

A Comparative Survey of Private Sector Liability for Grave Violations of International Law in National Jurisdictions:¹

NORWAY

The following is part of a larger project looking into the potential liabilities facing companies under public international law, specifically the laws governing genocide, crimes against humanity, and international humanitarian law. This survey is intended to assist in decisionmaking by companies, governments, and affected communities. It is not intended as a definitive description of liability or culpability under the law in Norway or internationally. It is not specific to any particular case or situation and is intended to be the basis for further research.

Introduction

Business entities can be found liable under Norwegian criminal law (penal code), and the grave breaches at issue in this survey are integrated to that law in varying ways. However, the survey found no cases in Norwegian jurisprudence in which a company was found liable for such grave breaches. Although there appears to be no legal obstacle that would prevent such prosecutions, there is little in Norwegian jurisprudence that would provide guidance on the likely procedural, evidentiary, or other requirements for the prosecution of business entities for grave breaches of these international laws. Thus, beyond the provisions outlined in black letter, it has proven difficult to provide responses to the questions in this survey that would provide definitive clarity as to the applicability of Norwegian law to such violations.

During the course of this survey there were two important developments with the potential to affect the answers provided below. First, a prosecutorial office was created dedicated to the pursuit of war criminals resident in Norway. Presumably, this is evidence of the intent of the Norwegian legal system to implement its obligations under the Geneva conventions to prosecute alleged war criminals in its own courts or make them available to another High Contracting Party. By the end of 2003, there had been no public indictments issued by this office. The mandate and practice of this office deserve further research at a later date.

Second, a penal reform was launched in Norway that will substantially alter the legal framework described below. While Norway has ratified many of the conventions relevant for this survey, the nature of the integration of those conventions to the Norwegian penal code varies. It is likely that the penal code reform will strengthen the applicability in Norway of the international laws discussed below. Specifically, the penal reform is expected to integrate more clearly and consistently the international laws dealt with under this survey (genocide, crimes against humanity, war crimes). It would be wise to revisit some of the issues covered in this survey once the reform is complete (two to four years).

I. Status of business entities under criminal law:

- 1. Does the Norwegian penal code (or judicial interpretations thereof) provide that business entities may be prosecuted criminally for violations of such code?**

¹ The contents of this survey were researched and written by Ingrid Hillblom, M.A., commissioned by Fafo AIS as part of its *Economies of Conflict* project. Comments provided by Asne Julsrud, Gro Nystuen, Christian H Ruge and Mark B Taylor.
©Fafo AIS 2004

Yes. According to the Norwegian General Civil Penal Code, chapter 3 a. *Criminal Liability of Enterprises*, it is possible for Norwegian courts to prosecute business entities for criminal violations set in this code and in other penal provisions. For example, it is possible under domestic law to pursue violators of environmental law. Convicted violators, either individual persons or enterprises, are punished with fines or imprisonment.

Article 48 reads:

§ 48 a. When a person who has acted on behalf of an enterprise contravenes a penal provision, the enterprise may be liable to a penalty. This applies even if no individual person is prosecuted for the contravention. *Enterprise* is defined as a company, society or other association, one-man enterprise, foundation, estate or public activity. The penalty will be a fine. The enterprise may also be deprived of the right to continue its business or may be prohibited from continuing it in certain ways, cf. § 29.

§ 48 b. In determining whether a penalty is to be imposed on an enterprise pursuant to § 48 a, and in assessing the nature of the penalty vis-à-vis the enterprise, particular consideration shall be paid to:

- a) The preventive effect of the penalty,
- b) The seriousness of the offence,
- c) Whether the enterprise could have prevented the offence by guidelines, instruction, training, control or other measures,
- d) Whether the offence has been committed in order to promote the interests of the enterprise,
- e) Whether the enterprise has had or could have obtained any advantage by the offence,
- f) The enterprise's economic capacity,
- g) Whether other sanctions have been imposed on the enterprise, or on any person who has acted on its behalf, as a consequence of the offence.

2. What are the standards applied in the Norwegian jurisdiction for attributing liability to a business entity for the actions of individual servants? For example:

a. What must one demonstrate in order to convince the court that the actions of the servants of the business entity may be attributed to the business entity to establish the guilt of the business?

Under § 48 a. (above), company liability arises out of the acts of individuals, as “when a person who has acted on behalf of a company contravenes a penal provision.” There are three aspects to the link (“on behalf of”) between the act of an individual and the business entity:

- 1) Objective and subjective conditions
- 2) The connection between individual and enterprise
- 3) The act is part of the perpetrator's work

1) Objective and subjective conditions

First, it has to be demonstrated that the act itself is a violation of one of the penal provision(s), the so-called *objective condition*. Someone has to have acted. In determining business entity liability, it is not necessary that the person actually be identified. A business entity can be liable for anonymous criminal actions, as long as a violation of a penal provision can be

determined. If the offending individual is identified, but was not accountable for their actions at the time of the action, the business entity may nevertheless be liable for the violation. It is not necessary to prove that the management of the entity is involved. The business entity can be liable solely through a 'theory of agency' without any substantive culpability on the part of management (see NOU 1989:11 page 15 and Ot.prp.nr.27 (1990-91) page 17).

The term *subjective condition* is used to determine whether someone is guilty of the specified act or crime. The subjective condition will determine the specific guilt of the person who acted. It determines if the person was acting intentionally, in a negligent manner, or not. Under § 48 a, the judgement of the subjective condition will determine the character of the penalty given (see The Norwegian Supreme Court decision HR-2002-00587).

2) Connection between individual and enterprise

A connection between the perpetrator of the violation and the enterprise has to be identified. Normally, the person shall be in the position to represent the enterprise, as defined by agreements, customary law or legislation. These representatives can be the enterprise's own bodies, the employees of the enterprise or independent commissioners, but they may also be outside of these groups. Civil legislation usually determines whether a person represents an enterprise or not.

Whether or not the commissioner has acted on behalf of the enterprise is determined by the specific violation of the penal provision. The reading of the penal provision identifies the enterprise as the subject of duty. Whether it is the enterprise or the commissioner that violates the provision makes no difference (Jensen 19XX: " p 47). Thus, with regard to business entity liability for grave breaches of the relevant international law, reference would have to be made to the specific provision in the penal code to determine the law's understanding of the relationship between individual and business entity in the commission of the violation.

