THE JUDICIAL COOPERATION IN CRIMINAL MATTERS WITHIN THE EUROPEAN UNION

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Abstract:

The stuhy is anchored in reality, that reagarding of the criminal phenon in the organiyed crime of dealing, of the traffic of weapons and perons, serious crimes exceed the boudari es of certain states and examines the measure which to be taken to fimly repress such crimes.

The study introduce a serises of preoccupations in order to harmonize the law depositions of material and procedural criminal law, a gradual increase of the mutua l confidence in the judicial acts of the member state of the European Union and the enlargement of the cooperation between the judicial bodies in view of preventing serious criminel deeds.

We espress our conviction that sooner or later there will be an Eur opean Criminal Cod an European criminal procedure with unifying dispotions, in parallel with the national criminal legislation.

Key words: criminal law, criminal procedure, communitarian fraud, European Court, criminality, judicial cooperation

JEL Classification: K14, K33

1. INTRODUCTION

Under the conditions of globalization, the criminal phenomenon expanded beyond national borders, the legislations of the states being unable to efficiently fight against it and therefore appropriate measures need to be taken on an international plan.

Such an endeavor is difficult to achieve as the norms of criminal law have a domestic character and the creation of an international criminal law has been contested by certain authors while accepted by others.

In this light, professor Vintila Dongoroz (1) could not conceive the possibility of creating an international criminal law, as there is no juridical organization of the international community, which requires a power superior to that of the sovereignty of each state, able to impose a common juridical order, opinion which was later shared by other authors, such as: Manzini, Maggiore, Bettiol, Garraud, etc.

This reality was also acknowledged through international treaties of the European Union.

However, the realities after World War II imposed the creation of certain international criminal courts for the trial of the greatest war criminals, such as the Nuremberg Court.

2. THE JUDICIAL COOPERATION IN CRIMINAL MATTERS

Through the UNO resolution 808 from February 22, 1 993, the International Court was created, with the headquarters in Hague, for the trials of people who allegedly violated the provisions of the international humanitarian law on the territory of former Yugoslavia after 1991(2).

Then the idea of the regiona lization of international criminal law appeared, sustained during the colloquium of the International Criminal Law Association held in September 1992 in Helsinki. On this occasion, it was admitted that the term globalization has in view the development of means of international collaboration among at least three independent states belonging to a determined geographic entity.

One of these means refers to the creation of an European criminal law which, as some authors(3) claim, is formed of a series of crimi nal norms (substantial, procedural, prison related) which are common to several European states, to be used against crime and especially against

translational organized crime. Starting from this definition, several authors(4) wondered whether a European criminal law is backed up by a necessity, invoking several obstacles.

One of the first obstacles is the idea of sovereignty claiming that the realization of criminal justice is an attribute of sovereignty and therefore impossible to achieve elsewhere but in side the national borders.

A second obstacle comes from the national particularities of criminal law and especially of criminal procedure. In Europe there are two systems, one of the continental criminal law, born from the Roman law and another, named common law, represented in England, but no measures have been taken yet to bring the two closer together. Thus, in England a Public Ministry was founded in 1986 and the legislators from continental Europe introduced probation(5). Although the distinction between the continental procedural system (inquisitorial) and the British system (accusatorial) tends to fade out to a certain extent, it is less likely that a unique law shall apply to the whole Europe. The juridical, sociological and cultural differences are against it and probably for a long time from now on as well.

However, the two obstacles cannot prove determinant, as within the general criminal law several institutions can be unified, such as the causes for the lack of punishment, situation also found in the special criminal law, especially the incrimination of communitarian fraud, an indispensable measure to protect the financial interests of the European Communities. Several national legislations have already incriminated the communitarian fraud, such as Germany, Italy and Romania, which, through Law no. 161/2003 introduced in Law no. 78/2000 Section 4^1 regarding crimes against the financial interests of the European Communities.

Some other states haven't, namely France and Holland, where the prosecution is possible only on the basis of common law incriminations regarding forgery, trickery, fraud, smuggling, deceit, which make it possible that for certain acts no criminal liability is triggered.

From this reason the problem of the incrimination of the communitarian fraud has been raised. In relation to this, at the request of the Parliament and of the Commission, experts from the member states of the EU have framed a series of norms regarding the protection of the financial interests of the Community(6), namely Corpus Juris(7), which comprises 35 articles, grouped in two parts, one dedicated to criminal law and the other to criminal procedure.

The first eight articles suggest the incrimination of certain acts regarding the defrauding of the communitarian budget and corruption, work abuse, money laundering and the association in view of committing crimes.

Part two is dedicated mainly to the European Public Ministry(8) which later was suggested to become the European Prosecutor and later the European Court. Thus, according to art. 69 line 1 of the Lisbon Treaty(9) for the modification of the Treaty regarding the European Union and the Treaty of creation of the European Community for fighting crimes against the financial interests of the Union, the Council may institute a European Court, entitled to investigate, prosecute and send to trial, together with EUROPOL, the authors and co-authors of crimes against the financial interests of the Union.

The statute of the European Court, the conditions for its exercise of powers, the applicable procedure for its activities as well as the applicable norms for the jurisdictional control of the procedural acts adopted in the exercising of its attributions are set through regulations.

The European Council may adopt, simultaneously or subsequently, a decision of modification of line 1 to the purpose of extending the powers of the European Court to include the fight against serious crimes of trans-border dimensions and to the purpose of the appropriate modification of line 2 with regards to the authors and co-authors of serious crimes affecting several member states.

