



PERMANENT MISSION OF SLOVENIA TO THE UNITED NATIONS

No.: N-470/11

The Permanent Mission of the Republic of Slovenia to the United Nations presents its compliments to the Secretary – General of the United Nations and, with reference to his Note LA/COD/50 of 1 March 2011, has the honour to transmit herewith the information by the Republic of Slovenia in accordance with the General Assembly resolution 65/20 of 6 December 2010 entitled “Criminal Accountability of United Nations officials and experts on mission”.

The Permanent Mission of the Republic of Slovenia to the United Nations avails itself of this opportunity to renew to the Secretary - General the assurances of its highest consideration.



New York, 1 July 2011

**Secretary-General
of the United Nations**

New York

Information provided by the Republic of Slovenia in accordance with the General Assembly resolution 65/20 of 6 December 2010 entitled "Criminal Accountability of United Nations officials and experts on mission"

Application of the Criminal Code of the Republic of Slovenia – *ratione personae*

The Criminal Code of the Republic of Slovenia (hereinafter referred to as the "Criminal Code"), shall apply to every person who commits a criminal offence on the territory of the Republic of Slovenia. In accordance with the positive principle, the Criminal Code shall also apply to a criminal offence committed abroad; this is determined on the basis of the seriousness of the offence, and shall apply when such an offence is not expected to be prosecuted abroad, and/or in cases where the State is obliged to prosecute, pursuant to an applicable binding international treaty. According to Article 11 of the Criminal Code, Slovenian criminal legislation is applicable to two types of such criminal offence:

- A criminal offence that must be prosecuted in accordance with an applicable binding international treaty, irrespective of the location in which the offence is committed;
- Political criminal offences, (i.e. criminal offences committed against the sovereignty of the Republic of Slovenia and its democratic constitutional order, and/or the crime of terrorism (committed against the Republic of Slovenia and/or any foreign State or international organisation)).

The applicability of the Criminal Code is set out in Chapter Two of the General Part of the Code: "*Application of the Criminal Code*". Article 11 includes a general rule on the application of the Criminal Code to specific criminal offences committed abroad. It reads as follows:

"Article 11

Application of the Criminal Code of the Republic of Slovenia to Specific Criminal Offences Committed in a Foreign State

The Criminal Code of the Republic of Slovenia shall apply to any person who, in a foreign State, commits:

- *A criminal offence under Article 243 of the Criminal Code or any other criminal offence which, in accordance with an applicable binding international treaty, is to be prosecuted in all contracting States, irrespective of the location in which it is committed; and*
- *Criminal offences under Article 108 and Articles 348–360 of the Criminal Code."*

The criminal offence defined under Article 243 is Counterfeiting of Currency, the offence defined under Article 108 is Terrorism and offences defined under Articles 348–360 include:

- Article 348 – Treason
- Article 349 – Attack on Territorial Integrity
- Article 350 – Attack on the State's Independence
- Article 351 – Encroachment upon Territorial Integrity
- Article 352 – Assassination of the President of the Republic

- Article 353 – Violence against the Highest Representatives of the State
- Article 354 – Violence against the Representatives of Foreign States or International Organisations
- Article 355 – Armed Rebellion
- Article 356 – Diversion
- Article 357 – Sabotage
- Article 358 – Espionage
- Article 359 – Incitement to Violent Change of the Constitutional Order
- Article 360 – Punishment for the Gravest Types of Criminal Offences

The Criminal Code, in accordance with the active personal principle, also applies if a Slovenian citizen commits a criminal offence not listed under Article 11 outside the territory of the Republic of Slovenia. The rule set out in Article 12 applies if the criminal procedure carried out abroad is deemed to be insufficient, and if the criminal offence committed is punishable under the law of the State in which such an offence has been committed, taking into account the observation of the "double jeopardy" (*ne bis in idem*) defence.

Article 12 of the Criminal Code thus reads as follows:

"Article 12

Application of the Criminal Code of the Republic of Slovenia to Citizens of the Republic of Slovenia who have Committed a Criminal Offence Abroad

The Criminal Code shall apply to any citizen of the Republic of Slovenia who commits a criminal offence abroad, other than those clarified in the preceding Article."