A commissioner that has violated a penal provision is not immune from penalty just because an enterprise is punished for the criminal action that has been committed. In such instances the commissioner may be charged for aiding the commission of the crime because the commissioner had acted on behalf of the enterprise.

It may be necessary to determine the extent to which the enterprise can influence the commissioner's way of performing the violation. It may be reasonable to determine which party had the *dominating influence* of the work. The party with dominating influence will then be seen as responsible for the actions made (Rt 1971 p 907 and Nygaard 19XX, p 236). However, there was little jurisprudence that could be found, as this is a little used area of the law. It is difficult to say what is required to determine the dominating influence. Still, in relation to the bodies of international law we are concerned with here, a relevant question to ask then the significance of this principle for considering individuals that are leaders of business entities that have violated international law. The laws that regulate the individual responsibilities within the governance structures of business entities should be scrutinised for the purpose of understanding how these might correspond to principles of command responsibility under international law.

Both parties can be made equally responsible for the act in question, if none of them can be said to have had dominating influence (Ot prp nr 27 (1990-91) p 20). It seems that it is not possible to design business agreements that free one of the parties from criminal responsibility

of the actions taken under the arrangement. If the parties have an agreement, the court shall at least pay more attention to the objective interpretation of “on behalf of” (Jensen 65).

In certain instances, a business entity may be criminally liable for the cumulative result of actions taken by more than one of its employees/representatives, even when those actions individually or by themselves are legal.

Actions by a subsidiary do not automatically invoke criminal liability for the parent company. Nothing is noted about this in the background documents of this provision (Jensen 60-61) and there has been little legal debate on this question. There appears to be little case law that might have tested this issue on which to base further explanation of the extent to which a subsidiary may create liability for the parent company.

3) The act is part of the perpetrator’s work

It has to be demonstrated that the violating action formed a part of the person’s work for the business entity. The action has to be functional and businesslike and not made out of disloyalty to the business entity. The connection between the work and the violation has to be real and in relation to work time (Ot prp nr 27 (1990-91) p 18). The act has to be ordinary in the context of business activity of the enterprise. Thus the same action may result in different legal responses for different enterprises, depending upon their area and manner of undertaking their businesses (Jensen 64).

The action in question does not have to have beneficial consequences for the business entity when establishing whether the employee action was business-related or not. Neither is it a requirement that the acting person had the intention to benefit the business entity. The definition of “acting on behalf of” is interpreted objectively. Whether the business entity was able to bring about any advantages from the act in question is established by the court when meting out the penalty (§ 48 b letter d and e, Rt 1993 p 459, Ot prp nr 27 (1990-91) p 19, NOU 1989:11 p 17).

To exempt the enterprise from liability, a *disloyal action* has to be evident (Rt 1993 p 459). It is not sufficient that the employee has acted in self-interest. The employee’s action has to almost exclusively be contrary to the interests of the business entity to be defined as disloyal (Jensen 72-73). Violations of the instructions of the business entity, in itself, do not convey an obvious disloyal condition (Jensen sp75).

- b. If, in order to find a business entity guilty of a crime, the court must find that the business entity intended to carry out an activity that is a crime, how must the prosecution demonstrate that such intent (mens rea) was present?**

A person cannot be punished for crimes under this penal code if s/he did not act intentionally, with negligence or with misdemeanour consisting of an omission to act. Each penal provision in the code expressly provides or unambiguously implies which one of these forms of intent is in effect.

General Civil Penal Code § 40. Most penal code provisions are applicable only to persons who have acted intentionally, *unless* a specific provision expressly provides or unambiguously implies that a negligent act is also punishable under that provision. Thus, in most cases, the intent of the perpetrator must be established. Under the penal code, intent

means that the offender needs to be aware of the criminal result of her/his actions. The awareness must concern all details of the provided action, not only concerning the results but also other elements of the criminal action. If the offender acted when s/he was intoxicated (self-inflicted) and that was caused by alcohol or another intoxicant, the court has to ignore the intoxication when assessing whether the act was intentionally committed. A misdemeanour consisting of an omission to act shall be punishable also when it is committed by negligence unless the contrary is expressly provided or unambiguously implied. With regard to business entity liability for negligence regarding grave breaches of the relevant international law, reference would have to be made to the specific provision in the penal code to determine whether the provision includes negligence.

Under the penal code, it does not matter if the desired result was achieved in another way than was intended. The intent has to exist at the time of the crime. It may be different if the criminal action took place over a prolonged period, giving the offender opportunity to realise the criminal aspects of the action. The decisive point is the objective of the offender. Whether it is more or less likely that the objective will be realised, makes no difference (Andenæs, 1991, p 214).

To act with purpose involves the concept of *subjective surplus* in addition to acting with intent. The offender has to do something to achieve the criminal act, which in other situations may be totally harmless. The important issue is what the offender wanted to achieve (Andenæs p220).

One example:

§ 270. Any person is guilty of fraud who, for the purpose of obtaining for himself or another an unlawful gain,

(1) By causing, confirming, or exploiting a mistake unlawfully induces any person to commit an act that causes loss or a risk of loss to him or any person for whom he is acting, or

(2) By the use of incorrect or incomplete information, by altering data or software or otherwise unlawfully influences the result of automatic data processing, and thereby causes loss or a risk of loss to any person.

The penalty for fraud is fine or imprisonment for a term not exceeding three years. An accomplice shall be liable to the same penalty.

Within the demand of acting intentionally, some penal provisions require acting with purpose or with *premeditation*. This includes, for example, homicide, the provision under which genocide is presently integrated to Norwegian law (see below). Yet, it is only occasionally that the penal code provides that the offender has to act with premeditation. When it does, it means that the offender committed a crime after consideration. There has been sufficient time and possibility to consider the action. This kind of acting will have importance in deciding the character of the penalty (Andenæs p220-221).

One example:

§ 233. Any person who causes another person's death, or is accessory thereto, is guilty of homicide and shall be liable to imprisonment for a term of not less than six years.

If the offender has acted with premeditation or has committed the homicide in order to facilitate or conceal another felony or to evade the penalty for such felony, imprisonment for a term not exceeding 21 years may be imposed. The same applies in cases of repeated offences and also when there are especially aggravating circumstances.

It is also possible to be found liable for an attempt at committing a felony. This is known as *punishable attempt*, under General Civil Penal Code § 49. When a felony is not completed, but an act has been done whereby the commission of the felony is intended to begin, this constitutes a punishable attempt. An attempt to commit a misdemeanour is not punishable.

