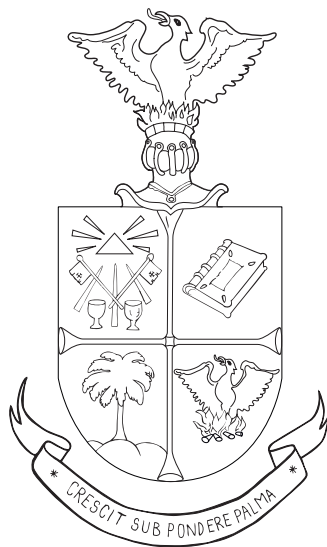


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HISTORY AND EXISTING PROVISIONS OF SUBSTANTIVE LEGISLATION ON CRIMES AGAINST HUMANITY IN HUNGARY

1. Introduction

The study seeks to present the history and provisions in force of substantive legislation on crimes against humanity. The crime against humanity can be regarded as a relatively young delict in both international and domestic legislation, due to its legal definition after the Second World War.² However, it is not clear in what context the term “*crimes contre l’humanité / crímenes de les a humanidad / Verbrechen gegen die Menschlichkeit / crimes against humanity*” was first coined. Some scholars point out that this term (or very similar terms) was used as early as the late eighteenth and early nineteenth centuries, especially in the context of slavery and the slave trade, as well as in Africa in relation to atrocities related to European colonialism, and elsewhere, such as the atrocities of Pope John Paul II. Due to the atrocities committed by King Leopold of Belgium in the Congo free state.³ Other scholars⁴ point out that the terminology of the crime against humanity stems from a joint declaration issued by the French, British and Russian governments in 1915 (allied governments)⁵ in which the Ottoman Empire was to be held accountable for the massacre of the Armenian population.⁶ The implementation of international law into national law has made significant progress over the last three decades. Thus, the way in which crimes against humanity are regulated is also bumpy.

1 Assistant Lecturer, Institute of Criminal Sciences.

2 ROBINSON, Darryl: Defining “Crimes Against Humanity” at the Rome Conference, *The American Journal of International Law*, Vol. 93, No. 1 (January 1999), pp. 43-57 <https://www.jstor.org/stable/2997955> (accessed 30 September 2021). For more information, see, for example, HEYDECKER, Joe J. – LEEB, Johannes: *Der Nürnberger Prozeß*. Köln, Kiepenheuer&Witsch, 2015.

3 SCHABAS, William: *Unimaginable Atrocities – Justice, Politics, and Rights at the War Crimes Tribunals*. Oxford, Oxford University Press, 2012, pp. 51-53

4 BASSIOUNI, M. Cherif: *Crimes Against Humanity in International Criminal Law*. Hague, Kluwer Law International, 1999, p. 62

5 GELLÉR, Balázs József: A nemzetközi büntetőjog. In: BELOVICS Ervin [etal.] – BUSCH Béla (szerk.): *Büntetőjog Általános Rész*. Budapest, HVG-ORAC, 2010, p. 524 [GELLÉR (2010a) op. cit.]

6 For more information, see, for example, DADRIAN, Vahakn: *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*. New York, Berghen Books, 1995.

II. The relationship between international and domestic law from the point of view of constitutional law

The implementation of international law in national law has made significant progress over the past three decades. Thus, the path of regulating crimes against humanity is bumpy.⁷ The role of international law as a source of law is recognized in criminal law through international obligations towards Hungary [The Fundamental Law of Hungary (25 April 2011), Article Q⁸]. Although this has not always been the case, since the regulation of the relationship between international law and domestic law, in other terms, the valid and effective effect of international obligations within the State, in the development of the Hungarian Constitution, has been overshadowed and neglected throughout the development of the Hungarian Constitution.⁹ The unwritten historical constitution, then Act I of 1946 on the form of government of Hungary and, in its original form, the text of the first written constitution, Act XX of 1949 on the Constitution of the People's Republic of Hungary, did not contain any provision on international obligations. This was in force until 31 December 2011. This was due to the prevailing mindset in contemporary socialist jurisprudence, which did not recognize the enforceability of the standards of international law within the State, without a separate decision by the State to that end, i.e. transformation into internal law.¹⁰ The particular public perception of that period was expressed in the

