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THE EVOLUTION OF INTERNATIONAL CRIMINAL JUDICIAL COOPERATION AT THE LEVEL OF THE EUROPEAN UNION

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Abstract

In this article I have developed the essential aspects related to international judicial cooperation in criminal matters at the European level: the need for cooperation.

The development of human society in general, and the development of technology in particular, have increasingly facilitated and determined the development of relations between states. An important aspect of human progress has been the facilitation of the freedom of movement of individuals and goods, which, although it represents a simplification of daily life and an added value, being beneficial to society, has also created the chance for criminals to lose more easily follow.

The progress of mankind in all fields has also generated the diversification of forms of violation of the criminal law, which increasingly exceeds the national borders of the states, not infrequently becoming a form of international violation of the criminal law.

The increase in international criminality required the mobilization of states in organizing and intensifying the fight against criminality by adopting legal instruments recognized worldwide in an organized framework.

International criminal judicial cooperation between states was thus regulated.

Key words: *criminal judicial cooperation, European Union, crime.*

INTRODUCTION

"An important foreign policy task for our state is the formation of a safe international environment". (*Nahorniuk-Danyliuk O., Trach S., Rossokxa S., Tsutskiridze M., p. 58*).

There are several legal institutions at European level that represent particularly important and effective tools in the fight against criminality and in the cooperation of states in the field of criminal law.

International judicial cooperation in criminal matters involves a complex of rules by which states help each other in the fight against the cross-border criminal phenomenon.

"International legal cooperation in criminal justice concerns the exchange of information, evidence and suspects between countries for the purpose of investigating and prosecuting criminal activity that has a cross-border impact" (*Ilchyshyn N., Brusakova O., Krykun V., Myroshnychenko Y., p. 3*).

The process of carrying out justice is facilitated by the cooperation between states that can retaliate against criminality extended to the territory of several states or to detect criminals who take refuge in countries other than those where they committed the crimes.

There are two types of criminal problems that can determine the cooperation of states in solving them:

- those caused by the commission of crimes by individual persons or those committed in criminal participation on the territory of a state after which those persons take refuge on the territory of another or other states

- those stemming from the commission of crimes through acts of criminal activity on the territory of several states, in which case the criminality is international.

In the latter situation, most facts involve the action of criminal groups formed for the purpose of committing crimes.

In these cases, we are talking about organized crime, which is particularly dangerous, because it involves an organizational structure that is often difficult to destabilize.

We can talk about criminal acts committed by organized criminal groups since the beginning of the last century.

They go beyond the borders of a single state and usually extend regionally, but we can identify extensive cases of extended actions even at the global level, such as acts of terrorism, drug trafficking and consumption, trafficking of arms, munitions and radioactive substances assets or the most common of all live meat trafficking.

These represent the main forms of manifestation of organized crime in today's reality.

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The gravity of these facts requires a fierce fight at the level of nations to combat them and reduce the criminal phenomenon, which could not be successful without judicial cooperation supported at the institutional level.

As a result of these antisocial manifestations, the need to establish and develop judicial cooperation in criminal matters was felt, the main objective of which is to minimize the risks of hindering the work of justice.

Currently, the ways to achieve international judicial cooperation in criminal matters are: extradition, the European arrest warrant, the transfer of proceedings in criminal matters, international legal assistance in criminal matters, the recognition of criminal judicial acts in relations with states outside the European Union, such as and with European states, international JIT procedures, joint investigation teams

In order to achieve this international goal, the Romanian state, for its part, has obliged itself through international treaties and conventions and through internal legislation to actively participate in the fight against international criminality.

The fight against criminality is also a priority at the level of the European Union, where specialized structures have been established, both in preventing and combating criminality.

The purpose of these structures is to identify, catch and ensure the prosecution of criminals who try to ensure their escape by taking refuge in the territory of another state than the one in which they committed the criminal act.

If the Treaty on the establishment of the European Economic Community from 1957 did not contain provisions giving it powers in criminal matters, the cooperation between the member states in the criminal field being carried out through bilateral or multilateral conventions concluded within the Council of Europe, the need for effective and direct cooperation was gradually realized bearing in mind the long-term objective of eliminating border controls and the free movement of people.

”The actual cooperation, at the level of the ministers of internal affairs of the Community states, began informally in the 1970s, in areas such as the fight against terrorism, drug trafficking and border control”. (Ştefan T., published on www.euroquod.ro/dokuwiki/lib/exe/fetch.php?media=capitolul_5-intro_si_asist_jud..pdf).

The next step at the European level was the Schengen Agreement signed on June 14, 1985, by which the elimination of control at the borders of the member states was conditioned by the adoption of compensatory measures in the matter of police and judicial cooperation.

Through the Schengen Agreement, new forms of cooperation were introduced to improve security in the European Union following the elimination of internal border controls.

