



Service des formations professionnalisées

MASTER 1

International and European Law

UE4 International Criminal Law
(Cours de M. CAZALBOU)

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Session 1

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International Criminal Law
MIEL – 2016/2017

Answer the following questions : short answers

1°) Explain briefly what is an International offense.

2°) According to Maurice Travers, what are the four main principles of International Criminal Law ?

3°) Explain, according to article 6 of the ECHR, what is a “Criminal charge” and why it is necessary for the European Court of Human Right to adopt an “autonomous” definition of it ?

Solve the following cases :

Case 1 :

George is a French citizen. After a long first semester in the University of Toulouse, he is taking holidays in Turkey where he bought, for its own consumption, a little bit of haschish to a retailer he met in a dark corner of a street in Istanbul.

Too bad for him he has been caught as, a little bit drunk and not very aware of what he was doing, he was smoking it right in front of a Police Station.

Now it's been four days he is in custody, he misses his flight back to France, he barely understands why it take this long and the only official authority he met, a certain M. Mustapha Kemal, vaguely explain to him that he was going to be prosecuted in front of a criminal court for drug trafficking.

Facing the Court he realises, he doesn't understand very well the local language, that M. Kemal is now requesting his imprisonment for six month.

Seems to George that some of his human rights are being violated here ...

Give him a legal advise.

Case 2 :

Frank is a German citizen. He's never been a really good student and turned into criminality pretty quick. It all started with petty offenses, shoplifting by here, drug retailing by there, but now he has reached a higher level by taking part in an international traffic of radioactive devises coming from Tchernobyl Ukrain. French buyers, from a radical political group, are interested in it.

Frank took part in the transport of the device between Ukrain and Germany, through Poland. Then he handle it to another member of the organisation which was in charge of crossing the French border. Since then, he no longer heard about it and was not informed if the devise reached French territory.

Yesterday, he has been arrested by German authorities that seem to have followed him since the beginning of the operation.

Could you explain him, regarding classical heads of jurisdiction, which country may prosecute him ?

Could France be able to prosecute him, even if Germany had already convicted him ?

Authorized materials :

Dictionnary (paper version only).

French Criminal Code (2005 version) - Extracts

SECTION I
OFFENCES COMMITTED OR DEEMED TO HAVE BEEN COMMITTED
WITHIN THE TERRITORY OF THE FRENCH REPUBLIC

Articles 113-2 to 113-5

ARTICLE 113-2

French Criminal law is applicable to all offences committed within the territory of the French Republic.

An offence is deemed to have been committed within the territory of the French Republic where one of its constituent elements was committed within that territory.

ARTICLE 113-3

French Criminal law is applicable to offences committed on board ships flying the French flag, or committed against such ships, wherever they may be. It is the only applicable law in relation to offences committed on board ships of the national navy, or against such ships, wherever they may be.

ARTICLE 113-4

French Criminal law is applicable to offences committed on board aircraft registered in France, or committed against such aircraft, wherever they may be. It is the only applicable law in relation to offences committed on board French military aircraft, or against such aircraft, wherever they may be.

ARTICLE 113-5

French criminal law is applicable to any person who, within the territory of the French Republic, is guilty as an accomplice to a felony or misdemeanour committed abroad if the felony or misdemeanour is punishable both by French law and the foreign law, and if it was established by a final decision of the foreign court.

Article 113-2-1 : Added by Act n°2016-731, 3 June 2016

Any felony or misdemeanour carried out through an electronic communication network, either attempted or committed against a physical person residing on the Republic territory or against a legal person having its registered office on the territory of the Republic, is deemed to have been committed on the territory of the Republic.

SECTION II
OFFENCES COMMITTED OUTSIDE THE TERRITORY OF THE
FRENCH REPUBLIC
Articles 113-6 to 113-12

ARTICLE 113-6

French criminal law is applicable to any felony committed by a French national outside the territory of the French Republic.

It is applicable to misdemeanours committed by French nationals outside the territory of the French Republic if the conduct is punishable under the legislation of the country in which it was committed.

The present article applies even if the offender has acquired French nationality after the commission of the offence of which he is accused.

ARTICLE 113-7

French Criminal law is applicable to any felony, as well as to any misdemeanour punished by imprisonment, committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place.

ARTICLE 113-8

In the cases set out under articles 113-6 and 113-7, the prosecution of misdemeanours may only be instigated at the behest of the public prosecutor. It must be preceded by a complaint made by the victim or his successor, or by an official accusation made by the authority of the country where the offence was committed.

