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Doctoral School of State and Legal Studies



# **CRIMES AGAINST HUMANITY IN THE SYSTEM OF INTERNATIONAL HUMANITARIAN CRIMINAL LAW**

**Doctoral Dissertation Theses**

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# **I. OUTLINE OF THE SCIENTIFIC RESEARCH ENVISAGED**

## **I.1. Brief Overview of the Research**

The research focuses on the legal distinction between humanity and mankind or humankind, as well as the legal regulation of crimes against humanity. The general aim of the doctoral dissertation is to provide clarity on the meanings of these concepts and their legal applications. The prevention and punishment of crimes against humanity are critically important for the protection of human rights and international peace.

## **I.2. Areas Examined in the Scientific Research**

- a) **Distinction between Humanity and Mankind:** The research delves into the difference between the concepts of humanity and mankind in international criminal law and the legal consequences of this distinction.
- b) **Crimes Against Humanity and Their Legal Regulation:** The research analyzes the legal definition of crimes against humanity and their prosecutability in international criminal law. Special attention is given to how these rules can be applied in practice.
- c) **International Legal Framework:** The research extensively studies the international legal framework, with a particular focus on the Rome Statute and other relevant international conventions that address crimes against humanity.
- d) **Domestic Legal Framework:** The research examines how Hungary implements its international legal obligations concerning crimes against humanity and what legal measures it has taken for prevention and punishment.
- e) **The Role of International Law in Prevention:** The research explores the role of international law in the prevention of crimes against humanity and the legal tools available to the international community for preventing these crimes.

The fundamental goal of the research is to contribute to the ongoing scholarly discourse in the field of international criminal law and to assist legislators and practicing lawyers in the legal interpretation and application of crimes against humanity.

## **II. METHODOLOGICAL SUMMARY OF SCIENTIFIC RESEARCH**

### **II.1. Type of Research**

During the preparation of the doctoral dissertation, I employed qualitative research methods, specifically opting for a deductive approach. Using this research method, I compared existing scientific theories and theses with relevant theoretical literature. The deductive research method led to the development of the central research tool, which was the tool of conceptual analysis.

### **II.2. Exploration of Research Background, Literature Review, and Other Sources**

Regarding the delicts at the focus of the dissertation, the international literature is quite extensive. Without aiming for completeness, I would like to mention a few authors: Beth Van Schaack, Carsten Stahn, Georg Schwarzenberger, M. Cherif Bassiouni, Malcolm N. Shaw, William A. Schabas, whose publications and books I had been reading and utilizing since the beginning of my research.

Regarding domestic literature, it can also be said that despite the international nature of the topic, I had access to numerous outstanding sources during my research. Without aiming for completeness, I would like to mention a few authors whose work I used in writing the dissertation: Ádány Tamás Vince, Gellér Balázs, Hoffmann Tamás, Karsai Krisztina, Kirs Eszter, Kovács Péter. In terms of choosing the topic, Professor Andrea Domokos's article "The Idea of International Criminal Justice" had a significant impact on me.

Primarily, I conducted library research, specifically at the National Library and the National Széchényi Library. Within this framework, I was able to extensively utilize domestic and international literary sources that were available to me there. Additionally, I collected numerous sources from online databases, libraries, and e-books. Unfortunately, my research was interrupted by the closures caused by the Covid-19 pandemic, which prevented me from conducting research abroad. However, thanks to the pandemic, online databases and the online libraries of certain foreign universities became accessible, which had previously allowed research only through subscription (to name a few where I collected sources without aiming for completeness: Brown University Library, Cambridge University Library, Harvard Library, Jogkódex, JSTOR, Vatican Library).

In addition to relevant domestic and international literature, the sources of the dissertation include international treaties, international judicial decisions, and other international documents (such as the Geneva Conventions, the Convention against Piracy, and significant decisions of ad hoc international criminal tribunals related to my topic, as well as crime prevention codes related to crimes against humanity). Therefore, it can be said that during this stage of the research, I endeavored to utilize the jurisprudence of international and domestic judicial forums concerning crimes against humanity.

