

## CRIMINAL LAW AS A BRANCH OF ROMANIAN LAW

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***Abstract:** Throughout history, criminal law has known several definitions, all of which finally have its presentation as a branch of law, made up of a totality of legal norms, which establish the facts that constitute crimes, the conditions of criminal liability, the sanctions and the manner of their application. From the presented definition, we can deduce the fact that criminal law is a distinct branch of law, along with civil, administrative, constitutional, commercial law. Also, it is composed of the general part and the special part, but the structure is unitary, one cannot exist without the other. The general part provides the general rules, rules on how to apply the law, the governing principles, the typicality of crimes, the manner and rules of sanctioning. Instead, the special part of criminal law includes the rules of criminalization and the content of crimes. Consequently, criminal law aims to defend legal values against crime and at the same time combat it, especially, criminal law is the main guarantor of the norms and rules provided by the Romanian Constitution, having as its main objective the independence and unity of the state as well as the safety of citizens.*

### **Introduction**

Law, regardless of the branch of which it is a part, represents the sovereignty of the state that developed it and that applies it, a fact that demonstrates the spatial limitation of the law. As for the criminal law, it is subordinated to the principles of sovereignty, the application of the law of a state cannot be extended beyond its borders (Boroi, 2022: 2).

### **1. The evolution of the concept of criminal law and the principle of territoriality**

Criminal law is in a continuous evolution due to the various new methods of committing existing acts as well as the emergence of new crimes determined by the emergence of the technological sphere. So, both the Romanian and the EU legislators must consider updating and improving the system in order to reduce crime. The Romanian Penal Code has undergone more than 5 changes over time, the French Code being often copied by the legislator and applied also in the Romanian space without, however, corroborating the legislation with the needs of the citizens and at the same time with the increased crime in our country. CP currently it is provided by Law 187/2012 which was aligned with the requirements of the European Union legislation as a consequence of Romania's accession to the European space in 2007.

We can say the same thing within the principle of territoriality whose rules evolve along with the crime phenomenon. Even if the rules of a state are applicable only within the borders, we must also take into account the new methods of committing acts such as cybercrimes, the commission of which is increasingly common in criminal law.

### ***1.1. General aspects regarding the principle of territoriality***

In the following, we want to present the conceptual aspects of the subject of analysis, so that the principle of territoriality is presented as "that principle according to which the norms of Romanian criminal law remain applicable to all crimes committed on the territory of Romania, a consequence of the sovereignty of the state vested with *jus puniendi* [(expr. lat. "the right to punish") - the state's right to penalize certain acts] (Pușcașu, 2022: 2)." Also, by identifying the applicable criminal law, the criminal investigation bodies will be able to establish the typicality of the act, its classification and the application of criminal sanctions.

The territory of Romania is defined by article 8 C.P. as being the expanse of land, the territorial sea as well as the waters with the soil, the subsoil and the air space included between the state borders (Udroiu, 2019:42). According to O.U.G. no. 105 of 2001, Article 1, state borders mean the real or imaginary line that passes from one border mark to another, from one coordination point to another (Criminal Code of Romania, 2023:17).

Also, article 8 of C.P. also defines crimes committed on the territory of Romania, more precisely, any crime "committed entirely on the territory of the Romanian state, or on a ship under the Romanian flag or an aircraft registered in Romania.". Before moving on, it is important to also define the term sovereignty because it is closely related to the principle of territoriality. According to the common language, sovereignty is presented to us as the attribute of the state to benefit from the inalienable and indivisible character, the supremacy of state power within its borders. We can also distinguish between national sovereignty which presents the independence of a state from other states, the sovereignty of the people being the ultimate power.

### ***1.2. The seat of the matter is provided both from the perspective of national and European Union norms***

As far as national regulation is concerned, the principle of territoriality is defined by the Criminal Code, General Part, Title I on Criminal Law and its limits of application, Section 2a, Application of criminal law in space article 8. Also, the criminal law is corroborated with the Constitutional laws that provide for the norms of sovereignty, integrity and independence of the country. At the same time, we can also mention the Emergency Ordinances that provide for the limits of territoriality, the rules regarding state borders, the conditions of extradition.

Through Romania's accession to the European space in 2007, it also brought with it the implementation of some Union norms, which have priority, the national legislation having a subsidiarity character, the updating of the national legislation being carried out according to the governing principles of the Community *acquis*. Even so, by joining the countries to the union space, they retain their sovereignty and character as an independent, inalienable state.

## **2. The governing principles of criminal law**

Finally, we want to present the general principles that govern criminal law because they define the territoriality and applicability of the criminal law on the territory of Romania.

