

# General Considerations Concerning the Principle of Territoriality of the Romanian Criminal Law

Vasile Draghici

*Ovidius University of Constanta, Law and Administrative Sciences*

[vasile.draghici@univ-ovidius.ro](mailto:vasile.draghici@univ-ovidius.ro)

## Abstract

*The expression used by the legislator in article 8 paragraph 1 of the Romanian Penal Code shows that the Romanian criminal law enforcement is exclusive and unconditional, so regardless of the category of acts which are committed on the Romanian territory, the criminal jurisdiction will be always exercised by the Romanian State through its competent bodies.*

*From this point of view it appears that the Romanian legislator remained constant regarding the territoriality of Romanian criminal law.*

*In the current regulation of art. 8, paragraph 3 of the Penal Code, the offense committed in Romania, is any offense committed on the territory defined in art. 8 paragraph 2 of the Penal code or a ship under the Romanian flag or an aircraft registered in Romania.*

**Key words:** territoriality, sovereignty, legal order

**J.E.L. classification:** K14, K10,

## 1. Introduction

The justification of the concept of territoriality of the Romanian criminal law is found in the principle of Romanian sovereignty, principle according to which the Romanian State is the only entity that has the exclusive and unconditional right to defend the legal order of Romania, through incriminating the actions which attack one way or another the fundamental social values that lie at the foundation of this order.

## 2. Introductory aspects

According to art. 8, paragraph 1 of the Romanian Penal Code, Title I, Chapter II, Section 2, the Romanian criminal law applies to offenses committed on Romanian territory (Noul Cod penal; Noul Cod de procedură penală, Ed. Hamangiu, 2014, Bucharest, page 9).

In this way, the Romanian legislator clearly intended to express unequivocally that the Romanian State is sovereign in applying its criminal law to all offenses committed on Romanian territory.

The expression used by the legislator in article 8 paragraph 1 of the Romanian Penal Code shows that the Romanian criminal law enforcement is exclusive and unconditional, so regardless of the category of acts which are committed on the Romanian territory, the criminal jurisdiction will be always exercised by the Romanian State through its competent bodies.

From this point of view it appears that the Romanian legislator remained constant regarding the territoriality of Romanian criminal law.

Thus, in the old rule in article 3 of the Penal Code of 1969, the principle of territoriality of the Romanian criminal law was expressed similarly to the expression used in the incriminating text of article 8 paragraph 1 of the Penal Code in force.

Basically, between the two incriminating texts there is no difference in terms of the will that the legislator wanted to convey, in this regard it was found that it uses the same literal expression.

The justification of the concept of territoriality of the Romanian criminal law is found in the principle of Romanian sovereignty, principle according to which the Romanian State is the only entity that has the exclusive and unconditional right to defend the legal order of Romania, through incriminating the actions which attack one way or another the fundamental social values that lie at the foundation of this order.

In this regard, the capacity of the perpetrator, Romanian citizen, foreign citizen or stateless person, is not relevant for the exercise of the Romanian criminal law, the law being applied equally for everyone and exclusively and unconditionally, without being in competition with any other foreign criminal law (George Antoniu - coordinator, Costică Bulai, Constantin Duvac, Ioan Griga, Gheorghe Ivan, Constantin Mitrache, Ioan Molnar, Ilie Pascu, Viorel Pașca, Ovidiu Predescu (authors) – Explicații preliminare ale Noului Cod Penal, 1<sup>st</sup> volume, Ed. Universul Juridic, Bucharest, 2010, page 94).

Furthermore, the conditions of criminal liability, the legal classification of the offense, the modalities of application, the individualization and enforcement of criminal sanctions will be taken into account and will be applied according to the Romanian criminal law, without considering another foreign regulation, even given that this regulation could be favourable to the offender in any way.

In these circumstances, one can easily observe that any provision which can be favourable to the perpetrator but not existing in the Romanian criminal law, cannot be applied to the perpetrator. Therefore, even if the perpetrator has been prosecuted and sentenced abroad for acts committed within Romania's territory, the foreign criminal court rulings are not published by law in Romania, not having the force of *res judicata* (final decision).

