

**SOME LEGAL ASPECTS OF REALIZATION
OF PRINCIPLE OF INDIVIDUAL CRIMINAL RESPONSIBILITY
IN INTERNATIONAL CRIMINAL LAW**

The principle of individual criminal responsibility is one of fundamental principles of international criminal law. But in practice, the realization of this principle meets some difficulties not only in legal enforcement, but also in legislative drafting. On the international level this principle took place in Statute of Nuremberg Tribunal at first. "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced", wrote the Nuremberg Tribunal in 1946.

More direct realization became this principle in Article 6 of Statute of International Criminal Tribunal for Rwanda: A person, who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime ... shall be individually responsible for the crime [1].

The Rome statute of International Criminal Court also stands on this position. In accordance with Article 25 of this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission [2]. As we understand, the most part of war crimes and crimes against humanity can be done only in cooperation or with use of military or other armed force. Most of 'clientele' of International Criminal Court will not be the actual perpetrators of the crimes, soiling their hands with flesh and blood. Rather, they will be 'accomplices', those who organise, plan and incite genocide, crimes against humanity and war crimes [3, 101].

As we see, Rome statute clearly distinguishes between three forms of perpetration: direct or immediate perpetration ("as an individual"), co-perpetration ("jointly with another"), perpetration by means ("through another person"). Thus, co-perpetration is no longer included in the complicity concept but recognized as an autonomous form of perpetration [4, 9].

Also Rome statute contains other forms of participation which themselves, however, establish different degrees of responsibility. Subparagraph (b) of Article 25 refers to a person who orders, solicits or induces the commission or attempt of a crime. Subparagraph (c) codifies any other assistance ("aids, abets or otherwise assists ... including providing the means") in the commission or attempt of a crime "for the purpose of facilitating" it. Generally speaking, participation in the case of subparagraph (b) implies a higher degree of responsibility than in the case of subparagraph (c) [4, 10].

The International Criminal Court, like its earlier models at Nuremberg, The Hague and Arusha, is targeted at the major criminals responsible for large-scale atrocities [3, 102]. And this is a reason why a big part of defendants are persons, who had earlier some governmental powers or were commanders of armed forces.

In such cases prosecutor determines a status of this organizations (legal fundament of acting, the presence or absence of hierarchy in this organization, discipline and so on). Next point of investigation is discovering of place which took defendant person in organization: Is defendant the person who only followed orders or the person who planned and organized crimes. Each act of defendant person will be examined and regarded or not regarded a crime. A punishment for defendant will depend on level of participation in crimes.

An example of this would be a case *The Prosecutor v. Bosco Ntaganda* (ICC-01/04-02/06, Situation in the Democratic Republic of the Congo). Bosco Ntaganda was one of the leaders of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (the "UPC/FPLC"). There are substantial grounds to believe that as early as the beginning of August 2002, the "UPC/FPLC" adopted an organisational policy to attack part of the civilian population, belonging to ethnic groups other than the Hema (the "non-Hema") and to expel them from Ituri Province, in the Democratic Republic of the Congo. Pursuant to this policy, between on or about 6 August 2002 and on or about 27 May 2003, the UPC/FPLC perpetrated a widespread and systematic attack against the non-Hema civilian population [5].

The Prosecutor is charging Mr. Ntaganda on such articles: Article 25(3)(a) of the Statute – Indirect Co-Perpetration; Article 25(3)(a) of the Statute – Direct Perpetration; Article 25(3)(b) of the Statute – Ordering; Article 25(3)(b) of the Statute – Inducing; Article 25(3)(d) of the Statute – Contributing in any other way; Article 28(a) of the Statute – Acting as a Military Commander [5].

As we see, one action can be determined as many crimes, especially if defendant person was a military commander or had other authority powers. Of course, any participant in a crime can only be liable for own contribution of defendant person to the crime without regard to the liability of other participants. Although this is not expressly stated in the Statute, but, as thinks Kai Ambos, it follows logically from the guilt principle and the principle of individual criminal responsibility itself [4, 12]. This implies that the responsibility of each participant has to be determined individually on the basis of his or her factual contribution to the crime in question.

List of used sources

1. Statute of International Criminal Tribunal for Rwanda from 31 January 2010 [Electronic Resource]. – Режим доступа: www.unict.org/sites/unict.org/files/legal-library/100131_Statute_en_fr_0.pdf.

2. Rome Statute of International Criminal Court from 17 July 1998 [Electronic Resource]. – Mode of access: http://zakon2.rada.gov.ua/laws/show/995_588.

3. William a. Schabas. An introduction to the International criminal court. Second edition. Cambridge University Press., 2004. – 586 p. – 101

4. Kai Ambos. General principles of Criminal law in the Rome statute [Electronic Resource] // Criminal Law Forum 10. Kluwer Academic Publishers, 1999. – P. 1–32. – Mode of access: <https://www.legal-tools.org/doc/a9a8ec/>.

5. Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, No.: ICC-01/04-02/06 from 9 June 2014 [Electronic Resource]. – Mode of access: www.icc-cpi.int/iccdocs/doc/doc1783301.pdf.