To determine whether the felony is completed it has to be clear that every element in the penal provision are reached and the reason cannot be unforeseen. If it were foreseen, it would have been an attempt.

To decide if it is an attempt the court has to determine the behaviour of the offender. It must be concluded from the behaviour that the offender did not think s/he needed any more preparation and intended to fulfil the crime. The intent to commit a crime must be present. A completion of the crime must be possible from the offender's conditions and has to be expected in a fairly immediate consistency with the preparations (Andenæs p 307-308).

The distinction between an attempt and a completed felony is important when deciding the penalty. An exception is described in § 50. That provision describes what is needed to escape from liability.

§ 50. An attempt shall cease to be punishable if the offender, before he knows that the felonious activity has been discovered, of his own free will, stops the felonious activity before the attempt has been completed or prevents the result that would constitute the completed felony.

The punishment for attempt is milder than for a completed crime.

§ 51. An attempt shall be punished by a milder penalty than a completed felony. The penalty may be reduced to less than the minimum provided for such felony and to a milder form of punishment.

The maximum penalty provided for the completed felony may be applied if the attempt has led to any such result as could have justified the application of so high penalty.

3. Under the Norwegian criminal code (penal law), what is the legal standard for convicting someone of aiding and abetting the commission of a crime by another (complicity)? What is the legal standard for convicting someone of plotting with another to commit a crime (criminal conspiracy)?

Each penal provision in the Norwegian criminal code specifies if it is criminal to aid and abet. Also, when the attempt is criminal, then participating in the attempt is also criminal (§ 49 above). With regard to business entity liability for complicity in grave breaches of the relevant international law, reference would have to be made to the specific provision in the penal code to determine the law's treatment of accomplices. However, there appears to be no specific

legal obstacle to potential liability for business entities that are complicit in violations of international law that are integrated to the Norwegian penal code.

For example, under vandalism:

§ 291. Any person, who unlawfully destroys, damages, renders useless or wastes an object that wholly or partly belongs to another shall be guilty of vandalism. The penalty for vandalism shall be fines or imprisonment for a term not exceeding one year. An accomplice shall be liable to the same penalty. A public prosecution will only be instituted when requested by the aggrieved person unless it is required in the public interest.

Different levels of participation exist—physical or psychological—that roughly parallel the categories of aiding and abetting. The physical participation (aiding) includes situations when more than one person that performs the crime and when other persons take part in the preparations (Andenæs 287). The psychological participation (abetting) is divided between persuasion, encouraging, giving advice, threatening, and deceiving (Andenæs 290-291). Promises to assist in some way may be defined as participation, but the promise has to be given before the crime is committed (Rt 1917 s. 139, 1948 s. 852, 1954 s. 828 se s. 830).

The penal code makes no difference between physical or psychological participation when establishing aiding and abetting but the actions need to take place before or at the same time as the offender completes the crime. The participating act has to be defined as crucial for the result and, further, it must be shown that the crime could not have been committed if this specified help was not provided. It is not possible to prosecute an accomplice for crimes of negligence. To identify any accomplices, the court has to judge the relation of each accomplice to the felony (they cannot be prosecuted as members of a group with joint criminal intent). A person who participated can be punished for their participation even if the main person did not do enough to fulfil a criminal attempt. The procedure to establish guilt is the same for perpetrators and accomplices (Andenæs 300-303).

4. Are there any other special elements not required in the conviction of a natural person that must be present when the defendant in a criminal proceeding is a business entity?

Nothing found other than what is described above.

II. Status of International Law/International Humanitarian Law in the Norwegian Legal Framework:

5. May an individual be prosecuted for violations of international law in the courts of Norway?

It is possible to prosecute an individual for violations of international law in Norway. Article § 96 of the Constitution of the Kingdom of Norway states that no one may be convicted except according to [domestic] law. Domestic law integrates specific bodies of international law but imposes the condition that there must be a penal provision in the domestic criminal law that covers the violation. Thus, the General Civil Penal Code, Article §1, second part, and the Human Rights Law § 3 integrates the Covenants on Civil and Political, and Economic and Social Rights, Convention on the Rights of the Child, as well as European charters of rights.

The conventions relating to genocide, crimes against humanity and war crimes are not mentioned in these two laws.

A Norwegian citizen need not be one of the victims of the violations. To find the determining conditions, see below IV.9. In a conflict of laws, the statute gives international law priority over Norwegian law, and establishes the principle that this superiority of law applies only when the international law provides a better legal position to the defendant than the domestic legislation would have provided (Eskeland, p. 93). The Human Rights Law statute establishes that international law has to be used directly in relation to the individual citizen.

The International Criminal Court may change some of this. Norway ratified the Rome Statute of the International Criminal Court (ICC) statute the 16 of February 2000, and it entered into force July 1, 2002. The ICC is complementary to domestic criminal jurisdictions (article 1) and states that only individuals can be criminally liable for the enumerated crimes (article 25). Thus, the Norwegian courts have the precedence to judge crimes that are specified in the statute. These crimes are, according to article 5, genocide, crimes against humanity, war crimes and the crime of aggression.

As described below, Norway has ratified the relevant covenants, but has only integrated certain international crimes to its penal code, among them slavery and genocide. In one case, slavery, this was done via legislation. In the case of genocide, this was done via a Justice Department ruling that indicated genocide could be considered under the penal provision for homicide. Thus, at present, it appears that whenever confronted with crimes specified in the statute that do not have a corresponding provision in Norwegian law, Norway will lack the possibility of exercising complementary jurisdiction and will be obliged to submit individuals to the jurisdiction of the ICC. However, as part of its penal law reform, steps are already underway to incorporate into the penal code the various provisions of the laws of genocide, crimes against humanity and war crimes and aggression found in the ICC statute.

Some examples of the integration, and lack of integration, of the relevant international law to Norwegian penal code follow. Below we examine slavery, torture, forced labour, and forced displacement:

Slavery

The only international crime that has been set in a penal provision in the Norwegian penal code is the crime of slavery. Slavery has its own penal provision and it is possible to prosecute an individual for slavery in the courts of Norway. The Slavery Convention was ratified on 11 April 1957.

Article I

For the purpose of the present Convention, the following definitions are agreed upon:

- (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

The Norwegian General Civil Penal Code has the following codification:

§ 225. Any person who causes or is accessory to causing another person to be enslaved shall be liable to imprisonment for a term of not less than five years and not more than 21 years.

