



Comments of Hungary on General Assembly resolution 77/111 of 7 December 2022, entitled

“The scope and application of the principle of universal jurisdiction”

Paragraph 4 of General Assembly resolution 77/111 of 7 December 2022 invited Member States to submit, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and on their national legal rules and judicial practice.

In response to this request, Hungary wishes to provide the following comments.

The legal framework for universal jurisdiction in Hungary

1. Territorial application of the Hungarian Criminal Code

Article 3 of the Hungarian Criminal Code¹ regulates the question of jurisdiction. Under this paragraph, the **territoriality principle** serves as the basic jurisdictional basis, prescribing that Hungarian criminal law shall apply to all criminal offenses committed in Hungary. This principle applies to criminal offenses committed on commercial ships or watercraft sailing, or aircraft flying under Hungarian flag outside the territory of Hungary.²

2. Extraterritorial application of the Hungarian Criminal Code

Complementing the above, Hungarian national criminal law may be given extraterritorial application in the cases below:

2.1. Hungarian citizens – active personality principle

Based on the **active personality principle**, Hungarian criminal law shall apply to any act of Hungarian citizens committed outside the territory of Hungary (defined in the wider sense as presented above), which are criminalized in accordance with Hungarian law.³

¹ Act 100 of 2012 on the Criminal Code (the **Hungarian Criminal Code**).

² Art. 3(1) a)-b) of the Hungarian Criminal Code.

³ Art. 3(1) c) of the Hungarian Criminal Code.

2.2. Non-Hungarian citizens – double criminality

Concerning offenses committed by non-Hungarian citizens, the Hungarian Criminal Code applies the principle of **double criminality** as a rule of thumb. This means that the national criminal law applies to offenses that are committed against non-Hungarian citizens, if the said offense constitutes a crime under both Hungarian criminal law and the criminal law of the state on the territory of which the crime was committed.⁴ There are two exceptions to this general rule.

2.2.1. Universal jurisdiction

In case of certain offenses, the Hungarian Criminal Code allows for invoking the universal jurisdiction principle for acts committed outside the territory of Hungary by a non-Hungarian citizen. Consequently, the Hungarian Criminal Code shall apply

1. to any act that is qualified as an offense against the State – excluding espionage against allied armed forces and espionage against European Union institutions – regardless of whether or not it is punishable in accordance with the law of the country where committed.

2. to acts that constitute a criminal act under Chapter XIII (*Crimes against humanity*) or XIV (*War crimes*), or any other criminal offenses that are to be prosecuted under an international treaty that was ratified and promulgated by Hungary.⁵ It is to be noted that the Hungarian Criminal Code includes genocide under Chapter XIII (*Crimes against humanity*).

2.2.2. Passive personality principle

As a novelty introduced in the Hungarian Criminal Code in 2012, national criminal law shall apply to any act committed by non-Hungarian citizens abroad against a Hungarian national or against a legal entity established under Hungarian law, which is punishable under Hungarian law.⁶ This provision was incorporated with regard to the tendency that was observed in international treaties, and it is also deemed compatible with a victim-centered approach.

3. *National measures in relation to the extraterritorial application of the Hungarian Criminal Code*

Extraterritorial application of national laws by its very nature raises the need for assessing the rules of international law, including international treaty law and customary international law.⁷ In this realm, the observance of complementarity is key to ensure effective justice since, in general, the State in which the offense was committed is best placed to collect and preserve evidence and conduct the criminal proceedings.

⁴ Art. 3(2) a) aa) of the Hungarian Criminal Code.

⁵ Art. 3(2) a) ab)-ac) of the Hungarian Criminal Code.

⁶ Art. (3)(2) b) of the Hungarian Criminal Code.

⁷ Under Art. Q of the Fundamental Law, Hungary shall ensure that Hungarian law is in conformity with international law in order to comply with its obligations under international law, and the rules of customary international law apply without any explicit implementation act.

In order to ensure that a national prosecution can only be launched when the above assessment was completed, the Hungarian Criminal Code applies a national safeguard measure. In cases contained Art. 3(2) of the Hungarian Criminal Code, i.e. double criminality, universal jurisdiction and the passive personality principle – described in subsection 2.2 above – criminal proceedings can only be initiated by the order of the Prosecutor General of Hungary.⁸ A failure to obtain the order of the Prosecutor General qualifies as a procedural error, and entails the dismissal of the case.⁹

Judicial practice

In Hungary, criminal proceedings conducted on the basis of universal jurisdiction are rare. Yet the major migratory flows associated with international and non-international armed conflicts may lead to the opening of criminal cases, as both the perpetrators and the victims of certain international criminal acts may seek refuge in another country, far away from the State in which the criminal acts in question were committed.

Upon a denunciation, and following the order of the Prosecutor General in 2019,¹⁰ a criminal proceeding was launched against a Syrian national for crimes committed outside the territory of Hungary, against Syrian civilians. According to the factual circumstances, the perpetrator joined Da'esh before 2015 and, as a member of this terrorist organization, committed several executions in 2015 against the civilian population in Syria. Following the turns in the conflict, the perpetrator decided to leave the country, was registered as a refugee as of 1 January 2016 in the European Union, and decided to settle in Hungary.

On 3 December 2020, the Budapest Metropolitan Court delivered a landmark judgment¹¹ in which it ruled that the accused person - named in the press as the 'hangman of Da'esh' - committed crimes against humanity as a widespread and systematic attack against the civilian population in Syria, and sentenced the perpetrator to life imprisonment. The court of second instance, the Budapest Court of Appeal upheld the judgment on 11 October 2021,¹² which is now final and binding.

Although the criminal offense in the above case – i.e. crimes against humanity – was punishable under the Hungarian Criminal Code, the judges examined in detail the international treaty law practice concerning crimes against humanity, and concluded that such crimes entail the application of universal jurisdiction.

However, the order of the Prosecutor General is an indispensable procedural requirement. As confirmed by the judgment of the Hungarian Supreme Court,¹³ the lack of this order in cases of universal jurisdiction qualifies as a grave procedural error. Such error results in the dismissal of the part of the case that relies on no other jurisdictional basis but universal jurisdiction.

⁸ Art. 3(3) of the Hungarian Criminal Code.

⁹ Art. 649(2) and 663(2) of Act XC of 2017 on Criminal Proceedings.

¹⁰ Resolution nr. Tük.1/19-1/2019. of 18 March 2019.

¹¹ Judgment of the Budapest Metropolitan Court of 3 December 2020, nr. 31.B.1091/2019/184.

¹² Judgment of the Budapest Court of Appeal of 11 October 2021, nr. 1.Bf.53/2021/23.

¹³ Judgment of the Hungarian Supreme Court (Curia) of 18 October 2022, nr. Bfv.168/2022/9.