

Administrative, Legal and Criminal Aspects of Liability for Illegal Expulsion of Children

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Abstract

The article provides a detailed analysis of the existing legal acts regarding criminal and administrative liability for the illegal expulsion of children. It has been found that the mass and systematic expulsion of children in the conditions of armed conflict, which is committed by the Russian Federation in the temporarily occupied Ukrainian territories, has signs of three most serious international crimes that belong to the jurisdiction of the International Criminal Court - crimes against humanity, war crimes and crimes of genocide. It is emphasized that the Ukrainian side should continue to try at the international, including the international legal level, to recognize the expulsion of children as genocide. In addition, considerable attention is paid to the peculiarities of international criminal liability for the expulsion of children, the legal status and jurisdiction of the International Criminal Court. The article analyzes the steps that have already been taken in the direction of bringing to justice the officials of the Russian Federation guilty of the expulsion of children. The prospects of making a final decision on this matter and the possibility of its enforcement are considered. At the same time, it is noted that the prospects for the actual execution of a future sentence by an international criminal court are very doubtful, since the Russian Federation is a permanent member of the UN Security Council and has the right to veto any of its decisions. The ineffectiveness of the existing mechanism for bringing to justice not only individuals, but also states in general, even for such international crimes as the deportation of children, which cannot be committed without using the entire state apparatus, has been identified. According to the results of the study, a number of problematic aspects of the current legal regulation and the existing system of international relations in the studied sphere have been identified, recommendations for their overcoming have been formulated.

Keywords: *Administrative, Armed Conflict, Deportation, Crime Against Humanity, Criminal Aspects, Crime Of Genocide, Illegal Expulsion, International Criminal Law, Legal, War Crime.*

1. INTRODUCTION

Problem statement. Since the annexation of Crimea and the invasion of Eastern Ukraine in 2014, the Russian Federation has been systematically committing war crimes in the territories temporarily occupied by it, the victims of which are including children. Thus, in particular, such crimes of the occupying State against children as forced change of citizenship, divorce from the family, recruitment of

children and their use in armed conflict, deprivation of children of the right to receive quality education, medical care, social, rehabilitation and other services provided for children, etc. are systematic. However, one of the most large-scale war crimes committed by the Russian Federation is the forced deportation of children to the territory of the aggressor state, the victims of which, according to the Ukrainian side, were more than 181 thousand Ukrainian children.¹

At the same time, the majority of international organizations authorized to protect the rights of children who have become victims of armed conflicts from different ranks are ineffective in the temporarily occupied Ukrainian territories, as a result of which, for example, cases of returning children – them to the territory controlled by Ukraine are quite isolated, in comparison with the number of deported children; namely, such a return occurs mainly not within the framework of the activities of international organizations, but through the mediation of third countries neutral in relation to the parties to the armed conflict.²

One of the few international institutions that reacted effectively to the numerous facts of deportation of ukrainian children by Russia, is the international criminal court, which formally charged the president of the Russian Federation, v. Putin and authorized under the president of the Russian Federation for the protection of children and even issued warrants for their arrest. However, the execution of these orders, as well as the future decision to bring officials of the Russian Federation to international criminal liability, is complicated by the peculiarities of international law in this area, which determines the relevance of our research.³

The article is aimed at studying the current provisions of the legislation on the deportation of children as an international crime and analyzing the prospects for bringing to justice for the illegal expulsion of children as individual officials and the Russian Federation as a whole.

2. ANALYSIS AND DISCUSSION

Speaking about deportation, including of children, as an international tort, we must, first of all, determine, firstly, the very concept of “deportation” and, secondly, the place of deportation in the system of internationally wrongful acts.

Regarding the first of the above issues, the definition of the concept of “*deportation*” is contained both in the national law of Ukraine and in acts of international law. At the national level, this concept is defined in the Law of Ukraine “On the Restoration of the Rights of Persons Deported on National Grounds”, according to which deportation is “*the forced resettlement of peoples, national minorities and persons on national grounds*”

¹ Korniienko, Maksym, Anatolii Desyatnik, Galina Didkivska, Yevhen Leheza, and Oleksiy Titarenko. ‘Peculiarities of Investigating Criminal Offenses Related to Illegal Turnover of Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors: Criminal Law Aspect’. *Khazanah Hukum* 5, no. 3 (2023): 205–15. <https://doi.org/10.15575/kh.v5i3.31742>.

² Dymko, Iegor, Arsen Muradian, Yevgeny Leheza, Andrii Manzhula, and Oleksandr Rudkovskiy. ‘Integrated Approach to the Development of the Effectiveness Function of Quality Control of Metal Products’. *Eastern-European Journal of Enterprise Technologies* 6, no. 3 (90) (2017): 26–34. <https://doi.org/10.15587/1729-4061.2017.119500>.

