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Short Analysis of Klaus Barbie and Jean-Pierre Bemba Gombo in Pointing out of the Responsability of Natural Persons for International Crimes

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Abstract: In international law doctrine carried on extensive talking and still it is a actual subject, if the individual is liable of responsability and, implied, of sanction for international crimes. Before to reveal some aspects of natural persons responsability for international crimes a couple of clarifications is required. Thus, we recall that the first author which use the term international criminal law was Jeremy Bentham, who distinguished between the criminal law of the community of states and the criminal law of a state. Over time, legal doctrine has extrapolated the concept of legal relationships with an international element, making the distinction between public international law and private international law. If criminal law is a branch of public law, then international criminal law becomes a sub-branch of international law, regulating criminal legal relationships with an international element. In other words, referring to private international law, we specify that it represents the totality of legal norms that resolve conflicts of laws or conflicts of jurisdiction and those regarding the legal status of the foreign national. In this context, the international element appears as a factual circumstance related to a legal relationship due to which this relationship is related to several legal systems (or laws belonging to different countries). With regard to international criminal law, we specify that this is a branch of public international law and designates the set of legal norms stipulated in various conventions and treaties by which states, in their capacity as subjects of law, order the repression of illicit acts that infringe fundamental rights of the international community. In other words, international criminal law consists of rules of general international law that govern the criminal liability of natural persons, individuals, for acts that harm international public order and constitute crimes against humanity.

Keywords: *case of Klaus Barbie and Jean-Pierre Bemba Gombo, responsability of natural persons, international crimes.*

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1. Introduction

The norms of the international public law beeing obligatory must respect by all the subjects of international public law (Ciucă, 2017), whether we are talking of states, international organizations or natural persons. When violation of the norms are found, occurs the insurance of compliance with norms which accomplished through the exercising of constraint by the states in individual or collective way, by implementing of coercive measures, obviously admitted by international law. In such situations, liability becomes of major importance because the way in which it has been engaged also depends on the maintenance of the international legal order, as well as the peace and security of the states. Specifically, international liability establishes the obligation of those who have violated the legal norms to bear the consequences of their illicit behavior in the form of sanctions established by states in this regard. Under current international law, the responsibility of states aims at a wide range of responsibilities for the war of aggression considered the most serious international crime and responsibility for other acts considered to be a threat or violation of peace, or for other illicit acts classified as crimes against humanity.

The international responsibility of states is engaged when international crimes are committed. The forms of international crimes can be: violation of an international agreement (treaty, convention) or customary norms that can only attract material responsibility and until the outbreak of a war of aggression, this form being the most serious of international crimes. The illegal or even criminal nature of an international offense is determined by conventional and customary rules. We mention that these norms are also enshrined in the statutes of the international military tribunals in Nuremberg and Tokyo.

Individuals may become subjects of international crime if their illicit actions are approved or tolerated by the state to which they belong, as well as when they commit international crimes.

2. The cases of Klaus Barbie and Jean-Pierre Bemba Gombo

The issue of criminal liability of individuals on an international level has given rise to numerous controversies in the legal literature, the analysis starting from various cases in legal practice. The main controversy in this area was the determination of the subject of international criminal liability, meaning who should be held criminally liable for committing an international crime. We reiterate that criminal liability is an attribute of man,

of the individual and not of the community. In the case of illicit acts of a criminal nature committed by one state against other states and requiring their repression by criminal sanctions, the criminal responsibility does not lie with the state, but with its representatives and agents, who have ordered and executed such offenses (Geamănu, 1975, p. 401). For this reason, for international crimes committed by state organs or agents, the international criminal responsibility does not fall to him but to the persons who committed them in the name and with the tolerance of the state. This does not mean that the state is relieved of any liability, as for the state as a whole, some political, economic or administrative measures apply, such as the restriction of state sovereignty, the imposition of an embargo or the payment of compensation - for exemple, V. Pella in its draft code provided for punishments and security measures applicable to states, such as: the destruction of strategic railways, the reduction of the army, the international control of the military budget, in order to prevent their aggressive activity (Ciucă, 2019).

