Journal of Liberty and International Affairs | Vol. 5, No. 3, 2020 | eISSN 1857-9760
Published online by the Institute for Research and European Studies at www.e-jlia.com



© 2019 The Author/s
This is an open access article distributed under the CC-BY 3.0 License.
Peer review method: Double-Blind
Date of acceptance: November 23, 2019
Date of publication: January 14, 2020
Review article
UDC 341.31:341.24
355.084.2

Scan the QR code:

RADISLAV KRSTIC`S CASE AS AN EXAMPLE OF COMMANDER`S LIABILITY

Katarzyna Zofia Czeszejko-Sochacka
University of Rzeszów, Poland
ORCID iD: https://orcid.org/0000-0001-7978-1687
kczeszejko[at]ur.edu.pl

Abstract: *The issue of the military order is a very complex one. When giving or executing an order, one should always take into account the necessity to make choices. The decisions taken may in the future imply criminal liability as a consequence of the order that is contrary to legal norms, or executing it. The purpose of the article is to present the problem of giving an order from the perspective of the crimes committed in the former Yugoslavia, with a detailed account of the R. Krstic's case. The author tried to answer the questions: What is the scope of the commander's liability? Is he liable only for the orders he has given? Does this liability extend to the behavior of his subordinates as well? In the presented article an analysis of selected court cases important from the point of view of the problem of giving an order was carried out. For this purpose, the regulations of International Military Tribunal at Nuremberg were analyzed. Subsequently, an analysis of selected court cases being investigated under the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia. In conclusion are indicated the regulations of International Criminal Tribunal for Rwanda and the regulations of the Rome Statute of the International Criminal Court.*

Keywords: *Radislav Krstic; military order; ICTR; ICTY; commander's liability*

EVOLUTION OF THE LIABILITY FOR ISSUANCE AND EXECUTION OF AN ORDER

The Hague Conventions were among the first formal statements of the laws of war and war crimes in the body of secular international law. The problem of a military order is a complex matter. This term has been given many definitions. The idea is first seen in IHL/Laws of war in the Hague Conventions of 1899 (Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899) and 1907 (Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907), which took the idea from US Army General Order 100. The Hague Conventions of 1899 and 1907 were the first multilateral treaties that addressed the conduct of warfare and were largely based on the Lieber Code, which was signed and issued by US President Abraham Lincoln to the Union Forces of the United States on 24 April 1863, during the American Civil War.

Ziewiński (1986) describes an order as an absolute and direct influence of one person on other person's will and is targeted at inducing a certain behavior of such a person. According to NATO Terms and Definitions Dictionary (2005), however, an order is a "will of a commander express to cause specific actions" (p. 90). Czerwiński (2015) on the other hand, emphasizes that an order is an instrument for the action of a specific social group, which is mutually subordinate and hierarchical.

In the past implementation of justice proceeded through criminal law was a domain of a given country (Żarna 2011). Over time this point of view started to change. Repeated efforts aimed at holding the culprits liable of the most serious crimes committed during different kinds of conflicts resulted in failure, and the criminals remained unpunished. The situation changed after the end of Second World War. The scale of committed crimes exceeded the wildest expectations and forced the international community to undertake decisive action.

The Rule of Absolute Obedience

The turning point was the establishment of the International Military Court at Nuremberg (IMT or Nuremberg Court) (Agreement for the prosecution and punishment of the major war criminals of the European Axis 1945), which drew the attention to the issue of individual liability for the committed crimes. For the first time in history, it was concluded that the liability shall be on the persons acting on behalf of a country. At that time the issue of military liability was immensely topical. Criminal activities in the context of a military order related mainly to the issue connected with violating the standards of military law, cultural goods or rules of warfare (Ziewiński 1986). Until the issuance of the Nuremberg ruling on the basis of international criminal law there was a lack of legislation which would unambiguously resolve the question of liability of the person executing an order. In the presented theories,

