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 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 navigable 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].

References


[3]. Article 4 paragraph 1 of O.U.G. No. 194 of 12 December 2002 on the regime of aliens in Romania, republished in the Monitorul Oficial of Romania, Part I, no. 421 of 05.06.2008, amended and supplemented, states: “While in Romania, foreigners are obliged to respect the Romanian laws”.


[5]. Article 3 paragraph 2 of the Constitution of Romania, republished in the Monitorul Oficial of Romania no. 767 of 31 October 2003. Par. 1 states that “The territory of Romania is inalienable”.


[8]. “Non bis in idem” formula that is off a judge to rule in connection with a case in which previously pronounced, http://www.dictionarjuridic.ro.


[11]. Law no. 17/1990 on the legal regime of marine waters, the contiguous zone and the exclusive economic zone of Romania, republished in the Monitorul Oficial of Romania, Part I, no. 765 of 21 October 2002, sets out the contiguous zone and the continental shelf over which the State exercises its right of economic exploitation, and certain control rights to prevent infringements of national laws on taxation, health and border crossing. Contiguous area not part of the national territory and the crimes committed in this area can be traced to the principle of territoriality Romanian criminal law, unless they are committed on a ship or a Romanian flag drilling submarine, whose regime is similar to the national flag ships.


18. Laura Magdalena Trocan, work cited, pp. 52-53.


22. Territorial jurisdiction is a form of power which distribute a criminal case in terms of territory between judicial bodies equal in rank. For details on the “territorial jurisdiction (ratione loci)”, see Ion Cristinel Rujan, *Drept procesual penal*, Academic Publishing Brancusi, Târgu-Jiu, 2009, p. 2.


25. For international airspace regulatory developments, see: Laura Magdalena Trocan, work cited, 2012, p. 54.


27. 1961 Vienna Convention on Diplomatic Relations provides that the diplomatic agent shall be inviolable (Article 29), and Article 31 states that the diplomatic agent shall enjoy immunity from the criminal jurisdiction of the sending State. See in this regard and Laura Magdalena Trocan, *Regimul juridic al ofițierilor consulare*, Annals of Constantin Brancusi University of Targu-Jiu, Legal Sciences Series, no. 1/2011, p. 87.


29. According to the Vienna Convention are considered according to the international diplomatic representatives Ambassador, Minister Plenipotentiary, counselor of embassy or delegation, the secretary of embassy or mission, attaché of the embassy or mission, military attaché and their family members if they are not nationals of the State accredited. Diplomatic immunities were extended then and the representatives of consular missions and acts according to conventions and international bodies to establish diplomatic immunity for their representatives (eg. ONU Convention on the privileges and immunity ratified by Romania by Decree no. 201 / 1956, EBRD - Agreement establishing the European Bank for Reconstruction and Development, ratified by Romania by Law nr.24/1990 ; Pundit - Agreement between the Government of Romania and the United Nations Development Programme on Privileges and Immunities - Monitorul Oficial, No. 81/1991). It enjoys immunity from foreign heads of state when they are in the country or are crossing the country and members of foreign diplomatic delegations on official mission.


31. Diplomatic immunity is a cause and effect in personam and inviolability of diplomatic premises is a consequence of that immunity. Romanian judicial authorities can not enter their premises without the approval of the head of mission, but it does mean that the acts committed by nationals of foreign diplomatic missions accredited in the territory out of the scope of national law. Although article 22 of the Vienna Convention provides that the mission premises are inviolable and not agents of the sending State may not enter them without the consent of the Head of Mission, the same article also stipulates that the State must take measures to ensure the peace of the mission or impairing disorder prevention its dignity, and that the premises, furniture, transport of the mission shall not be subject to search, requisition, attachment or insurers.

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[32]. Vasile Dobrinoiu, Ilie Pascu, Ioan Molnar, Gheorghe Nistoreanu, Alexandru Boroi, Valerică Lazăr, 

[33]. Article 34 of Law no. 17/1990 on the legal regime of marine waters, the contiguous zone and the 
exclusive economic zone of Romania, republished in the Monitorul Oficial of România, Part I, no. 

[34]. Article 17 para. 2 of Law no. 17/1990 republished.

[35]. Article 135 para. 1 C.p. states that: “The legal entity except the state and public authorities 
criminally responsible for crimes committed in achieving the object of activity or interest or on 
behalf of the legal person”.

[36]. “In absentia” (adverbial phrase) = “short”, “without being present in the process” of fr. “absentia”, 

[37]. Article 73 C.p. - _Deduction of sanctions and preventive measures undertaken outside the country._

[38]. George Antoniu (coordinating), Constantin Mitrache, Rodica Mihaela Stănoiu, Ioan Molnar, Viorel 
Paşca, Avram Filipaş, Iosif Ionescu, Nicoleta Iliescu, Matei Basarab, _Noul Cod penal comentat_, vol. 
I, Publisher C. H. Beck, Bucharest, 2006, p. 112.

[39]. Law no. 302 of 28 June 2004 on international judicial cooperation in criminal matters, published in 
the Monitorul Oficial no. 377 of 31 May 2011 to implement provisions of the Convention of 19 June 
1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at 
common borders Schengen - Article 129 - Application of the principle of _non bis in idem_: (1) A 
person against whom a final judgment to the territory of Schengen Member State can not be 
prosecuted or tried for the same offense if, in case of conviction, the judgment was enforced, is in 
effect or not State law can be enforced convicting; (2) However, the provisions of para. 1 shall not 
apply if: a) acts to which the foreign judgment were committed in whole or in part in Romania. In 
this case, the exception does not apply if the acts were committed in part in the territory of the 
Member State where the judgment was given; b) acts to which the foreign judgment constitutes a 
crime against state security or other essential interests against Romania; c) acts to which the foreign 
judgment was committed by a Romanian civil service in violation of its obligations. (3) The 
exceptions referred to in para. 2 shall not apply where, for the same facts, the Member State 
concerned demanded for taking criminal or extradition of the person concerned.

SRL, Bucharest, 1992, p. 102.

[41]. Article 237 of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code 
, published in the Monitorul Oficial of România, Part I, no. 757 of 12 November 2012, states that 
“condition willingly stay in Romania shall mean the voluntary stay in that territory at the time of 
disposition by judicial organs or restrictive measure involving deprivation of liberty on account of 
the crime that attracts the scope of the principle of universality”.