The cooperation aimed at cooperation on several levels: between police forces, customs authorities and control authorities at the external borders of all member states.

The Schengen Agreement ensured:

”- improving communication systems between police forces

- cross-border pursuit of criminals

- cross-border surveillance of suspects

- mutual operational assistance

- direct exchanges of information between police authorities”.

(<https://www.consilium.europa.eu/ro/policies/schengen-area/>).

The provisions on international cooperation contained in the Schengen Agreement have been a major achievement in the fight against terrorism and serious and organized crime, human trafficking and illegal migration.

An important step in international cooperation in the criminal field was the Maastricht Treaty.

The European Union was established by the Maastricht Treaty of November 1, 1993. This treaty is the official birth certificate of the European Union.

According to the Maastricht Treaty, the European Union is a construction that rests on three pillars:

- the European Community,

- Common Foreign and Security Policy (CFSP) and

- Cooperation in the field of Justice and Internal Affairs (JAI).

Without removing the other community treaties and without replacing the European Communities, however, according to the Maastricht Treaty, the European Union is not based exclusively on the European Communities.

As can be seen, they constitute only one of its pillars of support, which is a community pillar with a supranational character.

Thus, the Treaty includes two other new areas, in which the member states of the Communities propose to cooperate closely, namely the other two pillars that are predominantly intergovernmental in nature.

The special importance given by the Treaty to cooperation in the field of Justice through the regulation of the third pillar of the European Union is noted.

In Title VI of the Treaty, provisions were introduced regarding cooperation in the field of Justice and Internal Affairs to combat cross-border crime and illegal migration, cooperation that forms pillar III of the treaty.

Pillar III operated on the basis of unanimity within the Council of the European Union.

The objective of the provisions was to guarantee the safety and security of European citizens. It has been recognized at the legislative level that this objective can only be achieved through close cooperation in the field of justice and home affairs.

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Therefore, an important decision established by the treaty was the improvement of collaboration in the field of law and internal affairs.

In this sense, in order to ensure a better coordination of police collaboration, the European Police Office, "Europol", was established, with headquarters in The Hague.

One of the areas of common interest was police cooperation and judicial cooperation in criminal matters.

The immediate need at the European level was the enlargement of the European Union.

In this sense, a new treaty was signed on October 2, 1997, the enlargement treaty, the Treaty of Amsterdam.

This treaty entered into force on May 1, 1999.

This treaty amended the Treaty establishing the European Union, amended the Treaties establishing the European Communities and certain related acts.

The main goal of the European Union being its expansion to the east, the needs of ensuring a more effective and democratic functioning of the Union had to be adapted.

The cooperation between the states at the governmental level in the field of interest, criminal and police judicial cooperation was strengthened, defining precise objectives and tasks in this field, so that a legal instrument similar to a directive was created (www.europarl.europa.eu).

The chapter on criminal justice and police cooperation was introduced, replacing the chapter on Justice and Home Affairs provided for in the Maastricht Treaty and including the Schengen acquis.

It was established by the Treaty of Amsterdam and the so-called "Space of freedom, security and justice" through which the rights of EUROPOL were extended.

Within this official framework of the created space, police and judicial cooperation took place starting with the Treaty of Amsterdam.

As a response to the creation of "Europol" at the level of police cooperation, the European Council in 1999 decided to create "Eurojust" in the field of judicial cooperation.

The same European Council in Tampere in 1999 approved the principle of mutual recognition of court decisions, being an impetus for the national legislation of the member states.

"Intergovernmental cooperation in the field of judicial criminal and police cooperation has been strengthened by defining precise objectives and tasks, as well as by creating a new legal instrument analogous to a directive". (www.europarl.europa.eu).

"But the really important amendment produced by Amsterdam is the provision for a jurisdictional control in relation to police and judicial cooperation in criminal matters.

In this respect, two articles are modified to allow the attribution of competence to the Court of Justice: Articles 35 and 46 TEU” (*Bulnes, p. 619*).

Another important moment in the European construction plan was the signing of the Treaty of Nice on February 26, 2001.

On the occasion of the summit in Nice, the Charter of European Fundamental Rights was proclaimed as a political declaration, which means that the European Union ensures the construction of an area of freedom, security and justice in which the person feels safe.

It therefore follows that the European Union is intensifying the fight in the field of crimes that endanger a healthy and safe European construction.

”The European Union proposes to identify the means and methods that ensure a unitary and organized character of the repression of criminal acts”.

The premise from which one starts in arguing the necessity of this approach is that free movement within the European Union also determines the free movement of criminals and crimes.

The reform of the legal framework of the European Union required the signing of the Treaty of Lisbon on December 13, 2007.

