

## THE GENOCIDE AND THE COMMAND RESPONSIBILITY IN CRIMINAL LAW OF THE REPUBLIC OF SERBIA

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**Abstract.** *International criminal law, as a system of legal regulations embodied in the acts of international community and criminal legislations of individual states, establishes criminal liability and punishment for crimes against international law. These acts constitute breaches of the laws and customs of war (international humanitarian law) that violate or threaten peace among nations and the security of mankind. Penalties prescribed for these criminal offences are the most severe penalties in contemporary criminal legislation. In some cases, the international judicial (supranational) institutions such as the Nurnberg and the Tokyo Tribunal, the Hague Tribunal, the International Criminal Court (etc.) have primary jurisdiction over perpetrators of these criminal offences. The criminal act of genocide is defined as the killing of a nation or a tribe. In the UN General Assembly Resolution 96/I of 11<sup>th</sup> December 1946, genocide was proclaimed as “a crime under international law, which is in contradiction with the spirit and the aims of the OUN and condemned by the entire civilized world”. Although it emerged as a “subspecies of crime against humanity”, genocide rapidly obtained an autonomous status and contents as one of the most serious crimes of today. As a crime against international law, genocide is established on the basis of three elements: a) the objective component - actus reus; b) the subjective component - mens rea; c) the object of the act - the group (the victim). The source of this incrimination is found in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide which, in Article 2, defines the notion and the elements of this crime against international law. In legislation, theory and practice, this term can be interpreted in a broader sense as well. In this paper, the author analyses the theoretical and practical aspects of genocide in international criminal law and criminal law of the Republic of Serbia (including former FR Yugoslavia).*

**Key words:** *international law, humanity, crime, genocide, court, command responsibility, penalty.*

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## 1. GENOCIDE ACCORDING TO THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA

### 1.1. The system of international crimes

Chapter 34 of the new Criminal Code of the Republic of Serbia<sup>1</sup> contains the following “basic” crimes against international law:

- 1) Genocide (Article 370),
- 2) Crimes against Humanity (Article 371),
- 3) War Crimes against Civilian Population (Article 372),
- 4) War Crimes against the Wounded and the Sick (Article 373),
- 5) War Crimes against Prisoners of War (Article 374) and
- 6) Organizing and Inciting Genocide and War Crimes (Article 375).

### 1.2. The notion and basic characteristics of genocide

Pursuant to Article 370 of the Serbian Criminal Code, the crime of genocide consists of ordering or committing the following acts: killing or causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group with intent to destroy, in whole or in part, a national, ethnical, racial or religious group of people<sup>2</sup>.

The word “genocide” is a compound, created from a Greek word *genos*, meaning ‘a nation or tribe’, and a Latin word *caedes*, which means ‘killing or slaughter (massacre)’. When translated literally, this word stands for the extermination of an entire nation or tribe. In the OUN General Assembly Resolution 96/1 from 11 December 1946, genocide was proclaimed as “a crime against international law, which is in contradiction with the spirit and the aims of the OUN and condemned by the entire civilized world”.

In spite of the fact that it initially emerged as a “subspecies of crime against humanity”, genocide rapidly attained an autonomous status and content as one of the most serious crimes of today. Nowadays, it is also called “the crime above all crimes”. As a crime against international law, genocide is established on the basis of three elements<sup>3</sup>:

- 1) the objective component - *actus reus*,
- 2) the subjective component - *mens rea* and
- 3) the object of the act - the victim (the group).

The source of this incrimination is found in the Convention on the Prevention and Punishment of the Crime of Genocide (1948)<sup>4</sup>, which defines the contents and the elements of this crime against international law. In legislation, theory and practice this term has a more extensive interpretation. Namely, this concept includes not only killing but also destruction or extermination (committed in any other way) of a particular group that forms a consistent entity on the basis of national, ethnical, racial or religious grounds.

<sup>1</sup> The Official Gazette of the Republic of Serbia No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009 and 121/2012. More: D. Jovašević, *Krivični zakonik Republike Srbije sa uvodnim komentarom*, Beograd, 2007.

