

Article 5. If a person prosecuted for an offence has served a part or the whole of the sentence pronounced against him abroad for that offence, the sentence he has already served shall after examination be deducted from the sentence to which he is liable in Finland for that offence or shall be deemed to be equivalent to such a sentence. Nevertheless, if under Finnish law the offence is punishable by dismissal, ineligibility for public office, temporary removal from office or loss of civic rights, such sentences shall be pronounced against the offender in Finland.

Foreign sentences in criminal matters cannot be executed in Finland.

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Note. Chapters 41-44 of this Code, which are mentioned in article 4, above, deal with the following crimes: violations of rules concerning religion; violations of rules relating to the safety of the State and to the maintenance of public order; violations of rules concerning morality; violations of rules for the protection of life, health, and property.

Chapter 12 of the Finnish Code provides for the punishment of treason and other crimes against the safety of Finland, if the offender is a Finnish national or a resident of Finland, or if he is in the public service of Finland.

Article 13 of chapter 24 of the Code contains provisions relating to the sinking or stranding of a ship, the punishment—imprisonment from one to eight years—depending on the intention of the offender.

21. France

(a) CODE OF CRIMINAL PROCEDURE, 17 NOVEMBER 1808, AS REVISED. PETITS CODES DALLOZ, "CODE D'INSTRUCTION CRIMINELLE" (43RD EDITION, 1951), PP. 5-7. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 5. A French national who, being outside French territory, commits a crime punishable under French law may be prosecuted and judged in France.

A French national who, being outside French territory, commits an act termed in French law a misdemeanour (*délit*), may be prosecuted and judged in France if the act is punishable under the legislation of the country in which it was committed.

It shall be immaterial that the accused person has acquired French nationality only after committing the crime or misdemeanour.

Nevertheless, a person accused either of a crime or of a misdemeanour shall not be prosecuted if he proves that he has been finally judged abroad and, if convicted, that he has served his sentence, or been exempted therefrom under a statute of limitations, or pardoned.

Where an offence is committed against a private person of French or foreign nationality, proceedings may be taken only on the application of the public prosecutor and after a charge has been preferred by the aggrieved party or a French authority has been officially notified by an authority of the country where the offence was committed.

No proceedings may be taken before the accused returns to France, save for the crimes set forth in article 7 hereunder.

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Article 6. Legal proceedings shall be instituted on the application of the public prosecutor of the place where the accused resides or is to be found.

Nevertheless, the Court of Cassation may, at the request of the public prosecutor or of the parties, refer the case for hearing to a court or tribunal nearer to the place of the crime or misdemeanour.

Article 7. An alien who, being outside French territory, commits either as principal or accessory a crime against the security of the State, or counterfeits the seal of the State, national currency or legal tender, national papers, or bank notes authorized by law, may be prosecuted and judged according to the provisions of French law if he is arrested in France or the Government secures his extradition.

No proceedings may be taken against an alien for a crime or misdemeanour committed in France if the accused proves that he has been finally judged abroad and, if convicted, that he has served his sentence, or been exempted therefrom under a statute of limitations, or pardoned.

Note. The above text includes the following revised versions of the 1808 text: (1) Article 5—text revised by Act of 26 February 1910; (2) Article 6—text revised by Act of 27 June 1866; (3) Article 7—text revised by Acts of 27 June 1866 and 3 April 1903.

The prior texts of *article 5* were as follows:

Text of 1808: "A French national who commits outside French territory a crime against the security of the State, or counterfeits the seal of the State, national currency or legal tender, national papers, or bank notes authorized by law, may be prosecuted, judged and punished in France according to the provisions of French law."

Text revised by the Act of 27 June 1866: "A French national who, being outside French territory, commits a crime punishable under French law may be prosecuted and judged in France."

"A French national who being outside French territory commits an act termed in French law a misdemeanour (*délit*), may be prosecuted and judged in France if the act is punishable under the legislation of the country in which it was committed."

"Nevertheless, a person accused of either a crime or a misdemeanour shall not be prosecuted if he proves that he has been finally judged abroad."

