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*Agata Kleczkowska**

JUDGMENT OF THE SUPREME COURT, DATED 17 FEBRUARY 2016 (REF. NO. WA 16/15)[1]

Abstract:
In its Judgment of 17 February 2016, the Polish Supreme Court adjudicated the case of Polish soldiers accused of crimes committed in the village of Nangar Khel in Afghanistan in 2007. Ultimately, the Supreme Court found that Polish soldiers were guilty of, inter alia, breach of Article 318 of the Polish Penal Code, which stipulates that a soldier commits a crime even when executing an order if he is aware of this crime. However, the part of the judgment devoted to the problem of unlawful orders is very limited and almost completely lacks references to international law. The Supreme Court could have referred to a number of international legal acts, starting from the beginning of 20th century and up to the more recent regulations, including those in the Rome Statute. Moreover, the Supreme Court did not use international case law. As a result, the argumentation of the Supreme Court should be assessed as limited and unconvincing.

Keywords: blind bayonets, international criminal law, Penal Code, Polish Supreme Court, unlawful order

1. THESIS

Article 318 of the Polish Penal Code (PPC) does not completely exempt a soldier from criminal liability when he is executing orders. Instead, an exception to this general exemption takes place when the soldier, while executing the order, intentionally commits a crime. The Polish legislator did not recognize the theory of "blind bayonets", which refers to the necessity for soldiers to execute superiors' orders under any circumstances, regardless of their lawfulness.

* Ph.D. candidate, Institute of Law Studies of the Polish Academy of Sciences, Warsaw (Poland).

[1] The Judgment in Polish is available at: http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/WA%2016-15.pdf (Polish Supreme Court judgment) (accessed 30 May 2017).

2. FACTUAL BACKGROUND

The Polish Supreme Court judgment concerns events which took place in Nangar Khel, an Afghan village, during the period when the Polish Armed Forces were stationed in Afghanistan. On 17 August 2007, a subdivision of the Polish Army, under the command of sub-lieutenant Ł.B., received orders from major O.C. The orders instructed the soldiers to go to a place where one of the Polish military vehicles was attacked in order to reinforce the Polish and American soldiers who were close to Nangar Khel; to search the nearby hills where the attackers could have been hidden; and in case of danger, to engage in combat with the attackers and if necessary to use mortar fire. Consequently, as the order clearly defined the tasks of the subdivision under the command of sub-lieutenant Ł.B., it was not allowed to shell objects and could use mortar only in the event of a direct threat. However, when the soldiers arrived in the area near Nanghar Khel, they opened mortar fire against buildings in the village, without previous reconnaissance, in a situation wherein they did not face any direct danger.

Warrant officer A.O. ordered staff sergeant T.B. to open fire using mortars, and T.B. followed this order by commissioning this task to the personnel responsible for the mortars. In the meantime, sub-lieutenant Ł.B., of the highest rank in the group, who was aware of the illegal action of his subordinates, neither reacted to the situation nor changed the order, even though under Polish law he could have done so. As a result of the shelling, six civilians were killed and several others were seriously injured.[2]

In addition to the factual background, the procedural history of this case needs to be briefly summarized as well. Initially the case was adjudicated by the Military Circuit Court in Warsaw in 2011, which acquitted all defendants. Because the Prosecutor appealed the judgment, the case was moved to the Military Chamber of the Supreme Court, which decided that the case required partial re-examination in the Military Circuit Court. As a result, the Military Circuit Court decided, in 2015, that the soldiers had failed to properly execute the order which they received. The Military Chamber of the Supreme Court in 2016 upheld this position in the Judgment discussed herein.