<sup>2</sup> V. Đurđić, D. Jovašević, *Krivično pravo, Posebni deo*, Beograd, 2010. pp. 305-311.

<sup>3</sup> D. Radulović, *Međunarodno krivično pravo*, Podgorica, 1999, p.103.

<sup>4</sup> Official Gazette of the SFR Yugoslavia No. 56/1950.

The object of protection are humanity and international law. The object of attack is a national, ethnical, racial or religious group<sup>5</sup>.

A national group is comprised of people who have the feeling of sharing the legal bond of the same citizenship accompanied by reciprocal rights and obligations. An ethnical group consists of the members who are bound by the same language and culture. A racial group is a group based upon hereditary physical characteristics, which is often associated with a particular geographical area regardless of linguistic, cultural, national, or religious factors. A religious group includes members who share the same religious convictions, the same name of the confession or the same means of conducting religious ceremonies.

In fact, the terms such as national, ethnical, racial or religious group are still subject to extensive study and precise definitions that would be universally and internationally accepted have not been found yet. Thus, each of these terms has to be assessed in the light of an actual political, social and cultural *milieu*<sup>6</sup>.

Although the act of genocide is committed by destroying individuals, it is not intended to eliminate those people as individual persons but as members of the group. Depending on the actual target, genocide can appear as a national or ethnical genocide, or ethnocide, if it is targeted at a national or an ethnical group. In case of a racial genocide, the criminal act is aimed against a particular racial group or against several groups of that kind. Religious genocide is aimed against the members of one or more religious groups. The group is not to be determined in accordance with an objective or static criterion. Instead, the way the perpetrator perceives the members of the group is of fundamental importance for the definition of this term, which is also the standpoint of the ad hoc tribunals. The legal theory frequently points out to the lack of definitions on cultural genocide which implies the destruction of the language or the culture of a particular group.

Therefore, the aim of the criminal act of genocide is to destroy a group, in whole or in part, whereas the elimination of an individual simply represents a means of accomplishing this goal. The size of the group is irrelevant for the completion of this criminal offence. It is essential that the group is present as an entity carrying specific characteristics and that it is intended to be destroyed as such. The objective of the incrimination is to guarantee the right to life, i.e. existence and development for each group carrying specific national, ethnical, racial or religious features, regardless of the spatial cohesion of its members.

The act of genocide consists of several criminal acts which can be classified into a number of groups. These acts include:

- 1) killing or causing serious bodily or mental harm to members of a specific national ethnical, racial or religious group,
- 2) inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,
- 3) imposing measures intended to prevent births within the group (the so-called biological genocide) and
- 4) forcible transfer of children from one group to another intended to cause the loss of their group identity.

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<sup>5</sup> D. Jovašević, Komentar Krivičnog zakona SR Jugoslavije, Beograd, 2002, pp. 11-17.

<sup>6</sup> D. Jovašević, Međunarodno krivično pravo, Nis, 2011, pp. 89-93.

All these acts<sup>7</sup> contribute to physical and biological commission of genocide. To complete this act, it is enough to commit any of the acts explicitly prescribed in the law, with the intent to exterminate (destroy), in whole or in part, a group as a social entity. Genocide is a typical example of criminal offences that rest upon the „depersonalization of the victim“, which means that the victim of this act is not targeted due to some individual qualities or feature but primarily for being a member of a specific group.

The criminal act of genocide may be committed in two ways:

- 1) by ordering the commission of certain acts, and
- 2) by being directly involved in the commission of these acts.

Giving orders to commit the abovementioned acts is a special and autonomous act of genocide. In fact, ordering is a form of incitement. However, in this case ordering is not characterized as complicity but as a specific form of perpetrating this criminal offence. The crime of genocide is usually committed in an organized manner and in accordance with a previously arranged plan, giving particular authority to the order of a superior, which gives rise to the autonomous nature of his responsibility. Thus, the superior will be responsible for the mere act of having given the order to commit genocide, even if a subordinate refuses to obey or in any other way manages to avoid executing such an order.

