

Crimes against humanity seen under the view of the Rome Statute

PhD (C.) Egesta Ahmetaj
Prime Minister's Office, Albania

Abstract

Crimes against humanity appear as one of the most serious forms of human rights violations. Since these acts who consists this crime figure have appeared and continue to appear today, States have seen the need to take concrete steps to punish this crime figure and their perpetrators.

Crimes against humanity constitute one of the greatest challenges of the XX and XXI centuries. Since World War I until the Former Yugoslavia war, this offense has undergone many new approaches, but its foundation has been the same. This criminal offense is punishable in almost all international legislation. This shows the importance of the non-permissibility for the occurrence of such acts.

Many conventions, statutes, protocols have been undertaken for its prevention; we can mention here the Statutes of the International Criminal Tribunals, the Rome Statute, the Geneva Convention, etc. Such efforts have been undertaken by Albania in ratifying these acts and by making them mandatory part of the legal norms. Albania has also made progress by introducing crimes against humanity in the Criminal Code since 1995. It should be stated that Albania recognizes and has implemented into its legislation all the principles outlined in the Rome Statute and other international acts that would prevent and punish the crime.

Keywords: crimes against humanity, the Rome Statute, civilian population.

Introduction

We find the initial strands of concrete and serious measures since the First World War. Then the efforts to criminalize and punish this offense are intensified both in the domestic and international jurisdictions. Today crimes against humanity are part of the category of international crimes and are foreseen in the category of criminal offenses that are punishable by state legislation as well as by international acts. Among the most important international acts giving the notion of this crime is the Rome Statute, which also makes it, part of the jurisdiction of the International Criminal Court. However, in order to punish this offense, according to the degree of danger, the states must be concise as to the notion that they give to this crime in the domestic law, as well as to the will to punish or to cooperate and to submit it to international jurisdictions when they themselves are unable to conduct an independent investigation and trial. To achieve this goal, states have used a variety of forms. They have ratified the main international act, the Rome Statute, which gives the notion and at the same time the jurisdiction to investigate and judge when states are unwilling to punish perpetrators or are unable. Some forms or ways of implementing this statute have also been applied.

Legal analysis of crimes against humanity according to the Statute of Rome

The Rome Statute constitutes the legal source in force for international crimes. It was adopted on 17 July 1998 and ratified on 1 July 2002, after the condition for ratifying the statute from 60 states was met. This statute does not define the definition of crimes against humanity, but it gives all the acts and omissions that constitute crimes against humanity which are found in Article 7.

By analyzing the article we understand that the legislator has set some conditions to be met before the criminal offense is considered a crime against humanity. These are presented in the first and second paragraphs of the article and are:

- a) The existence of the attack and of a state or organizational policy;
- b) The attack should be wide or systematic;
- c) it should be directed against the civilian population;
- d) the relation between the perpetrator's conduct and the attack;
- e) also should exist the perpetrator's knowledge of the purpose of the offense.

Criminal acts that constitute crimes against humanity

Murder (Article 7/1/a of the ICC Statute) Article 7/2/a of the Statute of the ICC lists murder as the first basic act without giving more concrete elements in paragraph 2 of Article 7. In addition to the context element, killing requires the perpetrator to kill one or more persons. The lack of a specific definition of the elements of the killing necessitates the collection of various other sources under Article 21 of the Statute. Following the hierarchy envisaged by this norm, murder killing has existed in LNP instruments as a crime against humanity since the Nuremberg Charter, and as a common crime in the world's leading legal systems. In the case of Ad Hoc Courts that have analyzed various cases, the assassination was classified according to *Actus Reus/mens rea*, which is based on the common law legal system as a 'universal and mandatory right in the most developed law systems.

Indeed, the unlawful killing of someone is known as a fundamental act of all essential crimes (with the exception of a particular case of aggression crime) or as "murder (i) of group member/s (genocide)¹, 'murder' (crimes against humanity), or 'premeditated murder' / 'violence against life' (war crimes).

