

**Yagubova Seljan Murtuza,**

2<sup>nd</sup> year graduate student, “Transnational Criminal Law” specialty, Chair of Criminal Law and Criminology, Law Faculty, Baku State University

E-mail: yagubovaselcan2001@gmail.com

UOT 341.4

DOI: 10.30546/2218-9130.02.352.2024.35

---

# FORMER YUGOSLAVIA AND PUNISHMENTS PROVIDED FOR IN THE STATUTES OF THE INTERNATIONAL CRIMINAL TRIBUNALS OF RWANDA AND THE GROUNDS FOR THEIR APPLICATION

---

*Açar sözlər:* *Yugoslaviya Beynəlxalq Cinayət Tribunalı, Ruanda Beynəlxalq Cinayət Tribunalı, müharibə cinayətləri, soyqırımı, cəzalar.*

*Ключевые слова:* *Международные уголовные трибуналы бывшей Югославии, Международные уголовные трибуналы Руанды, система наказания, применение наказаний.*

*Keywords:* *International Criminal Tribunal for Yugoslavia, International Criminal Tribunal for Rwanda, war crimes, genocide, punishments.*

**A**d hoc tribunals are ad hoc courts created specifically by the United Nations or other international organizations to investigate and try serious international crimes, war crimes, genocide, and crimes against humanity. These tribunals are organized *ad hoc*, that is, they are created for a specific event or time and then cease to operate.

*Ad hoc* international criminal courts is typically serious international crimes perpetrators The-

se courts were established to deal with serious violations of international law, as well as serious crimes such as war crimes, crimes against humanity, and genocide. *Ad hoc* international criminal courts include the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

In November 1994, the UN established the International Criminal Tribunal for Rwanda to try those accused of genocide in Rwanda. The International Criminal Tribunal for Rwanda was established by the United Nations Security Council in November 1994 to try the Rwandan genocide and other serious violations of international law committed in Rwanda or by Rwandan nationals in neighboring countries from January 1, 1994 to December 31 of the same year. It is an international court established by Resolution No. 955. 61 people were convicted by the court, and 14 people were acquitted.

For the first time in history, the international tribunal – ICTR issued judgments against peop-

le who are guilty of committing genocide. The ICTR also calls rape genocide was the first institution to recognize it as a means of creating [5, p.1].

The ICTR, officially as the International Criminal Tribunal for Genocide and other serious violations of international humanitarian law, was conducting criminal trials committed on the territory of Rwanda and by Rwandan citizens on January 1 and December 31, 1994.

Those accused of participation in the genocide were primarily tried in one of three types of court systems: the International Criminal Tribunal for Rwanda (ICTR), Rwandan national courts, or local Gacaca courts. Some suspects who escaped from Rwanda were tried in the countries where they were found [6, p. 1].

The ICTR was an international tribunal based in Arusha, Tanzania. The court had no power to impose the death penalty; could only determine the term of imprisonment. The ICTR statute defined war crimes broadly. Murder, torture, deportation and enslavement were followed, but the ICTR also states that genocide is defined as «the systematic expulsion of a group of people from their homes by restricting their daily diet and reducing basic medical services below the minimum requirement. In addition, the tribunal As in the Rwandan conflict, where the Hutu-dominated interim government orchestrated the mass rape of Tutsi women by HIV-infected men, it ruled that «rape and sexual violence constitute genocide ... provided that they destroy a particular group in whole or in part thus, the tribunal became one of the first international bodies to officially recognize sexual violence as a war crime [6, p.1].

The ICTR statute limited the tribunal's jurisdiction to Rwandan leaders, while low-level defendants were to be tried in local courts. The ICTR statute did not consider an individual's official position, including the position of head

of state, as a sufficient basis for evading or evading criminal responsibility. Military and civilian leaders who knew or should have known that their subordinates had committed war crimes were subject to prosecution under the doctrine of command or superior responsibility. Those who committed war crimes pursuant to government or military orders were not thereby exempted from criminal liability, although the existence of the orders could be used as a mitigating factor.

According to Article 5 of the Statute of the Tribunal, the International Tribunal for Rwanda has jurisdiction over natural persons in accordance with the provisions of this Statute [1, p. 48].

According to Article 6 of the Charter, the persons who planned, incited, ordered, committed or otherwise assisted the crime specified in Articles 2-4 of this Charter shall be liable for the crime specified in Articles 2-4 of the Charter. The official position of any accused person, whether it is the state, the head of government, or a responsible public official, does not exempt that person from criminal responsibility and does not mitigate the punishment. If any of the actions provided for in Articles 2-4 of this Regulation is committed by a subordinate, if the subordinate employee knows or has reason to know that he is about to commit such actions, and the senior manager did not take necessary and reasonable measures to prevent such actions or punish those who committed them, it does not exempt his manager from criminal liability. The fact that the accused acted on the orders of the government or a superior does not absolve him of criminal responsibility, but it may be considered a mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires [1, p. 48].