The consequence of the act is manifested as threatening the survival of a certain national, ethnical, racial or religious group. It can be accomplished through causing a smaller or a larger number of individual consequences comprised of injuries (to life and limb, physical integrity, or a fetus) and threats (by inflicting unbearable living conditions on the group)<sup>8</sup>. The number of individual acts committed is insignificant for the commission of this criminal offence, which means that an act of genocide is committed no matter if it includes one or several relevant criminal acts. The fact that a larger number of criminal acts causing various individual consequences were committed has an impact on the determination of sentence. This indicates that planned and systematic extermination of human groups constitutes the essence of the crime of genocide<sup>9</sup>.

Any person can be the perpetrator of this act and the essential requirement for determining one's culpability is direct premeditation (*dolus coloratus*), including genocidal intent. Instead of applying the theory of intent, the assessment of such intent is based upon experience. The punishment prescribed for this act is a term of minimum five years' imprisonment to thirty to forty years' imprisonment. The Serbian Criminal Code explicitly points out that this criminal act cannot be subject to limitation for criminal prosecution and enforcement of penalty.

## 2. CRIMES AGAINST HUMANITY

Genocide and crimes against humanity, which are often treated as equal by legal theory as well as by certain international legal acts such as the Statute of the International Military Tribunal in Nürnberg, have several similarities:

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<sup>7</sup> A. Kaseze, *Međunarodno krivično pravo*, Beograd, 2005, pp. 115-117.

<sup>8</sup> Lj. Lazarević, B. Vučković, V. Vučković, *Komentar Krivičnog zakonika Crne Gore*, Cetinje, 2004, pp. 1021-1023.

<sup>9</sup> F. Bačić, *Krivično pravo, Posebni dio*, Zagreb, 1986, p. 316.

- 1) in both cases, the acts are aimed to cause massive killing of other persons,
- 2) both acts include severe violations insulting to humanity, and
- 3) neither of the acts represents an isolated case but is usually part of a broader conception.

However, there are evident dissimilarities between them, including<sup>10</sup>:

- 1) genocide entails genocidal intent, whereas a crime against humanity does not,
- 2) the target population of genocide is a group that has to possess shared group characteristics, whereas the victims of crime against humanity are determined by political preferences, physical characteristics or by the very fact that they found themselves in certain area in certain period of time,
- 3) crime against humanity is a broader term since the crime is committed within an extensive and systematic attack that the perpetrator is aware of, which is not requested as an essential and constitutive element of the crime of genocide, and
- 4) crime against humanity can be committed by conducting a wider range of diverse acts, all of which are not covered by the term of genocide<sup>11</sup>.

### 3. RESPONSIBILITY OF A SUPERIOR (COMMAND RESPONSIBILITY)

The criminal legislation of the Republic of Serbia decisively supports the standpoint that the ground for enforcement of penalties and other criminal sanctions is criminal liability perceived as a personal (individual) and subjective responsibility of a perpetrator or an accomplice.

Apart from the subjective criminal responsibility, the Serbian Criminal Code of 2005 also recognizes the responsibility of a superior, as a form of “objective” (command) responsibility. The responsibility of a superior in command is also provided by the Statute of the Permanent International Criminal Court and it can be applied by national judicial authorities in criminal proceedings against persons who committed some of the criminal offences envisaged in the new Criminal Code of the Republic of Serbia (in Chapter 34 entitled “Criminal Offences Against Humanity And Other Rights Guaranteed by International Law”)<sup>12</sup>.

The Serbian Criminal Code of 2005 explicitly envisages criminal liability and punishment for a superior in Article 384 titled “Failure to Prevent Crimes against Humanity and other Values Protected under International Law”. This provision stipulates that the failure to undertake relevant measures to prevent the commission of such crimes is punishable under international law as it constitutes a failure to act. There are several forms of this criminal offence.

