



THE 12TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

**Normative Acts Adopted at European Level and their Effectiveness in the
Field of International Police and Judicial Cooperation**

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Abstract: This paper aims at making a brief analysis of the relevant EU legal acts in matters of international judicial and police cooperation and the effects on the national legislation of Romania. The objective is important as it concerns the European area of freedom, security and justice, protecting citizens being a fundamental objective of the Union. The paper will consider the terms and concepts mostly legal and will focus on the areas of international police and judicial cooperation. The approach used by the authors is, in essence, from a legal perspective, being used research methods like study and observation. The result of research leads to the conclusion that international judicial cooperation in criminal matters is complex, requiring the transposition into national law of a larger number of EU legal acts compared to international police cooperation. The paper may have implications in the activity of institutions which have attributions in the fields above-mentioned, but can be useful for people interested in the evolution of internal legal documents. Essentially, the work highlights the need for giving up legal national pride for the best possible cooperation of the member States authorities with responsibilities in both areas.

Keywords: security; assistance; law; legislation

Introduction

European area of freedom, security and justice cannot be achieved without a suitable internal and internationally framework. European sources of law are found in Union treaties which are the basis of the judicial foundation, and then, in the background, are the other acts of the EU institutions. The principles governing the activity of European level are the same as in our internal law. So, a basic principle is the hierarchy of normative acts which means that lower level normative acts issued by the European institutions can not contain other solutions that are regulated in Primary sources of Community law. Regarding the institutions with legislative powers, in the European Union, these are European Parliament, Council and Commission, which adopt regulations and directives, make decisions and formulate recommendations or opinions. It is worth mentioning that those acts does not have a differentiated power, so that there is not a priority order to apply, but they differ in their effects and extended application³. In the field of police cooperation and judicial cooperation in criminal matters, according to the treaties, Council may adopt framework-decisions, common-position, decisions and conventions.

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³ L. Iamandi, International cooperation in the field of crime, Publisher AIT Laboratories LLC, Bucharest, p. 21.

Framework-decisions are instruments issued in order to harmonize laws and administrative acts of the Member States. This instruments require only targets to achieve, leaving to the opinion of the Member States legislative the ways for implementation. So, Council issued the Framework-Decision 2002/475/JAI¹ regarding combating terrorism and Amending-Decision 2008/919/JAI that define terrorist offenses and require Member States U.E., to harmonize their laws, to introduce minimum penalties for the criminal acts of terrorism. So, taking into account the international context, in the internal legislations of the Member States is imposed the necessity of regulating terrorist offense, in its legal content, being necessary to be found both sides, objective and subjective.

So, internal regulation must establish that this offense is produced by committing crimes, taking hostages, or committing threats etc. in order to strongly intimidate a nation, to destabilize political power or to constrain state bodies to act in a certain direction. Also, the Decision defines terrorist group as being a combination of at least two persons formed with the aim of committing acts of terrorism as we have previously defined. Not least, the Council requires Member States to punish any preparatory acts but also the participation of committing a terrorist offense as instigator or accomplice. Simultaneously, it is stipulated the situation of establish the jurisdiction if the offense is committed on the territory of a particular country or on a ship or aircraft belonging to a particular state, the Council impose Member States to cooperate to resolve issues related to jurisdiction. However, until the year 2014, not all U.E. states have implemented the Council measures found in stipulations of Council Framework-Decision 2008/919/JAI, in attention being Greece and Ireland, instead, other Member States have acted in order to prevent and combat terrorist offenses, punishing these crimes as U.E. required. Among the specific community acts in police and judicial matter are to be found common-positions, these normative acts being applied in particular Union matters. Understanding to remain within this controversial phenomenon, we mention that fight against terrorism is a key objective for the European Union, so that the Council's work in preventing and combating this scourge is extremely strong. Consequently, among the Council's acts is to be found the common-position 2001/931/PESC regarding the application of specific measures to combat terrorism². Is important to underscore that this common-position regulates the composition of a list or groups and persons that committed act of terrorism with the purpose to freeze their financial resources, obviously, with the aim to stop financing their illegal activities. Being an extremely dangerous phenomenon, permanently, in attention of the competent EU institutions, the Council considered that the measures taken by UN Resolution no. 1373 from 2001 must be supplemented, adopting in this purpose the aforesaid common-position.

