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Universal jurisdiction in Danish law

Introduction

By letter of 9 December 2022, The Office of Legal Affairs of the United Nations has requested information and observations that the Governments may wish to submit on the scope and application of universal jurisdiction under national law and in international treaties.

In Danish criminal law, universal jurisdiction is commonly understood as jurisdiction in situations where there is no or very little connection to Denmark, Danish nationals, or persons having their domicile or similar permanent residence in Denmark.

Thus, universal jurisdiction can be understood as situations where Danish criminal law applies regardless of whether the perpetrator or the victim are Danish nationals or persons with domicile or similar residence in Denmark, and regardless of whether the crime in question concerns any particular interest of the Danish state.

The Danish Criminal Code has four rules on universal jurisdiction. Furthermore, there are certain rules on universal jurisdiction in other statutes.

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Rules on universal jurisdiction in the Danish Criminal Code

The rules on universal jurisdiction in the Danish Criminal Code are listed below. The rules apply to Danish criminal law in general, i.e. not only to criminal acts in the Danish Criminal Code. For instance, the rules on jurisdiction in the Danish Criminal Code will also apply to criminal acts pursuant to Danish copyright law or Danish tax law even though these criminal acts are set out in the Danish Copyright Act and the respective Danish tax statutes.

- § 8(5) of the Danish Criminal Code stipulates that Danish law applies regardless of the domicile of the perpetrator where the act is covered by an international convention in pursuance of which Denmark is under an obligation to have criminal jurisdiction. This provision will cover *inter alia* the four 1949 Geneva Conventions which all provide for states to have universal jurisdiction, see e.g. article 129 and 130 of the third Geneva Convention relative to the Treatment of Prisoners of war as well as article 146 and 147 of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. Both conventions require states to have jurisdiction in cases of grave breaches of the conventions regardless of the nationality of the perpetrator. Also, § 8(5) of the Danish Criminal Code will provide jurisdiction for cases covered by the 1970 International Convention for the suppression of unlawful seizure of aircraft. According to article 4(2) of the said convention each contracting state shall take such measures as may be necessary to establish its jurisdiction over the offences in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 of the said convention. Cases concerning unlawful seizure of aircrafts will, however, be covered by § 8 b of the Danish Criminal Code which specifically concerns jurisdictions regarding unlawful seizure of vessels, see below.
- § 8(6) of the Danish Criminal Code stipulates that Danish criminal law applies where transfer of the accused for legal proceedings in another country is rejected, and the act, provided it is committed within the jurisdiction of a foreign state, is punishable according to the law of this State (double criminality), and provided that according to Danish law the act is punishable with a sentence more severe

than one year of imprisonment. This provision expresses the principle of *aut dedere aut judicare*.

- § 8 a of the Danish Criminal Code stipulates that Danish criminal law applies in cases covered by the Statute of the International Criminal Court. In such cases, Danish criminal law will apply if the perpetrator is merely being present in Denmark at the time criminal charges are made.
- § 8 b of the Danish Criminal Code provides that Danish criminal law applies in cases of unlawful seizure of an aircraft, ship, other vessel for collective transportation or transportation of goods.

Other rules on universal jurisdiction in Danish law

The Danish Road Traffic Act, § 134(5), stipulates that Danish criminal law always applies to certain criminal offences. The said offences are acts covered by article 19(2), 1st sentence, of EU Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport with later amendments¹ as well as acts covered by EU Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport.²

¹ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1681737041097&uri=CELEX%3A32006R0561>.

² See <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1681737168414&uri=CELEX%3A32014R0165>.