"Where an offence is committed against a private person of French or foreign nationality, proceedings may be taken only on the application of the public prosecutor and after a charge has been preferred by the aggrieved party or a French authority has been officially notified by an authority of the country where the offence was committed."

"No proceedings may be taken before the accused returns to France, save for the crimes set forth in article 7 hereunder."

Paragraph 3 of the 1866 Act was further amended by the Act of 3 April 1903 which added the following phrase at the end of that paragraph: "and, if convicted, that he has served his sentence, or been exempted therefrom under a statute of limitations, or pardoned".

The 1808 text of *article 6* was as follows: "This provision may be extended to cover aliens who, as principals or accessories to any of the said crimes, have been arrested in France or whose extradition has been secured by the Government."

The 1808 text of *article 7* was as follows: "A French national who commits outside the territory of the realm a crime against a French national may, on his return to France, be prosecuted and judged there, provided that he has not been prosecuted and judged abroad and that the aggrieved French national prefers a charge against him."

- (b) PENAL AND DISCIPLINARY CODE OF THE MERCHANT MARINE, 17 DECEMBER 1926. DALLOZ, "RECUEIL PÉRIODIQUE ET CRITIQUE MENSUEL", 1927, PART 4, P. 270; DALLOZ, "CODE DE COMMERCE" (47TH EDITION, 1951), PP. 317-318, 322-323, 330-331. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

Article 1. The provisions of this Act shall apply in their entirety, regardless of the whereabouts of the ship, and save as otherwise provided in the Code of Military Justice for the Naval Forces (*Code de justice militaire pour l'armée de mer*), to:

(1) All persons, irrespective of nationality, entered on the list of the crew of a French ship, other than a warship, which is registered in France or Algeria and has retained its home port there, the said persons to be subject to these provisions from the day on which their names are entered on the ship's books (*embarquement administratif*) up to and including the day on which their names are removed therefrom;

(2) All persons, irrespective of nationality, who are physically present on board any ship, as defined in sub-paragraph (1) above, either as *bona fide* passengers or with the object of making the voyage, these provisions to be applicable to them throughout the time of their presence on board.

Members of the crew and seamen who, as a result of shipwreck or absence without leave or abandonment, are travelling on board as passengers for the purpose of repatriation, shall continue to be subject to the provisions of this Act, in the event of the loss of the ship, until they can be handed over either to a French authority or to a local foreign authority. The same shall apply to all other persons on board if they have asked to be given the same treatment as the crew.

The above provisions notwithstanding, members of the armed land or naval forces who are embarked in any capacity whatsoever on any of the ships covered by sub-paragraph (1) above, shall remain subject to the jurisdiction of the military tribunals of the Army or Navy so far as any offence or crime referred to in this Act is concerned.

The procedure to be followed in the investigation of and the inquiry into the offences or crimes referred to in the preceding paragraph, as well as the conditions governing the punishment of any breaches of discipline which are punishable under this Act and which are committed by members of the armed land or naval forces, shall be laid down in a decree countersigned by the Minister of the Merchant Marine, the Minister of War, the Minister of the Navy and the Minister of Colonies.

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Article 34. If the crime or offence is committed by or in complicity with the master of the vessel, the maritime registrar (*administrateur de l'inscription maritime*) or, in his absence, the officer commanding the nearest warship, if the crime or offence is committed outside France, Algeria or any of the French colonies, shall, as soon as he is informed of the offence, institute a preliminary inquiry in conformity with articles 32, 33, 35 to 39, 43 and 44 of the Code of Criminal Procedure.

Article 35. (As amended by the Legislative Decree of 29 July 1939, article 1 of the Act of 26 October 1940, and the Act of 5 June 1943.) If

the offence or crime referred to in article 34 is committed outside France, Algeria, Morocco, Indo-China or the West Indies, the maritime registrar or, in his absence, the officer commanding the warship, shall communicate the documents in the case, in a sealed envelope, to the Minister of the Merchant Marine who shall refer the matter to the judicial authority mentioned in paragraph 2 of article 37.