3. SUPREME COURT'S REASONING

In its reasoning, the Supreme Court did not elaborate much on the thesis of the Circuit Court judgment concerning unlawful orders. It mostly reiterated it, pointing out again that Article 318 of the PPC does not always exempt a soldier from criminal liability when the soldier is following orders. An exception takes place when the soldier intentionally commits a crime. According to the Supreme Court, that was the case of the subdivision under the command of sub-lieutenant Ł.B. This result was based on the fact that under Polish law the so-called "blind bayonets" theory is not

[2] *Ibidem*, paras. 37-40.

recognized.[3] This theory refers to the rule that a soldier is obliged to follow a superior's order in any circumstances, regardless of whether the order is lawful or not. The Court also referred to the previous Supreme Court judgment of 14 March 2011, issued in this same case. In the earlier judgment, the Supreme Court referred to the General Regulation of the Armed Forces of the Republic of Poland,[4] which includes the obligation to follow orders by subordinates. Consequently, the Supreme Court came to the conclusion that if the soldiers are convinced that it is absolutely necessary to follow orders, and they are not aware of the fact that following orders would amount to a crime, they have not committed a crime.

The Supreme Court also referred to international legal regulations while discussing the charges against the defendants,[5] that is Article 23(b) and Article 25 of the Regulations concerning the Laws and Customs of War on Land;[6] Article 3(1)(a) of the Fourth Geneva Convention relating to the Protection of Civilian Persons in Time of War;[7] as well as Article 4(2)(a) and Article 13(1) and (2) of the Protocol Additional II to the Geneva Conventions.[8] However, the Supreme Court did not elaborate more on these

[3] *Ibidem*, para. 49.

[4] Decyzja Nr 445/MON z dnia 30 grudnia 2013 r. w sprawie wprowadzenia do użytku Regulaminu Ogólnego Sił Zbrojnych Rzeczypospolitej Polskiej, Dziennik Urzędowy Ministra Obrony Narodowej, 2013.12.30, poz. 398. – załącznik [Decision No. 445/MON of December 30, 2013, Official Journal of the Minister of National Defense, 2013.12.30, item 398. – annex].

[5] Polish Supreme Court judgment, para. 2.

[6] Article 23(b) provides "[i]n addition to the prohibitions provided by special Conventions, it is especially forbidden (…) (b) to kill or wound treacherously individuals belonging to the hostile nation or army; Article 25: "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited." International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, available at: http://www.refworld.org/docid/4374cae64.html (accessed 30 May 2017).

[7] Article 3(1)(a): "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (…) (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture." The Geneva Conventions of August 12, 1949, International Committee of the Red Cross, Geneva, pp. 153-221.

[8] Article 4(2)(a): "Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment." Article 13(1): "The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances." Art. 13(2): "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian popula-

regulations, nor did it mention any international legal regulations specifically concerning unlawful orders.

4. DISCUSSION OF THE COURT'S REASONING

Taking into account the issue of the regulation of acts of international humanitarian law (IHL) enumerated in the charges against the defendants, the Court seems to have acknowledged that the alleged crimes it was adjudicating were committed in the course of a non-international armed conflict, although it did not make such a clear statement. However, despite such findings the Supreme Court referred only to the PPC and did not discuss any international legal regulations concerning unlawful orders. Moreover, the Court did not elaborate more on the theory of "blind bayonets". It would seem that such references were necessary, not only because of the argument that the international legal rules concerning the unlawful orders form a customary norm, but also because of the long history of international regulations with regard to unlawful orders. Consequently, since the Supreme Court was ruling on alleged crimes committed during an armed conflict, regulated by IHL, it should have discussed these issues and related its conclusions with regard thereto to the case before it.

Article 318 of the PPC states that "A member of the armed forces who commits a prohibited act in carrying out an order does not commit an offence unless, while carrying out the order, he commits an offence intentionally."[9] Thus the only element which constitutes an exception to the exculpation of guilt is the soldier's awareness that the execution of the order would amount to a crime. In other words, if the soldier receives the order and is convinced that the order is lawful, but nevertheless, by executing it he commits a crime, he makes an *error facti*, since he considered that the consequences of the execution of the order would not result in the commission of a crime. This reasoning is meant to apply to a specific situation whereby a soldier receives the order and does not have the opportunity to analyze whether following it would amount to the crime or not, but acts in obedience to the superior who issued the order.[10] At the same time, when a soldier recognizes that the order is a crime, he should refuse to execute it, since the PPC does not require absolute obedience under such circumstances.

