

Preliminary note: the texts of the provisions of the Belgian Criminal Code and of the preliminary section of the Code of Criminal Procedure referred to below are set out in the annex.

In some cases, the preliminary section of the Code of Criminal Procedure of Belgium allows the Belgian judicial authorities to prosecute Belgian nationals and persons having their principal residence in Belgian territory when they have committed a crime or offence outside the territory of Belgium. Such jurisdiction is not unconditional and varies depending on the type of offence.

In general, any Belgian or any person whose principal residence is in Belgium who is found guilty of an act defined as a crime or offence under Belgian law may be prosecuted in Belgium, if the act is punishable under the laws of the country where it was committed (general requirement of dual criminal liability). When the offence is committed against a foreigner, prosecution can take place only under additional conditions: it can be undertaken only

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establishments.

- The prostitution of minors or adults, including as part of a criminal association.⁸
- Trafficking in human beings.⁹
- Indecent assault or rape¹⁰ committed against a minor.

Response no.1 (b) is applicable if question no.1 relates solely to the types of jurisdiction that could be invoked in Belgian law to enable the Belgian authorities to prosecute a national serving as a United Nations official or expert on mission who has committed an offence.

However, the principle of passive personal jurisdiction may be invoked for the Belgian judicial authorities to prosecute a foreigner who, outside the territory of Belgium, has committed:

- A serious violation of international humanitarian law defined in Book II, section I bis, of 2

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adopted at Strasbourg on 27 January 1977, which has been committed in the territory of a State

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international law.²⁷ Consequently, apart from this limit, the jurisdiction *ratione personae* of Belgian judicial authorities is governed by the common law regime explained in the previous question.

(a)

Within the limits covered in question 1 (b)-(f).

Belgian law does not break down its provisions into the categories listed below. Where appropriate, however, all those categories may be grouped under article 10 bis of the preliminary section of the Code of Criminal Procedure.

(i)

See comment above.

(ii)

See comment above.

(iii)

See comment above.

(iv)

See the rules of common law explained in question 1 (a)-(f) and note the relevance for that category of persons of article 10 quater, part 1, paragraph 2, and part 2 of the preliminary section of the Code of Criminal Procedure.

(v)

section of the Code of Criminal Procedure);

- offences under a rule of conventional or customary international law or a rule of law derived from the European Union binding on Belgium when that rule requires Belgium to submit the case by any means to its competent authorities for the purpose of prosecution (art. 12 bis of the preliminary section of the Code of Criminal Procedure).

(d) *ne bis in idem* - article 13, paragraph 1, of the preliminary section of the Code of Criminal Procedure

(e) -

In the following cases, prosecutions, including criminal investigation, may only take place at the request of a federal prosecutor (or, in certain cases, a crown prosecutor) who assesses any complaints:

- offences committed against a foreigner by a Belgian national or resident of Belgium (art. 7, para. 2, of the preliminary section of the Code of Criminal Procedure);
- serious violation of international humanitarian law (in Belgian law, this category includes war crimes, genocide and crimes against humanity) committed by a foreigner outside Belgian territory (article 10, paragraph 1 bis of the preliminary section of the Code of Criminal Procedure);
- offences covered by articles 347 bis, 393-397 and 475 of the Criminal Code and committed against a person who, at the time of commission of the offence, is a Belgian national (article 10, paragraph 5, of the preliminary section of the Code of Criminal Procedure);
- offence under a rule of conventional or customary international law or a rule of law derived from the European Union binding Belgium when that rule requires Belgium to submit the case by any means to its competent authorities for the purpose of prosecution (article 12 bis of the preliminary section of the Code of Criminal Procedure).



(a)

– Yes

(b)

The SOFA and SOMA agreements contain specific provisions relating to the immunities enjoyed by members of Belgian contingents deployed in peacekeeping operations.

(c)

The SOFA and SOMA agreements contain specific provisions relating to the immunities enjoyed by members of Belgian contingents deployed in peacekeeping operations.

(d)

General immunities and jurisdictional privileges: article 1 bis of the preliminary section of the Code of Criminal Procedure (see above). m } 1 _ ? e/f t ` ? e on f then

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The use of military courts in peacetime was abolished by the Act of 10 April 2003 and may only be reinstated in time of war. The Military Code of Criminal Procedure was also abolished.

Belgian military personnel are therefore subject to civilian courts and civilian law. They are also subject to specific provisions of the Belgian Military Criminal Code, which provides for military sentences and criminalizes:

- Treason and espionage
- Actions that undermine military duties
- Insubordination and rebellion
- Violence and offensive behaviour
- Desertion
- Misappropriation, theft and sale of military items
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