According to Article 7 of that Charter, the territorial jurisdiction of the International Tribunal for Rwanda extends to the territory of Rwanda, including its land surface and airspace, as well as

the territory of neighboring states, despite serious violations of international humanitarian law by Rwandan citizens. The temporary jurisdiction of the International Tribunal for Rwanda extends from January 1, 1994 to December 31, 1994 [1, p. 48].

According to Article 8 of the Charter, the International Tribunal for Rwanda and national courts have the same jurisdiction to prosecute persons who committed serious violations of international humanitarian law on the territory of Rwanda from January 1, 1994 to December 31, 1994, and Rwandan nationals for such violations committed on the territory of neighboring states. The International Tribunal for Rwanda has primacy over the national courts of all states. At any stage of the proceedings, the International Tribunal for Rwanda may formally request national courts to suspend their jurisdiction in accordance with this Statute and the rules of procedure and evidence of the International Tribunal for Rwanda [1, p. 48].

Article 9 of that statute is called «non bis in idem». «Non bis in idem» is a Latin legal principle that translates into English as «not twice for the same thing». It refers to the concept of double jeopardy, or the prohibition of being tried or punished twice for the same crime or the same conduct. The principle of non bis in idem is a key element of many legal systems around the world and is enshrined in various international human rights instruments. It is intended to protect against repeated prosecutions or punishments for an act, protected from prosecution through multiple trials for the same crime.

Pursuant to that Article, no person may be tried before a national court for acts constituting serious violations of international humanitarian law under this Statute for which he has already been tried by the International Tribunal for Rwanda [1, p. 49].

A person tried before a national court for acts that constitute a serious violation of international

humanitarian law may subsequently be tried by the International Tribunal for Rwanda only in the following cases:

- a) the act for which he was tried was characterized as a common crime;
- b) national judicial proceedings were not impartial or independent, designed to protect the accused from international criminal responsibility, or the case was not prosecuted seriously.

In considering the sentence to be imposed on a person convicted of an offense under this Statute, the International Tribunal for Rwanda shall take into account the extent to which any sentence imposed on the same person by a national court for the same act is excessive.

Article 23 of the Charter defines the system of punishments. According to that article, the punishment imposed by the Trial Chamber is limited to imprisonment. Both the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda had the power to impose prison terms after the two tribunals had convicted. This can range from several years to life imprisonment, depending on the seriousness of the crimes committed. ICTY sentences range from five to forty-six years in prison, while ICTR sentences range from twelve years to life imprisonment [7, p. 57]. When determining the term of imprisonment, the Trial Chambers should refer to the general practice of prison sentences in Rwandan courts. When determining the sentence, the Trial Chambers should take into account factors such as the gravity of the crime and individual circumstances. They may order the return of any property and income obtained by means to their legal owners [1, p. 62].

In Article 26 of the Charter, the norms related to the execution of sentences are reflected. According to that article, the prison sentence is served in Rwanda or in any of the states on the list of states that have notified the Security Council

that they are willing to receive convicted persons, as determined by the International Tribunal for Rwanda. Such detention is carried out under the supervision of the International Tribunal for Rwanda in accordance with the applicable legislation of the respective state [1, p. 63].

Under Article 27 of the Charter, the State concerned shall notify the International Tribunal for Rwanda if, under the applicable law of the State in which the prisoner is detained, he is entitled to a pardon or commutation of sentence. If the president of the International Tribunal for Rwanda makes such a decision based on the interests of justice and the general principles of law after consulting with the judges, amnesty or mitigation of punishment is possible [1, p. 63].

The International Criminal Tribunal for the former Yugoslavia (ICTY) was a United Nations court that tried war crimes committed during the conflicts in the Balkans in the 1990s. During her mandate spanning 1993-2017, she irreversibly changed the landscape of international humanitarian law, empowering victims to voice the horrors they witnessed and experienced, and proving that those most suspected of bearing responsibility for atrocities committed during armed conflicts should be brought to justice. they can be [3, p.1].

The International Criminal Tribunal for the former Yugoslavia was an ad hoc court located in The Hague, Netherlands, established by United Nations Security Council Resolution 827 to prosecute and prosecute war crimes committed during the Yugoslav Wars.

The ICTY was established on the basis of United Nations Security Council Resolution No. 827, adopted on May 25, 1993. Since 1991, the Tribunal has had jurisdiction over four groups of crimes committed on the territory of the former Yugoslavia: gross violations of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity.

