

Judicial Cooperation in Criminal Matters in the Light of the Lisbon Treaty

Dragne Luminița

Associate Professor PhD.

Faculty of Legal and Administrative Sciences „Dimitrie Cantemir” Christian University

Email: lumidragne@gmail.com

George Dorel MATEI

Lecturer, PhD.,

Faculty of Legal and Administrative Sciences „Dimitrie Cantemir” Christian University

Email: mateidorelgeorge@yahoo.com

To Link this Article: <http://dx.doi.org/10.6007/IJAREMS/v3-i2/866> DOI:10.6007/IJAREMS/v3-i2/866

Published Online: 03 March, 2014

Abstract

Cooperation between states is a principle laid on foundation of the entire international legal system. In order to maintain international peace and security states have the main obligation to cooperate with each other to solve any problems which may arise and at the cooperation base must stand the good faith of the states in international relations.

International cooperation in criminal matters appears as a natural consequence, a particular application basis of the great principle of the obligation of states to cooperation.

International crime is a phenomenon that has grown in recent decades and is manifest in all fields that have a wide variety of organizational forms and appropriate techniques. In the European Union, as well as in other international organizations are made efforts to combat this phenomenon.

Fighting international crime, prevention and combating it is for the international community priorities and one of the most effective ways to achieve these goals is the international cooperation.

Keywords: Freedom, Security, Justice, Judicial Cooperation In Criminal Matters.

Introduction

Cooperation between states as well as between states and international organizations are basis of the entire international legal system.

Administration of cooperation between states is needed in all areas of activity; it must be real, mutually beneficial and should be based on principles of international law, particularly the principle of equality of all states on their inalienable right to have their own fate.

The literature shows that the “peoples of the world supports cooperation even want it; is of benefit to the progress and development. They do not accept, however, the political,

military, economic ... subordination. All attempts at unification and integration - through subordination - have failed before and will fail in the future..." (Mazilu, 2006).

Both the UN Charter and other international documents as enshrined duty of states to cooperate with each other, without making any distinction in the degree of development, population, political disputes, and the extent of its territory or other discriminatory criteria.

An expression of the principle of cooperation is unprecedented growth in the number of international organizations with vocation of universality; to which members are the vast majority of states; by the Statute of these organizations, and by the decisions taken therein, Member States have undertaken specific obligations to cooperate in the field. The large number of organizations covering diverse fields is creating a network of obligations of cooperation between most countries (Diaconu, 2002).

International cooperation in criminal matters appears as a natural consequence, a particular application of the great principle of the obligation of states to cooperation. It is obvious that in the absence of specific customizations of where states are to cooperate, the general principles of the UN Charter would remain mere empty shell.

International judicial cooperation was made primarily to facilitate and accelerate cooperation in the field of legal proceedings and the enforcement of decisions, simplifying extradition procedure between the Member States, implementing minimum rules relating to the constituent elements of criminal acts and to penalties of crime organized terrorism and drug trafficking (Fuerea, 2002).

Today, the fight against cross-border crime has become imperative and states understood that it is their obligation to cooperate with each other to solve any problems that may arise or to prevent conflict situations.

About the judicial cooperation in criminal matters in the Treaty of Lisbon

The Lisbon Treaty was signed by the European Union member states on 13 December 2007 and entered into force on 1 December 2009.

Through the Lisbon Treaty changes were made to the two treaties that underpin the European Union, namely the Treaty on European Union (also known as the Treaty of Maastricht) and the Treaty establishing the European Economic Community (also called the Treaty of Rome and later renamed the Treaty on European Union).

Treaty of Lisbon currently remains even today an object of extreme controversy in the academic literature, being labeled by some renowned authors (PhD. professor Dumitru Mazilu) as *Treaty of a major legal engineers*, by other authors (to face, with less experience in analyzing international acts) as *the chance of a new start for judicial cooperation in criminal matters between the Member States of the European Union* (Radu, 2009).

According to the first characterization, we consider that it is inconceivable that an act of this scale to exceed the most democratic forms of popular control, namely the referendum. Since it falls within this approach to make an analysis of the mechanisms that led to the adoption of this Treaty, is to make an analysis of articles on judicial cooperation in criminal matters.

Romania, through the Law no. 13/2008¹, ratified the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007.

¹ Published in the Official Gazette of Romania, Part I, no. 107 of 12 February 2008.

Provisions that relate to the area of freedom, security and justice were grouped in Section V, entitled "Area of Freedom, Security and Justice", Part Three Treaty on the Functioning of the European Union, and in this heading we find in Chapter 4, the provisions relating to judicial cooperation in criminal matters.