In similar circumstances and where required by the gravity of the offence or the safety of the ship or passengers, the maritime registrar or, in his absence, the officer commanding the warship, may order the master to be temporarily detained or returned to a French port and shall, in that case, acting so far as possible in concert with the shipowners, take the necessary steps to replace the master.

If the offence or crime is committed in France, Algeria or Morocco the maritime registrar shall, as prescribed in article 33, refer the matter to the Procurator of the Republic or to the president of the commercial maritime tribunal.

Article 36. (As amended by the Legislative Decree of 29 July 1939.) The Procurator of the Republic shall, if necessary, institute proceedings for the prosecution of crimes committed on French ships as described in article 1 as well as of the offences referred to in articles 46, 49, 50 to 53, 58 and 68 to 78.

In the case of offences covered by articles 46, 51 (paragraph 1), 52, 69 to 72, 74 (paragraphs 1 and 3) and 75 to 78, the Public Prosecutor (*ministère public*) may not institute proceedings except with the concurrence of the maritime registrar.

In the case of offences covered by articles 49, 50, 51 (paragraph 2), 53, 58, 68 and 73, the Public Prosecutor may institute proceedings only on the basis of the findings of the maritime registrar or after a time-limit of eight days has expired since he formally asked for these findings by registered letter.

The maritime registrar shall on his request be heard by the tribunal.

Article 36 bis. (Added by the Legislative Decree of 29 July 1939 and amended by article 1 of the Act of 26 October 1940 and by the Act of 5 June 1943.) The offences referred to in articles 39 to 43, 45, 54 to 57, 59, 62 to 67, 80 to 85, 87 and 87 *bis* shall be dealt with by the commercial maritime tribunals established under title IV of the present Act.

The provisions of the preceding sub-paragraph notwithstanding, jurisdiction to deal with offences covered by articles 80 to 85 and 87 shall be vested in the commercial maritime tribunals sitting in France and Algeria, to the exclusion of similar tribunals sitting in Morocco, Indo-China and the West Indies.

Article 36 ter. (Added by the Act of 20 August.) The maritime registrars and investigating officers (*commissaires rapporteurs*) shall be responsible for the investigation of offences within the competence of the commercial maritime tribunal and shall, in that capacity, possess the powers conferred on examining magistrates by the Code of Criminal Procedure, including the power to issue orders to appear (*mandats de comparution*), subpoenas (*mandats d'amener*), detention orders (*mandats de dépôt*) and warrants for arrest (*mandats d'arrêt*).

Likewise, any maritime registrar who is called upon to preside over a commercial maritime tribunal competent to try an accused, may issue

an order to appear, subpoena, detention order or warrant for arrest against the accused.

The provisions of the Code of Criminal Procedure relating to detention pending trial are applicable to persons accused of offences within the competence of the commercial maritime tribunals.

Article 37. (As amended by the Legislative Decree of 29 June 1939.) In the case of any crime or offence the injured party has the right to associate himself as a private complainant (*partie civile*) with the proceedings before the ordinary courts, in conformity with the provisions of the Code of Criminal Procedure. Article 183 of the said Code notwithstanding the injured party may not summon the accused directly before the criminal court (*tribunal correctionnel*) but must bring the case before the examining magistrate.

The competent jurisdiction is either that of the offender's residence, his port of debarkation, the place of his arrest, or else the port where the ship is registered.

Article 38. In an emergency, if the circumstances are as described in articles 63 (paragraph 1) and 80 to 83 of this Act and the offences are chargeable to one or more members of the crew of a foreign ship, the maritime registrar may, without prejudice to any measures which may be taken under ordinary law, detain the ship until a sum, the amount of which shall be fixed by him, has been deposited with the Seamen's Fund as a guarantee of the enforcement of the sentence. If the sentence is final and not executed, the said sum, after deduction of costs and civil damages, shall become the property of the Disabled Seamen's Fund.

For the purpose of ensuring the enforcement of these decisions the maritime registrar may apply to the port authorities to prevent the ship from leaving the port, or may himself order such physical measures as may be necessary to prevent its departure.

