

In both cases prosecution proceedings shall be taken only in accordance with the conditions laid down in article 6.

Article 9. The preceding provisions shall not apply:

1. If the accused person has been tried in a foreign country for the same offence and has been acquitted.

2. If, having been convicted, he has served his sentence or it has lapsed, or he has been granted an amnesty or pardon.

Article 10. If the sentence pronounced by the foreign courts has been partly served the judges, when imposing the new sentence, shall take into account the time served by the offender.

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Note. The Decree on maritime discipline, of 22 January 1891 (Monaco, *Lois usuelles*, 1828-1907, pp. 299, 306), provides in article 39 that:

"Any person, whether on board or not, who with criminal intent causes a vessel to run aground or who causes the loss or destruction of a vessel by any means other than that of fire or explosives, shall be sentenced to a term of penal servitude.

"If the guilty person was, on any grounds, entrusted with the navigation of the vessel, the minimum penalty may not be applied."

39. Netherlands .

(a) PENAL CODE, 3 MARCH 1881, AS AMENDED. J. A. FRUIN, "DE NEDERLANDSCHE WETBOEKEN" (1947), PP. 1440-1441. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS

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Article 2. The provisions of the Netherlands Penal Code shall apply to any person committing an offence within the Kingdom in Europe.

Article 3. The provisions of the Netherlands Penal Code shall apply to any person committing an offence on board a Netherlands vessel outside the Kingdom in Europe.

Article 4. The provisions of the Netherlands Penal Code shall apply to any person committing outside the Kingdom in Europe:

(1) An offence specified in articles 92-96, the first paragraph of article 97 (a), article 105 or articles 108-110;

(2) An offence in respect of coinage, paper currency, bank notes, stamps issued by the State or Government marks;

(3) Forgery of bonds or certificates of indebtedness issued by the Netherlands State or by a Netherlands province, municipality or public institution, the talons or the dividend or interest coupons belonging to, or certificates issued in lieu of, such securities, or wilfully using such forged or altered securities as though they were genuine and unaltered;

(4) An offence specified in articles 381-385.

Article 5. The provisions of the Netherlands Penal Code shall apply to any Netherlands national committing outside the Kingdom in Europe:

(1) An offence specified in title I or II of the second book or in articles 206, 237, 388 or 389;

(2) An act constituting an offence under the Netherlands Penal Code and punishable by the law of the country in which it was committed.

An accused person may be prosecuted notwithstanding that he has become a Netherlands national since the act was committed.

Article 6. The provisions of the Netherlands Penal Code shall apply to any Netherlands official committing outside the Kingdom in Europe an offence specified in title XXVIII of the second book.

Article 7. The provisions of the Netherlands Penal Code shall apply to a master of or any person sailing in a Netherlands vessel who commits outside the Kingdom in Europe, on or off the vessel, an offence specified in title XXIX of the second book or title IX of the third book.

Article 8. The provisions of articles 2-7 shall be subject to the exceptions recognized by international law.

Note. The Netherlands Penal Code contains the following provisions with respect to offences concerning damage to ships:

“Article 168. Any person who wilfully and unlawfully sinks, strands, destroys, disables or damages a vessel shall be punished by:

“(1) Imprisonment for a term not exceeding 15 years, if the life of any person is endangered thereby;

“(2) Imprisonment for life or for a term not exceeding 20 years, if the life of any person is endangered and the death of any person is caused thereby.

“Article 169. Any person through whose fault a vessel is sunk, stranded, destroyed, disabled or damaged shall be punished by:

“(1) Imprisonment or detention for a term not exceeding six months, or a fine not exceeding 300 guilders, if the life of any person is endangered thereby;

“(2) Imprisonment or detention for a term not exceeding one year, if the death of any person is caused thereby.

“ . . .

“Article 414. A master of a Netherlands vessel involved in a collision who wilfully fails to give assistance in compliance with the first paragraph of article 358(a) or article 785 of the Commercial Code shall be punished by imprisonment for a term not exceeding three years.

“ . . .

“Article 473. A master or member of a crew who fails to observe the statutory precautions against collision or fouling shall be punished by a fine not exceeding 300 guilders.

“Article 474. A master of a Netherlands vessel who fails to comply with the second paragraph of article 358(a) or article 785 of the Commercial Code shall be punished by detention for a term not exceeding three months or by a fine not exceeding 300 guilders.”

The first two paragraphs of article 358(a) of the Commercial Code, mentioned in the above-quoted provisions of the Penal Code, read as follows:

“A master shall give to persons in peril, and especially to another ship with which his ship has collided and to persons therein, all assistance possible without seriously imperilling his ship or persons sailing therein.

“He shall also as far as possible inform the other ships involved in the collision of the name and home port of his ship and its ports of departure and destination.”

The provisions of the Penal Code, cited in articles 4-7 of that Code, deal with the following offences:

Articles 92-107 (title I of the second book): offences against the security of the State.

Articles 108-114 (title II of the second book): offences against the King.

Article 206: making a person unqualified for military service.

Article 237: bigamy.

Articles 381-414 (title XXIX of the second book): offences against shipping.

Title XXVIII of the second book: offences by officials.

Title IX of the third book: small offences (misdemeanours) connected with shipping.

- (b) CODE OF CRIMINAL PROCEDURE, 15 JANUARY 1921. J. A. FRUIN, "DE NEDERLANDSCHE WETBOEKEN" (1947), p. 1748. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 4. An offence committed on board a Netherlands vessel outside the Kingdom in Europe shall be deemed, for the purpose of determining the jurisdiction of the judge, to have been committed in the Kingdom at the place where the owner of the vessel is resident or the shipping company has its seat.

Article 5. Subject to the provisions of the Act determining the judicial powers of consuls, where no judge has jurisdiction under the foregoing provisions, the district court (*rechtbank*) or the court of summary jurisdiction (*kantongerecht*) at Amsterdam shall have jurisdiction.

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40. Nicaragua

- (a) PENAL CODE, 8 DECEMBER 1891. L. JIMÉNEZ DE ASÚA AND F. CARSI ZACARÉS, "CÓDIGOS PENALES IBEROAMERICANOS" (1946), VOL. II, PP. 234. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 11. Nicaraguan penal law shall apply to all inhabitants of the Republic, including aliens, save as otherwise provided under international law. Crimes and petty offences (*delitos y faltos*) committed in territorial and adjacent waters shall be subject to the provisions of this Code.

Article 12. Offences committed outside the territory of the Republic shall not be punished therein, save in the cases specified by law.

Article 13. The following persons shall be punished in accordance with this Code:

1. A national of Nicaragua or an alien who, outside the territory of Nicaragua, counterfeits Nicaraguan State bonds, bank notes legally issued in Nicaragua or bills of exchange or promissory notes discountable in Nicaragua; provided that the offender comes to Nicaragua and has not been tried and sentenced for the offence in the country in which it was committed.