Lisbon Treaty has brought major changes, one of them referring to the fact that it was given up of the pillar structure of the Union, which means that they formed the premises of a European criminal area that exceeded the territorial limits of the component states of the Union.

Also can be perceived a widening of the European Union competence, their evolution from the areas such as free movement of goods and people to elements of criminal law and criminal procedure being evident, only in this way can be achieved the purpose to create an area of freedom, security and justice.

In article 67 paragraph 1 is stated that "the Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States" and in par. 3 that "the Union shall endeavor to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, as well as countermeasures, through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as mutual recognition of judicial decisions in criminal matters and, if appropriate, by approximation of criminal laws."

Regarding proposals for new legislation, the Treaty of Lisbon introduces the possibility that the initiative belongs to a quarter of EU Member States. This applies in three areas (art. 76 TFEU) judicial cooperation in criminal matters, police cooperation, and administrative cooperation. Consequently, decision making process wins to celebrity through removing the unanimity rule which in many cases led to institutional blockages.

Regarding border control (art. 77 TFEU), the new Treaty provides the absence of any controls on persons crossing internal borders, regardless of citizenship, and also the gradually introduction of an integrated management of external borders.

In the context of increasing migration flows from third countries, Member States' concerns were directed just towards creating common rules and a uniform status of asylum. In this regard, the Treaty creates the foundation for a common European asylum (Article 78 TFEU), which could lead to the establishment of a common asylum policy in Europe.

Lisbon Treaty confirms the EU's commitment to a common policy on immigration (art. 79 TFEU) and proposes to strengthen the Union's instruments to combat trafficking.

On judicial cooperation in criminal matters, Article 82 (ex Article 31 TEU) provides that it is based in the Union on mutual recognition of judgments and other judicial decisions. European Parliament and the Council are empowered to adopt measures on the way ordinary legislative procedure.

Also, according to article 83 TFEU (ex-art. 31 TEU), the Treaty makes it possible to adopt minimum rules for defining and condemning certain cross-border crime in cross-border serious crime such as terrorism and drug trafficking (already existent) plus: human trafficking particularly women and children, arms trafficking, cybercrime, corruption offenses. The European Union can act more effectively against criminal groups, to promote and support actions to prevent crime and to contribute to countering terrorism through the freezing of assets (Fuerea, 2010). To respond to these threats more effectively, the Treaty of Lisbon strengthens *Eurojust* and *Europol*.

As a consequence of the entrance into force of the Lisbon Treaty, European Union benefits of an extended capacity to act on freedom, security and justice, which brings direct benefits in terms of its ability to fight against crime and terrorism.

The principle of mutual recognition of judicial decisions

Article 3, paragraph 2 of the Treaty on European Union states that the Union shall offer its citizens an area of freedom, security and justice without internal frontiers in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating this phenomenon².

From the analysis of article 82, paragraph 1 TFEU can conclude that value is determined by the principle that all judicial cooperation in criminal matters within the Union is based on the mutual recognition of judicial decisions tend to uniform laws of the Member States, including the field rules of an administrative nature.

Above mentioned requirement, raised at level of a principle is a logical consequence of the idea of the area of freedom, security and justice, in the case of mutual un-recognition of judgments, the notion of shared space remains a form without substance, the rights and freedoms of individuals may be injured possible divergent interpretations of various courts of member states of the European Union or at least the legitimate interests of the people would be protected as a result of multiple and costly legal steps in front of several community courts of common law (Matei, 2013).

Treaty enables Parliament and Council but to issue directives thus establishing minimum regulatory standards in order to facilitate:

- establish rules and procedures to ensure recognition of judicial decisions;
- prevent and settle conflicts of jurisdiction between Member States;
- support the training of the judiciary and judicial staff;
- facilitate cooperation between authorities with responsibility for investigation, prosecution and enforcement of criminal judgments.

Union members are fully aware of the multitude of practical difficulties that may arise in the field of mutual recognition of judgments, so no detail on specific mitigation mechanisms by himself TFEU.

From the requirements of Article 82 paragraph 2 TFEU note that the responsibility is transferred to the European Parliament and the Council in order to determine through the directive adopted by the ordinary legislative procedure, minimum standards in the field, and taking into account the differences between the legal traditions and systems of law peculiarities of each state of the European Union.

These minimum standards relate to:

- mutual admissibility of evidence between Member States;
- the rights of individuals in criminal procedure;
- the rights of criminality victims.

