

*Translated from Spanish*

**Ministry of Justice**

State Secretariat of Justice

General Directorate of International Legal Cooperation  
and Relations with Religious Denominations

General Subdirectorate for Justice Affairs in the  
European Union and International Organizations

**Response of the Ministry of Justice to the questionnaire on the establishment of jurisdiction over Member State nationals serving as officials or experts on mission, in relation to crimes**

The Ministry for Foreign Affairs and Cooperation, General Subdirectorate for the United Nations, has transmitted to us a questionnaire for the preparation of a compilation of national provisions concerning the establishment of jurisdiction over Member State nationals serving as officials or experts on mission, in relation to crimes, particularly those of a serious nature.

Within the area of responsibility of the Ministry of Justice, the responses are the following **(in bold and underlined)**:

1. Please indicate the available forms of jurisdiction and list the relevant national provision(s) through which criminal law is applicable to nationals while serving as United Nations officials or experts on mission; please, also specify whether specific legislation applies to United Nations officials and experts on mission.
  - A) **Territoriality**
  - B) **Nationality**
  - C) Passive personality
  - D) Effects doctrine
  - E) **Protective principle**
  - F) Universality

## G) Other (if any)

No specific legislation regarding such persons exists; the general rules on jurisdiction, set out in article 23 of Organic Act No. 6/1985 of 1 July on the judiciary, apply to them.

2. To what extent do national provisions establish jurisdiction *ratione personae* over crimes committed extraterritorially by nationals while serving as United Nations officials and experts on mission (please indicate all that apply and cite relevant national provisions):

**A) General application to all persons**

Article 23, paragraph 1, of Organic Act No. 6/1985 establishes that, "in the system of criminal law, the Spanish courts shall have jurisdiction over offences committed on Spanish territory or aboard Spanish vessels or aircraft, without prejudice to the provisions of international treaties to which Spain is a party".

**B) Jurisdiction over nationals**

Article 23, paragraph 2, of Organic Act No. 6/1985 establishes that the Spanish courts shall also have jurisdiction over offences committed outside the national territory, provided that the perpetrators are Spanish nationals or foreigners who have acquired Spanish nationality after the commission of the crime, and subject to the following conditions:

- (a) The act is an offence in the place where it was committed, unless, under an international treaty to which Spain is a party or a normative instrument of an international organization of which Spain is a member, this condition need not be met, without prejudice to the following subparagraphs;
- (b) The victim or the Public Prosecution Service has brought a case before the Spanish courts;
- (c) The alleged perpetrator has not been acquitted, pardoned or convicted abroad, or, in the latter case, has not served his or her sentence. If he or she has served part of the sentence, this will be taken into account in order to reduce proportionally the sentence imposed.

## C) Jurisdiction over stateless persons

**D) Jurisdiction over foreign nationals (list specific exceptions)**

Article 23, paragraphs 3 and 4, of Organic Act No. 6/1985 establishes that the Spanish courts shall have jurisdiction in cases in which the legal right that is to be protected represents an essential interest of the State or the offences are of a serious nature.

Article 23, paragraph 3, establishes that the Spanish courts shall also have jurisdiction over acts committed by Spanish nationals or foreigners outside the national territory where those acts can be classified as one of the following offences under Spanish criminal law:

- (a) Treason or crimes against the peace or independence of the State;
- (b) Crimes against the monarch, his or her consort or successor or the regent;
- (c) Rebellion or sedition;
- (d) Forgery of the royal signature or seal, the State seal, the signatures of ministers or public or official seals;
- (e) Counterfeiting of Spanish currency and the circulation of such currency;
- (f) Any other act of counterfeiting that is directly detrimental to the credit or interests of the State, and the introduction or circulation of the resulting counterfeit articles;
- (g) An attack against Spanish authorities or public officials;
- (h) Crimes committed in the performance of their duties by Spanish public officials residing abroad and crimes against the Spanish public administration;
- (i) Crimes related to exchange control.

