



LIETUVOS RESPUBLIKOS NUOLATINĖ MISIJA JUNGTINĖSE TAUTOSE
PERMANENT MISSION OF LITHUANIA TO THE UNITED NATIONS

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The Permanent Mission of the Republic of Lithuania to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to the Latter's Note No. LA/COD/59/1 as regards the General Assembly resolution 65/33 of 6 December 2010 entitled "The scope and application of the principle of universal jurisdiction", would like to submit the attached information on the scope and application of universal jurisdiction.

The Permanent Mission of the Republic of Lithuania 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, 3 May 2011

Enclosure: 5 pages.

H.E. Ban Ki-moon
Secretary-General of the United Nations
New York

The scope and application of the principal of universal jurisdiction

Legal rules

Article 7 of Criminal Code of the Republic of Lithuania (hereinafter referred to as the CC) incorporates the so-called criminal law doctrine principle of universal state criminal jurisdiction. The essence of the said principle is that in seeking prosecution of the person, who committed a criminal act, the state establishes criminal liability for certain crimes, regardless of the citizenship and the place of residence of the persons committing such crimes as well as the place of commission of the criminal act and whether the act committed is subject to punishment under the laws of the place of commission of the crime. Such provisions are in place to facilitate criminal law measures to prevent international crimes, therefore taking that into account under Article 7 of CC the Republic of Lithuania applies the universal criminal jurisdiction principle only to the crimes specified in the international treaties of the Republic of Lithuania.

It is worth mentioning that the rule that establishes the principle of universality determines that a person who committed one of the crimes listed in Article 7 is punished not according international treaties of the Republic of Lithuania, but on the ground of international treaties. This provision reveals a much wider approach which means that it is possible that CC determines criminal responsibility for a crime referring to the international treaty even if the Republic of Lithuania is not a party to the particular treaty. Moreover, despite the fact that some conventions concerning crimes of international character do not determine a possibility while applying principle of universality to implement other state's criminal jurisdiction for crimes listed in the conventions, for example, human trafficking, CC allows such possibility.

Under the provisions of paragraph 1 of Article 7 of CC universal state criminal jurisdiction principle is applied to the following crimes: genocide (Article 99 of CC), treatment of persons prohibited under international law (Article 100 of CC), killing of persons protected under international law (Article 101 of CC), deportation of civilians of an occupied state or transfer of the civilian population of an occupying state (Article 102 of CC), causing bodily harm to, torture or other inhuman treatment of persons protected under international humanitarian law (Article 103 of CC), forcible use of civilians or prisoners of war in the armed forces of the enemy (Article 105 of CC), destruction of protected objects or plunder of national valuable properties (Article 106 of CC), delay in repatriation of prisoners of war (Article 107 of CC), delay in release of interned civilians or impeding repatriation of other civilians (Article 108 of CC), unlawful use of the emblem of the Red Cross, Red Crescent and the United National Organization or another universally recognized emblem (sign) or designation (Article 109 of CC), aggression (Article 110 of CC), prohibited military attack (Article 111 of CC), use of prohibited means of warfare (Article 112 of CC), marauding (Article 113 of CC), Commander's negligent performance of his duty (Article 113¹ of CC). Under the provisions of paragraphs 2-11 of Article 7 of CC universal state criminal jurisdiction principle is applied to the following crimes: trafficking in human beings (Article 147 of CC), purchase or sale of a child (Article 157 of CC), production, storage or handling of counterfeit currency or securities (Article 213 of CC), money or property laundering (Article 216 of CC), acts of terrorism (Article 250 of CC), hijacking of an aircraft, ship or fixed platform on a continental shelf (Article 251 of CC), hostage taking (Article 252 of CC), unlawful possession of nuclear or radioactive materials or other sources of ionising radiation (Article 256 of CC), threat to use or otherwise influence or unlawfully acquire nuclear or radioactive materials or other sources of ionising radiation (Article 256¹ of CC), violation of the regulations governing lawful possession of nuclear or radioactive materials or other sources of ionising radiation (Article 247 of CC), unlawful possession of narcotic or psychotropic substances for the purpose other than distribution (Article 259 of CC), unlawful possession of narcotic or psychotropic substances for the purpose of