Article 79. If in circumstances other than those described in the Code of Military Justice for the Naval Forces, any person, by employing any means whatsoever, wilfully and with criminal intent causes any ship whatsoever to run aground or to be lost or destroyed, then that person shall be liable to the penalties prescribed in articles 434 and 435 of the Penal Code.

If the offender is in any capacity whatsoever responsible for the navigation of the ship or is acting as its pilot, he shall be liable to the maximum penalty applicable.

Article 80. Any master and any officer of the watch who violates the rules prescribed in the Maritime Regulations respecting lights to be shown at night or fog signals, or respecting the course to be followed or the manoeuvres to be executed on meeting another ship, shall be liable to imprisonment for a term of six days to three months, and to a fine of 2,000 to 12,000 francs or to one of these two penalties only.

Any pilot who violates the rules respecting the course to be followed shall be liable to the same penalty.

Article 81. If any of the offences referred to in article 80 or any other act of negligence attributable to the master, officer of the watch or pilot,

involves the ship or another ship in a collision or causes it to run aground or into a visible or known obstruction, or causes serious damage to the ship or its cargo, the offender shall be liable to imprisonment for a term of six days to three months and to a fine of 2,000 to 60,000 francs, or to one of these two penalties only.

If the offence leads to the loss of the ship or renders it totally unnavigable or causes the loss of a cargo, or causes serious bodily injury to or the death of one or more persons, the offender shall be liable to imprisonment for a term of three months to two years and to a fine of 6,000 to 72,000 francs, or to one of these two penalties only.

Article 82. If any member of the crew while on duty and not being the master, the officer of the watch or the pilot, commits any act of culpable negligence, or is remiss in his vigilance, or commits any other act of dereliction of duty, then, if owing to such act or remissness any ship is involved in a collision or runs aground or into a visible or known obstruction, or a ship or its cargo suffers serious damage, the person concerned shall be liable to imprisonment for six days to two months and to a fine of 2,000 to 12,000 francs, or to one of these two penalties only.

If the offence leads to the loss of the ship or renders it totally unseaworthy or causes the loss of a cargo, or causes serious bodily injury to or the death of one or more persons, the offender shall be liable to imprisonment for a term of six days to eight months and to a fine of 2,000 to 24,000 francs, or to one of these two penalties only.

Article 83. If after a collision has occurred any master fails to employ all the means at his disposal (to the extent compatible with the safety of his own ship, its crew and its passengers) to save the other vessel, its crew and its passengers from the peril created by the collision, then in such circumstances he shall be liable to a fine of 24,000 to 360,000 francs and to a term of imprisonment of one month to two years, or to one of these two penalties only.

If any master, not being compelled to do so by *force majeure*, leaves the scene of the disaster before assuring himself that assistance is no longer needed by the other vessel, its crew or passengers, or, the other vessel having sunk, leaves before he has done everything in his power to pick up the survivors, then the said master shall be liable to the same penalties as aforesaid. If one or more persons perish through the non-observance of the obligations referred to in this paragraph, the penalty may be increased to twice the amount stated.

If, after a collision has occurred and provided that it is possible without danger to the ship, crew or passengers, the master of either of the ships involved in the collision fails to give the master of the other ship the names of his own ship, its home port and its ports of departure and destination, then the said master shall be liable to a fine of 6,000 to 60,000 francs and to imprisonment for a term of six days to three months, or to one of these two penalties only.

Article 84. Any master who abandons his ship during a voyage, in case of danger, without first consulting the officers and leading members of the ship's crew, shall be liable to imprisonment for a term of six days to six months.

If any master fails to organize the rescue of the crew and passengers and to salvage the ship's papers, mail and the most valuable goods among its cargo, before abandoning ship in case of danger, he shall be liable to imprisonment for a term of one to two years.

Any master who, when forced to abandon ship, is not the last to leave, shall be liable to the penalty stated in the preceding paragraph.