This is so because, as the Supreme Court rightly observed, Article 318 of the PPC

tion, are prohibited." International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609, available at: http://www.refworld.org/docid/3ae6b37f40.html (accessed 30 May 2017).

[9] Translation after: International Committee of the Red Cross, *Practice Relating to Rule 155. Defence of Superior Orders*, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule155 (accessed 30 May 2017).

[10] D. Szeleszczuk, *Artykuł 318* [Article 318], in" A. Grześkowiak, K. Wiak (eds.), *Kodeks karny. Komentarz* [Penal Code. Commentary], CH Beck, Warszawa: 2016, p. 1286.

does not support the theory of blind bayonets (i.e., "silent bayonets", or passive obedience). The theory of blind bayonets is the oldest doctrine concerning the issue of soldier's obedience to the orders of superiors, and assumes an absolute obedience of orders, regardless of their content. Under this doctrine, a soldier is not entitled to assess the legality or legitimacy of the order but needs to "blindly" comply with it. The theory assumes that military discipline is a supreme value, which soldiers are required to adhere to in all circumstances. What's more, it is based on the assumption that a superior's order cannot infringe legal rules. The "blind bayonets" theory was used mainly in cases of crimes committed by totalitarian regimes, where the assumption was made that the soldier was not permitted to think independently, and he was considered to be only a tool in hands of his superiors.[11] An example of this can be seen in the disciplinary regulations of the Soviet Red Army, pursuant to which, "a superior's order constitutes a law for the subordinate; the order should be carried out without reservations and on time. Failure to carry out the order constitutes a crime."[12] Taking into account the state of Polish regulations in this respect, one can say that they rather follow the theory of "thinking bayonets", which assumes that the soldier, as an intelligent human being, may assess the legality of the order and in extreme cases refuse to execute it.[13]

National case law from different States has dealt with the problem whether an order was lawful or not for over a century. One can mention, *inter alia*, the case of Lieutenants Dithmar and Boldt, adjudicated by the Second Criminal Senate of the Imperial Court of Justice, which was ruling on the alleged war crimes committed during the First World War. The trial concerned the case of an attack against a ship hospital and its sailors. In its judgment, the Court came to the conclusion that a

> subordinate (…) is liable to punishment, if it was known to him that the order of the superior involved the infringement of civil or military law. (…) It is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law.[14]

Next worthy of mention are the Nuremberg Trials, before the International Military Tribunal in Nuremberg, which adjudicated the cases of the major war criminals. As the

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[11] K. Smolarek, *Analiza historyczno-prawna wyłączenia odpowiedzialności karnej podwładnego działającego na rozkaz przełożonego w prawie karnym* [Historic and legal analysis of the exemption from criminal liability of a subordinate acting upon a superior's order in criminal law], 2(168) Zeszyty Naukowe Wyższej Szkoły Oficerskiej Wojsk Lądowych 57 (2013); M. van Vordeen, *Rozkaz wojskowy jako instytucja prawa karnego: podstawowe zagadnienia* [Military orders as an institution of the criminal law - fundamental issues], 23 Studia Prawnoustrojowe 56 (2014), p. 67.

[12] K. Karski, *The Katyn Crime under Nuremberg Principles*, in: M. B. Szonert (ed.), *Katyn: State-Sponsored Extermination*, Libra Institute, Cleveland: 2012, p. 29.

[13] van Vordeen, *supra* note 11, p. 67.