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- 7 For more information, see, for example, SÁRI, János: A Népköztársaság Elnöki Tanácsa. In: SCHMIDT Péter (szerk.): Magyar alkotmányjog. Budapest, BM Tanulmányi és Propaganda Csoportfőnökség, 1976. KUKORRELI, István – TAKÁCS, Imre: A magyar alkotmány története. Az alkotmányosrendszerváltozás jellemzői. In: KUKORRELI István (szerk.): *Alkotmánytan I*. Budapest, Osiris, 2003. SÜLYOK, Gábor: A nemzetközi jog és a belső jog viszonya: a fontosabb elméletek és a hazai gyakorlat, *Leviatán*, Tom. 3., 2005. LAMM, Vanda: Megjegyzések a hazai jogrendszeréről. In: SZENTPÉTERI, József – TEPLÁN, István – VIZI, E. Szilveszter (szerk.): *Előmunkálatok a társadalmi párbeszédhez*. Budapest, Gazdasági és Szociális Tanács, 2006. SÜLYOK, Gábor: Visszatérés a nemzetközi jog és a belső jog viszonyának alaptörvényi szabályozása, *Jog – Állam – Politika*, 2012/4., pp. 18-19. <https://dfk-online.sze.hu/images/J%C3%81P/2012/4/sulyok.pdf> (accessed 30 September 2021.) MOLNÁR, Tamás: A nemzetközi jog és a magyar jog viszonya. In: JAKAB, András – FEKETE, Balázs (szerk.): *Internetes Jogtudományi Enciklopédia*, 2018. <http://ijoten.hu/szocikk/a-nemzetkozi-jog-es-a-magyar-jog-viszonya> (accessed 30 September 2021.)
- 8 The Fundamental Law of Hungary (25 April 2011) https://nemzetikonyvtar.kormany.hu/download/0/00/50000/Alap%C3%B6rv%C3%A9ny_angol.pdf (accessed 30 September 2021.)
- 9 BODNÁR, László: A nemzetközi jog magyar jogrendszerbeli helyének alkotmányos szabályozásáról, *Acta Universitatis Szegediensis Acta Juridica et Politica*, Tomus XLVII. Fasciculus 10., 1996, p. 20. http://acta.bibl.u-szeged.hu/6820/1/juridpol_047_019-036.pdf (accessed 28 September 2021.)
- 10 MOLNÁR (2018) op. cit., sections [2]-[4].

fact that a relatively large number of international treaties¹¹ were published and were essentially declarative in nature, i.e. they did not constitute a real source of law for the application of the law.¹² On this basis, the practical implementation of a very rigid and extremely dualistic transformation model is drawn up, which has not or only acknowledged on a case-by-case basis the primacy of transformed international law over domestic law.¹³ The first step towards international law was the amendment of the Constitution by Act XXXI of 1989, which ‘settled’ the relationship between international law and Hungarian law, the fulfilment of international legal obligations within the State.¹⁴ Because of the laconic, overly general wording of the provision and the resulting vagueness, several different meanings could be read from it. This was also sharply criticized by the literature.¹⁵ Finally, by three decisions of the Constitutional Court [No. 53/1993. (X. 13.), 4/1997. (I. 22.), 30/1998. (VI. 30.)], it led the dualist-transformational system out of the text. According to this, the generally recognized rules of international law become part of Hungarian law by general transformation, while international treaties must be incorporated into the Hungarian legal system individually by separate legislative publication, so-called special transformation.¹⁶ This constitutional norm was replaced by Article Q) of The Fundamental Law of Hungary (25 April 2011) from 1 January 2012, which merged the state goal of declaring Hungary’s participation in international relations and the new international legal clause that plays the role of a bridge between international law and the Hungarian legal system. Other sources of international law become part of the Hungarian legal system by proclamation by law. From the point of view of my subject, I would like to refer here to the problematic question that the Rome Statute¹⁷ is not part of the

11 This was mostly done by decrees of law adopted by the Presidential Council of the People’s Republic of Hungary. This body was also endowed with the widest international contracting powers. For more information, see, SÁRI(1976) op. cit.

12 BODNÁR (1996) op. cit., p. 21

13 Decree-Law No. 27 of 1982 was the first piece of legislation at the legal level to deal with the procedure relating to international treaties.

14 See Section 7(1) of Act XX of 1949.

15 BODNÁR (1996) op. cit., p. 20, VÖRÖS, Imre: Az Európai Megállapodás alkalmazása a magyar jogrendszerben, *Jogtudományi Közlemény*, 1997/5., p. 232, KOVÁCS, Péter: Nemzetközi szervezetek szankciós típusú határozatai magyarországi érvényesíthetőségének alkotmányjogi gyakorlata és problémái. In: BODNÁR, László (szerk.): EU-csatlakozás és alkotmányozás. Szeged, SZTE ÁJK, 2001, p. 134; SZÉNÁSI, György: A nemzetközi szerződésekkel kapcsolatos döntéshozatalra és eljárásra vonatkozó hatályos magyar jogi szabályozás és a napi valóság, ahogy azt a hivatásos jogalkalmazó látja és tapasztalja, *Magyar Jog*, 2002/7., p. 397; SÜLYOK (2005) op. cit., p. 86, LAMM (2006) op. cit., p. 22.

