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“Filtration” of the population in the temporarily occupied territories of Ukraine as an instrument of genocide

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Abstract

The relevance of this study stems from the need to investigate the “filtration” structure introduced by the occupation authorities, which contains violations of international humanitarian law. The purpose of this study was to investigate the conceptual and organisational foundations of the “filtration” system through the lens of international human rights law. Considering the subject matter and the purpose of this study, a range of scientific methods was employed, including terminological, systemic and structural, formal and logical, which helped to investigate the subject matter and summarise the analysis findings. The study covered the testimonies of victims about the crimes committed against them while passing through the filtration labyrinth. The study outlined the problematic issues of proving crimes committed on the territory of Ukraine, considering the practice of European and international court decisions on violations of civilian rights through the lens of international humanitarian law related to armed conflict. The study concluded that the “filtration” of the Ukrainian population in the temporarily occupied territories is a gross violation of human rights and contradicts the principles of democracy, freedom, and self-determination. Targeted sanctions against those responsible for these violations are crucial to hold them accountable for their actions. The study concluded that stopping the practice of “filtration” and facilitating the restoration of the rights and freedoms of the Ukrainian population in the temporarily occupied territories is possible only through diplomatic efforts and international cooperation. The main provisions of this study will encourage further investigations of crimes with the recording of testimonies and evidence, as well as contribute to the development of sound policies, mechanisms of international accountability, and prevention of potential violations in the interests of justice and protection of civilians

Keywords:

armed aggression; filtration facilities; filtration measures; temporary occupation; Russian occupation forces; genocidal intent; nationalist

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Introduction

The relevance of this study is substantiated by the need for a thorough investigation of the "filtration" structure introduced by the occupation authorities of the Russian Federation (RF) on the territory of Ukraine. Consideration of this aspect is important for uncovering the injustices and violations that occurred during the occupation. A detailed study of this structure will help to understand the mechanisms of its functioning and impact on society. Coverage of this issue will help to raise public awareness and promote a more objective view of the crimes recorded and investigated by international bodies during the war in Ukraine.

According to some researchers, Russia's actions in the war against Ukraine, including those being investigated by international courts, can be considered through the lens of the concept of genocide. In international law, "genocide" is defined as "any act committed with intent to destroy, in whole or in part, any national, ethnic, racial, or religious group as such" and is consolidated as a crime in the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the UN General Assembly in 1948¹ and used in the Rome Statute of the International Criminal Court (ICC)². C. Harrison (2023) describes the killing of civilians in the town of Bucha in 2022 as genocide. Failure to prosecute such suspects, according to the researcher, could lead to the recruitment of many more genocide perpetrators. Using the example of war crimes committed by the Russian military in Ukraine, A.V. Zamryga & M.A. Padalka (2023) examined the state of international cooperation in combating genocide, its development and prospects, emphasising the methodology for recognising and identifying genocide based on institutions of international responsibility for the legal definition of genocide as an international crime.

It should be emphasised that establishing the facts of genocide and, accordingly, prosecuting those responsible for its commission is currently an essential aspect and a relevant field for legal research. O.S. Sotula (2023) investigated criminal offences, distinguishing premeditated murder from genocide as a crime against the peace and security of humankind. Investigating the current trends in sexual violence related to the military conflict in Ukraine, V.M. Rufanova (2022, 2023) concludes that these crimes fall under the category of war crimes, crimes against humanity, and can be considered an act of genocide against the Ukrainian nation. Rufanova believes that sexual violence is part of Russia's military tactics and war strategy, which the researcher attributes to the facts of mass rape, regardless of age and gender, torture and electric shocks to the genital area of

victims, even in the presence of relatives, etc. Based on the above-mentioned researchers' attempts to analyse the war crimes of the RF in Ukraine through the lens of the concept of genocide, this study examines the organisation and functioning of the filtration system in the occupied territories of Ukraine from this standpoint. In this regard, it is necessary to mention the study of the transcripts of the materials and documents of the Nuremberg Trials (November 1945 – October 1946) by Y.V. Bevs (2022). The researcher emphasises that the Wehrmacht High Command's W. Keitel was recognised as a war criminal for violating international conventions on the treatment of Soviet prisoners of war, specifically, for keeping them in filtration camps.

M.V. Savva (2023) thoroughly investigated the system of "filtration", covering the existence of special filtration camps for prisoners of war and repatriates in the Soviet Union between 1941 and 1949 (formerly known as special NKVD camps; check and filtration camps). The system of special state verification ("filtration") involved checking Soviet soldiers released from captivity and persons who had returned to their homeland (repatriates) and possibly escaped from captivity at army or front-line assembly and transfer points. According to M.V. Savva, this test was one of the instruments of repression, since as of 1946, over 300,000 people were arrested as a result of this "filtration", which is almost 10% of all those who passed it. F. Exeler (2023) also highlights historical versions of "filtration" camps and checkpoints used by both Soviet authorities during and after World War II and by the RF during the double invasion of Chechnya.

T.V. Drakohrust (2022) detailed the results of the analysed Russian legislation on the status of a Ukrainian citizen staying in the territory of the aggressor country in connection with the massive measures to move Ukrainian citizens from the occupied territories to Russia. The researcher noted that not everyone has access to the procedure for obtaining refugee status or temporary asylum, as not every citizen of Ukraine is screened through "filtration camps". O. Pukhons'ka (2023) covers the traumatic experience of Stanislav Asieiev as a victim of the Donetsk Dachau concentration camp in the context of the current war, as well as in the context of the history of concentration camps such as the Gulag and Nazi camps.