³ Leheza, Yevhen Oleksandrovyh, Viktor Filatov, Volodymyr Varava, Vira Halunko, and Kartsyhin Dmytro. ‘Scientific and Practical Analysis of Administrative Jurisdiction in the Light of Adoption of the New Code of Administrative Procedure of Ukraine’. *Journal of Legal, Ethical and Regulatory Issues* 22, no. 5 (2019): 1–8. <https://dspace.oduvs.edu.ua/items/8756f8b6-59a2-4d6b-920c-b68d55efae0e>

from their places of permanent residence on the basis of decisions taken by state authorities of the former USSR or union republics". Despite the obvious imperfection of this definition, which is, so to speak, "retrospective" and applies only to cases of deportation during the time when Ukraine was part of the USSR, it nevertheless rightly points out two features of deportation, such as, firstly, its violent nature, and, secondly, its targeting against peoples, national minorities or individuals on the basis of nationality.⁴

These two features correspond to the understanding of deportation in international law. Thus, one of the most well-known definitions of deportation is contained in Article 7 of the Rome Statute of the International Criminal Court (hereinafter referred to as the Rome Statute), according to subparagraph "d" of paragraph 2 of which deportation (or forcible transfer of population) means the forcible transfer of the persons concerned by eviction or other coercive actions from the territory in which they are lawfully present, in the absence of grounds permitted by international law.⁵

An expanded interpretation of this provision of the Rome Statute (as well as other provisions of the Statute) is contained in the official document "Elements of Crimes" of the International Criminal Court, published in 2013 in The Hague and based on the official reports of the Assembly of States Parties to the Rome Statute of the ICC and the official reports of the Review Conference of the Rome Statute of the ICC (Kampala, 31 May - 11 June 2010). As stated in the text of the "Elements of Crimes", they "assist the Court in interpreting and applying Articles 6, 7 and 8 in accordance with the Statute of the ICC".⁶

As regards deportation, the Elements of Crimes further clarify that the term "forcible" used in relation to removal in Article 7 of the Rome Statute is not limited to the use of physical force, but may also include the threat of force or coercion, which is caused, for example, by psychological pressure, gross coercion, fear of violence, detention or abuse of power over such person, persons or a third person, or by the use of circumstances characterized by coercion. In addition, the provisions of Articles 2, 3, 4 and 9 of the General Introduction to the Elements of Crimes are relevant for the qualification of an act as deportation. Based on them, any crime contained in the Rome Statute, including deportation, is interpreted as such if committed knowingly and intentionally, which can be established by the Court on the basis of the relevant facts and circumstances. To qualify an act, it is not necessary to prove the fact that the perpetrator personally made a certain value judgment about the cruel or inhuman nature of his own actions. A particular type of behavior may constitute not only one, but several crimes provided for by the Rome Statute (the latter is especially relevant in the context of the deportation of children during an armed conflict, since it contains elements of other international crimes).⁷

4 Reznik, O., Bondarenko, O., Utkina, M., Klypa, O., & Bobrishova, L. (2023). Anti-Corruption Transformation Processes in the Conditions of the Judicial Reform in Ukraine Implementation. *International Journal for Court Administration*, 14(1). <https://doi.org/10.36745/ijca.400>. <https://iacajournal.org/articles/10.36745/ijca.400>

5 Arsanjani, M. H. (1999). The Rome Statute of the International Criminal Court. *American Journal of International Law*, 93(1). <https://doi.org/10.2307/2997954>

6 Ghuman, A. (2018). Elements of Crime. *International Journal of Law Management & Humanities*, 1.

7 Sotska, Alla, Serhii Tryhub, Tetiana Voloshanivska, Vadym Kolomiiets, and Krystyna Rezvorovych. 'Legal Regulation of the Protection Of Children's Rights By European Standards: a Comparative Perspective'. *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 2 (2024). 375-359. <https://doi.org/10.18592/sjhp.v24i2.13973>

As for the place of deportation in the system of international torts, it is necessary, first of all, to pay attention to the fact that the already cited Rome Statute places deportation in Article 7, which is called “crimes against humanity”, given that deportation is generally considered to belong to this group of international crimes. From a theoretical point of view, the content of such an act as deportation also fully corresponds to the generic features of crimes against humanity, among which the following are usually distinguished: a) mass (i.e. scale): the affected subjects, victims of such criminal acts are the civilian population, its certain social groups, communities; b) systematicity (duration);

c) purposeful organization (usually institutionalization);

d) connection with a state of war, armed conflicts, attacks⁸, as well as the content of the concept of “*crimes against humanity*” (as defined by M. M. Hnatovsky) as “*large-scale and systematic violations of human rights committed against a significant part or the entire civilian population of a certain area and constituting a grave encroachment on the life, health and dignity of a large number of people*”.

