

APPLICATION OF ROMANIAN LAW TO CRIMES COMMITTED BY ROMANIANS ABROAD

P. B. MARINCAȘ

Paul Bogdan Marincas

Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania

Master Degree program: Criminal Sciences and Forensics

E-mail: bogdan.marincas25@yahoo.ro

***Abstract:** This article gives a general presentation on the application of the principle of personality of the criminal law, it is structured in six essential points, presenting the definition, conditions of application, exceptions to the application, jurisdiction of the courts, special issues in the matter, as well as a brief comparison with other European legal systems regarding the application of this principle and contains a presentation of a practical case, from the jurisprudence of national courts regarding the application of Romanian criminal law to crimes committed by Romanians abroad.*

***Key words:** criminal law, the jurisprudence of national courts, the principle of the personality of the criminal law*

1. General notions regarding the application of the principle of personality of the criminal law

The Criminal Code regulates the principle of the personality of the criminal law in art. 9, according to which: "(1) The Romanian criminal law applies to crimes committed outside the territory of the country by a Romanian citizen or a Romanian legal entity, if the penalty provided for by the Romanian criminal law is life imprisonment or imprisonment for more than 10 years. (2) In the other cases, the Romanian criminal law applies to crimes committed outside the territory of the country by a Romanian citizen or a Romanian legal person, if the act is also provided as a crime by the criminal law of the country where it was committed or if it was committed in a place not subject to the jurisdiction of any State."

Through this principle, the incidence of the Romanian criminal law is ensured in relation to the quality of the one who commits the crime (Popoviciu, 2014:114).

The quality of being a Romanian citizen or a Romanian legal person must be taken into account when committing the crime, because the state defends, through its consular and embassy representatives, the interests of Romanian citizens abroad. Romanian citizens must respect the laws of our country even if they are in a foreign territory. It can be stated that, in order to be held criminally liable, it is sufficient for the act to be criminalized by the Romanian criminal law, for the offender to be a Romanian citizen and for there to be no reason to prevent the initiation of the criminal action.

Starting from considerations of judicial practice and doctrine, the Romanian legislator understood to take measures to avoid the unnecessary agglomeration of the judicial bodies with cases that will not be able to be resolved in a reasonable time due to the impossibility of their implementation, namely:

- fulfilling the condition of double criminality, for crimes of lesser and medium gravity, sanctioned with sentences of up to 10 years in prison,

- "*The initiation of the criminal action is done with the prior authorization of the general prosecutor of the prosecutor's office attached to the court of appeal in whose territorial range the prosecutor's office first notified is located or, as the case may be, of the general prosecutor of the prosecutor's office attached to the High Court of Cassation and Justice.*"- art. 9, para. 3, sentence 1 Criminal Code.

Therefore, the current Penal Code has introduced an additional requirement of procedure, providing that: *„the initiation of the criminal action is done with the prior authorization of the general prosecutor of the public prosecutor's office attached to the court of appeal in whose territorial range the first notified public prosecutor's office is located or, as the case may be, the general prosecutor of the public prosecutor's office attached to the high court of Cassation and Justice"*(regarding the crimes that are tried in the first instance by the supreme court), following the analysis of the opportunity to bring the suspect to criminal liability based on the Romanian criminal law or the opportunity to continue the criminal investigation and send to court a case in which probation would be difficult to administer; the criminal investigation body can, however, start the criminal investigation and carry out research documents regarding the act, can order the further criminal investigation against the suspect, but, in the absence of prior authorization, it cannot initiate the criminal action and order the referral to court .

According to art. 73 Criminal Code, if a crime that is prosecuted and judged in Romania by applying the principle of personality (art. 9 Criminal Code) was the subject of a criminal case also before foreign judicial bodies, *„the part of the punishment, as well as the duration of preventive custodial measures executed outside the territory of the country, are deducted from the duration of the punishment applied for the same crime in Romania."* These provisions *„applies accordingly also if the penalty served is a fine"*.

This principle is also known as the principle *active nationality* being meant to complement situations not covered by the principle of territoriality. It appears regulated in most criminal legislation, based on reasons related to the close connection between Romanian citizens (natural persons or legal entities), on the one hand, and the Romanian state, on the other (Rusu, 2014:101).