It is also important to note that during my PhD studies, I had the opportunity to participate in the Curia's PhD internship program, under the mentorship of Judge Ákos Székely, where I gained access to numerous sources during my time there, for which I am grateful.

Given the international nature of the central international crime at the heart of the dissertation, I primarily had access to English-language sources. Often, I translated these sources myself, and among these translation works, I would like to highlight the draft code for the prevention and punishment of crimes against humanity. Throughout my research, I also used French, German, and Italian-language literature, which I incorporated into the dissertation through my own translations (for French sources, I utilized the OpenEdition Journals, for German sources, the Nomos eLibrary, and for Italian sources, the Vatican Library database).

### **II.3. Development of the Conceptual Framework of the Research – Conceptualization, Operationalization**

In terms of the structural layout of the doctoral dissertation, it can be divided into five chapters: an introduction, three discussion chapters, and a conclusion. Each of the three substantive chapters is further subdivided into six subchapters. I aimed not only to logically connect the chapters in the dissertation but also to break them down into structural units to ensure overall coherence.

In the introduction (Chapter I), I approached the topic of the doctoral dissertation in three parts (three subchapters). First and foremost, I addressed the religious and legal-historical aspects that are crucial for the topic and, in my opinion, cannot be integrated into other chapters of the thesis. This brief presentation of religious and legal-historical aspects, however, establishes a

deeper foundation for the topic of the doctoral dissertation since the doctrine of just war is of great importance for international criminal law and, thus, all international crimes.

In the subsequent chapter (Chapter II), I addressed international criminal law at a general level, and in this chapter, I initiated a legal-historical investigation closely connected to the development of international criminal law and, consequently, international crimes. This is particularly important for my topic, as the historical roots of crimes against humanity constitute an area that can be examined quite extensively, a fact that I endeavored to illustrate in all chapters of the dissertation.

The subchapter on international criminal cooperation is indispensable because it can be considered one of the cornerstones in the development of crimes against humanity. Therefore, I aimed to highlight the legal-historical aspects of cooperation, which are relevant to the crimes in question, without claiming to comprehensively cover all relevant aspects.

The subchapter on the evolution of the international classification of crimes is also closely tied to the historical development of crimes against humanity. Thus, this subchapter is irreplaceable in the structure of the dissertation, as it represents a significant milestone in establishing the criteria for classifying certain delicts as international crimes. It is thanks to the development of this system that the category of crimes against humanity exists.

The subsequent section in historical development and, therefore, in the dissertation, discusses the precursors to international criminal justice. In this subchapter, I also aimed to collect those legal-historical aspects that are intricately linked to holding individuals accountable for crimes against humanity by international criminal tribunals. It was through this lengthy transformation that what we now understand as international criminal justice came into being, which I attempted to briefly illustrate in terms of the focus crimes in my dissertation.

In the subchapter titled "Anatomy and Concepts of International Criminal Law," I delved into international criminal law as an academic discipline. Legal science considers it a primary task to provide a descriptive, phenomenological definition of the field under examination, with the aim of establishing conceptual coherence, enhancing transparency, facilitating legal interpretation and application. Therefore, such a systematic examination, in my view, is necessary. Additionally, a globally accepted clear definition can pave the way for the further

development of international criminal law and resolve differing substantive interpretations stemming from language barriers. The aim of this subchapter is to systematically summarize the conceptual and structural components of the discipline of international criminal law, creating a unified whole.

During my research, I had the opportunity to conduct jurisprudential investigations, thanks to Professor Zoltán J. Tóth. As a result of this, my publication titled "The Nuremberg Trial in the Web of Law and Ethics" was born, which also contributed to shaping one of the goals of my research (see later in Chapter I.4). The subchapter "The Jurisprudential Examination of the Nuremberg Trial" is built upon this research and publication. In this subchapter, among other things, the international criminal law interpretations of the principles of *nullum crimen sine lege* and *nulla poena sine lege* are discussed, as well as the question of the revival of natural law.

