



No. SN78-144

The Permanent Mission of the Republic of Lithuania to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, in reference to its note LA/COD/59/1 of 18 December 2020 and with apologies for a belated submission, has the honour to transmit the information that the Government of the Republic of Lithuania wishes to submit pursuant to the General Assembly resolution 75/142 of 15 December 2020, entitled “The scope and application of the principle of universal jurisdiction”.

The issue of jurisdiction is dealt by Articles 4 to 8 by the Criminal Code of the Republic of Lithuania. Please see the extracts below:

Article 4. Validity of a Criminal Law in Respect of the Persons who have Committed Criminal Acts within the Territory of the State of Lithuania or Onboard the Vessels or Aircraft Flying the Flag or Displaying Marks of Registry of the State of Lithuania.

1. The persons who have committed criminal acts within the territory of the State of Lithuania or onboard the vessels or aircraft flying the flag or displaying marks of registry of the State of Lithuania shall be held liable under this Code.

2. The place of commission of a criminal act shall be the place in which a person acted or ought to have acted or could have acted or the place in which the consequences provided for by a criminal law occurred. The place of commission of a criminal act by accomplices shall be the place in which the criminal act was committed or, if one of the accomplices acted elsewhere, the place where he acted.

3. A single criminal act committed both in the territory of the State of Lithuania and abroad shall be considered to have been committed in the territory of the Republic of Lithuania if it was commenced or completed or discontinued in this territory.

4. The issue of criminal liability of the persons who enjoy immunity from criminal jurisdiction under international law and commit a criminal act in the territory of the Republic of Lithuania shall be decided in accordance with international treaties of the Republic of Lithuania and this Code.

Article 5. Criminal Liability of Citizens of the Republic of Lithuania and Other Permanent Residents of Lithuania for the Crimes Committed Abroad

Citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for the crimes committed abroad under this Code.

Article 6. Criminal Liability of Aliens for the Crimes Committed Abroad against the State of Lithuania

The aliens who do not have a permanent residence in the Republic of Lithuania shall be liable under a criminal law where they commit crimes abroad against the State of Lithuania as provided for in Articles 114-128 of this Code.

Article 7. Criminal Liability for the Crimes Provided for in International Treaties

Persons shall be held liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime, where they commit the following crimes subject to liability under international treaties:

- 1) crimes against humanity and war crimes (Articles 99-1131);
- 2) trafficking in human beings (Article 147);
- 3) purchase or sale of a child (Article 157);
- 4) production, storage or handling of counterfeit currency or securities (Article 213);
- 5) property laundering (Article 216);
- 6) bribery (Article 225);
- 7) trading in influence (Article 226);
- 8) graft (Article 227);
- 9) piracy (Article 2511);
- 10) acts of terrorism and crimes related to terrorist activity (Article 2521(1) and (2);
- 11) unlawful handling of nuclear or radioactive materials or other sources of ionising radiation (Articles 256, 2561 and 257);
- 12) the crimes related to possession of narcotic or psychotropic, toxic or highly active substances (Articles 259-269);
- 13) crimes against the environment (Articles 270, 2701, 2702, 2703, 271, 272 and 274).

Article 8. Criminal Liability for the Crimes Committed Abroad

1. A person who has committed abroad the crimes provided for in Articles 5 and 6 of this Code shall be held criminally liable only where the committed act is recognised as a crime and is punishable under the criminal code of the state of the place of commission of the crime and the Criminal Code of the Republic of Lithuania. Where a person who has committed a crime abroad is prosecuted in the Republic of Lithuania, but a different penalty is provided for this crime in each country, the person shall be subject to a penalty according to laws of the Republic of Lithuania, however it may not exceed the maximum penalty specified in criminal laws of the state of the place of commission of the crime.

2. A person who has committed the crimes provided for in Articles 5, 6, and 7 of the Criminal Code of the Republic of Lithuania shall not be held liable under this Code where he:

- 1) has served the sentence imposed by a foreign court;
- 2) has been released from serving the entire or a part of the sentence imposed by a foreign court;
- 3) has been acquitted or released from criminal liability or punishment by a foreign court's judgment, or no penalty has been imposed by reason of the statute of limitation or on other legal grounds provided for in that state.

