

STATEMENT ON PROMOTION OF RATIFICATION AND FULL IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT IN LITHUANIA

(v) Implementation measures

Lithuania signed the Rome Statute on 10 December 1998 and deposited its instrument of ratification on 12 May 2003, becoming a State Party to a treaty. In the domain of the national law, Lithuania has taken steps to enact certain implementing legislation. It introduced the Law on Ratification of the Rome Statute of the International Criminal Court (adopted by Seimas of the Republic of Lithuania on 1 April 2003 and entered into force on 21 May 2003), as well as amendments to the Criminal Code of the Republic of Lithuania and the Code of Criminal Procedure of the Republic of Lithuania.

By introducing the Rome Statute of the International Criminal Court, Lithuania made certain declarations:

- Pursuant to Article 87 (1) (a) of the Rome Statute, Seimas of the Republic of Lithuania declared that requests for cooperation made by the Court shall be directly transmitted to the Ministry of Justice or the Prosecutor General's Office;
- Pursuant to Article 87 (2) of the Rome Statute, requests for cooperation and any documents supporting the request shall either be in Lithuanian or English or be accompanied by a translation into Lithuanian or English;
- Pursuant to Article 103 (1) (b) of the Rome Statute, Lithuania declared its willingness to accept sentenced persons to serve a sentence of imprisonment, if these persons are citizens of the Republic of Lithuania.

Thus Lithuania accepted the obligation to cooperate with the Court in its investigation and prosecution of crimes, as well as provide necessary assistance. As legal norms regulating the complementarity principle in the Statute are non-self-executing, it is necessary to have some form of implementing legislation.

The Criminal Code of the Republic of Lithuania was modified introducing the section dealing with crimes against humanity and war crimes (Special part, XVth Section). Moreover, Lithuania has incorporated the crimes of genocide and aggression into the XVth section of the Criminal Code (it is worthy to mention that *materae personae* of a body of the crime of genocide comprises, *inter alia*, social and political groups as targeted groups). Besides, the Code establishes a possibility to prosecute a person despite his/her citizenship, a place of residence or a crime scene on the grounds of an international treaty (Art. 7), as well as the rule that a Lithuanian citizen or a foreigner shall be surrendered to the Court only where so provided in an international treaty (Art. 9).

The Code also establishes a criminal responsibility of a person who: obstructs or endangers the investigation of a case by the staff of the Court or the conduct of proceedings (Art. 231); seeks to affect victims, witnesses, experts or interpreters so that they would give false witness, evidence or interpretation or obstructs the attendance of the trial by the above mentioned persons (Art. 233); gives false witness, evidence or interpretation during the proceedings of the Court (Art. 235). The Criminal Procedure Code of the Republic of Lithuania provides that: in case the question of extradition to the Court is considered, the accused must have access to legal assistance (Art. 51); the staff of the Court may conduct their actions on the territory of Lithuania only in cases listed in the Statute and in the presence of Lithuanian officers (Art. 67); a Lithuanian citizen or a foreigner shall

be surrendered to the Court, if Lithuania is under an obligation, provided in an international treaty or a resolution of the UN Security Council, to extradite a person (Art. 71); international treaties and this Code introduce the grounds for arrest and detention of the accused (Art. 72); the prosecutor of the Prosecutor General's Office brings a request for the extradition of a person before the designated national court, which conducts a hearing and determines not/to surrender a person to the Court (Art. 73); a person subject to the national court's decision not/to surrender him/her to the Court has a right to appeal (Art. 74); a person shall be delivered to the Court according to the rules and procedures provided for by the international treaties of the Republic of Lithuania (Art. 76); the person arrested or convicted in accordance with the international treaties of the Republic of Lithuania might be temporarily transferred to the Court for procedural actions, pursuant to the decision of the Prosecutor General's Office (Art. 77); one of the grounds of an arrest of the person is the request by the Court for surrender of that person (Art. 122); an enforcement of a sentence of imprisonment shall be governed by this Code (Art. 365).

Therefore, the Republic of Lithuania cooperates in, *inter alia*, arresting persons wanted by the Court, providing evidence for use in proceedings and enforcing the sentences of convicted persons. In addition, Lithuania has enacted legislation implementing not only cooperation, but also complementarity obligation.