This legal provision also stipulates a particular form of criminal responsibility of a person who fails to undertake the necessary measures to prevent the commission of the following criminal offences against humanity and other rights guaranteed by international law<sup>13</sup>:

- 1) Genocide,
- 2) Crimes against humanity,

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<sup>10</sup> B. Petrović, D. Jovašević, *Krivično (kazнено) pravo II, Posebni dio*, Sarajevo, 2005, pp. 42-44.

<sup>11</sup> D. Jovašević, *Međunarodna krivična dela – odgovornost i kažnjivost*, Niš, 2010, pp. 263-268.

<sup>12</sup> D. Jovašević, *Krivično pravo, Opšti deo*, Beograd, 2010, p. 129-132.

<sup>13</sup> D. Jovašević, *Međunarodna krivična dela – odgovornost i kažnjivost*, Niš, 2010, pp. 189-193.

- 3) War crimes against the civilian population,
- 4) War crimes against the wounded and the sick,
- 5) War crimes against the prisoners of war,
- 6) Employment of prohibited means of warfare,
- 7) Unlawful killing and wounding of the enemy,
- 8) Unlawful appropriation of objects from bodies,
- 9) Violation of protection granted to a bearer of flag of truce/emissary,
- 10) Cruel treatment of the wounded, the sick and prisoners of war, and
- 11) Destroying cultural heritage.

These acts actually are the preparation for the commission or the commission of the gravest criminal offence of today.

The first form of this criminal offence can be committed by a military commander or a person who in practice is discharging such function. It is therefore a criminal offence that can be committed only by a perpetrator with particular characteristics, i.e. *delicta propria*. This criminal offence includes the following three elements<sup>14</sup>:

- 1) the perpetrator was aware or conscious of the fact that other persons were preparing or directly committing the enumerated crimes against international law,
- 2) crimes against international law were committed by the persons who entered the forces within the perpetrator's command or control, and
- 3) the perpetrator failed to undertake the measures that he could have taken and was obliged to undertake in order to prevent the commission of such crimes against international law, which resulted in the actual commission of crime.

The punishment prescribed for this criminal offence is the same as the punishment that would be imposed on the direct perpetrator of some of the enumerated crimes against international law. Hence, the fact that some of the aforementioned criminal offences were committed by a subordinate does not absolve the superior from criminal responsibility.

The second form of this criminal act envisaged in Article 384 of the Criminal Code of The Republic of Serbia is related to the failure of other superiors to act, which resulted in the commission of the aforementioned crimes against international law. This criminal offence requires that the three following requirements are met<sup>15</sup>:

- 1) the perpetrator knew or was aware of the fact that other persons were preparing or directly undertaking the commission of the enumerated crimes against international law,
- 2) the crimes against international law were committed by the perpetrator's subordinates, i.e. the persons who were subordinate to him in chain of command and execution of their tasks, and
- 3) the perpetrator failed to undertake the measures that he could have taken and was obliged to undertake in order to prevent the commission of the aforesaid crimes against international law, which actually resulted in the commission of these acts.

The punishment prescribed for this criminal offence is the punishment of imprisonment, which may be imposed on the direct perpetrator of one of the enumerated crimes against international law. If this criminal offence was committed by negligence (as a form of criminal liability), an imprisonment of six months to five years is prescribed.

<sup>14</sup> B. Ivanišević, G. Ilić, T. Višnjić, V. Janjić, Vodič kroz Haški tribunal, Beograd, 2007, pp. 133-151.

<sup>15</sup> V. Đurđić, D. Jovašević, Krivično pravo, Posebni deo, Beograd, 2010, pp. 336-337.

#### 4. THE COMMON CRIMINAL DESIGN (JOINT CRIMINAL ENTERPRISE): A NEW FORM OF CRIMINAL RESPONSIBILITY

As far as criminal responsibility is concerned, *common criminal design*<sup>16</sup>, *common criminal purpose*<sup>17</sup> or *joint criminal enterprise* is a special form of responsibility for crimes against international law which has lately been the subject matter of more frequent discussion in the legal theory and even more in the practice of international criminal law.