O. Potikha (2023) points out that in an effort to eradicate the national identity of Ukrainian children, the RF, through the forced deportation of children from the occupied territories, violated the Convention on the Rights of the Child³ and the Geneva Convention relative to the Protection of Civilian Persons⁴. Among the

¹Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December). Retrieved from <https://ips.ligazakon.net/document/MU48K03U>.

²Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

³Convention on the Rights of the Child. (1989, November). Retrieved from https://zakon.rada.gov.ua/laws/show/en/995_021?lang=en#Text.

⁴Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://ips.ligazakon.net/document/MU49006>.

victims of deportation are orphans, including those whose parents were killed by the occupiers, children from boarding schools who have relatives in Ukraine but are illegally taken away, as well as children of parents who failed the filtration check and ended up in torture chambers, along with other categories of children.

Therefore, the purpose of this study was to investigate the organisational and conceptual foundations of the filtration system in the Russian-occupied territories of Ukraine through the lens of international humanitarian law and to establish the legitimacy of applying the concept of genocide to filtration measures.

Materials and Methods

This study employed the following methods of scientific cognition: theoretical, terminological, systemic-structural, formal-logical, empirical, statistical, and activity-based approaches. The theoretical framework of this study included the findings of Ukrainian and international researchers in the field of genocide. The terms “genocide”, “Nazi”, “filtration facilities”, “filtration measures”, “temporary occupation”, “armed aggression”, “Russian occupation forces” were investigated using the terminological method. The systemic and structural method helped to thoroughly examine the phenomenon of “filtration”, its systematic nature and structure, as well as the use of all “filtration” facilities by the Russian military against the civilian population in the occupied territories. Using the formal and logical method, the study analysed the trends in the development of criminal law provisions regulating liability for genocide committed by the occupying forces against the Ukrainian people. The activity-based approach helped to cover the content of the “filtration” system as an instrument of genocide and, accordingly, the consideration of this type of crime by the ICC and the International Court of Justice with the imposition of appropriate punishment on both the aggressor country of the Russian Federation and high-ranking officials of the aggressor country.

The study compiled and analysed the international regulatory framework on the issues covered in this paper. These sources constitute the international legal framework covering the protection of human rights¹, the rights of the civilian population in the time of war², rights of the child³, prevention of crimes of genocide⁴, prevention of torture and inhumane treatment⁵, as well as establishing norms and procedures for punishing violations of these norms⁶. The next category of sources included the decisions of international organisations regarding the large-scale armed invasion of Ukraine on 24 February 2022, which was confirmed by international organisations, specifically by UN General Assembly Resolution ES-11/1 dated 2 March 2022⁷, UN General Assembly Resolution ES-11/2 dated 24 March 2022⁸, Clauses 1, 3 of Opinion 300 (2022) of the Parliamentary Assembly of the Council of Europe, Clauses 17, 18 of the Order of the International Court of Justice dated 16 March 2022⁹.

The national legislative level defined the crimes committed by the Armed Forces of the Russian Federation and its military and political leadership during the latest phase of armed aggression against Ukraine, which began on 24 February 2022, as genocide of the Ukrainian people. This is reflected in the appeals to the UN, the European Parliament, the Parliamentary Assembly of the Council of Europe, the OSCE Parliamentary Assembly, the NATO Parliamentary Assembly, governments and parliaments of foreign countries to recognise the genocide of the Ukrainian people, as well as crimes against humanity and war crimes committed by the Russian Federation on the territory of Ukraine¹⁰.

Results and Discussion

As of the beginning of 2024, 4 interstate cases of Ukraine against Russia are pending before the European Court of Human Rights: 1) Ukraine v. Russia (concerning Crimea) regarding human rights violations in the temporarily occupied territory of the Autonomous

¹Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004?lang=en#Text.

²Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://ips.ligazakon.net/document/MU49006>.

³Convention on the Rights of the Child. (1989, November). Retrieved from https://zakon.rada.gov.ua/laws/show/en/995_021?lang=en#Text.

⁴Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December). Retrieved from <https://ips.ligazakon.net/document/MU48K03U>.

⁵European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (1987, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_068?lang=en#Text.

⁶Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁷Resolution of the United Nations General Assembly No. ES-11/1 “Aggression Against Ukraine”. (2022, March). Retrieved from <https://reliefweb.int/report/ukraine/resolution-adopted-general-assembly-24-march-2022-es-112-humanitarian-consequences>.

⁸Resolution of the United Nations General Assembly No. ES-11/2 “Humanitarian Consequences of the Aggression Against Ukraine”. (2022, March). Retrieved from <https://reliefweb.int/report/ukraine/resolution-adopted-general-assembly-24-march-2022-es-112-humanitarian-consequences>.

⁹Order of the International Court of Justice No. 182 “Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)”. (2022, March). Retrieved from <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>.

¹⁰Statement of the Verkhovna Rada of Ukraine “On the Commitment of Genocide in Ukraine by the Russian Federation: Resolution of the Verkhovna Rada of Ukraine”. (2022, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2188-20>.