16 Sulyok (2012) op. cit., pp. 18-19

17 Rome Statute of the International Criminal Court <https://www.icc-cpi.int/nr/rdononlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf> (accessed 01 October 2021.)

Hungarian legal system. According to customary law¹⁸, of course, the definitions of international crimes are part of the Hungarian legal system, and the international convention promulgated by Hungary also contains several related provisions¹⁹, but this does not relieve the legislator of the obligation to publish.²⁰ In my opinion, this legislative failure to act against humanity can be particularly dangerous, since the offence under discussion has no international convention, and the Rome Statute is the primary source of law.

III. International legislation on crimes against humanity

III.1. Beginnings

The terminus technicus of crimes against humanity was created in 1945 by the Statute of the International Military Tribunal at Nuremberg (IMT).²¹

Article 6(c) of the Nuremberg Charter specifies for the first time crimes against humanity²²: “*namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.*”²³

18 For more information, see, for example, HOFFMANN, Tamás: A nemzetközi szokásjog szerepe a magyar büntetőbíróságok joggyakorlatának tükrében, *Jogelméleti Szemle*, 2011/4. http://jesz.ajk.elte.hu/hoffmann48.html#_edn1 (accessed 01 October 2021.)

19 See, for example, Decree-Law No. 16 of 1955 on the proclamation of an International Convention on the Prevention and Punishment of the Crime of Genocide, dated 9 December 1948.

20 “*As a result of the obstruction and postponement of the publication of the Rome Statute, there have been legal coherence problems which may jeopardise daily cooperation with the International Criminal Court of a legal aid nature, in particular as there are a number of articles in the Criminal Code and the Criminal Procedure Act which are subject to the provisions of the ‘Law on the Enforcement of Obligations arising from the Statute of the International Criminal Court’ depending on certain institutions, certain steps.*” KOVÁCS, Péter: Miért nincs még kihirdetve a Római Statútum? Gondolatok a Római Statútum és az Alaptörvény összeegyeztethetőségének egyszerűségéről, *Állam- és Jogtudomány*, 2019/1., p. 69 <https://jog.tk.mta.hu/uploads/files/2019-01-KOVACS.pdf> (accessed on 01 October 2021.)

21 IMT Charter, Article 1., 6.

22 The explicit intention to create the definition is the accountability of Nazi war criminals. S. DOMOKOS, Andrea: Nemzetközi büntetőbíráskodás eszméje. In: MÁTHÉ, Gábor [etal.]: *Jog és Állam 7., Bűnügyi Oktatók Országos Találkozója (BOT) – 2004*. Budapest, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, 2005, p. 25; HOFFMANN, Tamás: Nemzetközi büntetőjog. In: KENDE, Tamás [etal.]: *Nemzetközi jog*. Budapest, WoltersKluwer, 2014, p. 551

23 BASSIOUNI, M. Cherif: Emberiesség elleni bűncselekmények. In: GUTMAN, Roy – RIEFF,

This definition was also used by other international criminal courts. Initially, the International Military Tribunal for the Far East (IMTFE)²⁴ and then the Allied Control Committee of Germany decree No. 10,²⁵ under which the Allies prosecuted the Germans in their own occupied zones. Finally, the International Criminal Tribunal for the former Yugoslavia (ICTY),²⁶ the International Criminal Tribunal for Rwanda (ICTR),²⁷ the International Criminal Court (ICC)²⁸ and hybrid courts such as the Special Court for Sierra Leone²⁹ and the Extraordinary Chambers in the Courts of Cambodia^{30,31}

David (szerk.) [ford. LATTMANN Tamás – SÜLI István]: *Háborús Bűnök*. Budapest, Zrínyi, 2002, p. 104