To begin with, we recall the principle of the legality of criminalization and punishment which states that no deed can be considered a crime if there is no legal basis and also no criminal sanction can find its applicability in conditions where the criminal law does not provide for it.

The principle of territoriality is closely related to the legality of criminalization from two aspects

First of all, we must see that, if an action or an inaction was committed on the territory of Romania whose sanction and legislative framework is not provided for, we cannot hold the person in question responsible. Secondly, we must also look at things from the perspective of committing the criminal act in another country, which criminalizes the act, and Romania does not, the author of the act by moving to Romania cannot escape the application of the punishment. We thus observe the importance of committing the act on the territory of a country and the application of the governing norms of that country (Anghel, 2010:19).

The principle of minimum intervention (Streteanu et al., 2014:41) implies the subsidiarity of criminal law because criminal law has a more drastic sanctioning character, deprivation of liberty. This principle is also taken into account in the case of committing criminal acts on the territory of Romania, the intervention being subject only in cases that foresee a seriousness of the act.

The *ne bis idem* principle implies that no person can be tried twice for the same act. In this case, we will be able to observe cases involving continuous crimes, whose action takes place on the territory of one state and the result on the territory of another state, in which case, the person will not be held liable twice for the same deed, applying the mentioned principle. In the following, we will present the existing solutions in cases of this kind, which provide for crimes with a duration of consummation.

The legislation provides several principles that determine the application of the criminal law in the event of the commission of the crime. We have thus:

- The principle of personality;
- Principle of reality;
- The principle of universality;
- The principle of territoriality.

In the following we will refer to the analysis of the principle of territoriality, and in the following chapters we will briefly present the other principles, with the aim of being able to differentiate between them and the principle of territoriality.

The territoriality of the country includes, as we mentioned above, the land surface, the territorial waters, including the territorial sea, the subsoil and the air space.

The land surface includes the land area between the political-geographic borders that are established by border conventions with each neighboring state, the surface on which the state exercises its sovereign power.

Regarding territorial waters, here we mention inland waters through all rivers, lake areas and the territorial sea, contained between state borders.

The territorial sea is also regulated by Law no. 17/1990, article 2 which provides that the inland sea of Romania includes the strip of sea adjacent to the shore or, as the case may be, the inland maritime waters having a width of 12 nautical miles, the equivalent of 22,224 meters, measured from the baseline. It is important to correctly delimit the Romanian space and how far the jurisdiction of the Romanian criminal law extends in order to be able to properly apply the law and avoid violating the Conventional rights of citizens.

The basement, represents the sub-terrestrial area, including the one under the territorial sea and the expanse of water, measured as far as the current, contemporary technical-scientific means can penetrate, considering the technological evolution.

The last one, the airspace, is regulated by Decree 516/1953 which provides that Romania is sovereign over its airspace, being represented by the column of air above the territory.

According to new concepts, the headquarters of diplomatic representatives and consulates are also part of the country's territory, even if they are located in another country. These spaces benefit from a special regime that we will analyze in the chapter dedicated to this topic. We must also take into account the determination of the place of commission of the criminal act. In general, if the action or the result occurs on the territory of the country we can talk about the applicability of the territorial law. The problem arises when the result of the crime occurred on the territory of several states. For example, to understand better, if a person sends a package from Spain that produces a criminal act in Romania.

In this case the question is which law will be applicable? The specialist literature considers two theories as the answer.

The theory of the action, the crime being committed where the action was committed even if the result occurred in the territory of another state, referring to the case mentioned above, the law of Spain would be applicable.

The theory of the result states that the deed is considered committed on the territory of the state where the result occurred, regardless of where the action was committed, so that, in the present case, the Romanian law will be applied.

Unfortunately, these theories do not categorically cover all the methods of committing the acts, leaving room for the offender's evasion of responsibility.

Consequently, numerous legislations sought to enshrine the theory of ubiquity.

### **3. The theory of ubiquity**

Criminal law enshrines the theory of ubiquity as the criterion by which the place of the crime is determined. More precisely, the theory of ubiquity represents the possibility of the theory being everywhere. Romanian criminal law is applied according to the principle of territoriality, if there was an act of execution or the result occurred in this territory. In aid of this principle, the theory of ubiquity intervenes, which is determined according to the place where the act was committed.