A similar character has the responsibility of the state for not taking measures to prevent or prevent international crimes committed by individuals, if it was obliged to do so, without having the capacity to act in the name and on behalf of the state. The commission of certain acts contrary to the superior values of society, public order, the rights and interests of citizens, life, affects society as a whole. Its members adopt an attitude of blame and rejection towards the criminal phenomenon, and the state is debt to take protective measures.

The transition to the international sphere of crimes that were the exclusive competence of states, so related to their domestic law, as well as the occurrence of serious crimes, which occurred mainly after the prohibition of the use of force in international law, led to redefining the notion of international crime. The evolution of the concept has been slow for a long time, but since the beginning of the twentieth century conventional regulations of the term have crystallized.

Just as international custom does not require, in order to be binding, the clear and anticipated consent of all states and no unanimous consent, so the rule attributing criminality to certain violations of international law does not need to be unanimously recognized in order to be mandatory, and a less general belief that it is recognized as consistent with the idea of justice and that it is based on a social necessity (Creţu, 1996, p. 143; Gună, 2019).

The cases subject to our analysis reinforce the need to establish criminal liability for individuals who commit international crimes by order of the state apparatus to which they belong.

Klaus Barbie is one of the people sentenced to life in prison for crimes against humanity by the International Criminal Court. For a better understanding of the case we will briefly explain the factual situation: Klaus Barbie is of German nationality and was born on October 25, 1913 in Bad Godesberg, near Bonn. He was charged with crimes against humanity and was tried and convicted by a court in France.

From 1933 to 1935, he was a member of the „Hitler Youth" and showed fanatical enthusiasm for Nazi ideology during his stay in a youth labor camp organized by the National Socialist Party. He met Himmler in 1935 and joined the SS. He soon became a member of the Berlin intelligence services and took part in the persecution of Jews and homosexuals. He was then sent to The Hague and Amsterdam, where he was charged with persecuting political refugees from Germany and Jews.

Barbie arrived in France in 1942 and was made head of the Gestapo (secret police) in Lyon. The offenses of which he was subsequently charged took place during his stay in France. Klaus Barbie was accused of being responsible for the deportation of hundreds of French Jews, in particular for the arrest of 44 children and seven adults in the Izieu orphanage on 6 April 1944 and their deportation to the Auschwitz-Birkenau camp; the attack on the Union Générale des Israélites de France (UGIF) on Sainte-Catherine Street in Lyon on 9 February 1943, when 86 people were arrested and deported and the deportation of more than 600 people in the convoy of 11 August 1944, which otherwise, it was the last deportation from Lyon.

From 1942, Klaus Barbie was the regional commander of the Gestapo in Lyon, in occupied France; he was also called the „Butcher of Lyon", because of the notorious cruelty with which he interrogated his victims. After the war he took refuge in Bolivia, and in 1957 he managed to obtain Bolivian citizenship, under the pseudonym Klaus Altman. In 1983, Barbie was extradited at the request of France.

Numerous witnesses have given evidence in court about the abuse and torture of Barbie and her entourage.

In 1952 and 1954, the German Military Tribunal in Lyon sentenced Klaus Barbie to death in his absence. The court listed the abuses and war crimes committed: torture, executions, deportations, robberies. However, Klaus Barbie was protected by the American secret service that recruited him after the war. Thanks to this support, he was able to travel to Bolivia and obtain Bolivian citizenship. On November 5, 1982, an arrest warrant was issued for Klaus Barbie - who had meanwhile assumed a new identity: Klaus Altmann. On the night of February 4-5, 1983, Klaus Barbie was

deported from Bolivia to France via Cayenne. He was detained in Lyon until his trial began. Meanwhile, the legal investigation lasted four years.

