



THE INSURANCE FOR THE PROTECTION OF HUMAN RIGHTS WITHIN THE JUDICIAL COOPERATION IN CRIMINAL MATTERS

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Abstract: *This paper analyses a current topic that has a particular interest in the law area, that is respecting the human rights in the performed actions to fight the cross-border crime. In the context of unprecedented growth of global crime, the only way to reduce this phenomenon is to increase the specific international cooperation activities between the countries of the world. In addition to other rights and liberties specific to criminal proceedings, the legal institutions of each state must ensure the possibility of the accused person to be present at its trial. Our research highlights the need to respect human rights in all criminal trials, including those in which the citizens are sanctioned of criminal penalties in states other than their own.*

Key words: *human rights; judicial cooperation; extradition*

1. INTRODUCTION

In a globalization era in which the primary goal of all forums and regional and international institutions is the interest for promoting and respecting human rights, the society faces a threat that seems almost impossible to control: the increase of cross-border crime at global level (Noah Paul, 2007). Accelerated progress of technique and science has facilitated the diversification of manifestations of criminality, reaching sometimes to an extraordinary violence, the perpetrators of these types of events succeed, in many cases, to leave the territory in which they committed the crime and to evade the penal liability. This disappearing phenomenon of those who have committed various crimes has become a generality, requiring the need to prevent and fight crime more effectively by taking concrete measures by countries all over the world. These measures have materialized mainly on one hand, by improving the internal laws of the states, and on the other hand through the modernization and professionalisation of internal institutions with direct responsibilities in the complex work of preventing and fighting the cross-border crime. Along with those measures, at global and regional level, there have been adopted some international cooperation instruments (treaties, conventions, etc.), which seek to enhance the specific activities in the field by establishing concrete mechanisms for direct cooperation between the involved states, recommending each time the need to harmonize the legislation.

Judicial cooperation in criminal matters was the research subject for several authors, analyzing it from different points of view (e.g. Plachta, M., Apap, J., Carrera, S., etc.), and so have we in other works. In this study we analyse the mechanism of judicial cooperation in criminal matters at global level, dealing however with issues as how it can contribute to the promotion and observance of human rights and fundamental freedoms, the ways it manifests, being preoccupied especially by the recognition and enforcement of judicial judgments and of extradition as its main forms. In addition, we will demonstrate the need to develop a close cooperation between countries in order to achieve tangible results. However, starting from the necessity of preventing and fighting crime more effectively, it

must not be omitted the necessity to ensure a fair trial, where the convicted person should benefit, at an acceptable level, of its rights set by the international legal instruments.

2. JUDICIAL COOPERATION IN CRIMINAL MATTERS - CONCEPT AND PERSPECTIVES

To ensure the best possible way to secure and recognize the fundamental rights and freedoms, it is required the improvement of the fight against this scourge, which is perceived at international community level as a "global threat": the cross-border crime. In this context, the intergovernmental cooperation plays a vital role especially on the principle of mutual recognition of judicial decisions in criminal matters. In this sense, article 69, paragraph 1 of the Lisbon Treaty states that "judicial cooperation in criminal matters within the Union is based on the principle of mutual recognition of judgments and judicial decisions and it includes the approximation of laws, regulations and administrative norms of Member States in the domains referred to in paragraph (2) and article 69 B".

According to its policy, the EU is committed to ensure free movement of persons and a high level of protection of citizens, thus creating a new area of work, *Space for Freedom, Security and Justice*, whose domain of activity includes a wide range of actions including police and judicial cooperation in criminal matters, asylum, immigration, but also the fight against crime (terrorism, organized crime, human trafficking, etc.). The programs conducted by the *Space for Freedom, Security and Justice* (Tampere 1999-2004; Hague 2004-2009; Stockholm 2010-2014) have in common the adaptation of the international legal framework to future challenges of the society by focusing on citizens' interests and needs. According to Romanian and international law, the main forms of international judicial cooperation in criminal matters are: extradition, transfer of proceedings in criminal matters, recognition and enforcement, transfer of sentenced persons, legal assistance in criminal matters and more. At EU level, for the stated purpose of perfecting the complex activity of European judicial cooperation in criminal matters between Member States, in order to ensure an area of freedom, security and justice, in addition to the above forms of cooperation, there have been adopted others, such as: the European arrest warrant, recognition and enforcement of judgments and of other acts of criminal justice, legal assistance and many more. Although each form of cooperation has its importance in contributing to improving the system as a whole, we think that both in the current and the future stage, the recognition and enforcement of judgments and other judicial acts represent the basis of all criminal judicial cooperation activities. In this form of cooperation there are considered the following specific ways: recognition and enforcement of judgments imposing custodial sentences or measures involving deprivation of liberty, in order to execute them in a Member State; recognition of judgments and probation decisions for supervising the probation measures

