

32. Italy

(a) PENAL CODE, 19 OCTOBER 1930. L. FRANCHI AND V. FEROCI, "QUATTRO CODICI" (1949), CODICE PENALE E CODICE DI PROCEDURA PENALE, PP. 7-9. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

Article 3. The binding force of penal law. Italian penal law is binding on all persons, whether citizens or aliens, who are in the territory of the State, with the exceptions provided for in domestic public law or in international law.

Italian penal law is also binding on all persons, whether citizens or aliens, who are abroad, but only with respect to cases provided for in that law or in international law.

Article 4. Italian citizens. The territory of the State. For the purposes of penal law, "Italian citizens" shall include the citizens of the colonies, colonial subjects, persons belonging by origin or by choice to places subject to the jurisdiction of the State and stateless persons resident in the territory of the State.

For the purposes of penal law, the "territory of the State" shall be deemed to mean the territory of the Kingdom, of the colonies and all other places subject to the jurisdiction of the State. Italian vessels and aircraft shall be considered as the territory of the State, wherever they may be, unless they are subject, under international law, to foreign territorial law.

Article 6. Crimes committed within the territory of the State. Anyone who commits a crime within the territory of the State shall be punished in accordance with Italian law.

The crime shall be deemed to have been committed within the territory of the State when the action or omission which constitutes the crime either takes place there wholly or partly, or when the act which is the result of such action or omission has occurred there.

Article 7. Crimes committed abroad. Any Italian citizen or alien who commits in foreign territory one of the following crimes shall be punished in accordance with Italian law:

1. Offences against the State;
2. Offences involving the counterfeiting of the State seal and the use of such a counterfeit seal;
3. Offences involving the counterfeiting of coin which is used as legal currency within the territory of the State, or forging stamped securities or Italian public credit notes;
4. Offences committed by public officials in the service of the State, through abuse of their powers or by violating duties inherent in their functions;
5. Any other crime which is rendered subject to Italian penal law, by special provisions of the law or by international conventions.

Article 8. Political offences committed abroad. Any Italian citizen or alien who commits in foreign territory a political offence not included among those referred to in sub-paragraph 1 of the preceding article shall be punished in accordance with Italian law, at the request of the Minister of Justice.

In the case of a punishable offence involving a suit by the injured party, such a suit is necessary in addition to that request.

For the purpose of penal law, a political offence shall be deemed to mean any offence prejudicial to the political interests of the State or the political rights of an Italian citizen. An ordinary offence which is motivated, wholly or in part, by political considerations, shall also be deemed to be a political offence.

Article 9. Ordinary offences committed by Italian citizens abroad. With the exception of the cases referred to in the two preceding articles, any Italian citizen who commits, in foreign territory, any offence for which Italian law provides the penalty of death, hard labour, or imprisonment for a minimum of three years, shall be punished in accordance with that law, provided that he is within the territory of the State.

In the case of any offence punishable by a penalty restricting personal freedom for a shorter period, the offender shall be punished at the request of the Minister of Justice, or else in consequence of a request of, or a suit by, an injured party.

In the cases referred to in the above provisions, when an offence committed against a foreign State or against an alien is concerned, the offender shall be punished at the request of the Minister of Justice, provided that his extradition has not been granted, or has not been accepted by the government of the State in which the offence was committed.

Article 10. Ordinary offences committed by aliens abroad. Any alien who, outside the cases referred to in articles 7 and 8, commits in foreign territory an offence to the detriment of the State or of a citizen, for which Italian law prescribes the penalty of death or hard labour or imprisonment for a minimum of one year, shall be punished in accordance with the said law, provided that he is within the territory of the State, and that there is a request by the Minister of Justice, or a request of, or a suit by, the injured party.