- 24 IMTFE Charter Article 1., 5. https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf (accessed 02 October 2021.)
- 25 Bassiouni, M. Cherif: *Crimes Against Humanity: Historical Evolution and Contemporary Application*. New York, Cambridge University Press, 2011, p. xxxi.
- 26 S/RES/877 (1993) [https://undocs.org/S/RES/877\(1993\)](https://undocs.org/S/RES/877(1993)) (accessed 02 October 2021.) Hungary incorporated its Statute into domestic law by Act XXXIX of 1996. In 2017, the Tribunal concluded its operation to punish those responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. S. CRS Report for Congress, April 23, 1998, pp. 1-2 <https://fas.org/sgp/crs/row/96-404.pdf> (accessed 02 October 2021.); DOMOKOS (2005) op. cit., p. 23; UN ICTY, 2017. <https://www.icty.org/en/press/icty-marks-official-closure-with-moving-ceremony-in-the-hague> (accessed 02 October 2021.)
- 27 S/RES/891 (1993) [https://undocs.org/S/RES/891\(1993\)](https://undocs.org/S/RES/891(1993)) (accessed 02 October 2021.) Hungary incorporated its Statute into domestic law by Act CI of 1999. The first conviction for genocide took place in 1998, when Jean-Paul Akayesu was held accountable for his actions. S. ICTR, Prosecutor v. Jean-Paul Akayesu, Judgment, 23 Nov. 2001, Case No. ICTR-96-4-T. <https://unictr.irmct.org/en/cases/ict-96-4> (accessed 02 October 2021.) The tribunal closed at the end of 2015. S. BIEDERMANN, Zsuzsánna: A ruandai népirtás, *Afrika Tanulmányok folyóirat*, 2013/2., pp. 75-77 http://real.mtak.hu/9153/1/03_biedermann.pdf (accessed 03 October 2021.)
- 28 ICC Article 1; BASSIOUNI, M. Cherif: Negotiating the Treaty of Rome on the Establishment of an International Criminal Court, *Cornell International Law Journal*, 1999, Vol. 32: Iss. 3, Article 3., pp. 443-460 <http://scholarship.law.cornell.edu/cilj/vol32/iss3/3> (accessed 02 October 2021.); WIENER, A. Imre – LIGETI, Katalin: Hungarian Report on the International Criminal Court, *Acta Juridica Hungarica*, 2002, Vol. 43., Iss. 3-4., p. 263 <http://real.mtak.hu/46907/1/ajur.43.2002.3-4.5.pdf> http://real.mtak.hu/9153/1/03_biedermann.pdf (accessed 03 October 2021.)
- 29 S/RES/1385 (2001) [https://undocs.org/S/RES/1385\(2001\)](https://undocs.org/S/RES/1385(2001)) http://real.mtak.hu/9153/1/03_biedermann.pdf (accessed 03 October 2021.) For more information, see, for example, KOVÁCS, Péter: Nemzetközi büntetőbíráskodás. In: JAKAB, András – FEKETE, Balázs (szerk.): *Internetes Jogtudományi Enciklopédia*, 2018, sections [64]-[67] <http://ijoten.hu/szocikk/nemzetkozi-buntetobiraskodas> (accessed 03 October 2021.)
- 30 ECCC, Article 1., 2. https://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf (accessed 03 October 2021.); BASSIOUNI (2011) op. cit., pp. 255-256; KOVÁCS (2018) op. cit., sections [68]-[70]
- 31 BASSIOUNI (2011) op. cit., p. 256

Article 5(c) of the Charter of the International Military Tribunal For The Far East is about crimes against humanity: “*Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.*”

Compared to the Statute of the Nuremberg Tribunal, there are two differences. The first is that these acts are always crimes against peace.³² The second is „*persecution on religious grounds*”.³³ Article 6 also states that neither the official position of the accused nor the act carried out on command relieve him of criminal liability, but at most an attenuating circumstance *if justice so requires*,³⁴ which is in accordance with the Nuremberg principles.

Pursuant to Article 5 of the Statute of the International Tribunal, “*the International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:*

- (a) *murder;*
- (b) *extermination;*
- (c) *enslavement;*
- (d) *deportation;*
- (e) *imprisonment;*
- (f) *torture;*
- (g) *rape;*
- (h) *persecutions on political, racial and religious grounds;*
- (i) *other inhumane acts.*”³⁵

The article cited appears to be close in substance to Article 6(c) of the Statute of the Nuremberg Tribunal Statute, but the Statute of the Yugoslav Tribunal considers ‘committing in an armed confrontation’ to be a constitutive condition for a crime against humanity. It should be noted that in the practice of the Yugoslav Tribunal, ‘committing in an armed conflict’³⁶ means that there was an armed conflict at the time

32 GELLÉR, Balázs József: *Nemzetközi büntetőjog Magyarországon, Adalékok egy vitához, (Egyes jellemzők leírása és diagnosztikus kísérlet)*. Budapest, Tullius, 2010, p. 32 [GELLÉR (2010b) op. cit.]