Republic of Crimea¹; 2) four lawsuits of Ukraine and the Netherlands v. Russia, in which an interim decision was made, are consolidated into one case: human rights violations in the occupied Donbas region; abduction of orphans and children with disabilities and their transportation to the territory of the Russian Federation; the tragedy of the downing of the MH17 passenger flight; the crimes of the Russian military during the full-scale invasion of Ukraine²; 3) Ukraine v. Russia, the case of the seizure of Ukrainian sailors and ships³; 4) Ukraine v. Russia, application No. 10691/21, concerning the murder of Russian opponents⁴. The International Court of the United Nations (the UN) is considering two cases based on the claim of Ukraine against the Russian Federation^{5,6} and at the beginning of July 2023, the court agreed to add 32 more states to the claim. Furthermore, the Permanent Chamber of the Arbitration Court in The Hague is considering two more claims^{7,8}. A historic event for the system of international law in general and for Ukraine in particular was the decision of the ICC in The Hague dated 17 March 2023 on international arrest warrants for the President of the Russian Federation and the Commissioner for Children's Rights M. Lvova-Belova, who are suspected of forcibly transferring more than 16,000 Ukrainian children from the territories of Ukraine occupied by the Russian Federation (International Criminal Court, 2023).

The stated goal of Russia's military aggression is the "denazification" of Ukraine (Vinnichuk & Ruda, 2024). The term is used to associate armed aggression with extremism, which the Russian leadership calls "Nazis", considering Ukrainians who seek self-identification and definition of their national identity. This policy of the Russian Federation is aimed at distorting the image of the Ukrainian people and their aspirations for independence, spreading false ideological concepts in the world that try to link Ukrainian patriotism with

"Nazism" or other radical ideologies⁹. In a situation where the occupying authorities of the occupying power are actively pursuing a policy of destroying Ukrainian national and civic identity, specifically among children and youth, through education, both formal and informal, effective measures should be developed, and modern methods should be used to preserve Ukrainian national and civic identity¹⁰.

The security and defence forces of Ukraine stopped the advance of Russian occupation forces towards Kyiv and prevented its occupation. In most of the territories of Ukraine under the control of the occupation forces, the local population began to openly demonstrate a negative attitude towards them, calling on the representatives of the Russian occupation forces to stop the aggression and liberate the occupied territories, as well as actively counteract the advance of enemy units by passing information about them to the Security and Defence Forces of Ukraine, committing sabotage and otherwise counteracting the occupation forces (Javakhishvili, 2022). In this regard, the occupation forces have committed large-scale violations of international humanitarian law through murder, torture, deportation, destruction of infrastructure necessary for the survival of the civilian population, destruction of library collections, removal of educational materials from educational institutions, and removal of museum collections, including artefacts that constitute a source of Ukrainian history¹¹.

The illegal actions of the Russian occupation forces in the temporarily controlled territories of Ukraine became systematic and large-scale, as they enabled the destruction of some Ukrainians who were included in the arrest/destruction lists (Mackinnon *et al.*, 2022). According to E. Javakhishvili (2022), the goals were broader: the elimination of anyone who identified themselves as a representative of the Ukrainian national group (spoke Ukrainian, did not welcome the occupation forces,

¹Decision of the European Court of Human Rights in the Case No. 20958/14 and 38334/18 "Ukraine v. Russia (re Crimea)". (2020, December). Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-207622>.

²Decision of the European Court of Human Rights in the Case No. 8019/16, 43800/14 and 28525/20 "Case of Ukraine and the Netherlands v. Russia". (2022, November). Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-222889>.

³Decision of the European Court of Human Rights in the Case No. 55855/18 "Ukraine v. Russia (VIII)". (2023, October). Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-228701>.

⁴Press Release of the European Court of Human Rights in the Case No. 10691/21 "Ukraine v. Russia (IX)". (2021, February). Retrieved from <https://hudoc.echr.coe.int/fre-press#%7B%22fulltext%22:%5B%2210691/21%22%5D,%22languageisocode%22:%5B%22ENG%22%5D%7D>.

⁵Summary of the Judgment of the International Court of Justice in the Case (Ukraine v. Russian Federation: 32 States Intervening) "Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide". (2024, February). Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/182/182-20240202-sum-01-00-en.pdf>.

⁶Summary of the Judgment of the International Court of Justice in the Case (Ukraine v. Russian Federation) "Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination". (2024, January). Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/166/166-20240131-sum-01-00-en.pdf>.

⁷Written submission to the Permanent Court of Arbitration in the Case No. 2017-06 (Ukraine v. Russian Federation) "Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait". Retrieved from <https://pca-cpa.org/en/cases/149/>.

⁸Written submission to the Permanent Court of Arbitration in the Case No. 2019-28 "Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. the Russian Federation)". Retrieved from <https://pca-cpa.org/en/cases/229/>.

⁹Decision of the Cabinet of the Ministers of Ukraine No. 1322 "On Approval of the Strategy Confirmation of Ukrainian National and Civil Identity for the Period up to 2030". (2023, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1322-2023-%D0%BF#Tex>.

¹⁰Ibidem, 2023.