The subsequent major chapter in the dissertation deals with the historical and legal-dogmatic presentation of crimes against humanity (Chapter III). This chapter also begins with a historical investigation, in which exclusively the historical background of the crimes in question is explored.

In my view, the historical examination of crimes against humanity cannot be "merged" with the development history of international criminal law (hence I did not place the entire historical development in a single large chapter), even though they are closely related. The focus of the dissertation is on crimes against humanity, which has an extremely long legal history, and this can be understood in Chapter III. The process of the emergence of international criminal law as a science and, consequently, the international classification of crimes also has an extensive history of legal precedents. However, I needed to set a boundary for my research because if I did not limit the exploration of precedents, it would have overly extended the development history that I intended to present in the dissertation. This boundary was defined in certain subchapters of Chapter II, the brief contents of which I mentioned earlier.

Regarding the boundaries, I also find it important to mention why I did not delve into the Russian-Ukrainian conflict in my work.

Firstly, I believe that I do not have enough high-quality, credible sources at my disposal to mention it in the PhD dissertation.

Secondly, I think that a war conflict would have further complicated the framework that I aimed to establish in the dissertation. Within this framework, I sought to clarify questions related to legal history, legal theory, and legal dogmatics.

In Chapter III, I attempt to distinguish crimes against humanity from other international crimes. I exclusively separated these offenses in relation to genocide and war crimes since, in my opinion, these three international crimes are very similar to each other. I hope that this differentiation can be helpful for both practicing lawyers and laypersons alike.

In my view, the legal historical development that led to the regulation of crimes against humanity is particularly interesting. Thus, in subchapter 4 of Chapter III, we can learn about this process, and I highlight the summary thoughts of this process in Chapter II of the thesis booklet.

In Chapter II of the dissertation, I also included the Hungarian legal aspects of crimes against humanity, such as the constitutional concerns related to crimes against humanity in Hungary, which manifested themselves in the legal difficulties of the show trials or are currently evident in the dilemma of the enactment of the Rome Statute.

Reaching the last substantive chapter of the PhD thesis (Chapter IV), the subject of responsibility and crime prevention is covered. First and foremost, I considered it important to present both the concepts of responsibility and crime prevention. As I highlighted at the beginning of the thesis booklet, the focus of the dissertation was on precise definitions of concepts. In this chapter, I also aimed to briefly and succinctly present the background information to make the chapter's subject as comprehensible as possible. After the general exploration, I briefly touched on the European Union's crime prevention guidelines and the International Criminal Court's (ICC) crime prevention strategy.

As one of the outcomes of my research, Chapter IV, subchapter 6, presents a draft code on "Preventing and Punishing Crimes Against Humanity."



The final chapter of the thesis is the conclusion (Chapter V), in which I draw my conclusions in two parts, in line with the introductory section. The first part of the conclusion pertains to the lessons from the laws of war collections and the religious laws of war. The second part is an overall evaluation of the research questions and hypotheses of the doctoral thesis, which I will discuss in the thesis booklet's Part II.

#### **II.4. Formulation of Research Objectives and Hypotheses**

The first objective of the doctoral thesis is to determine whether the judgments of the post-World War II trials constituted *ex post facto* legislation. The aim is to conduct a legal-historical and legal-theoretical examination of the Nuremberg Trial to determine, on the one hand, whether the *nullum crimen sine lege* principle was violated by retroactive justice and, on the other hand, whether this type of legislation can be considered a rebirth of natural law.

The second objective of the doctoral thesis is to establish the framework within which individuals previously became and can currently become subjects of international criminal law, i.e., how the international criminal responsibility of individuals for a particular international crime (in this case, crimes against humanity) is determined.

The third objective of the doctoral thesis is to determine whether there is an *erga omnes* obligation to prevent crimes against humanity. The aim is to analyze judicial practice and previous prevention attempts to determine whether the obligation to prevent already exists or whether a new treaty is needed.

#### **The hypotheses of the doctoral thesis are as follows:**

H1. International criminal law is to be understood as a complex legal discipline that encompasses international criminal cooperation and international crimes.