The crime is considered committed on the territory of Romania, if an act of execution has been committed regardless of whether it has been completed or remains in the attempt phase. "The Romanian criminal law, based on the principle of territoriality, applies to all crimes committed on the territory of Romania, and the theory of ubiquity gives meaning to the place where the crime was committed in the sense of the aforementioned

Consequently, the theory of ubiquity within the framework of the application of the Romanian criminal law is also applicable in cases where a crime is committed entirely on the territory of Romania, or if it is found that only acts of execution or its result have been committed. The development of society and, of course, technology, has consecrated the appearance of several methods of committing criminal offenses, which is why, we consider it appropriate to apply the theory of ubiquity, "the current

development of information technology and the Internet, also reflected in the increasing number of acts of nature crimes that are committed / can be committed online, raise new, modern challenges." (Streteanu et al., 2014:172)

× The ubiquity criterion is applied in special cases such as the character of continuous or continued crimes, being considered committed wherever the criminal action or inaction has been prolonged. In this case, if the act was prolonged on the territory of the country, the Romanian criminal law will be applied, the conditions being met.

It will also be applied in the case of crimes committed out of habit, even if only one illegal act was committed in Romania and a plurality of acts in the territory of another state, the Romanian criminal law finds applicability. In this case we can talk about crimes like harassment.

### ***3.1. Case concerning the principle of territoriality***

In this case, E.M. he was fishing on the Black Sea, in a boat with several fishermen. He wanted to move to another place for fishing and while driving the boat, precisely when he started, he made a wrong maneuver during which one of the other fishermen O.I. fell into the water. He hit his head during the fall and was found only after two hours floating in the sea.

In this case, through the indictment, the prosecutor qualified the act as manslaughter, but is the Romanian criminal law applicable? The question arises because E.M. drove the boat into the territorial sea belonging to Romania, but the victim's body exceeded the limit established for Romania when it was found.

### ***3.2. Rule of law and court decision***

The court administered more evidence in the case. To begin with, the questioning of the defendant was considered. He admitted that he was driving the boat and that at one point he made an unusual maneuver because he wanted to move to another place because he learned that another place would be better for fishing. When he started the boat and started to move to the desired place, the victim, who was not wearing a life jacket, lost his balance, hit the boat when he fell and although both the defendant and the other fishermen tried to find him, this it was impossible. The other fishermen also appeared before the court. During their testimony, the state of facts as presented by the defendant was confirmed, they admitted that the victim had taken off his life jacket and was walking on the side of the boat, he was distracted because he had had some discussions with his family. The moment the boat was started, he got scared, lost his balance and fell into the water.

The necropsy report showed that his death was due to drowning, but the victim was unconscious due to the blow to the head. The experts concluded that if the victim had been rescued from the water, the blow to the head would not have put his life in danger, therefore the act would not even have been qualified as personal injury due to negligence.

With regard to the issue raised with reference to the application of the criminal law in space, the court takes into account the fact that, based on the principle of territoriality, the territorial sea is also considered, the entire adjacent strip of the coast, as well as the inland maritime waters, the width being 12 miles maritime, according to article 2, paragraph 1) of law 17/1990 on the territorial sea and inland maritime waters of Romania and article 8 of the Criminal Code In this case, the act was committed in waters belonging to the Romanian state, so the law applicable to this case is Romanian law, regardless of the fact that the victim was

found in an area that exceeds the 12 nautical miles from the shore belonging to the Romanian state. The court sentenced the defendant to 1 year and 6 months of suspended imprisonment. When individualizing the punishment, it was taken into account that the defendant had to make sure when starting the engine that all the passengers are safe and that they can wear life jackets. It was also noted that he immediately tried to find the victim, alerted the other fishermen to notify the authorities and jumped into the water to try to save her. Unfortunately, his attempts were in vain, the victim being nowhere to be found at that time.

The court decision is based on the legal provisions regarding the territoriality of the criminal law. We believe that in the case shown, the Romanian criminal law is the applicable one because the place where the act was committed is taken into account, and not the place where the victim was found. The criminal code takes into account both the territorial space, the Aryan one as well as the territorial sea when it establishes the sovereignty of the Romanian state regarding the applicability of the criminal law.

### **Conclusions**

The territorial limits of a state, as well as the importance of respecting the territorial sovereignty of states, are points that ensure peace and respect between neighboring states. If there are no rules that are applicable and accepted by the states regarding how to investigate and solve cases regarding crimes that take place in different states and that have foreign citizens as parties, or that are discovered or committed at the points of border, there will be problems regarding the prosecution of the guilty persons

Consequently, we can say that the identification of the principle of territoriality, geographical is the essential element in criminal law and also in a social democratic state, thus taking care to hold the person who committed the act accountable and at the same time to apply the corresponding criminal law, each individual state having its own law and its own power to decide and legislate, apply the rules according to the customary rules and norms, public order, Conventions and ratified treaties, without violating the rights and the democratic freedoms of the person concerned.

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