

Malta – Observations on the scope and application of the principle of universal jurisdiction

Malta

General Assembly Resolution 64/117 of 16 December 2009: The scope and application of the principle of universal jurisdiction

Your reference: LA/COD/59

Remark on relevant applicable international treaties

The Geneva Conventions of 1949

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)

Universal jurisdiction may be exercised against a person accused or convicted of committing a serious crime under international law (crimes against humanity; crimes against peace; genocide; piracy; slavery; torture; and war crimes). International legal instruments dedicated to serious crimes under international law often retain a legal obligation calling upon parties to ensure the maximum level of compliance.

Information on domestic legal rules

The grounds vesting the Maltese courts with jurisdiction are primarily found under Article 5 of the Criminal Code (Cap. 9).

This Article incorporates a number of different theories on jurisdiction namely: purely territorial Article 5(1) (a); extension of the territoriality principle Article 5(1) (b); variants of the cosmopolitan theory Articles 5(1) (e) and 5(1) (g); the personal theory Article 5(1) (d) and the theory of self-preservation Article 5(1) (d).

In transposing into national law, international agreements / instruments, Malta has further extended those grounds wherein the local courts can also exercise their jurisdiction. These grounds are also contemplated in the Criminal Code (Cap. 9) under the following Articles: Article 121C; Article 208B (5); Article 211 (3); Article 220 (3); Article 248E (5); Article 310B; Article 328M

To these must also be added the grounds wherein the Maltese Courts exercise the universality principle of jurisdiction, namely crimes against humanity, genocide and war crimes. These offences are found under articles 54A-I of the Criminal Code.

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Article 54G also has relevance in this context:

“54G. Without prejudice to the provisions of article 5, a criminal action for an offence under this Title may also be prosecuted in Malta -

(a) against any person subject to military law in terms of articles 178, 179 and 180 of the Malta Armed Forces Act even if the offence was committed outside Malta;

or

(b) against any citizen of Malta or permanent resident in Malta who outside Malta conspires to commit any offence under this Title even if the offence is to be committed outside Malta.”.

In terms of this latter provision a Maltese citizen or permanent resident would also be subject to Maltese jurisdiction if he conspires to commit such a crime notwithstanding that the conspiracy or the crime being conspired takes place outside Maltese jurisdiction.

Malta has implemented this obligation commonly known as ‘aut dedere aut judicare’ through a combined reading of articles 5 and 54A of the Criminal Code, supplemented by Part VI of the Extradition Act.

In fact article 5(1)(d) of the Criminal Code sanctions crimes of genocide, war crimes and crimes against humanity (Article 54A, Criminal Code offences) when these are committed by a Maltese national or permanent resident,

““5. (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta –

....(d) without prejudice to the preceding paragraphs of this sub-article, against any citizen of Malta or permanent resident in Malta who in any place or on board any ship or vessel or on board any aircraft wherever it may be shall have become guilty of the offences mentioned in article 54A

Article 5(1) (h) provides for the aut dedere aut judicare principle enunciated also in terms of the same Conventions:

“5. (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta -

....(h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the

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country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;....

Moreover in terms of Part VI of the Extradition Act, Chapter 276 of the Laws of Malta, since Malta is a party to the Statute of the International Criminal Court, Rome, 17th July, 1998, the arrest and surrender of a person alleged to have committed a crime over which the International Criminal Court has jurisdiction, or of a person alleged to have been convicted by the International Criminal Court is regulated.

(For ease of reference one could access the following link http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf)

Information on judicial practice

To date there were no instances where the principle of universal jurisdiction as provided to by national legislation was applied in judicial practice.