Any person who engages in or is accessory to slave trading or the transporting of slaves or persons destined for slave trading shall be liable to the same penalty.

Any person who enters into an association with another person for the purpose of carrying out or aiding or abetting any act referred to in this section shall be liable to imprisonment for a term not exceeding 10 years.

Torture

There is no specified penal provision for the crime of torture in Norwegian criminal law. The crimes covered are defined in the Convention against torture and other cruel, inhuman, or degrading treatment or punishment, ratified by Norway on 9 July 1986. Article 1 of the Convention defines torture:

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The following penal provisions in the Norwegian penal code cover different parts of the definition of torture:

Public servants misuse of position

§ 124. A public servant who unlawfully uses his office to induce or to attempt to induce any person to do, tolerate or omit to do anything shall be liable to fines or loss of office.

§ 125. A public servant who misleads or incites any official subordinate to him or under his supervision in the public service to commit a felony in this service, or who assists him therein or knowingly lets him commit such felony, or who abuses his office to incite another public servant or to assist him therein shall be liable to the same penalty as the latter.

Such penalty shall apply regardless of whether the public servant is not criminally liable because of good faith or for any other reason.

Rape

§ 192. Any person who;

(a) By force or by inducing fear for any person's life or health compels any person to commit an act of indecency, or;

- (b) To commit an act of indecency with a person that is unconscious or are of other reasons not capable of rejecting the act, or;
- (c) To by force or by inducing fear persuade another person to commit an act of indecency, or to do the same act to himself;

Shall be guilty of rape and liable to imprisonment for a term not exceeding 10 years. In judging whether someone have acted by force or by inducing fear or if the aggrieved were not capable of resist the action, it will be important if the aggrieved was younger than 14 years.

The sentence is imprisonment not less than two years if;

- (a) The act of indecency was sexual intercourse;
- (b) The offender has evoked the condition that is described in the first piece of this section under letter b, to obtain an act of indecency.

A sentence is imprisonment for a term not exceeding 21 years may be imposed if;

- (a) The rape has been performed by more than one person;
- (b) The rape has been performed in a particularly painful or degrading way;
- (c) The offender has previously been convicted and sentenced pursuant to this section or to section 195, or;
- (d) The aggrieved person dies or sustains serious injury to body or health. Venereal disease, compare [in Law on Protection against Contamination – Smittevernloven] § 1-3 no. 3 compared with no. 1, shall always be regarded as serious injury to body or health pursuant to this section.

Any person whose actions are gravely negligent in relation to the commission shall be guilty of rape pursuant the first piece of this section, and liable to imprisonment for a term not exceeding five years. If circumstances described in the third piece of the section exist, a sentence of imprisonment for a term not exceeding eight years may be imposed.

Misuse of position

§ 193. Any person, who commits or is accessory to another person committing an act of indecency by misusing its position, or misuse of a dependent relationship, shall be liable to imprisonment for a term not exceeding five years.

Any person who exploits or is accessory to another person's mental illness, lack of intelligence, or morbid disturbance of mental faculties in order to commit an act of indecency with any such person shall be liable to imprisonment for a term not exceeding five years.

Acts of indecency under custody

§ 194. Any person, who commits an act of indecency with any person that is under custody and under the protection of the offender, shall be liable to imprisonment for a term not exceeding five years.

Any person who is accessory to another person committing an act of indecency with any such person shall be liable to the same penalty as the latter.

§ 205. The penal provisions in this chapter will also be in effect to acts of participation.

Threat

§ 222. Any person who by unlawful conduct or by any threat thereof compels another person to do, submit to, or omit to do anything, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding six years may be imposed.

Any person who by threatening to make an accusation or report of a criminal act or to make a defamatory allegation unlawfully compels another person to do, submit, or omit to do anything, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding one year.

If the felony has been committed against any of the offender's next of kin, a public prosecution will only be instituted when requested by the aggrieved person unless it is required in the public interest.

Assault

§ 228. Any person who commits violence against the person of another or otherwise assails him bodily, or is accessory thereto, is guilty of assault and shall be liable to fines or imprisonment for a term not exceeding six months.

If the assault causes injury to body or health or considerable pain, imprisonment for a term not exceeding three years may be imposed, but not exceeding five years if death or serious injury results.

If an assault is retaliated with another assault, or is provoked by a previous assault or insult, it may go unpunished.

A public prosecution will only be instituted when requested by an aggrieved person unless;

- (a) The felony has resulted in someone's death, or
- (b) The felony is committed against the offender's previous or present spouse or cohabite, or
- (c) The felony is committed against the offender's child or the child of the offender's spouse or cohabite, or
- (d) The felony is committed against the offender's kin in the direct line of ascent, or
- (e) The prosecution is requested in the public interest.

Body or health injures

§ 229. Any person who injures another in body or health or reduces any person to helplessness, unconsciousness or any similar state, or who is accessory thereto, is guilty of occasioning bodily harm and shall be liable to imprisonment for a term nor exceeding three years, but not exceeding six years if any illness or inability to work lasting more than two weeks or any incurable defect or injury is caused, and not exceeding eight years if death or serious injury to body or health results.

§ 231. Any person who causes or is accessory to causing serious injury to body or health of another person is guilty of occasioning gravely bodily harm and shall be liable to imprisonment for a term not less than two years. If the act is premeditated, imprisonment for a term not exceeding 21 years may be imposed if the felony results in a person's death.

§ 233a. Any person who enters into an agreement with another person to act the way that are described in § 231 or § 233, shall be liable to imprisonment for a term not exceeding 10 years.

These provisions give the possibility to prosecute persons for acts that agree with the provisions.

Forced labour

The Forced Labour Convention (ILO 29) was ratified by Norway on 1 July 1932. The convention defines forced labour in article 2.

The Abolition of Forced Labour Convention (ILO 105) describes what kind of forced labour that shall be abolished. This convention was ratified by Norway on 14 of April 1958.

Article 1.

Each Member of the International Labour Organisation, which ratifies this Convention, undertakes to suppress and not to make use of any form of forced or compulsory labour:

- (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) As a method of mobilising and using labour for purposes of economic development;
- (c) As a means of labour discipline;
- (d) As a punishment for having participated in strikes;
- (e) As a means of racial, social, national or religious discrimination.