and alternative sanctions in another Member State than the one of the conviction; recognition and enforcement of seizure judgments; recognition and enforcement of decisions for freezing assets and evidence, and finally and recognition of financial penalties. One of the most frequently discussed issues in doctrine on recognition and enforcement of judgments where there were disposed measures involving deprivation of liberty is related to the one of protecting the rights of convicted persons, under the conditions of their absence at the trial according to which they were convicted. The imposed solution, subsequently accepted and even endorsed by the European Union, was to develop a new law designed to solve this situation. Needing to respect the rights of the convicted person, it was established 2009/299/JAI Council Framework Decision of 26 February 2009, amending the Framework Decisions 2002/584/JHA, 2005/783/JAI, 2006/783/JHA, 2008/947/JHA, 2008/909/JHA to enhance the procedural rights of individuals and to encourage the principle of mutual recognition regarding the decisions rendered in the absence of the person in question at the trial (published in Official Journal of the European Union no. L 81/24 of 27 March 2009). The main principle established by the mentioned European legislative act consists of the obligation of judicial authorities of the Member States to respect the right of the accused person to appear in person at the trial, this right is included in the right to a fair trial under article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. We must mention that this interpretation was made also by the European Court of Human Rights.

3. EXTRADITION - THE FORM OF JUDICIAL COOPERATION IN CRIMINAL MATTERS

Extradition is the most important and also the oldest form of international judicial cooperation in criminal matters. In a recent opinion, it was stated the fact that "extradition is one of the forms of international cooperation in criminal matters and it can be defined as the procedure by which a sovereign state (the applicant state) agrees to turn in at the request of another State (the requesting state), a person within its territory, which is being prosecuted or sent to trial for an offence or is wanted for the execution of a sentence in the requesting State (F. R Radu, 2009, p. 23). Analyzing the doctrine, the views of authors have expressed concerns in this area and according to the current legal stipulations, we can say that "*extradition is the main form of international judicial cooperation in criminal matters and it can be defined as a special procedure, governed by depositions of conventions, treaties and domestic laws, by which the requesting State turns in according to the reasoned request of another State (the requesting state), a person within its territory, which is being prosecuted or sent to trial for an offence or it is wanted for the execution of a sentence or a safety measure.*"

After the adoption of the Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (Published in Official Journal no. L 190/2002), the extradition between EU Member States can not be applied. Even in this context, extradition is still the main form of international judicial cooperation in criminal matters that can be applied any time between any EU member state and another state in Europe (which does not have that status) or any other part of the world.

Although the aforementioned European legislative act, which requires Member States to insure the protection of the rights of the convicted person to be present at his trial, had its legal effect only within the European Union, we consider, if it is requested, this right should also be granted to the extradited person from another non EU member state as well.

4. CONCLUSIONS

According to this assessment, the only practical way to prevent and fight crime in the area in order to stop the unprecedented growth of cross-border crime is the improvement of the activity of international judicial cooperation in criminal matters between world's states. Of all forms of cooperation known and applied by world's states, the recognition and enforcement of judicial judgments and the extradition remain, according to us, the most important. However, in order to achieve such cooperation, the protection of the rights of the convicted person represents a fundamental principle, mandatory for all EU Member States. In this context, even if this principle is mandatory only in relations of cooperation between Member States, in our view, it should be applied also in extradition matters, where it is necessary the recognition and enforcement of judgments emanating from a judicial authority of another non EU member state.

We started our research with the importance of European judicial cooperation in criminal matters, insisting upon the recognition of legal judgments adopted in a state, other than the executing one, and also the right of the convicted persons to be present at their trial. Although the theme explored in this paper has not been a constant concern for the experts, we consider that its importance and implications throughout the work of providing a space of freedom, security and justice, are a strong recommendation for future research in this area. This paper is a starting point, whereby we will expand in future research, perfecting the European legislation and the law of each Member State, therefore ensuring an appropriate level of respecting the convicted persons' rights. Also, within our future research, by approaching the scientific causes and conditions for the growth of cross-border crime, we will insist upon identifying real opportunities for supplementing and amending the European legislation in this area.

5. REFERENCES

- Apap, J.; Carrera, S. (2004). European Arrest Warrant a Good Testing Ground for Mutual Recognition in the Enlarged EU?, Available from: <http://www.ceps.be> Accessed: 2010-08-28
- Evert-Jan van der Vlis (2010), The right to interpretation and translation in criminal proceedings, The Journal of Specialised Translation Issue 14 – July 2010, pp.26-40
- Haga Programme, Available from: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/82534.pdf, Accessed: 2010-08-28
- Noah Paul (2007). Constructing Transjurisdictional Criminal Justice in a 'Global War on Terror'—Guantánamo Bay, 'Extraordinary Renditions', Sovereignty, and Human Rights after 11 September. Available from: <http://www.hartwick.edu/prebuilt/POSCPPaulThesis07.pdf>. Accessed: 2010-08-28
- Plachta, M. (2001). Contemporary Problems of Extradition: Human Rights, Grounds for Refusal and the Principle Aut Dedere Aut Judicare, Available from: http://www.unafei.or.jp/english/pdf/PDF_rms_all/no57.pdf Accessed: 2010-08-28
- Radu F. R. (2009). Cooperare judiciară internațională și europeană în materie penală, Îndrumar pentru practicieni, Wolters Kluwer România, București, p.23.
- Stockholm Programme, Available from <http://register.consilium.europa.eu/pdf/en/09/st17/st17024.en09.pdf>, Accessed: 2010-08-28
- Treaty of Lisbon, Available from: <http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf>, Accessed: 2010-08-28