Should the offence be committed against a foreign State or an alien, the offender shall be punished in accordance with Italian law at the request of the Minister of Justice, provided that:

- (a) He is within the territory of the State;
- (b) The offence concerned is punishable by death, hard labour or imprisonment for a minimum of three years;
- (c) His extradition has not been granted or has not been accepted by the government of the State in which he committed the offence or by the government of the State of which he is a citizen.

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Note. The Italian Penal Code contains the following special provisions concerning shipwreck:

“Article 428. Shipwreck, sinking or disaster to aircraft. A person causing the shipwreck or sinking of a ship or other vessel or the fall of an aircraft, the

property of another, shall be punished by imprisonment for not less than five nor more than twelve years.

“If the offence has been committed through destroying, removing or obscuring a light or other signal, or the giving of false signals or other fraudulent acts, the penalty shall be not less than five nor more than fifteen years’ imprisonment.

“The provisions of this article shall apply also to any person who causes the shipwreck or sinking of his own ship or other vessel or the fall of his own aircraft, and thereby endangers the public.

“*Article 429. Damage followed by shipwreck.* A person who, with intent only to damage a ship, other vessel or aircraft, or appliance intended to ensure safety of navigation, damages the same or renders it wholly or partly unserviceable, shall, if the act causes danger of shipwreck or sinking of a ship, or of accident to an aircraft, be punished by imprisonment for not less than one nor more than five years.

“If the act causes shipwreck, sinking of a ship or disaster as aforesaid, the penalty shall be imprisonment for not less than three nor more than ten years.

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“*Article 449. Wilful damage.* A person who wilfully causes a fire or other disaster mentioned in chapter I of this title shall be punished by not less than one nor more than five years’ imprisonment.

“If the disaster is a railway accident, or a shipwreck, or the sinking of a ship or the fall of an aircraft used for the carriage of passengers, the penalty shall be double.

“*Article 450. Wilfully causing danger.* A person who by his own act or wilful negligence causes or continues in being the danger of a railway accident, flood, shipwreck or the sinking of a ship or other vessel shall be punished by imprisonment not exceeding two years.

“If the offender disobeyed a specific order of an authority to remove the danger, the term of imprisonment shall be not less than one year.”

L. Franchi and V. Feroci, *Quattro Codici* (1949), Codice penale e Codice di procedura penale, pp. 79, 82.

(b) CODE OF CRIMINAL PROCEDURE, 17 OCTOBER 1930. L. FRANCHI AND V. FEROCI, “QUATTRO CODICI” (1949), CODICE PENALE E CODICE DI PROCEDURA PENALE, P. 143. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 41. Jurisdiction over offences deemed to have been committed in the territory of the State and over offences committed abroad. Where an offence has been committed partly in the territory of the State and partly abroad, proceedings shall be instituted in the State before the judge of the place where the action or omission took place wholly or partly or where the event became known, and his jurisdiction shall be governed by the provisions of the two preceding articles.

If the offence was committed wholly in foreign territory and if proceedings are to be instituted in the State, jurisdiction shall be determined successively by the place of residence, dwelling, domicile, arrest or detention of the accused.

Nevertheless, the Court of Cassation may on application by the public

prosecutor remove the examination or trial to a judge nearer to the place where the offence was committed.

The judge may use the records of the foreign authorities in the criminal proceedings or, if no proceedings are instituted in the State, in applying security measures and in ordering restitution and damages for loss.

In all the cases referred to in the above paragraphs officers of the judicial police, the public prosecutor and the judge may do anything necessary to collect and preserve the evidence even if the accused is not in the territory of the State.

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(c) NAVIGATION CODE, 30 MARCH 1942. A. BRUNETTI AND A. GIANNINI, "CODICE DELLA NAVIGAZIONE MARITTIMA" (1943), PP. 1926, 2284. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 4. Italian vessels and aircraft in localities not subject to the sovereignty of any State. Italian vessels on the high seas and Italian aircraft in a place or in air space not subject to the sovereignty of any State shall be considered as Italian territory.