If we analyze both other norms of the Rome Statute and the provisions of other acts of international criminal or international humanitarian law, the place of deportation, especially committed against children and in conditions of armed conflict, does not seem so unambiguous.⁹

The commission of deportation in conditions of armed conflict gives grounds to attribute this crime not only to crimes against humanity, but also to war crimes. Actually, the grounds for such a conclusion are also provided by Article 8 of the Rome Statute, according to which grave breaches of the Geneva Conventions of 12 August 1949 are considered war crimes. (one of which is the Fourth Geneva Convention “Regarding the Protection of Civilian Persons in Time of War”), including acts committed against persons protected under the provisions of the Geneva Convention (and therefore, including in relation to civilians, including children), including acts such as displacement, unlawful deportation or unlawful deprivation of liberty (subparagraph VII of paragraph “a” of part 2 of Article 8); direct or indirect transfer by the occupying power to the territory occupied by it of part of its own civilian population or deportation (displacement) within or outside the territory of part or all of the population of the occupied territory (subparagraph VIII of paragraph “b” of part 2 of Article 8).¹⁰

Other international legal instruments establishing responsibility for war crimes also usually mention among them the deportation of the civilian population, including children. For example, in the historically first definition of the concept of “war crime”, which is given in Art. 6 of the Charter of the International Military Tribunal at Nuremberg, it was noted that war crimes should be considered violations of the laws

8 Dudyk, I., Rezvorovych, K., Melnyk, V., Gayevaya, O., & Tumulavičius, V. (2024). Strategies for Ukraine’s Legal Integration into the EU: Learning from the Experience of Central and Eastern Europe. *Evropský politický a právní diskurz*, 11, 6, 13-21. <https://doi.org/10.46340/eppd.2024.11.6.2>

9 Volobueva, Olena, Yevhen Leheza, Vita Pervii, Yevhenii Plokhuta, and Roman Pichko. ‘Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine’. *Yustisia Jurnal Hukum* 12, no. 3 (2023): 262–77. <https://doi.org/10.20961/yustisia.v12i3.79443>.

10 Buletsa, S., Drozd, O., Yunin, O., & Mohilevskyi, L. (2018). MEDICAL ERROR: CIVIL AND LEGAL ASPECT. *Georgian Medical News*, 276. <https://pubmed.ncbi.nlm.nih.gov/29697400/>

and customs of war, including, inter alia, murder, cruel treatment or deportation of the civilian population in occupied territories.¹¹

The already mentioned Geneva Conventions of 1949 also contain a list of war crimes, which are understood as serious violations of the conventions and which include, inter alia, unlawful deportation, displacement of civilians under protection. Children are subject to all provisions of the Geneva Conventions relating to the humane treatment of persons who do not take an active part in hostilities, and, therefore, their forcible displacement, from the point of view of international humanitarian law, is a war crime.¹²

According to modern international law, the deportation of children, which has a massive and clearly expressed national character, can be considered a sign of such a crime against humanity as genocide (this is precisely what happens during the forcible transfer of children from the temporarily occupied territories of Ukraine by officials of the Russian Federation).¹³

According to Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), genocide is understood as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) killing members of the group; b) causing serious bodily harm or mental disorder to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) imposing measures to prevent the birth of children within the group; e) forcibly transferring children of one human group to another”.¹⁴ In addition, the treatment of the crime of genocide and the list of acts of genocide in Article 6 of the Rome Statute almost verbatim repeat Article 2 of the 1948 Convention.¹⁵

Turning again to the “Elements of the Crime” as an act of official interpretation of the Rome Statute, we note that, according to the “Elements”, in order to establish an act of genocide consisting in the forcible transfer of children from one human group to another (in accordance with Article 6, paragraph e, of the ICC Statute), the following elements are required: the perpetrator forcibly transferred one or more persons; such person(s) belonged to a particular ethnic, national, racial or religious group; the transfer was carried out from the specified group to another; such person(s) were under the age of 18; the perpetrator knew or should have known that such person(s) were under the age of 18. In addition, all types of acts of genocide, including the deportation of children, must necessarily contain the following elements of the crime: the person(s)

11 van Bueren, G. (2024). Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949. In *International Documents on Children*. https://doi.org/10.1163/9789004638662_068.

12 Leheza, Yevhen, Volodymyr Shablysty, Irina V. Aristova, Ivan O. Kravchenko, and Tatiana Kornikova. ‘Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, Their Analogues and Precursors: Administrative and Criminal Aspect’. *Journal of Drug and Alcohol Research* 12, no. 4 (2023). <https://doi.org/10.4303/JDAR/236240>.

