23] in difference to the argument that Russia's actions constitute cultural genocide and not physical or biological genocide.[24]

Acts of deporting children are both direct acts of genocide (when children, mainly orphans, are deported to Russia) and indirect, when children are sent away by their parents, with the understanding that it is for the purpose of improving their health, but afterwards are not returned to their parents.

There are also many cases of Ukrainian children being kidnapped and adopted in Russia. Quoting Lauren Wolf, "The children Russia kidnapped were first spirited off to camps or evacuated from cities under siege. Then they were made into Russians without history or provenance: "for months, forcibly transferred children, ages four months to 18 years, were listed in a public Russian adoption database without mention of their Ukrainian origin. That they were in the database at all was not widely known until May 31, when the Russian dissident outlet iStories exposed its use in an article alleging that the children were being made to sew camouflage nets for the Russian military, which some were even forced to join.[25] Lauren Wolfe concludes that "Moscow is apparently working quickly and cleverly to make the deported Ukrainian children disappear into Russia. But lawyers, child advocates, parents, and OSINT groups around the world are laboring just as feverishly to track the children down before doing so becomes impossible.[26]

On 27 April 2023 PACE confirmed that the forcible transfer and 'russification' of Ukrainian children shows evidence of genocide. PACE has demanded the safe return of Ukrainian children forcibly transferred to Russia or territory it temporarily occupies, as well as punishment of those who carried it out at all levels — pointing out that the documented evidence of this practice matches with the international definition of genocide.[27]

In a resolution based on a report by Paulo Pisco (Portugal, SOC), the Assembly said there was evidence that deported children had faced a process of "russification" through re-education in Russian language, culture, and history, citing examples of children being banned from speaking Ukrainian, exposed to propaganda, and mad to visit "patriotic" sites or undergo military training.

---

[23] Yulia Ioffe, "Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?" (2023) *Journal of Genocide Research,* at 23.

[24] William A. Schabas, "*Genocide and Ukraine: Do Words Mean What We Choose Them to Mean*," Journal of International Criminal Justice 20, 4 (2022): 843–57 at 848), as cited by Yulia Ioffe., Op. cit., at 23.

[25] Lauren Wolfe. "The Children Russia Kidnapped, *The Atlantic*. 1 July 2023. https://www.the Atlantic.com/international/archive/2023/07/russia-kidnapping-abducting-ukrainian-children/674535/

[26] Id.

[27] https://pace.coe.int/en/news/9075/the-forcible-transfer-and-russification-of-ukrainian-children-shows-evidence-of-genocide-says-pace

These transfers of Ukrainian children were "clearly being planned and organized in a systematic way" as state policy, the Assembly said, and had the abhorrent aim of "annihilating every link to and feature of their Ukrainian identity". Thus, the intent element in genocidal act of transferring children from one group to another in ongoing Russian genocide is primarily on the state level, and political leadership of Russia is the organizer and perpetrator of this genocidal act.

Conclusion

Children are the ones who suffer the most during any genocide, as was the case during the Holodomor-genocide, which culminated with the 1932–33 famine, during which one-third to half of the Holodomor victims were children.

During the ongoing Russian aggression against Ukraine Russia has forcibly transferred hundreds thousands of Ukrainian children to areas under its control, assigned them Russian citizenship, forcibly adopted them into Russian families, and created obstacles for their reunification with their parents and homeland.[28] The acts of forcible transferring Ukrainian children to other groups are systematic and extensive.

As stated by Ukraine's Ombudsman Dmytro Lubinets on 21st September 2023 in the UNO, "Kyiv has verified only 20000 children out of 700 000 kidnapped, that was recognized by Russia itself. … We still have to identify additional transfer of children and location of deported children, as well as to verify and update data about them."[29] Thus far Ukraine managed to return around 400 children out of thousands kidnapped and deported.

Ukraine will no doubt raise the argument of forcible transfer of Ukrainian children as an act of genocide in its claim against Russia before the ICJ. Proving before the Court that the forcible transfer of children — either independently or together with other acts, such as killing, causing harm to members of the group and creating conditions of life calculated to bring about their physical destruction — is being committed with the intent to destroy the Ukrainian nation (*dolus specilis*) will be a most challenging task.

[28] Gozzi, Laura "Deportation of Ukrainian children to Russia is war crime," *UN, BBC News.* 16 March 2023, Archived from the original on 18 March 2023. Retrieved 20 March 2023. UN investigators stated that Russia's forced deportation of Ukrainian children to areas under its control amounts to a war crime.

[29] Lubinets spoke at the UNO about the genocide of Ukrainian children noting that "they are being interrogated, tortured, psychologically pressed" ZN, UA, 21 Sept. 2023.