COMBATING GENOCIDE THROUGH THE ACTIVITIES OF NATIONAL COURTS

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Currently, counteraction against genocide is carried out both at the level of international judicial bodies and within the framework of the activities of the courts of the states themselves. In this aspect, it is relevant not only to develop the activities of international judicial bodies in the field of bringing to justice and imposing severe punishment on those guilty of committing genocide, but also to actively involve domestic judicial bodies in the administration of justice in relation to those who participated in acts of genocide on the basis of universal jurisdiction.

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In modern times, national courts can only try a crime if there is a connection between their country and the crime. However, under the principle of "universal jurisdiction", national courts can try some of the most serious crimes, regardless of where they were committed, the nationality of the suspects, or the victims. Cases brought under this principle are becoming an increasingly important part of international efforts to hold those responsible for atrocities accountable, ensure justice for victims who have nowhere else to turn, prevent future crimes, and help prevent countries from becoming safe havens for human rights violators. Some countries have established specialized war crimes units within law enforcement agencies and prosecutorial offices to investigate serious international crimes committed abroad, including genocide. In some of these countries, it took many years before trials of Rwandan suspects began. However, since 2001, several countries have tried Rwandan genocide suspects, including Belgium, Canada, Finland, France, Germany, the Netherlands, Norway, Sweden, and Switzerland. For some, these were the first genocide cases tried in their national courts. Criminal investigations against other Rwandan genocide suspects are still ongoing in several countries, including France and Belgium.

It should be noted that genocide trials in any type of court have their limitations. For example, "referring genocide cases to national courts sometimes leads to abuses of the very concept of "genocide" [1].

Thus, its unfounded use to designate intentional murders without the presence of characteristics characteristic of genocide is erroneous, leads to ignoring its exceptional danger, and leads to the "devaluation" of this concept.

The ineffectiveness of national courts may also be due to the fact that the judicial system in the country in question, due to a complex political situation, may be effectively paralyzed and completely dependent on executive authorities.

It should be noted that in the 1960s and 1970s, during the absence of a permanent international criminal court, Israeli courts expanded the scope of the 1948 Convention, holding that customary international law did not prohibit national courts from hearing cases of genocide, and convicted Adolf Eichmann of this crime. In 1961, the Jerusalem District

Court found him guilty of war crimes, crimes against humanity, and acts amounting to genocide committed in Germany and other countries during World War II. The substantive legal basis for this criminal case was the 1950 Nazi and Nazi Collaborator (Punishment) Law. It is noteworthy that this Law, "in contrast to the conventional model of criminal intent of genocide, which consisted of the destruction, in whole or in part, of a national, ethnic, racial or religious group, without using the term genocide, accumulated the relevant acts, providing for the intent to destroy, in whole or in part, only the Jewish people".

On May 29, 1962, the Supreme Court of Israel upheld the December 1961 conviction of Adolf Eichmann by the Jerusalem District Court for crimes against humanity, war crimes, and crimes against the Jewish people (genocide) during World War II. This ruling was the first universal jurisdiction case. It should be noted that this trial of Adolf Eichmann was poorly received by some criminal law experts, who argued that it distorted the law in several key areas. However, with the revival of international criminal law in recent decades, it has been demonstrated that the Jerusalem District Court and the Supreme Court of Israel have successfully resolved complex issues.

The Israeli courts' understanding of the connection between crimes against humanity and genocide, and their response to accusations of retroactive criminality, the consequences of kidnappings, and allegations that the court lacked impartiality, have also stood the test of time. Perhaps most importantly, the Adolf Eichmann verdict effectively advanced the law on the issue of universal jurisdiction, effectively removing the narrow jurisdictional framework established by the 1948 Genocide Convention.

The Adolf Eichmann verdict, while controversial at the time it was handed down, is nuanced and has enormous significance for the world today. The verdict is a compelling affirmation of the solid foundation of international law - the universal right of jurisdiction as the international community's most important tool for achieving justice. It articulated some important procedural aspects of this form of jurisdiction and the inappropriateness of certain barriers to prosecution, which national courts should still consider today. The case also reaffirmed the validity of the position that states may enact laws defining crimes under international law as crimes in their criminal codes and apply them retrospectively, provided that the conduct was criminal under international law at the time it was committed. However, the Adolf Eichmann case also contains certain issues, such as the abduction of suspects across national borders and the use of the death penalty, that have not stood the test of time [2].

