

Questionnaire on Criminal accountability of United Nations officials and experts on mission - POLAND

The text of all legal provisions referred to in the following questionnaire is quoted at its end.

Question 1.

Polish nationals are subject to Polish criminal law by virtue of holding the Polish citizenship. There is no specific legislation in place relating to UN officials or experts on mission in this respect (with the exception of privileges and immunities as detailed in question 5).

Article 109 of the Criminal Code (CC) expressly states that criminal law is applied to a Polish national who commits an offence abroad.

Question 2.

Polish criminal law is applied to all nationals in a general fashion.

Question 3.

Polish criminal law is applied to all offences committed by Polish nationals abroad in a general fashion.

Polish criminal law also applies to foreigners and stateless persons who commit an offence abroad, subject to the requirement of double criminality (Art. 110 and 111 CC):

- offences directed against the interests of the republic of Poland, against a Polish national, or legal person,
- terrorist offences,
- offences carrying the penalty exceeding 2 years of imprisonment if the offender is within the territory of Poland and is not to be extradited.

However, Polish criminal law is applied to offences committed abroad, irrespective of double criminality, in the following cases (art. 112 and 113 CC):

- offences against the internal or external security of the Republic of Poland,
- offences against Polish offices or public officials,
- offences against material Polish economic interests,
- perjury at a Polish office,
- offences which resulted in a financial benefit in the territory of Poland,
- offences within the jurisdiction of the International Criminal Court,
- offences which Poland is obliged to prosecute under an international agreement.

Question 4.

I. National law is the basis of applying extritorial jurisdiction, unless there is a binding international agreement in place superseding national rules.

II. The requirements for extritorial jurisdiction depending on the type of offence are listed in question 3 above. The principle of *ne bis in idem* is an obstacle to prosecution only if the previous judgment was issued by a Polish court or an international criminal court, unless a binding international agreement indicates otherwise or the proceedings or the enforcement of the judgment were transferred to Poland (Art. 114 § 1 and 3 CC).

Question 5.

The rules on immunity follow from a direct application of the 1946 Convention on Immunities and Privileges of the UN. The persons indicated in the Convention enjoy diplomatic immunity which is further specified by the provisions of the Criminal Procedure Code (CPC). If the persons in question are Polish nationals, their immunity only applies to acts made during, and in connection with, the discharge of their official duties (Art. 584 CPC).

Question 6.

As a rule, officials or experts on a mission are subject to “civilian” criminal law, unless they are army servicemen deployed abroad or have committed an offence in connection with their official duties, in which case military courts will be applicable (Article 647 § 1 CPC). “Civilian” criminal law may therefore be applied to military personnel if the offence is not connected with their official duties.

Legal provisions

Criminal Code

Article 109. Polish criminal law shall be applied to Polish citizens who have committed an offence abroad.

Article 110. § 1. Polish criminal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed abroad a terrorist offence.

§ 2. Polish criminal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.

Article 111. § 1. The requirement for liability for an act committed abroad is that an act is likewise recognised as an offence by a law in force in the place of its commission.

§ 2. If there are differences between the Polish criminal law and the law in force in the place of commission, the court may take these differences into account in favour of the perpetrator.

§ 3. The condition provided for in § 1 shall not be applied neither to a Polish public official, performing his duties abroad who committed an offence in connection with his functions, nor to a person who committed an offence in a place beyond the jurisdiction of any state authority.

Article 112. Notwithstanding the provisions in force in the place of the commission of the offence, Polish criminal law shall be applied to a Polish citizen or an alien in case of the commission of:

- 1) an offence against the internal or external security of the Republic of Poland;
- 2) an offence against Polish offices or public officials;
- 3) an offence against material economic interests of Poland
- 4) an offence of false deposition made before a Polish office.
- 5) an offence from which any financial benefit has been obtained, even indirectly, within the territory of the Republic of Poland.

Article 113. Notwithstanding the provisions binding in the place of committing an offence, Polish criminal law shall be applied to a Polish national and an alien, whose surrender has not been decided if such an alien has committed an offence abroad and the Republic of Poland is obliged to prosecute such crime under an international treaty or if an offence committed by such an alien is specified in the Rome Statute of the International Criminal Court, drawn up in Rome on 17 July 1998 (Journal of Laws of 2003, No. 78, pos. 708).

Article 114. § 1. A sentencing judgement rendered abroad shall not bar criminal proceedings for the same offence from being instituted before a Polish court.

§ 2. The court shall credit to the penalty, imposed the period of deprivation of liberty actually served abroad and the penalty there executed, taking into consideration the differences between these penalties.

§ 3. The provision of § 1 shall not apply:

- 1) in the event that the sentencing judgement adjudicated abroad was taken over to be enforced in the territory of the Republic of Poland and in the event that the sentence passed abroad refers to an offence with respect to which either the prosecution was taken over or the perpetrator was surrendered from the territory of the Republic of Poland
- 2) to verdicts of international criminal courts operating under international law that is binding for the Republic of Poland,
- 3) to valid court sentences or decisions of other bodies of foreign states concluding penal proceedings if it results from an international treaty binding the Republic of Poland.

Criminal Procedure Code

Article 578. The jurisdiction of Polish criminal courts shall not extend to:

- (1) the heads of diplomatic missions of foreign states accredited in the Republic of Poland,
- (2) persons on the diplomatic staff of such missions,
- (3) persons on the administrative and technical staff of such missions,
- (4) members of the families of the persons listed in subsections (1) through (3), if they are members of their households, and

(5) other persons granted diplomatic immunity pursuant to statutes, treaties, or universally acknowledged international custom.

Article 584. Articles 578 through 583 shall not be applicable to persons listed therein, if such persons are Polish nationals or have their permanent residence in Poland with respect to acts done during, and in connection with, the discharge of their official duties.

Article 647 § 1. The judicial decisions of a military court shall extend to cases involving:

1) soldiers in active service for offences:

a) defined in Chapters XXXIX through XLIV of the Criminal Code,

b) committed against a military authority or another soldier,

c) committed during or in connection with performance of duties, within the premises of a military facility or the designated place of stay, to the detriment of the army or in violation of the duty relating to military service,

d) committed abroad, during the use or state of the Armed Forces of the Republic of Poland abroad, within the meaning of the Act of 17 December 1998 on the Rules of Use or Stay of the Armed Forces of the Republic of Poland Abroad (Journal of Laws No. 162, item 1117 and of 2004, No. 210, item 2135),

2) military employees for offences:

a) specified in Article 356-363 of the Criminal Code in connection with Article 317 § 2 of that Code,

b) committed abroad, during the use or stay of the Armed Forces of the Republic of Poland abroad, within the meaning of the Act of 17 December 1998 on the Rules of Use or Stay of the Armed Forces of the Republic of Poland Abroad,

3) soldiers of the armed forces of foreign states present in the territory of the Republic of Poland and civilian members of their personnel - in cases arising out of offences committed in connection with their official duties, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.

§ 2. The cases listed in § 1 will not cease to be subject to the judicial decisions of military courts even though the soldier has been discharged from military service or the employment of the civilian employee has ended.

§ 3. In the event of releasing a soldier from active service or employment of the employee in the military has ceased, a case referred to in § 1 subsection 1 letters b or d, and - if an offence is not related to violation of the service duty - in § 1 subsection 2 letter b, the military court may transfer it to be heard by a common court, on the date of commencement of the judicial examination at the main trial at the latest, if this is not contrary to the administration of justice.