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HONOURING THE MEMORY OF THE HOLOCAUST VICTIMS:

LEGISLATIVE SETTLEMENT PROBLEMS IN UKRAINE

ВШАНУВАННЯ ПАМ'ЯТІ ЖЕРТВ ГОЛОКОСТУ: ПРОБЛЕМИ

ЗАКОНОДАВЧОГО ВРЕГУЛЮВАННЯ В УКРАЇНІ

УВАЖЕНИЕ ПАМЯТИ ЖЕРТВ ХОЛОКОСТА: ПРОБЛЕМЫ

ЗАКОНОДАТЕЛЬНОГО УРЕГУЛИРОВАНИЯ В УКРАИНЕ

***Summary.** In this paper the author sheds some light on the issues of memory lawmaking in Ukraine, and articulates thoughts about possible ways to improve the existing legislative framework of honoring the victims of the Holocaust. The paper analyzes the main reasons for the absence of memorial legislation in the country and proposes to improve the existing legislative base of Ukraine in respect of commemoration of victims of genocide, in the conditions of modern transformation of Ukrainian legislation. The importance of such changes is connected to the fact, that legislative regulation of the national memory policy, in particular of the memory of the Holocaust victims, affects the arrangement of memory places, and creation of memorial complexes. The legislative intervention*

of leading countries in the regulation of historical issues is analyzed. The terminological apparatus used in modern historical and legal sciences to study memory policy issues is analyzed. It provides substantiated conclusions in the form of step-by-step actions to resolve the situation in the memorial legislation of Ukraine.

Key words: Holocaust, memory law, memorial complex.

Анотація. Стаття присвячена проблемі створення меморіального законодавства в Україні. В роботі проаналізовано основні причини відсутності меморіального законодавства в державі та викладені пропозиції щодо вдосконалення існуючої законодавчої бази України в питанні вшанування пам'яті жертв геноцидів, в умовах сучасної трансформації українського законодавства. Наголошено на тому, що законодавче врегулювання політики національної пам'яті, зокрема в питанні вшанування пам'яті жертв Голокосту, впливає на облаштування місць пам'яті та створення меморіальних комплексів. Проаналізовано законодавство провідних країн світу у регулюванні історичних питань. Досліджується термінологічний апарат, який використовується в сучасній історичній та правовій науках для вивчення проблеми політики пам'яті. Надано аргументовані висновки у вигляді покрокових дій для вирішення ситуації, що склалась в меморіальному законодавстві України.

Ключові слова: Голокост, меморіальне законодавство, меморіальний комплекс.

Аннотация. Статья посвящена проблемам создания мемориального законодательства в Украине. В работе сделан анализ основных причин отсутствия мемориального законодательства в государстве и предложены пути усовершенствования существующей законодательной базы Украины по вопросу уважения памяти жертв геноцидов, в условиях современной трансформации украинского законодательства.

Акцентируется внимание на том, что законодательное урегулирование политики национальной памяти, в частности в вопросах уважения памяти жертв Холокоста, влияет на обустройства мест памяти и создания мемориальных комплексов. Сделан анализ законодательства ведущих стран мира в регулировании исторических вопросов. Исследуется терминологический аппарат, используемый в современной исторической и правовой науках для изучения проблемы политики памяти. Предоставлены аргументированные выводы в виде пошаговых действий для разрешения ситуации, сложившейся в мемориальном законодательстве Украины.

Ключевые слова: *Холокост, мемоиальное законодательство, мемориальный комплекс.*

The Holocaust as the great tragedy of the Jewish people, is one of the most controversial issues in the World history of the XXth century. Ukraine is not an exception in this matter, because its territories in the turbulent XXth century became one of the springboards of world events. Extermination of six million Jews during the Second World War, the massacres, the abuse of the living and the dead — memory about these events can be found not only in the historical archives, but also in living human memory.

The Holocaust had its particularities in different countries, but the result was the same — murder. The murder of Jews in Ukraine, as well as in other territories of the Soviet Union during the occupation, was absolutely cynical, and carried out almost openly.

Regulations designed to enshrine the commemoration of victims of genocides are an integral part of the memory law. Shortly after Ukraine officially declared itself an independent state in 1991, formation of such regulations took its place.

The goals of the politics of memory of the victims of genocides are to cement the identity of nations that survived them, to foster a culture of tolerance, to overcome the consequences of such catastrophes, and prevent them in the

future. Regulatory acts designed to commemorate the victims of genocides are an important part of the memory law. Firstly such category appeared in French public and scientific discourse.

Memory law is mostly represented by declarative norms [8, p.570]. The term was coined in France. Usually it refers to four French laws: the Gayssot Act of 1990, which criminalized the denial of the Holocaust (its adoption echoed the Faurisson case), the law of 2001, which recognizes the Armenian genocide; the Taubira Act of 2001, which declares the slave trade as a crime against humanity; the Mekacher Act of 2005 about French "presence" in the former colonies. Among mentioned French laws, only one, the Gayssot Act, envisages criminal punishment.