¹¹Ibidem, 2023.

supported the Armed Forces of Ukraine, showed loyalty to the state bodies of Ukraine and their representatives, did not want to receive a Russian passport, refused to sign contracts with Russian enterprises, refused Russian social benefits, or simply stayed or wished to stay on the territory of Ukraine not occupied by Russia).

In parallel with the unfolding of another act of aggression against Ukraine, according to official Ukrainian sources¹, the narrative that Russia is fighting Ukrainian nationalists, called “neo-Nazis”, – Ukrainians who reject the idea of the existence of only one nation and fight for the right of Ukrainians to self-identification – has become widespread in the Russian information environment during the so-called information operation. Thus, it can be assumed that the essence of the definition of “Nazi” used by Russians in the context of Ukrainians is that a Nazi is a Ukrainian who does not want to recognise themselves as a Russian. According to V. Muzhichok & M. Chaplak (2023), the “enemy junta”, through information warfare and propaganda, seeks to change the worldview of Ukrainians by imposing the idea of a common history and a common future, to “love and respect” the “Kremlin dictatorship”, and additionally promotes severe punishment for expressing the Ukrainian position. I.V. Matsyshina (2022) emphasises that the Russian Federation, through propaganda, is establishing a “homo sacer” policy in the occupied territory of Ukraine, the essence of which is the lack of recognition of any rights for the local population, including the “right to life”. The lack of a legal regime thus creates a situation of impunity for the killing of civilians.

The unlawful actions of the military personnel of the aggressor country against the citizens of Ukraine have signs of genocide. The first of these is the announcement of intentions to exterminate Ukrainians. In their public statements, Russian officials, supporters, and commentators of state media have repeatedly denied the existence of a separate Ukrainian identity (Khomenko & Zotova, 2021; Żochowski & Nieczypor, 2022), and broadcast anti-Ukrainian rhetoric about the intentions to annihilate the Ukrainian state and nation in their entirety (Yavir, 2022). Such statements and rhetoric constitute a systematic failure to follow humanitarian law (Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide²). Article 3 of this

Convention defines these actions as “direct and public incitement to genocide” and prescribes criminal punishment, while Article 4 stipulates the criminal prosecution of individuals responsible for genocide, regardless of their official status or position. At the same time, the RF, as a country that has undertaken to prevent and punish genocide under Article 1 of the Convention, can be held accountable for this crime. The International Court of Justice is already considering this case at the request of Ukraine³.

A Ukrainian court found Russian propagandist A. Gasparyan guilty of public calls for genocide of the Ukrainian people, violent changes to the constitutional order, and encroachment on the territorial integrity and inviolability of Ukraine under Articles 442 (Part 2), 109 (Part 3), and 110 (Part 2) of the Criminal Code of Ukraine⁴. Public calls for the genocide of the Ukrainian people are the result of the actions of the Russian military and armed forces in Ukraine (Russian propagandist sentenced..., 2023). Such statements and other crimes (conspiracy to commit genocide; genocide; direct and public incitement to genocide; complicity in genocide; and crimes against humanity (persecution, extermination, and murder) already have a precedent in genocide cases before international institutions, namely No. ICTR-99-52-T⁵.

Targeted attacks on critical infrastructure with the intention of depriving the population of Ukraine of electricity, water, communications, and other means of normal life, as well as attacks on the healthcare system of Ukraine, namely repeated attacks on perinatal centres and maternity hospitals, also indicate a plan to destroy the Ukrainian people. These coordinated actions by the Russian military to deprive Ukrainians of basic necessities demonstrate that the siege is intended to make life unbearable for as many Ukrainians as possible and is designed to physically destroy them⁶ (World Health Organization, 2023). One should agree with the position of O.V. Constanty (2023) that the Russian and Belarusian military and political leadership is responsible for the genocide against the Ukrainian people for the full-scale invasion and aggressive ambitions against Ukraine, the destruction of civilian and critical infrastructure, numerous murders, atrocities against the civilian population of Ukraine, and other war crimes. Article 2 (d)

¹Decision of the Cabinet of the Ministers of Ukraine No. 1322 “On Approval of the Strategy Confirmation of Ukrainian National and Civil Identity for the Period up to 2030”. (2023, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1322-2023-%D0%BF#Tex>.

²Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December). Retrieved from <https://ips.ligazakon.net/document/MU48K03U>.

³Summary of the Judgment of the International Court of Justice in the Case (Ukraine v. Russian Federation: 32 States Intervening) “Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide”. (2024, February). Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/182/182-20240202-sum-01-00-en.pdf>.

⁴Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁵Judgement and Sentence of the International Criminal Tribunal for Rwanda in the Case No. ICTR-99-52-T “The prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze”. (2003, December). Retrieved from <https://www.refworld.org/jurisprudence/caselaw/ict/2003/en/91852>.

⁶Decision of the Cabinet of the Ministers of Ukraine No. 1322 “On Approval of the Strategy Confirmation of Ukrainian National and Civil Identity for the Period up to 2030”. (2023, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1322-2023-%D0%BF#Tex>.

of the Convention on the Prevention of the Crime of Genocide and its Punishment "measures to prevent childbearing among such a group"¹, Article 18 of the Geneva Convention on the Protection of the Civilian Population², Article 6 (d) of the Rome Statute of the ICC³.