2. Conditions of application

The conditions of application of the principle of personality of the criminal law are:

1. The perpetrator must be a Romanian citizen or a Romanian legal person at the time of committing the crime. By Romanian citizen is meant the natural person who, at the time of committing the crime, had Romanian citizenship, even if he also had other citizenships of other states. By Romanian legal person, it is understood, according to art. 135 Criminal Code: "*(1) The legal person, with the exception of the state and public authorities, is criminally liable for crimes committed in the pursuit of the object of activity or in the interest or on behalf of the legal person. (2) Public institutions are not criminally liable for crimes committed in the exercise of an activity that cannot be the subject of the private domain. (3) The criminal liability of the legal person does not exclude the criminal liability of the natural person who contributed to the commission of the same act.*"

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2. The deed committed outside the territory of the country must be prescribed as a crime both by the Romanian criminal law and by the criminal law of the country where the crime was committed, if the punishment provided by the Romanian law is at most 10 years imprisonment. The law does not specify anything about double criminality, so it can be concluded, naturally, that there is no need for formal identity between the criminalization texts. It is important to criminalize the respective act in the content of the two legislations, the form of the crime or the form of participation being irrelevant.

The addition made by the current Penal Code regarding the requirement that the crime be provided for both by the Romanian criminal law and by the criminal law of the country where it was committed, in the case of crimes with a low or medium danger, is likely to avoid the application of the criminal law Romanian citizens or Romanian legal entities who have not committed any criminal offense outside the country according to foreign law, if their acts are nevertheless provided as crimes only by Romanian criminal law (Udroiu, 2014:29).

3. The act was committed in a space that is not subject to any state jurisdiction, but is, instead, criminalized by Romanian criminal law. It follows that the deed must be committed outside the territory of Romania or in a space that is not subject to the jurisdiction of any state. In this hypothesis, we can be in the presence of only an act of execution, instigation, complicity, or in the presence of only the result of the crime or a part of this result on the territory of Romania, becoming an incident to the principle of territoriality of the criminal law according to art. 8 of the Criminal Code.

This principle is applied exclusively and unconditionally, in the manner that the act is investigated and judged by the Romanian courts, taking into account, however, when individualizing the criminal sanction, the harshness of the sanction applied by the other state in case there was such a sanction applied (Rusu, 2014:102).

3. Exceptions to the application of the principle of personality of the criminal law

The exclusive and unconditional application is not made absolutely, there are exceptions. Such an exception from the application of art. 9 Criminal Code is provided by the provisions of art. 135 para. 1 of Law no. 302/2004 on extradition, republished pursuant to art. III of Law no. 51/2021. According to this legal text: "(1) A person in respect of whom a final judgment has been issued on the territory of a member state of the Schengen area cannot be prosecuted or tried for the same acts if, in case of conviction, the judgment has been executed, it is being executed or can no longer be executed according to the law of the state that pronounced the sentence."

This provision is an application of the principle *ne bis in idem*, and therefore the prosecutor will have to order the classification, and the court the termination of the criminal process, if there is a final judgment of conviction of the same person, for the same deed by the foreign courts (Udroiu, 2014:30).

According to art. 135 para. 2 of Law no. 302/2004 the above provisions do not apply if:

"a) the acts covered by the foreign judgment were committed in whole or in part on the territory of Romania. In this case, the exception does not apply if the facts were committed in part on the territory of the member state where the judgment was rendered;

b) the facts covered by the foreign judgment constitute a crime against national security or against other essential interests of Romania;

c) the acts covered by the foreign judgment were committed by a Romanian civil servant in breach of his official duties."