These theoretical standpoints are based upon the fact that the majority of crimes against international law are not a result of a single person's conduct or decision. In fact, crimes against international law committed in those situations are a result (consequence) of joint enterprise of several persons who either directly perpetrated these criminal offences or inspired others to do so, or planned or otherwise facilitated direct commission of these criminal offences. The use of this ground for establishing criminal responsibility under international criminal law implies that all the members of the group acting with a "common purpose" are considered responsible for a crime against international law<sup>18</sup>.

According to the judicial practice of the Hague Tribunal (*Tadić* case)<sup>19</sup>, common criminal purpose exists if the following constitutive (objective) elements are fulfilled:

1) the presence of several persons<sup>20</sup> on a specific level of cohesion. Such cohesion does not necessarily have to indicate the presence of a consistent organization in the form of a military, police, political or administrative structure but a certain form of joint enterprise is required,

2) the presence of a common project, plan, conception or purpose that includes the commission of a crime against international law. Such plans or purposes do not necessarily have to be strictly arranged or previously formulated. They can also be "improvised" or even "accepted on the spot" by the persons acting together, and

3) the participation of the perpetrator in such common criminal design (i.e. the perpetrator's contribution). Such participation does not have to be confirmed by the commission of a criminal offence. The act involving the perpetrators' assistance, facilitation or some other contribution to the process of the commission of a common plan or purpose is considered to be sufficient<sup>21</sup>.

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<sup>16</sup> This term was first created in the English law of the 14<sup>th</sup> century and then transplanted and further developed in the American criminal law, especially in the provisions related to organized crime. It is based upon the effort to make the proving of grave criminal offences easier, which enables the group of possible perpetrators to be expanded by including persons who otherwise could not be considered as perpetrators of such criminal offences. This is also a way of creating a new form of common or collective guilt.

<sup>17</sup> This institute is thought to have been implemented for the first time in the judgment on appeal before the Hague Tribunal in *Tadić* case in 1999.

<sup>18</sup> D. Jovašević, *Međunarodna krivična dela – odgovornost i kažnjivost*, Niš, 2010, pp. 191-194.

<sup>19</sup> The institution of joint criminal enterprise has been used several times in: 1) the practice of the Hague Tribunal: judgment 00-39-T (*Krajišnik* case), judgment 98-32 (*Vasiljević* case), judgment: 95-14 (*Blaškić* case) and judgment 98-33 (*Krstić* case); 2) the practice of the Rwanda Tribunal: judgment 96-17 (*Nakirutimana* case); and 3) the practice of Special Panels for Serious Crimes in East Timor, in judgments pertaining to the following cases: *Pereira*, *Domingos de Deus* and *Cardoso*.

<sup>20</sup> The participation of a smaller number of persons in the commission of particular crimes on a limited territory is considered sufficient to constitute "the presence of several persons" in the sense of joint criminal enterprise. These persons need to know (be familiar with) each other because they act together and there is a consent among them on the commission of criminal offences.

<sup>21</sup> B. Ivanišević, G. Ilić, T. Višnjić, V. Janjić, op.cit, pp. 119-121.

The Statute of the International Criminal Court (the Rome Statute) also prescribes joint criminal enterprise in Article 25, paragraph 3, point (d). According to this provision, a person shall be criminally liable for a crime within the jurisdiction of the Court if the person contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose.

The institute of joint criminal enterprise significantly differs from the traditional continental system of criminal law. It is said to have the following drawbacks<sup>22</sup>:

- 1) a person may be found liable even though the person did not have intent (awareness and will) which would be the ground for establishing the person's culpability,
- 2) a person may be liable for the predictable actions of another,
- 3) substantially different acts of persons who participate in the commission of a criminal offence are wrongly treated as equal,
- 4) it is not in accordance with the principle of legality, and
- 5) the existence of this institute is especially disputable when it comes to proving some facts as the innocent persons may be punished as well.

The contribution to the commission of such a crime shall be considered as intentional and it shall either<sup>23</sup> :

- 1) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court, or

- 2) be made in the knowledge of the intention of the group to commit the crime.

