

SPECIAL RESPONSIBILITY OF SUPERIORS (COMMANDERS) IN THE INTERNATIONAL CRIMINAL LAW

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ABSTRACT: *The article deals with the responsibility for a crime committed by command. In international criminal law exists two types of responsibilities. The first is the so called direct or active command responsibility, when the commander displays an active behavior in regards of the crime committed by subordinates, for example, by ordering them to commit a crime. These cases should be judged based on the traditional individual responsibility and the commander should be considered as a perpetrator based on the Statute of the International Criminal Court (hereinafter: ICC), and as an indirect perpetrator based on the dogmatics of the Hungarian criminal law. The second type – the command responsibility proper – is the indirect or passive one, the point of which is the special behavior of the commander in being guilty of negligence. As the task of proving whether a particular order for committing a crime was given or not is usually a difficult one, this indirect form of the command responsibility can have a great significance.*

KEYWORDS: *criminal law, superiors, commanders' responsibility, subordinates responsibility*

JEL CODE : *K 14*

1. INTRODUCTION

It is well-known, that the responsibility for a crime committed by command includes on the one hand the reference to the expression „I did it by command” from the (subordinate) side of the soldier and resulting from that, the question of a particular exclusion to punishability and mitigating circumstance, on the other hand, the specific responsibility of the commander for the crime committed by the subordinate.¹ The latter institute of law is referred to usually by two expressions in the related special literature and international documents. “Command responsibility” is the classic and traditional terminology of the military, “superior responsibility” is a more recent, but at the same time, wider category: it includes the responsibility of civilian superiors as well. We must note however, that these two expressions today are used as synonyms in many cases.

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¹ See e.g. L.C. Green: Command Responsibility in International Humanitarian Law, *Transnational Law and Contemporary Problems* (1995) pg. 319-320

Furthermore, it is worth making a distinction – from a wider standpoint – between two types of responsibilities. The first is the so called direct or active command responsibility, when the commander displays an active behavior in regards of the crime committed by subordinates, for example, by ordering them to commit a crime. These cases should be judged based on the traditional individual responsibility and the commander should be considered as a perpetrator based on the Statute of the International Criminal Court (hereinafter: ICC), and as an indirect perpetrator based on the dogmatics of the Hungarian criminal law. The second type – the command responsibility proper – is the indirect or passive one, the point of which is the special behavior of the commander in being guilty of negligence. As the task of proving whether a particular order for committing a crime was given or not is usually a difficult one, this indirect form of the command responsibility can have a great significance. This type of responsibility may be called specific or special, because *in this case the commander does not participate in committing a crime, neither as a perpetrator, nor as an accomplice, and does not give a particular order for its commission. Their responsibility is established on the one hand by their knowledge of the crime committed by their subordinates and the expectation of this knowledge, on the other hand, by their negligence in preventing or punishing the perpetration of the crime.*

It is well-known, that for a very long time, the subjects of international legal responsibility were states and international organizations exclusively. However, crimes – and so, international ones as well – are committed by a natural person, so the principle of a person's criminal law responsibility being based directly on international law has already been recorded by the peace treaties of the First World War.² The actual application of the principle of the individual criminal law responsibility has been initiated after World War Two, in the exercises of the International Military Tribunal of Nuremberg and the International Military Tribunal of the Far East in Tokyo, and has also been defined among the so called Nuremberg Principles.

Later on, the violation of the provisions made by the relevant international treaties – so, amongst others, the Geneva Conventions of 1949 or the Genocide Convention – also originated individual responsibility. As an end-point to this process, the principle of individual criminal law responsibility has been recorded by the Statute of the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY), the International Criminal Tribunal for Rwanda (hereinafter: ICTR), and also by the Statute of the ICC.³

International crimes are rarely committed as isolated crimes of a single person, it is more often the case that the number of the perpetrators is greater, the scope of the crime is wider, and it damages many people. The root of the problem is basically the fact that the international criminal law, a legal field based primarily on individual responsibility, deals significantly with criminal phenomena of a collective nature. To solve this problem, special forms of responsibility surfaced in international criminal law (we can include here the special command responsibility or the form of joint criminal enterprise).

² So for example the so called Provisions of punishment of the Treaty of Trianon (Article 157). See the Law XXXIII of 1921 on the ratification of the Treaty.