13 Leheza, Yevhen, Bogdan Shcherbyna, Yulia Leheza, Olena Pushkina, and Olesia Marchenko. ‘Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine’. *Revista Juridica Portucalense*, no. Sp. (2023): 340–58. [https://doi.org/10.34625/issn.2183-2705\(ne\)2023.ic-17](https://doi.org/10.34625/issn.2183-2705(ne)2023.ic-17).

14 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. (2019). In *Global Crime: An Encyclopedia of Cyber Theft, Weapons Sales, and Other Illegal Activities: Volume 1: AL: Volume 2: MZ* (Vols. 1–2). https://doi.org/10.1163/9789004637450_053.

15 Leheza, Yevhen, Larysa Yerofieienko, and Volodymyr Komashko. ‘Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects’. *Revista Justiça Do Direito* 37, no. 3 (2023): 157–72. <https://doi.org/10.5335/rjd.v37i3.15233>.

against whom the criminal actions are directed belonged to a particular racial, ethnic, national or religious group; the perpetrator of the acts of genocide intended to destroy, in whole or in part, that racial, ethnic, national or religious group; such conduct of the perpetrator occurred in the context of a clear pattern of similar conduct directed against that group or which could in itself have brought about such destruction.¹⁶

Considering that the victims of forced displacement from the temporarily occupied territories of Ukraine to Russia are tens of thousands of Ukrainian children, even according to the most conservative estimates, and also the fact that in the future, measures are systematically taken against such children to “erase” their Ukrainian identity (severing ties with Ukrainian families and their adoption by Russian families, aggressive propaganda in Russian educational institutions, etc.), such deportation fully corresponds to the above-mentioned signs of genocide, which are noted by many experts, in particular, the expert of the Council of Europe on internally displaced persons in Ukraine and the International Council on Crimes Committed in Armed Conflicts under the Office of the Prosecutor General O. Senatorova. However, to date, the facts of the deportation of Ukrainian children have not been officially qualified as genocide at the international legal level. In particular, in March 2023 The International Criminal Court in The Hague, issuing arrest warrants for Russian President Putin and the Commissioner for Children’s Rights under the President of the Russian Federation, M. Lvova-Belova, on suspicion of committing forcible deportations and transfers of children from the occupied territories of Ukraine, qualified such acts as war crimes under the above-mentioned Articles 8(2) of the Rome Statute.¹⁷

Therefore, despite the “triple” nature of the deportation of children in armed conflict, which under different circumstances can be qualified as a crime against humanity, a war crime, and a crime of genocide (i.e., it falls under the scope of three articles of the Rome Statute - 6, 7, and 8), as of today, the deportation of Ukrainian children committed by officials of the Russian Federation is qualified primarily as a war crime. Not least, this interpretation is due to the fact that the Russian Federation is a party to the Geneva Conventions, unlike the Rome Statute (which it signed, but later withdrew its signature), and, according to the general principle of international law, a state can be held responsible for the violation of only those international treaties that it has recognized as binding on itself. On the other hand, the Russian Federation is also a party to the Convention on the Prevention and Punishment of the Crime of Genocide (the UN International Court of Justice is even considering an interstate dispute between Ukraine and the Russian Federation regarding the latter’s violations of this Convention), but, of course, proving that the deportation of Ukrainian children by the Russian Federation has

16 Yunin, O., Shatkovskiy, Y., Hayrapetyan, A., Mishchuk, I., & Korobtsova, D. (2019). Foreign experience of the organization of the judicial settlement of administrative disputes and the current state in Ukraine. *Journal of Legal, Ethical and Regulatory Issues*, 22(6). <https://www.abacademies.org/abstract/foreign-experience-of-the-organization-of-the-judicial-settlement-of-administrative-disputes-and-the-current-state-in-uk-8807.html>

17 Leheza, Yevhen, Bogdan Shcherbyna, Yulia Leheza, Olena Pushkina, and Olesia Marchenko. (2024). ‘Features of full/partial suspension or refusal of performance of an obligation in case of non-performance of the counterparty under the civil legislation of Ukraine’. *Novum Jus* 18. no. 2 (2024): 131–150. <https://doi.org/10.14718/NovumJus.2024.18.2.5>

reached a level sufficient to recognize it as genocide against Ukraine is a more complex and lengthy process.¹⁸

Turning to the issue of the prospects for holding both officials directly guilty of such acts and the Russian Federation itself as a subject of international law liable for the deportation of children, we must first of all note that international law clearly distinguishes between the international legal responsibility of states for their commission of internationally wrongful acts and the international criminal responsibility of individual individuals for the commission of international crimes.

