



**NORGES FASTE DELEGASJON  
TIL DE FORENTE NASJONER**

The Permanent Mission of Norway to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to his Note no. LA/COD/59 inviting Member States to submit a report on universal jurisdiction. The Government of Norway has the honour to submit the following:

One of the major achievements in international relations and international law over the last decades is the shared understanding that there should be no impunity for serious crimes under international law. This understanding has led to the recognition of the principle of universal jurisdiction and the establishment of international criminal tribunals. International cooperation is constantly being strengthened and new measures taken to ensure that perpetrators of serious crimes are brought to justice. Universal jurisdiction is thus an important tool both for States and for the international community to ensure that the most serious crimes of common concern do not go unpunished.

The Norwegian 2005 General Civil Penal Code,<sup>1</sup> and the amended 1981 Criminal Procedure Act<sup>2</sup> contain provisions providing for the exercise of criminal jurisdiction and effective prosecution of serious crimes as defined under international law.

Section 5, third paragraph, and section 6 of the 2005 Penal Code are of particular interest in this connection. Section 5, third paragraph, applies to specific acts committed abroad by persons who are not Norwegian citizens or residents in Norway or another Nordic country, provided that the person is staying in Norway. Section 6 extends jurisdiction to any criminal act that Norway has a right or an obligation to prosecute under agreements with foreign States or under other applicable international law. These provisions broaden the scope of applicability of penal provisions set out in sections 4 and 5, but are then limited by constraints

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<sup>1</sup> Act of 20 May 2005 No. 28. This Act has only entered into force in regard to genocide, crimes against humanity and war crimes as described in Chapter 16 of the Act. For other crimes, section 12 of the 1902 Penal Code still applies.

<sup>2</sup> Act of 22 May 1981 No. 25

of Section 2 (criminal legislation applies subject to the limitations of international law), and section 5, paragraph 7, (prosecution is only instituted when required in the public interest).

In addition, the 1981 Criminal Procedure Act has been amended to introduce a new section 65, item 4, under which the power to institute prosecution in cases concerning foreign nationals who are not resident in Norway rests with the Director General of Public Prosecutions.<sup>3</sup>

Important directions are set out in the *travaux préparatoires* to these Acts, which play a particularly important role as a legal source in the interpretation of Norwegian statutory law. While the statutory provisions are drafted in a succinct form, in accordance with established Norwegian legislative practice, they have to be interpreted in the light of the comprehensive *travaux préparatoires* detailing the scope of the obligations concerned.

Attached are relevant excerpts from the 2005 Penal Code and the amended 1981 Criminal Procedure Act and their *travaux préparatoires* in English translation.

#### **A. Excerpts from the General Civil Penal Code (Penal Code)**

##### **Chapter 1. The scope and extent of the criminal legislation**

###### **Section 1. *The scope and extent of the general provisions***

The provisions of Part I apply to all criminal offences unless it is otherwise provided by or pursuant to statute or follows from interpretation.

###### **Section 2. *Limitations under international law***

The criminal legislation applies subject to the limitations that follow from agreements with foreign States or from international law generally.

**(...)**

###### **Section 5. *Applicability of the criminal legislation to acts committed abroad***

Outside the scope and extent pursuant to Section 4, the criminal legislation applies to acts committed

a) by a Norwegian national,

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<sup>3</sup> Pending the formal entry into force of this provision, the decision to prosecute rests with the Director General of Public Prosecutions.

- b) by a person resident in Norway, or
- c) on behalf of an enterprise registered in Norway,

when the acts:

1. are also punishable under the law of the country in which they are committed,
2. are regarded as a war crime, genocide or a crime against humanity,
3. are regarded as a breach of the international law of armed conflict,
4. are regarded as a child marriage or a forced marriage,
5. are regarded as genital mutilation,
6. are directed against the Norwegian State or a Norwegian State authority, or
7. were committed outside the area of sovereignty of any State and are punishable by imprisonment.
8. are regarded as deprivation of care
9. are covered by sections 257, 291–296, 299–306, or
10. are regarded as trading in influence.