A quarter century after Adolf Eichmann's conviction for similar crimes committed in Poland, Ivan Demjanjuk was brought to trial. The 1985 decision in his case held, "the fact that the State of Israel did not exist when Demjanjuk allegedly committed the crimes does not constitute an obstacle to Israel's exercise of jurisdiction in accordance with the principle of universality. In considering this jurisdictional premise, neither the nationality of the accused or the victim(s), nor the place where the crime was committed, are relevant. The underlying assumption is that the crimes are crimes against the laws of nations or against humanity, and that the prosecuting State acts on behalf of all nations. In so doing, Israel or any other State, regardless of its status in 1942 or 1943, may assume the obligation to protect the interests of all nations by seeking to punish those guilty of such crimes".

In general, it should be noted that until the 1980s, there were few trials in Western countries for those who committed war crimes or crimes against humanity, whether on the basis of territorial or extraterritorial jurisdiction [3].

Regarding the role of national courts in hearing cases of genocide and other crimes against humanity in the modern era, it is important to emphasize that, where international and national courts have concurrent jurisdiction, the latter may hear these cases themselves. This position was reflected in the case of Jorgic v. Germany, in which Jorgic was arrested in December 1995 upon his return from Bosnia to Germany for founding a paramilitary group whose members brutalized Muslim residents, as well as for committing genocide and murder. He was sentenced to life imprisonment by a German

court and sentenced to life imprisonment by a German court. In a subsequent application to the European Court of Human Rights, Jorgic argued that German courts lacked jurisdiction to try him for the serious crimes, including genocide, he committed in the Doboj region of Bosnia between May and September 1992.

In his application to the European Court of Human Rights, he argued that the German courts had unreasonably assumed jurisdiction to hear his case, and that their interpretation of the crime of genocide was not based on German or international law.

Meanwhile, the German court acted in strict accordance with domestic and international law in its decision in this case. In accepting the case and passing sentence, the German court "found no obstacle in public international law to the examination of the charges, in particular because the International Criminal Tribunal for the former Yugoslavia indicated that it did not intend to prosecute the applicant". The court's verdict was upheld on appeal, citing the principle of universal jurisdiction".

The European Court of Human Rights concluded in its judgment that, although many authorities favored a narrow interpretation of the crime of genocide, at the material time there were already several authorities that interpreted the crime of genocide as broadly as the German courts. In these circumstances, the European Court of Human Rights considered that the applicant, had it been necessary, with the assistance of a lawyer, could reasonably have foreseen that he risked being charged and convicted of genocide for the acts he committed in 1992. In this context, the European Court of Human Rights also took into account that the applicant had been found guilty of committing acts of considerable gravity and duration: the murder of several people, as well as the detention and ill-treatment of a large number of people over several months as the leader of a paramilitary group carrying out a policy of ethnic cleansing.

In this case, the European Court of Human Rights held that the national courts' interpretation of the crime of genocide could reasonably be considered to be consistent with the essence of this crime and could reasonably have been foreseen by the applicant at the time of the events in question. Since these requirements were met, the German courts correctly interpreted the crime of genocide under domestic law.

The European Court of Human Rights also emphasized in this case that "Article 9, paragraph 1, of the Statute of the International Tribunal for the Former Yugoslavia confirms the position of the German courts regarding the concurrent jurisdiction of the International Tribunal for the Former Yugoslavia and national courts, without any restrictions on the courts of individual countries" [4].

Positive steps toward promoting an impartial and cautious approach to the application of punishment for the crime of genocide can be noted in recent years. For example, on November 30, 2022, the German Federal Court of Justice upheld the conviction of an ISIS member for genocide, crimes against humanity, and war crimes committed against the Yazidis in Fallujah, Iraq. He was accused of enslaving and raping a Yazidi woman and her five-year-old daughter, resulting in the girl's death. The defendant was sentenced to life imprisonment. During the trial, the German court established that in the summer of 2015, ISIS member Taha "purchased" and, together with his wife, enslaved a five-year-old Yazidi girl named Reda and her mother. Reda and her mother were part of a group of Yazidi prisoners, and the couple held them captive in their residence in Fallujah. They forced them to practice Islam, work as slaves, and deprived them of sufficient food. Both captives were brutally beaten by Taha and subjected to other abuses; mother and daughter lived in constant fear. Reda ultimately died after Taha tied her with a rope to a window grille outdoors and left her in scorching heat of 51 degrees Celsius as punishment for wetting the bed and as a means of "disciplining" the girl.