(cc) BY

however, an emphasis was always put on the liability of the commander. The major criminals of the Nazi regime have tried to use the institution of an order to justify the crimes that they have committed. Such tactic was dictated by a universally accepted theory of absolute obedience, also known as the theory of blind bayonets. This rule assumes the primacy of military service over any other goods, creating the assumption that an order given by the superior cannot contradict the law. A soldier is entirely subordinated to the military discipline. Ziewiński (1986) rightly highlights, that this rule "estranges (...) the army from the society in the name of the so-called 'higher purposes' which is supposed to be an abstract (...) the idea of iron discipline" (p. 78). Absolute subordination to the commander's orders does not allow the possibility of analysis of the validity or legality of the content of the issued order by a subordinate, to which it is addressed (Smolarek 2013). A consequence of applying this rule is the immunity of the order's recipient in regards to breach of legal standards which are a result of executing an order or presumption, that a superior cannot issue an order contradicting the law (Karska and Karski 2013; Smolarek 2013). The liability for the content of an order and the resulting outcomes, on the basis of this standard, is put on the person who issued such order. Consequently, the action of the order's recipient is regarded as in accordance with the law.

The Principle of Moderation

Over time and under the influence of 'Nuremberg events' completely new concept was laid down, which put on the order's recipient a necessity to analyze each and every order received for its compliance with the law. The starting point was a presumption, that a soldier is a thinking being, which means that he has not only the right but also the duty to analyze the content of an order from the point of view of its legality. This rule exempts the soldier from the obligation of subordination to an unlawful order. If the order's recipient decides to execute it, she/he will bear the full criminal liability for the consequences of its execution (Smolarek 2013). This rule may manifest itself in two forms: extreme and moderate. In accordance with the theory of unlimited liability (extreme), the order's recipient has the duty to follow only those orders which comply with the law and do not conflict with the law standards. It is important to note, however, that in its extreme form the rule has no use in the army and does not exist in such form anywhere in the world. A soldier cannot wonder every single time whether the issued order is in the line with law, as it distorts the essence of military duty. According to the moderate form of this rule, the general binding force of an unlawful order is important, with the exception that in some cases an order is not binding and its execution implies criminal liability of the order's performer (Ziewiński 1986).

Based on this concept, the border point of obedience to the orders is awareness of the person who performs the order of its legality or illegality.

(cc) BY

From the viewpoint of the problem of an order, it is important to take notice of the basic canons, which constitute the foundation of the international liability of private persons, which include:

1. The rule of individual liability for the crimes committed in international conflicts.
2. The liability of the commanders and superiors.
3. Special liability of the military commanders for the actions of their subordinates.

COMMANDER'S LIABILITY IN THE INTERNATIONAL MILITARY TRIBUNAL STATUTE

The issue of the commander's liability, in principle, does not arouse any doubts but can be considered from various points of view depending on the way the legislation of individual countries was formulated. This issue, therefore, considering from the perspective of an: instigator, indirect perpetrator or direct perpetrator (Cyprian and Sawicki 1948). The necessity for a stricter liability of a commander is underlined by the overriding nature of their duty and the requirement for undertaking conscious and thoughtful decisions. Thus the Nuremberg Court set new directions for commander's liability, which should be analyzed from two sides.

Firstly, the commander may be directly liable for issuing unlawful orders, and secondly, his liability may be of indirect nature, related to the behavior of the subordinates in the event of absence of proper control over their actions. Cyprian and Sawicki (1948) had already wondered whether "not giving by the superior proper orders, to the issuance of which on the basis of the international law provisions he was obliged, unless due to that war crimes were committed, constitutes by itself an international law offence?" (p. 362). As a consequence, they determined that the commander bears responsibility, if he did not issue such orders and for the omission of such duty should be punished by military courts (Cyprian and Sawicki 1948). The Article VI of the IMT Statute unambiguously stated: "Leaders, organizers, instigators and partners, taking part in laying out of or in the execution of a joint plan or plot aimed at committing of one (...) crime, shall be liable for all actions committed by anyone with regard to the execution of such plan" (Agreement for the prosecution and punishment of the major war criminals of the European Axis 1945). Such interpretation is in force till the present day. The canons of liability set out by the Nuremberg Court have penetrated into the internal systems of individual countries and are reflected in their internal legal orders, as well as in numerous international conventions.