In its important judgment of 20 December 1985, the Cour de Cassation (the highest court of appeal in France) quashed the decision of the Lyon Court of Appeal on 4 October 1985, declaring the charges of unlawful detention, torture, deportation, voluntary manslaughter as invalid due to legal prescription and sent the case for a new trial to the Paris court. These decisions were mainly related to the court's jurisdiction to try the crimes committed by Klaus Barbie for whom he had already been convicted 30 years earlier. Thus, they were particularly concerned with questions of criminal procedure, without giving decisions on substantive law.

The trial against Klaus Barbie was finally opened on May 12, 1987, before the Rhône Cour, where he was tried. It seemed almost impossible to charge Barbie with war crimes because of the status of international crime restrictions. However, crimes against humanity are not limited. They had been introduced into French law since 1964. Therefore, Klaus Barbie could be tried for all offenses in this category. The accusations imposed by Barbie concerned three events: the attack on the UGIF in Lyon, on February 9, 1943; the attack on Izieu on April 6, 1944 and the deportation in the convoy on August 11, 1944. After 36 days of trial, the jury withdrew to consider its verdict. Barbie was found guilty of the 17 crimes against humanity of which she was charged, without mitigating circumstances. On July 4, 1987, he was sentenced to life in prison. Klaus Barbie died in prison on 25 September 1991 (Supreme Court, 1983).

A second example of the responsibility of the individual for international crimes under analysis is the case of Jean-Pierre Bemba Gombo. He was born in Bokada, Equateur Province, Democratic Republic of the Congo on November 4, 1962, a Congolese national. On June 8, 2018, he was acquitted by the ICC on two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape and robbery). He is currently no longer in the custody of the ICC, being released on June 12, 2018.

On June 8, 2018, the Appeals Chamber of the International Criminal Court (ICC) reversed the decision of the Third Chamber of Justice of March 21, 2016 and decided, by a majority, to acquit Jean-Pierre Bemba Gombo of war crimes and crimes against humanity.

On 21 March 2016, Chamber III concluded that, as a person effectively acting as a military commander and with effective control over the Mouvement de libération du Congo (MLC) troops, Mr Bemba was criminally liable under Article 28 (a) of the ICC Rome Statute for crimes

against humanity of murder and rape and war crimes, murder, rape and robbery committed by MLC troops in the Central African Republic (CAR) from approximately 26 December 2002 to 15 March 2003. On June 8, 2018, the Appeals Chamber found errors that affected the decision of Chamber III to convict Mr. Bemba. The Chamber considered it appropriate to oppose his conviction and to acquit him.

The Central African Republic ratified the Rome Statute on 3 October 2001. On 21 December 2004, the Government of the Central African Republic notified the ICC of offenses committed in its territory after 1 July 2002. In June 2005, the Government of the Central African Republic provided the prosecutor with documents relating to the offenses committed on its territory in 2002-2003, as well as the records of court proceedings held in Bangui in connection with these offenses. The prosecutor made a detailed analysis of the information received from the Government of the Central African Republic and requested and obtained additional information from various sources. After examining the information received, the prosecutor found that the conditions required by the Rome Statute to initiate an investigation were met. Thus, on 10 May 2007, the prosecutor informed the Government of the Central African Republic, the Preliminary Chamber III and the President of the Court of his decision to open an investigation, and on 22 May 2007, an investigation into the alleged offenses was made public committed in the Central African Republic.

On 9 May 2008, the Prosecutor's Office submitted a request to the Third Preliminary Chamber under Article 58 of the Rome Statute for the issuance of an arrest warrant for Jean-Pierre Bemba Gombo. On 23 May 2008, the Pre-Trial Chamber III issued an arrest warrant under seal and a request for provisional arrest addressed to the Kingdom of Belgium. On 24 May, Mr Bemba was arrested by the Belgian authorities and the Pre-Trial Chamber decided to cancel his arrest warrant.

