THE INFLUENCE OF LEIPZIG TRIALS ON THE CONCEPT OF INDIVIDUAL CRIMINAL RESPONSIBILITY

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Abstract

The main aim of presented scientific paper is to outline the importance of International Criminal Justice and Individual Criminal Responsibility. The principle of international criminal responsibility was not always of the same content. It has changed with the development of international law and is one of the most important institutions currently aimed at strengthening international peace and security. The necessity of international criminal responsibility for serious breaches of international law is caused by the importance of human values.

The paper discusses grave breaches committed during First World War and their legal consequences. According to treaty of Versailles, war criminals would be tried before the military tribunal comprised of judges from the country in which the crime occurred. The idea of an international court administering justice to war criminals appeared noble, but there was no unified position between the Allies on the specific issues. This was the main reason why Germans insisted to bring to trial all war criminals in German Court under the German Legislation.

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Author reviews several significant cases held in Leipzig Court and according to decisions assess the deterrent effect of the trials, their impact on the further development of international humanitarian law, international criminal justice and on the concept of individual criminal responsibility.

Key Words: *Leipzig trials, Individual Criminal Responsibility, First World War, crimes against humanity, war crimes*

Introduction

The concept of international criminal justice is simple and simultaneously complex. Its simplicity is determined by the fact that a specific offense is recognized as an international offense, perpetrator of which can be judged both by National Court and International Court. Its complexity is expressed in inter-relation between the national and international courts.[1]

The principle of international criminal responsibility was not always of the same content. It has changed with the development of international law and is one of the most important institutions currently aimed at strengthening international peace and security.[2]

[1] BROWNLIE I., **Principles of Public International Law** (7th Edition), Oxford University Press, New York, 2008, p. 645
[2] JIKIA M., **Legal Status of Individual in Modern International Law,** Tbilisi, 2011, p. 75

The need for international criminal responsibility for serious breaches of international law is caused by the importance of human values and aimed to prevention of various violations.[3]

Before the twentieth century, individuals were not subject to international criminal responsibility. In case of committing a crime under international law, they were brought to trial by the national courts. However there were exceptions, particularly in the case of piracy. Every state regardless of whether he had been injured by pirates, in case of detention, brought them to trial. Pirates were represented as enemies of humanity (*hostis humani generic*).[4]

Over time, the situation has changed and the list of the offenses that are punishable by international law are subject to the individual criminal responsibility under the international law.

From 1919 to 1994 there were five *ad hoc* international investigative commissions, four *ad hoc* international tribunals, and three national courts with international mandates after First and Second World War.[5]

While emphasizing the importance of individual criminal responsibility under international law and the role of Nuremberg and Tokyo tribunals for the establishment of these practices, it should be mentioned that there was an attempt to make an international trial to judge the individuals committed international crimes during First World War.

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[3] JIKIA M., p. 76
[4] SHAW M.N., **International Law**, (6th edition), Cambridge University Press, UK, 2008, pp. 397-398
[5] JIKIA M., p. 81

I. The End of First World War and Negotiations for Trials

The First World War ended and by decision of the winners to legitimize the consequences of the war, Paris Conference was held, where was discussed the results of the war and presented a new political reality. Germany and Austria-Hungary were declared as aggressors and they were obliged to make reparations. The Austro-Hungarian Empire collapsed and on its ruins emerged Austria, Hungary, Czechoslovakia, Yugoslavia. The Ottoman Empire, which was on the German side, was also dissolved and on its place originated Turkey, Albania, and various Arab states. Russia lost Finland, Poland, Ukraine, South Caucasus, etc.[6]

The results of the First World War were shocking, in particular, 8.5 million killed soldiers, 21 million wounded and mutilated.[7]

There were great changes after First World War. Not only were central powers supposed to pay reparations, but they were also required to deliver nationals accused of violations of law and customs of war to the Allies. This was the first time that regulations of Geneva and Hague conventions[8] were enforced. Previously states

[6] RONDELI A., **I World War,** Tbilisi, 2014, p. 8 https://gfsis.org/files/my-world/3/omi.pdf (access date: 26/11/2018)
[7] WILLMOTT H.P., **World War I**, New York: Dorling Kindersly Limited, 2009, p. 307.
[8] 1864 Geneva Convention for the Amelioration of the Condition of Wounded in Armies in the Field https://ihl-databases.icrc.org/ihl/INTRO/120?OpenDocument
1899 and 1907 Hague Conventions respecting laws and customs of war on land https://ihl-databases.icrc.org/ihl/INTRO/195

used their own military tribunals, but they typically granted amnesty for foreigners after peace treaty was signed.