(vii) Constitutional issues arising from ratification of the Statute

The Law on Ratification of the Rome Statute of the International Criminal Court was adopted according to the constitutional norms of the Republic of Lithuania (Art. 67 (16), Art. 138 (1)(6) Art 138 (3) of the Constitution of the Republic of Lithuania.

(viii) National contact points for matters related to promotion of ratification and full implementation

Ministry of Justice of the Republic of Lithuania is responsible for international co-operation and judicial assistance under part 9 of the Rome Statute of the International Criminal Court as well as drafting national implementation measures for incorporating the Statute into national legal framework. Ministry of Foreign Affairs of the Republic of Lithuania is respectively responsible for promotion of the ratification and implementation of the Rome Statute of the ICC.

INFORMATION RELEVANT TO PROMOTION OF RATIFICATION AND FULL IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT IN THE REPUBLIC OF LITHUANIA

(i) Information on obstacles to ratification or full implementation of the Rome Statute

The Republic of Lithuania signed the Rome Statute on 10 December 1998, ratified on 21 May 2003. It did not face major obstacles (e. g. constitutional) with regard to the ratification of the Rome Statute, apart from the necessity to adjust national legislation implementing both cooperation and complementarity obligations. The process concurred with a general revision of the Criminal and the Criminal Procedure codes of the Republic of Lithuania.

(ii) National or regional strategies or plans of action to promote ratification and/or full implementation

The Republic of Lithuania participates in preparation and implementation of the strategies and plans of action within the framework of European Union.

(iii) Technical and other assistance needs and delivery programmes

Q. v. section (ii).

(iv) Planned events and activities

Q. v. section (ii).

(v) Examples of implementing legislation for the Rome Statute

The current Criminal Code of the Republic of Lithuania was approved on 26 September 2000 and entered into force on 1 May 2003. It introduced a section dealing with crimes against humanity and war crimes, as well as crimes of genocide and aggression (Special part, Section XV, Art. 99 to 113). The unofficial translation of this section is provided below:

SECTION XV CRIMES AGAINST HUMANITY AND WAR CRIMES

Article 99. Genocide

Anyone, who with the intent to destroy physically all or part of people, belonging to any national, ethnical, racial, religious, social or political group, organised, directed or participated in their killings, torturing, mutilating, disturbing their mental development, deporting or otherwise creating conditions of living, which caused their destruction wholly or in part, limiting births within the groups or forcibly transferring children to the other groups,

shall be punished by imprisonment for a term from 5 to 20 years or life imprisonment.

Article 100. Treatment of Persons Prohibited by International Law

Anyone who intentionally performed or supported state or organisational policy and massively or systematically attacked civilians and killed them or caused grave harm for their health; created living conditions that caused persons deaths; trafficked persons; deported inhabitants; tortured, raped, involved into sexual slavery, forced to perform prostitution, made pregnant by force or sterilized; persecuted any community of persons because of political, racial, national, ethnical, cultural, religious, gender or any other motives, prohibited by international law; detained, arrested or deprived persons of their freedom in any other way, when such deprivation of freedom is not acknowledged, or refused to give information about the fate or whereabouts of these persons; performed policy of apartheid,

shall be punished by imprisonment for a term from 5 to 20 years or life imprisonment.

Article 101. Killing of Persons Protected under International Humanitarian Law

Anyone who, in time of war or during an international armed conflict, or occupation or annexation, and in violation of the norms of international humanitarian law, ordered the killing of or killed: people who surrendered by laying down their arms or people not having any means of resistance; the wounded, sick people, seamen of a sinking war ship, prisoners of war, civilians and/or any other persons who are in the occupied, annexed or captured territory or in the territory where hostilities are taking place and who are under international protection during the war,

shall be punished by imprisonment for a term from 12 to 20 years or by life imprisonment.

Article 102. Expelling of Civilians of an Occupied Country or Resettlement of Civilian Population of an Occupying Country

Anyone who, in time of war or during an international armed conflict, or under the conditions of occupation or annexation, ordered or carried out the expelling of the civilian population from the occupied or annexed territory to the territory of the occupying or annexing country or the territory of a third country; ordered or carried out the resettlement of the civilian population of the occupying country to the territory of the occupied country,

shall be punished by imprisonment for a term from 5 to 15 years.

