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Summary of doctoral dissertation:

PARTICIPATION IN CRIME FALLING WITHIN THE SUBJECT-MATTER JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT IN HAGUE

At the outset it seems necessary to indicate that the present doctoral dissertation was prepared under the joint supervision of Professor Piotr Kardas and Professor Florian Jeßberger in the co-tutelle doctoral assessment process. At the same time, this dissertation constitutes the culmination of research funded by the National Science Center in Poland under the research project no. 2017/27/N/HS5/00994.

The choice of the topic of this dissertation was definitely not accidental. As long as the attribution of individual criminal responsibility is taken into consideration, the regulations on broadly understood 'participation' in crime's commission (i.e. not crime's commission *sensu stricto*, but also encouraging the crime or facilitating its commission) constitute one of the decisive factors that need to be assessed. In fact, such regulations are equally important as the crimes' elements, because they also determine the overall scope of criminalization and severity of the criminal justice system. The modes of participation (or to adhere to the language used in the Rome Statute – the grounds of criminal responsibility) are all the more important given that they share some element of universality as they are generally (though sometimes with notable modifications) applicable to all the crimes and offenses that fall within the subject-matter jurisdiction of the judicial authority.

Upon the concrete regulations it is possible to answer whether the given model of individual attribution of criminal responsibility is coherent, fair and legitimate or quite the opposite – incomplete, defective, ineffective or illegitimate. For instance, the legal system that would not provide for any form of criminal responsibility for intentional assistance in crime's commission would – at least – be considered as incomplete and ineffective. On the other extreme, the model that would criminalize any contribution to the crime, regardless of the knowledge and will of the actor, would seem to be too rigorous and severe. It would be unfair, because of the fact that the scope of criminalization was too broad. Yet, the devil is in the detail. The assessment of regulations concerning the grounds of responsibility cannot be made on the basis of some perfunctory and general observations, but need to be preceded by thorough and complex analysis of relevant legal source (usually, legal text).

In this regard, the Rome Statute governing the activity of the ICC is by no means different from other existing regulations that also require careful and in-depth analysis. The uniqueness of the normative framework applicable in the criminal proceedings before the ICC comes down to the content of Article 25 (3) and Article 28 of the Rome Statute which lay the foundations of the ICC model of individual attribution. This model is on one hand visibly distinct from the regulations applied by the ICTY, ICTR, SCSL and ECCC, but on the other the practice of the ICC often refers to the concepts already recognized by the aforementioned international judicial bodies. What is more, the Rome Statute uses terminology

already recognized in some domestic legal systems, such as the triad of forms of perpetration which to a large extent resembles the provisions of German Criminal Code, or the expressions 'aid', 'abet' and 'solicit' that occurred in the caselaw of domestic courts in common law countries for years. This specific combination of the elements rooted in the common law tradition with the definition of perpetration with no doubt inspired by the German regulations, enriched by the heritage of international legal treaties and conventions, constitutes an extremely demanding, but at the same time intriguing subject of legal interpretation. In order to accurately approach the legal analysis of such a complex normative structure, clustered in two major provisions – Article 25 (3) and Article 28 of the Rome Statute, it was necessary to pay special attention to methodology.

Chapters II and III of the dissertation focus on these methodological aspects. Chapter II is aimed to explain the specific approach to the interpretation of the Rome Statute which combines the elements of classic formal-dogmatic analysis with the normative analysis based on the concept of interconnected norms and comparative analysis. Naturally, the formal-dogmatic analysis is primarily focused on the textual interpretation of the Rome Statute which, however, acknowledges the systemic aspects and the doubts as to the coherence of existing regulations. The concept of interconnected norms (founded upon the distinction between sanctioned and sanctioning norms), well recognized in the Polish academic works, constitutes the key element of normative analysis used in the present work. For this reason, Chapter IV is dedicated solely to this concept and constitutes the attempt of its application to the international core crimes (and their particularly complex internal structure) and other offenses criminalized under the Rome Statute. This Chapter signalizes also some dilemmas and questions that may arise in the context of grounds of criminal responsibility (such as prompting crime's commission and assistance in crime). These matters are further discussed in details in Chapters VI – VIII of this dissertation. As the comparative analysis is concerned, it needs to emphasized that in the light of the dissertation's objectives (clearly set out in the introductory part of the work), my doctoral thesis was never meant to be based on the juxtaposition between the regulations included in the Rome Statute and the normative frameworks that exist at the international or domestic level. Taken this into consideration, it seems justified to perceive the comparative analysis only as a subsidiary method of analysis and not the main methodological instrument.