There are no penal provisions in Norwegian legislation that cover these acts. According to the established principles of law described above, it will not be possible to prosecute anyone in Norway for violations of this part of international law. Thus, it would appear that the treaty is wholly without force of law in Norway. One reason for this may be the official view that there are no problems of this nature in Norway (NOU 1993:18). What might occur outside the country involving persons subject to Norwegian law seems not to have been a concern to date.

Forced Displacement

We have not been able to identify any provisions that even come close to the actions that constitute forced displacement in any aspects of domestic Norwegian law. Relevant international conventions and other agreements are cited below.

ICC Statute Article 7

Crimes against humanity

1. For the purpose of this Statute, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

Deportation or forcible transfer of population;

2. For the purpose of paragraph 1:

"Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

International Covenant on Civil and Political Rights

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

The European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

6. May a business entity be prosecuted for violations of international law in the courts of Norway?

In principle, yes. There is no legal obstacle to the prosecution of business entities under international law provisions that correspond to domestic penal code provisions. To be actionable in Norwegian courts, the international law provisions must be integrated domestic criminal law in the relevant Norwegian penal provisions. The courts should use the provisions (domestic or international) that provide a better legal position to the defendant. However, the laws of genocide, crimes against humanity and war crimes are not among the international laws that are explicitly integrated to the Norwegian penal code. In addition, there is very little jurisprudence against which to judge the viability of a prosecution. There is no case precedent concerning the prosecution of business entities for violations of international law in Norway.

Below, we examine what provisions in Norwegian domestic law correspond to the actions of genocide, crimes against humanity or war crimes.

Genocide

Norway ratified the Convention on the prevention and punishment of the crime of genocide the 9 of December 1948. Art.2 in this convention states that genocide is:

Acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberate inflicting on the group conditions of life calculated to bring about its physical destruction in a whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

There is no direct legislation for the crime genocide in Norwegian national law, but article 1 in the same convention confirms:

The contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law, which they undertake to prevent and to punish.

In connection with Norway's ratification of the Genocide-convention, the Justice Department expressed the opinion that genocide was supposed to be punished as murder, §233 The Penal Code, (St prp No. 56 1948 page 6).

§ 233. Any person who causes another person's death, or is accessory thereto, is guilty of homicide and shall be liable to imprisonment for a term of not less than six years. If the offender has acted with premeditation or has committed the homicide in order to facilitate or conceal another felony or to evade the penalty for such felony, imprisonment for a term not exceeding 21 years may be imposed. The same applies in cases of repeated offences and also when there are especially aggravating circumstances.

§ 233a. Any person who enters into an agreement with another person to act the way that are described in § 231 or § 233, shall be liable to imprisonment for a term not exceeding 10 years.

In principle, then, it should be possible to pursue a case of genocide against an individual in Norwegian courts. Since there is a penal provision in the domestic laws, it may be employed to prosecute individuals acting on behalf of business entities and impose a penalty on the business entity. Presumably, this would apply to any individual or company established in Norway, including for culpability in such actions carried out abroad (see section 8 on jurisdiction, below). However, this has not been done and there is no case law upon which to base an analysis of the effect of this form of integration.

Crimes against humanity

The first time that crimes against humanity was instituted was after World War II in the UN resolution, "Affirmation of the Principles of International Law recognised by the Charter of the Nuremberg Tribunal, Resolution 95 (I) of the United Nations General Assembly, 11 December 1946." These principles of international law were then recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal in 1950. These principles constitute that crimes against humanity shall be recognized to be punishable according to international law.

Norwegian criminal law does not constitute any specific penal provisions for crimes against humanity as such, but covers many of the actions that constitute crimes against humanity, for example rape, coercion, threat, deprivation of freedom, body or health injures and homicide. However, the ICC statute makes clear that these actions have to be widespread or systematic (see Article 7 below). How would these provisions of domestic Norwegian penal law permit this aspect of crimes against humanity to be heard? Would Norwegian law's conflict of laws principle, which provides for a decision to be made to the legal advantage of the defendant, permit the massive and systematic aspects of the international provisions to be prosecuted? Due to the absence of precedent, we simply do not know.

The ICC Statute is one source for of definitions:

Article 7

Crimes against humanity

For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy," means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Crimes against humanity consist of many of the same crimes that are punishable under the laws of war, but the crimes described need not be perpetrated during war. (Ståle/Eskeland, Straffrett, 2000, p 168).

War crimes

To identify the opportunities to prosecute business entities for war crimes it is necessary to check if the relevant conventions and protocols require that the violator must be punished. Since 1856 numerous international instruments that constitutes the laws of war has emerged. Only those of interest in this specific situation will be mentioned here.

The 1949 Geneva Conventions.

The following articles provide to punish perpetrators of war crimes

- Article 49 in the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
- Article 50 in the Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
- Article 129 in the Convention (III) relative to the Treatment of Prisoners of War;
- Article 146 in the Convention (IV) relative to the Protection of Civilian Persons in Time of War
- Article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

These articles provide that:

“The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.”

To test for Norwegian applicability, actions regarded as grave breaches need to be identified, and then tested against Norwegian legislation. The information on grave breaches is found in Art.50 GC (I), Art.51GC (II), Art.130 GC (III), Art.147 GC (IV) and Art.85 Prot. (I).

These are wilful killing, torture or inhuman treatment including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer, unlawful confinement, compelling a prisoner of war or other protected person to serve in the forces of a hostile power, wilfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial, taking of hostages, extensive destruction and appropriation of property not justified by military necessity, intentionally directing attacks against the civilian population, launching an indiscriminate attack, launching an attack against works or installations containing dangerous forces, making non-defended localities and demilitarised zones the object of attack, making a person the object of attack in the knowledge that he is hors de combat, the perfidious use of a distinctive emblem, wilfully transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, unjustifiable delay in the repatriation of prisoners of war or civilians, practices of apartheid and other inhuman and degrading practices and to make historic monuments, works of art and places of worship to which special protection has been given by special arrangement to be the object of attack.

The legislation integrating the Geneva conventions and their protocols to Norwegian law is the Military Penal Code, 1902-05-22-13.

§ 108. Any person who violate provisions that shall protect persons or property or is accessory thereto shall be liable to imprisonment for a term not exceeding four years unless the condition is covered by a stricter penal provision.

a) In The Geneva Conventions of 12 August 1949 about the amelioration of the condition of the wounded and sick in armed forces in the field, the shipwrecked members of armed forces at sea, the treatment of prisoners of war and the protection of civilian persons in time of war,

b) In the two protocols additional to these conventions of 8 June 1977.

