

- (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.

The act is considered to have been committed at the place where the offender acted and, in case of an omission, where he should have acted, or where the criminal effect of the offence took place or should have taken place.

§ 4. The German Criminal Law shall apply also to acts committed in Germany by aliens.

The German Criminal Law shall apply to an alien for an offence committed abroad, if it is a punishable offence under the law of the place where the offence was committed or if such place is subject to no criminal authority:

(1) Provided the offender acquired German nationality after the commission of the act, or

(2) Provided the offence was directed against the German nation or a German national, or

(3) Provided the offender was apprehended in Germany and is not to be extradited, although extradition would be possible in view of the kind of offence committed.

Regardless of what the law of the place of commission of the act is, the German Criminal Law shall apply to the following offences committed by an alien while in a foreign country:

(1) Offences which he committed while holding a German government office, or as a German soldier, or as a member of the Reich's Labour Services or offences which he has committed against someone holding a German government office, or an office of the Party, against a German soldier, or against members of the Reich's Labour Services while they are exercising their duties or in connexion with their exercise of such duties;

(2) Acts of high treason (*Hochverrat*) or treason (*Landesverrat*) against the German Reich;

(3) Major crimes with reference to the handling of explosives;

(4) Traffic in children or women;

(5) Unauthorized divulging of trade or business secrets of a German enterprise;

(6) Perjury in a proceeding which took place before a German court or other German authority competent for the administration of the oath;

(7) Major and minor crimes of counterfeiting;

(8) Unauthorized traffic in narcotics;

(9) Commerce in immoral publications.

§ 5. The German Criminal Law shall apply to acts committed on a German ship or German aircraft regardless of the law of the place of commission.

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*Note.* The text reproduced above does not take into account amendments introduced by the Law of 24 April 1934 (*Reichsgesetzblatt*, 1934, I. p. 341), which was repealed by the Law No. 1 of the Control Council for Germany (*Official Gazette of the Control Council for Germany*, no. 1, p. 6). With respect to the phrase "according to the sound sentiment of the German people" in article 3, see Proclamation No. 3, of the Control Council for Germany (*Official Gazette*, no. 1, pp. 22-23), which prohibited the determination by any court of any crime "by so-called 'sound popular instinct'."

Prior to 6 May 1940, articles 3-5 read as follows:

"3. The Criminal Law of the German Reich shall apply to all offences committed in the territory of the Reich, even if the offender is an alien.

"4. No prosecution, as a rule, shall be instituted for major and minor crimes committed abroad.

"However, a prosecution under the criminal laws of the German Reich may be instituted:

"(1) Against a German or an alien who committed abroad an act of high treason (*Hochverrat*) against the German Reich or a German state (*Bundesstaat*); or a major or a minor crime of counterfeiting, or who as an official of the German Reich or a German state has committed an act which is regarded by the laws of the German Reich as a major or minor crime in the discharge of official duties;

"(2) Against a German who committed abroad an act of treason (*Landesverrat*) against the German Reich or is guilty of insulting the prince of a federal German state;

"(3) Against a German who committed abroad an act which is regarded as a major or a minor crime by the laws of the German Reich and is also a punishable offence under the laws of the place where it was committed.

"Prosecution may take place, even though at the time of the offence the offender was not yet a German national. In this case the prosecution requires an application (*Antrag*) by a competent authority of the country in which the offence was committed, and the foreign criminal law is applicable if it is more lenient.

"5. In regard to section 4, sub-section 3, no prosecution may be instituted:

"(1) If a foreign court has rendered a final sentence concerning the act and either an acquittal has been pronounced or the penalty imposed has been fulfilled;

"(2) If the prosecution or execution of the punishment was barred by lapse of time or pardoned under the foreign law;

"(3) If according to the foreign law, prosecution is instituted only upon the application (*Antrag*) of the person injured and such a motion has not been made." (Translation from U.S. Library of Congress, *The Statutory Criminal Law of Germany*, 1947, pp. 6-7.)

It seems that the above-quoted provisions of articles 3-5 which were in force prior to 6 May 1940, while no longer in force in the Federal Republic of Germany, are still in force in the German Democratic Republic. The official edition of the Criminal Code of the German Democratic Republic notes, however, that the provisions of article 4 about treason and insulting the head of state have now become obsolete. *Ministerium der Justiz der Deutschen Demokratischen Republik, Strafgesetzbuch* (1951), pp. 18-20.

(b) CODE OF CRIMINAL PROCEDURE, 1 FEBRUARY 1877, AS AMENDED BY THE LAW TO RESTORE LEGAL UNITY IN THE FIELD OF JUDICIAL ORGANIZATION AND CIVIL AND CRIMINAL PROCEDURE, 12 SEPTEMBER 1950. "BUNDESGESETZBLATT", 1950, P. 455; O. SCHWARZ, "STRAF-PROZESSORDNUNG" (13TH EDITION, 1950), PP. 20-24, 164. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

§ 7. (1) Jurisdiction shall be vested in that court in the judicial district of which the punishable act was committed.

(2) If proof of the punishable act is based upon the contents of printed matter published within the country, only the court in the judicial district of which the printed matter was published shall be considered the competent court within the meaning of sub-paragraph (1). However, in libel cases in which proceedings are taken on the basis of an individual's

complaint, the court in the judicial district of which the printed matter was circulated shall also be competent, provided that the aggrieved party has his fixed abode or customary domicile in the same judicial district.

§ 8. (1) Jurisdiction shall be vested also in the court in the judicial district of which the accused has his domicile at the time a complaint is filed.

(2) If the accused has no fixed abode in the area to which this Federal law is applicable, jurisdiction shall also be determined by his customary residence, or, if such be unknown, by his last domicile.

§ 9. (1) If the punishable act was committed outside the area to which this Federal law is applicable and jurisdiction is not vested in a court in conformity with § 8, the court in the judicial district of which the arrest is made shall be the competent court. If no arrest has taken place, the competent court shall be determined by the Federal court.

(2) The same shall apply in the case of a punishable act committed in the area to which this Federal law is applicable whenever jurisdiction on the basis either of the act committed or of domicile cannot be ascertained.

§ 10. If the punishable act was committed on board a German vessel outside the area to which this Federal law is applicable (or on the high seas), the competent court shall be that within whose jurisdiction lies the home port or the port within the area to which this law is applicable, which is the first to be reached by the vessel after the commission of the act.

§ 11. (1) German citizens who enjoy extra-territorial rights, as well as officials of the Federal Government and of state governments employed abroad, shall retain in respect of jurisdiction the domicile they possessed at home. If they have no such domicile, the seat of the Federal Government shall be considered as their domicile.

(2) These provisions are not applicable to honorary consuls.

§ 12. (1) If more than one court is competent according to the provisions of paragraphs 7 to 11, the court that first inquired into the case shall have precedence.

(2) Nevertheless, the judicial inquiry and trial may be transferred to one of the other competent courts by the joint superior court.

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§ 153 (a) The State Prosecutor's Office may refrain from prosecuting in respect of an offence

(1) Committed by a German citizen abroad,

(2) Committed by a foreign citizen abroad or within the country while on board a foreign vessel or aircraft,

(3) If the offender has already been punished for the offence abroad to an extent that equals or exceeds the punishment he could expect to receive within the country.

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