

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 by itiple

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 is a member of an Islamist organization, committed several executions in 2015 against executions in 2015 against