

Article 278. Maritime offences committed on board and during a voyage or by members of the crew on land in the course of a voyage shall be tried by the maritime court of the port captaincy in which the ship was registered.

Article 279. Maritime offences committed in a ship anchored in a foreign port, when involving members of the crew only and when they do not disturb the peace of the port, shall be tried by the maritime court of the port captaincy in which the ship was registered.

- (d) CONSULAR REGULATIONS, APPROVED BY DECREE No. 6462, 17 MARCH 1920. "REGULAMENTO CONSULAR PORTUGUÊS" (LISBON, 1920). TRANSLATION FROM A. H. FELLER AND M. O. HUDSON, "A COLLECTION OF THE DIPLOMATIC AND CONSULAR LAWS AND REGULATIONS" (WASHINGTON, 1933), VOL. II, PP. 1022, 1038.
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Article 408. Consular officials exercise maritime commercial jurisdiction, in accordance with the provisions of the Penal and Disciplinary Code of the Merchant Marine; this jurisdiction includes offences of discipline, offences or crimes committed on board Portuguese vessels; its provisions are applicable to any person, national or alien, employed by whatever title on board of Portuguese sailing or steam vessels belonging to private persons or public administrations, in cases of offences or crimes committed from the day on which they become members of the crew until and including the day of their legal discharge.

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48. Romania

- (a) PENAL CODE, 18 MARCH 1936. "MONITORUL OFICIAL", 18 MARCH 1936, No. 65; C. HAMANGIU, "CODUL GENERAL AL ROMÂNIEI", 1856-1937, VOL. 24 (1936), PART I, PP. 3-7; "AKADEMIE FÜR DEUTSCHES RECHT, SAMMLUNG AUSSERDEUTSCHER STRAFGESETZBÜCHER", NO. 54 (1942), PP. 30-35. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.
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CHAPTER II. TERRITORIAL APPLICATION OF CRIMINAL LAW

Section I. Offences committed in Romania

Article 6. Any criminal act committed in Romanian territory is punishable in accordance with the provisions of Romanian penal law.

Romanian penal law likewise applies to criminal acts committed on or over Romanian territory, within the limits of the territorial seas or inland waters, or on board a Romanian ship or aircraft.

A criminal act is deemed to have been committed in Romania if the act of commission or omission, or merely a part of the act, was begun or completed in Romanian territory or if the criminal act produces its effect in Romanian territory.

Article 7. Romanian penal law does not apply:

1. To the person of the King;
2. To persons immune from criminal liability by virtue of treaties or the rules of international law;
3. To the crews of foreign merchant vessels with respect to criminal acts committed on board while the vessel is in territorial waters or in a Romanian port, or to the crews of foreign aircraft in flight over Romanian territory or present in that territory in virtue of a special authorization by the Romanian Government, except in cases where the criminal act was committed against a Romanian or has disturbed the peace and public order of the territory, or when the master of the vessel has applied to the Romanian authorities for assistance.

Section II. Criminal acts committed abroad by Romanians or by aliens domiciled in Romania

Article 8. A Romanian national is only liable to penalties for acts committed by him outside Romanian territory as principal, abettor or accessory, if he returns of his own free will or if, being in the country, he chooses to remain there, or if his extradition has been obtained, provided that the said acts are regarded as criminal acts both under the law of the country where they were committed and under Romanian law, though this proviso does not apply in the case of the criminal acts to which articles 10 and 11 refer.

In the case of discrepancy between the penalties prescribed by the two laws, the lighter penalty shall be applied.

If the lighter penalty is prescribed by the law of the foreign country and such penalty does not exist under Romanian law, the court shall replace it by one of the penalties prescribed by this Code corresponding to it as regards nature and length.

The offender may not be prosecuted if he proves, as regards the particular act, that he has been pardoned abroad, or that he had been sentenced there by a final judgment, and, in the case of conviction, that the sentence has been suspended or that the penalty has been extinguished, either because the sentence has been served or for any other reason serving to extinguish the penalty under the law of the country where sentence was passed.

If the offender has in any way whatsoever evaded the full execution of the penalty to which he was sentenced abroad, the portion of the penalty executed abroad shall be taken into account in the penalty to be imposed by the Romanian courts. Imprisonment before trial abroad shall also be deducted.

Similarly, a prosecution may not be instituted in respect of criminal acts if, under the law of the foreign country, a complaint must first be made and such complaint has not been made or has been withdrawn as provided by law.