The mentioned list is composed from names obtained, significantly, from information communicated by Member States' judicial authorities. The measures contained in that common-position became applicable by adopting Regulation (CE) nr. 881/2002 which is an act with general application, mandatory and directly applicable in Member States. Also, in the matter of cooperation is required the obligation of targeted states to mutual assistance for preventing and combating this phenomenon implicit to provide information competent U.E. institutions for updating this list, which was to be performed by other regulations and future decisions. Moving on in our approach, we will stop at the decision, which is a legal act from the category of secondary sources, binding in its entirety for its recipients. The decision, as the regulation, applies in its entirety, not being allowed a selective application, which is why we can say that this could lead to a confusion of juridical nature between those two normative acts. But, to the necessary clarify, should be noted that the decision states who are recipients of its rules while the regulation is directly applicable in each U.E. Member State. The Council may adopt decisions which

¹ www.eur-lex.europa.eu, accessed on 12.03.2017.

² www.eur-lex.europa.eu, accessed on 13.03.2017.

are binding and can be applied directly as provided therein. It is possible that the recipients of those acts to be inclusive various European organizations sense that we exemplify the joint Decision of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy regarding the participation of European Union in various organizations for cooperation in preventing and combating terrorism¹. In order to strengthen European security space, the Council adopted numerous decisions from which we mention the Council's Decision 2009/902/JAI from 30 November 2009 regarding the establishment of a European network of crime prevention (EUCPN) and for repeal the Decision 2001/427/JAI or the Council's Decision 2010/88/PESC/JAI regarding the signing in the name of the European Union, the Agreement between the European Union and Japan on mutual legal assistance in criminal matters, acts which targeted states must transpose into their own legislation. Conventions are legal documents concluded in order to appropriate legislation in a particular area of cooperation, these showing a particular importance in legislative policy developed at Union level. From these acts, stands up in the field of judicial cooperation, Convention adopted by the Council in accordance with art. 34 from TUE regarding mutual legal assistance in criminal matters between Member States of the European Union from 29 May 2000 and additional Protocol from 26 October 2001, Convention on simplified extradition procedures between the Member States of the European Union adopted on 10 March 1995 or Convention on extradition between European Union and Member States adopted on 27 September 1996. In our internal legislation, the legislature adopted two normative acts about the field of international police and judicial cooperation, that transpose in our state legislation a few of framework-decisions and decisions, aspect that confirms the thesis that these two categories of documents are relevant and produce significant effects in the Member States relating to the foregoing. For Romania, are relevant Law no. 302/2004² on international judicial cooperation in criminal matters and Government Emergency Ordinance no. 103/2006³ on certain measures for facilitating international police cooperation.

So, Law no. 24/2000 on legislative technique requires the legislature to mention expressly the community acts that are transposed into national legislation, with all their identification elements, this obligation subsisting even in the event of partial transposition, situation when it will be made only to those sections/articles/paragraphs taken into consideration by the legislator⁴. Also, it is imposed to the legislator the obligation to identify the most effective legal solutions in preparing the draft laws so that these enjoy the efficiency and stability. In the same manner, should be noted that the validity of a legislative act is based, together with social interest, of internal legislative policy and the requirement to correlate with the rest of internal rules and of the requirement to harmonize national legislation with community legislation⁵. Simultaneously, in order to integrate the new organic law into national law the legislature must consider the draft legislative act to comply fully with the requirements found in the community legislation that Romania manifested the intention to internalize them. Not least, the law establish, in the process of elaboration and drawing draft laws, the obligation to ensure their compatibility with EU rules and the task of formulating proposals for amending and supplementing them when their provisions are no longer consistent with community law.