Preliminary discussions of trial emerged before the end of the war between Great Britain, France and the United States, as Germany's defeat appeared imminent. But discussion didn't lead to real result, since they couldn't agree regarding some details; the main problem was a lack of an international model to administer a war crimes trial.

The Hague Convention provided guidance regarding war crimes, but had not established guidelines for punishing those parties guilty of violating international law.[9] Legally, the Treaty of Versailles justified the Allies' demand for a trial, but its clauses better supported the trial of war criminals before a single nation, rather than a court of international judges.[10]

According to Article 229 of treaty of Versailles, war criminals would be tried before the military tribunal comprised of judges from the country in which the crime occurred. Parties guilty of crimes against more than one nation would be tried before a military tribunal of judges from each of the offended countries.[11]

The idea of an international court administering justice to war criminals appeared noble, but there was no unified position

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[9] JONES H., "*A Missing Paradigm? Military Captivity and the Prisoner of War 1914-1918"*„ **Immigrants &Minorities**, N1/2 (March/July, 2008), p. 26

[10] Articles 227-230 of the Treaty of Versailles gave the Allies the right to try Germans accused of war crimes before an international tribunal. Treaty of Peace with Germany (Treaty of Versailles) (1919), Articles 227-230. https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf

[11] Treaty of Peace with Germany (Treaty of Versailles) (1919), Article 229. https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf

between the Allies on the specific issues. In 1914, the British had called for the trials of German military leaders for the "atrocities" committed in Belgium.[12] Five years later, their focus was on the crimes committed against their own country, specifically the practices of unrestricted submarine warfare and the abuse of prisoners of war. The French focused on war crimes that occurred during the German destruction of Northern France, abuses and deportations of civilians, and abuse of war prisoners. The Belgians accused the Germans of charges similar to those expressed by the French, but applied them as pertained to their own country.[13]

In February 1920, the Allies presented Germany with a list of 862 accused war criminals, who they expected the Germans to extradite.[14] A majority of those on the list were charged with committing war crimes related to the invasion of France and Belgium, while the second largest category of war crimes were related to the treatment of prisoners of war.[15]

Based on abovementioned events, the German government began a carefully balanced policy of appeasement regarding war crimes trials. As an alternative to the International military tribunal,

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[12] WILLIS J.M., **Prologue to Nuremburg: The Politics and Diplomacy of Punishing Was Criminals of the First World War**, Greenwood Press, 1982, p.3.

[13] VICK A.M., **A Catalyst for the development of human rights: German internment practices in the First World War, 1914-1929,** Blacksburg, Virginia, 2013, p. 82

[14] The Allies had yet to determine the specific site of extradition, but because of Britain's dominant influence over the trials, most likely it would have been London.

[15] KRAMER A., "*The First Wave of International War Crimes Trials: Istanbul and Leipzig",* **European Review** 14, no. 4 (2006), p. 447

Germans offered to try a significantly decreased number of the German war criminals in Germany's Supreme Court in Leipzig. Presented offer included the presentation of delegation from Great Britain, France and Belgium on trials.

After months of negotiations, the Germans and the Allies established final preparations for the trials in the spring of 1921. On 7th of May, 1920 The Allies presented much shorter list (45 suspects) than in the beginning. The List was accompanied with an official note, Stating that the intention of this first compilation was to assess the seriousness of the Germans' self-commitment and that this list was nothing more than a "test".[16]

The first set of trials included twelve men, six accused by the British, five by the French, and one by the Belgians. Though other trials followed, this first set constituted the "Leipzig Trials" and held the most significance because of Allied attendance.[17]

II. Several Cases from Leipzig Trials

There were three types of Cases presented to Leipzig Trials: British Cases, French cases and Belgium Cases.

Initially Britain presented four cases that charged Germans as war criminals. One of the main cases was the case of Karl Heynen[18], former guard of war camp prisoner. The accusations included torture and non-human treatment of British prisoners of war, in particular:

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[16] HENKEL G., "*Leipzig War Crimes Trials",* **International Encyclopedia of the First World War 1914-1918**, updated 21 October 2016 https://encyclopedia.1914-1918-online.net/article/leipzig_war_crimes_trials

[17] VICK A.M., p. 87

[18] Karl Heynen Case, 8 August, 1921 https://goo.gl/VpBhxD

- On the 8th of November he ill-used the English prisoner Jones by means of Blows with the first and kicks on the ground, alleging that he had reported sick but had been found fit by the doctor; On 10th and 11th of November Heynen struck Jones in the face, because Jones, who had a swollen check, declared that he had tooth-ache; [19]
- The accused struck English prisoner McLaren, because he remained in bed on account of alleged sickness; [20]
- The English prisoner Cross suffered from abscesses in the lower part of the leg. As a result of his ill-treatment by the accused Cross became unable to contain himself. The ill-usage treatment in regard to Cross of which accused was guilty was limited to the blows and kicks when Cross showed the sores on his leg.[21]

