

## 35 A REVIEW OF THE MONOGRAPH ON THE CHALLENGES OF DOMESTIC PROSECUTION OF WAR CRIMES WITH SPECIAL ATTENTION TO CRIMINAL JUSTICE GUARANTEES

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**Réka Varga, *The Challenges of domestic prosecution of war crimes with special attention to criminal justice guarantees*, Pázmány Press, 2014, Budapest, p 284; ISBN 978-963-308-173-0**

The book under review is based on Réka Varga's doctoral dissertation. The author is a systematic researcher of the field of international criminal law and international humanitarian law. Her professional experience – she was a legal adviser to the International Committee of the Red Cross Regional Delegation for Central Europe from 2001 to 2009, and she has been a legal adviser to the Hungarian Red Cross since 2009 – meant a guarantee of an ambitious monograph.

In my opinion, this legal practice driven dissertation (based on examining the law-making practices and jurisdictions of states) raises three momentous, theoretical legal problems, which have not been discussed so far in such a complex context, in order to give a theoretical background to the research. The legal issues discussed are as follows: the enforcement of international law, state sovereignty and the relationship between international and domestic law.

The first dogmatic legal problem of international law is whether international law has the right to enforce its rules or not. The search for responding to this 'evergreen' question pervades the whole disquisition. In my opinion, the dissertation puts the international and national levels of accountability in a context similar to the two levels of human rights protection (national and international). For this reason, we have to emphasize the complementary relationship between the two existing systems (the national level and the international level), which means permanent cooperation and mutual influence on each other, as well. The primary responsibility to prosecute rests on the states, and only in the case of their failure or non availability do the international tribunals step in. The complementarity

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principle, which first appeared in the Rome Statute establishing the ICC, as well as its supplementary nature have hitherto been unknown in jurisprudence.<sup>1</sup>

The second dogmatic legal question is state sovereignty. Criminal jurisdiction is traditionally under state control. This field, becoming international, is only a recent phenomenon, and yet we can say it has undergone an extraordinary development.<sup>2</sup> This problem of state-sovereignty is addressed in the historical section of the monograph, in the discussion of universal jurisdiction. The accountability of a perpetrator of a crime by another state (which is not affected) is questionable with regard to sovereignty. Another aspect of sovereignty to comply with international treaties, which define an obligation to achieve a certain goal (the punishment of certain crimes) implies that the states are bound to adopt internal legislation.

Such obligations usually mean self-imposed restriction of sovereignty on the part of states, the way in which they comply with such obligations has to be left to them.<sup>3</sup> So freedom, which prevails by realizing the implementation obligation, is derived from the sovereignty of the state as well.

The third theoretical basis of the thesis is the relationship between domestic and international law, especially the notion of monism and dualism. According to the author this theoretical foundation is needed at least in brief in order for the reader to be able to better discuss the difficulties of the applicability of international criminal law in national proceedings. The related biggest domestic anomaly, which we have to mention here, is that the reservations of the ICC have obligated Hungary since 1 July 2002, so it is internationally legally binding in our country, but the Statute itself has not been published in domestic law yet.<sup>4</sup>

I would like to mention the most interesting part of the book which is about the difficulties of the implementation of international law in respective national systems. This part of the monograph goes beyond the theoretical approach; it asks real questions and seeks to provide real answers. The conclusion of the author is that there is no uniform solution – owing to the different legal cultures and traditions of states – some common elements may be identified though. For instance, it has not proved to be a good solution to apply ordinary crimes to war crimes.<sup>5</sup> The author is absolutely right when she says it is necessary

1 T. V. Ádány: *A nemzetközi büntetőbíróság joghatósága – Előzmények, tendenciák és előfeltételek*, Pázmány Press, Budapest 2014, p. 191.

2 T. Lattmann: *A nemzetközi büntetőbírói fórumok működésének rendszere, különös tekintettel a Nemzetközi Büntetőbíróságra – politika, parancs vagy jog?* in: *Egységesezés és szétagolódás a nemzetközi büntetőjogban*, Edited by: E. Kirs, Studia Iuris Gentium Miskolciana; IV. Miskolc Miskolc University 2009, p. 9.

