



PERMANENT MISSION
OF THE REPUBLIC OF LITHUANIA
TO THE UNITED NATIONS

No. SN78-83

The Permanent Mission of the Republic of Lithuania to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and has the honour to refer to the Latter's Note Verbale (Reference: LA/COD/59/1), dated 27 December 2023, and to the paragraph 4 of the General Assembly resolution 78/113, dated 7 December 2023, requesting information and observations on "the scope and application of the principle of universal jurisdiction".

The Permanent Mission of the Republic of Lithuania to the United Nations has the honour to convey the enclosed submission by the Republic of Lithuania on this matter and takes this opportunity to reiterate to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

Enclosure: 2 pages

New York, 26 April 2024

Office of Legal Affairs
United Nations
New York

INFORMATION AND OBSERVATIONS BY THE REPUBLIC OF LITHUANIA ON THE SCOPE AND APPLICATION OF UNIVERSAL JURISDICTION

The Republic of Lithuania would like to recall its previous comments and observations made in this context in accordance with relevant resolutions of the United Nations General Assembly on universal jurisdiction in 2011 and 2021. Please be informed that the legal regulation established in the Criminal Code of the Republic of Lithuania (hereinafter – the Criminal Code or the CC), insofar as it is related to the rules of jurisdiction (including universal jurisdiction), has not changed since the last information was provided in 2021.¹

The Republic of Lithuania considers universal jurisdiction to be an important and useful tool in the fight against impunity for the crimes under international law. In this respect, exercise of universal jurisdiction by competent organs of the State can play an important part in achieving accountability and contribute to delivering justice to victims and preventing further commitment of crimes under international law. The national legislation of the Republic of Lithuania provides the exercise of universal jurisdiction for such crimes, regardless of the citizenship and place of residence of the perpetrator or the territory where the crime has been committed.

Lithuanian courts deal with cases in which universal jurisdiction is applied, i.e. the current practice of Klaipėda Regional Court in criminal case No. 1-12-795/2021 (judgment delivered on 15 April 2021), criminal case No. 1-88-795/2022 (judgment delivered on 28 December 2022), criminal case No. 1-15-417/2023 (judgment delivered 11 August 2023), criminal case No. 1-43-635/2024 (judgement still pending).

In the case-law of the Supreme Court of the Republic of Lithuania (hereinafter – the Supreme Court), in most cases, the question of the application of universal jurisdiction under Article 7 of the Criminal Code has so far arisen in cases involving the possession of narcotic drugs or psychotropic, toxic or heavily exposed substances (Article 7(12) of the CC, Articles 259 to 269 of the CC). In this category of cases, the examination of situations in which the said materials are wholly or partly disposed of in foreign countries (e.g. rulings in cases 2K-544/2014, 2K-526/2011), is based essentially on the rule laid down in Article 7 of the Criminal Code, according to which certain offences committed abroad are subject to the application of the Criminal Code irrespective of the nationality of the persons, the place of residence, the place where the offence was committed and the fact that the acts committed are punishable under the law of the foreign country where the offence was committed. Thus, in criminal cases dealing with crimes involving the possession of narcotic drugs or psychotropic, toxic or heavily exposed substances it should not be determined whether criminal liability for committing such acts is provided for in other countries. At the same time, it can be seen from the case-law of the Supreme Court (e.g. its ruling in case No. 2K-526/2011) that the legal regime applied in a foreign country to the disposal of the relevant mentioned materials can be significant in determining a person's criminal liability according to the conditions of the Criminal Code, for example, in assessing guilt.

The Supreme Court in its case-law has also gave guidance on provisions of universal jurisdiction in the context of war crimes and crimes against humanity. For example, in

¹ https://www.un.org/en/ga/sixth/76/universal_jurisdiction/lithuania_e.pdf

the ruling in criminal case No. 2K-7-39-1073/2022 an extended chamber of seven judges stated that Geneva Conventions (for example, Article 146 of the Geneva Convention relating to the Protection of Civilian Persons in Time of War, Article 85(1) of Additional Protocol I to the Geneva Conventions) and other relevant international instruments specified in the ruling recognise that any national court has jurisdiction to prosecute a person for war crimes and crimes against humanity, irrespective of where they were committed, the nationality of the person who committed them and their prohibition at national level. This principle is also reflected in national regulation of the Republic of Lithuania. Thus, the Supreme Court found that any national court, including the courts of the Republic of Lithuania, is competent to conduct criminal prosecutions for war crimes and crimes against humanity and must do so in accordance with national criminal and criminal procedure laws. It should be noted that in this case, the extended panel of seven judges also provided significant clarifications regarding the possibility to prosecute perpetrators *in absentia*, which is enshrined in the provisions of the Code of Criminal Procedure, and is considered an important aspect of the implementation of criminal responsibility for crimes against humanity and war crimes.

Lithuanian prosecutors continue to initiate new cases on the basis of the provisions on universal jurisdiction. The following pre-trial investigations are carried out on this basis:

— pre-trial investigation in accordance with Article 100 of the Criminal Code (“Prohibited treatment of humans by international law”) and Article 100³ (“Torture”) of the Criminal Code concerning the actions of the state institutions of the Republic of Belarus against the population of the Republic of Belarus following the 2020 presidential elections of the Republic of Belarus;

— pre-trial investigation in accordance with Article 100² (“Separation of children”) and Article 102 (“Abduction or transfer of civilians”) of the Criminal Code due to illegal deportation of Ukrainian children to Belarusian territory;

— pre-trial investigation in accordance with Article 100 of the Criminal Code (“Prohibited treatment of persons under international humanitarian law”), Article 101 of the Criminal Code (“Killing of persons protected by international humanitarian law”), Article 103(1) of the Criminal Code (“Harm, torture or other inhuman treatment of persons protected by international humanitarian law or violation of the protection of their property”), Article 110 of the Criminal Code (“Aggression”), Article 111(1) and (2) of the Criminal Code (“Prohibited war attack”) due to the aggression against Ukraine by the Russian Federation and the ongoing international armed conflict.

Moreover, the Government of the Republic of Lithuania is a staunch advocate for the principle of universal jurisdiction and continues to support and promote its importance in various international forums.

On February 14, 2024, the Minister of Justice of the Republic of Lithuania officially signed the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes, and other International Crimes. This treaty encompasses various provisions, among which Article 8(3) notably establishes the principle of universal jurisdiction.