(cc) BY

COMMANDER'S LIABILITY IN THE STATUTE OF INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

After the experiences of Second World War, it seemed as the international community is able to draw conclusions and deal with future conflicts in accordance with the rules of humanitarian law. The future has shown, however, that the world did not learn anything from this lesson. The end of 20th century abounded in bloody conflicts, in which newly arose the discussion related to the liability of the superiors.

Problematic aspects of an order have become extremely topical issue in relation to the cases judged by International Criminal Tribunal for the former Yugoslavia (ICTY). Creation of this institution was a consequence of tragic events, which in the late 1990s took place in the Balkans and lead to the break-up of the Socialist Federal Republic of Yugoslavia and to mass human rights violations in the region. The reasons for such situation were internal conflicts arising over the years, which were a result of an ethnic, religious and cultural mixture of different nationalities inhabiting the Balkans.[1] The multicultural experiment, which at first, during the rule of the charismatic leader Josip Broz Tito seemed successful, lead to the escalation of nationalistic movements and efforts of individual national groups to break out from the Republic to create their own country. According to various sources, this conflict took from 97 000 to 200 000 human lives (Trawczyńska 2008; Flőgel and Lauc n.d.; Meron 1999), and the Srebrenica massacre has become a symbol of these events (Southwick 2005). Nation (2003) claims that: "The root cause of the conflict was the destruction of the multinational Yugoslav federation as a result of the rise of an intolerant and exclusionary nationalism among its constituent nations" (p. 9).

Following Nuremberg Court's example, the ICTY statute (1993) included the provisions individualizing the criminal liability of the superiors. In accordance with the contents of Article 7 paragraph 1 of the statute "a person who plans, prepares, commissions, commits or instigates in any other way and helps in planning, preparing or committing a crime (…) bears individual liability for the crime". Paragraph 3 (ICTY statute 1993) on the other hand states, that the superior bears the criminal liability 'if he knew or should have known, that a subordinate intends to commit or has already committed such deed, and the superior did not undertake the necessary and justified means to prevent committing of such deed or to punish the culprit'. When examining following cases the Yugoslavian court specified the basis of the commander's liability or other superiors for issued orders. In the operative part of the judgment in the case Prosecutor v. Zejnil Delacic Zdravko Mucic (1996) ICTY stated that the general rule on the basis of the international criminal law provisions is the liability of military

[1] On the territory of the Socialist Federal Republic of Yugoslavia there were in fact six Nations which were: Muslims, Montenegrins (Orthodox religions), Macedonians, Serbs, Croats and Slovenes (Catholics). Vojvodina was inhabited by a Hungarian minority.

(cc) BY

commanders for the illegal actions of their subordinates. Based on this case, the ICTY emphasized that the commander bears the liability for the actions of his subordinates, so not only for the orders given out, but also for not taking measures to secure, or prevent unlawful behavior of his subordinates. This issue was also addressed in the case of Kunuraca (Prosecutor v. Kunurac *et al*. 1996), in which it was decided, that in the first place it should be evaluated, whether the commander had objective ability to take action that is whether he had the ability to prevent the crime and to punish his subordinates (Wierczyńska 2010). In the case of Delalicia (Prosecutor v. Mucic *et al*. 1996), however, presumptions were set out which allowed charging the commander for the deeds committed by his subordinates, including:

1. Existence of the dependence relation between the superior and the subordinate. ICTY drew attention to the lack of necessity of the existence of a formalized relation between them, emphasising the significance of superior's real control over the subordinate. In the already mentioned case of Zejnil Delacic Zdravko Mucic (Prosecutor v. Mucic *et al*. 1996), ICTY highlighted that the Article 7 p. 2 extends the scope of liability beyond the military leaders, covering the political leaders and other civil supervisors as well.
2. The supervisor's knowledge or his ability to predict, or having the awareness that the crime has been or will be committed.
3. Lack of supervisor's reaction to the actions of subordinates.