Article 85. If any master who is able without serious danger to his ship, crew or passengers, to render assistance to any person, even an enemy, found at sea in danger of drowning, fails to render such assistance, he shall be liable to a fine of 6,000 to 36,000 francs and to imprisonment for a term of one month to two years, or to one of these two penalties only.

Article 86. (As amended by the Legislative Decree of 29 July 1939.) So far as the offences referred to in articles 80 to 85 are concerned, the maritime registrar may not refer any case to the President of the Maritime Tribunal unless an inquiry in which both sides shall be heard has first been conducted by him in accordance with conditions to be prescribed by decree.

Article 87. The provisions of articles 80 to 83 shall apply to all persons, including aliens, present on a foreign ship, if the offence is committed in French coastal waters and within the limits of French territorial waters.

The same provisions, as well as the provisions of article 78, shall also apply to any persons present on any ship or holding a navigation permit. In this case, the person steering the ship or vessel shall be deemed to be the master.

If any of the offences referred to in articles 80, 81 and 83 to 85 is committed by a person in command in irregular circumstances, as defined in article 70, the penalty shall be doubled.

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(c) AIR NAVIGATION ACT, 31 MAY 1924. "JOURNAL OFFICIEL", 3 JUNE 1924; "RECUEIL DALLOZ", 1925, IV, P. 41. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 10. The juridical relationships between persons on board an aircraft in flight are governed by the laws of the country under whose flag that aircraft flies in all cases in which territorial legislation would normally be applicable.

Nonetheless, in the case of a crime or offence committed on board a foreign aircraft, the French tribunals shall be deemed competent if the offender or the victim is of French nationality or if the aircraft has landed in France after the commission of the crime or offence.

The jurisdiction in such cases shall belong to the tribunal of the place of landing, if prosecution is initiated at the time of landing, or to the tribunal of the place of arrest if the offender is subsequently arrested in France.

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- (d) EXTRADITION ACT, 10 MARCH 1927. "JOURNAL OFFICIEL", VOL. 59 (1927), P. 2874; "RECUEIL DALLOZ", 1927, IV, P. 265. TRANSLATION FROM "AMERICAN JOURNAL OF INTERNATIONAL LAW", VOL. 29 (1935), SPECIAL SUPPLEMENT, P. 381.

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Article 3. The French Government may deliver to foreign governments, at their request, every person not French or French *ressortissant*, who, being the object of prosecution initiated in the name of the requesting State or convicted by its tribunals, is found in the territory of the Republic or of its colonial possessions.

Nevertheless, extradition is granted only if the offence which is the basis of the request has been committed:

Either within the territory of the requesting State by a subject of that State or by an alien;

Or outside of its territory by a subject of that State;

Or outside of its territory by a person, an alien to that State, when the offence is one of the number of those of which the French law authorizes prosecution in France, even though they have been committed by an alien abroad.

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- (e) MOROCCO: DAHIR REGULATING SEA-FISHING, 31 MARCH 1919, AS AMENDED BY DAHIR OF 26 MAY 1937. P. L. RIVIÈRE, "TRAITÉS, CODES ET LOIS DU MAROC", SUPPLEMENT FOR 1938, P. 124. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 42 . . . If the offence is committed at sea, proceedings shall be instituted either in the court nearest to the place of the commission of the offence, or in the court nearest to the port to which the offender is brought, or, in the case of Moroccan vessels, in the court within the jurisdiction of which the port of registry of the said vessels is located.

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22. Germany

- (a) CRIMINAL CODE, 15 MAY 1871, AS REVISED ON 6 MAY 1940. "REICHSGESETZBLATT", 1940, I, P. 754. TRANSLATION FROM U.S. LIBRARY OF CONGRESS, "THE STATUTORY CRIMINAL LAW OF GERMANY" (1947), PP. 7-8.

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§ 3. The German Criminal Law shall apply to any act of a German national regardless of whether it was committed in Germany or abroad.

The German Criminal Law shall not apply to an act committed abroad and not punishable under the law of the place of commission if such act does not appear to be a wrong deserving punishment when judged according to the sound sentiment of the German people, in view of the particular circumstances of the place where it is committed.