33 GELLÉR (2010b) op. cit., p. 33

34 GELLÉR (2010a) op. cit., p. 529

35 Act XXXIX of 1996, Article 5.

36 International law has never defined the concept of war. S. VALKI, László: Háború, erőszak, agresszió. In: KENDE, Tamás [etal.]: *Nemzetközi jog*. Budapest, WoltersKluwer, 2014, p. 720; International law uses the concept of armed conflict at this time. S. GREENWOOD, Christopher: The Concept of War in Modern International Law, *International and Comparative Law Quarterly*,

and place of the crime, and that no link between the crime and the conflict is necessary.

The Court of Appeal of the Yugoslav Court of Justice stated in the Tasdic case:

*“[...] the now crystallised rule of customary international law is that the factual nature of crimes against humanity requires no connection to international or internal armed conflict. [...] When drafting the Statute, the Security Council drew the framework of this scope of crime unnecessarily narrower than how it would develop under customary international law.”*³⁷

Thus, according to the correct interpretation, the Yugoslav Tribunal strictosensu does not require any link between crimes against humanity and (international) armed conflict, but the latter was objectively necessary for criminal liability to be established.³⁸

In particular, in the Nikolic case, in which the Council of first instance of the Yugoslav Tribunal outlined the fundamental characteristics of crimes against humanity.

These characteristics are as follows:

- (i) these delicacies must be directed against a specific group of civilians;
- (ii) the acts must be to some extent organized and systematic;
- (iii) although the acts do not need to be linked to a political stance established at national level, they should not be carried out merely because of isolated acts of some individuals.³⁹

This terminological approach is also reflected in the Mrkic, Radic and VeselinSlijvancanin cases.⁴⁰

1987, vol. 36., p. 283; M. NYITRAI, Péter: *Nemzetközi és európai büntetőjog*. Budapest, Osiris, 2006, p. 176

37 ICTY, Prosecutor v. Tadić, Appeals Chamber Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case No. IT-94-1., par.141. <https://www.icty.org/case/tadic/4,2016-6-9>. (accessed 03 October 2021.); BERESFORD, Stuart: *The International Criminal Tribunal for the Former Yugoslavia: the First Four Years*, *Otago Law Review*, 1999, Vol. 9, No. 3., p. 565 <http://www.nzlii.org/nz/journals/OtaLawRw/1999/7.html> (accessed 04 October 2021.);

38 „[...] *What is inhumane, and consequently proscribed, in international wars cannot but be inhumane and inadmissible in civil strife.*” S. ICTY, The Prosecutor v. Duško Tadić aka “Dule”, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber, 2 October 1995, Case No. IT-94-1-AR72, par.119. <https://www.icty.org/x/cases/tadic/acdec/en/51002.htm> (accessed 03 October 2021.); (accessed 03 October 2021.); See also more details: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule70#Fn_3460CD3C_00022 (accessed 02 October 2021.)

39 ICTY, Prosecutor v. Nikolić, Review of the Indictment pursuant to Rule 61, 20 Oct 1995, Case No. IT-95-2-R61., par.26. https://www.icty.org/en/case/dragan_nikolic#acjug (accessed 01 October 2021.)

40 ICTY, Prosecutor v. Mrkic, Radic, Veselin Slijvancanin, Review of the Indictment pursuant to Rule 61, 3 April 1996, Case No. IT-95-13-R61., par.30.; Ld. még részletesebben <https://www.icty.org/x/cases/mrksic/tjug/en/070927.pdf> (accessed 02 October 2021.); M. NYITRAI (2006) op. cit., p. 189

The Statute of the Yugoslav Tribunal has expanded the scope of basic acts on rape and torture. The Council of the Yugoslav Court of First Instance also pointed out that there may be significant overlaps between crimes against humanity and war crimes,⁴¹ but that crimes against humanity can also be committed in peacetime, as opposed to war crimes, which can be committed specifically during a war.⁴²

As set out in Article 3 of the Statute of Rwanda Tribunal:

“The International Criminal Court of Rwanda shall have the right to prosecute persons responsible for the following offences if they have been committed in a wide and systematic attack on the civilian population on national, political, folk, racial or religious grounds:

- (a) manslaughter;*
- (b) extermination;*
- (c) soaking;*
- (d) deportation;*
- (e) imprisonment;*
- (f) torture;*
- (g) rape;*
- (h) persecution on political, racial or religious grounds;*
- (i) other inhumane acts.”⁴³*