RADISLAV KRSTIC CASE

The issue of individual liability of the commander received a lot of attention during the trial of Radislav Krstic (Prosecutor v. Krstic 1998) – deputy commander of the Bosnian-Serb Army, who commanded the so-called 'Drin's Unit' (Prosecutor v. Krstic 1998; Szpak 2012) accused, among others, of the attack on Srebrenica. His case is especially interesting, as he was the first war criminal, who was charged with genocide by the ICTY. R. Krstic's case (Southwick 2005; International Criminal Tribunal for the Former Yugoslavia 2004) deserves particular attention also for the reason that the issues of the commander's liability, who was not physically present at the place of the crime committed by his subordinates, were considered. Krstic's line of defense was simple. The general did not deny that the Armies of the Republic of Serbia were the culprits of the war crimes, nevertheless he did not plead, that they acted on his command. During the trial, however, Krstic was accused of playing a leading role in the operation code-named 'Krivaja 95' (Command of the Drina Corpus Military Secret 1995), which included firing at Srebrenica and resettlement of the Muslim people to Potocari, where they were beaten, intimidated, murdered and raped. At the time of the trial, Krstic's defense was his physical absence during the later executions committed on this part of the population.

(cc) BY

Drakulic (2006) who was observing the trials of Balkan war criminals stated emphatically that: "the fact that he did not know about the crimes at the time they were being committed should not prevent him from submitting a report when he found it out" (p. 45). Krstic, however, tried to hide behind his lack of awareness regarding the fate of the Muslims resettled from Srebrenica. This line of defense was invalidated by the fact, that during these events the defendant together with his supervisor general R. Mladic met the ONZ UNPROFOR protection forces' representatives and the representatives of Bosnian Muslims twice (Prosecutor v. Krstic 1998). At these meetings general R. Mladic announced that he would oversee the evacuation of Muslim population from Srebrenica in person and demanded to present him all Muslim men and boys between 16 and 60 years of age. Throughout the subsequent evacuation, the group got separated from the rest of the Muslims and then murdered (Prosecutor v. Krstic 1998). During the trial, the prosecutor played a tape on which Krstic issuing orders to carry out mass executions was recorded (Żarna 2018; Drakulic 2006). At this point it is worth to pay attention to the content of Article 7 p. 3 of the ICTY statute (1993):

> The fact that any act (...) has been committed by the subordinate, does not exempt the superior from the criminal liability, if he knew or should have known, that the subordinate intends to commit such act or has already committed it, and the superior did not undertake necessary and justified measures to prevent committing of such act or punishment of the culprit.

Krstic was arrested by the UN in 1998. The prosecutor stated that he bears individual liability pursuant to Article 7 p. 1 of the ICTY Statute (1993) or the superior's liability (Article 7 p. 3). On the basis of Article 4 of the statute ICTY (1993) accused him of committing genocide, or complicity in committing it. Based on Article 5 for crimes against humanity and murders that violate the laws and customs of war, pursuant to Article 3 of the ICTY statute (1993; Prosecutor v. Krstic 1998).

Interpretation of the content of the provision of Article 7 p. 1 ICTY was carried out in the Tihimor Blaskic's case (Prosecutor v. Blaskic *et al*. 1995) in which the principles necessary to assign individual liability for the crimes were established:

1. The crime must be committed by a person other than the accused.
2. The actions of a person committing the crime resulted from executing an order.
3. The accused acted with *mens rea*, which requires from a superior, who orders, plans or instigates to prove indirect or direct intention. The Process Chamber emphasized that the order's illegality does not have to be obvious (Prosecutor v. Blaskic et al. 1995).

(cc) BY

Finally, during the Krstic's trial no direct evidence that 'Drin's Unit' prepared a plan for seizing the enclave was fund, but the Ruling Chamber stressed that this operation would not be possible without the unit's help, as they were in charge of transporting the Muslims and they were used to carry out the execution in the subsequent days (Szpak 2012).

Appeals Chamber, however, did not question the fact that genocide was committed in Srebrenica, but indicated the lack of intention on the side of R. Krstic in the form of destroying an entire ethnic group. The ICTY sentenced R. Krstic to 46 years of imprisonment, but the Appeals Chamber reduced it to 35 years. Ultimately the legal qualification of the deed was also changed from committing the crime of genocide to aiding it.