distribution thereof or unlawful possession of a large quantity of narcotic or psychotropic substances (Article 260 of CC), distribution of narcotic or psychotropic substances among minors (Article 261 of CC), production of installations for the production of narcotic or psychotropic substances or development of technologies or specifications for the production of narcotic or psychotropic substances (Article 262 of CC), theft, extortion or other unlawful taking possession of narcotic or psychotropic substances (Article 263 of CC), inducing the use of narcotic or psychotropic substances (Article 264 of CC), illegal cultivation of poppies or hemp (Article 265 of CC), unlawful possession of category I precursors of narcotic or psychotropic substances (Article 266 of CC), unlawful possession of highly active or toxic substances (Article 267 of CC), creation or unlawful possession of biological weapons (Article 267¹ of CC), violation of regulations governing lawful possession of psychotropic, highly active or toxic substances (Article 268 of CC), violation of regulations governing environmental protection or the use of natural resources (Article 270 of CC), illicit trade in the substances depleting the ozone layer (Article 270¹ of CC), destruction or devastation of protected areas or protected natural objects (Article 271 of CC), illegal hunting or fishing or other use of wild fauna resources (Article 272 of CC), unlawful picking, destruction, handling or other possession of protected wild flora, fungi or parts thereof (Article 274 of CC).

Under the provisions of paragraph 8 of Article 95 of CC there are no statute of limitations for crimes referred to in Articles 99-106 and 110-113¹ of CC (respectively also in paragraph 1 of Article 7 of CC).

Under the provisions of paragraph 3 of Article 3 of CC a criminal law establishing the criminality of an act, imposing a more severe penalty upon or otherwise aggravating legal circumstances of the person who has committed the criminal act shall have no retroactive effect. The provisions of this Code establishing liability for genocide (Article 99 of CC), treatment of persons prohibited under international law (Article 100 of CC), killing of persons protected under international law (Article 101 of CC), deportation of civilians of an occupied state or transfer of the civilian population of an occupying state (Article 102 of CC), causing bodily harm to, torture or other inhuman treatment of persons protected under international humanitarian law (Article 103 of CC), forcible use of civilians or prisoners of war in the armed forces of the enemy (Article 105 of CC), aggression (Article 110 of CC), prohibited military attack (Article 111 of CC), use of prohibited means of warfare (Article 112 of CC), Commander's negligent performance of his duty (Article 113¹ of CC) shall constitute an exception.

The Constitution of the Republic of Lithuania and other legal acts pertaining to the criminal procedures provides for immunity of certain persons (members of the Seimas, President of the Republic, members of the Government, candidates to Presidents of the Republic, members of the Seimas and municipality councils, judges of the Constitutional Court and other courts, personnel of diplomatic missions and consular establishments, etc.) against criminal jurisdiction. Under the provisions of paragraph 4 of Article 4 of CC the issue of criminal liability of the persons who enjoy immunity from criminal jurisdiction under international legal norms and commit a criminal act in the territory of the Republic of Lithuania shall be decided in accordance with treaties of the Republic of Lithuania and CC. Under subparagraph 3, paragraph 1, Article 3 of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as CCP) if a crime is committed by a person enjoying immunity from criminal jurisdiction under international legal norms or permission to prosecute the person from a competent institution is not obtained when such permission is obligatory under the laws, the criminal procedure may not be instituted, and, if instituted, must be terminated. Persons, who enjoy immunity from criminal jurisdiction under international legal norms, cannot be detained or arrested. Procedures specified in CCP can only be carried out with regard to such persons only upon obtaining their consent or under their request. The consent of such persons shall be obtained via the Ministry of Foreign Affairs of the Republic of Lithuania (paragraph 3, Article 5 of CCP).

Under the provisions of Article 4 of the CCP irrespective of the place, where the crime is committed, the criminal procedure in the territory of the Republic of Lithuania shall be conducted under CCP, unless an international treaty of the Republic of Lithuania specifies other terms.

Under the provisions of Articles 166 and 169 of CCP pre-trial investigation, in case there is basis for initiation, shall be initiated under the general procedure, i.e. after receipt of a complaint, statement or notification about criminal acts or after a prosecutor or pre-trial investigation officer establish features of criminal acts themselves, the prosecutor or pre-trial investigation officer shall immediately initiate the pre-trial investigation. Every case of initiation of a pre-trial investigation shall be registered under the procedure established by the Prosecutor General of the Republic of Lithuania. The pre-trial investigation shall be carried out by pre-trial investigation officer. Pre-trial investigations shall be organized and supervised and controlled by a prosecutor, who can decide to carry out the whole or part of the pre-trial investigation himself or assigns it to a pre-trial investigation establishment (Articles 164, 169 of CCP). It should be noted that only the prosecutor shall take decisions on joining and separating pre-trial investigations, on termination of a pre-trial investigation, on renewal of a terminated pre-trial investigation, on completion of the investigation and drawing up of the bill of indictment (paragraph 4, Article 170 of CCP).