According to the provisions of Law no. 302/2004 on international judicial cooperation in criminal matters and those under criminal conventions and treaties to which Romania is part or acceded, only after the recognition by the courts in Romania of a foreign judgment can this take effect in the Romanian state over the convicted person and only within the recognition made by the Romanian courts.

In fact, even in this case, what applies on the territory of Romania is nothing but the judgment of the Romanian recognition courts and not the foreign criminal rule in its original form.

From this point of view, we may have several hypotheses. A first hypothesis is that the foreign criminal court has convicted the perpetrator for offenses committed on Romania's territory.

In this situation, if the foreign court's ruling is being recognized in parallel with the prosecution of acts committed within the territory of Romania, on the occasion of the judgment can be considered the penalties applied in the foreign judgment, and the part of the penalty already enforced abroad may be deducted.

At this point it could be taken into account the principle of "non bis in idem", if the perpetrator was brought on the territory of Romania by one of the forms of judicial cooperation in criminal matters, referred to in article 1 of law No. 302/2004, in application of article 8 of the same law, but we will be in the situation that the judging by the Romanian courts may not be hindered.

Another hypothesis is that in which the foreign criminal courts have ordered the acquittal or cessation of criminal trial for acts committed in Romania.

In this hypothesis a possible retrial in the Romanian State of those acts is only possible by applying the principle of "non bis in idem", but even using this principle, of course only in the event of the existence of a form of international judicial cooperation in criminal matters, it can get to the inadmissibility of this form of cooperation, and in no case to the non-application of the Romanian criminal law.

Moreover, it is widely accepted in the Romanian criminal legal literature that the principle of territoriality is justified also by the fact that an effective ruling is held in the best conditions there where the criminal deed was committed assuming that the perpetrator knows best the law of the place where the deed was committed (George Antoniu - coordinator, Costică Bulai, Constantin Duvac, Ioan Griga, Gheorghe Ivan, Constantin Mitrache, Ioan Molnar, Ilie Pascu, Viorel Pașca, Ovidiu Predescu (authors) – Explicații preliminare ale Noului Cod Penal, 1<sup>st</sup> volume, Ed. Universul Juridic, Bucharest, 2010, page 94).

Next, we will examine the application of the Romanian criminal law to acts committed on the Romanian territory, analysing the ways in which the legislator understood this application, by explaining the concepts used in article 8 of the Penal Code.

### 3. The concept of territory

To be able to apply the Romanian criminal law to acts committed on Romanian territory, as I pointed out, is certainly necessary for the legislator to define the notion of "territory".

Thus in article 8 paragraph 2 of the Romanian Penal Code, by Romanian territory is understood "the extent of land, territorial sea and waters, soil, subsoil and air space between state borders".

It is observed in this case that the Romanian legislator took over, with some modifications, the definition of territory from article 142 of the old Penal Code of 1969. This was and is necessary because the concept of territory under the Romanian criminal law has a broader meaning than the concept of territory in the geographical sense, objective reality which the legislator has clearly taken into account.

From the listing observed in article 8 paragraph 2 of the Penal Code, it can be seen that the notion of territory of Romania comprises several elements: the surface of the land, inland waters, inland maritime waters, the territorial sea, the subsoil of the Romanian territory and of the territorial sea and the airspace above the land surface and the territorial sea.

- *The surface of the land* - refers to the stretch of land (dry land) located between the political and geographical borders of Romania.

The limits of this area are set by the Romanian state through bilateral border agreements with each of the countries Romania shares a border with.

The marking of these limits is made by distinctive signs called terminals, earth mounds, etc. (Vasile Drăghici, Drept Penal – Partea Generală, Course, Ed. Pro Universitaria, Bucharest, 2010, 2<sup>nd</sup> edition, page 66).

- *Inland waters* - are to be found within the limits of the terrestrial surface, being made up of standing waters (lakes, puddles) and flowing waters (rivers, mainstreams, streams).

In the case of standing waters, the border line is usually established on the midline, the middle line of the standing water or by the border determined through the border convention with the neighbouring States.

In the situation of flowing waters, usually the border line coincides with the centreline of the navigable parts of the stream, the river or the lowest depths.

*Inland maritime waters* – by Law No. 17/07 August 1990 amended, completed and republished in the Official Gazette No. 252/08 April 2014, was established in Romania which is the legal regime of inland maritime waters, of the territorial sea, of the contiguous area and the exclusive economic zones of Romania (See Law no. 17/1990).

