

ABSTRACT

This study deals with the theoretical question of state jurisdiction under international law. Jurisdiction is defined as the legal title for the exercising of state power which may affect the rights and obligations of persons.

The study analyzes jurisdiction, explores the possibilities and limits on the use of the various jurisdictional titles and their interplay.

International jurisdictional law is mainly governed by customary international law. Some treaties have been concluded in the field of international criminal law.

This study examines the jurisdictional issues focusing mainly on the criminal law. This corresponds with the selection of practical examples from the criminal law, which are listed by each of the jurisdictional titles. The practical impact of the jurisdictional theory on national law is illustrated using the specific provisions of the Czech Criminal Code, Austrian Criminal Code and German Criminal Code.

States as sovereign subjects of international law are entitled to exercise jurisdiction not only within their own territory, but also, in accordance with international law, outside their own territory. The jurisdiction of subjects of international law may come into competition.

In spite of the fact that the States are sovereign subjects of international law they can not exercise their power regardless of other subjects of international law. States may exercise their jurisdiction if they have substantial and procedural reasons for application of jurisdiction.

Jurisdiction is structured and consists of substantive and procedural titles which constitute one fully-fledged jurisdictional title together. Only on the basis of a fully-fledged jurisdictional title is the State allowed to affect the rights and obligations of natural or legal persons. International jurisdictional law does not allow the subject of international law to apply its jurisdiction if it meets none or

alternatively only one of the conditions (substantive or procedural jurisdictional title). Such an exercise of jurisdiction would not be based on any legal ground and as such would constitute a relationship of relative international liability between the infringer and the subject of international law in whose internal affairs the infringer intervened.

The procedural jurisdictional title is the jurisdiction to enforce. The enforcement jurisdiction entails in it the right of the State to exercise its power, to require compliance and to punish non-compliance with its national law, either by the courts or by executive, administrative, police or other non-judicial measures.

From the substantive point of view jurisdiction is the right of the State to prescribe a concrete person the rights and obligations under national law. The jurisdiction to prescribe expresses always a substantial and effective link between the State and the person in its jurisdiction. If the link is sufficiently substantial and effective, the State is entitled to subject the person to its jurisdiction. If the link between the State and the person is not sufficiently substantial and effective, the State is not entitled to extend its jurisdiction over the person.

The jurisdiction is a concomitant of sovereignty, it does not reflect the full rights of the subject of international law, but it is only an expression of its right and obligations to exercise its power.

The study deals with the historical development of jurisdiction since 17th century and follows the decline in importance of personal jurisdiction and the growing importance of territorial jurisdiction. This was connected with the establishment of modern states in the period after the Treaty of Westphalia, concluded in the year 1648.

Substantive jurisdictional titles are divided into three basic groups, namely territorial, extraterritorial and universal jurisdiction.

The State as a territorial sovereign has territorial jurisdiction in its territory and all persons and things located in its territory are subject to it.

The State applies territorial jurisdiction within its territory to secure national security, public safety and order, public health, morality and last but not least to protect the rights and obligations of natural and legal persons. When exercising its power the State is obliged to respect its national law and obligations under international law.

When examining cross-border offences the study distinguishes between subjective and objective territorial jurisdiction. The study deals with the protection of competition with a European Community element, namely with the judgement of the European Court of Justice in the joint cases 89/85, 104/85, 114/85, 116/85, 117/85, 125/85 to 129/85 of *Zellstoff v. Commission*.

Another area closely related to territorial jurisdiction is the gathering of evidence for judicial proceedings. When dealing with cross-boarder disputes it is often necessary to submit documents or other evidence, that is, at the relevant time, abroad and therefore outside of the jurisdiction of the State of the judicial proceedings. In respect of this the study deals with international judicial cooperation and the pre-trial discovery of documents in common law jurisdiction.

The study deals with restrictions on territorial jurisdiction. The study analyzes diplomatic privileges and immunities and the status of an international organisation and its workers in the State within which it is established. The relationship between a State and an international organisation is illustrated by the analysis of the European Court of Human Rights' judgement in *Beer and Reagan versus Germany* (App. No. 28934/95) and *Waite and Kennedy versus Germany* (App. No. 26083/94).