Extermination (Article 7/1/b of the ICC Statute) Article 7/2/b of the ICC Statute establishes "extermination" as "deliberate causation of severe life conditions calculated to bring about the destruction of a part of the population", for example, with deprivation of access to food and medicines. Using the Latin term "*inter alia*" makes it clear that it only defines living conditions (Schabas, 2010). Crime essentially consists in the establishment of deadly living conditions that reach in (massive) spread of murder, that target groups of people.² While extinction generally involves a large number of victims, where it is not necessary for a particular part of this target group to be eliminated.³ Relying on International Criminal Law, the population should be

¹ Article 2 / a of the Convention for the Prevention and Punishment of Genocide.

² Prosecutor against Stasic, Case no. IT-97-24-A, para. 259.

³ Prosecutor v. Krstić, Case no. IT-98-33, Para. 501-3.

targeted to be eliminated. Selective killings are enough to kill some members of the group, while others are separated.

Slavery (Article 7/1 / c of the ICC Statute). The main element of the definition of “slavery” is considered to be “the right of possession” exercised by one person over another (Article 7/2/c of the ICC). The constituent parts of the enslavement include: control of one’s movement, control of the physical environment, psychological control, measures taken to prevent or impede escape, power, threat of use of force or coercion, duration, the assertion of exclusivity, submission for inhuman treatment and abusive, sexuality control, forced labor, commercial sale, or inheritance of a person or forced labor or other services to a person.⁴ It is considered that the lack of consent by the victims is not an element of crime, since enslavement derives from alleged property rights. *Mens rea* is required, when consisting of intentional power exercises attached to the right of possession.

Deportation or forcible transfer of population (Article 7/1/d of ICC Statute)

Historically, the expulsion of (parts of) populations is by no means a new phenomenon where, in fact, this was an essential part of colonial policies of the old world (Hankel, 1995). Article 7/2/d of the ICC Statute establishes the “deportation” or “forced transfer of the population” as the ‘forcible transfer of persons’ by deportation or other austerity acts from the area in which they are legally present, without the causes allowed under international law”. (Heller & Simpson, 2013). First, the transfer of persons across borders is classical of “deportation”, while within a country is called a “forcible transfer”, where they are included in the definition of offense. Use of the term “transfer” confirms that population movements within the borders of a country are involved in attacks (La Haye, 2008). Secondly, “forcible transfer” is not criminal if the persons in question do not have a legitimate residence in the first place, or transfer (displacement) is justified under international law. The term is widely understood, including physical force *sensu stricto* “taking advantage of a tightening environment.” If these minimal guarantees are not in line with a displacement under legitimate principles can be turned into a criminal offense and may even constitute a particular crime against humanity, for example, an inhumane act.⁵

Imprisonment or other deprivations of Liberty (Article 7/1/e of the ICC Statute)

Article 7/1/e penalizes “imprisonment or other serious deprivations of physical liberty, contrary to the fundamental rules of international law”. From the formulation of the provision it is clear that only freedom of movement is covered. The term “force” is not limited to physical force, but may include the threat of force or coercion. *Ad hoc* tribunals have dealt with the deprivation of liberty as a crime against humanity in only two decisions: Kordic and Çerkez. The crime against humanity by imprisonment or other serious deprivations of liberty differs from war crimes of unlawful isolation

⁴ Prosecutor v. Kunarac Case no. IT-96-23-T & IT-96-23 / 1-T, para 543.

⁵ Krstic, Case no. IT-98-33-T, para. 532.

only in relation to the context of the element.⁶ Any form of arbitrary deprivation of liberty may constitute imprisonment as long as other crime requirements are met. Arbitrariness presupposes that the deprivation of liberty is imposed irrespectively of the internationally recognized rule of regular law process. Provisions shall be respected as a minimum with respect to persons deprived of their liberty for reasons connected with armed conflict if they are interned or detained.