On 10 June 2008, the Third Pre-Trial Chamber took a decision on the prosecutor's request of 9 May 2008. It also issued a new arrest warrant, replacing the warrant issued on 23 May 2008, adding to the actions against Mr Bemba charged with murder, constituting both a war crime and a crime against humanity. At the same time, the Chamber addressed a request to the Kingdom of Belgium for the arrest and surrender of Mr Bemba to the ICC. On July 3, 2008, J.P. Bemba was transferred and handed over to the ICC. On 4 July 2008, Bemba appeared before the 3rd Preliminary Chamber.

On 27 May 2008, Preliminary Chamber III addressed a decision and a request to the Portuguese Republic for the identification, pursuit, freezing and confiscation of Jean-Pierre Bemba's property. On 25 August 2008, it

was held that Jean-Pierre Bemba was not destitute and was therefore eligible for legal aid, in full or in part, paid by the Court.

On 10 October and 14 November 2008, the Pre-Trial Chamber decided to reject the request for a defense to lift the confiscation of Mr Bemba's property. It also ordered the Registrar to monitor, in consultation with the Portuguese authorities, the distribution of a monthly amount made to a Portuguese bank account held by Mr Bemba to ensure that he was fulfilling his financial obligations to his family and his lawyer.

On 20 October 2009, the Third Chamber of the Court ordered the Registry to advance a monthly amount (retroactively from March 2009) to Mr Bemba to cover his financial obligations to his lawyer, pending a change significant of its financial circumstances, following as JP Bemba to reimburse the Court from its own funds.

The confirmation hearing took place between 12 and 15 January 2009. On 3 March 2009, the Pre-Trial Chamber decided to postpone the confirmation hearing of the case and asked the prosecutor to consider submitting an amended document containing the allegations, examining whether the characterization of the facts of the case may correspond to a different mode of liability than the individual responsibility assumed by the prosecutor, respectively the criminal responsibility as military commander or superior within the meaning of Article 28 of the Rome Statute.

Following an in-depth analysis of the amended document containing the allegations made by the prosecutor and the observations of the defense and the victims legal representatives, the Second Pre-Trial Chamber considered, on 15 June 2009, that there was sufficient evidence to establish substantial grounds for believing that JP Bemba is criminally responsible for acting effectively as a military commander within the meaning of Article 28 (a) of the Statute for war crimes (murder, rape and robbery) and crimes against humanity (crime and rape). Following the confirmation of the allegations of 18 September 2009, the Presidency set up Chamber III and referred the case to the Court. On 22 November 2010, the trial began before the Third Chamber, with the parties and participants making opening statements. The presentation of evidence began on 23 November 2010.

During the proceedings, the Chamber issued 1219 decisions, orders, notifications and requests for cooperation, as well as 277 decisions and oral orders. The chamber admitted a total of 733 pieces of evidence, including 5,724 pages of documents. The chamber met for 330 working days and heard 77 witnesses, including 40 witnesses called by the Prosecutor's Office, 34 Defense Appeals, 2 witnesses called by the victims' legal representative

and a witness called by the chamber. The chamber also allowed three of the victims to express their views and concerns directly.

The prosecutor's office, the defense and the legal representative of the victims made the closing oral statements on November 12 and 13, 2014.

Judgment Chamber III granted 5229 persons the status of victims authorized to participate in the proceedings. On March 21, 2016, the Third Chamber unanimously declared that J.P. Bemba Gombo is guilty, beyond any reasonable doubt, of two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape and robbery). On June 21, 2016, Chamber III sentenced Mr. Bemba to 18 years in prison. We specify that both the decision and the sentence were subject to appeals. The Appeals Chamber held hearings in this case between 9 and 12 January 2018 and again on 16 January 2018 to hear the observations of the parties and participants in these ongoing appeals. On June 8, 2018, the Appeals Chamber found errors that affected the decision of the Third Chamber of the Court to convict J.P. Bemba.