In circumstances where any draft directive initiated the aforementioned purpose, namely to facilitate mutual recognition of judgments, is considered by a Council member that may affect the fundamental principles of its criminal punishment may be submitted to the Council European consequence of the suspension of the ordinary legislative procedure and

² Official Journal C 326, 26/10/2012 p. 0001 - 0390

will be initiated discussions in the European Council. If consensus is reached, the project will be resend to Council, and the ordinary legislative procedure is restarted after suspension.

Analyzing the text of the Treaty we notice that is granted within four months of negotiation to alter the draft directive in a sense thankful for that State who raised an objection. State Opposition should aim only possible fundamental differences between law order and the draft Directive, mere inconsistency not the subject of such complaints.

For where disagreement persists but two or more countries want to cooperate more closely on the basis of the draft directive in relation to which third countries are in dispute, the States concerned shall inform the European Parliament, the Council and the Commission that it intends to work in the sense of the Directive.

Therefore, the treaty establishes in the competence of the European Parliament and of the Council the right to issue directives that can be established to define minimum standards in cross-border crime in order to standardize the great law of the Member States.

Vast border crime is targeting areas such as international drug traffic of risk and high risk, terrorism, human trafficking, counterfeiting of means of electronic payment and cybercrime, tax evasion and money laundering, corruption offenses.

Might ask whether crime areas set out above and in relation to which may issue directives are limited specified in the TFEU or whether they could be extended to others, depending on the evolution of crime and the need for defense Member States of the European Union.

Starting from the provisions of article 83 paragraph 1, last thesis TFEU, we believe that the list of these areas remain open, the Council may adopt a decision identifying other areas of crime that meet the criteria of particularly serious cross-border crime.

Also identified the establishment of a constructive obligation among European Union member states to adjust legislation under union policies in combating cross-border crime as in article 83 paragraph 3 TFEU show that if the approximation of the laws, regulations and administrative provisions of the Member States in criminal matters is indispensable to ensure the effective implementation of a Union policy in an area which has been subject harmonization measures, directives may establish minimum rules concerning the definition of criminal offenses and sanctions in the area concerned.

Union policy on combating cross-border crime appears to be a goal that keeps even the core, of the explicit nature of art. 83 TFEU being enlightening in this regard. Thus we see that the margin of appreciation of states in national penal policy decreases in the case of cross-border serious crime. The solution appears to be a reasonable, because only through the establishment of such measures can be put into practice desideratum of a European area of freedom and security.

Conclusions

The fight against cross-border crime has become imperative and it is important to emphasize that states have understood that their obligation is to cooperate with each other to solve any problems that may arise or to prevent conflict situations. "I do not doubt at all the triumph of international cooperation on all the afflictions which threaten us from the

shadows, provided that each bring here in collaborative work, the three elements without which nothing great can be accomplished: the desire of understanding, will, and generosity"³.

Currently, states must put emphasis on cooperation between regional and international organizations to fight crime removing or at least reducing it, because the only way to build a safer world, we can strengthen freedom and security.

Kofi Annan emphasize the importance of cooperation between the United Nations and regional organizations and the need to build global-regional strategic partnerships appropriate current international context, but also the structures of institutionalized cooperation UN and regional organizations⁴.

References:

- Diaconu, 2002, *Tratat de drept internațional public*, 1st volume, Lumina Lex Publishing, Bucharest, pp. 316-317.
- Fuerea, 2002, *Instituțiile Uniunii Europene*, Universul Juridic Publishing, Bucharest, p 31.
- Fuerea, 2010, *Manualul Uniunii Europene*, 4th Edition, Revised and enlarged from the Treaty of Lisbon (2007/2009), Bucharesti, Universul Juridic Publishing, p.76.
- G.D. Matei, 2013, *Cooperarea judiciară internațională în materie penală*, Doctoral Thesis, unpublished, Bucharest, p. 53.
- D. Mazilu, 2006, *Tratatul privind Dreptul Păcii*, Lumina Lex Publishing, Bucharest, p.171.
- F.R. Radu, 2009, *Cooperare judiciară și europeană în materie penală*, Ed. Wolters Kluwer, București, p. 67
- Official Journal C 326*, 26/10/2012 p. 0001 – 0390
- Official Gazette of Romania, Part I, no. 107 of 12 February 2008.

³ Quoted from Nicolae Titulescu's speech, held on the eleventh session of the General Assembly of the League of Nations, after his election as President of this session - September 10, 1930 - Titulescu Diplomatic Documents, p.331.

⁴ From speech held by UN Secretary-General on the conference opening "Cooperation UNO - Regional organizations in stabilization processes" organized by Romania on 20 July 2004. The debate was attended by representatives of the other 14 member states of the Security Council and UN member states and of organizations with security tasks - OSCE, the CIS, the Organization of African Union, League of Arab States and others