On the basis of the already mentioned Kunurac's case (Prosecutor v. Kunurac *et al*. 1996), ICTY stated, that the aiding is a construction of liability for taking part in someone else's crime. The action of the helper may have the form of a factual encouragement, help, or moral support, and such help may take the form of action or omission. *Mens rea* of aiding constitutes the helper's awareness that his action helps the direct culprit to commit a crime. It is not necessary for the helper to share the *mens rea* of the direct culprit, but he has to know the essential elements of the crime and make a conscious decision on how to act knowing, that he, therefore, aides committing it.

R. Krstic's case perfectly illustrates the problems of commander's liability for issuance of an order, instigation, or planning of illegal deeds, but also for not taking measures aimed at preventing illegal action of the subordinates. Harmen van der Wilt states that this is the liability for culpable omissions, the duty that is inscribed into the function of a supervisor and into his authority under the hierarchical structure (Harmen van der Wilt 2016).

The world public opinion recollected anew about the crimes committed on the territory of former Yugoslavia because of Krstic's supervisor – General R. Mladic convicted by the ICTY to life sentence. R. Mladic (Prosecutor v. Mladic 2017) – the commander of High Command of the Army of the Republic of Serbia was declared guilty by the ICTY for the crime of genocide, a crime against humanity and violating war laws or customs of war. When considering the individual liability of the 'Butcher of Bosnia' [2] the ICTY emphasized his liability as a commander. In the explanatory memorandum, the Judge stated, that Mladic personally issued orders to fire at Sarajevo and was part of a criminal group, whose job was the ethnic cleansing of former Yugoslavia during which approximately 100 000 people died and 2,2 million had to leave their place of residence. Eventually, the court sentenced him for 10 of 11 charges brought against him, including deeming him guilty of murdering 8 000 Muslim boys and men from Srebrenica and siege of Sarajevo during which 11 000 civilians were killed. Mladic's figure has been to this day evaluated ambiguously, as there are regions, where he has been treated like a war hero. Lasting more 16 years trial constitutes an end of a certain period of history and satisfies the societal sense of justice.

[2] This is how Ratko Mladic is called.

(cc) BY

REGULATIONS IN INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA AND INTERNATIONAL CRIMINAL COURT

The principles regarding supervisors' liability, which were constituted by the Yugoslavian court, were later repeated in the International Criminal Tribunal for Rwanda (ICTR) Statute (1994), established as a result of Rwandan slaughter of 1994. The document contains a repetition of the provisions set out in ICTY with regards to individual criminal liability. Article 6 of the ICTR statute is a literal repetition of the contents of Article 7 of the ICTY Statute. The issue of commander's liability has been considered, amongst many, in the Akayesu's case (Prosecutor v. Akayesu 1997), as well as in the Jean-Bosco Barayagwiza's case (Prosecutor v. Barayagwiza 2000), or Clement Kayishema and Obed Ruzindan's case (Prosecutor v. Kayishema *et al*. 1996). In these cases, the courts clarified that if a commander fails to fulfil his duty to prevent or punish a crime, he should receive a heavier penalty than his subordinates who committed the crime. The courts concluded that it would be inconsistent to punish an ordinary offender with a sentence equal to or greater than the conviction (Williamson 2008).

Today, the UN Residual Mechanism is the successor of the ad hoc criminal tribunals, before which trials for war crimes committed on the territory of former Yugoslavia and Rwanda are reaching to an end. It also constitutes a body of appeal, before which the proceedings of the already announced R. Mladic's appeal.