Article 13 of the Criminal Code sets out the rules of applicability of the Criminal Code to a foreign citizen, who commits a criminal offence abroad. It reads as follows:

"Article 13

Application of the Criminal Code of the Republic of Slovenia to Foreign Citizens Who Committed a Criminal Offence Abroad

- (1) *The Criminal Code shall apply to any foreign citizen who commits a criminal offence against the Republic of Slovenia in a foreign State or to any of its citizens, even if the offence in question is not covered by Article 11 of the Criminal Code.*
- (2) *The Criminal Code shall also apply to any foreign citizen who commits a criminal offence against a third state in a foreign State, or to any of its citizens if he has been apprehended on the territory of the Republic of Slovenia, but not yet extradited to a foreign State. In such cases, the Court shall impose a sentence on the perpetrator, which is not heavier than that prescribed by the law of the State on the territory of which the offence was committed."*

Article 14 of the Criminal Code sets out the special conditions that need to be met in order to prosecute. It reads as follows:

"Article 14

Special Conditions for Prosecution

- (1) *If, in cases under Article 10 and Item 1 of Article 11 of the Criminal Code, a criminal procedure is initiated or discontinued in a foreign State, the perpetrator may be prosecuted in the Republic of Slovenia, only by permission of the Minister of Justice, with a notice stating that the conditions under which the perpetrator is prosecuted shall not violate double jeopardy provisions.*
- (2) *In cases under Articles 12 and 13 of the Criminal Code, the perpetrator shall not be prosecuted:*
 - 1) *If he has served his sentence in a foreign State or if it was decided, in accordance with an applicable binding international treaty, that the sentence imposed in a foreign State is to be served in the Republic of Slovenia;*
 - 2) *If the alleged perpetrator has been acquitted by a foreign court, or if his sentence has been remitted, or if the execution of the sentence has fallen under the statute of limitations; and*
 - 3) *If, according to foreign law, the criminal offence in question has not been filed and may only be prosecuted upon complaint by the injured party.*
- (3) *In cases under Articles 12 and 13, the perpetrator shall only be prosecuted insofar as his conduct constitutes a criminal offence in the State in which it was committed.*
- (4) *If, in cases under Article 12 of the Criminal Code, the criminal offence committed against the Republic of Slovenia and/or its citizens does not constitute a criminal offence under the law of the State in which it was committed, the perpetrator of such an offence may be prosecuted only by permission of the Minister of Justice of the Republic of Slovenia.*
- (5) *If in all other cases, except those referred to in Item 2 of Article 11, and Paragraph 4 thereof, the criminal offence is not punished in the State in which it was committed, the perpetrator may be prosecuted only by permission of the Minister of Justice and with the proviso that, according to the general principles of law recognised by the international community, the offence in question constituted a criminal offence at the time it was committed.*
- (6) *In cases under Article 10, the prosecution of an alien may be transferred to another State under the conditions provided by Slovenian law.*

The above general principles also apply to Slovenian citizens who have committed a criminal offence in their capacity as employees of the United Nations and/or as experts on a mission.

Ad items 4 and 5 (a), (b) and (d)

Slovenia is a Contracting Party to many international instruments adopted in the framework of different international organisations, such as the United Nations, the

Council of Europe, the European Union and bilateral treaties regulating international legal assistance, extradition and surrender. Slovenia can provide international legal assistance only where reciprocal arrangements exist. International legal assistance in criminal matters and extradition is regulated by the Criminal Procedure Act and the Act on International Co-operation in Criminal Matters between the Member States of the European Union.

On this basis, relevant authorities can provide and receive a wide range of types of international legal assistance, such as investigations, the seizure of assets, the collection of information, documents and evidence (including financial data) from financial institutions or other legal entities, the collection of statements, sending originals or copies of relevant documents and other items, the submission of legal documents, interviewing persons and experts, and the identification, freezing and/or confiscation of property. Reciprocal legal assistance is provided to the requesting State pursuant to the procedure of that State only if such a procedure is in accordance with the public order of the Republic of Slovenia.

Ad item 5(c)

The *Criminal Procedure Act* contains provisions on the protection of victims of crimes relating to their procedural status as witnesses. The Republic of Slovenia has adopted the *Act on Compensation to Crime Victims*, which regulates the right of victims of premeditated crimes and their relatives to compensation. Also outlined in the Act is the procedure to be followed for the enforcement of these rights, and which relevant authorities are to decide or participate in the decision-making process regarding these rights. The Act also states the relevant authorities that are to pass judgment, and the procedures to be followed in transnational cases, in accordance with the (EU) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

The *Witness Protection Act* (2005) outlines the conditions to be met and the procedures to be followed for the protection of witnesses and other persons under threat due to their participation in a criminal procedure. This protection is assured in pre-trial procedures, as well as during and after the criminal procedure relating to crimes listed in the same Act. The inclusion of a person under threat into the protection programme is voluntary and is carried out upon submission of a written consent by the witness, and a decision made by a relevant authority agreeing to this, in accordance with the Act. The Act outlines general rules and principles related to the protection of witnesses. It also provides for the establishment of a special unit and committee for the purpose of protecting such persons and regulating the conditions to be met and procedures to be followed for the cessation of the programme of protection, protection of evidence and data, their financing and control.