The most severe sentence the tribunal could impose was life imprisonment. Various states have signed agreements with the United Nations for the purpose of implementing the penalty of deprivation of liberty [4, p. 1].

The court confirmed 8 indictments against 46 people and issued arrest warrants. The Bosnian Serb defendant Duško Tadić was the first to be tried at the tribunal. Between June 1995 and June 1996, 10 public charges against a total of 33 individuals were approved. Six of the newly accused persons were transferred to the detention center of the tribunal. In addition to Duško Tadić, by June 1996 the tribunal had ordered the arrest of Tihomir Blaškić, Dražen Erdemović, Zejnir Delalić, Zdravko Mucić, Esad Landžo and Hazim Delić. Erdemović was the first person to plead guilty before the tribunal. In 1995–1996, the ICTY accepted various cases involving several detainees, but they never reached the trial stage.

A total of 161 people were charged during the Tribunal's activity; the final indictments were issued in December 2004, and the last one was confirmed in the spring of 2005. Goran Hagić was captured on July 20, 2011 as the last person to evade criminal prosecution. The last verdict was issued on November 29, 2017, and the institution was officially closed on December 31, 2017.

According to Article 6 of the Statute, the International Tribunal for the Former Yugoslavia has jurisdiction over natural persons in accordance with the provisions of this Statute [2, p.6].

According to Article 7 of the Statute, whoever plans, incites, orders, commits or otherwise assists in the crime specified in Articles 2-5 of this Statute or is responsible for the crime specified in Articles 2-5 of this Statute. The official position of any accused person, whether it is the state or the head of the government or a responsible public official, does not exempt this person from criminal responsibility and does not reduce

the punishment. If the employee knows or has a reason to know that he is about to commit such actions, his supervisor does not take necessary and reasonable measures to prevent such actions or to punish those who commit them, he shall not be exempted from criminal liability. The fact that the accused acted on the instructions of the government or a superior does not absolve him of criminal responsibility, but may be considered a mitigation of punishment if the International Tribunal determines that justice so requires.

According to Article 7 of the Charter, the territorial jurisdiction of the International Tribunal extends to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporary jurisdiction of the International Tribunal extends to the period starting from January 1, 1991 [2, p.6].

According to Article 9 of the Charter, the International Tribunal and national courts have the same jurisdiction to prosecute persons for serious violations of international humanitarian law in the territory of the former Yugoslavia since January 1, 1991. The International Tribunal has priority over national courts. At any stage of the proceedings, the International Tribunal may formally request national courts to suspend the jurisdiction of the International Tribunal in accordance with this Statute and the Rules of Procedure and Evidence of the International Tribunal [2, p.7].

According to Article 10 of the Charter, no person can be tried before a national court for actions that constitute serious violations of international humanitarian law in accordance with this Statute, which are already tried by the International Tribunal [2, p. 7].

A person tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by an International Tribunal only if: (a) the act for

which he is tried is characterized as an ordinary crime; or (b) national judicial proceedings are not impartial or independent, designed to protect the accused from international criminal responsibility, or the case has not been prosecuted seriously.

In considering the sentence to be imposed on a person convicted of an offense under this Statute, the International Tribunal shall take into account the extent to which any sentence imposed on the same person by a national court for the same act is excessive.

The system of punishments is defined in Article 24 of the Charter. According to that article, the punishment imposed by the Trial Chamber is limited to imprisonment. When determining prison terms, the Trial Chambers must refer to the common practice of prison sentences in the courts of the former Yugoslavia. When determining the sentence, the Trial Chambers must take into account factors such as the gravity of the crime and the individual circumstances of the convict. may order the return of any property and income to their rightful owners [2, p.12].

According to Article 27 of the Charter, imprisonment is served in the state designated by the International Tribunal from the list of states that have notified the Security Council that they are ready to receive prisoners. Such detention is carried out under the supervision of the International Tribunal in accordance with the applicable legislation of the respective state. [2, p. 13]

If, in accordance with the applicable law of the State in which the prisoner is detained, he is entitled to amnesty or commutation of sentence, the State concerned shall inform the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, resolves the issue based on the interests of justice and general principles of law.

Both the ICTY and the ICTR were *ad hoc international criminal tribunals established by the*

*United Nations Security Council to bring justice to those accused of war crimes, crimes against humanity and genocide during these conflicts.* Both of them completed their mandates with the conclusion of the respective cases and trials.

*Ad hoc* tribunals operate within the framework of the legislation created for them and are based on the principles of international law. They have the authority to convict persons responsible for violations of international law, regardless of their rank and position.