During 1990s and 2000s, the global community observed the rapid growth of declarative memory lawmaking. But in some cases, memory laws enact criminal punishment, mostly these norms are related to the issue of Holocaust denial. Such laws from the post-war period exist in Austria and Germany, and since 1964 in Sweden as well. Influenced by the Gayssot Act, a similar law was passed in 1995 in Belgium. There are relevant regulations in the Czech Republic and Slovenia. However, there is no such law in the United States (even though this country has a developed legislation against racial discrimination), in England (where it's considered as incompatible with the freedom of speech), in Japan, Italy, Finland, and most other countries. In Hungary, after heated debates, such act was also declared as incompatible with the freedom of speech.

Today initiatives in memory lawmaking continue to be an important part of the agenda of the international political organizations. In 2007 a framework decision was made by the European Parliament, which invites European countries to prohibit the Holocaust denial. Although during the discussion, Lithuania and Latvia made proposals to prohibit the denial of the crimes of Stalinism, it did not find support.

It is worth noting that most of these laws contain norms on the burial of the victims of genocides in accordance to their ethnic and religious traditions. So, according to Jewish tradition, a cemetery is a holy place, even more sacred than a synagogue. The Jewish order is governed by the strict burial and commemoration laws. For Jews, caring for cemeteries is an important religious and social responsibility. The Talmudic expression "Jewish tombstones are cleaner than the royal palaces" reflects the essence of proper care for Jewish graves and cemeteries. Under normal circumstances, the entire Jewish community willingly shares the duties of protection, repair and maintenance of cemeteries [9, p.157].

It should be noted that the normative legal basis of the memory policy in developed countries is not only memory lawmaking, but also its coordination with other branches of law: this is the Land Code, which defines the protection of land for historical and cultural purposes, the Criminal Code containing the norms on liability for causing damage to monuments etc.

In some countries (the United States of America, Germany, France, Poland) we can see successful examples of the commemoration of the victims of genocides through the construction of memorial complexes, which become the effective scientific centers and centers for studying the premises of a particular tragedy. In our opinion, the most successful examples of memorial complexes in the world are the The Auschwitz-Birkenau Memorial and Museum (Poland) and the The Tuol Sleng Genocide Museum (Cambodia). The memorial on the territory of the former Nazi death camp in Sobibor in Poland also deserves attention. During the construction of these complexes, the commemorative traditions of the Jewish people were observed while perpetuating the memory of the Holocaust victims.

Unfortunately, the history of XXth century in Ukraine contains multiple examples of mass extermination of the population. These are some of the most tragic consequences of the special status of Ukrainian lands in the global

historical processes: Holodomor 1932-1933, the German occupation and the Holocaust.

In this context, the special place is also Babi Yar (Kyiv), which became world-famous due to the mass executions, mostly of Jews, in 1941-1943, committed by the German occupying command during the Second World War. However, this place still doesn't have a memorial complex.

Analysis of the memory lawmaking for honoring the victims of genocides on the territory of Ukraine and overcoming its consequences indicates that in the 1990s the government did not make any notable decisions about the matter. The year 2000 did not become the turning point for Ukrainian memory policy as well, when the Law of Ukraine "On the Victims of Nazi Persecution" was adopted (March 23, 2000). This law wasn't related directly to the commemoration of the victims of the genocides [2]. The title itself proves the continuity and shiftlessness of the Soviet memory policy. The concept of "victims of Nazi persecution" only categorially replaces the faceless "Soviet citizens" who suffered from the Nazi occupation atrocities. No specific emphasis on the victims of the genocide has been made in this act.

The resolution of the Verkhovna Rada of Ukraine "On the International Roma Holocaust" became a true turning point in the recognition of one of the genocides, with the introduction of the corresponding annual commemorative practices and some norms. Part 1 of this decree states the annually celebration on August 2 (the date of the "Gypsy night" at the Auschwitz-Birkenau concentration camp) the International Day of the Holocaust of Roma at the state level .

Thus, Ukraine, for the first time at the official state level, has established the annual date of commemoration of the victims of one of the genocides that took place on its territory. The decree also contains a statement about state support for Porajmos studies, memorialization of the massacres sites and acceptance of the eligibility of victims for compensation provided by Ukrainian legislation to the victims of Nazi persecution [7, p. 182-183].

The first and to the present moment the only regulatory act at the highest state level, which contains a reference to the Holocaust, is the Resolution of the Verkhovna Rada of Ukraine "On the 70th anniversary of the Babi Yar tragedy" [6]. In general, shifts in attitudes towards Babi Yar tragedy can be traced from the 50th anniversary of the beginning of the shootings, that is, since 1991 [12].

The International Holocaust Remembrance Day, introduced by the world community in 2005, began being marked annually in Ukraine in 2011, in accordance to the resolution of the Verkhovna Rada, the author of which was a Communist deputy [11]. As the Ukrainian expert notes, the text of the resolution resembles the Soviet practice of commemorating the victims of Babi Yar, who became "victims of fascism" (the word genocide was excluded again). However, besides the fact that the first persons of the state began to annually commemorate the Holocaust on January 27, nothing has changed in the status of commemoration of this event in Ukraine.