Romanian penal law shall also apply to Romanian nationals in respect of acts committed abroad if the place where the acts were committed is not within the sovereignty of any country, provided that the said acts constitute crimes or offences punishable under this Code.

Article 9. The provisions of the preceding article are also applicable to aliens domiciled in Romania if they are not the nationals of any

country or if their extradition has not been requested, and to aliens acquiring Romanian nationality after committing a criminal act abroad.

The provisions shall also apply to abettors and accessories who have taken part in Romania in a criminal act committed abroad and punishable under Romanian law.

*Section III. Offences against the interests of the Romanian State,
committed abroad by Romanians or aliens*

Article 10. If any person, as principal, abettor or accessory commits, outside Romanian territory, a crime against the security of the State, the offence of counterfeiting Romanian coins, government securities or Romanian bank notes, or of counterfeiting the seals of the State or of Romanian authorities, stamps or national marks, or the offence of committing acts derogatory to the honour, prestige or interests of the Romanian nation or State, or any crime or offence against a Romanian citizen, he may be prosecuted in Romania, tried and sentenced, even *in absentia*, unless the Romanian Government has requested his prosecution abroad.

If the offender is arrested in Romanian territory or if his extradition is obtained, he shall be liable to the execution of the penalty imposed by the Romanian courts, even if, in respect of the acts enumerated in the preceding paragraph, he had received pardon abroad, or has been sentenced abroad by a final judgment and, in the case of conviction, the sentence has been suspended or the penalty has been extinguished, either because the sentence has been served or for some other reason provided for in the law of the country where sentence was passed.

If the offender is sentenced abroad in respect of any such criminal act, the penalty served abroad shall be deducted from the penalty imposed by the Romanian court. Similarly, any imprisonment prior to trial abroad shall be deducted in accordance with the provisions of this Code.

Persons sentenced *in absentia* may request retrial if they return to the country and if the penalty has not been extinguished by lapse of time.

Section IV. Offences committed abroad by aliens

Article 11. If an alien commits abroad any crime or offence, other than those referred to in article 10, he shall be liable to prosecution under article 8 if he is in the country and his extradition is not requested or cannot be carried out.

A prosecution in respect of such criminal acts may be instituted only at the request of the Ministry of Justice, except in the case of the prosecution of the following criminal acts, which may be prosecuted and punished in accordance with the provisions of this Code without regard to the penal provisions in force in the place where such criminal acts were committed:

1. The counterfeiting of foreign coins, paper currency, government securities, bank notes, stamps or marks;
2. The traffic in women and children;

3. Acts of terrorism which are criminal acts under the Code in question;
4. The traffic in narcotic drugs;
5. The traffic in obscene publications (pornography);
6. Desertion of family;
7. Participation in acts committed with the intent of placing a person in a state of slavery;
8. Piracy;
9. The severing or destruction of submarine cables, and the broadcasting of false distress signals or calls;
10. Any other criminal act referred to in this Code, which Romania has undertaken by international agreement to treat as a punishable offence.

Section V. Effects of foreign judgments in criminal matters

Article 12. If a Romanian national or an alien domiciled in Romania is sentenced abroad for a criminal act under the ordinary law, the Romanian criminal courts may, on the application of the public prosecutor, order the person concerned to be placed under any disability or to suffer any loss of civil rights or any disqualification by which the criminal act is punishable under Romanian law.

The person so sentenced has the right to request that the court should re-examine the entire case before rendering a decision with regard to proceedings for disqualification instituted by the public prosecutor.

Disqualification proceedings may not be instituted by the public prosecutor if the Romanian citizen has received a pardon or has been rehabilitated in the country where the criminal act was committed, or if a period of ten years has elapsed since the date when the penalty was extinguished abroad, either because the sentence had been served, or because a pardon had been granted, or by lapse of time or on other ground for the extinction of penalties recognized by the law of the country where the sentence was passed.

Article 13. An alien sentenced to a penalty in his own country for a criminal act under the ordinary law, which is also a criminal act under Romanian law, shall be debarred in Romania from the exercise and enjoyment of the rights of which he has been deprived by final judgment of the foreign court.

The foregoing provisions shall not apply if the alien was sentenced *in absentia* or if the loss of capacity, loss of civil rights or the disqualification ordered by the foreign court is repugnant to public policy.

Article 14. Any person who commits a criminal act in Romania after having been found guilty by final judgment abroad of a criminal act which is also a criminal act under Romanian law may be treated as a second offender, in the cases and under the conditions prescribed by the code.