Torture under Article 7/1/ and 7/2/e/f of the ICC Statute. The prohibition of torture in international law - is defined as 'intentional infliction of physical or mental pain or suffering on a person under guardianship or under the control of the accused. This definition differs from torture as an individual offense provided for in Article 1/1 of the Convention against Torture (UNCAT), whereby no one should be subject to arbitrary arrest or detention. No one shall be deprived of his liberty, except for legitimate reasons and in accordance with the procedures established by law. With regard to procedural safeguards, paragraph 4 states: "Whoever is deprived of his or her liberty by means of arrest or detention shall have the right to take proceedings before a court so that the court may decide without delay on the lawfulness of his detention and ordering his release, if the detention is not lawful. Within the purpose of the request, a note on the Elements of Crimes explicitly states that "no specific purpose should be proved." Conversely, the jurisprudence of the ad hoc courts has always applied Article 1/1 of the Convention against Torture and has in essence approved the purpose. In short, torture under Article 7/1/f of the ICC Statute requires causing physical or mental pain or suffering must meet a minimum level of severity. The victim must be under the control of the perpetrator, who must be in a situation where no rescue exists. The perpetrator shall not follow a certain order. If pain or suffering is a result of a legal sanction it does not constitute a torture in the legal sense.⁷

Sexual Crimes (Article 7/1/j of the ICC Statute. From the above analysis of international statutes after the Second World War we note that the issue of sexual violence was almost non-existent in the post-World War II trials and was labeled "forgotten by international law crimes.

Perhaps the most important factor to be considered when talking about sex offenses is cultural conditionality of criminal prohibition. According to the Statute of the ICC, unlike the Statute of ad hoc tribunals, it is included to be punished by two forms of sexual violence as two crimes against humanity (Article 7/1/g) and as war crimes (Article 8/2/b/e) (Malley-Morrison, Mercurio & Teose, 2004). Criminalization of sexual offenses in some other crimes against humanity (also war crimes) has been extensively evaluated in implicit way, in particular those referring to acts against bodily integrity and the right to reproduction. Despite various elements in the context, such as crimes against humanity and war crimes, are offenses defined as identical. Article 7/3 of the ICC Statute stipulates that: ... The term "gender" refers to two sexes male and female, within the context of society". A gender neutral application for international sexual crimes can be explained by the fact that women, children, and men are equally

⁶ Kordic and Čerkez, Case no. IT-95-14 / 2-T, para 301.

⁷ Kvočka et al., Case no. IT-98-30 / 1-T, para. 149.

victims of sexual violence in conflict according to UN observations. Sexual crimes may appear in the following forms:

- Rape;
- Sexual slavery;
- Forced Prostitution;
- Forced pregnancy;
- Forced sterilization;
- Any other form of sexual violence with comparable weight.⁸

Persecution (Article 7/1/h of the ICC Statute) Persecution is not a single offense. It constitutes a fundamental act - envisaged in Article 7/1/h in the Statute of the ICC, which is 'related to any referred act or to any offense within the jurisdiction of the Court'. This requirement is not explicitly followed by the formulation of the relevant ad hoc tribunal provisions. (Eg., Article 5/h of the Statute of the Hague Tribunal) Jurisprudence has long recognized it (persecution) as a "serious crime" and constitutes a serious violation of human rights. The crime of persecution can only be carried out through concrete (basic) acts or through inaction involving people who severely violate human rights. Article 7/1/h of the ICC Statute in other aspects, is clearer than the Statutes of the ad hoc Tribunals. First, the (discriminatory) grounds of persecution go beyond 'politics, race and religion' (Article 5/h of the Hague Tribunal Statute) 'national, ethnic, and cultural. . . , Gender as defined in paragraph 3, or other grounds recognized as inadmissible under international law. "Second, the subject of persecution is defined as "any identifiable group or collective." Finally, persecution is defined as 'intentional deprivation and serious violation of human rights in violation of international law because of the identity of the group or collectivity" (Article 7/2/g of the ICC Statute).

Forced disappearance of persons (Article 7/1/i The Statute of the ICC)

Article 7/2/i of the Statute of the ICC provides for the first time a definition of the offense of forced disappearance of persons which is included in the minimum standards of legal security. Thus, this behavior is characterized by 'the arrest, detention or abduction of persons with or without the authorization, support or acceptance of a State or a political organization. It is also associated with later refusal to accept this deprivation of liberty or to provide information on the fate or whereabouts of persons, in order to remove them from the protection of the law for a prolonged period of time.' Unfortunately, the forced disappearance of persons, is used by totalitarian regimes to get rid of dissident or enemy forces.⁹

Apartheid Crime (Article 7/1 of the ICC Statute) Apartheid means '*segregation*' in the African language and stands for a racial segregation system practiced in South Africa since 1948 to the African National Congress (ANC) in 1994. The practice declared a crime against humanity and drafted a series of international instruments, starting with the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity and continuing with the 1973 UN Apartheid Convention. This Article of the Statute defines, actus reus of apartheid crime as an

⁸ The elements of crime Article 7/1 / g-4 of the Rome Statute.

