

UNIVERSAL JURISDICTION – reply by the REPUBLIC OF SLOVENIA

International law regulates states' assertion of universal criminal jurisdiction. Universal criminal jurisdiction is jurisdiction, based solely on the nature of crime regardless of the nexus between the place of commission of crime, alleged perpetrator and the country of prosecution. Slovenia accepts that customary international law permits the exercise of universal jurisdiction over the most serious crimes under international law which include genocide, crimes against humanity, war crimes, torture and piracy. In addition numerous treaties oblige states parties to empower their criminal justice system to exercise jurisdiction over crimes defined in those treaties, although this obligation extends only to the exercise of such jurisdiction when a suspect is subsequently present in the territory of a forum state. A state may rely on universal jurisdiction as a basis for extradition request provided that all international norms and standards on the protection of human rights shall be respected and the rights of the accused assured, including the prevention of double jeopardy.

When disputes arise between states because of possible concurrence of different jurisdictions, specific rules contained in the treaties should be applied, and when not possible, states should apply the well known and established means of peaceful settlement of disputes.

If a state has no other basis to exercise jurisdiction but the universal jurisdiction and there are other states that have or may assert jurisdiction, the judicial organs of the first state should consider different criteria, such as its treaty obligations, place of commission of crime, nationality criteria and any other connection between requesting state and alleged perpetrator, the crime or the victim; but also the interests of justice.

The Criminal Code of the Republic of Slovenia regulates the principle of universal jurisdiction in paragraph 2 of Article 13 which deals with "*Application of the Penal Code of the Republic of Slovenia to Foreign Citizens who committed a criminal offence abroad*". The Code thereby also applies to a foreign national who in a foreign state commits a criminal offence against a foreign state or a foreign national if he is apprehended on the territory of the Republic of Slovenia and is not extradited to a foreign state. In such cases, the sentence imposed by the court cannot be heavier than that provided for by the law of the state where the criminal offence was committed. Conditions to exercise universal jurisdiction are stated in Article 14 as "*Special Conditions for Prosecution*".

According to this principle, the Slovenian Criminal Code is applicable and shall be used against a foreign national who commits abroad a criminal offence and who is apprehended on the territory of the Republic of Slovenia. The principle of universality is subsidiary and bound to the identity of the norm or the principle of double criminality. This means that the act also has to be punishable by the law of the state where the act was committed. There is one exception to the rule: if the act is committed in a foreign state and is not punishable there, the perpetrator may be prosecuted only with the permission of the Minister of Justice, provided that the act, when committed, was considered as criminal offence according to the customary rules and principles recognized by the international community.

According to this rules conditions required by the Slovenian Criminal Code for exercising universal jurisdiction are:

- A criminal offence was committed in a foreign state by a foreign national who is apprehended on the territory of the Republic of Slovenia and is not extradited to the foreign state;
- The act also has to be punishable by the law of the state where it was committed;
- If the act is not punishable in both states, the jurisdiction may still be exercised if, at the time of execution, the act is considered a criminal offence according to the customary rules and principles recognized by the international community (e.g. terrorism, piracy, crimes against humanity, war crimes...) and the Minister of Justice has given a permission to prosecute.

Besides the above conditions there are also conditions on the side of the perpetrator and he shall not be prosecuted:

- 1) if he has served the sentence imposed on him in the foreign country or if it was decided in accordance with an international agreement that the sentence imposed in the foreign country is to be served in the Republic of Slovenia;
- 2) if he has been acquitted by a foreign court or if his sentence has been remitted or the execution of the sentence has fallen under the statute of limitations;
- 3) if, according to foreign law, the criminal offence concerned may only be prosecuted upon the complaint of the injured party and the latter has not been filed.

Consequently, universal jurisdiction is limited if a certain act is not punishable in the state where it was committed and is not considered a criminal offence under customary rules and principles recognized by the international community. Primary limitation is, however, that there must be a nexus with the Republic of Slovenia in the sense of the alleged perpetrator's presence in its territory.

In addition to customary international law numerous treaties oblige their states parties to empower their criminal justice system to exercise universal jurisdiction over crimes defined in such treaties when a perpetrator is subsequently found on the territory of such state. Provisions to that effect are found in various treaties, to which Slovenia is a Contracting Party:

1. The Four Geneva Conventions of 12 August 1949
2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 6 June 1977
3. Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague 16 December 1970
4. Convention for the Suppression of Unlawful Acts against the Safety of Civilian Aircraft, Montreal, 23 September 1971
5. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 14. December 1973
6. Convention against the Taking of Hostages, New York, 17 December 1979
7. Convention on the Physical Protection of Nuclear Material, Vienna, 3 March 1980
8. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York 10 December 1984
9. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome 10 March 1988

10. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 10 March 1988
11. Convention on the Safety of United Nations and Associated Personnel, New York 9 December 1994
12. Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997
13. Second Protocol to the Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999
14. Convention for the Suppression of Financing of Terrorism, New York 9 December 1999
15. Convention against Transnational Organized Crime, New York, 15 December 2000
16. Convention for the Suppression of Acts of Nuclear Terrorism, New York, 15 April 2005

No case has yet been tried before the Slovenian courts under the principle of universal jurisdiction.