

ROMANIAN CRIMINAL LAW ENFORCEMENT IN SPACE IN THE NEW CRIMINAL CODE

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Abstract

It is normal criminal laws of a state to have an effect in space, in relation to the extent that state sovereignty because, basically, the only way to enforce them through its bodies. Criminal law is territorial because its purpose is to achieve, maintain and reinstate the law in the State to which it belongs [1].

Keywords: *territory, territoriality principle, the principle of ubiquity, immunity from jurisdiction, personality principle, the reality principle, the principle of universality*

I. Acts committed in the country

Since the entry into force, the Romanian criminal law [2] is required generally to all persons residing or temporarily residing in the territory of our state [3]: Romanian or foreign citizens [4], stateless persons residing in Romania or abroad, or dual citizenship.

According to constitutional provisions, “the Romanian borders are sanctioned by the organic law of the principles and other generally recognized international law” [5]. The natural elements that make up the territory becomes relevant national and international legal framework and through state-administrative organization, the territory of the state [6].

a) The basic principle of criminal law enforcement in space, according to which the criminal law applies to offenses committed on the territory of Romania is the principle of territoriality (Article 8 para. 1 C.p.). Mandatory nature of the rule in art. 8 C.p. imposes the exclusive and unconditional Romanian penal law crimes in Romania, regardless of the quality of the perpetrator, Romanian or foreign citizen, stateless person residing in Romania or abroad. If the perpetrator is a foreign citizen or stateless person residing abroad he can not plead that his country's law is more favorable. Conditions its liability criminal offense in Romania are set exclusively on Romanian criminal law. Criminal law is territorial because its purpose is to achieve, maintain and reinstate the law in the State to which it belongs [7].

Romanian criminal law enforcement exclusivity limits the effects of *non bis in idem principle* [8], so that if the offender would have been prosecuted for a crime committed abroad in Romania, foreign court judgment is not *res judicata* so that the offender may be tried by courts Romanian, regardless of the outcome of foreign courts (acquittal, dismissal of criminal proceedings, sentencing), the only effect of the foreign judgment being that, according to art. 73 C.p., the punishment and custodial term preventive measures

performed outside the country, even the fine be deducted from the sentence imposed for the same offense in Romania.

To determine the incidence of crime in relation to territoriality country, the legislature has regulated the concept of “Romania” in article 8 para. 2 C.p.; “offense in Romania” in article 8 para. 3 C.p.

The “territory” (in English. “Territory”) [9] the term “Romania” means the extent of land, waters, territorial sea and soil, subsoil and airspace between frontiers.

The country's territory includes therefore the following:

1 - the terrestrial (ground) or extent of land between geopolitical borders of the state of our state borders established by agreements with neighboring states;

2 - Romania's territorial sea adjacent to the coast include high strip, or where appropriate, marine waters, with a width of 12 nautical miles measured from the baselines, lines representing maritime state border of Romania. Romania's territorial sea territorial sea is separated from other states, according to the principles and norms of international law [10]. External lines and lateral border of the territorial sea [11] is the sea state of Romania.

Internal waters lies [12] between the shore and the baselines from which the territorial sea is measured.

The baselines are the lines of low tide along the shore or, where appropriate, the straight lines joining the furthestmost points of the coast, including the seaward shore of the Islands; mooring places, hydraulic fittings, other permanent port facilities.

The outer limit of the territorial sea is the line joining each point at a distance of 12 nautical miles, measured from the nearest point of the baseline.

Contiguous area [13] of Romania is large strip adjacent to the territorial sea that extends offshore to the distance of 24 nautical miles, measured from baselines.

3 - inland (either running or standing: rivers, lakes, ponds, bays, inland marine waters located along the Black Sea) located entirely within the state or forming borders with another state. When it comes to rivers navigable limits of the territory shall be determined taking into account the largest line depth, thalweg water and the rivers standing inavigabile and the center line thereof [14].

4 - the basement of Ground corresponding terrestrial, aquatic, territorial sea, boundless deep, almost to where man can reach;

5 - the air is the air column above the space between terrestrial and aquatic imaginary verticals high on the country's borders [15], including the outer limit of the territorial sea up to a limit of space (90-110 km), to where our sovereignty extends [16] - airspace delimited by the lowest perigee [17] altitude that allows maintaining an artificial satellite orbit. Delimitation of airspace and outer space has raised many issues in literature [18], proposing more conventional criteria of delimitation.

