

# JUR5570 - International Criminal Law

## Spring 2010

Please answer all four questions below:

In 2000-01, Petunian governmental forces committed widespread and systematic crimes amounting to crimes against humanity against an ethnic minority group, the Minorians. Petunia's Minister of Foreign Affairs, Mr. Petru, was widely believed to have personally ordered some of the gravest crimes, including a massacre in August 2001, where approximately 1,200 innocent Minorians were killed.

In October 2003, Mr. Petru went on a holiday to Spain, to ride his bicycle in the Pyrenees. The minister said he was confident that Spanish authorities would not arrest him, as he was immune to such arrest. To his surprise, however, Mr. Petru was arrested by Spanish police once he put his foot on Spanish soil.

Two months later, in December 2003, a Spanish judge d'instruction decided that Mr. Petru be prosecuted. Mr. Petru, who was still incumbent Minister of Foreign Affairs, appealed the decision. He argued that Spanish courts lacked jurisdiction and that he was immune under international law. The Spanish Chief Prosecutor, on his part, argued that the issues of jurisdiction and immunity could not be invoked by the minister himself, only by his home state. In any case, Petunian authorities had remained silent on the matter, and this should be seen as a tacit waiver of both jurisdiction and immunity, preventing the minister from raising the issues.

1. Can the Minister of Foreign Affairs raise the issues of jurisdiction and immunity before Spanish courts?

After a Spanish court in May 2004 had found that Spanish courts had jurisdiction and that the minister was not immune, the Petunian government, which initially had not wanted to intervene in the matter, decided to bring the matter before the International Court of Justice. Here Petunia argued that because the alleged crimes had been committed outside Spain and neither the minister nor any of the victims were Spanish citizens, Spanish courts lacked jurisdiction under international law. The fact that the Spanish penal code provided for jurisdiction was irrelevant. Spain, on its part, argued that Spanish courts had jurisdiction due to the gravity of the crimes.

2. Do Spanish courts have jurisdiction over the alleged crimes?

Petunia further argued that even if Spanish courts had jurisdiction, an incumbent Minister of Foreign Affairs enjoyed absolute immunity before national courts. Spain argued, on its part, that the crimes in question were personal acts and therefore not covered by any immunity rule.

3. Is the Minister of Foreign Affairs immune before Spanish courts?

In January 2006, a new democratic government came to power in Petunia. This government soon initiated investigations into the crimes committed by the former regime. Upon investigation, the Petunian Chief Prosecutor decided to prosecute inter alia Captain Marco. In January 2000 the Captain had, as member of a military group, participated in a campaign with the purpose to rid a certain region of Minorians. During this campaign, in which thousands of Minorians were forcibly transferred out of the region, more than 200 Minorians were killed. All though it was clear that Captain Marco had not personally participated in any of the killings, the Chief Prosecutor argued that he could be held responsible for them because it was foreseeable that such a campaign could lead to killings.

4. Explain how a person like Captain Marco can be brought to justice under the doctrine of joint criminal enterprise. What are the main criteria for holding someone responsible under this doctrine? Does the Petunian penal code, which has material penal provisions that are practically identical to those of the Rome Statute of the International Criminal Court, cover such responsibility?