Chapter V has in fact twofold structure which is aimed to allocate further remarks dedicated to the grounds of criminal responsibility set out in Article 25 (3) and Article 28 in the specific context. The first part of this Chapter enlists the matters and questions which are important for the structure of the grounds of criminal responsibility and the factors that need to be taken into account both from the perspective of legislator, but also the practitioner or scholar who endeavours to decode the constituent elements of concrete grounds of criminal responsibility. It could even be claimed that this subchapter contains the list of some 'bracket matters' that need to be considered and decided on the grounds of any regulation when the crime's commission in the multi-actor scenarios comes into an equation. Thus, this subchapter evolves around the theoretical aspects of the regulations on the broadly understood participation in crime's commission. The second subchapter refers specifically to the syntactic structure of the Rome Statute and the specified questions that arise in the context of Article 25 (3) and Article 28 of the Rome Statute. That notwithstanding, the preliminary hypotheses as to the interpretation of Article 25 (3) and Article 28 of the Statute were formulated in the Chapter V as well. These hypotheses were discussed and analysed in Chapters VI – VIII of the dissertation (the hypotheses relating to the forms of perpetration in Chapter VI, the hypotheses referring to the forms of participation other that perpetration in Chapter VII and the hypotheses associated with the superior responsibility in Chapter VIII subchapter (i)).

Naturally, the latter reflects the internal structure of the next chapters of dissertation. Namely, Chapter VI discusses the forms of perpetration set out in Article 25 (3) (a) of the Rome Statute. This part of the dissertation takes into consideration the decisions and judgement issued by the end of December 2022, including but not limited to *Lubanga, Katanga, Ntaganda, Ongwen, Al Bashir* and *Al Mahdi* cases. The reference to the existing caselaw was used in order to show how the objective and subjective elements of perpetration (single/direct perpetration, co-perpetration and indirect perpetration) were understood

and applied in the existing ICC practice. The Chapter aims also to point out the controversies that arise in the context of broad understanding of perpetration based on the concept of 'control over the crime'. In this regard, I formulate a general conclusion that contrary to the prevailing practice the notion of 'crime's commission' shall be interpreted narrowly and focus on the physical execution of the crime's elements (alone or in agreement with someone else) or direct control over the execution of the crime by someone else. In the light of this conclusion I strongly argue that the cases in which the concept of perpetration through an organization has been used, could be effectively dealt with as the forms of participation set out in Article 25 (3) (b – d) of the Statute with the endeavours to 'stretch' the understanding of crime's commission.

Chapter VII refers to the grounds of responsibility involving prompting crime's commission, assistance in crime's commission and other forms of contribution to the crime. Undeniably, the first objective was to set the boundaries between the forms of responsibility set out in the subsequent subparagraphs of Article 25 (3) of the Rome Statute and between the terms used in these provisions. Thus, I attempted to distinguish between the terms 'solicit' and 'induce'; as well as 'aid', 'abet' and 'otherwise assist' in the crime's commission and attempted commission used in Article 25 (3) (b) and (c) of the Rome Statute. That notwithstanding, I tried to emphasize the nature, functions and scope of accessory clause which occurs in Article 25 (3) (b – d) of the Rome Statute and might be subject to different interpretations. Another structural feature that has been thoroughly discussed in the dissertation refers to so-called qualitative thresholds, namely the requirements that the assessed criminal conduct shall constitute the substantial or significant contribution to the crime's commission. In addition to that, I critically assess the criminal responsibility for direct and public incitement to commit genocide. In this regard, the most important conclusion is that the non-accessory form of responsibility set out in Article 25 (3) (e) shall not be limited to the incitement to commit genocide, but shall extend to the war crimes and crimes against humanity. Naturally, all views and conclusions presented in this Chapter are embedded in, or juxtaposed to the existing caselaw of the ICC and to the extent necessary – to the jurisprudence of other international judicial authorities.

Chapter VIII is aimed to discuss the concepts and provisions that complement or modify the grounds of criminal responsibility that might be recognized under Article 25 (3) of the Rome Statute. First and foremost, I endeavour to briefly describe the concept of superior responsibility set out in Article 28 of the Rome Statute and allocate it within the whole internal structure of the Statute as the subsidiary ground of criminal responsibility. In this context, the *Bemba* case was evaluated. In this regard, the analysis is not as detailed as in the case of subsequent subparagraphs of Article 25 (3) (a – e) of the Rome Statute. In addition to that, the function and scope of Article 25 (3*bis*) of the Rome Statute were discussed. In this context, I state that this provision is by no means superfluous and does not simply repeat the leadership clause from Article 8*bis* of the Statute, but plays an important role within the structure of grounds of responsibility. Last, but not least, Chapter VIII discusses the possibility to apply the grounds of responsibility set out in Article 25 (3) of the Statute to the criminal offenses against the administration of justice defined in Article 70 of the Rome Statute. In this regard, the *Bemba et al.* case was particularly relevant. Chapter IX is crowned by the brief conclusions summarizing the analysis presented in the whole dissertation.

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