

Genocide as a crime against the peace and security of mankind according to the legislation of the Russian Federation and the Federal Republic of Germany

Prof. Dr., Dr.hab. Anna Valerjevna Serebrennikova
Moscow State Lomonosov University
Moscow- Russia

Abstract

This article reviews the issues related to the implementation of the international criminal law provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) dated 9 December 1948 in the national legislation of the Russian Federation and Germany. From this point of view Article 357 of the Russian Federation Criminal Code (RF CC) and the German Code of Crimes against International Law (CCAIL) are analyzed.

Keywords: international criminal law, the Russian Federation, Germany, the criminal law, genocide.

Introduction

The implementation of the international criminal law provisions into the national legislation of any state, including the establishment of criminal responsibility for international crime, including genocide, is an important task for every modern state. The criminal legislations of Russia and Germany are correspondingly based on the Russian Federation Constitution of 1993 [2], the Basic Law for the Federal Republic of Germany of 1949 [6], and on the universally recognized principles and norms of the international law. For example, the Russian Constitution of 1993 contains a provision on the recognition of the principles and norms of international law and international treaties of the Russian Federation as integral part of the legal system of the Russian Federation. Part 2 of Article 1 of the RF CC [3] stipulates that "this Code is based on the Constitution of the Russian Federation and universally recognized principles and norms of the international law". This provision is implemented when relevant norms of the criminal law enter into force upon adoption of a federal law.

Article II of the CPPCG can serve as an example.

This Convention was adopted and proposed for signature, ratification or accession, as General Assembly resolution 260 A (III), and entered into force on 12 January 1961, [5, p. 518], which contains the notion of genocide. On the basis of this norm "in the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, any national, ethnic, racial or religious group, as such:

- a) killing members of the group;
- b) causing serious bodily or mental harm 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 intended to prevent births within the group; or

e) Forcibly transferring children of the group to another group

There are the norms in the criminal legislation of Russia and Germany that establish criminal responsibility for genocide. They can serve as an example of implementation of standards of international criminal law in national criminal legislations of the countries in question.

In the RF CC the criminal responsibility for genocide is established in Article 357. This norm contains in Chapter 34 Section XII 'Crimes against the peace and security of humankind'. Article 357 literally reproduces the notion of genocide given in Article II of the Convention in question and is formulated as follows: 'any of the acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such by killing members of the group; causing serious harm to their health; imposing measures intended to prevent births within the group; forcible transfer of children of the group, transfer or infliction of conditions calculated to bring about the physical destruction of the members of the group shall be punished by imprisonment for the term from twelve to twenty years, or by capital punishment, or by life imprisonment.

The merit of the Russian legislator, in our opinion, is that he does not extend the notion of the genocide given in Article 2 of the Convention in question, which confirms the implementation of a constitutional provision on the recognition of the principles and norms of international law and international treaties of the Russian Federation as integral part of the legal system of the Russian Federation.

In the German law, the criminal responsibility for genocide was established in the Act to introduce the Code of Crimes Against International Law (CCAIL) dated 26 June 2002 [1], (BGBl. I S. 2254) and not in the German Criminal Code (GCC) as earlier.

It is due, on the one hand, to the specifics of the German criminal law, namely, that the criminal law provisions are not only contained in the GCC of 15.05.1871 (RGBl. S. 127. (version dated 13.11.1998)), but also in so called additional criminal law (Nebenstrafrecht) and other federal laws. On the other hand, it can be explained as an attempt of the German legislator to codify international crimes in a separate legislative act.

Part 2 of the CCAIL contains compositions of criminal acts against international law and begins with section 1 that includes the norms concerning genocide and crimes against humanity. Paragraph 6 of the CCAIL establishes criminal responsibility for genocide.

One should note that before the adoption of the CCAIL the criminal responsibility for this crime was established in Section 220a of the GCC. This norm was introduced in the GCC by Law of 09.08.1954 (BGBl. 1954 II, S.729). and entered into force on 22.02.1955, which confirms the implementation of the UN Convention on the Prevention and Punishment of the Crime of Genocide norms and relevant punishment in the national German criminal law.