German and British witnesses testified that Heynen had regularly tortured Cross during interrogation sessions by plunging his head into hot and ice water. The accused was sentenced to ten months imprisonment for fifteen charges of ill-treating and three charges of insulting subordinates; other charged was dismissed and in respect of them he was acquitted. The detention during the enquiry was taken into consideration (4 months).[22]

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[19] *"German War Trials: Judgement in the Case of Karl Heynen",* **The American Journal of International Law**, Vol. 16. No. 4 (Oct. 1922), p. 680 www.jstor.org/stable/2187590

[20] *German War Trials*, p. 680 www.jstor.org/stable/2187590

[21] *German War Trials*, p. 680 www.jstor.org/stable/2187590

[22] VICK A.M., p. 88

The Verdict of Heynen's case established a precedent for the majority British cases. Captain Emil Muller was in charge for inhuman treatment of war prisoners at Flavyle-Martel on the Western Front at the end of April and Beginning of May, 1918. The conditions in camp was very bad, in particular it was capable of accommodating 450 men and instead it was overcrowded nearly by 1000 men; the sanitary practically didn't exist; the provision of food and medical attention was wholly insufficient. Despite abovementioned conditions prisoners were forced to engage in heavy work behind the lines at long distances from the camp, and practically no excuse of weakness or sickness was accepted as relieving them from work. Men in the last stages of dysentery were driven out to work and fell and died by the road.[23]

According to evidence, this case included two issues; one related to the physical condition of the camp, and the other related to personal brutality committed by Muller. There was a conflict between the evidence given by witnesses and by accused. After considering the records presented by German military authorities, the court came to the conclusion that Muller was not responsible for the insanitary conditions of camps that caused significant number of death.[24] However, Captain Muller was charged for personal violence, in particular he had been guilty of sending out to work

[23] "*The British Cases*", **The American Journal of International Law,** Vol. 16, No. 4 (October, 1922), p. 634 https://doi.org/10.1017/S0002930000209354
[24] *The British Cases,* p. 635 https://doi.org/10.1017/S0002930000209354

men, whose physical condition rendered them wholly incapable of discharging it.[25] The court charged him six months imprisonment.

In contrast to British cases, Germans handled the French and Belgian cases with considerably less care and diligence because, unlike the British cases, neither French nor the Belgian cases suited German interests.[26]

For The Belgian victims Leipzig trials were an utter fiasco. From the 3000 names of war criminals originally collected by the Allies, Belgium had submitted 1100. When the total number was reduced to 854, the Belgian total was slashed to 334.[27]

Finally only 15 were accused for crimes against Belgians for mistreating prisoners of war and abusing civilians. Unfortunately none would ever have answered for these actions. Only one German - Max Ramdohr, an officer in the Secret Military Police - was put on trials and was acquitted.[28]

Max Ramdohr was accused of torturing children in the town of Grammont in East Flanders during the occupation. He was trying to obtain information about sabotage of the railway lines south of the town.[29]

Leipzig Court listened to witnessed who also were victims, but considered the evidence not strong. German Law forbade witnesses under thirteen from testifying; because of this fact

[25] *The British Cases,* p. 636 https://doi.org/10.1017/S0002930000209354
[26] VICK A.M., p. 92
[27] LIPKES J., Rehearsals: **The German Army in Belgium, August 1914**, Leuven University Press, 2007, p. 592
[28] LIPKES J., p. 592
[29] LIPKES J., p. 593

evidence was disregarded. Even those permitted to testify were accused of "strong bias" against their torturer. According to the Judges' opinion, these children had been influenced by stories of alleged atrocities and as a result may have been victims of a mass delusion.[30] Addition to this, Ramdohr's colleagues' and superiors' positive responses regarding his excellent character weighed heavily and in the end he was acquitted.[31]

Germans believed that in August 1914, the Belgians should have allowed German military to pass freely through the country to France. In contrast Belgians attacked German troops, which lead to the deaths of thousands of Belgian Civilians. To Germans, Belgian attacks amounted to an illegal war on an occupying army.[32]

After the trial Belgian delegation left Leipzig and informed German government that Belgium would itself enforce justice.