The first paragraph applies correspondingly to acts committed

- a) by a person who since committing the act has become a Norwegian national or has been granted residence in Norway,
- b) by a person who is or who since the act has become a national of or is resident in another Nordic country, and who is staying in Norway, or
- c) on behalf of a foreign enterprise which, since the act was committed, has transferred all its operations to an enterprise registered in Norway.

The first paragraph, items 1, 2, 3, 6, 7 apply correspondingly to acts committed by persons other than those who fall within the scope of the first and second paragraphs, when the person is staying in Norway, and the maximum penalty for the act is imprisonment for a term exceeding one year.

In the case of acts mentioned in the first paragraph, item 2, the second and third paragraphs apply only if the act is regarded as genocide, a crime against humanity or a war crime under international law.

The criminal legislation also applies to acts committed abroad by persons other than those who fall within the scope of the first to fourth paragraphs if the

maximum penalty for the act is imprisonment for a term exceeding six years and the act is directed against a person who is a Norwegian national or is resident in Norway.

In a prosecution under this section, the penalty may not exceed the highest statutory penalty for a corresponding act in the country in which it was committed.

A prosecution under this section is only instituted when required in the public interest.

**Section 6. *Special grounds for prosecution under international law***

Outside the scope and extent of sections 4 and 5, the criminal legislation also applies to acts that Norway has a right or an obligation to prosecute under agreements with foreign States or under international law generally.

Section 5, seventh paragraph, applies correspondingly.

**B.**

**Excerpts from the legislative history of the Penal Code<sup>4</sup>**

The comments provided in relation to the *fifth* paragraph of Section 5 below are of particular significance to the issue of universal jurisdiction. These comments provide guidelines to the competent prosecution authority when dealing with such cases.<sup>5</sup>

*Re Section 5*

[...]

Under the *fifth paragraph* [seventh paragraph in the current Penal Code], a prosecution is only instituted for acts committed outside Norway when required in the public interest. This provision makes it clear that a degree of restraint should

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<sup>4</sup> From Proposition No. 90 (2003–2004) to the Odelsting on the General Civil Penal Code (Penal Code).

<sup>5</sup> The parts of the Penal Code quoted here have now entered into force. However, the Proposition discusses an earlier draft of the new Penal Code, which means that references to specific paragraphs and items do not necessarily agree with the current Penal Code. Comments in square brackets have been added to clarify where this is the case.

be exercised as regards prosecution of acts committed outside Norway. The provision allows for considerable discretion. Except in cases that are regarded as genocide or crimes against humanity, factors of importance will be the gravity of the offence, what ties the offender has with Norway, and the extent to which the act affects Norwegian interests, particularly if the aggrieved party or another person affected is Norwegian. The extent to which another, and perhaps more relevant, country has jurisdiction and a properly functioning legal system will also be a significant factor if the suspect is staying in, or can be extradited to, that country. The competent prosecuting authority must assess whether it is in the public interest to institute a prosecution. It is proposed to transfer the special power to institute a prosecution in the case of acts perpetrated by a foreign national outside Norway, which currently rests with the King, to the Director of Public Prosecutions. As this provision is of a procedural nature, it is proposed that it should be moved to section 65 of the Criminal Procedure Act.

*Re Section 6. Special grounds for prosecution under international law*

The *first paragraph* of section 6 states that Norwegian criminal law also applies outside the scope and extent of sections 4 and 5 for acts that Norway has a right or an obligation to prosecute under international law. This corresponds to section 1–8 of the draft drawn up by the Penal Code Revision Commission, but its scope is somewhat wider. The background to this is described in Chapter 13.5.6.

This is a new provision. It meets the same need as that fulfilled by section 12, first paragraph, item 3, a), d), e) and f), and item 4, a), c) and d), of the 1902 Penal Code. It will enable Norway to meet obligations relating to universal jurisdiction that follow from agreements to which it is a party. In cases where corresponding obligations follow from general international law but are not set out in a specific treaty, this will also widen the scope and extent of Norwegian criminal law. (See Norwegian Official Report 2002:4, page 206).

