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## Conviction of Communist regime crimes in Ukraine

Ukraine is one of the countries which suffered most from the Communist regime crimes. Millions of the Ukrainians had been repressed by the Communist regime since 1918 when Ukraine was occupied by Bolshevik's troops till 1991 when at last it gained independence. Ukraine became an experimental ground for communists where they perfected scenarios of seizure of power and repressions against dissidents. Later, after 1939 these scenarios were used in the Baltic States, and since 1945 – in Central and Eastern European States. A well-known lawyer, the author of term *Genocide* and one of the authors of Convention On Condemnation of Genocides Rafael Lemkin called the communists policy in Ukraine *a classical sample of Soviet Genocide*<sup>1</sup> with the following stages: repressions against intelligentsia, liquidation of Ukrainian national church, subduing of the main layers of Ukrainian people – peasants who were violently hit by artificial famine. The last step was the dispersion of the Ukrainians by means of deportation and colonization of their lands by the representatives of other nations. Lemkin saw in communist actions a clear-cut consistent plan aimed at elimination of Ukrainian nation. Apparently this plan was not similar to *final solution of Jewish problem* by the Nazi and did not provide for Holocaust of all the Ukrainians. However, according to Rafael Lemkin the realization of this plan would have meant that *Ukraine would perish just as if all the Ukrainians were killed because it would lose the part of the nation which preserved and developed its culture, belief, unifying ideas which paved the way for it and gave a soul to it i.e. made it not just population but a nation*<sup>2</sup>.

The communists did not manage to fulfill this plan. Because of strong internal opposition of enslaved nations and external pressure by foreign democracies, the Soviet Union began to decay and at last collapsed. In the second half of 1980s the weakening of communist authority and the strengthening of national democratic movements raised public discussion of communist regime crimes. The revealing mass graves of political repressions victims made this issue urgent in Ukraine. There were a lot of such hidden cemeteries in city parks, at factories or on highways. They were eventually discovered before but Soviet Union punitive bodies managed to stop the dissemination of such information. In new socio-political situation the KGB could not continue to conceal it that was why this organization started to search for mass graves and to investigate under which

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<sup>1</sup> Lemkin R. *Soviet Genocide in Ukraine* – Kyiv, 2009.–P.37

<sup>2</sup> I. q. –P.41

circumstances they appeared. The first criminal cases concerning the crimes of communism were launched that time.

One of the first cases was connected with the district Bykivnia near Kyiv city. The mass graves were found long ago. But all commissions created by the Soviet government claimed until 1980s that buried there Soviet war prisoners were shot by the Germans. However many facts and evidences of eyewitnesses denied this version and called it the burial place of Stalin repressions' victims. Therefore, the national and democratic organizations such as *Memorial* and the Movement demanded the additional investigation of the case from the government. At last, on December 5, 1988 the Prosecutor's Office of the Ukrainian Soviet Socialistic Republic launched the criminal case and created the investigative group. As a result the interrogation of 250 witnesses, analysis of 60 archival cases and 7 expertises were conducted. The most important conclusion of the investigative group was that the burial place compromised the repressed by the Soviet power in 1937-1941.<sup>3</sup> But these conclusions did not become the reason for further examination of Communist power crimes. Moreover, in six months, in May 1989, the criminal case was closed because the leaders of the People's Commissariat of Internal Affairs responsible for the repressions at that moment were dead and the period for making responsible expired. It is significant that there were no attempts to refer the case to wider context of communist regime crimes and to use the international principles of law on Genocide or crimes against humanity ratified by the Soviet government. The same happened with the other cases - the government under the public pressure launched the criminal case on August 14, 1989 concerning revealing of burial places in Dem'yaniv laz near Ivano-Frankivs'k city<sup>4</sup> and on March 22, 1990 concerning revealing of Polish officers' burial places in woodland park near Kharkiv city. The case on Dem'yaniv laz was under way but finally was closed in 1996<sup>5</sup>.