[14] *German War Trials: Judgment in the Case of Lieutenants Dithmar and Boldt: Hospital Ship 'Llandovery Castle' Rendered July 16, 1921*, 16(4) The American Journal of International Law 708 (1922), p. 722.

Tribunal observed, most of the defendants claimed that in doing what they did they were actually acting under the orders of Hitler, and therefore could not be held responsible for the acts they committed in carrying out these orders.[15] However, Article 8 of the Charter of the International Military Tribunal stated that: "The fact that the Defendant acted pursuant to an order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires."[16] This rule was also reiterated in the Nuremberg Principles.[17] The Tribunal held that: "The provisions of this article are in conformity with the law of all nations",[18] based on the state of international legal regulations (and presumably of customary international law) in 1945. Moreover, it ruled that it "is not the existence of the order, but whether moral choice was in fact possible" which decides whether the superior's order could constitute a mitigating circumstance.[19] As a result, the Tribunal noted that many of the defendants "made a mockery of the soldier's oath of obedience to military orders", since they used the circumstances of a superior's order as a tool for their defense, and not as a commitment which really influenced their behavior.[20] The Tribunal also observed that: "superior orders, even to a soldier, cannot be considered in mitigation where crimes as shocking and extensive have been committed consciously, ruthlessly, and without military excuse or justification."[21]

When it comes to the more recent international legal regulations on unlawful orders, they can be divided into four groups. Firstly, some of these regulations exclude that exculpation from criminal liability is possible at all, regardless of whether the soldier acted intentionally or not. For example, Article 2 of the Convention against Torture,[22] Article VIII of the Inter-American Convention on the Forced Disappearance of Persons,[23] and Article 6(2) of the Convention on Enforced Disappearance[24] all state that an order cannot justify the commitment of the offences stipulated by these conventions.

Secondly, there are international legal acts which state that it does not matter whether or not the perpetrator was aware that the order would result in a crime, but nevertheless

[15] *Judgment in the Trial of the Major War Criminals before the International Military Tribunals*, Nuremberg 14 November 1945 – 1 October 1946, Nuremberg 1947, p. 223 (Nuremberg Judgment).

[16] D. Schindler, J. Toman, *The Laws of Armed Conflicts*, Martinus Nihjoff Publisher, Leiden/Boston: 1988, pp. 912-919.

[17] Principle IV: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him", *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, Yearbook of the International Law Commission, 1950, vol. II, para. 97.

[18] Nuremberg Judgment, p. 223.

[19] *Ibidem*, p. 224.

[20] *Ibidem*, p. 278.

[21] *Ibidem*, p. 291.

[22] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85.

[23] O.A.S. Treaty Series No. A-60.

[24] International Convention for the Protection of All Persons from Enforced Disappearance, 2716 UNTS 3.

the fact that he was following an order can be considered in mitigation of punishment. Such regulations are included in statutes of many international tribunals, for example the Special Tribunal for Lebanon (Article 3(3) of the Statute[25]), the Special Court for Sierra Leone (Article 6(4) of the Statute[26]), the International Criminal Tribunal for the former Yugoslavia (ICTY) (Article 7(4) of the Statute[27]) and the International Criminal Tribunal for Rwanda (Article 6(4) of the Statute[28]). Among this group of regulations, one should mention also Article 77(2) of the draft Additional Protocol I to the Geneva Conventions[29] which contains a regulation similar to Article 318 of the PPC, since it states that

> [t]he mere fact of having acted pursuant to an order of an authority or a superior does not absolve an accused person from penal responsibility, if it be established that in the circumstances at the time he knew or should have known that he was committing a grave breach of the Conventions or of this Protocol. It may, however, be taken into account in mitigation of punishment.