⁹ Hitler's 'Night and Fog Decree' of 7 December 1941, 195-7.

institutionalized regime of systematic oppression and dominance by a racial group over any other racial group or groups. Thus, the inhumane acts committed must or correspond to those penalized in Article 7/1/a - (i) and (k) or to be 'similar' to those acts. Of course, there is a problem of legal certainty that increases for the definition of inhumane acts outside the ICC Statute. Inhumane acts must occur within the framework of an institutionalized system of racist oppression, namely a system where racial oppression and discrimination are institutionalized in particular by a special legislation, but also by a de facto policy (Bassiouni, 2011). Under subjective conditions, acts must be carried out 'in order to preserve' the racist regime. Just as in the case of forced disappearance and persecution, the specific purpose is required, except for the general purpose (Meseke, 2004).

Other inhumane acts (Article 7/1/k of the ICC Statute)

'Other inhumane acts' is the captured, remaining or unresolved category of the offenses of crimes against humanity. However, only the ad hoc statutes of the courts refer in very unspecified way to 'other inhumane acts' (Article 5/i of the ICTY and Article 3 dealing with problems in legal matters. The current problem of legal certainty has been admitted to judicial practice where the Statute of Rome defines this act in a more precise manner. According to Article 7/1/k of the ICC Statute, other inhumane acts are 'similar acts', having intentional character to inflict great suffering, injuries serious harm to the body or mental injury or injury to the physical health of the victims." Therefore, the perpetrator should cause "serious suffering or serious bodily harm to the body or mental or physical health" of the victim and the specific act must be of a similar character to any other act referred to in Article 7/1 of the ICC Statute. "Character" refers to "the nature and gravity of the offense." Thus, it is clear that this statement was made in order to limit the provision to align it with the specific basic acts of crimes against humanity listed in the first paragraph and uses the criterion of nature and gravity as a distinctive element.

3. Ways of implementing the Statute of Rome by domestic legislation

The Statute of Rome, as stated above, constitutes the legal act in force for international crimes. Unlike previous statutes, the statute deals more widely with international crimes, criminal elements and criminal principles. By the very importance of this statute was ratified by a large number of states. From the above analysis, it is also concluded that after ratifying the statute, the states have aligned their legislation with the articles of the statute. In the implementation of the statute, many states have taken legal measures that facilitate the adoption of the statute in their legislation. As a result, some states have adopted a new legislation, some have only changed legal points that were in violation of the statute's principles (Cryer & Bekoy, 2007). This is expressed in Article 1 of the Statute, where the jurisdiction of the court will have complementary role in domestic criminal jurisdiction, and will not replace them. However, the Rome Statute, unlike the other statutes, does not oblige the states that at the moment of implementation, the figure of the offense should be the same as that presented in the statute. However, in cases where States Parties fail to condemn the

accused, to find evidence, to call witnesses or to continue the trial, the ICC declares the inability to sentence or prosecute and resumes the investigation or continues where it is when it considers it.¹⁰ The Rome Statute acknowledges that states have the primary jurisdiction and obligation to detect, investigate, prosecute and judge more serious international crimes, as per international law in force and under the Rome Statute. The principle of complementarity can be defined as the subsidiary principle intended to confer jurisdiction on an international aid body, in the present case, the ICC, when the national body does not exercise its primary jurisdiction. Within the context of universal jurisdiction, the principle of complementarity in international criminal law requires national and international criminal justice systems to function in addition to preventing international law crimes: when the first does not do so, the latter interferes and ensures that the perpetrators do not remain unpunished. The principle of complementarity is based on a compromise between respect for the principle of state sovereignty and respect for the principle of universal jurisdiction, in other words, acceptance by States Parties that individuals who have committed international crimes may be punished with the establishment and recognition of the ICC. The principle of complementarity is the balance between states and the Court. Second, the principle of complementarity in the ICC Statute is not only a general principle as stated in the Preamble and in Article 1 but also includes concrete enforcement tools because the statute sets out the conditions regarding the exercise of jurisdiction. Statute leaves space to the court for possible interpretations and can be considered as an arbitrator.