Instead, according to para. 3 of the same legal text: "*(3) The exceptions mentioned in para. (2) does not apply when, for the same facts, the Member State concerned requested to take over the criminal prosecution or granted the extradition of the person in question."*

4. Application of the principle of personality of the criminal law in a case with international drug trafficking as its object

The Călărași Court heard the criminal case concerning the AV defendants sent to court for committing the crimes of: "international drug trafficking „provided by art. 3 paragraph 1 of Law no. 143/2000 and "unlawful procurement of dangerous drugs ", provided by art. 2 para. 1 of Law 143/2000, all with the application of art. 38 para. 1 of the Criminal Code and ZF sent to court for committing the crimes of "international trafficking in dangerous drugs", provided by art. 3 paragraph 1 of Law 143/2000 and "possession of dangerous drugs for personal consumption", provided by art. 4 para. 1 of Law 143/2000, all with the application of art. 38 paragraph 1 Criminal Code.

The court, on the present criminal case, held that, by indictment no. 18D/P/2017 of the Prosecutor's Office attached to the ÎCCJ – DIICOT – BT Călărași, the AV defendants were sent to court for committing the crimes of: "international drug trafficking", provided by art. 3 paragraph 1 of Law no. 143/2000 and "unlawful procurement of dangerous drugs ", provided by art. 2 para. 1 of Law 143/2000, all with the application of art. 38 paragraph 1 Criminal Code and ZF for committing the crimes of "international drug trafficking", provided by art. 3 paragraph 1 of Law 143/2000 and "possession of dangerous drugs for personal consumption", provided by art. 4 para. 1 of Law 143/2000, all with the application of art. 38 paragraph 1 Criminal Code.

It was essentially noted through the act of referral to the court that the defendant AV, on 11.03.2017, while she was in Italy, placed in a package the amount of 8.24 grams of cannabis, which she shipped to Romania, through an international courier company, a parcel that was received by the defendant ZF, a fact that meets the constitutive elements of the crime of "introducing dangerous drugs into the country without the right", provided by art. 3 paragraph 1 of Law 143/2000. The same defendant, during March 2017, while she was in Italy, unlawfully procured from an Italian citizen, the amount of 8.24 grams of cannabis, an act that meets the constitutive elements of the crime of "unlawful procurement of drugs of risk", provided by art. 2 para. 1 of Law 143/2000.

In the charge of the defendant ZF, it was noted that on 15.03.2017, he was detected by the police after he picked up from the headquarters of an international courier company a parcel that he received as the recipient, which contained the amount of 8.24 grams of cannabis, which he received based on a prior agreement he had with co-defendant AV, who purchased the drugs from Italy, a fact that meets the constitutive elements of the crime of "introducing drugs into the country risk „provided by art. 3 paragraph 1 of Law 143/2000. The same defendant, from the moment of receiving the package, until the moment of being caught red-handed and

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opening the package, possessed the amount of 8.24 grams of cannabis, for personal consumption, a fact that meets the constitutive elements of the crime of "possession of drugs for consumption own", provided by art. 4 para. 1 of Law 143/2000.

In the course of the criminal investigation, the following means of evidence were administered: ex officio referral report, accused statements, suspect statements, witness statements, flagrant report, photographic plates, technical-scientific report, evidence of introduction to the Chamber of Criminal Bodies, criminal record sheets.

The case was registered at the Călărași Court under no. 1028/116/2017, on 30.06.2017.

By the conclusion of the meeting in the council chamber dated 24.08.2017, the legality of the referral to the court with the indictment no. 18D/P/2017 of the Prosecutor's Office attached to the ÎCCJ - DIICOT - BT Călărași, the administration of the evidence and the execution of the criminal investigation documents was found, and the trial of the case regarding the defendants AV and ZF was ordered

On September 21, 2017, during the trial on the merits of the case, the two defendants told the court that they wanted the trial to be based on the simplified procedure, fully admitting the crimes, as they were retained in the indictment and based on the evidence administered in the criminal investigation phase.

Considering this recognition position of the defendants, the court considers the following factual situation:

On 13.03.2017, the judicial police bodies of the Călărași Territorial Office - the Călărași Organized Crime Service, notified themselves ex officio and started conducting investigations under the aspect of committing the crime of "introduction of dangerous drugs into the country", provided by art. 3 paragraph 1 of Law 143/2000. In the referral document prepared by the judicial police bodies, it is noted that a person named AV, who resides in Italy, would send dangerous drugs, which he would hide in postal parcels, to the named ZF, who lives in the municipality of Călărași, the latter proceeding, after receiving the cannabis, to sell it to consumers who are part of his entourage.