Moreover, as this group includes the majority of statutes of international criminal courts and tribunals, it is indispensable to refer at least to the *Erdemović* case, adjudicated by the ICTY, which is one of the most discussed cases concerning unlawful orders. Dražen Erdemović was a member of the 10th Sabotage Unit of the Bosnian Serbs Army when the massacre in the Pilica farm took place. He claimed that when he received orders to kill Bosnian Muslims transported to the farm, he initially refused to do so, but then he was threatened that he would be killed as well if he refused to carry out the orders. Consequently, at the end he executed the order, killing about 70-100 people in one day.[30] Trial Chamber I decided that the criminal liability of the accused, taking into account the fact that he was following orders, should be assessed using the following criteria: the existence of any imminent physical danger that threatened the accused, the rank held by the soldier giving the order and by the one receiving it, as well as the circumstances surrounding how the order was given and how it was received.[31] However, at the end of the trial Chamber I decided that the superior's order did not constitute a mitigating circumstance in the

[25] Statute of the Special Tribunal for Lebanon, S/RES/1757 (2007) – attachment.

[26] Statute of the Special Court for Sierra Leone http://www.refworld.org/docid/3dda29f94.html (accessed 30 May 2017).

[27] Updated Statute of the International Criminal Tribunal for the Former Yugoslavia http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf (accessed 30 May 2017).

[28] Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006) http://www.refworld.org/docid/3ae6b3952c.html (accessed 30 May 2017).

[29] Draft Additional Protocols to the Geneva Conventions of August 12, 1949, Commentary, Geneva 1973, p. 97. Ultimately, the regulation on the unlawful orders was not included in the final text of the Additional Protocol I.

[30] *The Prosecutor v. Drazen Erdemovic, Sentencing Judgment*, 29 November 1996, Case IT-96-22-T, paras. 78, 80-81.

[31] *Ibidem*, paras. 18-19.

Erdemović case.[32] When the case was remitted to Trial Chamber (The Appeal Chamber found that the guilty plea by Erdemović was not informed), Trial Chamber II again found that despite the fact that Erdemović was initially reluctant to execute the orders, in the end he used a Kalashnikov automatic rifle and continued to kill victims for most of the day. What's more, the Tribunal took into account the magnitude of the crime and the scale of the accused's role in it.[33] The Tribunal also observed that, even though the accused was acting under duress, in similar morally difficult situations he discussed before the Tribunal he was nevertheless capable of taking positive actions.[34] As a result, it can be concluded that the ICTY decided that the mode of committing the crime, his consent to do so, the general circumstances, as well as the possibility of making a moral choice should be taken into account when evaluating the mitigating circumstances of a crime committed in the execution of an illegal order.

Thirdly, some international regulations refer to morality and a choice of conduct by a soldier. For instance, Principle IV of the Nuremberg Principles mentioned above states that the fact that the soldier followed an order does not relieve him of responsibility "provided a moral choice was in fact possible to him."[35] The International Law Commission Draft Code of Offences against the Peace and Security of Mankind refers to situations whereby "in the circumstances at the time, it was possible for him not to comply with that order" (Article 4).[36]

Finally, a majority of the international and national legal regulations introduce the element of a "manifestly unlawful" order as a criterion of assessment of a soldier's conduct. The most important example of this group would be Article 33(1) of the ICC Statute,[37] which states that:

[t]he fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless: (a) The person was under a legal obligation to obey orders of the Government or the superior in question; (b) The person did not know that the order was unlawful; and (c) The order was not manifestly unlawful.[38]

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[32] *Ibidem*, para. 111.

[33] *The Prosecutor v. Drazen Erdemovic, Sentencing Judgment*, 5 March 1998, Case IT-96-22-Tbis, para. 15.

[34] *Ibidem*, para. 17.

[35] Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, Yearbook of the International Law Commission 1950, vol. II, para. 97.

[36] Draft Code of Offences against the Peace and Security of Mankind, Yearbook of the International Law Commission 1954, vol. II.

[37] Rome Statute of the International Criminal Court, 2187 UNTS 3.