The state border is real or imaginary line, drawn between different points on the surface of the Earth, which separates the territory of a State other countries, the high seas, outer space height and depth to limit access to modern technology. It has great economic and political importance, determining limits on the exercise of territorial sovereignty of states and the rights of peoples to decide their own fate. Inviolability of borders is a basic condition for the free development of each nation and the state, to maintain international peace and security [19], which was sanctioned and between states in a universal and mandatory obligation of international law [20].

The “crimes committed in Romania” means, according to article 8 para. 3 C.p. “any offense committed within the art show article 8 para. 2 C.p., or a Romanian flagged vessel or an aircraft registered in Romania”; according to article 8 para. 4 C.p.: “an offense shall be deemed committed in Romania when that territory or a Romanian flagged vessel or

aircraft registered in Romania was performed an act of execution, or aiding or abetting occurred even partly the result of the offense”.

b) To determine the Romanian criminal law, the interaction space facts and offenders, the legislature adopted the principle of ubiquity [21] and seamless deployment, in which, as noted above, in Romania or on a ship under Romanian flag or aircraft registered in Romania has performed an act of execution, or aiding or abetting occurred, even in part, the result of the offense.

Based on this principle, the Romanian courts are competent [22] both offenses started in Romania, but consumed or spent abroad and where crimes have occurred, even in part, the result of our country [23].

Vessels or aircraft, although not a natural part of the territory over which sovereignty of the state, they are included in the concept of territory by assimilation [24], and the need to protect them as much as the national territory.

Theory finds its full implementation, serve to resolve controversial issues determining the place where the crime: crimes continue, crime continued; offenses complex attempt, criminal participation, regardless of the quality of participants: author, instigator, accomplice, crimes committed through inaction. Failure can occur in a country and the outcome to occur in another country. For example, the omission is committed by an official in the performance of his duties, a failure to act in our country and thereby causes serious disruption of a joint venture activity (and the Romanian capital), headquartered abroad.

With respect to offenses committed on ships or aircraft shall distinguish the following situations:

- 1 - when the offense was committed on Romanian flagged vessel or aircraft during the Romanian territory as she is Romanian, Romanian criminal law will apply based on the principle of territoriality as the ship or aircraft has not left the country.
- 2 - when the offense was committed on Romanian flagged vessel or aircraft located Romanian territorial waters or airspace of a foreign state (moving) and places them on board or landing (stationary) will apply:

- Romanian criminal law, it belongs to the state flag when the ship or aircraft is military or government service Romanian government (state, scientific, or mail service, etc.) Solution is justified by the fact that these ship is on foreign territory with the approval of the foreign state government as such offenses committed on board do not fall under the criminal jurisdiction of the state where the ship/aircraft.

- Usually, the criminal law of the coastal state in whose territorial waters the vessel or in whose area the aircraft, if the ship or aircraft is commercial, civil or leisure (Tourist), consistent with the principle of territoriality of criminal law that state [25]. In international practice (international courtesy rules) but there is a usage that foreign state to exercise criminal jurisdiction if: the offense disturbs the public order of the coastal State is required suppression of trafficking in narcotic drugs or psychotropic substances foreign assistance to local authorities has been requested in writing by the master or aircraft or a diplomatic or consular agent of the State whose flag [26]. Without these conditions, coastal village not exercise jurisdiction, but allow it to be exercised under the criminal law of the state whose flag the ship is or aircraft, even when it would be in a foreign port or place.

c) Exceptions to the principle of territoriality

Applying criminal law under the principle of territoriality know certain limitations in that it does not apply in relation to certain categories of offenses: offenses committed by persons enjoying immunity from jurisdiction, offenses committed by personnel of foreign armies: in crossing the territory country, stationed in the country.

These exceptions Romanian incidents undermines state sovereignty, they derive from international treaties and agreements that it has signed Romanian state because it is sovereign.

Under the provisions of article 13 C.p., “criminal law does not apply to crimes committed by the diplomatic representatives of foreign states or other persons in accordance with international treaties are not subject to the criminal jurisdiction of the Romanian state”. Jurisdictional immunity gives expression to the principle of sovereign equality of states, under which states make their mutual concessions concerning their right to jurisdiction could achieve its interests. These concessions by States Parties shall ensure freedom of action of the diplomatic staff [27].