³ According to Article 25 of the Statute of the ICC: „A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.” See the Statute of the ICC at e.g.: http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf

All of the above is closely related with the *function* of this special form of responsibility. The original motivation behind the formulation of the command responsibility had stemmed from the realization that those highly ranked – usually military – leaders, the subordinates of whom seriously violated international laws during war, but who did not participate in the perpetration of these crimes themselves and did not order them either, cannot be left unpunished.⁴ Carla del Ponte interprets the special command responsibility as a legal institute that makes it possible to prosecute central or local leaders – either from the circles of military, politics or the state – who participated in the commission of serious international crimes.⁵ Others emphasize the retaining, deterrent effect of this form of responsibility: it is the commander, who is in the situation to prevent his or her subordinates from committing war crimes, so the prospect of impeachment urges the commander to fulfill his or her duties as a supervisory and controlling authority.⁶

The *reason* for the special command responsibility is the fact, that the commander or superior is accountable for the behavior of the subordinate or employee, is bound to control and supervise it. It is a powerful argument to say that if the commander had fulfilled his or her controlling duties, the crime would not have been committed, or at least by punishing the perpetrator, future crimes could have been prevented from happening.

2. THE SHORT HISTORY OF THE LEGAL INSTITUTION

The special command responsibility has only become real and an actual referential point in the post-World War Two trials, however, the origins of the legal institution can be found earlier in the past. Grotius has already emphasized in the middle of the 17th century the necessity of holding those responsible, who had authority over others. If these people know about the crimes committed by their subordinates, and they do not prevent them from doing so, they themselves commit a crime as well.⁷ The conclusion formulated by Grotius had become the center of attention later, when it first became fully a considerable issue to make the perpetrators of war crimes accountable, and it is known that this happened after World War One. At the peace treaty following the war, a committee has been established, which examined the possibility of punishing the individuals responsible for the outbreak of the war and which – among others – forecast the impeachment of those who “had knowledge about actions that were going against the laws and customs of war, but – although it had been in their power – did not prevent these actions, did not end these

⁴ See Beatrice I. Bonafé: Finding a Proper Role for Command Responsibility, *Journal of International Criminal Justice* 5 (2007) 13. pg. 8-9 An example for this could be the trial of General Strugar who led the siege against the city of Dubrovnik (ICTY): the prosecution could prove neither the fact of the order for committing war crimes, nor the effective participation of the general in committing the crimes, but he was found guilty on the basis of the special command responsibility.

⁵ Carla Del Ponte: Prosecuting the Individuals Bearing the Highest Level of Responsibility, *Journal of International Criminal Justice* (2004) pg. 516-517

⁶ See e.g. Greg R. Vetter: Command Responsibility of Non-Military Superiors in the International Criminal Court, *Yale Journal of International Law* 25 (2000) pg. 89

⁷ Shane Darcy: Collective Responsibility and Accountability under International Law, Transnational Publishers, 2007. pg. 294-295

actions, and did not punish the perpetrators of these actions".⁸ This early formulation of the special command responsibility had not been included in the peace treaties that ended the war, thus we can find only one example of a judgment based on this particular construction of responsibility among the cases of Leipzig after the First World War.

In the Müller-case, a commander of a French war prisoner camp, captain Müller had been accused of – among other things – treating the war prisoners badly, as according to the prosecution, he witnessed a subordinate officer assaulting a prisoner of war. The court found him guilty in assault, because – although he did not order it – he overlooked and tolerated its perpetration.⁹

The standard formulation of the special command responsibility by international law did not happen between the two World Wars, so the elements of responsibility had been shaped during the trials after the Second World War. It should be noted that the special command responsibility was not included in the Charter of the Nuremberg Tribunal, nor in the Charter of the International Military Tribunal for the Far East (it was not necessary because of the codification of the participation in the execution of a mutual plan of perpetrating a crime, as a form of responsibility).¹⁰

Besides the trials of the main war criminals, other trials took place in Nuremberg, and at one of these, the responsibility of generals Wilhelm List and Wilhelm Von Leeb had been established, based on that the accused did not prevent the crimes committed by their subordinates, and by this, they have implicitly agreed to them.