Joint criminal enterprise can emerge in three forms. Those are:

- 1) the responsibility of all the members of the group acting with a common purpose and with a common intent to commit a particular crime against international law. It does not necessarily imply that all members of the group have been directly involved in the perpetration of such criminal offence but, if one of them voluntarily participated in some aspect of the common criminal design with the intent to commit such a crime against international law (as a result of their joint enterprise), all of them will be considered responsible,

- 2) the responsibility for "concentration camps", where all persons in superior positions within the camps where these criminal offences were committed are also considered to be perpetrators even though they did not directly participate in the perpetration, and

- 3) "extended" joint criminal enterprise, which implies the commission of a criminal act which is a logical and predictable consequence stemming from a criminal offence committed within the framework of the common criminal design.

According to the judicial practice of the Hague Tribunal, a common plan is considered to exist in the following cases<sup>24</sup>:

- a) long-term and unlawful imprisonment and captivation of a foreign national,
- b) repeated torture and beating of the imprisoned persons,
- c) murder of the imprisoned persons,
- d) frequent and long-lasting forced labor of the imprisoned persons, and
- e) maintaining inhumane conditions in the prison facilities.

<sup>22</sup> D. Jovašević, *Međunarodno krivično pravo*, Niš, 2011, pp. 189-192.

<sup>23</sup> B. Petrović, D. Jovašević, *Međunarodno krivično pravo*, Sarajevo, 2010, pp. 159-183.

<sup>24</sup> D. Jovašević, *Međunarodno krivično pravo*, Niš, 2011, pp. 193-194.



In order to apply this form of responsibility, the following conditions shall be satisfied:

- 1) there must be an organized system of maltreatment of the imprisoned persons that includes the commission of some of the crimes against international law,
- 2) the perpetrator has to be aware of the nature of this system of maltreatment,
- 3) there is factual evidence that the perpetrator has encouraged, helped, supported or otherwise participated in accomplishing the common criminal purpose, given the fact that he had the permission and the possibility to supervise the imprisoned persons, and that he could have made their life in prison more bearable and acceptable but failed to do so, and
- 4) the perpetrator has been found liable for committing the so-called “extended” joint criminal enterprise, which implies the responsibility for a crime against international law which stands beyond the framework of the common criminal purpose but is still embodied in the logical and predictable consequence of such a crime.

## 5. CONCLUSION

International criminal law, as a system of legal regulations embodied in the acts of international community and criminal legislations of individual states, establishes criminal liability and punishment for crimes against international law. These acts constitute breaches of international humanitarian law and customs of war that violate or threaten peace among nations and the security of mankind. Penalties prescribed for these criminal offences are the most severe penalties in contemporary criminal legislation. The crime of genocide is often designated as a crime above all other crimes. Due to its significance, nature and character, it has a prominent position among all the crimes against international law.

The act of genocide consists of ordering or committing the following acts: killing or causing serious bodily or mental harm to members of a human group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction or extinction, in whole or in part; imposing measures intended to prevent birth within the group; or forcibly transferring children to another group with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group of people.

This criminal offence implies the killing of a nation or a tribe. In the UN General Assembly Resolution 96/I of 11<sup>th</sup> December 1946, genocide was proclaimed as “a crime under international law, which is in contradiction with the spirit and the aims of the OUN and condemned by the entire civilized world”. Although it emerged as a “subspecies of crime against humanity”, genocide rapidly obtained an autonomous status and contents as one of the most serious crimes of today.

As a crime against international law, genocide is established on the basis of three elements: a) the objective component – *actus reus*; b) the subjective component – *mens rea*; c) the object of the act – the group (the victim). The source of this incrimination is found in the Convention on the Prevention and Punishment of the Crime of Genocide (1948) which, in Article 2, defines the notion and the elements of this crime against international law. In legislation, theory and practice, this term can be interpreted in a broader sense as well. Namely, this term does not include only killing but also any destruction (committed in any other way) or extermination of a particular group that forms a consistent entity on the basis of national, ethnical, racial or religious grounds.

