

## **Abstract**

### **Grounds for Excluding Criminal Responsibility in International Criminal Law**

This thesis aims on currently two most discussed grounds for excluding criminal responsibility (defenses) in international criminal law: defense of duress and defense of superior order. First of them emerges from a situation in which a perpetrator is forced by threat to commit a crime under international law. The second one addresses a question whether a person should be responsible for a crime committed pursuant to an order of a Government or of a superior.

Regarding the structure of the army, it is not surprising that there these two defenses occur together in many cases and that they arise from the very same situation. However, they should not be mistaken one for another. The aim of this thesis is to analyze the most significant case law on the topic and to research what was the background for the formulation of the articles on defense of duress and superior order in the Rome Statute of ICC. The paper also examines the deficiencies of the regulation of duress and superior order in the Rome Statute and their possible improvement.

The thesis is composed of 5 chapters. The first chapter is introductory and describes used methodology of the paper and its structure. Chapter number two deals with grounds for excluding criminal responsibility in international criminal law in general. It presents different origins of defenses in this branch of law, presents all defenses recognized by the Rome statute and finally explains differences between excuse and justification – two groups of grounds for excluding criminal responsibility.

The third chapter deals with duress. The introduction of this chapter defines duress, explains its differentiation from necessity and discusses whether it leads either to excuse or to justification. The other parts are focused on case law of post-world war two tribunals and describe in detail the decision in case Erdemovic and its dissenting opinions.

Chapter four is about order of superior or Government. It describes its historical progress in 20<sup>th</sup> century and explains substance of so called Nuremberg principle. Furthermore, it discusses the application of this defense in connection with mistake of law and mistake of fact.

General conclusions are provided in the last part, which argues that individual circumstances of each case should be always taken into account. It also evaluates current regulation of Rome

statute and concludes that current provisions on duress and superior order admitting both of them under specific circumstances as defences are appropriate.