Implementation Forms

States, as mentioned above, have the right to the form of implementation of the statute. According to Criminalist Broomhall in his work "The International Criminal Court; Forms of implementation by the states, 1999" states that implementation forms are full implementation, full non-implementation and application of domestic legislation, mixed implementation and combined implementation (Bromhall, 2009).

Legal analysis of crimes against humanity under Albanian legislation with the Rome Statute

Crimes against humanity under the Criminal Code of the Republic of Albania

Humanity protection is the main task of any international organization, but also of state. The Albanian state, which and in its Constitution in Article 18 has foreseen the prohibition of all forms of discrimination. We also mention the fact that Albania adheres to all international conventions and statutes for combating and preventing the phenomenon such as the Rome Statute, the Geneva Convention and the Additional Protocols. Below will be clarified the figure of the offense and the changes it has undergone over the years. Crimes against humanity were initially foreseen as a criminal offense in Article 74 of the Criminal Code 1995. Specifically:

Assassination, extermination, slavery, internal exile and deportation as well as any other

¹⁰ Article 17/3 of the Statute of Rome.

torture or other inhumane violence committed for political, ideological, racial, ethnic and religious reasons shall be punishable not less than fifteen years or life imprisonment or death. Even after signing the Rome Statute, the legislator decided that the work had to be fully formulated according to the French model and that of the Nuremberg Tribunal (Elezi, 2015). For this reason, Law No. 8733, dated 24.01.2001 "On some additions to the Criminal Code", was approved, because it was necessary to give the definition of the offense, which ultimately changed with law no.144 of 02.05.2013. Specifically: "Assassination, forcible disappearance, extermination, slavery, exile and deportation, as well as any other torture or other inhumane violence committed under a deliberate plan or systematically against a group of civilian population, for political, ideological, racial, ethnic and religious motives are sentenced not less than fifteen years or life imprisonment."

This definition, although corresponding to a certain extent in Article 7 of the Rome Statute, is quite limited in various respects. It is more detailed than the relevant provisions in the Statute of Nuremberg and the Tokyo Charter and the Statute of TNPR and the TNVJ. "Although the definition in the Rome Statute is more detailed than the previous definitions, it generally seems to reflect most of the positive developments identified in the recent tribunals.

Comparative aspect of Albanian legislation with the Rome Statute

After analyzing the elements and criminal acts of Article 7 of the Rome Statute and Article 74 of the Criminal Code of the Republic of Albania, we assume that although these two articles are not similar, from the legal analysis we find many similarities. Regarding the sanctioning of Albanian legislation on crimes against humanity, we see that this act is conditioned by the existence of a deliberate concrete plan, which is not explicitly found in Article 7 of the Rome Statute. The statute deals more widely with all acts that constitute crimes against humanity. The only novelty of the Albanian Penal Code lies in Article 74/a, where the criminal offense of computer distribution of pro-genocide and crimes against humanity is not stated in the statute. In the statute we find defined the acts such as the attack directed against the civilian population, extermination, torture, etc., which is missing in Article 74. But by analyzing the second paragraph of Article 74 which reads "as well as any kind of torture or other inhuman violence" we can say that to complete the lack of other criminal acts, we will refer to the statute. This also comes from the legal power that the Rome Statute has over domestic legal norms. Under Article 122/2 of the Constitution, international agreements prevail over domestic laws that disagree with it. With regard to the criminal elements, we will analyze the five main pillars.