That wording differs from Article 5(c) of the Statute of the Yugoslav Court of Justice in that there is no need for an armed conflict at the time of the offence. The factual element is a widespread or systematic attack on a discriminatory basis, whether national, political, ethnic, racial or religious, or on a civilian population, which is also a factual element in the practice of the Yugoslav Tribunal, even though it does not appear in its Statute, but does not impose the condition for the realization of crimes against humanity that factual conduct is committed on a discriminatory basis.⁴⁴

III.2. In our days

For the purposes of the Statute of the International Criminal Court (also known as the Rome Statute⁴⁵), a crime against humanity is understood to mean any of the following acts committed as part of a wide-ranging or systematic attack on the civilian population, knowing of the attack:

41 M. NYITRAI (2006) op. cit., p. 190.

42 BASSIOUNI(2002) op. cit., p. 105

43 Act CI of 1999, Art. 3.

44 SÁNTHA, Ferenc: Az emberiség elleni bűncselekmények, *Miskolci Jogi Szemle*, 2008/1., p. 56; PAPP, Petra: Emberiség vagy emberiség? Az emberiség elleni bűncselekmények nemzetközi és magyar jogi szabályozása. In: NAGY, Péter – WIEDEMANN, János (szerk.): *Tudományos eredmények – hallgatói TDK dolgozatok 2018-2019*. Budapest, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Acta Iuvenum Carolensia XI., 2019, p. 417

45 Compare it to footnote 17.

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;
- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court,;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid;
- (k) other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Article 7(2) of the Rome Statute provides for further interpretative provisions for certain conducts.⁴⁶

The ICC is assisted in the interpretation and application of crimes against humanity (including crimes against humanity) by the Elements of Crimes document. In addition, under Article 21 of the Statute, the court may consider so-called external sources,⁴⁷ such as international conventions that incriminate international criminal offences, during its enforcement activities.⁴⁸

IV. Hungarian legal interpretation and implementation of crimes against humanity

After the Second World War, the first full codification of Hungarian criminal law took place with the adoption of Act V of 1961. Thus, in a separate chapter, the Criminal

46 Ibid.

47 E.g. an international convention against torture and other cruel, inhuman or degrading punishments or treatment developed under the United Nations in 1984. S. <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (accessed 02 October 2021.)

48 ICC, Rome Statute Article 21.: „[...] (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence; (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict; (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.” Compare it to footnote 17.

Code codified crimes to be prosecuted under international law under the name of crimes against peace and humanity, which included crimes against peace, war crimes and the crime of genocide, but not the sui generis crimes against humanity.⁴⁹

The same approach was followed by Act IV of 1978 on the Criminal Code, which also regulated international crimes in Chapter XI, which is also known as crimes against humanity. Chapter XI classified the various offences under international law under two titles: title I “Crimes against peace” included incitement to war (§ 153), illicit recruitment (§ 154), genocide (§ 155) and apartheid crime (§ 157). So, this title functioned as a collection category, since it included genocide and a specific crime against humanity, apartheid. However, title II “War crimes” contained only crimes prohibited by international humanitarian law. Thus, until the adoption of Act C of 2012, the Hungarian criminal law did not know the category of crimes against humanity at all, but it referred to crimes against humanity as crimes under international law. Since part of the legal literature translated this category as crimes against humanity, this regulatory deficiency, which was linked to the misleading title of Chapter XI of the Criminal Code, resulted in serious problems in terms of the application of law. The terminology debate stemmed from the ambiguity of the original English and French terms and the different regulatory approaches behind them. Crimes against humanity / *crimes contre l’humanité* / *crímenes de les a humanidad* / *Verbrechen gegen die Menschlichkeit* can indeed be translated as either a crime against humanity or against all mankind. In the view of Károly Nagy and Erich Kussbach, the use of the term ‘crimes against humanity’ in the Hungarian language is justified, since this group of crimes is one of the most international legal crimes, all of which have humanity as their legal object. The statutory definitions of crimes have been introduced to criminalize inhumane acts against the civilian population, so the translation of ‘crimes against humanity’ certainly seems more accurate. Crimes against humanity are part of this conceptual space, a category of crimes against humanity. Legislature resolved this problem in Act C of 2012 on the Criminal Code (‘Criminal Code IV’), creating the Chapter on Crimes Against Humanity (Chapter XIII) and the following chapter on War Crimes (Chapter XIV).