Generally, the defeat of national and democratic camp at Presidential elections in Ukraine in December 1991 resulted into gradual reduction of informational campaigns aimed at communist crimes coverage. It is not strange as the new power in Ukraine was the reformed communist nomenclature. When the political disorder provoked by the opening of archives, investigation of communist power crimes and disclosure of personal files was in Central and Eastern Europe, there was almost absolute public tranquility in Ukraine.

The disclosure of truth concerning Soviet totalitarian regime was continued by separate public initiatives (the society of former political prisoners and research organizations such as *Memorial*). Their initiatives had no influence on political situation in the country where the registration of the Communist party of Ukraine

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<sup>3</sup> Memory of Bykivnya. Documents and materials.- Kyiv,2000.- p.64-71

<sup>4</sup> R. Krutsyk. Dem'yaniv Laz. Genocide of Halychyna.-Kyiv,2009.- p.103

<sup>5</sup> I.q.- p.167

(forbidden 2 years ago) was renewed in 1993. But they were not going to cease their activities and on March 21, 1996 the Society of Political Prisoners and the Repressed, the Association of Holodomor Researchers in Ukraine and *Memorial Society* established The Ukrainian National Committee on organization of international trial over the Soviet Union Communist Party for totalitarian regime crimes (Nuremberg-2)<sup>6</sup>. At the initial stage, this Committee had rather good political support of 68 members of the Ukrainian parliament, which however failed to capitalize in a certain success.

In 1999 anticommunist rhetoric was adopted by incumbent, at that time, Ukrainian president Leonid Kuchma, a major competitor of whom was the representative of the Communist Party of Ukraine Petro Symonenko. For Presidential support a Public Anti-communist Congress took place in L'viv at the end of 1999. However it didn't have any legal or political effect. After completion of the elections the anticommunist rhetoric of the power disappeared again.

However, *The Anti-communist Congress* and *The International Public Tribunal*, aimed at international conviction of Communism<sup>7</sup> took place outside Ukraine in Vilnius in March 2000 on the initiative of many public and political forces. The Ukrainian delegation also took part in the events and prepared well-grounded document *The indictment of the international public criminal case on the accusation of the Soviet Union Communist Party in committing crimes on the territory of Ukraine and against the Ukrainians*<sup>8</sup>. One of the key moments of this document was the accusation of the Communist power in the commitment of Genocide crime against the Ukrainians in the form of Holodomor. However, neither the document itself, nor the whole Congress and the process didn't become known in Ukraine. The authorities didn't react on public appeals with the demand to initiate the criminal case investigation on the Genocide in Ukraine in 1932-1933<sup>9</sup>.

The situation has changed just after 2004 revolutionary events and changes of power in Ukraine. The new leadership of the state started to refuse from the totalitarian past and to condemn the communist regime crimes. The archives of the USSR punitive and repressive system began to open during independence for the first time. In January 2009 the President Viktor Yushchenko issued a special Decree on declassification and disclosure of documents connected with Holodomor, political repressions and Ukrainian liberation movement. Following the Decree it was conducted a great work aimed at the disclosure and access to the documents classified before, which elucidate communist regime crimes in Ukraine.

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<sup>6</sup> L. Lukianenko Nurnberg-2. – Kyiv, 2001. – P.16

<sup>7</sup> Anti-communist Congress and Tribunal Proceedings. – Vilnius, 2002.

<sup>8</sup> L.Lukianenko Nurnberg-2. – Kyiv, 2001. – P. 37-85

<sup>9</sup> I.q.– P.26-27, 33.

All these facts gave an opportunity to raise a question about the necessity to launch a criminal case on Holodomor. The group of public activists and MPs appealed to the Security Service about it. On May 22, 2009 the Security Service of Ukraine launched a criminal case on committing Genocide in Ukraine in 1932-1933 on the grounds laid out in Part 1, Article 442 *Genocide* of the Criminal Code of Ukraine<sup>10</sup>. From that time the investigative group of 150 investigators has started the large-scale work in all Ukrainian regions.