As for the second of these types of responsibility, the prosecution of persons guilty of committing international crimes, including crimes against humanity, genocide and war crimes, is the prerogative of the International Criminal Court, which, in accordance with Article 1 of the Rome Statute, has the authority to exercise jurisdiction over persons for the most serious crimes of concern to the international community, supplementing national criminal justice systems.¹⁹

In this context, it is appropriate to note that the very fact of the International Criminal Court issuing an arrest warrant for Putin and Lvova-Belova, despite the fact that it has not yet been executed, firstly, significantly narrows the “geography” of Putin’s possible visits, since in countries that have ratified the Rome Statute, he risks being arrested in execution of the ICC decision, and secondly, indirectly contributes to the possibility of conducting negotiations (unfortunately, few so far) on the return of deported children between Ukraine and the Russian Federation through the mediation of third states, which nevertheless demonstrate, albeit insignificant, results. According to the authorities, as of the beginning of 2024, about 500 children had been returned to Ukraine.

However, it cannot be ignored that the prospects of the forced execution of both the arrest warrant already issued by the ICC and future sentences against Putin, Lvova-Belova or other war criminals found guilty of the deportation of Ukrainian children in states that have not ratified the Rome Statute are rather illusory. The greatest paradox of this situation is that such states include, in fact, Ukraine itself, which signed the Rome Statute back in 2000, but has not yet ratified it. It seems quite illogical that a state that demands justice in the International Criminal Court does not itself extend its jurisdiction to itself, in view of which we can only emphasize once again the importance of ratifying the Rome Statute as soon as possible.²⁰

In this context, we note that the very fact of bringing individual individuals, even the President of the Russian Federation and other top officials, is not sufficient punishment for a crime committed by thousands of Russian citizens who carry out deportation orders, facilitate the forced adoption of Ukrainian children by Russian families, teach them propaganda theses in Russian schools, etc. As R. I. Rebrysh emphasizes in this regard, the

18 Leheza, Yevhen, Karina Pisotska, Oleksandr Dubenko, Oleksandr Dakhno, and Artur Sotskyi. ‘The Essence of the Principles of Ukrainian Law in Modern Jurisprudence’. *Revista Juridica Portucalense* 32 (2022): 342–363. [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15).

19 Rezvorych, K., Gorinov, P., Sokol, M., Kutsyk, K., & Opatskyi, R. (2023). Peculiarities of the Legislative Regulation of the Protection of Rights of Workers on the Background of Russian Military Aggression (the Ukrainian Experience). *Review of Economics and Finance*, 21. <https://doi.org/10.55365/1923.x2023.21.60>

20 Yunin, O., Nikolaichuk, S., Brusakova, O., Kravchenko, I., & Kolesnikova, M. (2021). Administrative and legal status of district administrative courts in the administrative justice system. *Journal of Legal, Ethical and Regulatory Issues*, 24(6). <https://www.abacademies.org/articles/Administrative-and-legal-status-1544-0044-24-6-737.pdf>

commission of such an international crime as genocide (and one of its manifestations is the mass deportation of children and the erasure of their national identity) is impossible without the involvement of the entire state mechanism, without a criminal state policy that is implemented by local and central authorities, enshrined in legislation, ensured by law enforcement and law enforcement agencies, and supported by the population of this state, which, through the institutions of representative democracy, supports the criminal policy of the state both at the stage of formation and after its implementation.²¹

However, in terms of holding states, rather than individuals, accountable for international crimes, international law is quite imperfect and does not contain any imperative norms on this issue - obviously, based on the general principle of respect for the sovereignty of states, which, however, seems somewhat inappropriate in this case.

Speaking of the international responsibility of states, we note that today the only codified international legal act on this issue is the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001), developed by the UN Commission on International Law and approved by UN General Assembly Resolution No. 56/83. In contrast to international treaties, they do not have a legally binding status. At the same time, another legal feature of this Resolution is that the UN General Assembly only “took note” of the Draft Articles, the text of which is placed in the annex to it, and “offered them to the attention of governments”, without raising the issue of their future adoption as an international treaty or other appropriate measures.²² However, it cannot be ignored that, within the meaning of the Draft Articles, the deportation of children, sanctioned by decisions of senior officials of the Russian Federation (in particular, Putin and Talvovoy-Belova, who are actually the subject of the proceedings in the International Criminal Court), is, firstly, an internationally wrongful act, since, within the meaning of Article 12 of the Draft Articles, it is a violation of any international obligation, regardless of its origin, and therefore of the Geneva Conventions, to which the Russian Federation is a party; and secondly, it is considered to be an act of the State as a whole, because according to Article 8 of the Draft Articles, an act of a person (group of persons) under international law is considered to be an act of a State if the person (group of persons) at the time of committing this act actually acts on the instructions or under the direction or control of that State.²³