Following this notification, the judicial police bodies established by specific methods that, on 15.03.2017, two days after the registration of the criminal investigation file, ZF would receive and pick up from a courier company a parcel sent by AV that would contain dangerous drugs, namely cannabis. As a consequence, an activity was organized to catch the defendant ZF in the act, who was picked up after he presented himself at the headquarters of the courier company Posta Atlassib and came into possession of a package sent from Italy by the defendant AV, in the name of

Next, the defendant ZF was taken to the headquarters of the Călărași Organized Crime Service, together with the witness CVT and, in his presence, the package was opened, a circumstance in which it was found that it contained items of clothing, shoes and two mobile phones. Inside a pair of sports shoes, brand Nike, a package of wet wipes was discovered in which a plastic bag was hidden, which contained an olive-green substance with a pungent smell, a substance that was raised for expert examination, packed in a MAI type envelope, and sealed with the MAI seal no. xxx. When asked what he knew about the detected substance, the defendant ZF stated that he was a drug user, namely cannabis, and "that quantity was sent by his concubine AV, who was in Italy, to work".

By the Ordinance of 15.03.2017, it was ordered that a technical-scientific assessment be carried out in the case, by a specialist from the Central Drug Analysis and Profile Laboratory, in order to establish whether the sample taken from the parcel contains psychotropic narcotic substances, subject to the established regime by Law 143/2000 and what is the mass of evidence. From the Technical-Scientific Findings Report no. xxx of 13.04.2017 of the Central Drug Analysis and Profile Laboratory, it follows that the sample in the case regarding ZF and AV consists of 8.24 grams of cannabis. Cannabis is part of Annex Table no. III to Law 143/2000, the sample contains tetrahydrocannabinol, a psychotropic substance, biosynthesized by the cannabis plant, and the amount of 7.90 grams of cannabis, remaining in the sample, after the laboratory analyses, was handed over to the criminal investigation body.

With proof no. xxx of 05.05.2017, the police introduced to the Criminal Bodies Chamber of the IGPR - DCJSCO the amount of 7.90 grams of cannabis, which is to be confiscated by the court. Being heard, the two defendants, during the criminal investigation, admitted to committing the crimes they were charged with and exposed the concrete circumstances in which they committed the facts that form the object of the investigations, in the manner in which they were brought to their attention.

During the criminal investigation, it was ordered by ordinance to extend the criminal investigation against AV regarding the commission of the crime of "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law no. 143/2000, considering that her act of acquiring, while she was in Italy, the amount of 8.24 grams of cannabis, meets the constitutive elements of the offense provided for by art. 2 para. 1 of Law 143/2000.

Finding that there is double criminality and considering the provisions of art. 9 of the Criminal Code, which establishes the principle of the personality of the criminal law, the General Prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice was requested to authorize the initiation of criminal proceedings against the suspect AV for committing the crime of "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law 143/2000, act committed on the territory of Italy.

By the Ordinance of 20.06.2017 it was ordered, based on art. 9 para. 3 Criminal Code related to art. 16 para. 1 lit. e) Code of criminal procedure and art. 309 of the Criminal Procedure Code, authorizing the initiation of criminal proceedings against the suspected AV for committing the crime of "unlawful procurement of dangerous drugs", provided by art. 2 para. 1 of Law 143/2000. These confessions of the defendants are corroborated with the other evidence administered in the case, namely witness statements, photographic plates, minutes of red-handed arrest, report of technical-scientific findings.

From the statement of the witness CVT, a person criminally convicted for committing the offense provided for in art. 2 para. 1 of Law 143/2000, in a criminal case previously solved by the Directorate for the Investigation of Organized Crime and Terrorism - Călărași Territorial Office, it appears that he is the one who accompanied the defendant ZF to the courier company headquarters with the stated purpose of both to purchase part of the objects sent by the defendant AV. The witness showed that he went with the defendant ZF to the headquarters of the courier company, to pick up a package sent from Italy, by his concubine, only the defendant entered the premises, and he waited for him outside, inside the car they travelled with. After the defendant took possession of the package and they were preparing to leave, they were summoned by police workers, who asked them to accompany them to the premises, in order to

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carry out a control on the package picked up by the defendant, shipped from Italy, by his concubine. The witness also stated that the package in question was unsealed by police workers in the presence of him and the defendant, the circumstance in which it was found that inside a brown sports shoe, inscribed "Nike Air Max", there was a package of wet wipes, which contained inside a small transparent plastic bag, in which there were green-olive vegetable fragments.