The Board of Appeal concluded, by a majority, that Chamber III erroneously convicted Mr Bemba of specific criminal offenses which did not fall within the scope of the case and that the proceedings in relation to those acts should be discontinued. The Appeals Chamber also found that Mr Bemba could not be held criminally liable under Article 28 of the ICC Rome Statute for crimes committed by MLC troops during the Central African Republic operation and that he had to be acquitted due to the fact that the The court erred in finding that Mr Bemba had failed to take all necessary and reasonable steps to prevent or prosecute the crimes of the MLC troops. Therefore, the Appeals Chamber considered, by a majority, that it was appropriate to set aside his conviction and to acquit him.

The Appeals Chamber also dismissed the appeals brought by Mr Bemba and the prosecutor against the judgment imposed by the Court III. On 14 August 2009, the Pre-Trial Chamber II granted Mr Bemba a provisional release. The implementation of this decision was postponed pending a decision stating that J.P. Bemba will be released and what conditions will be imposed. On the same day, the prosecutor appealed the decision. On December 2, 2009, the Appeals Chamber reversed the decision of the Preliminary Chamber II.

Thus, on 8 June 2018, following the acquittal of Mr Bemba in the main proceedings, the Appeals Chamber indicated that there was no reason to continue Mr Bemba's detention on the basis of the case related to the alleged crimes in the Central African Republic and Chamber VII would have to decides whether Mr Bemba's arrest is justified in connection with his

conviction for crimes against humanity. On June 12, 2018, Chamber VII ordered the provisional release under specific conditions for J.P. Bemba in this case. Conditions include: refrain from making public statements in this case, do not change your address without prior notice, do not contact any witnesses in this case and fully comply with all orders issued in this case. On September 17, 2018, the VII Chamber of Deputies convicted J.P. Bemba to one year in prison and fined him EUR 300,000 for crimes against the administration of justice. The time spent in detention has been deducted and, consequently, the prison sentence is considered to have been carried out.

In March 2019, Mr Bemba's defense filed a claim for compensation and damages under Article 85 of the Rome Statute. The Preliminary Chamber II, appointed by the Presidency, examines the request and has taken a timely decision. On October 19, 2016 J.P. Bemba and the other defendants in this case were found guilty and the sentences were handed down on March 22, 2017. The accused filed appeals against the verdict and sentences on March 8, 2018. However, on September 17, 2018, new sentences were handed down for Messrs. Bemba, Mangenda and Kilolo.

The convictions and acquittals for all five defendants are now final. Sentences with imprisonment were executed. In reaching this decision, the Chamber of First Instance VII noted that the Appeals Chamber had revoked the convictions for an offense (presenting evidence that a party knew to be false or falsified) and considered holistically, among other factors: 1 the seriousness of the facts of the convicted persons for whom they were found responsible, 2. their role in attempting to obstruct the investigation of the offenses, and 3 their individual degree of participation and intent. It also placed particular emphasis on the discouraging effects of the three convicts being imprisoned for significant periods of time in this case, which had a significant effect on their professional reputation, financial circumstances and family circumstances (International Criminal Court, 2016).

3. Liability of the individual for international crimes

We remind you that the rules of international law, like any binding legal rules, must be respected by all subjects of international law, but equally, by individuals. As we have discussed on other occasions, violation of these rules attracts international liability. Liability thus arises from the commission of an unlawful antisocial act, meaning from a breach of a rule of conduct between States, established by a treaty or other conventional legal instrument, and obviously necessarily entails a sanction.

As we have seen in the examples discussed above, any unlawful act involves the combination of three factors: breach of a rule of law, damage and the existence of a causal link between the breach of the rule of law and the damage caused. We emphasize that we also find these elements in the international responsibility.

We specify that the issue of criminal liability of individuals who, in their capacity as state organs, have committed criminal acts has been discussed since the nineteenth century in international law. Thus, „three doctrines emerged: that of the exclusive responsibility of the state, that of the cumulative resounding of the state and individuals and the third, of the exclusive responsibility of individuals" (Diaconu, 1978, p. 330). It currently operates cumulative international liability, meaning the state in question is liable for the actions of its agents, in which case liability can take various forms, except criminal, as it is not possible for a state to be a criminal.