H2. The conceptual territory of international crimes has emerged as a result of a long legal development, and as a result, it is now well-defined based on the Statute of the International Criminal Court.

H3. International crimes are not abstract entities but are committed by specific individuals; the (specific) individual's (international) criminal responsibility is of particular importance.

H4. Achieving the goals of preventing crimes against humanity requires a strong emphasis on elevating prevention to the level of an international treaty.

H5. The mere existence of the International Criminal Court is insufficient to prevent crimes against humanity.

### **III. SUMMARY OF THE SCIENTIFIC RESEARCH**

The principle of "nullum crimen sine lege," which asserts that no one shall be held criminally responsible for an act that was not a criminal offense under national or international law at the time when it was committed, is a fundamental principle of criminal law. This principle is equally relevant in international law. Ultimately, individuals are held internationally responsible for their conduct if that conduct is considered unlawful under international law, regardless of the provisions of national law. The main criticism of the Nuremberg Tribunal's jurisdiction was related to the violation of the prohibition of retroactive application, which stems from the principle of "nullum crimen sine lege." The Nuremberg Tribunal, however, held that the Charter establishing it did not reflect the arbitrary exercise of power by the victorious nations but rather an expression of the then-existing international law. It emphasized that the law of war derives not only from treaties but also gradually from universally recognized state practices and general principles applied by legal scholars and military tribunals.

Specific instances of serious violations of international humanitarian law constitute war crimes. War crimes are committed under circumstances similar to those of genocide and crimes against humanity, but the latter, unlike war crimes, are not linked to armed conflicts. Individuals bear personal responsibility for war crimes. The "Nuremberg Principles" undeniably established individual international criminal responsibility for international crimes that jeopardize the entire humanity and world peace. Leaders who commit human rights abuses and abuse their power, even if they were former representatives of a state or community, appear as defendants in international criminal proceedings. It is essential that individuals involved in the conflict are held accountable for the gravity of their crimes, not their political affiliations. States must ensure that the "alleged" perpetrators either face trial in their own domestic courts or are handed over to another state's court or an international criminal court, such as the International Criminal Court (ICC), for trial.

The International Criminal Court (ICC) plays a crucial role in preventing international crimes under international law. The drafting history of the Rome Statute indicates that the establishment of an (international) institution that deters and prevents future international crimes was relevant for the states that signed (and ratified) the Charter. In fact, with regard to the prevention of crimes against humanity, the erga omnes obligation can be traced back to customary international law. The international community does not stand idly by, and a code specifically prepared about such crimes would greatly enhance prevention. It would make it clear to all states in the world what their obligations are regarding prevention. I believe that a unified international treaty could also prevent known crimes from being ignored.

The preamble of the Rome Statute states that international crimes are exceptionally serious offenses that affect the fundamental values and interests of the international community, including international peace and security. The classification of these acts as crimes is not subject to national law, and their criminality is directly based on international law, with individual criminal responsibility arising directly from the rules of international law. The legal literature comprehensively refers to these crimes as crimes against humanity, which include the following four offenses:

- aggression (crime of aggression),
- genocide,
- crimes against humanity,
- war crimes [this list corresponds to the subject-matter jurisdiction of the ICC].

It is important to distinguish between the term's "humanity" and "mankind." Under international law, the comprehensive category of offenses is referred to as crimes against humanity, which are crimes that violate or endanger the interests of the international community and whose criminality is based directly or indirectly on international law. These crimes are currently listed in Article 5 of the Rome Statute.

The term "humanity" means behaving in a humane and decent manner. The term "mankind" refers to: the collective of all human beings, the human race.

Regarding certain modes of conduct within crimes against humanity, in my opinion, the provisions of Chapter XIII of Act C of 2012 on the Criminal Code (briefly: Criminal Code)

should be comprehensively referred to as crimes against humanity, and the offense sanctioned in Section 143 of the Criminal Code should be referred to as crimes against humanity (in French: crimes contre l'humanité, in Spanish: crímenes de les a humanidad, in German: Verbrechen gegen die Menschlichkeit, in English: crimes against humanity).