[38] However, it should be noted that, despite the existence of such a regulation, until now the ICC has not applied it in any of its adjudicated cases, including in the situation in the Central African Republic in the Case of *Prosecutor v. Jean-Pierre Bemba Gombo*, which relates to the problem of the superior's responsibility over his subordinates (Amicus Curiae Observations on Superior Responsibility Submitted Pursuant to Rule 103 of the Rules of Procedure and Evidence, 20 April 2009, ICC01/0501/08).

Consequently, Article 33(1) combines the element of a "manifestly unlawful" order with the element stipulated by the PPC, i.e. the soldier's awareness of the unlawful nature of the order.[39]

However, what does a "manifestly unlawful" order mean? The idea that it matters whether the order carried out was "manifestly unlawful" or not was applied for the first time by the Austrio-Hungarian Military Court in 1915, when it determined that a subordinate may be found liable for his action when following orders only when his behavior is "manifestly in conflict not only with criminal law but also with the customs of war of civilized peoples."[40] Even though the International Committee of the Red Cross (ICRC) summary on unlawful orders mentions at least several national legislations and national court judgments which refer to "manifestly unlawful orders", none of them elaborate what "manifestly unlawful" means, how it can be determined, and when the unlawfulness of an order is "manifest". In its Rules on Customary International Humanitarian Law, the ICRC reiterates this criterion (Rule 154), but again does not explain its meaning.[41] At the same time, it is hard to determine the meaning of a "manifestly unlawful" order in the abstract, without reference to a specific situation or set of facts.[42] Lauterpacht has pointed out that a manifestly unlawful order is one which should be "obvious to a person of ordinary understanding".[43] Moreover, one can argue that circumstances which the average person would not be aware of are irrelevant when assessing whether an order was plainly contrary to the legal order.[44] At the same time, the "unlawfulness" should also refer to international law, not to the domestic legal orders, which implies that the unlawfulness needs to fall within an average person's knowledge of international law.[45]

To sum up, the Supreme Court should have referred to the wide range of international legal acts and case law, starting from the early 20th century, in order to properly adjudicate the issue of the unlawful orders issued by Polish officers which prompted the massacre in Nangar Khel. While it is understandable that the Supreme Court referred first and foremost to the PPC regulation, nonetheless bearing in mind that the case concerned crimes committed during a non-international armed conflict, the Supreme Court could have referred at least to Additional Protocol II to the Geneva Conventions,

[39] The summary of all international legal regulations on the unlawful orders can be found at: *Practice Relating to Rule 155. Defence of Superior Orders*, *supra* note 4.

[40] P. Gaeta, *The Defence of Superior Orders: The Statute of the International Criminal Court versus Customary International Law*, 10 European Journal of International Law 172 (1999), p. 175.

[41] ICRC, Rule 154, Obedience to Superior Orders, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule154 (accessed 30 May 2017).

[42] G. D. Solis, *The Law of Armed Conflicts: International Humanitarian Law in War*, Cambridge University Press, Cambridge: 2010, p. 359.

[43] After: A. Zimmermann, *Superior Orders*, in: A. Cassese, P. Gaeta, J. R. W. D. Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, *Volume II*, Oxford University Press, Oxford: 2002, p. 970.

[44] *Ibidem*.

[45] *Ibidem*.

which binds Poland, and consequently, the Polish armed forces as well. As a result, the Supreme Court's judgment is very hermetic, and the argumentation used by the Supreme Court is very limited. It is hard to assess whether a more profound reference to international law would have changed the final ruling of the Court in the Nangar Khel case, but bearing in mind that the Supreme Court adjudicated alleged crimes committed by the Polish Armed Forces in a foreign State and which breached international legal norms, this should have been sufficient reason for the Supreme Court to consider something more than just the Polish regulations. Thus, one can call for wider and more eloquent Supreme Court rulings in cases involving international law in the future, since not only Polish statutes, but also international legal norms are part of the Polish legal order as well.