At governmental level, legislative harmonization is achieved through specialized bodies of the central government respectively through the ministries concerned. In the field of police and judicial international cooperation we believe that, in the main scope, have attributions the Ministry of Foreign

¹ www.eur-lex.europa.eu, accessed 2/27/2017.

² Published in the Official Gazette no. 594 of July 1, 2004.

³ Published in the Official Gazette no. 150 of February 28, 2014.

⁴ Art. 45 of Law no. 24/2000, published in Official Gazette no. 139 of March 31, 2000.

⁵ Art. 6 para. (1) of Law no. 24/2000.

Affairs, Ministry of Interior and Ministry of Justice, as specialized institutions of the central public administration. Regarding the first institution, according to Government Decision number 16/2017¹ regarding to organization and functioning the Ministry of Foreign Affairs, these one, by Department Legal Approximation, approves draft laws legislation that aim to provide the transposition or ensuring the framework to direct application into national law EU legislation or the ones that have European relevance and examines, in terms of compatibility with EU regulations, legislative proposals for formulating the government's viewpoint on them². Therefore, the main activity of Department Legal Approximation from the Ministry of Internal Affairs falls within ensuring the compatibility national rules with European Union law, this being subordinate to the Government Agent for the European Union Court Justice, that is carrying out its duties in the coordination of the Minister Delegate for European Affairs³. Similar powers are also provided to the Ministry of Justice, which, according to art. 6 pts. I pt. 3 from Government Decision number 652/2009 regarding the organization and functioning of the Ministry of Justice, has the obligation to evaluate internal legislation, within its competence, in terms of compatibility with community *acquis* and other international legal documents, to which Romania has expressed its intention to assume them, formulating, simultaneously, proposals to improve the existing legal framework. As we are interested, internationally, Ministry of Justice exerts the most important prerogative, which consists of conducting skills of central authority in the area of international judicial cooperation⁴. Also, Ministry of Justice takes part in the Council of Justice and Home Affairs and all other international meetings involving one of its fields of competence⁵. As a specialized body of central public administration, Ministry of Interior, exercise, at its turn, responsibilities in harmonizing national legislation, this goal being a permanent one, assumed of Romania with its accession to the European Union. So, in its area, Interior Ministry ensure the fulfillment of the obligations assumed by Romania and participates actively in the processes of policy elaboration and drawing up community legislation⁶. Also, Interior Ministry participates, in the same manner as the Ministry of Justice, at the achievement of national strategies and programs developed in line with EU policies.

Within this function, for its area, Ministry of Internal Affairs shall represent Romania at the Council of Justice and Home Affairs and at the meetings of the EU Council and European Commission⁷. Not least, similarly, Ministry of Internal Affairs provides a higher degree of compatibility of national law with EU rules, submitting the same time every effort timeliness of transposition and implementation process for its fields of competence⁸. We have previously shown that the legislature transposed into national law a series of decisions and framework-decisions, legal acts of particular importance, governing forms and means of police and judicial cooperation. So, relevant in the field of international judicial cooperation in criminal matters is Law no. 302/20014.

This normative act, in its field of regulation, expressly stipulate to which forms of international judicial cooperation in criminal matters it applies. Also, it is worth mentioning that the legislature intended to regulate the situation when the law expressly applies to specific forms of police cooperation, namely

¹ www.mae.ro, accessed on 03.13.2017.

² Art. 2 pt. 37 of H.G. no. 16/2017, published in Official Gazette no. 44 of January 16, 2017.

³ Art. 2 para. (3) of O.U.G. no. 11/2017 on the organization and functioning of Government Agent for the Court of Justice of the European Union and the Court of Justice of the European Free Trade Association, published in Official Gazette no. 84 of January 30, 2017.