Section VI. General provisions

Article 15. In all cases where Romanian courts are competent to try offences committed abroad, they shall apply the security measures

applicable under Romanian law, even if such measures are not applicable or are applicable only partly under the law of the country where the criminal act was committed.

Note. Article 364 of the Romanian Penal Code provides for the punishment of persons who have caused a public danger with respect to means of communications on land, on sea or in the air, or who have caused the sinking of a ship.

(b) CODE OF CRIMINAL PROCEDURE, 19 MARCH 1936. "MONITORUL OFICIAL", 19 MARCH 1936, No. 66; C. HAMANGIU, "CODUL GENERAL AL ROMÂNIEI", 1856-1937, VOL. 24 (1936), PART I, PP. 133, 137-139. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

Article 21. Territorial jurisdiction is determined by the place where the offence was committed, even if the effects were only felt elsewhere. The court of the district in which the offender resides shall also have jurisdiction.

Further, the court of the place where the offender was taken into custody shall also have jurisdiction.

Article 22. Among the courts the jurisdiction of which is laid down in the preceding article, preference shall be given to the court of the place in which the offence was committed unless one of the other competent courts has already pronounced judgment.

As between the court of the place of residence of the offender and the court of the place where he was taken into custody, preference shall be given to the court of the place of his residence unless the other court has already pronounced judgment.

In all cases where the offence was committed in a place within the competence of several courts, the court which first takes cognizance of the offence shall be competent.

Article 23. In case of an offence committed abroad, the court of the place of the offender's residence or of the place where he was taken into custody shall be competent.

Proceedings shall be taken before the criminal courts at Bucharest against all offenders not residing in Romania who have been extradited and all offenders who commit an offence in the circumstances set forth in article 10 of the Penal Code.

In cases where an offence has been committed in the vicinity of the frontier of Romania, the Court of Cassation may, for purposes of investigation and at the request of the Public Prosecutor or of the parties concerned, refer the record of the investigation to the court closest to the place where the offence was committed.

In the cases mentioned above and in all cases when the necessary judicial steps cannot be taken within the country the judge may, in order to initiate a criminal investigation or to order the return of property or the payment of damages, avail himself of the judicial steps taken by foreign authorities.

Article 24. In case of an offence committed on board a Romanian vessel, the court of the first Romanian port at which the vessel calls after the commission of the offence shall be competent.

The court of the first Romanian port at which the vessel calls shall be competent in respect of any offence committed by the crew of a foreign merchant vessel in the circumstances set forth at the end of paragraph 3 of article 7 and in cases covered by paragraph 8 of article 11 of the Penal Code.

An offence committed on a Romanian aircraft shall be within the jurisdiction of the court of the place where the aircraft lands if such place is situated in the country; if it is situated abroad, the offence shall be within the jurisdiction of the Romanian court of the place where the airport of registry of the aircraft is situated.

An offence committed by the crew of a foreign commercial aircraft in the circumstances set forth in the last part of paragraph 3 of article 7 of the Penal Code shall be within the jurisdiction of the Romanian court of the place where the aircraft lands if such place is situated in the country; if it is situated abroad, the offence shall be within the jurisdiction of the Romanian court of the place where the airport of registry of the aircraft is situated.

The provisions of article 23 shall apply to any person who is guilty of an attempt against the security of the State.

Article 25. Offences committed abroad by Romanian nationals in diplomatic or consular posts, by officials of legations or consulates and by a person entrusted with a mission on behalf of the Romanian Government shall fall within the jurisdiction of the courts of their place of domicile in Romania.

In default of a domicile, the courts of Bucharest shall be competent.

Article 26. In the case of offences which have been committed abroad by Romanians and have been adjudicated by consular courts, an appeal may be taken to the Court of Appeal of Bucharest.

Article 27. An offence committed by the press shall fall within the competence of the court of the district in which the publication which is the object of the proceedings is printed, provided that the place of printing is known and is situated in Romania.

In cases where the place of publication is unknown or is situated abroad, the court of the district in which the publication was distributed shall be competent.

If, in the latter case, two or more courts have concurrent jurisdiction, the first court seized of the offence shall deal with the case.

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49. Spain

(a) PENAL CODE, 23 DECEMBER 1944. E. CUELLO CALÓN, "CÓDIGO PENAL, TEXTO REFUNDIDO DE 1944" (2ND EDITION, 1950), p. 623. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 554. The penalties prescribed in the present chapter shall apply to persons causing damage by destroying an aircraft, sinking