Article 23, paragraph 4, of Organic Act No. 6/1985 establishes that the Spanish courts shall also have jurisdiction over acts committed by Spanish nationals or foreigners outside the national territory, where those acts can be classified as one of the following offences under Spanish law, subject to the stated conditions:

- (a) Genocide, crimes against humanity or crimes against protected persons or property in situations of armed conflict, where proceedings are brought against a Spanish national, a foreign national who habitually resides in Spain or a foreigner present in Spain whose extradition has been refused by the Spanish authorities;

(b) Torture and other offences against moral integrity under articles 174-177 of the Criminal Code, where:

1. Proceedings are brought against a Spanish national; or
2. The victim had Spanish nationality at the time when the crime was committed and the person accused of the crime is present in Spanish territory;

(c) Crimes of enforced disappearance under the International Convention for the Protection of All Persons from Enforced Disappearance, done at New York on 20 December 2006, where:

1. Proceedings are brought against a Spanish national; or
2. The victim had Spanish nationality at the time when the crime was committed and the person accused of the crime is present in Spanish territory;

(d) Crimes of piracy, terrorism, trafficking in toxic, narcotic or psychotropic substances, trafficking in persons, crimes against the rights of foreign nationals and crimes against the safety of maritime navigation committed in maritime areas in the cases provided for in the treaties ratified by Spain or the normative instruments of an international organization of which Spain is a member;

(e) Terrorism, in any of the following circumstances:

1. Proceedings are brought against a Spanish national;
2. Proceedings are brought against a foreigner who habitually resides or is present in Spain, or against any individual who does not fall into one of these categories but who collaborates with a Spanish national or with a foreigner residing or present in Spain to commit a terrorist offence;
3. The crime is committed on behalf of a legal person whose registered office is in Spain;
4. The victim had Spanish nationality at the time when the crime was committed;
5. The crime is committed with the aim of unlawfully influencing or determining the actions of any Spanish authority;

6. The crime is committed against an institution or agency of the European Union that is headquartered in Spain;
7. The crime is committed against a vessel or aircraft flying the Spanish flag; or
8. The crime is committed against Spanish official facilities, including Spanish embassies and consulates.

For these purposes, a Spanish official facility means any permanent or temporary facility in which Spanish authorities or public officials carry out their public functions;

(f) Crimes under the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970, where:

1. The crime is committed by a Spanish national; or
2. The crime is committed against an aircraft flying the Spanish flag;

(g) Crimes under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, and the Protocol supplementary thereto, done at Montreal on 24 February 1988, in the cases set forth therein;

(h) Crimes under the Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980, where the offence is committed by a Spanish national;

(i) Trafficking in toxic, narcotic or psychotropic substances, where:

1. Proceedings are brought against a Spanish national; or
2. Action has been taken to carry out one of these crimes or to establish a criminal group or organization with a view to committing one of these crimes on Spanish territory;

(j) Crimes involving the establishment and financing of or membership in a criminal group or organization, or crimes committed by members of such groups or organizations, where the latter have acted with a view to committing an offence in Spain that is punishable with a term of three or more years in prison;

(k) Crimes against the sexual freedom and inviolability of minors, where:

1. Proceedings are brought against a Spanish national;
2. Proceedings are brought against a foreign national who habitually resides in Spain;
3. Proceedings are brought against a legal person, company, organization, group or any other kind of entity or association of persons that has its headquarters or registered office in Spain; or
4. The victim had Spanish nationality or was habitually resident in Spain at the time when the crime was committed;

(l) Crimes under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of 11 May 2011, where:

1. Proceedings are brought against a Spanish national;
2. Proceedings are brought against a foreigner who habitually resides in Spain; or
3. The victim had Spanish nationality or was habitually resident in Spain at the time when the crime was committed and the person accused of the crime is present in Spain;

(m) Trafficking in persons, where:

1. Proceedings are brought against a Spanish national;
2. Proceedings are brought against a foreign national who habitually resides in Spain;
3. Proceedings are brought against a legal person, company, organization, group or any other kind of entity or association of persons that has its headquarters or registered office in Spain; or
4. The victim had Spanish nationality or was habitually resident in Spain at the time when the crime was committed and the person accused of the crime is present in Spain;