Jurisdictional immunity appears as a procedural exception, which results in non territorial criminal law or crimes committed on the territory of Romania or other crimes where the criminal law should be incident Romanian reality or universality principles, it does not remove the criminal nature of the offense and not the offender from criminal defense to the state bodies of nationality. It can only lose by leaving the service that attracts the benefit of immunity.

Receiving State, although not prosecuted, and punish the offender himself diplomatic agent shall be entitled to request the sending State trial and punishment thereof can declare “persona non grata” and may ask to leave the territory [28].

In the category of diplomatic representatives [29] enter the following persons are: ambassadors, attachés embassy or legation, ministers plenipotentiary, counselors, secretaries, heads of state and government, foreign ministers, technical staff, administrative and service of diplomatic missions, representatives O.N.U. [30], consular agents etc.

Romanian criminal law may not crimes committed diplomatic premises and land in Romania, the prosecution are banned, except only if the head of mission required consents or Romanian authorities to intervene [31]. Consequently, offenses committed in diplomatic missions by persons other than those who enjoy diplomatic immunity fall under the national law of the Romanian state, but tracking documents can not be made without the consent of the Head of Mission.

Treaties and international agreements or the establishment of international bodies detailing the scope of these immunities and inviolability of either limiting or extending their scope people.

The category of other persons enjoying immunity from jurisdiction shall be treated and a foreign army soldiers passing by or stationed in the country.

For offenses committed by personnel of foreign troops belonging to the law of the State to which these bands rational solution finds its foundation in that foreign armies are the bearer of sovereignty and the state from which he represents.

Not fall under Romanian law any acts committed by persons on board ships or aircraft aliens in our country [32], specifically those used for military or government.

For offenses committed by persons forming part of the crew of such ships or aircraft shall be the law of the State to which the ship or according to international conventions.

The situation is different in the case of offenses committed on board foreign merchant ships or aircraft flying through the territorial sea of Romania [33], in the sense that:

- Romanian criminal law applies in respect of any offense committed on Romanian territory, while standing in Romanian ports, internal waters or stay in airports offenses attract Romanian criminal law enforcement, exclusive and unconditional principle of territoriality. The law allows but according to the rules of international courtesy, the

Romanian authorities to intervene only where the facts are of a certain severity or intervention was required to master the Romanian authorities.

- Romanian criminal law applies to offenses committed on crossing Romanian territory and remain one of the cases [34]: the offense was committed by a Romanian citizen or a person without citizenship residing in Romania, the crime is directed against the national interests, a Romanian citizen, a person resident in Romania, the offense is likely to disturb the public order in the country or the territorial sea, it requires suppression of trafficking in narcotic drugs or psychotropic substances Romanian authorities assistance has been requested in writing by the master or aircraft or by a diplomatic or consular agent of the State whose flag.

II. Acts committed outside the country

To cover the full range of situations that may arise in connection with the place of the offense, the Romanian criminal law applies to offenses committed abroad, dedicating: the principle of personality (nationality or citizenship active) reality principle (passive nationality or citizenship) or real protection principle of universality, which provides the legal principles of suppression of facts will commit dangerous anywhere and by anyone.

1. According to the principle of personality (Art. 9 para. 1-2 C.p.), Romanian criminal law applies to offenses committed outside the territory of the country by a Romanian citizen or a Romanian legal entity, if the penalty provided by the Romanian law is life imprisonment or imprisonment more than 10 years. In other cases, the Romanian penal law applies to offenses committed outside the territory of the country by a Romanian citizen or a Romanian legal person, if the offense is the offense under the criminal law of the country where it was committed or has been committed in a place that is not subject to the jurisdiction of any state.

In applying this principle are required to be met:

- The offense was committed wholly outside the country or in a place that is not subject to the jurisdiction of any state. Where to place only an act of execution, or aiding or abetting occurred outcome or result of some crime, criminal law principle of territoriality becomes incident (art. 8 C.p).

- The offender to have the time of the offense abroad, the quality of Romanian or Romanian legal entity [35] (art. 9 para. 1 C.p.).

- The offense is an offense and Romanian criminal law, and the law of the place of committing the crime, so to be double criminality in the case of serious offenses for which small and medium - Romanian law provides for imprisonment of 10 years (art. 9 para. 2 C.p.).