**In summary, crimes against humanity:**

- a) are not necessarily linked to war. While their roots can undoubtedly be found in the context of war crimes, legal development has extended the criminal protection defined within the framework of war crimes to specific acts committed in peacetime with certain gravity and nature;
- b) do not manifest an intent to achieve military objectives, and it is crucial that the purposes stated in the elements of the crimes are not intrinsically linked to any military operations;
- c) often involve political, religious, or ethnic hostility and hatred as motives;
- d) the passive subject of the crime can only be the civilian population;
- e) the criminal conduct is explicitly listed in Article 7(a-k) of the Rome Statute, which encompasses exceptionally inhumane and cruel acts that violate the fundamental values of humanity, especially the requirements inherent in the principles of humanity and human dignity;
- f) the crime is only constituted if it is committed as part of a widespread or systematic attack against the civilian population.

#### **IV. COMPLETE LIST OF PUBLICATIONS OF THE DOCTORAL CANDIDATE<sup>1</sup>**

1. Domokos, Andrea; Papp, Petra; Bérces, Viktor: Legal Regulations in Criminal Law. Budapest, Hungary: Patrocinium Publisher (2022) ISBN: 9789634133643
2. **Papp, Petra: Christian Teachings in International Criminal Law, with Special Focus on Genocide, War Crimes, and Crimes against Humanity. GLOSSA IURIDICA 9: 1-2 pp. 203-219., 17 p. (2022)**
3. **Papp, Petra: Concise Presentation of the Draft Code on the Prevention and Punishment of Crimes against Humanity. In: Miskolczi-Bodnár, Péter (ed.) XXIII. National**

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<sup>1</sup> In the text, in bold, which is related to the thesis.

- Conference of Law Doctoral Students. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2022) 354 p. pp. 155-164., 10 p.**
4. **Papp, Petra: History and Existing Provisions of Substantive Legislation on Crimes against Humanity in Hungary. KAROLI MUNDUS 2: 1 pp. 11-23., 13 p. (2022)**
  5. **Papp, Petra: Concise Thoughts on the Law of War and War Crimes. In: Miskolczi-Bodnár, Péter (ed.) XXII. National Conference of Law Doctoral Students. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2022) 283 p. pp. 129-142., 14 p.**
  6. Papp, Petra: International and Domestic Legal Protection of the Ozone Layer. In: Domokos, Andrea (ed.) Criminal Protection of Nature and the Environment. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2022) 224 p. pp. 157-181., 25 p.
  7. **Papp, Petra: The Impact of the Nuremberg Trials on Domestic and International Criminal Law. In: Miskolczi-Bodnár, Péter (ed.) XXI. National Conference of Law Doctoral Students: 2021. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2022) 168 p. pp. 69-80., 12 p.**
  8. Boóc, Ádám; Papp, Petra: Editorial Preface. In: Boóc, Ádám; Papp, Petra (eds.) Acta Iuvenum Caroliensia: Works of Youth, Studies from the 35th OTDK Section of Law and Political Science. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2021) pp. 9-10., 2 p.
  9. Boóc, Ádám (ed.); Papp, Petra (ed.): Acta Iuvenum Caroliensia: Works of Youth, Studies from the 35th OTDK Section of Law and Political Science. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2021) ISBN: 9786155961779
  10. **Papp, Petra: On Certain Aspects of Responsibility. STUDIA IURISPRUDENTIAE DOCTORANDORUM MISKOLCIENSIIUM - STUDIES OF LEGAL DOCTORAL STUDENTS OF MISKOLC 22: 2 pp. 165-184., 19 p. (2021)**
  11. Papp, Petra: Domestic Violence Against Women as a Violation of Human Rights. In: Domokos, Andrea (ed.) Current Issues of Domestic Violence. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2021) 112 p. pp. 89-108., 20 p.
  12. **Papp, Petra: International Criminal Law and Christianity. In: Badacsonyi, Zoltán (ed.) Letters and Spirit: Law and Jurisprudence from the Perspective of Christianity.**