(n) Crimes of corruption among individuals or in international economic transactions, where:

1. Proceedings are brought against a Spanish national;

2. Proceedings are brought against a foreign national who habitually resides in Spain;
3. The crime is committed by the director, manager, employee or partner of a commercial enterprise, company, association, foundation or organization that has its headquarters or registered office in Spain; or
4. The crime is committed by a legal person, company, organization, group or any other kind of entity or association of persons that has its headquarters or registered office in Spain;

(o) Crimes under the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health of 28 October 2011, where:

1. Proceedings are brought against a Spanish national;
2. Proceedings are brought against a foreigner who habitually resides in Spain;
3. Proceedings are brought against a legal person, company, organization, group or any other kind of entity or association of persons that has its headquarters or registered office in Spain;
4. The victim had Spanish nationality at the time when the crime was committed; or
5. The victim was habitually resident in Spain at the time when the crime was committed;

(p) Any other offence in respect of which prosecution is required under a treaty that is in force for Spain or under other normative instruments of an international organization of which Spain is a member, in the cases and circumstances specified therein.

The Spanish courts shall also have jurisdiction over the above-mentioned offences, where such offences are committed outside the national territory by a foreign national present in Spain whose extradition has been refused by the Spanish authorities, if this is required under a treaty that is in force for Spain.

**Exceptions** under article 23, paragraph 5, of Organic Act No. 6/1985:

The crimes of a serious nature referred to in article 23, paragraph 4, shall not be prosecutable in Spain in the following cases:

- (a) Where proceedings to investigate and prosecute the offence have been initiated by an international court established in accordance with a treaty or agreement to which Spain is a party;
- (b) Where proceedings to investigate and prosecute the offence have been initiated in the State in which the offence was committed or in the State of nationality of the accused person, if:
  - 1. The accused person is not present in Spanish territory; or
  - 2. Proceedings have been initiated to extradite the accused person to the country in which the offence was committed or to the country of nationality of the victims or to bring the accused person before an international court, unless the extradition is not authorized.

The provisions of subparagraph (b) shall not apply where the State that has jurisdiction is unwilling or genuinely unable to carry out the investigation; this shall be determined by the Second Division of the Supreme Court, which shall be presented with a reasoned statement by the relevant judge or court.

In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

- (a) Proceedings have been or are being undertaken or the national decision has been taken to shield the person concerned from criminal responsibility;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) Proceedings have not been or are not being conducted independently or impartially, and they have been or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.



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- E) Specific legislation for particular categories of persons
- a. Military United Nations officials and experts on mission
  - b. Police United Nations officials and experts on mission
  - c. Civilian United Nations officials and experts on mission
  - d. Public officials acting in foreign jurisdiction
  - e. Other (if any)
3. To which extent do national provisions establish jurisdiction *ratione materiae* over crimes committed extraterritorially by nationals while serving as United Nations officials or experts on mission (please indicate all that apply and cite relevant national provisions).
- A) General application of criminal law
  - B) Application limited to international treaty obligations
  - C) **Application limited to crimes of a “serious nature”**. Regulated in the above-mentioned article 23, paragraph 4, of Organic Act No. 6/1985
  - D) **Application limited to “international crimes”, including genocide, crimes against humanity and war crimes.** Regulated in the above-mentioned article 23, paragraph 4, of Organic Act No. 6/1985
  - E) Application limited to crimes accompanied with minimum imprisonment term
  - F) **Application limited to crimes affecting “essential interest(s) of the State”**. Regulated in the above-mentioned article 23, paragraph 3, of Organic Act No. 6/1985
  - G) Application limited to crimes affecting public security.
  - H) **Application limited to specific list of crimes.** Regulated in the above-mentioned article 23, paragraphs 3 and 4, of Organic Act No. 6/1985
  - I) Other limitations to the application *ratione materiae* of domestic law (if any).

This Ministry has not responded to questions 4, 5 and 6 of the questionnaire on the understanding that the Ministry of Defence and the Ministry of Foreign Affairs and Cooperation are in a better position to do so.

Madrid, 7 June 2016

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