



Kolegji AAB

FACULTY OF LAW

DEPARTEMENT: CIVIL LAW

MASTER STUDY

THEME:

**RIGHTS OF THE ACCUSED IN THE INTERNATIONAL CRIMINAL
COURT PROCEEDINGS**

Mentor:

Prof. Ass. Dr. Lulzim Tafa

Candidate:

Ali Selimi

Pristinë, 2014

Content

Introduction

CHAPTER I

INVESTIGATION STAGE

1. The rights of the accused in the investigation process
 - 1.1. The right to an effective defense and fair judge
 - 1.2. The right to equality and equal treatment by law
 - 1.3. The right of presumption of innocence
 - 1.4. Negative comments from the public authorities
 - 1.5. The right to respect of privacy, family, home and correspondence
 - 1.6. Interference in correspondence
 - 1.7. The right to be treated with humanity and the right to freedom from torture
 - 1.8. The right of the accused person to get notified of the charges in a language he/she understands
 - 1.9. The right to legal assistance
 - 1.10. The right not to testify against itself or the right to remain silent
 - 1.11. The right to be recorded during interrogation

CHAPTER II

PREPARATORY STAGE

1. The right to be recorded during interrogation
 - 1.1. The right for time and facilities to prepare defense
 - 1.2. The right to call, inquire or examine witnesses
 - 1.3. The right to a reasoned judgment
 - 1.4. Compliance with the conviction of the international law standards

1.4.1. Corporal punishment

1.4.2. The death penalty

CHAPTER III

FINAL STAGE

1. The rights of the accused after the court proceedings

1.1. The right of appeal

1.2. The right to full review

1.3. Availability of the decision

1.4. Transcripts of the trial

1.5. Preservation of evidence

1.6. The right to legal assistance

1.7. The right to compensation in the event of failure to justice

1.8. The right to a fair trial and special courts

1.9. Final remarks

Bibliography

List of abbreviations

Introduction

The defense of the accused remains in the interest of all civilized systems of law. All legal systems provide certain standards for the rights of the accused. Therefore, the rights guarantee that criminal proceedings shall be conducted in accordance with legal norms and no evil should be done to alleged perpetrators. So, they have the right to a fair and efficient trial. These ideas are developed in the context of human rights and approved at the national level, as well as internationally. Therefore, in this paper we have tried to answer the question whether the rules for the protection of the accused in international criminal proceedings are standard rights provided by international declarations and conventions.

International Criminal Court (ICC) is the first permanent international criminal court, which aims to promote the rule of law and ensure that the most serious crimes under international law will not escape unpunished. The Rome Statute of the International Criminal Court was established on July 17, 1998, when it was adopted by 120 countries participating in the "Diplomatic Conference of UN Plenipotentiaries on the Establishment of an International Criminal Court". The Statute entered into force on 1 July 2002. Adoption of this statute had preceded the Preparatory Committee meetings that took place over the period 1996-1998, with the aim of drafting the text of the Rome Statute. (2) In addition to protecting the victims of the Rome Statute, Article 68 (3) also provides opportunities for the participation of victims at all stages of the procedure. Rome Statute offers the accused of serious crimes under international law, clear rights, through which they will be represented, (3) to submit remarks (4) and to express their views on the concerns that preoccupy them. (5) The aim of this paper is to clarify that the International Criminal Court is not only to punish the perpetrators, but also the protection of their rights in all phases of criminal proceedings.

The rights of persons during the investigation phase of a suspect under this Statute are specified in Article 55, which states that the person:

“Shall not be compelled to incriminate himself or herself or to confess guilt; shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment; shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.”

When there is reason to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned by the prosecutor or by national authorities pursuant to a request made under Part 9. The person has the right to remain silent and silence cannot be taken as an admission of guilt or innocence. To provide legal assistance by a person who is elected by the accused in any case where the interests of justice require so and without payment if the person does not have sufficient means to pay and be questioned in the presence of a lawyer. It may

be questioned without the presence of a lawyer unless the person has voluntarily waived the protection of law.