The command responsibility based on the neglect of one's duty had appeared in a procedure at the International Military Tribunal for the Far East as well: a separate count of indictment had been devoted to the behavior of those people, who deliberately and knowingly ignored their obligation to secure the adherence to the rights of war and prevent the violation of military law. Based on this count, almost the entire Japanese government – so the civil superiors – had been considered responsible for crimes committed against war prisoners.¹¹

Nevertheless, the case most referred to was the Yamashita-case heard at the U.S. military court, in which the accused – the commander-in-chief of the Japanese army on the Philippines – had been charged with the unlawful ignorance and negligence of his obligations ensuing from his position, as he did not supervise the actions of his subordinates. With his negligence, he allowed the Japanese soldiers to commit serious atrocities against the civil population and American war prisoners. According to the prosecution, the atrocities happened so expansively and in so great quantities that the accused should have been aware of them, or if he had not been aware of those, it was the result of the deliberate conduct from the side of the accused, in the sense that he had not done the expected steps to obtain the necessary information. It was not proven during the

⁸Mucić-case (Trial Chamber IT-96-21). 335. (November 16th 1998) www.un.org/icty/celebici/trialc2/judgement/cel-tj981116e.pdf

⁹ Stuart E. Hendin: Command Responsibility and Superior Orders in the Twentieth Century – A Century of Evolution, Murdoch University Electronic Journal of Law, Vol. 10, Number 1 (March 2003) pg. 7-8

¹⁰ In front of the Tribunal of Nuremberg, the guiltiness of generals Keitel and Jodl had been established by referring to the same reason, that the mass elimination of civil people, war prisoners, and in the Soviet Union, commissars was the consequence of orders given (or transferred) by them, but this does not qualify as the so called passive command responsibility.

¹¹ Meloni Chantal: Command Responsibility, *Journal of International Criminal Justice* (2007) pg. 622

procedure in the end, whether the accused had been aware of the crimes committed by the soldiers, as it was established as a fact, that as a result of the powerful American offensive, the line of communication between the general headquarters and most of the troops had been broken. In spite of that, Yamashita had been found guilty by the court – on a secondary level as well – and the inflicted death-sentence had been carried out.¹²

Following the World War, the special command responsibility has been codified on an international level in 1977: Article 87 of Protocol I of the Geneva Conventions obliges military commanders to prevent and, if needs be, obstruct, and report to the authorities in charge the violations of the Conventions and the Protocol. Furthermore, they must make sure that the members of the armed forces subordinated to them are aware of the obligations laid upon them by the Conventions and the Protocol.¹³ Finally, when summing up the results of the development of law, it can be said that the special command responsibility may be considered as a legal institute generally acknowledged by international law and a form of responsibility applicable at both international and non-international armed conflicts.

3. ELEMENTS OF THE COMMAND RESPONSIBILITY

The elements of the special responsibility of military commanders and civil superiors had been developed primarily during the practice of international criminal courts, and more closely, mostly in the trials of the ICTY. (Thus, we also typically rely on the practice of the ICTY when introducing the elements of the command responsibility, but we refer to the fact, that the International Law Commission, in its Draft Code of Crimes against the Peace and Security of Mankind, also regulates the responsibility of the superiors, who neglect preventing and punishing the crimes committed by their subordinates.)¹⁴

Point 3 of Article 7 of the Statute of the ICTY¹⁵ regulates this special form of responsibility according to the below:

„The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.,,

The *prerequisite* of the responsibility is implicitly the perpetration of a crime which falls under the scope of the legal authority of the given international court, perpetrated by a subordinate. And the *elements* of the responsibility can be summed up thus:

3.1. The existence of the superior (commander) - subordinate relation

¹² See e.g. Hendin: *ibid.* pg 19-22

¹³ Protocol I to the Geneva Conventions relating to the protection of victims of international armed conflicts. The document can be found e.g. on the website of the ICRC: www.icrc.org/eng/ It does worth noting, that the Hague Convention IV of 1907 had previously recorded the basic principle, that the military commander is responsible for the behaviour of his or her subordinate soldiers.

¹⁴ *Draft Code of Crimes against the Peace and Security of Mankind with commentaries* (1996). The document – among others – can be found on the website of the International Law Commission. <http://www.un.org/law/ilc/index.htm>

¹⁵ The Statute of the tribunal is included in the Annex of Law XXXIX of 1996.