ARTICLE 113-8-1

Without prejudice to the application of articles 113-6 to 113-8, French Criminal law is also applicable to any felony or misdemeanour subject to a penalty of at least five years' imprisonment committed outside the territory of the French Republic by an alien whose extradition to the requesting State has been refused by the French authorities either because the offence for which the extradition has been requested is subject to a penalty or to a safety measure that is contrary to French public policy, or because the person in question has been tried in the aforesaid State by a court which does not respect the basic procedural guarantees and the rights of the defence, or because the matter in question shows the characteristics of a political offence.

Prosecution for the offences set out in the first paragraph may only be initiated at the request of the public prosecutor. It must be preceded by an official accusation, transmitted by the Minister of Justice, from the authorities in the country where the offence has been committed and which has requested the extradition.

ARTICLE 113-9

In the cases set out under articles 113-6 and 113-7 no prosecution may be initiated against a person who establishes that he was subject to a final decision abroad for the same offence and, in the event of conviction, that the sentence has been served or extinguished by limitation.

ARTICLE 113-10

French criminal law applies to felonies and misdemeanours defined as violations of the fundamental interests of the nation and punishable under title I of Book IV, to forgery and counterfeiting of State seals, of coins serving as legal tender, banknotes or public papers punishable under Articles 442-1, 442-2, 442-15, 443-1 and 444-1, and to any felony or misdemeanour against French diplomatic or consular agents or premises committed outside the territory of the French Republic.

ARTICLE 113-11

Subject to the provisions of article 113-9, French Criminal law is applicable to felonies and misdemeanours committed on board or against aircraft not registered in France:

1° where the perpetrator or victim is a French national;

2° where the aircraft lands in France after the commission of the felony or misdemeanour;

3° where the aircraft was leased without crew to a natural or legal person whose main place of business, or failing this, whose permanent residence is on French territory.

In the case provided for in 1° above, the nationality of the perpetrator or victim of the offence is determined in accordance with article 113-6, last paragraph, and article 113-7.

ARTICLE 113-12

French Criminal law is applicable to offences committed beyond territorial waters, when international conventions and the law provide for this.

The present article is applicable in the overseas territories, New Caledonia and the territorial collectivity of Mayote.

French Criminal Procedure Code (2005 version) – Extracts

**TITLE IX
OFFENCES COMMITTED OUTSIDE THE TERRITORY OF THE REPUBLIC
Articles 689 to 693**

**CHAPTER I
JURISDICTION OF FRENCH COURTS Articles 689 to 689-10**

Article 689

Perpetrators of or accomplices to offences committed outside the territory of the Republic may be prosecuted and tried by French courts either when French law is applicable under the provisions of Book I of the Criminal Code or any other statute, or when an international Convention gives jurisdiction to French courts to deal with the offence.

Article 689-1

In accordance with the international Conventions quoted in the following articles, a person guilty of committing any of the offences listed by these provisions outside the territory of the Republic and who happens to be in France may be prosecuted and tried by French courts. The provisions of the present article apply to attempts to commit these offences, in every case where attempt is punishable.

Article 689-2

For the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted in New York on 10th December 1984 (...).

Article 689-3

For the implementation of the European Convention on the Suppression of Terrorism, signed in Strasbourg on 27th January 1977, and the Dublin agreement of 4th December 1979, made between the member states of the European Communities concerning the implementation of the European Convention for the Suppression of Terrorism (...)

Article 689-4

For the implementation of the Convention on the Physical Protection of Nuclear Material (...)

Article 689-5

For the implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (...)

Article 689-6

For the implementation of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16 December 1970, and of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (...)

Article 689-7

For the implementation of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (...)

Article 689-8

For the application of the Protocol to the Convention on the Protection of the Communities' Financial Interests made in Dublin on 27th September 1996 and of the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union (...)

Article 689-9

For the application of the International Convention for the Suppression of Terrorist Bombings (...) .

Article 689-10

For the application of the International Convention for the Suppression of the Financing of Terrorism
(...) .

CHAPTER II

INITIATION OF PROSECUTION AND COURTS WITH AREA JURISDICTION Articles 692 to 693

Article 692

In the cases set out in the preceding chapter, no prosecution may be initiated against a person who proves that he has been finally tried abroad for the same matters and, in the case of conviction, that the sentence has been served or extinguished by limitation.