



The EPPO – Learning from existing international practice

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The Issue

- Concurrent jurisdiction on the European and international level
- What can be learned from experiences made internationally?

Elements

1. How is concurrent jurisdiction dealt with in the statutes/ Rules of Procedure internationally?
 2. What is stipulated in case of non-compliance?
 3. How have the mechanisms worked in practice?
- What can be learnt from this for the EPPO?

Concurrent Jurisdiction

Primary Jurisdiction

- International prosecution has always priority, States are obliged to defer
- Rationel: States are not in a position to prosecute
- Article 9 ICTY Statute + Rule 9 RoP
- Non-compliance? Refer case to Security Council (Rule 11)

Complementary Jurisdiction

- International court is one of last resort
- Rationel: States are in a better position to prosecute. Only unwillingness or inability trigger int. Jurisdiction
- Article 1 and 17 of Rome Statute
- Non-compliance? Refer case to Assembly of State Parties or SC

Concurrent jurisdiction in practice

ICTY

- Dusko Tadic prosecuted under national law in Germany
- ICTY asked for deferral but Germany had not implemented corresponding laws (SC Res. 827)

ICC

- Situation in Libya – arrest warrants for Saif Gaddafi and Al-Senussi
- Situation referred to SC – ignored by Libya

Summary – International Level

Theory:

- Jurisdiction clearly stipulated in the statutes
- Match well the goals and purposes of the relevant court/tribunal

Practice:

- Request of prosecutor supported by order of court/tribunal
- No enforcement power in case of non-compliance
- Prosecutor must make political choices and jeopardizes legitimacy

Concurrent Jurisdiction at the EPPO

Priority jurisdiction (Art.19)

- Right of evocation (Art.21a)

Non-compliance?

- Not stipulated in proposal
- Which court or tribunal to back up right of evocation?

Proposals

- Delegated Prosecutor enforces request for deferral in the national court of the state from which deferral is sought
 - BUT: Delegated Prosecutor = national prosecutor
- Permanent Chamber orders the member state to comply
 - BUT: Not foreseen by proposal
 - BUT: Political, not legal solution
- Infringement procedure (Art. 258 TFEU) for breaching the Regulation setting up the EPPO.
 - BUT: Average duration of infringement procedure: 31 months → Rights of the defendant?

Final remarks – Lessons identified

- ICTY and ICC
 - Strong enforcement mechanisms are lacking
 - Large discretion of prosecutors to choose their cases
 - Uncertainty, illegitimacy and loss of power.
- The EPPO
 - Non-compliance not addressed
 - No court
 - Clear rules on deferral and their enforcement are needed
- Problems visible at int. stage – EPPO can avoid similar issues on EU level