It seems like this provision provides the possibility to prosecute persons for more breaches than the grave ones. Also to act accessory is punishable.

§ 1. Part 1. General provisions in the General Civil Penal Code shall be used in relation to actions that are punishable according to this present law, unless otherwise indicated [in the Military Code].

Thus, as § 48 a of the General Civil Penal Code creates liability for business entities it would in principle be possible to consider business entity complicity for war crimes defined under

the Military penal code. It is not clear whether the Military Code sets any special requirements for what it takes to be regarded as an accessory.

Both the Conventions banning chemical weapons and landmines are specifically integrated to Norwegian law. Can actions that violate the Conventions banning chemical weapons² and anti-personnel mines³ be regarded as war crimes?

International Criminal Court Rome Statute:

Article 8 in the ICC Statute provides that use of this kind of weapons shall not be used.

Article 8, 2. (b);

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123.

Norway has ratified both of these conventions, and criminal liability for violations of them are specified in domestic law:

Chemical Weapons Convention:

Article VII

National implementation measures

General undertakings

1. Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention. In particular, it shall:

(a) Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;

(b) Not permit in any place under its control any activity prohibited to a State Party under this Convention; and

(c) Extend its penal legislation enacted under subparagraph (a) to any activity prohibited

² Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993

³ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997

to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

A ratification of this convention means that each State Party must introduce these actions of crime in their legislation. In Norway this is the Law of Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1994-05-06-10).

§ 5. Any one who violates this law or regulations that are given by virtue of this law will be liable to fines or imprisonment for a term not exceeding five years. Who has acted negligent will be liable to fines or imprisonment for a term not exceeding two years. Who is accessory thereto, shall be liable to the same penalty.

The 1997 Landmine Convention

Article 9

National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

No penal provisions corresponded with this convention in pre-existing national law. The Law of Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, passed in 1998 (1998-07-17-54) created such provisions:

§ 5. Any one who violates this law or regulations that are given by virtue of this law will be liable to fines or imprisonment for a term not exceeding two years. Who has acted negligently will be liable to fines or imprisonment for a term not exceeding six months. Who is accessory thereto, shall be liable to the same penalty.

In particular situations the King can give more detailed regulations of exceptions from punishment in condition to this law or to the Military penal code, the 22 of May 1902, § 107.

The chemical weapon convention opens for a wider jurisdiction than the Landmine convention (see 'Jurisdiction, Criminal Law', below). The law only permits prosecution of Norwegian citizens for actions committed outside the Norwegian territory. Thus, business entities can be prosecuted for actions that violate these two laws.

Military Law

§ 107 in the military penal code address the other conventions that prohibit use of forbid certain types of weapons:

§ 107. Any person who use weapons against the hostile Party that are prohibited according to the international agreements that Norway has agreed upon or is accessory thereto, shall be liable to imprisonment.

This section can be used to prosecute business entities as what is stated in § 48 a the Penal Code, but only in wartime. That also means that the possibility to use § 48 a can be different in time of peace and in time of war and that is because of the possibility to use a primary penalty provision. Therefore, sections 107 and 48 cannot be used in some situations.

Following the argument in section 1 in this survey, it seems that it is possible to prosecute business entities in Norway for violations of the parts of international law that concerns slavery, torture, forced labour and forced displacement. .

New penal code

Work to revise the Norwegian penal code is in progress; a commission has made an inquiry and have made proposals of new penal provisions that may introduce quite widespread changes from existing practice. Among other issues, the commission suggest that genocide, war crimes, and crimes against humanity will have their own penal provisions. The Justice Department also suggests a penal provision for torture. There seems to be no significant opposition against these proposed changes.

§ 48 a in the Norwegian penal code, as described above, gives the possibility to persecute business entities. It can only be used for crimes that have provisions in the same code or in other laws in the domestic criminal legislation. A business entity can be liable for actions made by the management, employees or commissioners/co-workers. The punishment will be a fine. The enterprise may also by a judgement be deprived of the right to carry on business or may be prohibited from carrying it on in certain forms.

III. Alternative Mechanisms: Civil Law/Tort:

7. Are there any bases in the Norwegian tort law (civil law) for suing individuals and/or business entities for violations of international law?

Civil law in Norway does not give many opportunities to sue for violations of international law. The Criminal Code is the preferred arena for such crimes, but there are very few, if any, actual cases from which to draw conclusions.

The thresholds for triggering actions are different in civil and criminal law. One of the major differences between them is the burden of proof.

There is a theoretical option to get to violators by suing them for damages for the harm the violation has resulted in. The code of compensation for damage (1969-06-13-26) sets the options for this. (This law has not been translated into English, so the following is just a description.)

There are possibilities to get compensation for personal bodily injury, loss of future income and for the assumed future expenses that will be debited to the harmed person (§ 3-1.)

If the harmed person is injured in a lastingly and considerable way the person is entitled to compensation for that injury (§ 3-2.).

Compensation for damage of property and other capital detriment shall cover the financial loss that has arisen (§ 4-1.).

It is also possible to demand this kind of compensation in connection with a criminal trial, but the parameters for this exists in another law.

Civil law in the Norwegian legislation does not offer many options to sue violators of international law. It is, as described above, only possible to get compensation for the pain the victim has suffered or for the financial loss that might have occurred. Still, there is no tradition in the Norwegian courts to set damages with high amounts. Thus it seems that the civil law system in Norway is not a very developed tool to handle grave violations of international law.

8. What types of causes of action might be asserted against a business entity with respect to actions committed outside Norway, but which involve a business entity that is domiciled in your jurisdiction?

If a business entity domiciled in Norway are involved in actions that are committed outside the country it is possible to bring both a civil and a criminal action against this business entity. In both cases it is possible because the business entity is domiciled in Norway. It is also required according to criminal law that the action also has to be punishable according to the law of the country in which it is committed. To find all the jurisdictional requirements, see below 9.

The only examples identified for the survey concerned business entities domiciled in Norway and involved in corruption abroad. One concerns a shipping-business, DSND Offshore, accused of bribing Finnish officials. In that case there were only the individual officials of the company that were prosecuted, not the company as an entity. All the officials were acquitted. The trial took place in a Finnish court. **Did it apply Norwegian law? If not, is it relevant here?**

The other situation concerns the construction company Veidekke ASA. Veidekke was the former parent company to a company called Nor-Icil, accused of bribing the Minister of Energy in Uganda. So far has nobody been prosecuted and the inquiry has been focused on if this corrupt action has influenced a dam-enlargement project in Uganda.