In the case, it was decided, by the reasoned ordinance of 14.03.2017, to authorize the use of collaborators and undercover investigators, with the aim of obtaining the data and information necessary to prove the criminal activity carried out by the defendant ZF

The SC witness stated that he has known the defendant ZF for a long time and knows about him that he has been a high-risk drug user since he was 13-14 years old, since he went to Italy with his family. He confirmed that the defendant returned to the country at the end of 2016 - the beginning of 2017, by which he learned that shortly after his return to Romania, he received from his concubine, AV, a package containing hidden about 100 grams of cannabis, drugs that he partly possessed and consumed daily, but which he also sold to make money to support himself, to consuming people who were part of his entourage. The witness also specified that, through the relationship he had with the defendant ZF, he learned directly from him that, on 15.03.2017, he was going to receive from the defendant AV, located in Italy, a package in which to hide a quantity of drugs, identical to those that the defendant had sent previously. From the relations communicated by "Posta Atlassib"- Courier Rapid, the company through which the defendant AV sent the parcel containing drugs into the country, it follows that the defendant ZF is registered in the database as the recipient of the following shipments, the sender being AV: a parcel shipment dated 28.01 .2017, with the defendant AV as the sender, with the place of departure Rossolini Italy, the place of destination Călărași, consignee ZF; a parcel shipment dated 12.03.2017, with AV as the sender, with the place of departure Rossolini, Italy, the place of destination Călărași, consignee ZF

Compared to the above, it finds that, in law, the act of the defendant AV who, on 11.03.2017, while she was in Italy, placed in a package the amount of 8.24 grams of cannabis, which sent to Romania, through an international courier company, the package that was received by the defendant ZF, meets the constituent elements of the crime of "introducing dangerous drugs into the country without the right", provided by art. 3 paragraph 1 of Law 143/2000. The act of the same defendant who, during March 2017, while in Italy, unlawfully procured from an Italian citizen the amount of 8.24 grams of cannabis, meets the constituent elements of the crime of "unlawful procurement of drugs of risk", provided by art. 2 para. 1 of Law 143/2000.

The fact of the defendant ZF who, on 15.03.2017, was detected by the police after he picked up from the headquarters of an international courier company a package that he received as the recipient, which contained the amount of 8.24 grams of cannabis, which he received based on a prior agreement he had with co-defendant AV, who purchased the drugs in Italy, meets the constituent elements of the crime of "importing into the country dangerous drugs", provided by art. 3 paragraph 1 of Law 143/2000. The act of the defendant ZF, who, from the moment he received the corner, until the moment he was caught in the act and the package was opened, possessed the quantity of 8.24 grams of cannabis, for his own consumption, meets the

constitutive elements of the crime of "possession of drugs for the purpose of consumption own", provided by art. 4 para. 1 of Law 143/2000.

When individualizing the punishments for the two defendants, the court takes into account the real circumstances in which the acts were committed, the manner and circumstances of their commission, the personal circumstances, not being known to have criminal antecedents, the sincere attitude of recognition and regret, as well as the general criteria for individualizing the punishment provided by art. 72 of the previous Criminal Code.

In view of these circumstances, the court considers that the purpose of the punishment can be achieved even without its execution in detention, which is why the provisions of art. 91 of the Criminal Code, regarding the suspension of the execution of the sentence under supervision, with the defendants following that during the term of supervision they will fulfil the obligations imposed in full, representing supervision measures.

At the same time, their attention was drawn to the provisions of art. 96 Criminal Code, regarding the revocation of the suspension of the sentence under supervision.