Established in 1997, International Criminal Court (ICC) (Rome Statute 1998) took over the legacy of the Nuremberg court and the *ad hoc* courts. The issue of individual criminal liability was regulated in the Article 25 of the ICC statute (1998), which contains an extensive catalogue of the forms of committing crimes. Article 28 on the other hand, regulates in details the issue of commanders' and Rother superiors' liability. In accordance with the provisions of the statute, the commander (both military and civil) is liable, if he knew, or taking into consideration the circumstances at given time should know, that the armed forces were committing, or were going to commit such crimes Article 28 a (i). He is also liable when he did not undertake all the necessary and rational measures within the limits of his power, aimed at preventing, or refraining from preventing such crimes, or referring the case to competent authorities of criminal proceedings (Article 28 a (ii)). In other cases, the superior bears criminal liability for the crimes under the jurisdiction of the Tribunal committed by his subordinates being under his factual power and control, if they happened as a consequence of his lack of proper control, if (Article 27 b): (i) the superior knew or consciously ignored an information, which clearly indicated that the subordinates were committing or intended to commit such crimes; (ii) such crimes concerned activity under supervisor's real liability and control; and (iii) the supervisor did not undertake all necessary and rational measures within the limits of his power aimed at prevention or stopping from committing such crimes or referring the matter to competent authorities of criminal proceedings.

(cc) BY

CONCLUSION

Criminal liability for committing international crimes must be absolute and unavoidable, as Ziewiński (1986) states "regardless of the views and legal systems of individual countries" (p. 161). Addressing the questions set out in the introduction it is important to note, that the commander's liability is subject to particular restrictions. Persons performing the highest positions should be required to be particularly careful and able to make conscious decisions, as they are liable not only for their own actions but also for the actions of the people under their authority. They bear the liability to ensure compliance with the martial law of their subordinates (Grzebyk 2013). Assigning such liability requires, however, to meet a number of premises which in particular include the need for a relation between a supervisor and a subordinate, but it does not have to be a formal relation, as the actual element of authority is important. Commander's liability is implied in the situation of the issuance of an order to commit an international crime, having knowledge about committing of such crimes by the subordinates and not taking preventing action, but also not making the efforts to punish the culprits.

This complicated matter is perfectly illustrated by the R. Krstic's case which is one of the most spectacular cases that took place before ICTY. The obligation to counteract crime arises before its implementation and covers crimes both in the period of being carried out, as well as those of continuous character (Nieprzecka 2017).

Currently, on the basis of the agreement between the government of the Republic of Poland and the UN of the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia (2008) judgments R. Krstic serves a prison sentence on the territory of Poland. In the order on the admissibility of taking over the ruling to execute in the Republic of Poland, District Court in Warsaw stated that:

> Establishing the International Criminal Tribunal for the former Yugoslavia is not only a tribute to the victims of the bloody conflict but above all a triumph of justice over political opportunism. With the act of establishing the Tribunal, the international community wished to pay off the moral debt owed to the victims, who were anonymous to them, but not to their families, in whose memories they live on un-revenged (District Court in Warsaw 2012).

(cc) BY

REFERENCES

1. Agreement between the government of the Republic of Poland and the United Nations of the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia, 18 September, 2008. Retrieved from https://www.legal-tools.org/doc/6e589a/pdf/. Accessed 8 August 2019.
1. Agreement for the prosecution and punishment of the major war criminals of the European Axis, 8 August 1945. Retrieved from https://www.refworld.org/docid/47fdfb34d.html. Accessed 8 June 2019.
2. Command of the Drina Corps Military Secret. Krivaja-95 (1995). Retrieved from https://archive.org/stream/251260-950702-krivaja-95/251260-950702-krivaja-95_djvu.txt. Accessed 1 June 2019.
3. Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899. Retreived from http://www.opbw.org/int_inst/sec_docs/1899HC-TEXT.pdf. Accessed 2 November 2019.
4. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Retrieved from http://www.opbw.org/int_inst/sec_docs/1907HC-TEXT.pdf. Accessed 2 November 2019.
5. Cyprian, T. & Sawicki, J. (1948). Prawo norymberskie. Bilans i perspektywy. DC: Publisher Eugeniusza Kuthana, Cracow.
6. Czerwiński, M. (2015). Odpowiedzialnośc za wydanie i wykonanie rozkazu. Acta Universitatis Lodziensis Folia Iuridica, (74), 117-135. Retrieved from http://dspace.uni.lodz.pl:8080/xmlui/bitstream/handle/11089/10426/8-117_135-%20Czerwi%c5%84ski.pdf?sequence=1&isAllowed=y. Accessed 2 June 2019.
7. District Court in Warsaw (2012). Judgment, 6 December 2012. Retrieved from https://www.ebos.pl/orzeczenie-ms/postanowienie-viii-kop-222-12-sad-okregowy-w-warszawie-z-2012-12-06.html. Accessed 7 August 2019.
8. Draculic, S. (2006). They Would Never Hurt a Fly. War Criminals on Trial in The Hague. (J. Szacki, Trans.). DC: W.A.B, Warsaw.
9. Flögel, M.,Goreta, S.Š., & Lauc,G. (2007).War Stress in the Former Yugoslavia. In G. Fink (Ed), Encyclopedia of Stress (pp. 855–859). doi:10.1016/b978-012373947-6.00392-5.
10. Grzebyk, P. (2013). Command responibility for orders to commit international crimes. International Criminal Law. Targeted Killing & Superior Order, 4, 205-221. Retrieved from http://www.2017.ism.uw.edu.pl/wp-content/uploads/2013/02/mph-iv.pdf. Accessed 20 May 2019.