Through this treaty, the Treaty on the European Union and the Treaty establishing the European Community were amended, i.e. the two treaties that constitute the basis of the European Union.

It is also known as the Reform Treaty.

The treaty ensured a solid path in strengthening criminal cooperation at the European level.

Through the Treaty, the European Parliament became an involved party, whose powers established rules ensuring a legislative framework regarding the assistance that states give each other in the fight against the cross-border criminal phenomenon.

In the field of interest, it brought a major change because pillar III of the European Union was eliminated, and the issues related to police and judicial cooperation in criminal matters were regulated in Title V called, ”The area of freedom, security and justice”, which it includes, in addition to cooperation in criminal matters and police cooperation, the policies on border control, the right to asylum and immigration and cooperation in civil matters.

According to the Treaty, in the field of criminal judicial cooperation, the usual legislative acts defined by art. 288: regulations, directives, decisions.

The adoption of these acts within the internal law of the member states ensures their supremacy over national law.

According to the Treaty, ”Judicial cooperation in criminal matters within the Union is based on the principle of mutual recognition of court judgments and judicial decisions”.

The Parliament and the Council have legislative prerogatives.

Based on them, the adopted measures concern:

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- by which to ensure the recognition in the Union of court decisions
- through which to prevent and resolve jurisdictional conflicts between member states
- through which it supports the professional training of magistrates and judicial personnel
- by which it facilitates cooperation in the criminal field between the judicial authorities of the member states.

The Parliament and the Council through directives can establish minimum rules to facilitate the mutual recognition of court decisions, minimum rules regarding the definition of crimes and criminal sanctions for cross-border crimes of particular gravity such as: terrorism, human trafficking and sexual exploitation of women and of children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime (www.eur-lex.europa.eu).

The Treaty of Lisbon strengthens Europol and Eurojust, in order to be able to respond more operatively to acts of organized crime, human trafficking networks or money laundering crimes.

Eurojust is a body within the European Union based in The Hague whose objectives are: cooperation between the competent authorities of the member states with powers in terrorism, illicit drug trafficking, human trafficking, clandestine immigration channels, illicit trafficking of radioactive materials and nuclear weapons, illicit motor vehicle trafficking, counterfeiting of the euro, money laundering linked to international criminal activities, cybercrime, fraud and corruption, crimes affecting the financial interests of the European Community, laundering the products resulting from crimes, crimes that affect the environment, participation in a criminal organization.

Another important body of the Union is Europol whose duties are established by the European Parliament and the Council: "the collection, storage, processing and analysis of information, as well as the exchange of information transmitted in particular by the authorities of member states or third countries or authorities; coordinating, organizing and carrying out research and operative actions, carried out together with the competent authorities of the member states or within joint research teams and, as the case may be, in collaboration with Eurojust" (<https://eur-lex.europa.eu/legal-content>).

Another important institution is the European Public Prosecutor's Office, which has powers regarding the perpetrators of crimes affecting the European Union budget.

This institution has powers regarding fraud crimes, corruption crimes, or cross-border VAT frauds with a value greater than 10 million euros.

The question arises as to which European institutions have legislative powers in the field of judicial cooperation in criminal matters.

The European Parliament and the Council are the institutions that draw up the legislation on judicial cooperation in criminal matters at the European Union level.

Naturally, this legislative activity took shape through a series of important acts targeting equally important areas.

Common minimum standards for criminal proceedings have been established: in this sense, a series of directives have been adopted regarding the criminal procedure regarding the rights existing during the course of a criminal proceeding: to information, to have access to a lawyer, to interpretation, with regarding the presumption of innocence, translation, special rights regarding children involved in criminal proceedings or regarding free legal assistance.

Regarding the fight against terrorism, directives and regulations were adopted.

Another important area is the fight against corruption, cybercrime, fraud and money laundering

A series of acts developed in the form of directives provided protection measures at the European level (www.europarl.europa.eu).

Areas of major interest in which European acts have been adopted are the exchange of information between member states and EU agencies and in the field of victim protection.

CONCLUSION

At the European level, the need for cooperation has become more and more accentuated considering the removal of controls at the borders of the member states of the European Union.

In the case of a violation of the criminal law, holding the guilty party accountable is both a state right and an obligation, only in this way can the violated legal order be restored.

But, not infrequently, this is more difficult because there is the possibility that criminals after the commission of a crime, or after their trial, take refuge in the territory of another state in order to avoid prosecution or the execution of a criminal sanction.

For such situations, there is mutual cooperation between the states, being regulated by the European legal acts and those of the member states, several forms of cooperation, the most common being the European arrest warrant, extradition, recognition of court decisions.

In order to intensify the fight against criminality at the level of the European Union, it is absolutely necessary to have bodies with attributions in the field, which can carry out their activity on the basis of normative acts developed at the European level.

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