⁴ Art. 6 pt. III, pt. 1 of H.G. no. 652/2009 on the organization and functioning of the Ministry of Justice, published in the Official Gazette no. 443 of June 29, 2009.

⁵ Art. 6 pt. III, pt. 5 of H.G. no. 652/2009.

⁶ Art. 1 para. (2) c) of O.U.G. no. 30/2007 on the organization and functioning of the Ministry of Internal Affairs, published in the Official Gazette no. 309 of May 9, 2007.

⁷ Art. 3 par. (1) c) pt. 2 of O.U.G. no. 103/2007.

⁸ Art. 3 alin. (1) lit. c) pct. 4 din O.U.G. nr. 103/2007.

when they are under the control of judicial authorities. Therefore, this law establishes the legal procedure for extradition, surrender under a European arrest warrant, transfer of proceedings in criminal matters, recognition and enforcement of judgments, transfer of sentenced persons, mutual legal assistance in criminal matters, in the end, leaving open the way for other forms of international judicial cooperation in criminal matters. Instead, by Government Emergency Ordinance no. 103/2006¹, Romanian legislator wanted the development of the internal legislation and to regulate the activities of an essential authority of police and judicial cooperation in criminal matters at international level, namely the International Police Cooperation Center. Although this authority has a significant role internally and internationally, it does not enjoy legal personality, being a structure within the General Inspectorate of Romanian Police. Similarly, by issuing this Emergency Ordinance, legislature expressly excluded any interference within the field of international judicial cooperation in criminal matters and in the sphere of international law and relevant community legislation in this matter.

This authority makes the connection with Interpol, Europol, SIS/Sirene, operational connection with SELEC, but also with the internal affairs attachés and liaison officers accredited both abroad Romanian and foreign accredited in Romania². So, it is to be noted that this authority has major international powers, creating a bridge between the authorities in Romania and international channels responsible for preventing and combating cross-border crime. Turning to international legal acts on these two laws transpose into national legislation is important to note that the report is disproportionate. So, Law no. 302/2004 transposes into national law the provisions of nine Framework-Decision while Government Emergency Ordinance no. 103/2006 transposes the provisions of a single decision and provides the legal framework necessary to implement two Council decisions. It is worth mentioning that, at the level of the Council of Europe, the reference document for regulating principle of mutual recognition is the Council Framework-Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union. Relative to the competent authorities involved in the cooperation process, Law no. 302/2004 establishes these skills, depending on penal trial phases to the Ministry of Justice, the Public Ministry, and the Interior Ministry just for requests in criminal record. So, for all forms of cooperation, is under the jurisdiction of Ministry of Justice through its specialized department any request that is made during the trial phase or the execution of criminal judgments, while, for the stage of investigation and prosecution, all activities are under the jurisdiction of Prosecutor's Office attached to the High Court of Cassation and other prosecution units.

In general terms, cooperation, involves sending a request for judicial assistance by the Romanian central authority who receives, conduct regular control and, either executes or transmits the competent authority. We see that the central authority is carrying out this check regularly that involves verification of the requirements of form and substance governed by the law, by international documents ratified by Romania and, not least, the good practices established between states. However, the easiest way to cooperate is the direct transmission of requests for assistance, ensuring this way and the principle of celerity regulated by most proceedings in criminal matters, of course, if this method is stipulated in the incidental legal instrument. This method of transmission is provided in international legal instruments, a first shape imposing the transmission of the request only in an emergency, but with the obligation of communication of a copy to the central authority, while, for the second modality, transmission of the application being able to perform any situation. The law also provides for the transmission of the request electronic means, especially fax, if the requirements of authenticity, confidentiality and credibility are

¹ Approved by Law no. 104/2007, published in the Official Gazette of Romania, Part I, no. 275 of April 25, 2007.