Article 103. Injury, Torture or Other Inhuman Treatment of Persons Protected under International Humanitarian Law

Anyone who, in time of war or during an international armed conflict, or under the conditions of occupation or annexation, and in violation of the norms of international humanitarian law, inflicted a serious injury or an illness upon or tortures the wounded, the sick, seamen of a sinking warship, prisoners of war, civilians or any other persons protected under international humanitarian law, or conducted a biological or medical experiment with the said persons, illegally took from them body organs or tissues for transplant, illegally took their blood or treated them in some other inhuman manner, or punished them by criminal penalties without a judgement of an independent and impartial tribunal or without guarantees of defence in court or committed an outrage on the remains of the fallen,

shall be punished by imprisonment for a term from 3 to 12 years.

Article 104. Violation of Norms of International Humanitarian Law Regarding Protection of Civilians and their Property in Time of War

Anyone who, in time of war or during an armed international conflict, or under conditions of occupation or annexation, and in violation of the norms of international humanitarian law, drove out a civilian population from their homes, resettled them or compelled them to change their religion; raped women, involved them in sexual slavery or compelled them to engage in prostitution; forcibly sterilised or inseminated; utilised threats or terror; took hostages; applied collective punishment; illegally confined them in concentration camps; separated children from their parents or guardians; put them under threat of death by starvation; imposed criminal punishment without the judgement of an independent and impartial court or without guarantees of defence in court; confiscated their property or conducted mass expropriation for purposes which are neither justifiable by nor essential to the war effort; imposed unjustifiably large indemnities and requisitions;

shall be punished by imprisonment for a term from 3 to 15 years.

Article 105. Forced Engagement of Civilians or Prisoners of War in Enemy Armed Forces

1. *Anyone who, in time of war, during an armed international conflict, occupation or annexation, and in violation of international humanitarian law, forced civilians or prisoners of war to serve in the armed forces of their enemy or used them as human shields in a military operation, or who conscripted or recruited children under 18 years of age into the armed forces or used them during a military operation,*

shall be punished by imprisonment for a term from 3 to 10 years.

2. *Anyone who conscripted or recruited children under 18 years of age to the military service in other than state armed forces or used them during a military operation,*

shall be punished by imprisonment for a term from 3 to 12 years.

Article 106. Destruction of Protected Objects or Plunder of National Treasures

Anyone who, for purposes which are neither justifiable by nor essential to the war effort, gave orders to destroy or carried out the destruction of historic monuments or cultural, artistic, educational, scientific or religious objects protected by international agreements or national laws, or plundered national treasures in occupied or annexed territories and caused great harm,

shall be punished by imprisonment for a term from 3 to 12 years.

Article 107. Delay in Repatriation of Prisoners of War

Anyone who, after the signing of a peace treaty or the end of hostilities, unjustifiably delayed the release or repatriation of prisoners of war,

shall be punished by imprisonment for a term of up to 3 years or by fine.

Article 108. Delay in Releasing Interned Civilians or Impeding Repatriation of other Civilians

Anyone who, after cessation of hostilities, unjustifiably delayed the release of interned civilians or did not permit other civilians to repatriate to their homeland from the territory of the armed conflict,

shall be punished by imprisonment for a term of up to 3 years or by fine.

Article 109. Illegal use of the Red Cross, the Red Crescent and the United Nations Organization Emblem (Sign)

1. *Anyone who, in time of peace, used illegally the Red Cross, the Red Crescent and the United Nations Organization or any other universally accepted emblem (sign),*

shall be punished by imprisonment for a term of up to 1 year or by fine.

2. *Anyone who, in time of war or during an armed international conflict, used illegally the Red Cross, the Red Crescent and the United Nations Organization or any other universally accepted emblem (sign) which usable in time of war,*

shall be punished by imprisonment for a term of up to 3 year or by fine.

Article 110. Aggression

Anyone who caused an aggression against another state or who is in command of the hostilities,

shall be punished by imprisonment for a term from 10 to 20 years or by life imprisonment.

Article 111. Prohibited Military Attack

1. *Anyone who ordered or carried out a military attack prohibited under international humanitarian law against civilians, medical or civil defence personnel, a military or a civilian hospital, a health centre, a vehicle carrying wounded or sick persons, the personnel of the International Red Cross Committee or a National Red Cross or Red Crescent Society, or a military attack on an undefended settlement or a demilitarised zone, or a military attack without choosing a definitive target but knowing that there could be civilian casualties or destruction of a civilian object, or against combatants who have clearly withdrawn from the battle and have shown no resistance,*

shall be punished by imprisonment for a term from 5 to 15 years.