a) The existence of the attack and of a state or organizational policy

Article 74 is conditioned by the existence of a deliberate concrete plan. While in the statute it is conditioned by the existence of the attack and a state or organizational policy. And though the mode of expression is different, the essence is the same. After analyzing the element of the assault and state or organizational policy in the statute, we came to the conclusion that the "policy to commit such an attack" requires the state or organization to act actively, by instigating or encouraging such an attack against a civilian population. Random acts of individuals do not constitute crimes against humanity, but some basic state organizations or organizational bodies that

run, promote or encourage crimes should exist in order for them to be considered crimes against humanity. So, in conclusion, the existence of a deliberate concrete plan must necessarily exist in state or organizational policy.

b) The attack should be widespread or systematic

Article 7 stipulates that the attack should be widespread or systematic. While Article 74 is conditioned only by systematic attack. Under Article 74 of the Code and 7 of the Statute, the attack should be widespread or systematic, but should not include both.¹¹ According to the established jurisprudence of the TNVJ, “systematic” refers to the organized nature of acts of violence and the impossibility of their causal occurrence. This does not mean that the accused himself must have acted in a widespread or systematic manner; only the attack, and not the individual acts of the accused, should be widespread or systematic.¹² While ‘widespread’ refers to the nature of the large scale of attack and the number of targeted persons.

c) The attack against the civilian population

Article 74 is conditioned on the part that the attack is directed against the civilian population for political, ideological, racial, ethnic and religious motives, while the statute has left a general interpretation of the civilian population. This condition of Article 74 is in conformity with Article 6 of the Statute where it speaks about Genocide.

d) The link between the conduct of the perpetrator and the attack

And although this is not explicitly stated in Article 74, according to the analysis of the term “*according to a deliberate concrete plan*”, this element can be found in Article 74 if it were to be interpreted. The Hague Tribunal’s Appeals Chamber in Tadic said that “to convict an accused of crimes against humanity, it must be proved that the crimes were related to the attack on a civilian population (which occurred during an armed conflict) and that the accused knew that his crimes were interrelated.” In other words, “the actions of the accused should constitute part of a plan of widespread or systematic crimes directed against the civilian population, and that the accused must have known that his actions fit in such a plan”. So, in conclusion, this element is common in both articles.

e) Recognition of the perpetrator for the purpose of the offense

This element is clearly stated in Article 7/1 of the Statute, which states “*with knowledge for the attack*”. While in Article 74 it derives from the interpretation of paragraph “under a deliberate concrete plan”. As stated above, the perpetrator should have known that behavior was part of or intended to be part of a widespread or systematic attack against a civilian population. The elements of ICC crimes further clarify that the requirement to recognize a widespread or systematic attack against a civilian population should not be interpreted as it is required evidence that the perpetrator has knowledge of all the characteristics of the attack or the exact details of the plan or policy of the state or organization. So this element is found in both articles.

¹¹ Prosecution v. Tadic IT-94-1-T, para. 648.

¹² Prosecutor v. Blaškić, TNVJ - Case No. IT-95-14-A, para. 101.

From the analysis of the above statutes, it was concluded that Article 74 is similar to Article 6 of the Statute of Nuremberg, and therefore is more limited to criminal acts than the Statute. While in the criminal elements there is a great similarity to Article 7 of the Statute even not expressly. From the analysis of the principles of the statute, it is concluded that all international legal principles are also sanctioned in Chapter 1 of the Criminal Code of the Republic of Albania. In addition to the age as a condition for exemption from criminal liability, where in Albania is 16 years old for crimes, while in the statute is 18 years old. However, the Statute constitutes an international agreement and comes after the Constitution in the hierarchy of legal norms. This means that even if national legislation does not include any principle, it will be completed or referred to in the statute.

Implementation by other countries

French legislation has approximated the offense of Crimes against Humanity, with the Rome Statute. It is clearly stated that the elements that are needed are the same as those in the statute. It is also important to mention the fact that the French legislature does not recognize the universal jurisdiction for acts that constitute crimes against humanity. The model of implementation that France has undertaken is that of mixed implementation, as it has been fully implemented as a criminal offense, and the component elements of the offense have been accepted under its legislation. From the analysis of the above articles it was concluded that Article 74 has similarities with Article 212-1, in all criminal elements. Also unlike the French legislation that has not accepted the universal jurisdiction of the ICC, Albania has accepted it, even mentioned it in the Criminal Code in Article 7/a. Another change we see are the sentences, France has issued the maximum punishment (life imprisonment), while Albania has imposed a sentence depending on the conviction of the court from 15 years to life imprisonment.