IV. Jurisdiction:

9. On what bases do the courts of your country assert jurisdiction over criminal and civil defendants?

Criminal law

Norwegian criminal law is applicable to acts committed abroad by any Norwegian national or any person domiciled in Norway when the act is a felony also punishable according to the law of the country in which it is committed, and the offender is resident in the realm or is staying therein (§ 12). Unless it is otherwise specially provided Norwegian criminal law shall be applicable to acts committed in the realm (§ 12).

Thus, jurisdiction in criminal law is determined by the answers to the following questions:

- Where was the crime committed?
- What was the nationality or residence of the offender?
- What kind of crime was committed?

If the crime is committed outside Norway it has to be determined if the felony also is punishable according to the law of the country in which it is committed. It has no significance if the criminal action is declared to be statute-barred according to the legislation of the other country. The King [i.e. the Cabinet] can decide to prosecute in situations when the crime is committed outside Norway and the offender is a non-Norwegian.

General Penal Code

§ 12. Unless it is otherwise specially provided Norwegian criminal law shall be applicable to acts committed;

1. In the realm, including

- a) Any installation or construction placed on the Norwegian part of the continental shelf and used for exploration for or exploitation or storage of submarine natural resources,
- b) Constructions for the transport of petroleum resources connected with any installation or construction placed on the Norwegian part of the continental shelf,
- c) The security zone around such installations and constructions as are mentioned under a and b above,
- d) Any Norwegian vessel (including a Norwegian drilling platform or similar mobile installation) in the open sea and,
- e) Any Norwegian aircraft outside such areas as are subject to the jurisdiction of any State.

2. On any Norwegian vessel or aircraft wherever it maybe, by a member of its crew or any other person travelling on the vessel or aircraft; the term vessel here also includes a drilling platform or similar mobile installation.

3. Abroad by any Norwegian national or any person domiciled in Norway when the act;

- a) Is one of those dealt with in chapters 8, 9, 10, 11, 12, 14, 17, 18, 20, 23, 24, 25, 26 or 33 of this code or sections 135, 141, 142, 144, [147 a, 147 b], 169, 192 to 195, 197 to 199, 202, 203, 204 first paragraph d, 222 to 225, 227 to 235, 238, 239, 242 to 245, 291, 292, 294 item 2, 317, 326 to 328, 330, last paragraph, 338, 342, 367 to 370 or 423 and in any case when it,
- b) Is a felony or misdemeanour against the Norwegian State or Norwegian state authority,
- c) Is also punishable according to the law of the country in which it is committed or,
- d) Is committed in relation to the EFTA Court of Justice and is included among those dealt with in section 163, cf, section 167 and section 165, of the present Act, or sections 205 to 207 of the Courts of Justice Act.
- e) Is punishable according to the Law of Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1994-05-06-10) § 5,
- f) Is punishable according to United Nations Convention on the Law of the Sea of 10 December 1982, article 113,

- g) Is punishable according to the Law of Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1998-07-17-54) § 5 or,
- h) Is punishable according to the Law of the Prohibition of Gender Mutilation (1995-12-15-74)

4. Abroad, by a foreigner when the act either,

- a) Is one of those dealt with in sections 83, 88, 89, 90, 91, 91 a, 93, 94, 98 to 104 a, 110 to 132, 147 a, 147 b, 148, 149, 150, 151 a, 152 first cf. second paragraph, 152 a, 152 b, 153 first to fourth paragraphs, 154, 159, 160, 161, 169, 174 to 178, 182 to 185, 187, 189, 190, 192 to 195, 217, 220, 221, 222 to 225, 227 to 229, 231 to 235, 238, 239, 243, 244, 256, 258, 266 to 269, 271, 276, 291, 292, 324, 325, 328, 415 or 423 or of this code or section 1, 2, 3, or 5 of the Act relating to defence secrets,
- b) Is a felony also punishable according to the law of the country in which it is committed, and the offender is resident in the realm or is staying therein or,
- c) Is committed in relation to the EFTA Court of Justice and is included among those dealt with in section 163, cf. section 167 and section 165, of the present Act, or section 205 to 207 of the Courts of Justice Act or,
- d) Meet the requirements in the Law of Implementation of the Agreement on Illicit Traffic by Sea in Narcotic Drugs and Psychotropic Substances 31 of January 1995 (1997-06-13-47).

In cases in which the criminality of an act depends on or is influenced by any actual or intended effect, the act shall be regarded as committed also where such effect has occurred or is intended to be produced.

§ 13. In the cases dealt with in section 12, item 4, litrae (a) and (b), a prosecution can only be instituted when the King so decides.

In the cases dealt with in section 12, item 4 (b), a prosecution may not take place unless there is also power to impose a penalty according to the law of the country in which the act was committed. Nor may a more severe penalty be imposed than is authorized by the law of the said country.

The first and second paragraphs shall not apply when a criminal prosecution in this country takes place in accordance with an agreement with a foreign State concerning the transfer of criminal proceedings.

In every case in which a person punished abroad is convicted of the same offence in this country, the penalty already served shall as far as possible be deducted from sentence imposed here.

Comment

In this area, it is much more uncertain how the revised criminal code will turn out. Two issues stand out. One is about the requirement of double legislation of punishment, in Norway and in the country where the crime was committed. The other concerns the question of which crimes shall be, and when they shall be, declared as a crime statute-barred [meaning?].

Civil law

The provisions that state the jurisdiction in general in Norwegian civil law are in the Civil Suit Act (1915-08-13-6). This law has not been translated into English by the authorities, what follows are descriptions.

The conclusive question to determine jurisdiction in civil law is where the defendant has her residence or temporary personal presence (§§ 18 and 19). What determines the jurisdiction to sue a business entity is where the board of directors has its seat (§ 21).

Foreigners can be sued in Norwegian courts if they run any kind of business activity in Norway (§§ 27 and 28). That is if they have an obligation to fulfil a claim here (§§ 25 and 26) or if they are sued to compensate for damage that have occurred in Norway. According to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, (Lugano on 16 September 1988), it is possible to sue foreigners from the contracting parties in Norwegian courts if they own property in the country.