- Budapest, Hungary: Petrecz Sándor Foundation Publisher (2021) 364 p. pp. 164-188., 25 p.
13. Papp, Petra: Thoughts on Crime Prevention. In: Baráth, Noémi; Mezei, József (eds.) LAW-SCIENCE-ACTUALITIES - 2021 Law Science through the Eyes of Young Researchers - Essay Collection. Budapest, Hungary: National Association of Doctoral Students, Law Science Division (2021) 168 p. pp. 138-147., 10 p.
  14. Papp, Petra: Crimes Against Humanity or War Crimes? In: Miskolczi-Bodnár, Péter (ed.) XIX. National Conference of Law Doctoral Students. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2021) 375 p. pp. 221-233., 13 p.
  15. Domokos, Andrea; Papp, Petra: Response of Various International Organizations to Domestic Violence during the Pandemic. LEGAL THEORY REVIEW 3 pp. 25-33., 9 p. (2021)
  16. Papp, Petra: The Brief Overview of Various International Criminal Tribunals. In: Miskolczi-Bodnár, Péter (ed.) XVIII. Professional Meeting of Law Doctoral Students 2020. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2021) 321 p. pp. 211-234., 24 p.
  17. Papp, Petra: Forced Labor. In: Erdős, Csaba (ed.) Doctoral Workshop Studies 2020. Győr, Hungary: Universitas-Győr Nonprofit Ltd. (2020) 405 p. pp. 281-294., 14 p.
  18. Papp, Petra: Legal Qualification of „Sortúz” Trial. In: Miskolczi, Bodnár Péter (ed.) XVII. National Conference of Law Doctoral Students. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2020) 323 p. pp. 203-211., 9 p.
  19. Papp, Petra: Fundamentals of Forced Labor. In: Miskolczi, Bodnár Péter (ed.) XVI. National Conference of Law Doctoral Students. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2020) 305 p. pp. 217-226., 10 p.
  20. Papp, Petra: History and Current Provisions of Substantive Legal Regulation of Crimes Against Humanity. LEGAL THEORY REVIEW 21: 4 pp. 76-87., 12 p. (2020)
  21. Domokos, Andrea; Papp, Petra; Wiedemann, János: Legal Regulations in Criminal Law. Budapest, Hungary: Patrocinium Publisher (2020), 250 p. ISBN: 9789634133049

22. Domokos, Andrea; Papp, Petra: Life Imprisonment - The Hungarian Substantive Legal Regulation from the Beginnings to the Present. *LEGAL THEORY REVIEW* 21: 2 pp. 29-38., 10 p. (2020)
23. **Papp, Petra: The Nuremberg Trials in the Web of Law and Morality. In: Bihari, Erika; Molnár, Dániel; Szikszai-Németh, Ketrin (eds.) Spring Wind 2019 Conference = Spring Wind 2019: Conference Proceedings I. Budapest, Hungary: National Association of Doctoral Students (DOSZ) (2020) 641 p. pp. 287-298., 12 p.**
24. **Papp, Petra: The Historiography of International Criminal Law. In: Miskolczi, Bodnár Péter (ed.) XV. National Conference of Law Doctoral Students. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2020) 207 p. pp. 119-128., 10 p.**
25. Papp, Petra: The History of the Kecskemét Reformed Law Academy 1875-1949. *GERUNDIUM: UNIVERSITY HISTORY COMMUNICATIONS* 2019: 10 pp. 143-152., 10 p. (2019)
26. **Papp, Petra: Humankind or Humanity? International and Hungarian Legal Regulation of Crimes Against Humanity. *ACTA IUVENUM CAROLIENSIA* 2019: 11 pp. 403-432., 30 p. (2019)**
27. **Papp, Petra: What Is International Criminal Law? The Conceptual and Systematic Foundations of International Criminal Law. In: Miskolczi, Bodnár Péter (ed.) XIV. National Conference of Law Doctoral Students. Budapest, Hungary: Károli Gáspár Reformed University, Faculty of Law and State Sciences (2019) 481 p. pp. 313-322., 10 p.**