The main French case on Leipzig Trial was against General Karl Stenger, The prosecutor alleged that in August 1914 Stenger misused his official position as brigade commander by instructing subordinates to commit crimes, namely to issue orders to kill wounded French soldiers. The prosecutor further alleged that one of the subordinates receiving this order was Major Benno Crusius who misused his official position by instructing subordinates to directly

[30] LIPKES J., p. 593
[31] LIPKES J., p. 593
[32] HULL I., **Absolute Destruction: Military Culture and The practices of War in imperial Germany,** Cornel University Press, 2005, pp. 209-211

implement the aforementioned order and thereby commit the killings.[33]

On the day of the trial, Karl Stenger appeared in court in his uniform pressed and glistening with a dozen medals as German war hero. Stengers' appearance as a war-worn general emphasized the credibility of his testimony. He calmly denied the charge that he issued an order to kill prisoners (though he admitted he was not opposed to the practice), and the only prisoners who were shot were those who continued to fight.[34]

After 6-day trial Court acquitted Stenger. This was surprising because witnesses at trial made contradictory statements as to the existence or non-existence of such an order. The judges relied on denials by certain insider witnesses, officers of the immediate staff of Stenger, as to whether such an order was ever given. However, the judgment also acknowledged that two witnesses testified otherwise: the co-accused Crusius testified to have obtained an oral order not to give pardon and the witness Major Müller testified to have forwarded the order from Crusius to others.[35]

The judgment of the Reichsgericht was silent as to why the judges favoured the denials of witnesses forming Stenger's inner circle over the different version advanced by Crusius and Müller. The trial ended with Stenger's acquittal; Crusius lost the right to

[33] BRGSAMO M., **Historical Origins of International Criminal Law: Volume 1,** FICHL Publication Series No. 20 (2014), Torkel Opsahl Academic EPublisher, Brussels, 2014 p. 22
[34] MULLINS Cl., **The Leipzig Trials: An Account of the War Criminals' Trials and a Study of German Mentality**, London, 1921, p. 155.
[35] BRGSAMO M., p. 22

wear his uniform and received a sentence of two years in prison, of which he had already served fourteen months.[36]

French delegation like Belgians left the trials and declared that French troops would continue to occupy the Rhine until justice was delivered at Leipzig.[37]

None of the 12 war crimes trials conducted in front of the Leipzig Court resulted in sentences that exceeded five years' detention. The sentences imposed were as follows:

- Six months – twice;
- Ten months – once;
- Two years – three times;
- Five years – once.

Conclusion

The Leipzig Trials drew criticism not only for their lenient sentences, but also for the ineffective policy of the German authorities to secure the imposed sanctions in the execution of sentences phase following the judgments. It's obvious that the trials were formality.

As a conclusion we can emphasize several issues based on above discussed issues, in particular:

- Do Leipzig trials have any deterrent effect? Deterrence is an "act or process of discouraging certain behavior, particularly by fear; especially as a goal of criminal law, the prevention

[36] VICK A.M., p. 95
[37] VICK A.M., p. 95

of criminal behavior by fear of punishment".[38] Deterrence has two key assumptions: that a prison sentence will prevent the convicted offender from committing further crime, and that the abstract fear of punishment will prevent *others* from committing similar crime. In essence, deterrence aims to reduce crime.[39] According to the final results of trials, it can be barely said that these trials had any deterrent effect, since the sentences for the grave breaches of international law were very mild.

- Does the attempt of international law, in particular international humanitarian law fail in protection of Hague and Geneva Conventions? What was the positive impact of Leipzig Trials in regard with Individual Criminal Responsibility? During First World War several international treaties prohibiting certain methods of Warfare on land and on sea had been signed and ratified by 37 nations. These treaties are Hague conventions that were ratified by Germans too in 1909. The violation of this conventions doesn't directly means commission of crime, that is only exist when three requirements are met: a. prohibition forms part of international law;[40] b. the violation of this prohibition affects

[38]GARNER B. A., **Black's Law Dictionary**, 9th edition, West, St. Paul, 2009, p. 519,https://www.polskawalczaca.com/library/a.blackslaw4th.pdf
[39] ORMEROD D., **Smith and Hogan's Criminal Law**, 13th edition, Oxford University Press, Oxford, 2011, p. 39.
[40] CASSESE A., **International Criminal Law**, Oxford University Press, New York, 2008, p. 11

certain universal values;[41] c. Violation considers individual criminal responsibility and is punishable regardless of its incorporation into domestic law.[42] The Hague conventions contain prohibitions that protect universal values, however the issue of individual criminal responsibility is questionable. The Hague Convention includes State responsibility to pay compensation, but it also doesn't exclude the individual criminal responsibility.

The Leipzig trials were at least an attempt in the history of international criminal law to carry out the justice. Prohibition of International Humanitarian Law did not yet provide individual criminal responsibility. But this experience indirectly lead to 1929 and 1949 Geneva conventions, first international ad hoc tribunals after Second World War.

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[41] CASSESE A., p. 11,
[42] ICTY, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-I-T (Tadić case), 2 October 1995, para. 94. http://www.legal-tools.org/doc/866e17/

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