As for the specific forms of State responsibility, then, according to Articles 34-37 of the Draft Articles, reparation for damage caused by an internationally wrongful act is carried out in the form of restitution (the obligation of the subject to restore the situation that existed before the commission of the wrongful act), compensation (the obligation to compensate for the damage caused by such an act to the extent that the compensation for such damage is not covered by restitution) and satisfaction (unlike the

21 Leonenko, Tetiana Ye., Maksym I. Leonenko, Oleh O. Shkuta, and Vasyl M. Yurchyshyn. ‘Features of Group Motivation for Criminal Acts Committed on the Grounds of Religious Hatred or Hostility’. *Journal of Advanced Research in Law and Economics* 10, no. 3 (2019): 834–41. [https://doi.org/10.14505/jarle.v10.3\(41\).19](https://doi.org/10.14505/jarle.v10.3(41).19).

22 Smiesova, V., Pylypenko, A., Ivanova, M., & Karpenko, R. (2019). Economic and institutional conditions for implementation of economic interests in the countries of the world. *Montenegrin Journal of Economics*, 15(4). <https://doi.org/10.14254/1800-5845/2019.15-4.6>

23 Shkuta, Oleh, Dmytro Karbovskyi, Olena Pushkina, Mykola Potip, and Olena Varhuliak. ‘Object and Subject of State Control in the Sphere of Legal Turnover of Narcotic Drugs, Psychotropic Substances and Their Precursors in Ukraine: Administrative, Criminal and Civil-Legal Aspect’. *Journal of Drug and Alcohol Research* 12 (2023). <https://doi.org/10.4303/JDAR/236255>.

previous two, it is a form of non-pecuniary responsibility and may be manifested in the recognition of the violation committed, the making of an official apology or in another similar manner).²⁴

Of course, in the case of the deportation of children by the Russian Federation from the temporarily occupied Ukrainian territories, all three of the above-mentioned measures of responsibility of the aggressor state would be quite appropriate, and, above all, restitution, which in this case could be expressed in such a form as the unconditional and immediate return of all deported children to the territory of Ukraine. However, as we have already mentioned above, UNGA Resolution No. 56/83 of 2001 does not have binding legal force (as, in fact, any other act adopted by an international organization). As A. Bakayev and P. Yaroshevich note, the main effective international legal mechanisms for combating international crimes are the UN Security Council, the International Court of Justice and the International Criminal Court.²⁵ At the same time, the first two bodies can issue decisions, including against states. However, in many cases, the decisions of the Security Council have a political connotation, since the interests of permanent members with veto power (one of them is the Russian Federation) play a large role in its decision-making. As for the International Court of Justice, it cannot consider a case against a state that has committed an international crime and make a decision without its consent.²⁶

Moreover, even if the case is considered and a decision is made, the only UN body authorized to use force to enforce such a decision is the already mentioned UN Security Council, which brings us back to the problem of the actual absence of any mechanism of coercion in relation to a state that is a permanent member of the UN Security Council that has committed an internationally wrongful act and does not wish to voluntarily compensate the harm caused to the injured state. Under such conditions, the only effective solution can only be the exclusion of the Russian Federation from the UN Security Council or at least the deprivation of its veto right in those matters that concern its violation of the fundamental principles of international law. However, as of today, such an issue is not even being considered.

3. CONCLUSION

According to the results of the study, it is necessary to single out the following main conclusions:

The deportation of children from the temporarily occupied Ukrainian territories, carried out by the Russian Federation as part of its full-scale invasion, has signs at the same time of the three most serious international crimes under the Rome Statute: crimes against humanity, war crimes and crimes of genocide. At the same time, to

24 Vakulyk, O., Petrenko, P., Kuzmenko, I., Pochtovyi, M., & Orlovskyi, R. (2020). Cybersecurity as a component of the national security of the state. *Journal of Security and Sustainability Issues*, 9(3). [https://doi.org/10.9770/JSSI.2020.9.3\(4\)](https://doi.org/10.9770/JSSI.2020.9.3(4))

25 Volobuieva, Olena, Yevhen Leheza, Vita Pervii, Yevhenii Plokhuta, and Roman Pichko. 'Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine'. *Yustisia Jurnal Hukum* 12, no. 3 (2023): 262–77. <https://doi.org/10.20961/yustisia.v12i3.79443>

26 Voloshanivska, Tetiana, Inna Pozihun, Serhii Losych, Olha Merdova and Yevhen Leheza. 'Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors'. *Journal of Drug and Alcohol Research*, 12(10) (2023). <https://doi.org/10.4303/JDAR/236269>

date, the International Criminal Court has charged officials of the Russian Federation with only committing a war crime, but the Ukrainian side must continue to seek at the international, including international legal level, recognition of the deportation of Ukrainian children as genocide.