Subsequent changes to this norm were of purely editorial nature. The norm about genocide was placed in section 16 of the Special part of the GCC 'Criminal acts against life'. It was due to the fact that this norm protected human life as a legal benefit in certain cases. There was no independent section in the Special part of the GCC concerning crimes against the peace and security of humankind. The German

legislator followed a different procedure by adopting in 1992 an independent Federal Law that included the CCAIL which currently contains the provision about genocide. Let's take a closer look at the composition of this criminal offence:

(1) Those who with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(1) Kill members of the group; (2) Cause serious bodily or mental harm to members of the group, especially of type stipulated in § 226 of the CC; (3) Deliberately inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part; (4) Imposes measures intended to prevent births within the group; (5) Forcibly transfers children of the group to another group shall be punished by life imprisonment.

We would like to note that Section 220a of the previous GCC genocide was defined likewise.

Thus, one can conclude that the dispositions of the norms under consideration (Article 357 of the RF CC and Section 6 of the CCAIL) were formulated likewise. It can be explained, first of all, by the fact that they were formulated based on the texts of the relevant conventions.

Let's briefly characterize the considered norms. The objects of the genocide are the basics of the humankind and humanity, i.e. provision at the international level of security for national, ethnic, racial or religious groups. These provisions stipulate that the victims of genocide are not individuals, group members, but a group of people itself that is nationally, racially, religiously or ethnically homogenous and specific and the crime is committed with the aim to destroy such specifics. These cannot include any political parties, economic societies or cultural groups.

The objective part of these norms is characterized by 'any of the following 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 or mental harm to members of the group, especially of type stipulated in Section 226 of the GCC; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Such a composition both in the RF CC, and in the CCAIL is treated as an act of creating a threat of destruction for a certain group of people, so the actual achievement of the purpose is not required. Similarities between Article 357 of the RF CC and Section 6 of the CCAIL also concern both the subjective side, which is characterized by direct intention and purpose as an obligatory element of the composition (complete or partial physical extermination of a national, ethnic, racial or religious group as such), and the subject of crime (general).

The differences between Article 357 of the RF CC and Section 6 of the CCAIL are the following:

Firstly, sanctions are different. According to paragraph 1 of Section 6 of the CCAIL punishment is an absolute sanction in the form of deprivation of liberty for life. The sanction in Article 357 of the RF CC has an alternative and in addition to life sentence

provides for punishment in the form of deprivation of liberty for a term of twelve to twenty years. Secondly, Section 6 of the CCAIL has paragraph 2. This provision does not contain a qualified form of genocide, but establishes criminal liability for a less serious case of genocide, i.e. is the norm, containing the rules of determination of punishment scope (Strafzumessungsregeln). In cases provided in paragraph 1, Nos.2 to 5, the punishment may be the imprisonment for a term of not less than five years. In practice, in our opinion, this provision should be applied, first of all, with respect to the genocide that did not lead to any deaths. A similar provision was in former Section 220a of the GCC.

The common point in the legislations of Russia and Germany is the existence of a norm that contains an important criminal-legal injunction that statutes of limitations shall not apply to genocide (article 78 of the RF CC, section 5 of CCAIL). This norm is implemented in the criminal legislations of a majority of modern states, which do not apply the statutory limitations to crimes against humanity and war crimes. The legal basis for that is the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity as of 26 November 1968 [6, International acts on human rights. The decree. ed. p. 522].

Thus, as an example of implementation of standards of international criminal law in national legislation of the RF and Germany one can mention Article 357 of the RF CC and section 6 of the CCAIL where criminal responsibility for genocide is established.

References

- Code of Crimes Against International Law. [Online] Available: <http://www.iuscomp.org/gla/statutes/VoeStGB.pdf>. (February, 2017).
- Constitution of the Russian Federation. Moscow. [Online] Available: <http://www.constitution.ru> (February, 2017).
- Criminal Code of the Russian Federation. [Online] Available: http://www.consultant.ru/document/cons_doc_LAW_10699 (February, 2017).
- German Criminal Code. [Online] Available: <http://www.gesetze-im-internet.de/stgb> (February, 2017).
- International acts on human rights. Collection of documents. (2002). (2rd. ed.) .Moscow: INFRA-M.
- The Basic Law of the Federal Republic of Germany. [Online] Available: <https://www.bundestag.de/grundgesetz> (February, 2017).