The investigation collected the materials that were parts of 330 volumes of the criminal case. There are 3 186 death registration acts folios of 1932-1933, more than 5 000 archival documents of the Bolshevik party and other public institutions, video-, tape recordings of witnesses' memories among the documents of the case. During the investigation 1 890 witnesses were interrogated, 24 forensic medical examinations were carried out. The psychological, scientific and demographic, comprehensive historical and legal examinations were also conducted. The investigation found that the Communist leaders of that time, in particular Yosyp Stalin, Viacheslav Molotov, Lazar Kahanovych, Pavlo Postyshev, Stanislav Kosior, Vlas Chubar' and Mendel' Khataievych were the organizers of the crime. According to the investigative materials the mentioned individuals used the repressive apparatus of communist totalitarian regime in Ukraine in peacetime, made a decision and artificially created living conditions aimed at partial physical extermination of the Ukrainian national group, using the following mechanisms and methods:

- the development of the corn-storage plan for Ukraine up to the level that wouldn't be fulfilled. But if this plan was fulfilled – it was made only by forcible way, using repressions and at the expense of complete confiscation of seed and corn stores of peasants;
- including districts, populated areas, collective farms, village councils to the “black lists”, i.e. blocking them with military forces, ban on leaving these territories by population, absolute confiscation of food, and ban on trade;
- the isolation of Ukrainian territory by specially armed detachments, military and police units;
- the limit of free movement of peasantry out of Ukraine to look for food and ban on correspondence;
- the installment of *fines paid in kind*;
- carrying out constant searches with the confiscation of seed and corn stores, belongings, clothes, all food;
- strengthening the measures of criminal repression, including military execution of the persons, who resisted the confiscation of seed, meat, potatoes, sunflowers, etc.

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<sup>10</sup>The resolution on launching of the criminal case and beginning of its pre-trial investigation// Holodomor 1932-1933 in Ukraine. The materials of the criminal case # 475. – Kyiv, 2010.-C.1-3.

The documents of Ukrainian, Polish, German and Italian archives were added to the materials of the case. The facts of Holodomor in 1932-1933 in Ukraine are confirmed by 857 mass burial places of Genocide victims, revealed during the investigation. According to forensic, scientific and demographic expertise conclusion of M.W. Ptukha Demography and Social Research Institute of the National Academy of Sciences of Ukraine 3 941 000 persons perished in the result of Genocide in Ukraine. Taking into account the cumulative losses Ukraine lost 10 063 000 persons.

On December 31, 2009 the Security Service of Ukraine forwarded the criminal case to the Kyiv Court of Appeal for the judicial trial under the legislation in effect. The trial of the criminal case upon the fact of Holodomor organization in 1932-1933 in Ukraine was completed on January 13, 2010. Under the international and national legislation in effect, the court condemned J.V. Stalin, V.V. Molotov, L.M. Kahanovych, P.P. Postyshev, S.V. Kosior, V.Y. Chubar and M.M. Khataievych for crime against Humanity. According to the UN Convention *On the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* dated November 26, 1968 (ratified by Ukraine on March 25, 1969) this crime doesn't have time limitation. Taking into consideration that the accused are dead, the criminal case was closed by the court, according to Point 8 Part 1 Article 6 of the Code of Criminal Procedure of Ukraine i.e. under non-rehabilitative grounds. On January 21, 2010 the decision of the Court of Appeal came into effect. Thereby Ukraine implemented its international obligations to take measures on the prevention and punishment of the crime of Genocide following the UN Convention *On the Prevention and Punishment of the Crime of Genocide* dated December 9, 1948. Therefore, statement of the fact of crime by the court became the most important juridical result of the trial. The court indicated the mechanisms of its realization and classified it juridically as the Crime of Genocide<sup>11</sup>.

Hereby at last Ukraine got the first legal precedent of the communist power crime conviction. We expect, that there will be other cases, and the activity of Ukrainian law-enforcement agencies and the public, coordinated with other international initiatives, will result in the international tribunal, that will help to give an exact legal assessment of the Communist regimes and their crimes.

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<sup>11</sup> Kyiv Court of Appeal. The Resolution. 13.01.2010//Holodomor of 1932-1933 in Ukraine. Materials of the Criminal case # 475 – p. 5-52.