The November 2021 ruling by the Frankfurt Higher Regional Court against Iraqi citizen Taha A.-J. marked the first conviction of an ISIS member for genocide in a country other than the one in which it was committed. Although Taha was not a German citizen, his victims were not German, and his crimes were

not committed on German soil, German courts impose such sentences due to their jurisdiction over genocide, war crimes, and crimes against humanity, in accordance with the principle of universal jurisdiction. Furthermore, his wife, Jennifer W., a German citizen, was sentenced to 10 years in prison for her involvement in the crimes against Reda and her mother. Although Taha A.-J. appealed this sentence, his appeal was rejected. Instead, the Federal Court of Justice of Germany upheld the factual findings of the Higher Regional Court, upheld the legal assessment of the defendant's guilt for genocide, and upheld the life sentence. The Federal Court confirmed that "the defendant's actions, which caused serious harm to Reda and her mother, in conjunction with similar actions by other ISIS members, were capable of destroying the Kurdish religious group of the Yazidis" [5].

The German court added that "it was precisely the organized enslavement of women and girls, especially in connection with religious re-education, that served to destroy the Yazidi religious minority with the aim of establishing an Islamic caliphate. Overall, this approach was capable of leading to... the (partial) destruction of this group as such".

On July 27, 2022, the Hamburg Higher Regional Court found German citizen and ISIS member Yalda A. guilty of aiding and abetting genocide, as well as crimes against humanity and war crimes related to the enslavement and cruel treatment of a young Yazidi woman, "M." The defendant was sentenced to five years and six months in prison. According to the verdict, which a three-judge panel delivered orally after an 11-day trial, the defendant traveled from Germany to Syria in April 2014. There, she married several high-ranking ISIS militants, one of whom held M captive as a sex slave and in domestic servitude for several weeks in 2017. The Trial Chamber found that the defendant's actions contributed to ISIS's attempt to destroy the Yazidi religious group and that the crimes committed amounted to genocide. The Chamber concluded that it was "inconceivable" that the defendant was unaware of ISIS's persecution of Yazidis after living in the so-called Islamic State for more than three years and being married to a high-ranking ISIS member. Furthermore, the defendant herself supported ISIS ideology and called Yazidis "dirty infidels" [6].

On June 21, 2023, the Higher Regional Court of Koblenz found German citizen "Nadine K." guilty of aiding and abetting genocide, crimes against humanity, and war crimes for the enslavement and cruel treatment of a young Yazidi woman in support of ISIS's brutal campaign to eradicate the Yazidi religious minority. The 37-year-old former ISIS member was sentenced to 9 years and 3 months in prison for genocide committed against the Yazidi community in Iraq and Syria.

The defendant and her husband joined ISIS in late 2014 after the terrorist group invaded the Sinjar region of Iraq, carrying out mass executions of Yazidi men and elderly women, and subjecting young women and children to abduction, sexual slavery, and forced recruitment. In Iraq and Syria, the defendant's husband worked as an ISIS doctor, treating ISIS fighters among other patients. In 2016, another ISIS member "gave" him a 21-year-old Yazidi woman (referred to as "N"). For three years, until March 2019, the couple held N. as a slave in their home in various locations, where she was raped and subjected to forced labor.

The defendant knew that her husband regularly beat and raped N. and chose not to intervene, even though she "could and should have". The defendant ensured N.'s detention and thereby facilitated the victim's abuse. The defendant acted not out of fear, but to advance ISIS ideology, with which she identified.

It should also be noted that, in addition to sentencing for genocide, in recent years, German courts have also widely convicted ISIS members for crimes against humanity and war crimes against Yazidis.

The logical conclusion of all the efforts by German state authorities to convict and punish those involved in the Yazidi genocide was the public recognition of the Yazidi genocide by the German parliament on January 19, 2023.

Thus, the development of modern and international law and national criminal legislation requires not only the strengthening of criminal prosecution for the commission of genocide within the framework of international

procedures, but also the development of the activities of domestic judicial bodies to actively suppress this crime, along with international judicial mechanisms, and the eradication of corresponding shortcomings in order to ensure the inevitability of criminal punishment for those responsible.

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