These tribunals play an important role in ensuring justice for victims and communities affected

by crime. They contribute to the development and application of international criminal law and set precedents for holding accountable those responsible for gross human rights violations.

The main point is that certain punishments and their application depend on the rules and legal framework established by each ad hoc international criminal court. *These courts* operate on the basis of international law and were established to ensure that those responsible for the most serious violations of human rights and international humanitarian law are brought to justice.

#### References:

1. Statute Of The International Tribunal For Rwanda: [Electronic resource] / URL: [https://legal.un.org/avl/pdf/ha/ictr\\_EF.pdf](https://legal.un.org/avl/pdf/ha/ictr_EF.pdf)
2. Updated Statute Of The International Criminal Tribunal For The Former Yugoslavia: [Electronic resource] / URL: [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf)
3. [Electronic resource] / URL: <https://www.icty.org/>
4. Post-World War II developments by Mary Margaret Penrose: [Electronic resource] / URL: <https://www.britannica.com/topic/war-crime/Post-World-War-II-developments>
5. The ICTR in Brief.: [Electronic resource] / URL: <https://unictr.irmct.org/en/tribunal>
6. National recovery: [Electronic resource] / URL: <https://www.britannica.com/event/Rwanda-genocide-of-1994/National-recovery>
7. Punishment For Violations Of International Criminal Law: An Analysis Of Sentencing at the ICTY and ICTR: [Electronic resource] / URL: <https://mckinneylaw.iu.edu/iiclr/pdf/vol12p53.pdf>

**Yaqubova Selcan Murtuza qızı**

### **KEÇMİŞ YUQOSLAVİYA VƏ RUANDA BEYNƏLXALQ CİNAYƏT TRİBUNALLARININ NİZAMNAMƏLƏRİNDƏ NƏZƏRDƏ TUTULMUŞ CƏZALAR VƏ ONLARIN TƏTBİQ OLUNMA ƏSASLARI**

#### **XÜLASƏ**

Keçmiş Yuqoslaviya üzrə Beynəlxalq Cinayət Tribunalı (ICTY) və Ruanda üzrə Beynəlxalq Cinayət Tribunalının (ICTR) Birləşmiş Millətlər Təşkilatının Təhlükəsizlik Şurası tərəfindən keçmiş Yuqoslaviya və Ruandada münafişələr zamanı beynəlxalq humanitar hüququn ciddi şəkildə pozulmasına görə məsuliyyət daşıyan şəxsləri mühakimə etmək üçün yaradılmışdır.

ICTY 2017-ci ildə keçmiş Yuqoslaviyadakı münafişələr zamanı törədilən cinayətlərdə təqsirli bilinən şəxslərə həbs və ömürlük azadlıqdan məhrumetmə cəzalarının tətbiqi ilə bağlı hökmər çıxararaq öz işini yekunlaşdırıb.

ICTR Ruanda soyqırımına görə məsuliyyət daşıyanlara ömürlük həbs də daxil olmaqla bir çox başqa cəzalar verərək öz fəaliyyətini 2015-ci ildə tamamladı. Bu Tribunalın tətbiq etdiyi cəzalar bir çox milli cinayət hüquq sistemlərində olan cəzalara bənzəyir.

**Ягубова Сельджан Муртуза гызы**

**НАКАЗАНИЯ, ПРЕДУСМОТРЕННЫЕ В УСТАВАХ МЕЖДУНАРОДНЫХ УГОЛОВНЫХ  
ТРИБУНАЛОВ В БЫВШЕЙ ЮГОСЛАВИИ И РУАНДЕ, И ОСНОВАНИЯ ИХ ПРИМЕНЕНИЯ**

**РЕЗЮМЕ**

Международный уголовный трибунал по бывшей Югославии (МТБЮ) и Международный уголовный трибунал по Руанде (МУТР) были созданы Советом Безопасности ООН для преследования лиц, ответственных за серьезные нарушения международного гуманитарного права во время конфликтов в бывшей Югославии и Руанде.

В 2017 году МТБЮ завершил разбирательство, вынеся приговоры к тюремному заключению и пожизненному заключению за преступления, совершенные во время конфликтов в бывшей Югославии.

МУТР завершил свое разбирательство в 2015 году, вынеся множество других приговоров, включая пожизненное заключение, виновным в геноциде в Руанде. Наказания, налагаемые этим Трибуналом, аналогичны тем, которые применяются во многих национальных системах уголовного правосудия.

**Redaksiyaya daxilolma tarixi: 15.01.2024**

**Təkrar işlənməyə göndərilmə tarixi: 17.01.2024**

**Çapa qəbul olunma tarixi: 20.01.2024**