The superior-subordinate relation is based on *control* in military and other hierarchies. In certain situations – for example, during a war – the mechanisms of control and ordering may become unstable, so the formal nature of the relation between superior and subordinate is not always granted. In this sense, we can make a distinction between the so called *de jure* and *de facto* jurisdictions of control, and consequently, between a *de jure* and *de facto* commander (superior). In the first case, the superior obtains his or her function based on appointment or commission, in military hierarchies this is represented by rank or post. The *de facto* commander does not have a formal function, but based on all circumstances of the case, he or she must be considered as having one.¹⁶

In case of both the *de facto* and the *de jure* commander, the main point is that they should have an *effective control* over the actions of the subordinated people. Regarding the validity of *effective control*, the starting point is obviously the official position held by the accused, but one must examine the duties actually performed by the accused, and also the fact, whether they had been entitled to give the order. (So for example the signature of the accused on an official document about the release of a prisoner refers to the validity of the jurisdiction of control exercised by the accused, but it is possible, that the signing was the execution of an order given by someone else.) *Effective control means that the superior possesses the ability to prevent the subordinates from committing crimes, or to punish the perpetrators.*¹⁷

As a consequence, a soldier of lower rank may have effective control over the platoon he or she leads, and it has no significance, if the given military unit had only been created temporarily – e.g. to do a given task.¹⁸ Furthermore, there is nothing to prevent many superiors from being impeached at the same time because of the actions of a subordinate leading to a crime, if the perpetrator had indeed been active under the actual supervision of these commanders. It should be noted, that in the practice of the ad hoc tribunals, and in the armed conflicts of recent history, the *de facto* control (*de facto* command) dominates, as in many cases the battles are fought by military and paramilitary units with an unstable hierarchy, subordinated to self-appointed governments which are not acknowledged officially. In the *Celebici-case*, the court acquitted Delacić, the commander of the camp for Serbian war prisoners, by referring to the fact that in spite of his formal function as a commander, the accused did not have a jurisdiction to control the camp, and did not give orders either. The court, however, established the responsibility of the other accused, Mucić, who, although entitled with no such function, had been the *de facto* commander of the camp, as on the one hand he referred to himself as commander usually, on the other hand, he was called commander by the soldiers as well, and finally the prisoners had the impression that he was in command, as Mucić decided over who should be free and who should be transferred to another camp.¹⁹

It is important, that *not only military, but civil people* can be punished based on the construction of the superior responsibility, if they had effective control over the actions of particular individuals. The jurisdiction of a civil superior – e.g. a major of a city or any other official – cannot be compared to that of a military commander obviously. According

¹⁶ Limaj-case (Trial Chamber IT-03-66). 522.

¹⁷ Kordic and Cerkez-case (Appeals Chamber IT-95-14/2). 840.

¹⁸ Halilovic-ügy (Trial Chamber IT-01-48). 61.

¹⁹ Mucić-case (Trial Chamber IT-96-21)

to practice, the single fact that someone is regarded as an influential person by those around him or her does not suffice, but if he or she has a valid, actual ability to prevent or punish crimes, he or she may be impeached as a superior.²⁰ (For example, the person whose jurisdiction includes the control over the police, but in the practice of the ICTR, the chief of a local tea-processing company had been qualified as such a person.) This ability does not necessarily mean the right to carry out punishment or disciplinary action, but refers to such a position, in which the given person must report a crime to the responsible authority, if it is revealed to them. By the way, the practice of ad hoc tribunals does not differentiate between the conditions of impeachment of civil and military superiors (commanders).

b) The subjective (awareness) side: to impeach the superior, it is necessary to know for sure that he or she had been aware, or should have been aware of the fact that his or her subordinate was preparing to commit a crime, or the crime had already been committed.