Article 63 of the Rome Statute for the rights of the accused in criminal proceedings in front of the International Criminal Court expressly states that the accused has the right to be present during the trial. The trial should be public and only in exceptional circumstances it may be confined to the cases provided for in Article 68, or to protect confidential or sensitive information to evidence (Article 64). The Rome Statute provides that the accused is innocent until proven guilty beyond a reasonable doubt; everyone will be presumed innocent until proved guilty in accordance with applicable laws the prosecutor burdens to prove the guilt of the accused. After the imposition of a sentence for the accused, the court must be convinced of the guilt of the accused beyond reasonable doubt. The accused in criminal proceedings in front of the International Criminal Court are guaranteed all the traditional rights, including the right to be tried without undue delay, the right to silence and right to counsel.

Article 67 on the rights of the accused in criminal proceedings considers that in the determination of any charge, the accused is entitled to a public hearing, having regard to the provisions of this Statute, to a fair and impartial adjudication, minimal guarantees must be offered for full equality of the parties in the proceedings. To be informed promptly and in detail of the nature, cause and content of the formal accusation in a language which he/she understands and speaks; have enough time to prepare his/her defense and to communicate freely with counsel of the accused elected; Paragraph 2 of Article 63 states that the accused shall be present during the trial. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, using communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

In this paper, we have tried to give an answer whether the rules that protect the defendant at the International Criminal procedures meet the standards on human rights provided by international declarations and conventions and if the adoption of these standards by the criminal courts have been successful at international level and based on international law. Here, by analyzing the development of the International Criminal Court proceedings for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) will be given thought to the standards stipulated by international law on human rights.

The aim of this paper is to describe the rights of the accused during all stages of criminal proceedings and determine the level of rights guaranteed to the accused of serious crimes. As for the discussion starting point will be the Universal Declaration of Human Rights, and in particular the International Covenant on Civil and Political Rights with reference to other international instruments and on the other international rules during criminal proceedings in the statutes of the ICTY, ICTR, ICC and Rules of their Procedure and Evidence. As references will also serve

proceedings at the Nuremberg and Tokyo tribunals and other international sources of human rights about the rights of the accused.

The paper will address the comprehensive principle of equality before the law, conditions which must be respected both in civil and criminal proceedings, as well as the principle of presumption of innocence, which is of fundamental importance with criminal proceedings. This paper will examine some human rights that belong to the phase of criminal investigation, until the beginning of the trial itself, when it should take place. What should be noted is that the issue of the administration of justice for minors will not be treated at all in this paper. It should also be noted in this chapter there is no complete list of rights guaranteed in the pre-trial stage, but we will just focus on certain human rights that are considered to be of particular importance with the criminal investigation.

The choice of issues to be addressed in this chapter and in the following chapters is made from a practical point of view, given the course of events that usually occur with the investigation of criminal activities, and trial.

Final remarks

In this paper, we treated the basic rights that should be provided effectively to all persons charged after criminal proceedings. Their rights, which must be protected after the completion of judicial proceedings or the sentence of his/her innocence. It has also demonstrated the indispensable role that local judges may have in fair administration of justice, a role which is highlighted in the first and second chapter. But, national judges are not only responsible for their actions. They somehow are responsible for the actions of prosecutors and defense lawyers, to the extent that, when the judge has no indication that the prosecutor has made a mistake in the course of a criminal investigation using illegal investigative tools, or that the counsel has not regularly consulted with his/her client, or simply did not act in a professional manner, the judge has a duty to intervene and correct those mistakes, because such an action may be essential in order to guarantee a fair trial and equality between the prosecution and defense. The rights that are addressed in this chapter are numerous and it is difficult, or even impossible, to separate some as more important than others. These rights form a whole and together with the rights covered in the first and second chapter, constitute the foundation on which a society must build on human rights in general.