However, the prospects for the actual execution the future sentence of the ICC are rather doubtful, since the Russian Federation is not a party to the Rome Statute, and other states or the international community as a whole have no real possibility of forceful coercion of the Russian Federation to implement such a decision due to the fact that it is a permanent member of the UN Security Council and has the right to veto any of its decisions.

Bringing to international responsibility not only individual war criminals, but also the Russian Federation as a whole today seems even more unlikely, since in fact the only codified international legal act in the sphere of international responsibility of states is the Draft Articles on the Responsibility of States for Internationally Wrongful Acts approved by the UN General Assembly Resolution, which do not have mandatory legal status.

Further scientific research in this direction we see in the study of the problems of social support and rehabilitation of children who returned from Russia after forced deportation.

REFERENCES

- Arsanjani, M. H. (1999). The Rome Statute of the International Criminal Court. *American Journal of International Law*, 93(1). <https://doi.org/10.2307/2997954>
- Buletsa, S., Drozd, O., Yunin, O., & Mohilevskiy, L. (2018). Medical error: civil and legal aspect. *Georgian Medical News*, 276. <https://pubmed.ncbi.nlm.nih.gov/29697400/>
- Dudyk, I., Rezvorovych, K., Melnyk, V., Gayevaya, O., & Tumulavičius, V. (2024). Strategies for Ukraine's Legal Integration into the EU: Learning from the Experience of Central and Eastern Europe. *Evropský politický a právní diskurz*, 11, 6, 13-21. <https://doi.org/10.46340/eppd.2024.11.6.2>
- Dymko, Iegor, Arsen Muradian, Yevgeny Leheza, Andrii Manzhula, and Oleksandr Rudkovskiy. 'Integrated Approach to the Development of the Effectiveness Function of Quality Control of Metal Products'. *Eastern-European Journal of Enterprise Technologies* 6, no. 3 (90) (2017): 26–34. <https://doi.org/10.15587/1729-4061.2017.119500>.
- Ghuman, A. (2018). Elements of Crime. *International Journal of Law Management & Humanities*, 1.
- Korniienko, Maksym, Anatolii Desyatnik, Galina Didkivska, Yevhen Leheza, and Oleksiy Titarenko. 'Peculiarities of Investigating Criminal Offenses Related to Illegal Turnover of Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors: Criminal Law Aspect'. *Khazanah Hukum* 5, no. 3 (2023): 205–15. <https://doi.org/10.15575/kh.v5i3.31742>.
- Leheza, Yevhen Oleksandrovyh, Viktor Filatov, Volodymyr Varava, Vira Halunko,

- and Kartsyhin Dmytro. 'Scientific and Practical Analysis of Administrative Jurisdiction in the Light of Adoption of the New Code of Administrative Procedure of Ukraine'. *Journal of Legal, Ethical and Regulatory Issues* 22, no. 5 (2019): 1–8. <https://dspace.oduvs.edu.ua/items/8756f8b6-59a2-4d6b-920c-b68d55efae0e>
- Leheza, Yevhen, Bogdan Shcherbyna, Yulia Leheza, Olena Pushkina, and Olesia Marchenko. 'Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine'. *Revista Jurídica Portucalense*, no. Sp. (2023): 340–58. [https://doi.org/10.34625/issn.2183-2705\(ne\)2023.ic-17](https://doi.org/10.34625/issn.2183-2705(ne)2023.ic-17).
- Leheza, Yevhen, Bogdan Shcherbyna, Yulia Leheza, Olena Pushkina, and Olesia Marchenko. (2024). 'Features of full/partial suspension or refusal of performance of an obligation in case of non-performance of the counterparty under the civil legislation of Ukraine'. *Novum Jus* 18. no. 2 (2024): 131–150. <https://doi.org/10.14718/NovumJus.2024.18.2.5>
- Leheza, Yevhen, Karina Pisotska, Oleksandr Dubenko, Oleksandr Dakhno, and Artur Sotskyi. 'The Essence of the Principles of Ukrainian Law in Modern Jurisprudence'. *Revista Jurídica Portucalense* 32 (2022): 342–363. [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15).
- Leheza, Yevhen, Larysa Yerofieienko, and Volodymyr Komashko. 'Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects'. *Revista Justiça Do Direito* 37, no. 3 (2023): 157–72. <https://doi.org/10.5335/rjd.v37i3.15233>.
- Leonenko, Tetiana Ye., Maksym I. Leonenko, Oleh O. Shkuta, and Vasyl M. Yurchyshyn. 'Features of Group Motivation for Criminal Acts Committed on the Grounds of Religious Hatred or Hostility'. *Journal of Advanced Research in Law and Economics* 10, no. 3 (2019): 834–41. [https://doi.org/10.14505//jarle.v10.3\(41\).19](https://doi.org/10.14505//jarle.v10.3(41).19).
- Reznik, O., Bondarenko, O., Utkina, M., Klypa, O., & Bobrishova, L. (2023). Anti-Corruption Transformation Processes in the Conditions of the Judicial Reform in Ukraine Implementation. *International Journal for Court Administration*, 14(1). <https://doi.org/10.36745/ijca.400>. <https://iacajournal.org/articles/10.36745/ijca.400>
- Rezvorovych, K., Gorinov, P., Sokol, M., Kutsyk, K., & Opatskyi, R. (2023). Peculiarities of the Legislative Regulation of the Protection of Rights of Workers on the Background of Russian Military Aggression (the Ukrainian Experience). *Review of Economics and Finance*, 21. <https://doi.org/10.55365/1923.x2023.21.60>
- Shkuta, Oleh, Dmytro Karbovskyi, Olena Pushkina, Mykola Potip, and Olena Varhuliak. 'Object and Subject of State Control in the Sphere of Legal Turnover of Narcotic Drugs, Psychotropic Substances and Their Precursors in Ukraine: Administrative, Criminal and Civil-Legal Aspect'. *Journal of Drug and Alcohol Research* 12 (2023). <https://doi.org/10.4303/JDAR/236255>.
- Smiesova, V., Pylypenko, A., Ivanova, M., & Karpenko, R. (2019). Economic and institutional conditions for implementation of economic interests in the