The practice visible in the trials following Second World War had been criticized indeed for the reason that the judgments basically only presumed the fact that the commander had been aware of the crimes committed by the subordinated soldiers. The presumption had been based on two factors: (1) the particularly high rank of the accused (they were the members of the highest military and political command); (2) the expansive and en masse quality of the crimes committed. According to the then-standard viewpoint, crimes of such quality could not have been realized in any other way, but with the – at least implicit – agreement of the commander, thus, the commanders must have been aware of these crimes.²¹

The practice of the ad hoc tribunals applies a much more careful approach. According to this, the awareness of the crime cannot be presumed, or taken for granted, although the function of the accused is an important starting point in this case as well. It is actually very difficult for a *de jure* military commander to base his defense on his or her unawareness of the actions of the subordinate soldiers with a well-established system of controlling-ordering behind his or her back. It is more challenging to prove the awareness in case of other superiors – especially the *de facto* civil superior. Many external factors are to be taken into consideration in such cases, so for example the distance between the location of the superior and the scene of the crime, the information disposed to him or her, the number of crimes committed, their expansive or en masse quality, the time span of the perpetration, and the number of people taking part in the perpetration of the crime(s).²²

The most problematic term in practice, the one that leads to carelessness, “they should have known”, means that the commander obtained so called warning information, which at least indicates the risk of the commission of a crime. Based on this, the commander is obliged to find out whether the subordinate had committed a crime, or if a crime is being perpetrated right at that time. To put it more simply: the commander obtained information referring to the commission – its possibility or risk – of a crime, but due to his or her own fault, he or she had not found out about it.²³ An example for this is the camp commander,

²⁰ Kordić and Cerkez-case (Trial Chamber IT-95-14/2). 416.

²¹ Lásd Bonafé: *ibid.* pg. 606

²² Kordić and Cerkez-case (Trial Chamber IT-95-14/2). 427.

²³ Mucić-case (Appeals Chamber IT-96-21) 222-241.

who had been aware of the fact that one of the guards committed violent sexual crimes against the prisoners and he does not relocate him to another post: as a superior, he is responsible for the sexual violence committed later by the guard.²⁴ Finally, according to practice, it is not a prerequisite for the commander to know the perpetrator personally: it is enough to know that the perpetrator is a member of the unit or group lead or supervised by him or her.²⁵

c) The objective side: the superior neglected to take the measures necessary and justified for prevention and punishment. In this regard, only those measures can be considered, that belong under the jurisdiction of the superior and that can be done by him or her in the given situation: on the one hand, no superior can be forced to do the impossible, on the other hand, the scope of the expected measures depends on the actual jurisdiction of control exercised by the superior. According to practice, it is not necessary to prove the casual relation between the neglect of the superior and the crime committed by the subordinate (as this would already point to the apprenticeship of the superior).²⁶

For the sake of preventing *crimes being prepared*, it is an expected behavior of the superior to inform his or her subordinates about the basics of humanitarian law and make sure that these standards are adhered to. According to practice, it is also expectable from the superior to systematically monitor the behavior of the subordinates in order to obtain knowledge of a crime being prepared. One method for this is the establishment of a network, which could inform the superior about the preparation for the (or about the already committed) violation of law, another method would be any means of monitoring the actions of subordinate people.²⁷ Thus the fact that the commander of the camp knowingly neglected the monitoring of the actions of his or her subordinates and made regular violence toward prisoners possible, is a good point to establish the responsibility of the superior on.

Regarding the actions needed to be taken for the sake of punishing a subordinate for a *crime already committed*, the superior usually fulfills his or her obligations by conducting the necessary (internal) investigations and by notifying the authorities with a jurisdiction to judge over a crime, if he or she is not entitled to impeach the accused and to apply sanctions.²⁸ It is not necessary that the crime which was committed by the subordinate to be finished by a legally binding decision. (Elek: Legal force of decisions in criminal procedures, DEÁJK, Debrecen, 2012, pp. 223.)²⁹ As the obligations to prevent and to punish are separate ones, and both are imposed on the superior, if the superior has knowledge about the subordinate preparing for a crime, but does not take any preventive

²⁴ A similar, so called warning information could be if the commander is aware of the fact that his soldier consumed alcohol before the mission. See Krnojelac-case (Appeals Chamber IT-97-25) 154.

²⁵ Orić-case (Trial Chamber IT-03-68). 315.

²⁶ It is still a question how the above rule will be interpreted in the future practice of the ICC, as according to the text of the Statute the subordinate of the superior commits the crime „as a result of his or her failure to exercise properly over such subordinates”. The existence of the casual relation, as a condition of responsibility, seems to be contrary to the previously described function of command responsibility, but it is possible to interpret the above provision in a way which implies that the neglect of the superior significantly increased the risk of the subordinate committing a crime.