Unfortunately, during more than 28 years of independence of Ukraine, the state has not been able to create a single memorial complex dedicated to the Holocaust. Thus, construction of the Holocaust historical memory in Ukraine has become the domain of non-governmental organizations, both Ukrainian and foreign.

The idea of creation of the memorial in Babi Yar was expressed decades ago. However, during the Soviet era, it faced the wall of silent resistance from the Soviet regime. It reappeared again in independent Ukraine. In February 1992, the Kyiv City Council decided to establish a museum at Babi Yar [13], but even today there is no such institution. The biggest issue with the honoring victims of the genocide in Ukraine is that the tragedy has usually 'on-air' status just once a year, on the day of remembrance. The chronic underfunding of the project development has also its negative impact. Low salaries in the field cause lack of professionals for management and scientific positions.

Thus, till this day Babi Yar is a part of the Kyiv city Dorogozhychi park. In this densely populated area of Kyiv there is no other park zone, and for local residents it is a recreational area, a popular destination for dog walking, sporting and family time. It's also a busy spot for small entertainment businesses, settled right in those ravines, where people were killed in 1941.

There are currently three major projects of commemoration of the victims of the Holocaust at Babi Yar in Kyiv.

The first project is curated by the Ministry of Culture of Ukraine, which is responsible for the establishment of the memorial museum [10] in the former office of the Jewish cemetery, situated at Melnikova street 44. In 2017, the state allocated 27 million UAH for the implementation of this project, but funding has not been used until now, because conceptual architectural and design solutions are still in progress.

The second project was initiated by the Babi Yar Public Committee (Vitaly Nakhmanovych) and the Vaad of Ukraine (Iosiph Zisels) and implemented by the Canadian Ukrainian-Jewish Meeting (UJE) organization led by James Timerty (Canada). This landscape-architectural project is about the creation of the memorial park on the vast territory (70 hectares), which includes Babi Yar, all the cemeteries adjacent to it, and has the code name Babi Yar - Dorogozhychi Necropolis. The implementation of this project is also suspended, mainly because of the miscommunication between governmental institutions and the non-governmental organizations in Ukraine. For instance, James Timerty for almost two years couldn't arrange a meeting with the President of Ukraine, Petro Poroshenko, to discuss this initiative.

The third project is about creation of the Memorial and the Holocaust Museum "Babi Yar". This idea was proposed in spring 2016 (although it existed in a slightly different form earlier) by a group of large Russian businessmen of Jewish origin who were born in Ukraine. The authors offered to create the large-scale Holocaust Memorial and Museum. However, there is an important remark

about this project, which is connected to the Jewish tradition. The construction site would be situated on the territory of the old Jewish cemetery. There is a document signed by Rabbi Schlesinger from London, who heads the main organization for the supervision of all Jewish cemeteries in Europe, which prohibits any construction on this site.

Given the above, for the best protection of places of mass executions, we offer following:

1. To enact a law on the recognition of the Holocaust as genocide and legally regulate the policy of memory of the genocides victims on the territory of Ukraine, which will allow to implement the following proposals.

2. To create a memorial complex on the territory of the National Historical Memorial Preserve "Babi Yar", where to establish the exact places of death of people and observe the Jewish memorial traditions. During the two years of the German occupation, about 100 thousand people were killed in Babi Yar, the absolute majority of them were Jews. However, non-Jews were also killed there: Soviet prisoners of war, Roma, mentally disabled, leaders of the Ukrainian nationalist and Soviet undergrounds, townspeople. It is necessary to commemorate all those who died at Babi Yar. In our opinion it's important for such a project to be curated by state authorities, not by private sponsors.

3. To make changes in Articles 54 and 211 of the Land Code of Ukraine, establish norms of protection of cultural heritage within the territories of the historical and cultural value with description of the legal regime of land use, including prohibition of the activities, which can be considered as contradicted to the main purpose of these premises.

Till now, the exact locations of massacres during the executions at Babi Yar are not designated on the site. Considering Jewish tradition to avoid stepping over or sitting on tombstones or places of death, it's important to establish paths with respect to those who died there.

4. To make a multidisciplinary research of the preconditions and the consequences of the events in Babi Yar. It is important for understanding of the Holocaust as a tragic phenomenon of the world history in the XXth century without forgetting about preconditions of the Holocaust in the particular country. Thus, exposition of the future Memorial complex should include narratives about harsh repressions which had taught people to pay almost no attention to the massacres, encouragements of mass denunciations, complete demoralization of the population under the influence of the repression, the Holodomor and other crimes of the Soviet regime.

Consequently, the lack of special memorial legislation in Ukraine negatively affects the creation of memorial complexes dedicated to the victims of the genocides. Now there is a need to implement the national policy of memory, in particular in the issue of the memory of the Holocaust victims by developing a mechanism for creating memorial complexes and arranging places for the commemorating of the genocides victims. We consider it expedient to make these changes until 2021 (to the 80th anniversary of the Massacres at Babi Yar). These changes can become the important steps to the Ukrainian memory lawmaking improvement.

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