Among the signs of genocide, according to Article 7 (h) of the Rome Statute of the ICC⁴, it is also worth mentioning the facts of persecution and destruction in the temporarily occupied territories of Ukraine of people with a pro-Ukrainian position, the destruction of the clergy, who are the bearers of Ukrainian identity (Steele, 2019; Żochowski & Nieczypor, 2022). Therewith, unaccompanied Ukrainian children are being illegally transferred to Russia in the occupied territory to change their identity, and other crimes aimed at destroying the Ukrainian people are being committed (Javakhishvili, 2022). These actions can be classified as genocide under Article 2(e) of the Convention on the Prevention and Punishment of the Crime of Genocide⁵, Article 6(e) of the Rome Statute of the ICC⁶, Article 49 of the Geneva Convention relative to the Protection of Civilian Persons⁷.

Thanks to many years of work in the investigation of crimes committed by aggressor countries in the World War II, Polish lawyer R. Lemkin (1944) defined it as "genocide" and thus made a valuable contribution to the development and adoption of the Convention on the Prevention and Punishment of the Crime of Genocide by the UN General Assembly in 1948⁸, which imposes obligations on states to prevent this crime and, if committed, to criminalise it and punish the perpetrators. According to Article 2 of the Convention, the term "genocide" defines any act aimed at the total or partial destruction of a national, ethnic, racial, or religious group as such⁹. It is this definition of genocide that is valid in the legal field and, accordingly, in the Rome Statute of the International Criminal Court¹⁰. R. Lemkin himself emphasised that "genocide does not necessarily mean the immediate destruction of a nation, unless it is carried out by the mass destruction of all members of the nation. Rather, it is a coordinated plan of various actions aimed at destroying the essential foundations of

national groups with the aim of annihilating the groups themselves."

The introduction of a "filtration" system by the aggressor neighbour in each temporarily occupied Ukrainian settlement is a proof of this, as it is an imitation of the checks on the civilian population in the occupied territories by the Nazi troops of the Third Reich and the Stalinist regime in the USSR. The Russian Federation has implemented the practices of previous totalitarian regimes. This is confirmed by the armed conflicts since the collapse of the USSR, which Russia unleashed in the Republic of Moldova (1992); during the First Chechen War (1994-1996) and the Second Chechen War (1999-2003). The Russian troops were accused of "torturing, beating, and sometimes raping Chechen civilians in the "filtration camps" (Exeler, 2023). In June 2022, the ICC issued arrest warrants for three representatives of the administration of the self-proclaimed Republic of South Ossetia for their involvement in "unlawful detention, torture, and inhumane treatment, outrages on personal dignity, taking hostages, and the illegal transfer of civilians" (Russian-Georgian war, 2008) (International Criminal Court, 2022). In April 2023, the European Court of Human Rights issued an additional judgment in the case of Georgia v. Russia (II) on the payment of just satisfaction to 160 civilians – victims of the armed conflict who suffered humiliating acts in the basement of the South Ossetian Ministry of Internal Affairs in Tskhinvali from 10 to 27 August 2008¹¹. This case can be considered a filtration element.

Having previous experience of using "filtration" checkpoints during armed aggressions, specifically in Georgia, from the first days of the occupation of Ukraine, the Russian military leadership set up a "filtration" system. One of the evidences is the results of a comprehensive survey of 421 residents of Kherson evacuated in February-April 2022, conducted by R. Molikeych (2023), who describes in detail the motives and decisions of the civilian population to leave Kherson and the complex and lengthy evacuation route associated with the "filtration" procedure. P. Sauer (2022) publishes testimonies of Mariupol residents forcibly

¹Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December). Retrieved from <https://ips.ligazakon.net/document/MU48K03U>.

²Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://ips.ligazakon.net/document/MU49006>.

³Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁴Ibidem, 1998.

⁵Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December). Retrieved from <https://ips.ligazakon.net/document/MU48K03U>.

⁶Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁷Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://ips.ligazakon.net/document/MU49006>.

⁸Convention on the Prevention and Punishment of the Crime of Genocide. (1948, December). Retrieved from <https://ips.ligazakon.net/document/MU48K03U>.

⁹Ibidem, 1948.

¹⁰Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

¹¹Decision of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)". (2021, January). Retrieved from <https://rm.coe.int/georgia-v-russia-ii-gc-ukr/1680a58450>.

deported to Russia and information from the international charity project “Helping to Leave” (2024). The Foundation provides humanitarian aid to Ukrainians affected by the invasion of Russian troops. According to the journalist, the situation with the forced deportations of Ukrainians has raised concerns among international human rights groups, especially the passage of “filtration camps”.

The case of student Illia Gibeskul, who as of 2024 is in the Kaliningrad detention centre of the Russian Federation, provides information on the forced verification, registration, and detention of Ukrainian citizens who could pose a threat to Russian control over Ukraine during the filtration process in Donetsk, which was characterised by psychological and physical pressure, torture, and murder. The reason for the arrest was social media posts calling for donations to the Azov regiment, a video of the regiment's oath, as well as an interview with Dzhokhar Dudayev and a repost from a page called “Russian nationalist”, which were published after his arrest when his phone was in the possession of Russian security forces (They took my phone..., 2022).