Thus, in article 5 of this law, it was foreseen that the surfaces of water situated between the shore and base lines constitute the Romanian inland maritime waters.

According to art. 2 of Law no. 17/1990, the baselines are the biggest reflux lines along shoreline or, as appropriate, the straight lines joining the furthestmost points of the shore, including from seaward shore, islands, docking constructions, hydro-technical facilities and other permanent port facilities.

The geographical coordinates of the points between which are plotted the baselines are established by law or the Government decisions.

- *Territorial sea* - According to art. 2 paragraph 1 of Law no. 17/1990, the territorial sea of Romania includes the sea strip adjacent to the shoreline, or, where appropriate, inland marine waters with the width of 12 nautical miles (22.224 m) measured from the baselines.

From the same article no. 2, paragraph 4 mentioned above, it is found that the outer limit of the territorial sea is the line every point of which is located at a distance of 12 nautical miles measured from the nearest point of the baselines.

From a further examination of the same regulation indicated above, it is noted that Romania's territorial sea is delimited from the neighbouring States territorial sea through agreements with each of these States under international law.

The outer and side limits of the territorial sea constitute Romania's maritime State border.

- *The subsoil of the terrestrial and aquatic space* (interior waters, inland maritime waters, the territorial sea) is located in the deep underground, without limits, its extent being localized between the State border lines, as shown above.

- *The airspace* – Comprises the air column above the terrestrial territory, the inland waters, the territorial sea and the inland maritime waters, without being considered, in general, any height limits.

In the criminal doctrine existed and still exist several theories about the extent of this airspace.

According to Professor Ion Tanoviceanu, the airspace was named "territorial atmosphere" Ion Tanoviceanu - *Tratat de drept și procedură penală*, Ed. Curierul Juridic, Bucharest, 1924, 1<sup>st</sup> volume, page 312.

A second theory claims the principle of freedom of airspace, while other authors plead for the sovereign right of the State over the airspace, with the permission of the free overflight of other states' civil aircrafts (George Antoniu - coordinator, Costică Bulai, Constantin Duvac, Ioan Griga, Gheorghe Ivan, Constantin Mitrache, Ioan Molnar, Ilie Pascu, Viorel Pașca, Ovidiu Predescu (authors) – *Explicații preliminare ale Noului Cod Penal*, 1<sup>st</sup> volume, Ed. Universul Juridic, Bucharest, 2010, page 95).

Regarding the Air Code, from the point of view of the airspace regulation, it is shown that here the upper line is foreseen, respectively the lowest perigee (90-110 km), in which the State fully exercises its sovereignty.

After this upper limit comes the outer space which is a free space, not subject to any jurisdiction and governed by the rules of international law.

- *The notion of crime committed on the Romanian territory*

After explaining the concept of territory and its components, it is of course necessary to show what it is meant by act committed on the territory of the country.

In the current regulation of art. 8, paragraph 3 of the Penal Code, the offense committed in Romania, is any offense committed on the territory defined in art. 8 paragraph 2 of the Penal code or a ship under the Romanian flag or an aircraft registered in Romania.

In article 8 paragraph 4 of the Penal Code it is stated that "the crime shall be deemed committed on the Romanian territory also when on this territory or on a ship under Romanian flag or aircraft registered in Romania was carried out an act of execution, instigation or aiding to a crime or even if a partial result of the offence took place".

From the analysis of this text, it is found that the ubiquity principle (derived from the full deployment theory) applies to the situation when on the Romanian territory (meaning here all parts of the territory, including ships and aircrafts) have been carried out acts of incitement, complicity or the result of the crime has occurred.

Still it is observed that there are another 2 instances when the Romanian criminal law is applied on the country's territory that refers to committing the act entirely on the territory of Romania or on a Romanian ship or aircraft.

It is interesting to note that the concept of territory in the sense of the criminal law has been given by the Romanian legislator a special meaning by being included in this concept also the ships and aircrafts.

The Romanian criminal doctrine shows that however it remains unregulated in law enforcement the criminal act committed on offshore sea drilling platforms (see to that effect the opinion of Professor George Antoniu and other Romanian authors - George Antoniu - coordinator et al., op. cit., page 95).