² Art. 6 of O.U.G. no. 103/2006.

met. About this communication channel, in a court case¹, the High Court of Cassation and Justice rejected the criticism of the suspects who were the subjects of European arrest warrants. Thus, the Court said that faxes received by the Romanian authorities certify those copies as reflected in data transmission that are found in content mandates and making references to the fax number and e-mail. But, more than that, the Court noted that this solution is strengthened by the frequently use this rapid communication channel by Interpol. However, the Supreme Court ruled on the issue of pronouncing Romanian courts about certain aspects of criminal proceedings in the issuing of the European arrest warrant and on the accusations person subject to these mandates, stating that courts must be restricted to a check formal application attachment documents and determining the exact identity of the persons. This attitude is regulated in our legislation by applying the principle of mutual recognition and trust under the provisions of Council Framework-Decision no. 2002/584/JHA of 13 June 2002. In the field of judicial cooperation in criminal matters, particularly for the fulfilling measures taken by the judicial authorities, stands with an active role the International Police Cooperation Center.

According to Law no. 302/2004, this structure is informed, in most cases, on the measures taken by the judicial authorities either to meet them or to take action in another way. Turning to O.U.G. no. 103/2006, International Police Cooperation Center has, in police cooperation proceedings, an active role, exercising its jurisdiction, especially for exchange of information and intelligence. In essence, forms and means of police and judicial cooperation should converge towards the same goal, namely to prevent and combat crime in the EU, providing an area of security of EU citizens, facilitating the administration of justice and, not least, creating an homogeneous and effective institutional framework. Normative acts alleged follows that, the first and most common form of cooperation is the traditional one, based on mutual assistance requests information on arrests or other procedures. Next would be relatively formal cooperation, such as, for example, which used in Eurojust. Further, was found co-active cooperation, by combined teams joined as it is regulated in the art. 13 from Convention MACM EU for the 2000 or the Council's Framework-Decision of 06/03/2002 regarding the investigative teams merged.

Further, we have cross-border cooperation regulated as cross-border pursuit and surveillance. We also know another form of cooperation in the matter of international police established by shared institutions such as Europol, or through development of common databases such as the Schengen Information System and finally, cooperation based on the principle of mutual recognition. After transposition the international legal acts relevant for the police and judicial cooperation in internal legislation, meaning decisions and framework-decisions, we see that the Romanian legislator named the procedures of cooperation for the two segments, police and judiciary, distinct designations to avoid any confusion and to exclude any interference. Thus, Law no. 302/2004 uses the phrase "forms of international judicial cooperation" and O.U.G. no. 103/2006 uses the juxtaposition of words "specific cooperation activities and international police assistance", these activities being in the Law. 302/2004 as "specific modalities of international police cooperation". Next, the two laws regulates the principles governing the two forms of cooperation, which, analyzing them, we find that there are three common principles, respectively the principles of reciprocity, legality and confidentiality.

Further, O.U.G. no. 103/2006 regulates cooperation in home affairs attachés and liaison officers and pursuit. In the section on cooperation with the Member States of the European Union, are regulated, as forms of cooperation, exchange of data and information and other cooperation forms. In the last case, police assistance may be granted in special circumstances as, effective border control, major events of

¹ Decision no. 2456 of June 21, 2010, delivered by the High Court of Cassation and Justice in case no. 800/46/2010 on www.legeaz.net, accessed on 03.18.2017.

cross-border dimension in cases as major disasters and serious accidents, and for participating in joint operations.

Conclusions

Legal acts of European police and judicial cooperation international managed to become an effective tool in preventing and combating crime in the EU, which can be transposed into national law in a manner easy. Also, it seems that legislation allows the use of the most effective mean which is the request for judicial assistance, forwarded to the authorities of the Member States by any means of quick communication, of course, by respecting the conditions of authenticity. However, one should not overlook the role of Europol and Eurojust, which are strong pillars in strengthening the European security and justice.

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