IV.1. Crimes against Humanity in Act C of 2012

Section 143 of Criminal Code IV contains the statutory definition of crimes against humanity, which is in accordance with Article 7 of the Rome Statute. Humanity is the legal object of crimes against humanity in a broad sense. In a narrow sense, the population of a State, or part of it. Various criminal acts can be carried out

49 Act II of 1950, on the general part of the Criminal Code, contained in Section 138 the definition of the crime against a national, ethnic, racial or religious group, which overlaps with crimes against humanity.

against the population.⁵⁰ Their common elements are that they can be carried out if the conduct is carried out as part of a comprehensive or systematic attack on the population.⁵¹ However, a comprehensive and systematic attack does not mean that a war⁵² specified in the interpretative provision of Criminal Code IV must exist. In the event of war, the offence specified in Chapter XIV of Criminal Code IV may be established. The passive subject of the crime is the population,⁵³ or a part of it, or a member thereof, regardless of gender, age, origin, or nationality.⁵⁴ According to paragraph (1)(h), a group is defined as a group on the grounds of political opinion, nationality, ethnic origin, culture, religion, sex or any other reason. Membership of the group also assumes that the members of the group actually live in the same geographically demarcated place, forming part of the population together.⁵⁵ The act can often be accompanied by the pursuit of territorial interests. The legislature listed the criminal offences in eight points. The first conduct of the offence is murder, which is governed by Section 160 of Criminal Code IV.⁵⁶ The second act is forcing the civilian population, in part or in whole, to live under conditions threatening the demise of that population or certain members thereof. This should be understood as an influence that adversely alters the living conditions of the forced individuals without ensuring the satisfaction of elementary needs, thereby creating a risk of the destruction of the population or a part thereof. It can usually be achieved by physical violence directed against all or part of the population, some of its members, which predicts the horror of the extinction (death) of the population or of some of its members as set out in the definition of the crime.⁵⁷ The third conduct is ordering the displacement of the civilian population, in part or in whole, from their rightful place of residence, which infringes the right to freely choose the place of residence. Basically, it can be achieved by relocating or forcibly abducting the population⁵⁸. The fourth conduct is human trafficking and forced labour (§ 192⁵⁹). Article 7(1)

50 MOLNÁR, Gábor Miklós: Az emberiség elleni bűncselekmények. In: BUSCH, Béla (szerk.): *Büntetőjog II., Különös rész*. Budapest, HVG-ORAC, 2016, p. 27

51 POLT, Péter: Az emberiség elleni bűncselekmények. In: BLASKÓ, Béla (szerk.): *Büntetőjog Különös Rész I.* Budapest-Debrecen, Rejtjel, 2018, p. 18

52 According to Section 459(10) of Act C of 2012.

53 The concept of the population, see Molnár (2016) op. cit., p. 27

54 Ibid. 28

55 MOLNÁR, Gábor Miklós: Az emberiség elleni bűncselekmények. In: BUSCH, Béla (szerk.): *Büntetőjog II., Különös rész*. Budapest, HVG-ORAC, 2014, p. 26

56 POLT (2018) op. cit., p. 18

57 HORNYÁK, Szabolcs: Az emberiség elleni bűncselekmények. In: TÓTH, Mihály – NAGY, Zoltán: *Magyar Büntetőjog, Különös Rész*. Budapest, Osiris, 2014, pp. 23-24

58 POLT (2018) op. cit., p. 19

59 Section 143 (1) d) of Act C of 2012 was amended by Section 13 (c) of Act V of 2020.

(c) of the Rome Statute refers to enslavement.⁶⁰ The fifth conduct is the deprivation of another person of his or her personal freedom, or unlawfully maintaining his or her abduction. This corresponds to imprisonment under the Statute or other severe forms of deprivation of physical liberty.⁶¹ Forcing others to commit sexual violence (§ 197) or to tolerate it, prostitution, carrying a fetus or discourse (§ 163).⁶² Grievous bodily harm (with a duration of more than eight days under § 164) may be caused by assault or harm to health or psychological harm by assault or psychological distress.⁶³ Grievous bodily harm means serious damage to health, distortion, or serious damage to external or internal organs.⁶⁴ Psychological harm must be more than temporary damage, even humiliation. The psychological damage caused does not have to be permanent and irreparable, but, at the same time, it causes a serious disadvantage to the future life of the victim.⁶⁵ On this basis, examples of this behaviour include torture, grievous bodily harm, threats to life, interrogation with beatings, rape, or other forms of serious inhumane and degrading treatment.⁶⁶ The cause of serious physical or psychological harm must be covered by the perpetrator's direct intentions.⁶⁷ Deprivation of other persons of their basic rights for reasons of their affiliation with a group on the grounds of political opinion, nationality, ethnic origin, culture, religion, sex or any other reason.⁶⁸ Given the extreme seriousness of the act, the preparation of the offence is also punishable. The subject of the crime can be anyone, regardless of nationality, and the perpetrator belongs to the attacking group itself. Crimes against humanity are deliberate crimes. They can be achieved not only with a straight (*dolus directus*), but also with a possible (*dolus eventualis*) intention. The fact that the perpetrator commits one or more elements