- countries of the world. *Montenegrin Journal of Economics*, 15(4). <https://doi.org/10.14254/1800-5845/2019.15-4.6>
- Sotska, Alla, Serhii Tryhub, Tetiana Voloshanivska, Vadym Kolomiiets, and Krystyna Rezvorovych. 'Legal Regulation of the Protection Of Children's Rights By European Standards: a Comparative Perspective.' *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 2 (2024). 359-375. <https://doi.org/10.18592/sjhp.v24i2.13973>
- United Nations Convention on the Prevention and Punishment of the Crime of Genocide. (2019). In *Global Crime: An Encyclopedia of Cyber Theft, Weapons Sales, and Other Illegal Activities: Volume 1: AL: Volume 2: MZ* (Vols. 1–2). https://doi.org/10.1163/9789004637450_053.
- Vakulyk, O., Petrenko, P., Kuzmenko, I., Pochtovyi, M., & Orlovskiy, R. (2020). Cybersecurity as a component of the national security of the state. *Journal of Security and Sustainability Issues*, 9(3). [https://doi.org/10.9770/JSSI.2020.9.3\(4\)](https://doi.org/10.9770/JSSI.2020.9.3(4))
- van Bueren, G. (2024). Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949. In *International Documents on Children*. https://doi.org/10.1163/9789004638662_068. Leheza, Yevhen, Volodymyr Shablysty, Irina V. Aristova, Ivan O. Kravchenko, and Tatiana Korniakova. 'Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, Their Analogues and Precursors: Administrative and Criminal Aspect'. *Journal of Drug and Alcohol Research* 12, no. 4 (2023). <https://doi.org/10.4303/JDAR/236240>.
- Volobuieva, Olena, Yevhen Leheza, Vita Pervii, Yevhenii Plokhuta, and Roman Pichko. 'Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine'. *Yustisia Jurnal Hukum* 12, no. 3 (2023): 262–77. <https://doi.org/10.20961/yustisia.v12i3.79443>.
- Voloshanivska, Tetiana, Inna Pozihun, Serhii Losych, Olha Merdova and Yevhen Leheza. 'Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors'. *Journal of Drug and Alcohol Research*, 12(10) (2023). <https://doi.org/10.4303/JDAR/236269>
- Yunin, O., Nikolaichuk, S., Brusakova, O., Kravchenko, I., & Kolesnikova, M. (2021). Administrative and legal status of district administrative courts in the administrative justice system. *Journal of Legal, Ethical and Regulatory Issues*, 24(6). <https://www.abacademies.org/articles/Administrative-and-legal-status-1544-0044-24-6-737.pdf>
- Yunin, O., Shatkovskiy, Y., Hayrapetyan, A., Mishchuk, I., & Korobtsova, D. (2019). Foreign experience of the organization of the judicial settlement of administrative disputes and the current state in Ukraine. *Journal of Legal, Ethical and Regulatory Issues*, 22(6). <https://www.abacademies.org/abstract/foreign-experience-of-the-organization-of-the-judicial-settlement-of-administrative-disputes-and-the-current-state-in-uk-8807.html>