Among the victims of this system was Mariupol resident Maria Vdovychenko, who reportedly spent several days waiting in the cold, without food or the opportunity to use the toilet (Katrichenko & Klymyk, 2022). According to other accounts, filtering in Mariupol took place in three stages: physical inspection, phone inspection and fingerprinting, and interrogation (Kunyskyi, 2022). Thus, “filtration” should be considered as a multifunctional system introduced by the aggressor country and its proxies on the occupied Ukrainian lands to register, interrogate and, sometimes, detain civilians.

It is also worth considering the opinion of D. Getmanova & S. Matviyenko (2022) on the extension of the timeframe of “filtration” from interrogation to various logistical stages, including the collection of digital and biometric data in the so-called “camps” to instrumentalise and verify deported civilians as data subjects. Particularly noteworthy is the researchers' position that the “subject of deportation” is not a particular person who is deported, but rather a place in the system of “filtration” that a person is forced to pass through during the Russian occupation, and with each subsequent person who is sent to pass the filtration before deportation, this place is reproduced through the infrastructure measures of not only the object of filtration, but also the overall system of communication, transportation, and administration associated with this process. Thus, a filtration “camp” is an essential element of foreign infrastructure that is part of the filtration system.

Forced inspections of civilians are carried out on the streets, in homes, at roadblocks, and at filtration points, with subsequent registration and examination of all data. A thorough check of people's affiliation with the sphere of influence, state affiliation, field of activity, Ukrainian views, identity, and self-expression suggests that the occupation authorities thus identify and deprive of liberty or life active Ukrainians who pose a danger to their regime (Savva, 2023; Exeler, 2023; Poiarkova, 2023).

Notably, in international conflicts, the occupying powers are entitled to register persons in their zone of control, following Articles 42 and 78 of the Geneva Convention relative to the Protection of Civilian Persons. However, the system of “filtration” of the Ukrainian population in the temporarily occupied territories, which includes brutal interrogation methods, torture, unlawful detention, and incommunicado detention, constitutes a serious violation of international humanitarian law, following Article 5 of the Convention relative to the Protection of Civilian Persons in Time of War¹. Civilians may be detained only in cases where the occupying authorities believe that they pose an imminent security threat. Mass detentions are prohibited unless there is individual proof of a mandatory threat. Detained civilians should be registered immediately, and the fact should be reported to the International Committee of the Red Cross. Furthermore, they are guaranteed due process of law, including the right to appeal against detention.

V. Colvin & P. Orchard (2022), investigating the forced deportation of Ukrainian civilians since 2014, note that the Russian government still uses a filtering system, both borrowed from the Soviet government and its own tactics, which it used during the attack on the Ichkerian Republic and the fighting in Syria. Therefore, all these actions have the elements of both war crimes (according to the Fourth Geneva Convention relative to the Protection of Civilian Persons², Additional Protocol II and Article 8 of the Rome Statute³) and crimes against humanity (Article 7 of the Rome Statute⁴). In the current environment, a range of mechanisms have been developed to bring individual perpetrators of these acts to justice. It is worth emphasising the significance of recording cases of genocide against Ukrainians during filtration measures, forced displacement of civilians, and illegal adoption of Ukrainian children to further prevent the use of the filtration system as a violation of international legal norms (Andrukhov, 2023; Koval & Kislyak, 2023). The outlined factual material on the organisation of the “filtration” system can be systematised into the following structural and functional diagram (Fig. 1).

¹Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://ips.ligazakon.net/document/MU49006>.

²Ibidem, 1949.

³Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁴Ibidem, 1998.

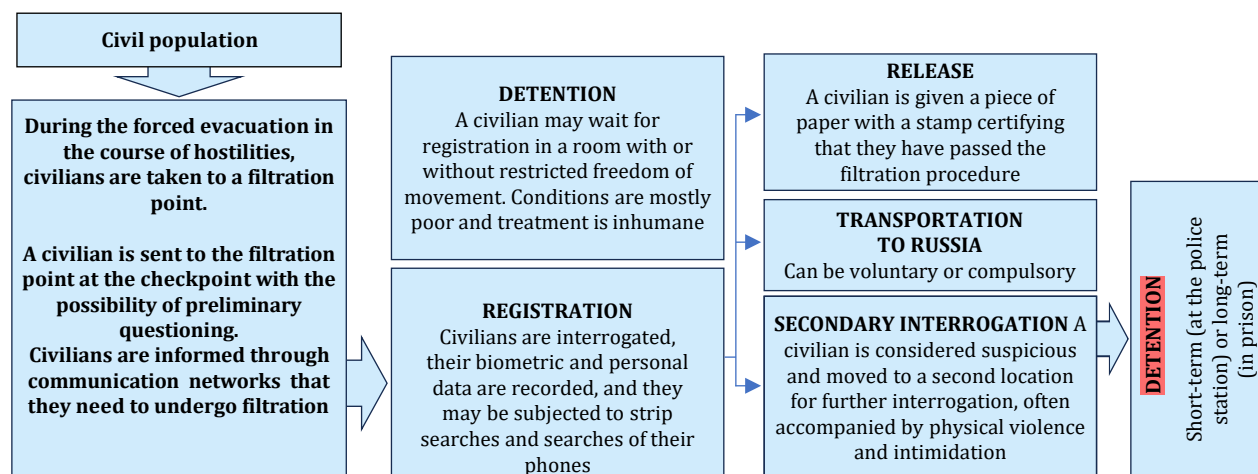


Figure 1. The system of "filtration" in the occupied territories of Ukraine

Source: systematised by the authors of this study

For their own safety, civilians are forced to leave the occupied territories through "registration or filtration points", where they are forced to undergo a range of procedures. These measures by the occupying authorities systematically violate national and international law, specifically Article 32 of the Constitution of Ukraine¹, Article 182 of the Criminal Code of Ukraine², Article 7, Part 1 of Article 8 of the Charter of Fundamental Rights of the European Union³, Article 12 of the Universal Declaration of Human Rights⁴, etc. The first procedure is the collection of personal information (Getmanova & Matviyenko, 2022; Kunytskyi, 2022). The second is fingerprinting (Sauer, 2022). The third is photography (Lawson *et al.*, 2023), video recording of "material" for propagandist "confessional videos" (Getmanova & Matviyenko, 2022). The fourth procedure is an interview, during which individuals are asked a predetermined set of questions about their attitude towards Ukraine and their ties to the Ukrainian armed forces and their loyalty to the occupation authorities (France24, 2022). The fifth procedure is to check mobile phones, including contacts, chat histories, photos, videos, screenshots, geolocation, likes, reposts, or other interactions with pro-Ukrainian activity on social media, and browser history (Colvin & Orchard, 2022; Bachega, 2022). The sixth stage involves a body examination to identify patriotic Ukrainian tattoos and marks that may indicate the use of weapons, including scuff marks from small arms, body armour, abrasions on the index finger, and bruises from the recoil of shooting (France24, 2022). Seventh stage – vehicles are inspected for weapons, ammunition, military ammunition, IDs, and other evidence that may indicate

involvement with state institutions (Human Rights Watch, 2022; Petruniok *et al.*, 2022).

In case of a positive result of the check, a person is issued a certificate during the "filtration" procedure, which gives them the right to move freely through the unrecognised "L/DPR" and the opportunity to travel to the Russian Federation. The certificate contains the person's full name, date of birth, the name of the filtration point, the date and signature of the person who carried out the inspection, but without the surname (Kunyskyi, 2022). If a civilian appears suspicious to the occupying forces, they are detained and moved to another location for further interrogation. Notably, operations to detain civilians are not legal. They can only be authorised if there is an "imperative security threat" to the occupying forces from an individual detained civilian. However, as a general rule, administrative civilian detention is discouraged under international law and is highly restricted. After completing the "filtration" procedure, Ukrainian citizens can be deported to the separated regions of the Russian Federation with a special condition of their further stay there for two years (Colvin & Orchard, 2022; Javakhishvili, 2022; Poiarkova, 2023).

The next link in the filtering system is camps and other places of detention for those awaiting registration. As a rule, citizens of Ukraine are held in inhumane conditions and restricted to little or no freedom of movement (Colvin & Orchard, 2022; Getmanova & Matviyenko, 2022; Poiarkova, 2023). Persons who have not passed the "filtration" check at the registration point are taken to "interrogation centres", which are the next stage of the "filtration" mechanism. In these places, individuals are subjected to more severe interrogation

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

²Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text> 2341-III.

³Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from <https://ccl.org.ua/posts/2021/11/hartiya-osnovnyh-prav-yevropejskogo-soyuzu/>.

⁴Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.

methods with the use of torture and humiliating acts that degrade the honour and dignity of the person. For example, the decision of the European Court of Human Rights “Georgia v. Russia (II)”¹. Based on the results of such interrogations, a person may be subject to short-term detention – referral to a police station, or long-term detention – imprisonment. If during the interrogation, Ukrainian citizens change their position towards the occupation authorities or are ransomed by relatives or friends, they are released. Some are given certificates that they have passed the “filtration”. As a rule, most of them leave the temporarily occupied territory through humanitarian corridors (Exeler, 2023; Getmanova & Matviyenko, 2022). In other cases, they use the borders of the Russian Federation and the European Union to enter Ukraine (Lawson *et al.*, 2023).

The above measures constitute or systematically contribute to the violation of a range of international human rights instruments, including European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment², Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms³, Articles 3, 17, 32, 147 of the Geneva Convention relative to the Protection of Civilian Persons, which states that “the prohibition of torture is a fundamental principle of international humanitarian law”⁴, Article 7(f) of the Rome Statute⁵. The prohibition of torture is also prescribed in national legislation in Articles 3, 21, 28 of the Constitution of Ukraine⁶ and Article 127 of the Criminal Code of Ukraine⁷.

Citizens of Ukraine who have been subjected to torture and have not changed their views are further taken to places of detention in the temporarily occupied territories and the Russian Federation. Some prisoners face groundless charges and sentences, while others are held in pre-trial detention centres and have no status. Usually, the occupation forces accuse civilian hostages of committing “acts of international terrorism”, “high treason”, and opposing a “special military operation” (They took my phone..., 2022). They use the “criminal codes” of the unrecognised LPR and DPR republics or refer to Russian law to support these accusations. However, most of the prisoners are held without charge, which is likely due to their use as an exchange pool. They are then moved to different penal colonies. In each place of detention, prisoners are held in inhumane conditions.

The forced displacement of civilians is considered a war crime, and when accompanied by the illegal practice of deporting Ukrainians to specially prepared detention facilities, it may constitute a crime against humanity, which is a more serious international crime. The unlawful detention, inadequate conditions, and mistreatment of displaced civilians violate a host of international conventions. The prohibition of torture is a binding norm of international law that all states must respect, even in times of international armed conflict.