Dwelling on this issue, you can find that in law No. 17/1990 in chapters 2 and 3 is regulated the legal regime of the continuous and exclusive economic zones in Romania.

In this regard, in articles 8 and 16 of law No. 17/1990 is stipulated that Romania shall exercise the prevention and suppression of violations on its territory in the field of customs, fiscal, health and crossing the State borders, having exclusive jurisdiction on the artificial islands, installations and other facilities.

Around them are established security and protection areas of up to 500 meters from every point of their outer limits.

Therefore, based on this rule, it can be seen that in the contiguous and exclusive zone from the Romanian Black Sea the Romanian State exercises an exclusive penal jurisdiction over

installations, artificial islands etc. This category includes the maritime and offshore rigs, so that the acts committed on these offshore Romanian platforms fall under the Romanian criminal jurisdiction.

Obviously, there is no question of applying Romanian exclusive jurisdiction in the event that these platforms would be in Romanian territorial waters, Romanian criminal law being applied exclusively and unconditionally.

Another hypothesis would be when Romanian platforms would be found in international waters (free waters) we believe that the Romanian criminal law would apply exclusively and unconditionally for the acts committed on these platforms, in accordance with art. 8 paragraph 3 sentence 2 of the Penal Code, whereas the maritime drilling rigs can be assimilated with the sea-going Romanian vessels, being floating plants which sail and are moving from one point to another under the Romanian flag.

We believe that such an interpretation was envisaged by the legislator when it understood to drop the provision relating to offshore maritime rigs from article no. 8 of the Penal Code.

Also, assuming that the rigs would operate in the exclusive economic zone of another country, the exploitation of resources in this situation calls for the conclusion of a protocol or convention, through which the criminal jurisdiction and regime will be regulated.

#### 4. Conclusions

At the end of our study regarding the meanings of the concept of *rent* we find that the notion we have analyzed is used in various fields, such as law, finance, mining, construction, agriculture etc. Incidentally, this was the starting point for our topic of research. Among these meanings that we can come across in everyday practice, two are most common, namely *agricultural rent* and *lifetime tenancy agreement*.

The existence of a legal relationship that is based on rent (any of its forms) requires obtaining a regular income entering the heritage of the owner's property over which rent is exerted in return for the owner's yielding the usage of the heresaid asset for a fixed or unfixed period of time, depending on the rent type.

We cannot claim to have exhausted the complete investigation of all the meanings that the concept of *rent* undergoes, but we tried to bring to the attention of those interested a substantial part of the gathered information.

#### 5. References

1. See Noul Cod penal; Noul Cod de procedură penală, Ed. Hamangiu, 2014, Bucharest, page 9
2. See Vasile Drăghici, Drept Penal – Partea Generală, Course, Ed. Pro Universitaria, Bucharest, 2010, 2<sup>nd</sup> Edition, page 65
3. See George Antoniu - coordinator, Costică Bulai, Constantin Duvac, Ioan Griga, Gheorghe Ivan, Constantin Mitrache, Ioan Molnar, Ilie Pascu, Viorel Pașca, Ovidiu Predescu (authors) – Explicații preliminare ale Noului Cod Penal, 1<sup>st</sup> volume, Ed. Universul Juridic, Bucharest, 2010, page 94
4. See Vasile Drăghici, Drept Penal – Partea Generală, Course, Ed. Pro Universitaria, Bucharest, 2010, 2<sup>nd</sup> edition, page 66
5. See Law no. 17/1990
6. See Ion Tanoviceanu - Tratat de drept și procedură penală, Ed. Curierul Juridic, Bucharest, 1924, 1<sup>st</sup> volume, page 312
7. See George Antoniu - coordinator, Costică Bulai, Constantin Duvac, Ioan Griga, Gheorghe Ivan, Constantin Mitrache, Ioan Molnar, Ilie Pascu, Viorel Pașca, Ovidiu Predescu (authors) – Explicații preliminare ale Noului Cod Penal, 1<sup>st</sup> volume, Ed. Universul Juridic, Bucharest, 2010, page 95
8. See George Antoniu - coordinator et al., op. cit., page 95