As a rule, the state is not responsible for illegal acts committed on its territory by private persons, regardless of whether they are citizens or foreigners. However, under certain conditions, the state is also liable for illicit acts committed in its territory by simple private citizens or foreigners when these acts harm another state or its citizens. The State shall not be liable for prejudicial acts committed by individuals against another State unless the damage is the consequence of failure to take the measures it was required to take to prevent such actions. If no such liability is established, the obligation of the State is to punish those persons and to offer the injured party the possibility of obtaining remedies.

Criminal liability can be attributed only to state agents (senior officials or members of the government), because only the natural person can be susceptible to committing a criminal act, and implicitly, can bear the consequences for it. If the person injured by the wrongful act is a foreign national or a representative or head of diplomatic mission of a foreign state, then the state must punish the perpetrator and ensure access to justice for the injured persons in order to obtain reparation.

An analysis of the evolution of international law shows that a form of criminal liability has been instituted against individuals for certain crimes which harm the interests of States, such as counterfeiting currency or the slave trade. We find these crimes provided for in various international conventions that include the obligation of states to criminalize and punish them.

The situation changed with the two World Wars when the emergence of the principle of non-aggression established that the war of aggression is the most serious form of international crime and thus regulated

rules on criminal liability of states and individuals as organs of the state, for the war of aggression and for the crime of aggression.

We notice that, gradually, we are witnessing a resizing of the idea of liability of individuals in international law. Sanctions under international law can often be applied to the individual for conduct generated and attributable to the state. The sanctioning of individuals by a supranational institution could not be easily accepted because it undermined the sovereignty of the state. The liability of individuals in international law has been laded by the difficulty of prosecuting persons with decision-making positions in a state who enjoy immunity (Pașca, 2020, p. 68).

With the adoption of the statutes of the international criminal courts in Nürnberg and Tokyo, the liability of individuals in international law for war of aggression and other international crimes has been regulated. The principle of individual criminal responsibility is enshrined in the Charter of the Nuremberg Military Tribunal, later adopted by the Statutes of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, by the International Criminal Court and in various UN documents, such as the Convention on the Prevention and Punishment of the crime of genocide.

When acting as state agency, natural persons may commit international crimes in the situation where they order, decide or execute incriminating acts and which are punishable by international criminal law. We specify that, only applied individually, the criminal sanction can achieve its educational purpose, forcing the organs and agents of a state to respect the international legal norms. According to the provisions of art. 4 and 5 of the Draft United Nations Commission on International Law on State Liability for Illicit International Acts, „the action of state bodies may be attributed to the State concerned when they exercise legislative, executive, judicial or state functions. public power".

According to art. 25 para. (3) of the Statute of the International Criminal Court „there are three categories of perpetrators: those who commit the crime individually, those who commit the crime together with another person and those who commit the crime through another person, ordering, requesting or encouraging the commission of the crime. Many of the international crimes sanctioned by international criminal tribunals (as can be seen from the relevant legal practice) have been the consequence of state policy (Pașca, 2020, p. 70), but nevertheless, the criminal liability of a state has not been provided for in any statute.

4. Conclusions

We note that, from an international point of view, the state is not liable for prejudicial acts committed by individuals against another state only when the act and the damage caused are the result of failure to take the measures it was obliged to take according to specific circumstances. which may raise the issue of compensation or satisfaction.

If the existence of omissions cannot be established, then the issue of liability for the act committed and, for its consequences, the state in whose territory an international crime or other act prejudicial to another state or to its citizens having only the obligation to punish the perpetrator and to offer the injured party the possibility of obtaining compensation from the injured person. What is certain is that failure to fulfill such an obligation constitutes a violation by that state of the rules of international law.

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