Prosecutor General of the Republic of Lithuania on the 28 of September adopted the recommendations (hereinafter – Recommendations) for the crimes for which criminal responsibility is from international treaties (CC Art. 7), organization and performance of the pre-trial investigation. According to the Recommendations, when State Borders Guard Service performs alien's verification at the border inspection point, including the application of short-term or a transit visa proceedings, suspects that the alien has committed a crime against humanity or war crimes or genocide or any other crime of 2-10 points of the Article 7 of the CC for the offenses in their home, in a third country or in Lithuania, in accordance with Article 7 of the CC, Article 166 of the CCP, Paragraph 1 of the Article 171 of the CCP, should be immediately adopted a procedural decision on the pre-trial initiated. Such alien shall be temporarily detained (Article 140 of the CCP), carried out by other urgent investigative actions, and eliminates the questions of preliminary measure to him.

It should be noted that the criminal proceedings shall be conducted under the general procedures with respect to crimes specified in Article 7 of CC, therefore the aggrieved party or witness shall exercise their rights under the procedure specified by CCP. It should be stated that CCP does not distinguish the victims of the crimes specified in Article 7 of CC into a separate group of victims, thus they are subject to the general guarantees and measures of protection of victims applied in the criminal process. Respectively taking into account vulnerability of children CCP provides for increased protection guarantees with respect to children both during the pre-trial investigation and the trial.

Applicable international treaties

1. The Rome Statute of the International Criminal Court adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002.
2. UN Charter, entered into force on 24 October 1945.
3. The United Nations Convention on the prevention and punishment of the crime of genocide, adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.
4. The United Nations Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, entered into force on 11 November 1970.
5. 1949 Geneva Conventions and their Additional Protocols.
6. Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (and protocols), entered into force on 3 December, 1998.

7. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, entered into force on 15 May 1998.
8. Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction, entered into force on 1 November 2003.
9. Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effect (Protocol V, entitled Protocol on explosive remnants of war), entered into force on 12 November 2006.
10. Convention against torture and other cruel, inhuman or degrading treatment or punishment, entered into force on 2 March 1996.
11. The United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children.
12. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
13. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
14. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.
15. Convention for the Suppression of Unlawful Seizure of Aircraft [Hijacking Convention], 16 December 1970, Hague.
16. International Convention against the taking of hostages. Adopted by the General Assembly of the United Nations on 17 December 1979.
17. International Convention for the Suppression of the Financing of Terrorism. Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999.
18. International Convention for the Suppression of Terrorist Bombings, New York, 1997.
19. The Convention on the Physical Protection of Nuclear Material.
20. The Vienna Convention for the Protection of the Ozone Layer (adopted, 1985, entered into force, 1988).
21. United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.
22. International Convention for the Suppression of Counterfeiting Currency and Protocol, entered into force on 1 July 2004.
23. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, entered into force on 5 September 2004.
24. Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ 2004 Special edition, Chapter 19, Volume 07, p. 10).
25. Council framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ 2004 Special edition, Chapter 19, Volume 01, p. 187).
26. Council Framework Decision 2001/888/JHA of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ 2004 Special edition, Chapter 19, Volume 04, p. 182).
27. Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ 2004 Special edition, Chapter 15, Volume 06, p. 123).

28. Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ 2004 Special edition, Chapter 19, Volume 04, p. 158).
29. Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ 2004 Special edition, Chapter 19, Volume 06, p. 18).
30. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2004 Special edition, Chapter 19, Volume 06, p. 34).
31. Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ 2004 Special edition, Chapter 19, Volume 06, p. 52).
32. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ 2004 Special edition, Chapter 19, Volume 06, p. 64).
33. Council framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ 2004 Special edition, Chapter 19, Volume 06, p. 61).
34. Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ 2004 Special edition, Chapter 19, Volume 06, p. 182).
35. Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ 2004 Special edition, Chapter 19, Volume 07, p. 10).
36. Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (OJ 2004 Special edition, Chapter 15, Volume 08, p. 291).
37. Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8).
38. Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49).
39. Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems (OJ 2005 L 69, p. 67).
40. Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (OJ 2005 L 255, p. 164).
41. Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ 2005 L 255, p. 11).
42. Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ 2008 L 238, p. 28).
43. (*et cetera*)

Judicial practice

It should be noted that the Ministry of Justice does not have any data about criminals cases tried in the Supreme Court of Lithuania and adopted important rulings (or respective explanations) in criminal cases on the issues of universal criminal jurisdiction.