(cc) BY

11. Harmen van der Wilt (2017). Nullum Crimen and superior responsibility. In A. Górski. (Ed.), International Criminal Court. Theory. Practice. Challenges (pp. 307-312). DC: Difin, Warsaw.
12. International Criminal Tribunal for the Former Yugoslavia: Prosecutor v. Radislav Kristic (2004). International Legal Materials, 43 (6), 1301-1389. doi: 10.1017/s0020782900007543.
13. Karska, E. & Karski, K. (2013). Responsibility for execution of unlawful superior order in the Order, International Criminal Law. Targeted Killing & Superior Order ,4, 168-204. Retrieved from http://www.2017.ism.uw.edu.pl/wp-content/uploads/2013/02/mph-iv.pdf. Accessed 20 May 2019.
14. Meron, T. (1999). The Case for War Crimes Trials in Yugoslavia. War Crimes Law Comes of Age: Essays. doi 10.1093/acprof:oso/9780198268567.001.0001.
15. NATO (2005). Glossary of terms and definitions. Retrieved from https://standard.di.mod.bg/pls/mstd/MSTD.blob_upload_download_routines.download_blob?p_id=281&p_table_name=d_ref_documents&p_file_name_column_name=file_name&p_mime_type_column_name=mime_type&p_blob_column_name=contents&p_app_id=600. Accessed 7 August 2019.
16. Nation, Craig. (2003). War in Balkans, 1991-2002. Retrieved from https://ssi.armywarcollege.edu/pdffiles/PUB123.pdf. Accessed 2 November 2019.
17. Nieprzecka, A. (2017). Criminal liability of a military commander on the grounds of the Rome Statute and its implications for the crimes` elements. In A. Górski (Ed.), International Criminal Court. Theory. Practice. Challenges (pp. 314-327). DC: Difin, Warsaw
18. Rome Statute of the International Criminal Court. Retrieved from https://www.icc-cpi.int/Publications/Rome-Statute.pdf. Accessed 15 June 2019. Accessed 15 June 2019.
19. Smolarek, K. (2013). Analiza historyczno-prawna wyłączenia odpowiedzialności karnej podwładnego działającego na rozkaz przełożonego w prawie karnym. Journal of Science of the Gen Tadeusz Kosciuszko Military Academy of Land Forces. 168 (2), 56-67. doi:10.5604/1731-8157.1115436.
20. Southwick, K. G. (2005), Srebrenica as Genocide? The Krstic Decision and the Language of the Unspeakable. Yale Human Rights & Development L.J., 8, 188-227. Retrieved from https://www.utdallas.edu/~mjleaf/southwickGenocide.pdf. Accessed 7 August 2019.
21. Statute Of The International Criminal Tribunal For The Former Yugoslavia, S/RES/827 (1993). Retrieved from http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf. Accessed 15 March 2019.

