

« *Lawyers for Lawyers* »

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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 26: THE PRINCIPLE OF UNIVERSAL JURISDICTION

➤ Definition

This concerns a rule which determines the jurisdiction of national courts for certain offences and in derogation of standard rules of international criminal law.

The State has jurisdiction to prosecute the perpetrators of certain serious crimes, wherever the crime was committed and whatever the nationality of the perpetrator or the victim.

➤ Origin

For the most effective repression of organised crime, such as piracy, trafficking in human beings, terrorism, etc., which requires broader criteria for jurisdiction.

➤ Development

Combats impunity for the most serious crimes which affect the international community as a whole : genocide, crimes against humanity, war crimes, torture.

➤ Legal basis

- **Geneva Conventions** of 1949 and Protocol I of 1977 (art. 88 of the Protocol): principle of universal jurisdiction for national courts with regard to serious violations of international humanitarian law.
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (art. 5.2) : principle of universal jurisdiction for national courts for acts of torture.
- **International custom**: principle of universal jurisdiction for national courts for crimes against humanity and crimes of genocide.

➤ Conditions of implementation

The principle of universal jurisdiction is not directly applicable and must be incorporated into national legislations (see file n° 6 on the implementation in national law of international human rights law).



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It may, according to conventions, be of an obligatory or elective nature for States. This **jurisdiction is obligatory** for cases of **crimes against humanity, war crimes and genocide**.

International convention or national legislation which provides for universal jurisdiction may require the presence of the perpetrator of the crimes on the territory of the State which intends to prosecute.

In these cases, universal jurisdiction satisfies the principle of « extradite or judge », which requires the State either to extradite or prosecute the presumed perpetrator arrested. E.g. : art. 7.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and art. 7 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Jurisdiction is absolute when this condition is not required. This broad concept of universal jurisdiction (in abstentia) is not unanimous in international law.

➤ Implementation by national legislation

French law used to provide for universal jurisdiction with regard to torture, but not with war crimes, genocide or crimes against humanity. E.g. : The *Munyeshyaka* case (Rwandan priest from Kigali accused of improper treatment of a group of Tutsi delivered to Hutu militias) and the *Ely Ould Dha* case (a Mauritanian officer accused of having practised acts of torture against black Mauritanian citizens in Jreïda prison).

Since the adoption of the law relating to the adaptation of criminal law to the institution of the International Criminal Court on 13 July 2010, universal jurisdiction is also recognised for war crimes, crimes against humanity and crimes of genocide. However, the law sets out restrictive conditions to this jurisdiction : 1. The alleged perpetrator must have normal residence in France, 2. Double incrimination, 3. Monopoly of prosecution to the Public Prosecutor's Office, 4. Express declaration of the International Criminal Court declining jurisdiction.

German law contains a code of crimes which runs contrary to international law, and provides for universal jurisdiction in matters relating to genocide, crimes against humanity and war crimes. However, it contains no provision relating solely to the crime of torture, which is classified as « serious bodily harm ».

E.g. : *Djajic, Jorgic, Sokolovic and Kusljic* cases relating to crimes of genocide during the Bosnian conflict.

British legislation only makes provision for universal jurisdiction for certain war crimes and acts of torture. E.g. : these provisions allowed for the arrest of Augusto Pinochet in London in 1998.

In *Belgium* a law « of universal jurisdiction » was adopted in 1993 (law relating to the punishment of serious breaches of the Geneva international conventions of 12 August 1949 and Protocols I and II of 8 June 1977, supplementary to these conventions), and revised in 1999 for the prosecution of serious violations of international humanitarian law (including genocide). This revision of the law put in place absolute universal jurisdiction. Several complaints were lodged (*Pinochet, Yerodia* cases), but the law was repealed in 2003 and replaced by the Law of 5 August 2003 relating to serious violations of international humanitarian law, with more limited scope. Indeed, by virtue of this law, proceedings may only be instituted if the plaintiff is Belgian (or resident in Belgium), or if the perpetrator can be found in Belgium.

Spain exercises universal jurisdiction in matters of genocide, crimes against humanity and torture (art. 23.4 of the *Ley Orgánica del Poder Judicial*, which enshrines a principle of absolute universal jurisdiction, but which was revised in 2009, imposing a link with Spain) Spain is the country which has the highest number of pending proceedings on the basis of this principle.

E.g. : In 1996, the Spanish courts instituted proceedings against Augusto Pinochet, on the basis of a complaint for torture lodged by Spanish victims of the Chilean dictator, while he was located in England, and Judge Garzón requested his extradition (which was not obtained). In 2005, Argentine Adolfo Scilingo was sentenced by the *Audiencia Nacional* to more than 1 000 years in prison for crimes against humanity. In 2005, the *Tribunal Constitucional* enshrined absolute universal jurisdiction for prosecutions for acts of genocide, terrorism and torture committed in Guatemala. More recently, on December 2010, Judge Fernando Andreu of the *Audiencia*

Nacional admitted a complaint presented by the lawyer Juan Garces in behalf of several families from a refugees camp in Iraq, alleging violence committed by Iraqis soldiers and policemen on July 2009.

Sources:

- Henri D. Bosly, Damien Vandermeersch *Génocide, crimes contre l'humanité et crimes de guerre face à la justice : les juridictions internationales et les tribunaux nationaux*, Bruylant, 2010.
- Web site of Trial Watch : <http://www.trial-ch.org/en/home.html>
- FIDH : A stage by stage approach for the exercise of UJ in Western European countries – June 2009 ; available on the FIDH web site : <http://www.fidh.org/-english->
- La Documentation Française : File «Justice pénale internationale » : <http://www.ladocumentationfrancaise.fr/dossiers/justice-penale-internationale/index.shtml>
- French Code of Criminal Procedure, article 689-11, as amended by the law relating to the adaptation of criminal law to the institution of the International Criminal Court dated 13 July 2010.

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