²⁷ Darcy: *ibid.*, pg. 340

²⁸ Limaj-case (Trial Chamber IT-03-66). 529.

²⁹ See Balazs Elek: A jogerő a büntetőeljárásban. DEÁJK, Debrecen, 2012, pp.223.

actions, then the punishment of the perpetrator afterwards will not nullify his or her neglect, thus, the superior remains impeachable.

4. THE LEGAL NATURE OF THE SPECIAL COMMAND RESPONSIBILITY

The practice of the ad hoc tribunals consistently emphasizes that the command responsibility is not a replaceable one, so it is not a criminal law responsibility imposed because of the crimes of another person – the subordinate. The superior is impeached because of his or her own behavior (neglect), it is another question that the accessorial nature of this form of responsibility can hardly be denied: the command responsibility is not understandable without the crime committed by the subordinate. The accessorial nature of the responsibility is further supported by the fact that the courts declare the superior guilty for the same crime as the subordinate – but based on the command responsibility. The special command responsibility is a legal institute that is fully unknown by the Hungarian criminal law dogmatics, – as we mentioned – it cannot be inserted into the traditional framework of participation either from the perpetrator's or the accessory's side. No doubt that this is an independent responsibility, which can be mostly considered as a form of perpetration – best comparable to the special responsibility of the business executive in Hungarian law. The leader is an independent perpetrator of the crime committed by the person being under his or her command and supervision, power and control, regardless of the punishability of this person. The superior's responsibility has its own independent objective and subjective elements.³⁰

5. THE SPECIAL COMMAND RESPONSIBILITY IN THE INTERNATIONAL CRIMINAL LAW OF THE FUTURE

Taking into consideration primarily the practical experiences of the International Criminal Tribunal for the former Yugoslavia, the *Statute of the ICC* regulates the legal institute of superior responsibility in a quite detailed way (Article 28 of the Statute), making a difference between the responsibility prerequisites of military commanders and civil officers.

The *military commander* (*de jure* commander) or the person actually proceeding as a military commander (*de facto* commander) is punishable, if the given crime is committed by forces under his or her actual command and supervision, or actual power and control, as a result of not having proper control over these forces, if

- he or she *was aware*, or under those circumstances, should have been aware what crimes his or her forces are committing or are willing to commit, and
- did not take all necessary and reasonable measures for the sake of preventing or obstructing the commission of the crimes, or of forwarding the case to the authorities with jurisdiction so they could conduct an examination and criminal procedure.

The *civil supervisor* is responsible in the case when the crime is committed by his or her subordinates who are under his or her actual power and control, as a result of not exercising the appropriate control over the subordinates, if the supervisor *was aware* what

³⁰ See Norbert Kis-Balázs Gellért: Home codification of international crimes de lege ferenda, in: *Wiener A. Imre Ünnepi Kötet*, KJK-Kerszöv Kft., Budapest, 2005. pg. 363-392

crimes his or her subordinates had committed or are willing to commit, or *deliberately ignored* the information obviously referring to this. (The other prerequisites are the same as those mentioned in connection with the responsibility of the military commander.)

It can be seen that the responsibility of the civil superior is narrower than that of the military commander, so the burden of verification is bigger on the shoulder of the prosecution, as they must verify that the civil superior did have the information, based on which he or she was aware, or should have been aware of the commission of the crime.³¹

Based on the practice of the ad hoc tribunals, an interesting conclusion can be made: this is the form of responsibility, based on which it is the most unlikely that an accused would be declared guilty. Until the middle of 2007, from the 99 accused people of the two Tribunals, 55 people had been charged based on special command responsibility, but only 10 accused were declared guilty.³² An explanation for this phenomenon, aside from the difficulties of verification, could be the practice, that if the responsibility of the accused regarding a certain crime can be established based on both the principle of the traditional individual responsibility and on the special command responsibility as well, tribunals prefer the first solution.

Thus the opinion can be formulated, that – although based on this, the impeachment of both the military and civil, political leaders is theoretically assured – the special command responsibility can be applied more effectively in case of crimes – and mostly, war crimes – committed in the framework of the traditional military hierarchy, for the impeachment of military leaders.

³¹ See Péter M. Nyitrai: *Nemzetközi és európai büntetőjog*, Budapest, Osiris Kiadó, 2006. pg. 139

³² See Bonafé: *ibid.* pg. 602

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