60 POLT (2018) op. cit., p. 19; PAPP, Petra: A kényszermunka alapjai. In: MISKOLCZI BODNÁR, Péter (szerk.): *Jog és Állam 29. szám, XVI. Jogász Doktoranduszok Országos Találkozója*. Budapest, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Patrocinium, 2020, pp. 217-224

61 POLT (2018) op. cit., p. 19

62 Ibid.; HORNYÁK (2014) op. cit., p. 24

63 According to Szabolcs Hornyák, the cause of serious psychological harm can be determined if the victim suffers a strong psychological and emotional shock that involves at least intermittent overturning of his psychological balance, manifests itself as a bad experience in later life, or his later lifestyle changes in a negative direction because of the shock. S. HORNYÁK (2014) op. cit., pp. 24-25; POLT (2018) op. cit., p. 20

64 IT-98-33-T par.543

65 IT-98-33-T par.513; IT-02-60-T par.645; IT-97-24-T par.516

66 IT-05-88-T par.812; IT-99-36-T par.690

67 IT-02-60-T0 par.645; MOLNÁR (2014) op. cit., pp. 25-28; KIRS, Eszter: Népiártás az ICTY nagytábor alatt. In: BLUTMAN, László – HOMOKI-NAGY, Mária (szerk.): *Ünnepi kötet Dr. Bodnár László egyetemi tanár 70. születésnapjára*. Szeged, Szegedi Tudományegyetem Állam- és Jogtudományi Kar, 2014, p. 306 http://acta.bibl.u-szeged.hu/34799/1/juridpol_077_303-311.pdf (accessed 04 October 2021.)

68 HORNYÁK (2014) op. cit., p. 25; POLT (2018) op. cit., p. 20

of the definition of the crime on the same occasion and to the demeaning of one or more persons does not affect the order or result in a set of offences. In view of the additional condition set out in the definition of the crime that the conducts detailed therein are expressed as a comprehensive or systematic part of the offence against the population, crime against humanity is specific to all offences contrary to other definitions of Criminal Code IV, therefore their formal set is apparent and is classified exclusively in accordance with Section 143.⁶⁹

V. Conclusion

“War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens,[1] but as soldiers, not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation.”⁷⁰

The category of crimes against humanity appeared after the Second World War and soon became an integral part of international criminal law. Although it has not yet been codified in a separate international treaty, it provides a comprehensive set of rules for the Rome Statute of the International Criminal Court. A significant part of the conceptual elements of crimes against humanity are found in customary international law, in the case law of international criminal tribunals. In this study, I have tried to point out that this basic category of international crimes has been present in national law for a relatively short period of time. A similar category of crimes, known as crimes against the people, which were created to hold the civilian population accountable, can be recorded as a precursor to similar crimes in post-World War II criminal proceedings. However, this does not identify the category of crimes against humanity. Act C of 2012 is a significant step in the right direction, as it largely eliminates the lack of coherence between Hungary’s international legal obligations and its national legislation. However, this has not yet solved the fundamental constitutional concern of how to assess, transfer, suspend and reopen potential Hungarian cases under the complementary jurisdiction of the International Criminal Court in the absence of the promulgated Rome Statute. Substantive law is ‘harmonised’, but there is a high degree of legal uncertainty in the field of procedural law. If there were a Hungarian criminal prosecution for a crime against humanity, the Hungarian judge would be able to establish the facts from a substantive point of view, but he would not know what he should do with the case from a procedural point of view.

69 MOLNÁR (2014) op. cit., p. 28; KARSAI, Krisztina (szerk.): *Nagykommentár a Büntető Törvénykönyvről*, Budapest, Wolters, 2019, pp. 307-309

70 ROUSSEAU, Jean-Jacques (ford. RADVÁNYI, Zsigmond): *Társadalmi szerződés, II. kiadás*. Budapest, Phönix-Oravetz, 1947.