Territorial jurisdiction complements the extraterritorial jurisdiction. While territorial jurisdiction is based on territorial title, extraterritorial jurisdiction is based on different legal titles.

The first of the extraterritorial jurisdiction group is personal jurisdiction which is further divided into active and passive personal jurisdiction.

Active personal jurisdiction is based on a sufficiently close and effective link between the State and a natural or legal person, which may not only be citizenship but also some other sufficiently close and effective link.

In connection with active personal jurisdiction the study deals with the dual nationality of natural persons and the nationality of legal persons.

Passive personal jurisdiction is based on the nationality of the victim of a crime. The fact that a person falling within the active personal jurisdiction of the State is a victim of a crime abroad constitutes a legitimate State interest in protecting such a person. It is a sufficient reason for the formation of a jurisdictional relationship between the suspect and the State in whose active personal jurisdiction is the victim.

Another jurisdiction title which belongs to the group of extraterritorial jurisdiction is the jurisdiction of registration. The jurisdiction of registration is a jurisdictional title for the exercising of state power in international territories. The jurisdiction of registration is further divided into jurisdiction of the state of the flag and jurisdiction of matriculation in the state of the registration.

The jurisdiction of the state of the flag shall apply on board ships and aircrafts, as well as inside research stations. The jurisdiction of the state of the flag is delimited and linked to the object (ship, aircraft or research station).

The jurisdiction of matriculation in the state of the registration is not delimited and linked to the object (ship, aircraft or research station). Jurisdiction is based only on the act of registration. This jurisdictional title can be applied for example to registered Antarctica's research expeditions.

The group of extraterritorial jurisdiction includes the protective jurisdiction which protects important interests of a particular state from attacks abroad.

The delegated jurisdiction is based on a legal title which transfers jurisdiction from the territorial sovereign to another subject of international law (a particularly state or international organisation). On the specified part of the territory of territorial sovereign is applied the national law of the State to which

the jurisdiction was delegated. The jurisdiction can be delegated mainly by an international treaty, but also by a resolution of the Security Council of the United Nations.

The last title of extraterritorial jurisdiction is vicarious jurisdiction. Vicarious jurisdiction is subsidiary to territorial jurisdiction. On the basis of vicarious jurisdiction the state authorities apply national law in cases where they catch on the state territory a person who has committed a crime but the cause and consequences of this crime occurred abroad. This jurisdictional title may be used under the following two cumulative conditions: (i) double criminality; and (ii) that the offender cannot be extradited for a reason not connected to the nature of the crime to the State in whose territory the crime was committed.

Apart from territorial and extraterritorial jurisdiction international jurisdictional law also recognizes universal jurisdiction. While territorial and extraterritorial jurisdictions protect the interests of subjects of international law, universal jurisdiction protects the interests of the international community as a whole.

Universal jurisdiction can be divided into the traditional universal jurisdiction, universal jurisdiction in absentia and unconditional universal jurisdiction.

The traditional universal jurisdiction is a universal jurisdiction exercised against a person suspected of committing an international offence who is in the enforcement jurisdiction of the State. This means that the person is present either in the territory of the State, or is caught by the State in international territories.

When criminal proceedings are conducted by the State through the title of universal jurisdiction in the absence of the person suspected of committing an international offence, because the person does not fall within the State's enforcement jurisdiction, it constitutes an exercise of universal jurisdiction in absentia.

The combination of traditional universal jurisdiction and a universal jurisdiction in absentia cumulates in the absolute universal jurisdiction.

By the application of jurisdictional titles the subjects of international law should ensure the following general principles: (a) the principle of non-intervention; (b) genuine connection; (c) proportionality; (d) accommodation and mutuality; (e) equity (*ex aequo et bono*); (f) prohibition of abuse of rights; and (g) the responsibility or duty to protect.

Compliance with these general principles should help to solve jurisdictional conflicts between the subjects of international law quickly and effectively. It should lead to reasonable exercise of jurisdiction in the international community.

Finally the study deals with exercise of jurisdiction on the sea and in the Antarctica and the Arctic.

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