- Criminal proceedings shall be initiated with the prior authorization of the general prosecutor of the Court of Appeals, whose jurisdiction is notified first floor or, where applicable, the General Prosecutor 's Office attached to the High Court of Cassation and Justice. Period in which the prosecutor may issue the authorization is for up to 30 days from the date of request authorization and may be extended, under the law, but the total duration exceeding 180 days (art. 9 para. 3 C.p.).

- The offender may be prosecuted by the Romanian courts and when he is not in the country, the judgment may take place in absentia [36]; Romanian criminal law will apply even if the perpetrator was tried, convicted or acquitted abroad, following that, according to art. 73 C.p., the punishment and custodial term preventive measures performed outside the country, to be deducted from the sentence imposed for the same offense in Romania [37].

- The provisions of art. 9 C.p. apply unless otherwise provided by an international treaty to which Romania is a party (art. 12 C.p.).

Regarding the treatment applicable sanctioning the doctrine advanced the view that the Romanian court may not impose a more severe penalty than that imposed abroad since the individualization of punishment should be given to the repressive reaction could not be more severe than in the country abroad, where the offense was committed or where its social resonance was stronger [38].

Also, there are situations exception to this principle, namely, the situation of the offender can invoke *res judicata* the judgment abroad [39].

2. According to the reality principle (art. 10 C.p.), Romanian criminal law applies to offenses committed outside the territory of the country by a foreign citizen or a stateless person, against the Romanian state, against a Romanian citizen or a legal Romanian.

In applying this principle are required to be met:

- The offense was committed wholly outside the country;
- Author and other participants in the crime to have quality foreign citizen or stateless person who does not reside in Romania;
- The offense was committed against the Romanian state directed against a Romanian citizen or a Romanian legal person;
- The offense is an offense of Romanian criminal law, it is not necessary to double criminality;
- Act not subject to proceedings in the State in which was committed;
- Criminal proceedings shall be initiated with the prior authorization of the General Prosecutor's Office attached to the High Court of Cassation and Justice;
- The offender may be prosecuted by the Romanian courts and when he is not in the country, the judgment may take place in *absentia*, Romanian criminal law will apply even if the perpetrator was tried, convicted or acquitted abroad, following that, according to article 73 Penal Code, the punishment and custodial term preventive measures performed outside the country, to be deducted from the sentence imposed for the same offense in Romania.
- The provisions of art. 10 C.p. apply unless otherwise provided by an international treaty to which Romania is a party (art. 12 C.p.).

Reality principle of criminal law is coming to consecrate the necessity defense against crimes committed abroad paramount social values representing each state actually right “to defend on its own criminal law, their own being and safety of its citizens” [40].

3. According to the principle of universality (Article 11 C.p.), Romanian criminal law applies to offenses other than those provided in art. 10 C.p., committed outside the country of a foreign citizen or stateless person who is voluntarily in Romania, in the following cases:

a) has committed an offense which the Romanian state has undertaken to suppress under an international treaty, whether foreseen or not by the criminal law of the state in whose territory it was committed;

b) requested the extradition or surrender of the offender and this was refused.

In applying this principle are required to be met:

- The offense was committed wholly outside the country;
- The offense has been committed other than those referred to in art. 10 C.p.;
- The offense to be of those that the Romanian state has undertaken to suppress under an international treaty, whether foreseen or not by the criminal law of the state in whose territory it was committed;
- Author and other participants in the crime to have quality foreign citizen or stateless person who does not reside in Romania;
- The offender must be willingly in our country [41];

- Requested the extradition or surrender of the offender and this was refused. This condition is not required when state law the offense, there is a cause which prevents the initiation of criminal proceedings or continue criminal proceedings or execution of the sentence or the sentence has been served or is deemed as served;

- When the punishment was not executed or was executed only in part, proceed according to the law regarding the recognition of foreign judgments, so that, according to art. 73 Penal Code, the punishment and custodial term preventive measures performed outside the country, to be deducted from the sentence imposed for the same offense in Romania.

- The provisions of art. 11 C.p. apply unless otherwise provided by an international treaty to which Romania is a party (art. 12 C.p.).

Conclusions

Respect for the territorial integrity, inviolability of the territorial state and its borders, the obligation not to use force or threat of force against the elements of the state territory, not to infringe the sovereignty and national independence are fundamental principles of international law, the relations between all states of the world.

A nation, a people can not exist without territory. It appears as a material expression of supremacy, independence and inviolability of state and the people that live there [42].

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