3. A citizen of the Republic of Lithuania or another person permanently residing in Lithuania who has committed abroad one or more crimes provided for in Article 149(3) and (4), Article 150(3) and (4), Article 151(2), Article 1511, Article 1521, Articles 153 and 157, Article 162(1), Article 307(3), Article 308(3) and Article 309(2) and (3) of this Code shall be punishable regardless of whether the committed act is punishable under the criminal law of the state of commission of the crime.

Article 7 of the Criminal Code of the Republic of Lithuania establishes the principle of active national jurisdiction where citizens and permanent residents of Lithuania are criminally liable under the Criminal Code of the Republic of Lithuania for the crimes committed abroad.

Lithuanian Criminal Code also establishes universal jurisdiction under international treaties for certain crimes, such as crimes against humanity and war crimes, trafficking in human beings, money laundering, terrorist activity, and several others, regardless of the citizenship and place of residence of the perpetrator or the territory where the crime has been committed.

Thus, in case it emerges that a criminal act was committed in Lithuania, the question concerning the liability of a person could be decided taking into account the territorial principle of jurisdiction (Article 4 of the CC), and in case it emerges that a criminal act was committed by a national of the Republic of Lithuania or a person permanently residing in Lithuania, jurisdiction based on the principle of nationality should be applied (Article 5 of the CC).

Generally, one of the preconditions for the application of the universal jurisdiction is that a person is punished in the State in which he or she in fact is present only in case he or she cannot be extradited or surrendered to the State that is the place of commission of a crime or to the international court. State in the territory of which a criminal act was committed or the State whose national committed a criminal act should be the first to use the right to punish the offender for international crime. Only in case the extradition or surrender of the offender from the place where he/she in fact is present is not possible, the execution of universal jurisdiction could be considered. It should be noted that according to the Statute of the International Criminal Court the jurisdiction of this court is only complementary.

However, neither such a precondition nor priorities of jurisdiction are stipulated in Article 7 of the Criminal Code of the Republic of Lithuania.

It should be noted that Lithuanian legislation and case law foresees that the ratified international treaties have supremacy over the national law. The principle *aut dedere aut judicare* establishing the obligation of the State to extradite or judge is stipulated in a number of international treaties, while the norm established in Article 7 of the Criminal Code of the

Republic of Lithuania gives rise to a precondition for proper application of universal jurisdiction. Article 7 of the CC clearly lists criminal acts subject to the principle of universal jurisdiction.

Given the questions arise from the interpretation of international legal acts and Lithuanian criminal laws adopted during their implementation, the national case law may be based on the interpretations provided in the decisions of international courts. In this respect, the case law of the International Criminal Court, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia, the International Court of Justice should be noted.

An analysis of the case law of the European Court of Human Rights is essential to ensure compliance with Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, especially in cases concerning the application of this principle in the context of liability for crimes against humanity and war crimes (e. g. Kononov v. Latvia [GC], no. 36376/04, judgment of 17 May 2010; Korbely v. Hungary [GC], no. 9174/02, judgment of 19 September 2008; Jorgic v. Germany, no. 74613/01, judgment of 12 July 2007; Streletz, Kessler and Krenz v. Germany [GC], nos. 34044/96, 35532/97 and 44801/98, judgment of 22 March 2001; K.-H.W. v. Germany [GC], no. 37201/97, judgment of 22 March 2001; Polednová v. Czech Republic, no. 2615/10, decision of 21 June 2011; Kolk and Kislyiy v. Estonia, nos. 23052/04 and 24018/04, decision of 17 January 2006; Penart v. Estonia, no. 14685/04, decision of 24 January 2006; Papon v. France, no. 54210/00, decision of 15 November 2001).

One more important aspect of execution of criminal liability for crimes against humanity based on the principle of universal jurisdiction is also the possibility to prosecute a perpetrator *in absentia*. It is worth mentioning that in Lithuania, such a possibility is enshrined in the norms of the Code of Criminal Procedure and is effectively implemented.

The Permanent Mission of the Republic of Lithuania to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

New York, 7 May 2021

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