(cc) BY

22. Statute of the International Criminal Tribunal For Rwanda, S/RES/955 (1994). Retrieved from https://unictr.irmct.org/sites/unictr.org/files/legal-library/100131_Statute_en_fr_0.pdf. Accessed 12 March 2019.
23. Statute of the International Residual Mechanism for Criminal Tribunals, S/RES/1966 (2010). Retrieved from https://www.irmct.org/sites/default/files/documents/101222_sc_res1966_statute_en.pdf. Accessed 1 June 2019.
24. Szpak, A. (2012). Zbrodnie w Srebrenicy i Sarajewie przed międzynarodowym trybunałem karnym ds. Zbrodni w b. Jugosławii casus Ratko Mladicia. Ruch Prawniczy, Ekonomiczny i Socjologiczny, 74 (4), 79-91. doi.org/10.14746/rpeis.2012.74.4.7
25. The Prosecutor v. Jean Paul Akayesu, ICTR-96-4-I, International Criminal Tribunal for Rwanda (ICTR), 17 June 1997. Retrieved from http://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-96-4/indictments/en/970617.pdf.pdf. Accessed 5 Augist 2019.
26. The Prosecutor v. Blastic et.al, IT-95-14, International Criminal Tribunal for the Former Yugoslavia (ICTY), 10 November 1995. Retrieved from http://www.icty.org/x/cases/blaskic/ind/en/bla-ii951110e.pdf. Accessed 7 August 2019.
27. The Prosecutor v. Jean-Bosco Barayagwiza, ICTR-99-52, International Criminal Tribunal for Rwanda (ICTR), 13 April 2000. Retrieved from https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-99-52/indictments/en/000413.pdf. Accessed 29 June 2019.
28. The Prosecutor v. Radislav Krstic, IT-98-33, International Criminal Tribunal for the Former Yugoslavia (ICTY), 30 October 1998. Retrieved from http://www.icty.org/x/cases/krstic/ind/en/krs-ii981102e.pdf. Accessed 25 April 2019.
29. The Prosecutor v. Kayishema et al., ICTR-95-1-I, International Criminal Tribunal for Rwanda (ICTR), 29 April 1996. Retrieved from https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-95-1/indictments/en/960429.pdf. Accessed from 1 August 2019.
30. The Prosecutor v. Kunarac et al., IT-96-23&23/1, International Criminal Tribunal for the Former Yugoslavia (ICTY), 18 June 1996. Retrieved from http://www.icty.org/x/cases/kunarac/ind/en/kunarac_960618eng_indictment.pdf. Accessed 6 May 2019.
31. The Prosecutor v. Mucic et al, IT-96-21, International Criminal Tribunal for the Former Yugoslavia (ICTY), 19 March 1996. Retrieved from http://www.icty.org/case/mucic/4. Accessed 30 August 2017.
32. The Prosecutor v. Ratko Mladic, IT-95-5-I, International Criminal Tribunal for the Former Yugoslavia (ICTY), IT-09-92-T, 22 November 2017. Retrieved from http://www.icty.org/x/cases/mladic/tjug/en/171122-4of5_1.pdf. Accessed 5 August 2019.

(cc) BY

33. Trawczyńska, M. Geneza i konsekwencje konfliktu w Bośni i Hercegowinie w latach 1992-1995 (2008). Retrieved from http://www.bibliotekacyfrowa.pl/Content/32200/0011.pdf. Accessed 21 October 2018. Accessed 14 May 2019.
34. Wierczyńska, K. (2010). Pojęcie ludobójstwa ludobójstwa w kontekście orzecznictwa międzynarodowych trybunałów karnych ad hoc. DC: SCHOLAR, Warsaw.
35. Williamson, J. A. (2008). Some considerations on command responsibility and criminal liability. International Rewievof the Red Cross, 90 (870), 307-317.
36. Ziewiński, J. (1986). Rozkaz wojskowy w prawie karnym. DC: Ministerstwo Obrony Narodowej, Warsaw.
37. Żarna, K. (2011). Geneza międzynarodowej odpowiedzialności karnej jednostki: Zbrodnia i kara. In W. Wacławczyk, K. Żarna (Ed.), Ludobójstwo-zbrodnie wojenne-zbrodnie przeciwko ludzkości (pp. 292-311). DC: Adam Marszałek, Torun.
38. Żarna, K. (2018). Activity of the International Criminal Tribunal for the former Yugoslavia (1993-2017). An assessment. Polityka i Społeczeństwo, 4 (16), 65-75.

(cc) BY