2. *Anyone who ordered or carried out a military attack prohibited under international humanitarian law on a target that poses grave danger to the environment and people, such as a nuclear plant, dam, a facility for the storage of hazardous substances, or other similar object, whilst knowing that this may cause very serious consequences, or a military attack using weapons of mass destruction,*

shall be punished by imprisonment for a term of from 10 to 20 years or by life imprisonment.

Article 112. Use of Prohibited Warfare

Anyone who, in violation of international agreements of the Republic of Lithuania or generally accepted international practices regarding the conduct and waging of war, ordered the use or himself used the prohibited warfare or means of waging war,

shall be punished by imprisonment for a term from 3 to 10 years.

Article 113. Marauding

Anyone who ordered the plundering of or himself carried out the plundering of property from persons fallen or wounded on the battlefield,

shall be punished by imprisonment for a term of up to 5 years.

The Criminal Code also establishes a criminal liability of a person who: obstructs or endangers the investigation of a case by the staff of the Court or the conduct of proceedings (Art. 231); seeks to affect victims, witnesses, experts or interpreters so that they would give false witness, evidence or interpretation or obstructs the attendance of the trial by the above mentioned persons (Art. 233); gives false witness, evidence or interpretation during the proceedings of the Court (Art. 235).

Besides, the Criminal Code establishes a possibility to prosecute a person despite his/her citizenship, place of residence, place of commission of the crime, or the punishability of the committed act under the laws of the place where the crime was committed, on the grounds of an international treaty (Art. 7), as well as the rule that a Lithuanian citizen or a foreigner shall be surrendered to the Court only where so provided in an international treaty (Art. 9). These crimes

(except Art. 107, 108, 109, 113) are not subject to the statute of limitation on criminal liability (Art. 95).

The current Criminal Procedure Code of the Republic of Lithuania was approved on 14 March 2002 and entered into force on 1 May 2003. It provides that: in case the question of extradition to the Court is considered, the accused must have access to legal assistance (Art. 51); the staff of the Court may conduct their actions on the territory of the Republic of Lithuania only in cases listed in the Rome Statute and in the presence of Lithuanian officers (Art. 67); a Lithuanian citizen or a foreigner shall be surrendered to the Court, if the Republic of Lithuania is under an obligation, provided in an international treaty or a resolution of the UN Security Council, to extradite a person (Art. 71); international treaties and this Code introduce the grounds for arrest and detention of the accused (Art. 72); the prosecutor of the Prosecutor General's Office brings a request for the extradition of a person before the designated national court, which conducts a hearing and determines not/to surrender a person to the Court (Art. 73); a person subject to the national court's decision not/to surrender him/her to the Court has a right to appeal (Art. 74); a person shall be delivered to the Court according to the rules and procedures provided for by the international treaties of the Republic of Lithuania (Art. 76); the person arrested or convicted in accordance with the international treaties of the Republic of Lithuania might be temporarily transferred to the Court for procedural actions, pursuant to the decision of the Prosecutor General's Office (Art. 77); one of the grounds of an arrest of the person is the request by the Court for surrender of that person (Art. 122); an enforcement of a sentence of imprisonment shall be governed by this Code (Art. 365).

Thus the Republic of Lithuania accepted the obligation to cooperate with the Court in its investigation and prosecution of crimes (arresting persons wanted by the Court, providing evidence for use in proceedings, enforcing the sentences of convicted persons and etc.), as well as to provide necessary assistance. In addition, the Republic of Lithuania has enacted legislation implementing not only cooperation, but also complementary obligation.

(vi) Bilateral cooperation agreements between the Court and State Parties

The Republic of Lithuania does not have a bilateral cooperation agreement with the Court.

(vii) Solutions to constitutional issues arising from ratification

Q. v. section (i).

(viii) National contact points for matters related to promotion of ratification and full implementation

Ministry of Justice of the Republic of Lithuania (namely the International Law Department) is responsible for international co-operation and judicial assistance under part 9 of the Rome Statute as well as drafting national implementation measures for incorporating the Rome Statute into national legal framework.

Ministry of Foreign Affairs of the Republic of Lithuania (namely the Law and International Treaties Department) is respectively responsible for promotion of the ratification and implementation of the Rome Statute.