Another Institution of the EU is Eurojust, which, on the basis of article 69D of the Treaty of Lisbon, has the mission to support and consolidate the coordination and cooperation between national authorities of criminal investigation and prosecution in relation to the serious forms of criminality which affect two or more member states which require criminal research on common grounds, through operations conducted by the authorities of the member states and by Europol.

In this context, the European Parliament and the Council determine the structure, functioning, field of action and attributions of Eurojust, which may include:

- the beginning of the criminal investigation as well as the proposition for criminal research conducted by the competent national authorities, especially the ones referring to crimes against the financial interests of the union;
- coordination of research and criminal investigations;
- consolidation of judicial cooperation including solving competence conflicts and in close relation with the European Judicial Network.

The conditions for the implication of the European Parliament and of the national parliaments in the evaluation of Eurojust are currently being established.

The official acts of juridical procedure within the above mentioned investigations are carried out by the national competent authorities.

The judicial cooperation in criminal matters within the Union, in the light of article 69A of the Treaty of Lisbon, is based on the principle of mutual recognition of court decisions and includes the acceptance of rightful acts and administrative norms of the member states in certain fields.

To this purpose, the European Parliament and the Council adopts measures regarding:

- The creation of norms and procedures meant to ensure the recognition, in the entire Union, of all categories of court and judicial decisions.
- The prevention and solving of competence conflicts between member states;
- The support of professional training of magistrates and personnel in the judicial branch
- The facilitation of the cooperation between the judicial authorities or their equivalent of the member states in matters of criminal investigation and enforcement of decisions.

To the extent it may turn out to be necessary to facilitate the mutual recognition of court and judicial decisions, as well as the police cooperation in criminal matters exceeding the national borders, the European Parliament and the Council may establish a set of minimal norms which take into consideration the existent differences between the judicial traditions and the law systems of the member states and referring to:

- mutual admissibility of evidence among member states;
- the rights of people in criminal procedure;
- the rights of victims of criminality
- other special elements of criminal procedure which the Council has previously identified in a decision

The adoption of these minimal norms doesn't stop the member states from maintaining or adopting a higher level of protection of people, nevertheless, the levels established at the level of the community shouldn't be ignored. We can mention here that Romania, through the revised Constitution of 2003, has established in art. 23 that the remanding in custody of a person may not exceed 24 hours, while in France, Spain, Italy, Moldavia, it may extend up to 4 days. Through article 27, line 3 of the fundamental law, it was stipulated that the search warrant is granted by the judge and it is carried out under the conditions and forms stipulated by the law, which means that the previous exceptions regarding fragrant crimes and the consent of the person being searched are no longer in force, although the legislations of several states from the European Union still allow it.

The European Parliament and the Council may also establish, according to art. 69B of the Treaty of Lisbon, minimal norms regarding the definition of crimes and sanctions in the fields of serious criminality which exceeds the national borders, resulting from the nature or impact of these crimes or from the special requirements in fighting them.

These fields of criminality are as follows: terrorism, traffic of persons and sexual exploitation of women and children, narcotics and weapon trading, money laundering, corruption counterfeit of means of payment, organized crime.

Depending on the evolution of crime, the Council may adopt a decision to identify other fields of criminality.

3. CONCLUSION

In the event the acknowledgement of acts and administrative norms with the powers of a law in criminal matters proves to be indispensable to ensure the efficient enforcement of a policy of the Union, minimal norms regarding the definition of crimes and sanctions may be established for that particular field.

Finally, the European Parliament and the Council may establish measures for encouraging and supporting the action of the member states in the field of crime prevention, excluding every harmonization of rightful acts and administrative norms of the member states.

The transposition in practice of these provisions will lead to a harmonization of the dispositions of material and procedural criminal law, to the gradual increase of mutual trust in procedural acts of the judicial bodies of the member states and the enlargement of their cooperation for the suppression of serious crimes exceeding the national borders.

We express our conviction, alongside with other authors(10), that in the near future there will be a Criminal Code and a European Criminal Procedure with unifying dispositions of material and procedural criminal law, in parallel with the national criminal legislation.

We could therefore speak of the creation of a criminal European space and of a uniform criminal law, but it is still debatable whether the authorities of the EU and the national authorities will get involved and cooperate against serious criminal offences.

NOTES

(1) Vintila Dongoroz, *Drept Penal*, Bucharest, 1939, page 179.
(2) Jean Pradel, Geert, *Droit penal europeen*, Dalloz, Paris, 2002, page 2.
(3) Ibidem, p.3;
(4) A. Tsitsoura, *Este necesar un drept penal European*, Pouvoirs, no. 55, 1990, p. 133.
(5) J. Pradel, *Droit penal compare*, Dalloz, 1995; passim.
(6) V. Pavaleanu, Spatiul judiciar European, Revista de drept penal, no. 2, 2004, p. 44.
(7) Mireiile Delmas-Marty, *Corpus Juris* portant dispositions penales pour la protection des interest financiers de l"Union Europeenne, Editura Economica, Paris, 1997.
(8) N. Neagu, *Scurt istoric al evolutiei protectiei penale a intereselor financiare ale Uniunii Europene prin mijloace de drept comunitar*, Dreptul, no. 8, 2006, p. 135.
(9) Signed in Lisbon, on December 13th, 2007, ratified by Romania through Law no. 13/2008, published in Romania's Official Monitor no. 107 from February 12, 2008.
(10) G. Antoniu, *Implicatii penale ale Constitutiei Europene*, Revista de Drept Penal, no. 3, 2005, p. 24.

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