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**Human Rights in International Criminal
Procedure**

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Abstract

The rapid development of International Criminal Law in the second half of 20th century and especially on its end is marked by a proliferation of international criminal judicial organs and thereby by a huge increase and development of procedural norms determining these organs' jurisdiction and functioning but also specifying procedural status of individuals – suspected and accused persons, victims.

The submitted thesis focuses on one of the aspects of individuals procedural status, namely their procedural guarantees – human rights in international criminal procedure. The analyse of human rights in international criminal procedure (the proceedings before International Criminal Court) was done having been backed by statutory regulations of international military tribunals and *ad hoc* tribunal for Former Yugoslavia and Rwanda and their case-law. The hypothetical start point was to consider that procedural guarantees in the ICC procedure established by Rome Statute in 1998 are on a highest level and more detailed than these guarantees enshrined in *ad hoc* tribunals Statutes and even in international universal or regional human rights protecting instruments.

The dissertation work has been divided into five parts, where the two first parts play a theoretical function role, the analysis is presented in other three parts.

The first part deals with the *Phenomenon of Human Rights in International Criminal Law* and particularly in international criminal procedure. Supposing that international human rights law and international criminal law are independent branches of international law, there can be still two common features. The first one is operating in the field of international criminal substantial law by the fact that serious breaches of international human rights law constitute crimes under international law. The second manifestation of common features is in the field of international criminal procedure, in the framework of which human rights (procedural guarantees) are accorded to suspects, accused and victims. These procedural guarantees operate in the procedural framework of international criminal procedure, but they are based on national inspiration – accusatorial (common law system) and inquisitorial (continental system) models.

The second part presents the basic human rights conception in international criminal procedure, which is the *Fair trial procedure* – and its relevant manifestations – *the principles of international criminal procedure*. The conception

of fair trial, still as theoretical introduction, is presented in a holistic point of view, as it is understood and regulated in international criminal procedure against the backdrop of its manifestations – the principle of equality of arms, the presumption of innocence, the *ne bis in idem* principle and the principle of impartiality and independence of court. The start point to the analysis of these principles were *ad hoc* tribunals Statutes and then ICC Statute with a case-law support of these tribunals and European Court of Human Rights as well.

The third part deals with *Human Rights during Investigation* conducted by the ICC Prosecutor. It presents an analysis of relevant provisions of ICC Statute which focus on procedural rights during an investigation. The Rome Statute has established a new, very interesting conception of two-grade human rights provisions during investigation. The article 55 of the Rome Statute differentiates two groups of procedural guarantees – the first being human rights of *all* persons during investigation, the second are the procedural guarantees of suspected persons. The first grade operates with basic guarantees, i.e. right not to testify, rights not to be subjected to any form of coercion, right to competent translation free of cost and right not to be subjected to arbitrary detention. These guarantees, usually mentioned in international human rights conventions universal (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights), or regional (European Convention on Human Rights, American Convention on Human Rights, African Charter on Human and Peoples Rights) or in *ad hoc* tribunals Statute, the interesting novelty is that all these rights are accorded to *all* persons under ICC organs jurisdiction. A detailed analysis of first grade individual procedural rights has shown they do guarantee a higher standard of human rights protection than above-mentioned international conventions. A right to have an assistance of competent translator in case a person does not *fully* understands and speaks the language of the Court, is a promoting example.

In the second grade group of procedural guarantees protecting suspected persons, the accorded standard shows to be higher, as well. It is a case e.g. of the right to informed the persons that he/she is suspected of having committed a crime under ICC jurisdiction, that is not explicitly stated in above-mentioned conventions. The same goes for other guarantees of suspects – right to remain silent, right to legal assistance and right to be questioned in his presence.

The fourth part deals with *Human Rights during Trial*. It is built on an analysis of the article 67 of ICC Statute. This article mirrors the article 14 par. 3 of International Covenant on Civil and Political Rights, nevertheless the art. 67 has been deepened and developed in several points. All analysed rights are shown as constructional elements of the fair trial conception which is carried out during the trial and which comes to be materialized through the equality of arms principle. In the ICC Statute, this principle bears a new characteristic, particularly in terms of the same procedural status of the prosecution and defence witnesses and in terms of the right of the accused person to the disclosure of all evidence in Prosecutor's possession which might have an exculpatory or mitigating effect. The high standard of human rights protection is ensured by many provisions of ICC Rules of Procedure and Evidence.

The fifth part presents the *Status of victims in International Criminal Procedure*. It shows first their procedural status before *ad hoc* tribunals, where victims played only the role of Prosecutor's witnesses without any procedural rights and guarantees. The ICC Statute confers to victims the right to participate in the procedure and to present their views and concerns. This part analyses the relevant kind of procedure in which victims can take part with the Court's consent and the modalities of their participation. These modalities are always determined by the Court in a manner to be not prejudicial to the rights of the accused and the fair trial principle. The fact itself that victims can participate directly in the ICC procedure confirms a higher standard of human rights protection what was verified many times by the ICC case-law authorizing the participation of victims.

The detailed analysis of procedural rights of persons during investigation, accused persons during trial and victims for the whole international criminal procedure has confirmed that the ICC Statute provisions afford a higher standard of protection of these rights than it is in the case of *ad hoc* tribunals' provisions.