Based on art. 16 para. 1 of Law 143/2000 ordered the special confiscation for the benefit of the state from the defendant ZF of the drugs that were the object of the crime, drugs located at the IGPR - DCJSEO Crime Body Chamber with evidence no. xxx/5.05.2017.

Based on art. 17 para. 1 of Law 143/2000 ordered the destruction of drugs seized for confiscation, with the preservation of counter-evidence (sintact.ro).

CONCLUSIONS

Criminal laws are applied, like all laws, in space on a certain territory, subject to a sovereignty, given by art. 8 Criminal Code and for a certain duration, as a result of a criminal policy, generated by economic and socio-cultural factors. From the moment of entry into force, the criminal law is mandatory for all Romanian citizens, and the crime can also be committed outside the territory of Romania, by a Romanian citizen, foreign citizen, or stateless, who lives in the country or has dual citizenship. As in all social phenomena, so also in the case of crime, respectively criminality, space is a reference factor. Criminal acts are committed in a certain space, that is, on a territory, in a given place.

The effectiveness of the criminal law is limited not only in time, but also in space, in the sense that it extends its effects to the territory over which the state exercises its sovereignty.

State sovereignty, i.e., the exercise of political power under certain conditions of independence, unity, etc. it takes place in a certain delimited geographical-political territory, in accordance with international conventions. The entire legislation elaborated and adopted by the legislative bodies of the state operates on the extent of this territory.

Referring to the criminal legislation, we will say that it, with all the means of combating criminality that it organizes, acts on a determined territory. The application of the Romanian criminal law, according to the principle of territoriality, is exclusive and unconditional, in the sense that the Romanian courts are not bound by the solutions handed down by the foreign courts, in the event that the foreign citizen or stateless person has also been tried abroad for the acts committed in Romania, the judgments of foreign courts not having *res judicata* authority. In the same sense, if the criminal process was terminated on the grounds that there are causes that remove the criminal nature of the deed or criminal liability, the termination solution does not prevent the perpetrator from being judged according to Romanian law.

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In the case of crimes committed under the conditions of art. 8, art. 9, art. 10 or art. 11 Criminal Code, the punishment part, as well as the duration of preventive measures depriving of liberty executed outside the territory of the country are subtracted from the duration of the punishment applied for the same punishment in Romania. The rule also applies accordingly if the penalty served outside the country is a fine (Rusu, 2014:95).

The principle of the personality of the criminal law complements the principle of the territoriality of the criminal law which alone cannot cover all the situations that may arise in judicial practice in relation to the application of the Romanian criminal law in space. The concept of this principle consists in the fact that Romanian citizens and Romanian legal entities are obliged to respect the laws of our state even when they are abroad. By including the principle of personality in the package of principles governing the application of the criminal law in space, the legislator of the new Criminal Code considered that the fight against crime cannot be conceived only within the limits of the territoriality principle of the criminal law. Therefore, it was considered necessary that the requirements of the Romanian criminal law be respected also outside the territory of the country by Romanian citizens and Romanian legal entities. By stipulating the principle of personality in the Criminal Code, the Romanian legislator gave effectiveness to the Romanian criminal law beyond the borders of the country.

Based on the principle of personality, the Romanian citizen (or Romanian legal entity) who was tried for crimes committed abroad and subjected to the execution of a sentence or benefited from a cause of termination of the criminal process, can be held criminally liable by the judicial bodies in the country.

It is no less true that, if there were no principle of personality in the criminal law, in relation to crimes committed by Romanian citizens or Romanian legal entities abroad, the principle of territoriality would be inoperative, and such persons, who have disregarded the national criminal law, they could not be held criminally liable under Romanian criminal law.

To eliminate this shortcoming, the legislator of the current Criminal Code provided in art. 9 the principle of the personality of the criminal law as an expression of the guarantees granted by the Romanian Constitution to the rights of Romanian citizens. Thus, the Romanian criminal law protects Romanian citizens and Romanian legal entities, and the Constitution guarantees their rights, so that, wherever they are, it requires them to behave in accordance with the requirements of the criminal law abroad.

The reason for this principle is of a practical nature, its role being to avoid the impunity of our nationals, natural or legal persons, when they commit crimes abroad (Dobrinou, 2012).

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