Abstract in English

Dissertation Thesis

David Kohout: Legal-Historical Aspects of Punishment of Nazi Criminals on the Background of the Adolf Eichmann Trial

This Dissertation on the topic of „Legal-Historical Aspects of Punishment of Nazi Criminals on the Background of the Adolf Eichmann Trial“ seeks to analyze the main approaches to the prosecution and punishment of the Nazi crimes. It was chosen to use the trial of Adolf Eichmann in Jerusalem in years 1961 – 1962 as a connecting thread of this whole work. It was so not only due to the individual remarkableness of the trial but also due to the fact that it was in many ways a very illustrative for the previous legal development until that time. Additionally, many commentators of this trial attribute it a great impact on the renewal of the interest in the prosecution of former Nazis who were implicated in perpetration of crimes committed until 1945 and who remained at large after the end of war. Therefore this Thesis goes beyond the Eichmann trial and focuses on its broader context in material but also personal sense (in the text it often referred to cases of prosecution of close collaborators of Adolf Eichmann).

In the opening chapters this Dissertation, however, starts with events that go far back in time before the Adolf Eichmann trial. This is for the reason that it is useful to demonstrate the initial phases of creation of the International Criminal Law, which decisively influenced the Nazis and Nazi Collaborators Punishment Law used as the basis of the criminal case against Adolf Eichmann. For these reasons it was necessary to explore the situation after the end of the World War I, when the first concepts of punishment of perpetrators of (especially) war crimes were proposed. It was also this period when the term of crimes against humanity was coined (in connection to the Armenian genocide in the Ottoman Empire). Despite the fact that these efforts went futile, resulted in resignation over the criminal punishment of perpetrators and meant complete failure, they nevertheless became a legal as well as organizational model and important experience for the punishment of Nazi (and other) criminals after the end of the World War II.

On the basis of the experience (and also due to several significant differences in comparison with the situation in 1918, i.e. unconditional surrender of Germany and especially its full military occupation) the main allies (USA, UK, USSR and France) agreed to set up the

International Military Tribunal, which would be responsible for trying those responsible for instigation of the world conflict or those, who participated in the implementation of the persecution measures which had been introduced by the Nazi regime in the whole territory under its influence. The subsequent trial (generally referred to as the "Nuremberg Trial") and the Charter of the International Military Tribunal, which the trial was based upon, created the main framework (i.e. definitions of applicable crimes, scope of application, doctrine of command responsibility and of criminal responsibility of a soldier who carried out an illegal order) for trials that followed. Most significantly these were the subsequent trials carried out on the basis of the (Allied) Control Council Law No. 10 by military tribunals established in the individual occupation zones in Germany. Most notable of these tribunals are those set up in US zone. Their judgments were in many ways built upon the decision of the International Military Tribunal and elaborated it further and they were later on often cited by the courts in the trial of Adolf Eichmann (and they remain to be important part of the case-law relative to the International Criminal Law until now).

However, the law of the Charter of the International Military Tribunal was not applied only by the international tribunals in the first post-war years (not mentioning that the military tribunals established in the occupation zones by the Allies were not pure international tribunals). This law was applied in a limited scope by national courts in some of the occupation zones (British, French zones and with some specifics in the Soviet one too) and especially in Austria, where the national courts relied on national legislation substantially similar to the principles of International Law. These were actually the first cases of reception of Public International (Criminal) Law into domestic legal orders, or direct application of laws from the province of the International Law against natural persons in national criminal proceedings.

The following part of the Dissertation deals with the trial of Adolf Eichmann itself, both in relation to the previous legal evolution and to its broader social, political and cultural connotations. This trial (which is until recently held to be historically the major leading case involving holocaust, which was addressed in its full complexity there) is truly one of the landmark cases. Its particularity was based already in the extraordinary circumstances of Eichmann´s arrest, who was apprehended by the commando of the Israeli secret intelligence service and transported secretly from Argentina to Israel). Additionally much of international attention was produced by the fact that Eichmann was supposed to be tried by courts of the state, which based its right to existence to a great extent on historical experience of shoah.

Judgments of courts delivered in the Eichmann trial remain until now the leading sources with respect to the innovative application of the doctrine of universal jurisdiction, which has since then been implemented into legal orders of a number of states. The universality is now a widely accepted concept enabling national states to try persons for e.g. crimes against humanity or war crimes before its national courts even if no traditional basis for jurisdiction over such crimes was given.

As it was mentioned before, the trial of Adolf Eichmann played an important role also in the following investigations of Nazi crimes mainly in the German Democratic Republic and to a more limited extent in Austria too. Even though it would be too simplifying to hold (according to recent studies on this subject) that the Eichmann trial was the only impulse causing the renewed increase in number of proceeding abroad, it is nevertheless with a little doubt that in certain cases it was vital for institution of the proceedings (especially in cases against Otto Hunsche, Hermann Krumey and Franz Novak, which are assessed in detail in this Dissertation). This new phase before West-German and Austrian courts represents antipole of the trials conducted on the basis of the Charter of the International Military Tribunal and national laws laying their fundaments from the principles of the Charter. Since 1950s both West Germany and Austria have come back to the laws of the national Criminal Law. On one hand, these laws could not be subject to objections as to their retroactive effects (in contrast this was the case for the laws based on the International Criminal Law, which was not unequivocally existent in the time of perpetration of the acts and the Charter was therefore subject to criticism in this respect). On the other hand, the setback of this traditional legislation (the Criminal Codes originated in the 19th century) was the fact that it was not prepared for dealing with crimes of such complexity as were the crimes committed by the Nazis. Another significant feature connected to the national laws used since 1950s was the fact that even the Nazi crimes (often amounting to direct involvement in the most serious crime against the mankind, the genocide) were subject to statutory limitations. Fighting the upcoming limitation period and the often unsatisfying outcome of this struggle had a direct impact on a great number of investigated Nazi crimes. Also for these reasons the numbers of cases on the national level started to decline again in 1970s.

Nowadays the period of prosecution of Nazi crimes is (despite a few exceptions) almost over and it becomes slowly rather a matter of history. However, the described spectrum of various approaches towards the punishment of (especially) crimes of universal character, which

transcend the boarders of individual states due to their seriousness and impact, has its implications for today and future.

References in this Dissertation aim to point to further developments in the area of International Criminal Law. The International Military Tribunal has nowadays its descendants in the International Criminal Tribunals for Former Yugoslavia and Rwanda and also the International Criminal Court. At the same time many states implemented into their national legal orders the bodies of crime for crimes against humanity, war crimes etc. so that their future perpetrators could not benefit from the fossil provisions of the traditional national law. In connection with the principle of universal jurisdiction there is nowadays a relatively comprehensive system for dealing with such crimes both on international and national level (if prevention fails).

These developments can be viewed as a consequence of the (often overly complicated) attempts to punish Nazi criminals. Although this Dissertation is predominantly one from the domain of legal history, it, nevertheless, surpasses also into a number of other legal disciplines such as Public International Law and International Criminal Law, traditional Criminal Law or in the most general meaning to legal theory and philosophy of law.

Key words:

Adolf Eichmann; International Military Tribunal in Nuremberg; Nuremberg Principles; Nazi crimes; crimes under International Law; crimes against humanity; war crimes; crimes against peace; universal jurisdiction; statutory limitation; Leipzig war crimes trials; Control Council Law No. 10; genocide; holocaust