10. If plaintiffs wanted to sue a business entity in the Norwegian jurisdiction, what are some of the jurisdictional and procedural obstacles that they (and their lawyers) might face?

Criminal law

According to § 77 the Penal Code “Criminal acts shall be subject to public prosecution unless it is otherwise provided”. The Penal Code states what is the required respite for an application.

§ 80. An application for public prosecution must be submitted not later than six months after the person entitled to apply has acquired knowledge of the criminal act and who has committed it. In case of a claim for a declaration of invalidity the corresponding time limit is three years. Section 146 of the Courts of Justice Act shall apply correspondingly.

In the case of persons whose right to apply is based on section 78 and 79, the time limit does not begin to run until their right is established.

The Public Prosecutor decides to start a preliminary investigation and if an indictment should be brought. The Public Prosecutor makes these decisions when not the King or the Prosecutor General is to do it, § 66 the Criminal Process Act (1981-05-22-25).

This law has not been officially translated into English, what follows are descriptions:

The Criminal Process Act do not regulate when and on what grounds a criminal case can be dismissed, but one can find some conditions to reject a criminal-case in § 74 paragraph 1 and 5. One of these to conditions is the evaluation of evidence; whether sufficient or not.

Both domestic and foreign individuals and organisations can initiate a criminal proceeding by an application for public prosecution, because it is a public task to pursue criminal actions. There are a few exceptions, but these crimes are not the ones that are in focus in this survey. One thing that may happen if a criminal case is initiated by someone that are not the actual victim of the crime is will be easier to use the doctrine of *forum non conveniens*.

It is possible for the victim to get qualified counsel according to § 107 a in the Criminal Process Act. So far this is most used in instances of sexual offences and grave violence, including murder (victim's relatives) but it seems it is not limited to these. When to decide in what other situations the victim can get counsel the court has to make a concrete judgement of the victims own situation (Bjerke m fl p 424). According to the law it will be important if there is reason to believe that the criminal act has caused considerable harm to the victims body or health.

Civil law

There are some absolute conditions that have to be attained to if Norwegian courts are to engage a trial of a case. As a basic principle these conditions have to exist at the time the summons is handed to the court. If not, the court will dismiss the case.

The court must be competent in an objectively, local, and functional way. The court has to check its functional competence by examine if the decreeted conciliation has taken place. Determining the legal home court, i.e. the local competence of the court, is dependent on two circumstances. When the law do not require a specific legal home court, the defendant can choose another court than the one that the legal action was brought to (§ 36 Civil Suit Act). Sometimes the courts local competence depends on the fact that the defendant has to give its consent (§ 92).

There are several conditions that establish the court's objective competence.

- A judgement of the same legal matter that is in force cannot already exist (§ 163).
- The court is not competent if the same parties bring another legal action about the same legal object (§ 64).
- The parties have to have the capacity to bring a legal action (§§ 40 and 41).

The objective capacity also deals with what types of causes one can bring to a court.

- It can concern a legal condition or a legal claim (§ 53 and 54).
- The need for a judgement can depend on an uncertainty about the legal situation or if it is reason to believe that one party do not want or are not able to fulfil its obligations (Hov p 196).
- The plaintiff must have a legal claim that has a legitimate material relation to the defendant (Hov p 213).
- The summons has to fulfil the requirements that are set up by the law (§ 300). The court has to check out what respites that shall be in affect.

Norwegian laws set up different respites and the courts always have to take them into consideration (Hov p 105). The parties' presence in the court proceedings will have impact on what the court shall do. Different types of absence will have different results, for example the case can be dismissed or the court can bring the case to an end by a judgment caused by the absence (Hov p 105). The competence of the court also depends on the existence of an agreement of arbitration (§ 452 paragraph 3).

The plaintiff is liable to pay for the court costs for a case that the plaintiff has relinquished from (§ 67 paragraph 3) or has been absent from (§ 346 paragraph 3). A plaintiff that is a foreigner has, on request of the defendant, to secure for its one-court costs (§ 182).

Two or more lawsuits may be accumulated (§§ 68-72) or united (§ 98 paragraph 1). Accumulation can be done when there are more than one plaintiff or defendant and when several legal conditions can be settled in the same judgment. Accumulations of lawsuits are only possibly in the lowest authority. When one of the parties is a party in all the cases they can be united.

One can get access to qualified counsel through free legal aid according to the Legal Aid Code (1980-06-13-35). This law has not been officially translated into, what follows is a description:

The law cannot be employed in a criminal trial (§ 1).

Legal aid is given to individual persons and as a basic rule not to enterprises or organisations (§ 4).

The legal aid can be received in situations outside the court proceedings (§ 12), before the courts as to legal counsel or as a deduction for legal fees (§ 16) and as deduction for filing fees and other fees (§ 26).

According to Art. 2, the Convention about civil legal action (1954-03-01) every citizen in the contracting countries shall have the same access to free legal aid as Norwegian citizens.

11. Do the courts in Norway sometimes decline to exercise jurisdiction over matters where the events occurred in another country and/or the majority of witnesses and the bulk of other evidence is outside of your country, thereby making it more convenient for the parties to litigate in the courts of another jurisdiction (sometimes referred to as the doctrine of *forum non conveniens*)?

Only one example is identified, when in July 2002, the youth organisation of the Labour Party, AUF, attempted to get the Prosecutor General to indict Israeli PM Ariel Sharon for grave violations of international law (The Massacres of Civilians in the Sabra and Chatilla Refugee camps in Beirut, Lebanon, 1982). A few days later the Prosecutor General rejected this and one of the arguments was that all of the witnesses were in another country and also that Norwegian authorities would have problems to investigate.

12. Would the doctrine of sovereign immunity be applicable to protect a state-owned enterprise?

I have not found any provisions or indications what so ever that gives state-owned enterprises sovereign immunity in Norwegian courts.

References

Jensen Pål, Vilkår for foretakstraff, Oslo 19XX
Nygaard, Juridisk teori, Oslo 19XX,
Andenæs, Alminnelig strafferett, 3 utgave, Oslo 1991
Eskeland Ståle, Strafferett, Oslo 2000,
Hov, XXX, Oslo 19xx

Abbreviations used in reference

Ot Prp Document made by Parliament in preparation of deciding on new law

NOU Document from the Government to the Parliament, discussing specific issues and outlining and suggesting policy options

Rt Journal of legal records