3 R. Varga: *'The Challenges of domestic prosecution of war crimes with special attention to criminal justice guarantees'*, Pázmány Press, 2014, p. 55.

4 T. Molnár: *'A nemzetközi jogi eredetű normák beépülése a magyar jogrendszerbe'* Dialóg-Campus – Dóm, Budapest-Pécs 2013, p. 205.

5 Varga, 2014, p. 245.

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to involve experts from legal practice in order to start a wide-ranging dialogue between academics and legal practitioners to solve the remaining problems.

Hereinafter I will discuss the structure of the monograph in details. After a brief and concise introduction, the major topic is discussed in three comprehensive chapters, and the book ends with a conclusion. The first substantive part deals with the evolution of international criminal jurisdiction, individual responsibility, the definition of war crimes, and the international obligations on the repression of grave breaches and war crimes. This chapter is structured to demonstrate the development in these fields.

The next part of the dissertation is about the legal problems related to the application of international criminal law. It examines the common problems that may arise during the domestic application of international law. These problems are discussed from various perspectives, such as the inherent dilemmas and issues of international law-making, the features of national legislation that may bring about problematic applications of international law, and finally the approaches and attitudes of domestic courts towards international law during application and the interaction between the jurisprudence of international and national judicial bodies.

The final chapter preceding the conclusion is concerned with the possible ways of overcoming the hurdles. This chapter analyses two different ways of overcoming the obstacles: first, the level of international jurisprudence, especially the effects of the jurisprudence of international tribunals on domestic war crime procedures. Second, the level of internal legislation which contains the features of the implementation of the Rome Statute, as well as a comparative analysis of the attributions of the legal practices of Central European countries of criminalization techniques and of universal jurisdiction.

It must be noted that this research is a long-needed contribution to this field because – as Réka Varga in her paper mentioned earlier – while several studies have examined the role of international tribunals and the suitability of international tribunals and the responsibility of the perpetrators of international crimes, far fewer have analyzed the procedures before the national courts with regard to their difficulties and problems. However, as we all know, the primary obligation of the impeachment lies on the national forum.<sup>6</sup>

Basically, the researcher's starting point was her professional experience, which she had gained by working as a legal adviser to the ICRC Regional Delegation for Central Europe. This resulted in a legal practice oriented approach, and affected the monograph, too. Thanks to the author's high standards as a researcher, she used a wide range of literature on international law for the theoretical foundation of the book. The readers are offered a

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6 Réka Varga: 'Háborús bűncselekményekkel kapcsolatos eljárások nemzeti bíróságok előtt', in: *Egységesedés és széttagolódás a nemzetközi büntetőjogban*, Edited by: E. Kirs, *Studia Iuris Gentium Miskolciana*; IV. Miskolc Miskolc University 2009, p. 91.

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more than twenty-five page bibliography including relevant scientific literature, so the works of both Hungarian and international experts of the field are listed. Furthermore, the bibliography contains references to international treaties, domestic cases, domestic laws, cases of international tribunal and other relevant sources.

My personal favourite was the excellent appendix at the end of the monograph, 'Legislation related to the prosecution of war crimes in selected Central European countries'. Unfortunately, this is not usual in legal monographs, though it is very useful and impressive. The table recounts the criminal proceedings of war crimes in Hungary, Poland, Slovenia, Slovakia and the Czech Republic.

To sum up, let me point out that this remarkable monograph by Réka Varga will be useful not only for the representatives of Hungarian and international jurisprudence but interested law students also. Owing to her ambitious work, the Hungarian international legal literature got a lasting piece of science which will be helpful for other researchers. For me this book has opened up a new perspective for my general interest in international law. And I am sure future readers, even if they are not experts of this subject, will find this monograph enjoyable and readable thanks to its logical structure.