The analysed material suggests that the protection of human rights and dignity of the affected population should be at the forefront of diplomatic efforts. By strengthening international solidarity and applying pressure on those responsible for these violations, there is hope that the practice of “filtration” will be stopped and the rights and freedoms of the Ukrainian people in the temporarily occupied territories will be restored. The stories of those affected should not be relegated to the margins of diplomatic discussions but should be brought to the forefront of global attention. The principles of democracy, freedom, and human dignity are non-negotiable, and their violation requires a unified, decisive response. At the same time, the authors of the present study emphasise the need to ensure the availability of emergency interim reparations for civilians who suffered both physically and mentally as a result of the “filtration” system.

Conclusions

In the ongoing war in Ukraine, as of 2024, its individual regions have become hostages to a system of ignoring/non-observance of freedoms and human rights. The occupation forces systematically use the “filtration” procedure against the population in the temporarily occupied territories. Notably, both deliberate and indiscriminate attacks by the enemy against the civilian population or persons not directly involved in hostilities, as well as against civilian objects and other analogous targets, are defined by international humanitarian law as serious (gross) violations and are accordingly prohibited. The unlawful deprivation of liberty of a civilian, including detention and confinement in a place of detention, e.g., a “filtration” camp, such as internment, shall be considered arbitrary if it does not fall within any of the lawful categories under Article 5 § 1 of the Convention for the Protection of Human Rights and

¹Decision of the European Court of Human Rights in the Case No. 38263/08 “Georgia v. Russia (II)”. (2021, January). Retrieved from <https://rm.coe.int/georgia-v-russia-ii-gc-ukr/1680a58450>.

²European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (1987, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_068?lang=en#Text.

³Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004?lang=en#Text.

⁴Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from <https://ips.ligazakon.net/document/MU49006>.

⁵Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁶Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁷Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text> 2341-III.

Fundamental Freedoms, or if it is not permitted under international humanitarian law; it shall also be unlawful if it violates the procedural safeguards established by international humanitarian law.

Considering the analysis of international law and the systematisation of the researched and documented evidence of Russian crimes in Ukraine, the Russian military and political leadership is implementing genocide of a separate national and ethnic group protected by the Convention on the Prevention and Punishment of the Crime of Genocide and Article 442 of the Criminal Code of Ukraine. The analysis of the "filtration" system and the cases of its functioning leads to the conclusion that it is an instrument of genocide. This measure by the occupation authorities requires attention from international institutions designed to protect human rights. Notably, the case of *Georgia v. Russia (II)*, No. 38263/08, has a much larger number of episodes and complex issues than the first Georgian case. This case may serve as an important source in assessing the timeframe for consideration of complaints in the European Court of Human Rights, specifically in the case of *Ukraine v. Russia*.

The study of the problem of "filtration" of the civilian population in the temporarily occupied territories of Ukraine requires further scientific investigation to fully understand the nature, scale, and consequences of the "filtration" procedures. Further research could provide a platform for clarifying the motivations behind "filtration" strategies and assessing their impact on the affected population, which would make a valuable contribution to the broader discourse on human rights violations.

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Conflict of Interest

The authors of this study declare no conflict of interest.

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«Фільтрація» населення на тимчасово окупованих територіях України як інструмент геноциду

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Анотація

Актуальність статті зумовлена необхідністю дослідити «фільтраційну» структуру, запроваджену окупаційною владою, яка містить порушення міжнародного гуманітарного права. Метою статті є дослідження концептуальних й організаційних засад системи «фільтрації» крізь призму міжнародного права прав людини. З огляду на проблематику та мету наукової розробки, застосовано комплекс наукових методів, зокрема термінологічний, системно-структурний, формально-логічний, що дали змогу здійснити дослідження предмета й узагальнити результати аналізу. У роботі висвітлено свідчення потерпілих про злочини, які було вчинено щодо них під час проходження фільтраційного лабіринту. Окреслено проблемні питання доказування щодо злочинів, вчинених на території України, з огляду на практику європейських і міжнародних судових рішень з питань порушення прав цивільної особи крізь призму міжнародного гуманітарного права, пов'язаного зі збройним конфліктом. За результатами здійсненого дослідження констатовано, що «фільтрація» українського населення на тимчасово окупованих територіях є грубим порушенням прав людини та суперечить принципам демократії, свободи й самовизначення. Застосування адресних санкцій до винних у цих порушеннях має вирішальне значення для притягнення їх до відповідальності за їхні діяння. Сформульовано висновок, що припинення практики «фільтрації» та сприяння відновленню прав і свобод українського населення на тимчасово окупованих територіях можливе лише за наявності дипломатичних зусиль і міжнародного співробітництва. Основні положення статті спонукатимуть до подальших розслідувань злочинів із фіксацією свідчень, доказів, а також сприятимуть розробленню обґрунтованої політики, механізмів міжнародної відповідальності та запобіганню потенційним порушенням в інтересах правосуддя і захисту цивільного населення

Ключові слова:

збройна агресія; фільтраційні об'єкти; фільтраційні заходи; тимчасова окупація; російські окупаційні війська; геноцидальний намір; націоналіст