As the most recently established criminal legal discipline, established within the framework of international law of war and international humanitarian law, international criminal law obtained its “citizenship” status at the beginning of the third millennium as the. When the Rome Statute of the International Criminal Court came into force, this branch of law was finally inaugurated in a substantive, procedural and executive sense. Before that, the evolution of this branch of law had been embodied in the development of basic criminal legal terms and institutes within a series of international legal documents (of both universal and regional character), in international agreements between individual states as well as in the practice of the international courts (primarily, the Nürnberg and the Tokyo Tribunals).

The practice of international courts includes the following:

1) crimes against international law (which differ from criminal offences with an international element) that can emerge in two forms: as crimes against international law in a narrow (basic) sense, or as crimes against international law in a broader sense;

2) establishing the perpetrator’s criminal liability (the prerequisite for which is that the offender is above the age of 18); thus, the act may be committed by a single person or include the participation of several persons, or even the participation of a legal person such as a state or an organization, and

3) the system of criminal punishment i.e. sentences imposed by the supranational judicial authorities.

In this paper, the author discussed the fundamental terms and institutions of international criminal law. Given the nature, the character and the hazard of crimes against international law, this branch of law is recognizes a special form of objective criminal responsibility, as opposed to the individual (subjective) criminal responsibility. The objective criminal responsibility implies the liability of political and/or military superiors in command for the crimes against international law committed by their subordinates. It is widely recognized as the responsibility of a superior (command responsibility), which has been entering national criminal legislations through relevant international standards. This institute is also envisaged in the latest Criminal Code of the Republic of Serbia (2005).

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## **GENOCID I KOMANDA ODGOVORNOST U KRIVIČNOM PRAVU REPUBLIKE SRBIJE**

*Međunarodno krivično pravo, kao sistem pravnih propisa sadržanih u aktima međunarodne zajednice i krivičnim zakonodavstvima pojedinih država, uspostavlja krivičnu odgovornost i kaznu za zločine protiv međunarodnog prava. Ovi akti predstavljaju kršenje zakona i običaja ratovanja (međunarodnog humanitarnog prava) koje krše ili ugrožavaju mir među narodima i bezbednost čovečanstva. Kazne propisane za ova krivična djela su najteže kazne u savremenom krivičnom zakonodavstvu. U nekim slučajevima, međunarodne sudske (nacionalne) institucije kao što su Tribunali u Nirnbergu i Tokiju, Haški tribunal, Međunarodni krivični sud (itd) imaju primarnu nadležnost nad izvršiocima ovih krivičnih dela. Krivično delo genocida je definisano kao ubistvo jednog naroda ili plemena. U Rezoluciji Generalne skupštine UN-a 96/I od 11. decembra 1946, genocid je definisan kao "zločin po međunarodnom pravu, koji je u suprotnosti sa duhom i ciljevima OUN i koji je osudio ceo civilizovani svet". Iako je nastao kao "podvrsta zločina protiv čovečnosti", genocid je ubrzo dobio autonomni status i sadržaj kao jedan od najtežih zločina današnjice. Kao zločin protiv međunarodnog prava, genocid počiva na postojanju tri elementa: a) objektivne komponente - actus reus; b) subjektivne komponente - mens rea; c) predmeta akta - grupa (žrtva). Izvor ove inkriminacije nalazi se u Konvenciji iz 1948. godine o sprečavanju i kažnjavanju zločina genocida koji, u članu 2, definiše pojam i elemente ovog zločina protiv međunarodnog prava. U zakonodavstvu, teoriji i praksi, ovaj termin može da se tumači u širem smislu. U ovom radu, autor analizira teorijske i praktične aspekte genocida u međunarodnom krivičnom pravu i krivičnom pravu Republike Srbije (uključujući bivše SR Jugoslavije).*

**Ključne reči:** *međunarodno pravo, humanost, krivično delo, genocid, sud, komandna odgovornost, kazna.*