The provision will have independent significance in cases where the double criminality requirement or the maximum penalty requirement is not met, for example if the maximum penalty for the act does not exceed a term of imprisonment of more than one year, see section 5, third paragraph. The provision will also be of significance if the person concerned is not a Norwegian national and is not staying in Norway when a prosecution is instituted.

The provision in section 6 does not provide independent legal authority to institute prosecution. If Norway becomes party to an agreement that imposes an obligation to criminalise certain acts that are not fully covered by current penal provisions, it will still be necessary either to amend national legislation or to make reservations in connection with ratification of the agreement. However, no amendments or additions of the kind that have been necessary as regards section 12 of the 1902 Penal Code will be needed to ensure more or less universal jurisdiction.

The *second paragraph* provides that the provision of the last paragraph of section 5 relating to prosecution applies correspondingly. This will be of particular significance in cases where there is no specific obligation for Norway to prosecute the act under an agreement or international law.

C.

**Excerpts from the Criminal Procedure Act**

As far as procedural issues are concerned, the following amendment to the Criminal Procedure Act with comments (below) is of relevance to the issue of universal jurisdiction.

With effect from the entry into force of the new Penal Code, the following amendments are made to the Criminal Procedure Act of 22 May 1981 No. 25:

The new section 65, item 4, shall read as follows:

If the decision to prosecute is not to be made by the King in Council, the Director of Public Prosecutions shall decide whether a prosecution should be brought in the case of:

1. ....
2. ....
3. offences committed by means of printed matter or broadcasting, with the exception of offences against section 204 of the Penal Code,
4. *proceedings against a foreign national who is not resident in Norway, see section 5, third paragraph, of the Penal Code. Nevertheless, this does not apply when a criminal prosecution in this country takes place in accordance with an agreement with a foreign State concerning the transfer of criminal proceedings.*

D.

**Excerpts from the legislative history of this procedural provision**

*Re new section 65, item 4*

The additional provision replaces section 13, first and third paragraphs, of the 1902 Penal Code, under which the power to institute a prosecution in cases concerning foreign nationals who are not resident in Norway rests with the King. The Penal Code Revision Commission has proposed that this power should be transferred to the Director of Public Prosecutions, and has been supported by the bodies consulted. The vast majority of cases where foreign nationals are prosecuted for acts perpetrated abroad have no foreign policy implications, and the possibility of such implications was the reason why the power to institute proceedings in such cases has until now rested with the King in Council. This rule, which has meant that decisions to prosecute have had to be made by Royal Decree, has been an unnecessarily complicating and delaying factor in many relatively straightforward cases. The Ministry [Added comment: of Police and Justice]

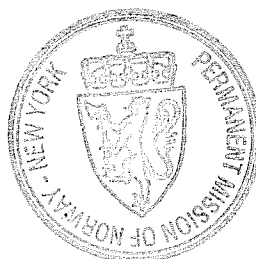
therefore agrees that the power to institute a prosecution in such cases should be transferred to the Director of Public Prosecutions, on the understanding that, in the few cases that do have foreign policy implications, the Director of Public Prosecutions will consult the Ministry of Foreign Affairs. When cases against foreign nationals are transferred to Norway in accordance with an agreement on the transfer of criminal proceedings, it is not necessary for the power to institute a prosecution to be shifted upwards to the Director of Public Prosecutions. In such cases, it is therefore proposed to retain the provision of section 13, third paragraph, of the current Penal Code, so that the ordinary provisions of sections 64–67 of the Criminal Procedure Act on the power to decide whether to prosecute will continue to apply. The necessary control will in such cases be undertaken when cases are transferred from another country.

In accordance with section 13 of the current Penal Code, the provision on special power to institute a prosecution applies solely to cases covered by section 5, third paragraph, of the Penal Code. If a foreign national is prosecuted for an act perpetrated abroad under section 6 on special grounds for prosecution under international law, the ordinary provisions of sections 64–67 of the Criminal Procedure Act on the power to decide whether to prosecute will apply.

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



New York, 7 May 2010



Secretary-General of the United Nations

United Nations

New York