The German legislature, unlike the other legislators, for international crimes, has drafted a special code. The Code "On Crimes against International Law". The way of implementation by German legislation is the form of full implementation referring to the statute. The criminal acts envisaged for crimes against humanity in German legislation are more in line with the ICC Statute than acts that constitute crimes against humanity under Article 74 of the Albanian Law. The main emphasis is on convictions (sentences), the German legislator has different convictions (sentences) in view of the consequences they have brought, and are relatively moderate than those provided for in Article 74 of the Albanian Criminal Code. It is common ground that both countries recognize the jurisdiction of the ICC in their territory.

Crimes against humanity are not codified in Italy. Most of the crimes contained in Article 7 of the Rome Statute are partially covered by domestic criminal provisions. The form of implementation by this state is the complete non-implementation and application of domestic legislation. The criminal policy pursued both by Italy and Albania is the same. None of the two states has fully sanctioned the acts that constitute crimes against humanity. And that punishment in Italian legislation is covered by domestic legislation.

The Republic of Kosovo has not ratified the Statute, it has completely codified the offense of crimes against humanity under the Rome Statute instead. So we are talking about a copied pre-implementation.

The Republic of Poland accepts the jurisdiction of the ICC and states that in cases of detention, investigation, trial and conviction of an individual within the Polish territory, a permit shall be obtained from the Ministry of Justice, which after verifying the circumstances may accept the surrender or not of the person. With regard to crimes against humanity, the Polish legislator has united the acts against peace, humanity and the acts of War into a common article. The Albanian criminal code does not express the purpose of the destruction in part or in full and as an additional element has the intended plan or the execution of the acts in a systematic way. Acts that constitute crimes against humanity under the Albanian legislation are few in number. The form of implementation by both countries is the same, the non-implementation and application of domestic legislation.

Conclusions

So in a more concise way we can say that the Nuremberg Tribunal is the first act dealing with crimes against humanity. The Rome Statute is the most important act in power to punish international perpetrators while the ICC has jurisdiction over genocide, war crimes, crimes against humanity and aggression. The ICC decisions are based on national court decisions.

As for the Albanian legislature, the offense of crimes against humanity has been fully formulated according to the French model and that of the Nuremberg Tribunal. Rome Statute for ICC, ratified by law no. 8994, of December 23, 2002, is part of the Albanian legal system and has superiority over domestic laws that are not in accordance with it. The form of implementation is the complete non-implementation and application of domestic legislation. In the criminal elements there is a great similarity to Article 7 of the Statute even why not expressly. From the analysis of statute principles it is concluded that all international legal principles are sanctioned also in Chapter I of the Criminal Code of the Republic of Albania. The only novelty of the Albanian Penal Code, lies in Article 74/a, where the criminal offense of computer distribution of pro-genocide and crimes against humanity is not stated in the statute.

The criminal offense of Crime against Humanity addresses the Statute of Rome, analyzing the following suggestions:

- It is recommended that the objective aspect of crimes against humanity be aligned with Article 7 of the Rome Statute, avoiding any kind of torture or other inhumane violence in Article 74 of the Criminal Code, as well as providing full definitions of criminal acts.
- Determine the characteristics of the attack according to a concrete plan envisioned in the statute, because random acts of individuals do not constitute crimes against humanity, but there must be some basic state or organizational bodies that run, promote or encourage crimes, in such a way that crimes constitute crimes against humanity.
- To remove characteristics according to a concrete plan envisioned under our law,

because if the intended plan is not proven, the perpetrators condemn will be avoided, or the offense would be qualified as genocide.

- Determine the characteristics of the widespread assault by the statute, because “widespread” refers to the nature of the large attack rate and the number of targeted persons. And it cannot be considered a crime against humanity when the attack is accidentally directed to a person.
- To remove motives, because according to Albania’s legislation, the motives for condemnation must be proved, while the punishment of perpetrators can be avoided.

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