Article 5. Law governing instruments executed on board vessels or aircraft in course of navigation. Instruments executed and acts done on board a vessel or aircraft in course of navigation in a place or in air space subject to the sovereignty of a foreign State shall be governed by the national law of such vessel or aircraft in all cases in which, in conformity with the provisions respecting the applicability of laws in general, the law of the place in which the instrument was executed or the act done should be applicable.

The provisions of the foregoing paragraph shall likewise apply to instruments executed and acts done on board a vessel or aircraft of foreign nationality in course of navigation in a place or in air space subject to the sovereignty of the Italian State, on condition of reciprocity on the part of the State to which such vessel or aircraft belongs.

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Article 1240. Territorial jurisdiction. Territorial jurisdiction with respect to the offences provided for in this code, if committed abroad or outside the territorial waters or air space of Italy, shall rest with the judge of the place where, after the offence is committed, the vessel or aircraft in which the accused person was travelling at the moment of the offence first puts in or lands in Italy.

If, before the vessel puts in or the aircraft lands in Italy, a report, charge or complaint was lodged with the consular authorities or the captain of a naval vessel, or if such authorities have discharged the functions of judicial police, or if jurisdiction cannot be determined in the manner prescribed in the foregoing paragraph, jurisdiction shall rest with the judge of the place in which the vessel or aircraft on board which the accused person was travelling at the moment of the offence is registered or is normally kept, respectively.

Where, in cases dealt with by the consular authorities, sentence has not yet been passed at the time of departure of the vessel or aircraft from

the official district of the said authorities, jurisdiction shall pass to the judge having territorial jurisdiction under the provisions of the foregoing paragraphs. Documents drawn up by the consular authorities in the course of the preparatory investigation shall retain full validity for the purpose of the said judges.

33. Japan

(a) CRIMINAL CODE, 23 APRIL 1907, AS AMENDED. TRANSLATION FROM T. L. BLAKEMORE, "THE CRIMINAL CODE OF JAPAN" (1950), PP. 3-7.

Article 1. This Code applies to every person who commits a crime in Japan.

It also applies to every person who commits a crime on board a Japanese ship outside Japan.

Article 2. This Code applies to every person who commits one of the following crimes outside Japan:

1. (Deleted)
2. Crimes as provided in articles 77 to 79;
3. Crimes as provided in articles 81, 82, 87 and 88;
4. Crimes as provided in article 148 as well as attempts thereof;
5. Crimes as provided in articles 154, 155, 157 and 158;
6. Crimes as provided in articles 162 and 163;
7. Crimes as provided in articles 164 to 166 as well as an attempt to commit a crime as provided in paragraph 2 of article 164, paragraph 2 of article 165, and paragraph 2 of article 166.

Article 3. This Code applies to a Japanese who commits one of the following crimes outside Japan:

1. Crimes as provided in article 108 and paragraph 1 of article 109, and crimes punishable as provided in article 108 and paragraph 1 of article 109, as well as any attempt to commit the above-mentioned crimes.
2. The crime as provided in article 119;
3. Crimes as provided in articles 159 to 161;
4. Crimes as provided in article 167 as well as an attempt to commit the crime as provided in paragraph 2 of that article;
5. Crimes as provided in articles 176 to 179, 181 and 184;
6. Crimes as provided in articles 199 and 200, as well as an attempt to commit such crimes;
7. Crimes as provided in articles 204 and 205;
8. Crimes as provided in articles 214 to 216;
9. Crimes as provided in article 218 as well as the crime of killing or injuring a person as a result of the commission of those crimes;
10. Crimes as provided in articles 220 and 221;
11. Crimes as provided in articles 224 to 228;
12. Crimes as provided in article 230;
13. Crimes as provided in articles 235, 236, 238 to 241 and 243;
14. Crimes as provided in articles 246 to 250;
15. The crime as provided in article 253;
16. The crime as provided in paragraph 2 of article 256.