

Can Putin Be Tried in Poland?

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[On 1 March, the Polish Minister of Justice decided to initiate proceedings](#) against Russia for its military attack on Ukraine and possible war crimes and crimes against humanity. This may come as a surprise, especially after [the prosecutor at the International Criminal Court \(ICC\), Karim Khan, has already started to act in this matter](#). But the initiation of proceedings in Poland would mainly be symbolic and would not conflict with international investigations. An EU Member State investigating specific individuals for their involvement in a war crime would be a powerful signal that their behavior should be condemned not only politically, but also legally. At the same time, the scale and specificity of the crimes in question go beyond the possibilities of a single country and require extensive condemnation and the participation of observers and lawyers representing the broad international community.

What is the scope of Polish jurisdiction?

The Polish Penal Code contains a chapter on Crimes against peace, humanity, and war crimes, which provides for the criminalization of virtually all forms of crimes known to international law. The [justification of one of the amendments to the Polish Penal Code](#) related to the entry into force of the Rome Statute of the ICC: „[...]one of the essential principles expressed in the Statute is the principle of complementarity. It means that domestic criminal courts have priority in the exercise of jurisdiction over the crimes covered by the Statute. However, if a state is unwilling or unable to conduct criminal proceedings, the Court may assume jurisdiction. For this reason, it is important to include the proposed types of prohibited acts referring to the crimes against humanity and war crimes specified in the Statute in the Criminal Code. This will allow for the extension of national jurisdiction over these acts. It should also be borne in mind that the definitions of crimes contained in the Statute are currently an international standard to which Polish legislation should be adapted.“

Thus, the Polish administration of justice and law enforcement has its own competence to prosecute and punish war crimes. Naturally, the most evident field for applying these provisions is when war crimes are committed on Polish territory. But not only then.

In Chapter XIII, on the liability for crimes committed abroad, the Code provides for a complex system of rules allowing the application of Polish substantive criminal law to acts committed abroad. Provisions apply for example to a Polish citizen who has committed a crime abroad or an alien who has committed a prohibited act against the interests of the Republic of Poland abroad. In most cases this requires the dual-criminality principle to be met, meaning that Polish law can only be applied if this act is also recognized as a crime by the law in force in the place where the act was committed.

However, other regulations are expanding the possibility to apply the Polish criminal code to crimes committed abroad, even when at the place of their perpetration, no similar law is in force. This group of crimes includes crimes against the internal or external security of the Republic of Poland, as well as crimes provided for in the Rome Statute of the International Criminal Court when no extradition order has been issued. Under the so-called “universal rule”, which means that a state may investigate and subsequently adjudicate on crimes that are criminal under an international agreement, the Polish judiciary can cover acts as crimes of genocide or other types of acts contained in the ICC Statute.

An opportunity to investigate

The substantive law provisions mentioned above do not automatically mean that each case will come before a Polish court. They only provide a legal opportunity to conduct proceedings. The effective use of procedural instruments such as detention, pre-trial detention, and prosecution before Polish courts is an entirely different matter regulated by procedural rules. What does the initiation of Polish proceedings in question mean then? They would undoubtedly be symbolic. Poland expresses moral condemnation of what is happening in Ukraine. The legal perspective allows for formalized steps like collecting evidence in an orderly manner and allowing for its subsequent use in a criminal trial or forwarding it to the ICC. Interrogations of refugees, for instance, have already taken place to obtain information about the realities of the conflict. It seems unlikely that the political decision-makers of the Kremlin, headed by Vladimir Putin, will be brought before the Polish justice system. However, such a fate may befall people from military or civilian circles (e.g. media propagandists, oligarchs) who support the Russian aggression and war crimes. With enough information about these people, it is possible to charge them in absentia and apply to Interpol for a red notice. [Red notices](#) are issued for fugitives wanted either for prosecution or to serve a sentence. They are a request to law enforcement worldwide to locate and provisionally arrest a person. It is possible to issue an arrest warrant for these persons, should they appear on the territory of Poland, and also to file a European Arrest Warrant, which makes it likely that these persons will be arrested and transferred to Poland once they are on EU territory. This might prevent these people from traveling to the EU and perhaps to other countries that react to Interpol's note. It is clear that the Russian authorities will not cooperate in this type of criminal prosecution with another country. But the mere fact that an EU Member State is investigating a specific person for participation in a war crime would be a powerful signal that this behavior will not be treated as having only a political dimension, but the most tangible one.

The scale of the investigation

The fly in the ointment here is the question of the scale of a possible investigation. As we know from [media reports and reports of the Security Service of Ukraine, the personal data of many Russian soldiers](#) and their commanders committing the crime of participation in an aggressive war and war crimes have been determined quite precisely. They go into thousands. If we add Putin's propagandists from the

media, politicians, oligarchs, and other allies, the investigation becomes so extensive and multi-threaded that it will overload Polish law enforcement agencies. The scale and specificity of these crimes go beyond the possibilities of a single country. They require the participation of the international community.

The universal principle is a catch that allows for the application of domestic criminal law to be expended so that no crime that is important for the international community goes unpunished. But despite the principle that the ICC statute is complementary to domestic legislation, justice in the situation we are dealing with in Ukraine requires accountability before an international court. The problem of the scale of the crime and the effectiveness of domestic proceedings means that often a decision must be made to conduct proceedings only against those perpetrators who are highest in the decision-making hierarchy and for whom it is relatively easy to find irrefutable evidence of their guilt. This is often in fundamental contradiction to the social sense of justice, especially for the directly harmed. They would probably prefer that the real perpetrators of massacres, the ones bombing civilian facilities, be punished. Therefore, the question arises whether applying the universal principle is essential for bringing justice to the perpetrators of the most terrible criminal acts.

A symbol of support

In the proposed investigations symbolism comes to the fore, indeed, showing the lack of indifference to what is happening by the international community. Therefore, the initiation of proceedings by the Polish prosecutor's office should be assessed as the state's compliance with its international obligations concerning the prosecution of crimes covered by international law. Evaluating the adequacy of the activities undertaken and their final effectiveness is a completely different question. The symbolism of solidarity with the international community has its undoubted advantages. But carrying out the proceedings with the awareness that they will not achieve the intended results may ultimately weaken that message of support.

