

CONSIDERATIONS ON THE IMPORTANCE OF THE EUROPEAN CRIMINAL LEGAL REGULATIONS CONTAINED IN THE TREATY OF LISBON

L.-R. POPOVICIU

Laura-Roxana POPOVICIU

Faculty of Juridical and Administration Sciences, the Law Department

Agora University of Oradea, Romania

Correspondence: Agora University, 8 Piața Tineretului St., Oradea, Romania

E-mail: lpopoviciu@yahoo.com

ABSTRACT: *The establishment of a common European space of the Member States from an economic and judicial point of view has been the desideratum of the European states. The openness created by the European space, namely the free movement of people, generates an enormous advantage for Europe's population, but can also lead to Member States being exposed to various forms of cross-border crime that go beyond their borders.*

Free movement within the U.E. it must be accompanied by the strengthening of Member States' cooperation in the field of criminal justice and policing in order to ensure a framework of security and safety for European citizens.

European citizens have the right to move and live freely without fear of being exposed to various forms of crime. However, international crime in various forms: drug trafficking, trafficking in human beings, prostitution, pimping, theft, robbery, murder, terrorism is a worrying phenomenon for European citizens. The number of organized crime cases has increased, capital market offenses, illegal e-commerce activities as well as those related to the safety and physical and moral integrity of the person have increased significantly.

The issue of ensuring European criminal justice has thus been raised over time. Adoption of unitary criminal measures in the legislation of European states, but also at EU level. it is considered an effective means of preventing international crime and punishing those guilty of committing it.

We find in European documents criminal regulations at European level that define the common effort to reduce and limit international crime. In this article, I have focused on the latest fundamental European treaty: the Treaty of Lisbon, in which criminal law falling within the exclusive sphere of the Member States acquires European competences.

KEY WORDS: *Lisbon Treaty, Criminal Code, criminal law, European Union*

INTRODUCTION

Ensuring a climate of peace at European level in the wake of the atrocities and aftermath of World War II, which broke out just 20 years after the end of World War I, was the goal of the great politicians of the time.

Thus, starting with 1950, European countries begin to unite, economically and politically.

On May 9, 1950, the French Minister of Foreign Affairs, Robert Schuman¹ proposed that coal and steel production be jointly managed by European countries. In this way, no country could secretly arm itself against the others, coal being the most important source of energy available at that time.

¹ He is considered one of the founding fathers of the European Union, and also served as President of the European Parliament from 1958 to 1960

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1. THE EVOLUTION OF CRIMINAL REGULATIONS IN THE EUROPEAN TREATIES²

On 18 April 1951 the first European Treaty was signed, the Treaty establishing the European Coal and Steel Community, which entered into force on 23 July 1952 and established the European Coal and Steel Community.

This is the origin of the current European Union.

The European Coal and Steel Community was founded by six neighboring countries: Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

The decision to set up the CECO led to the elimination of mistrust between states and the tensions that had accumulated during the Second World War.

In the first stage, this grandiose project of mutual support of the European states emphasized the strengthening of the economic cooperation, being involved in trade, the European states become interdependent from the economic point of view.

The importance of economic cooperation between states proved its effectiveness, which led to its extension to other economic sectors, with the signing of the Treaties of Rome³ – The CEE and EURATOM treaties on 25 March 1957 and entered into force on 1 January 1958.

The European Economic Community, set up by the Treaty of Rome, has made great strides economically and contributed to the intensification of economic cooperation between the six signatory states.

The Merger Treaty - the Brussels Treaty, signed on 8 April 1965 and entered into force: 1 July 1967 saw some key changes in the existence of the new European bodies, with the aim of simplifying the European institutional framework by creating a single Commission and a single Council for all three European Communities (CEE, Euratom, CECO).

The Single European Act entered into force: 1 July 1987 and the Maastricht Treaty⁴ by which the European Union was formally established.

The Maastricht Treaty was signed on 7 February 1992 and entered into force on 1 November 1993. This Treaty divided the spheres of competence of the European states into three pillars.

The third pillar, Cooperation in the field of justice and foreign affairs, sought to develop joint action through intergovernmental methods, in order to provide citizens with a high level of protection, in an area of freedom, security and justice.

What began as a strictly economic union has gradually become an entity with activities in countless fields, the third pillar referring to, among other things, the fight against terrorism, serious crime, drug trafficking and international fraud, judicial cooperation. in criminal and civil matters and the creation of a European Police Office (Europol) equipped with an information exchange system between national police.

The Treaty of Amsterdam⁵ entered into force on 1 May 1999 and prepared the European Union for further enlargements. It has led to obviously more important consequences in the field of criminal law.

The European Council presented true principles underlying the collaboration between the various national authorities (judges, prosecutors, police) of the Member States, between them and the European criminal institutions, and between the latter: the principle of mutual recognition of judgments⁶, sharing or availability of information, direct communication

² The European Union was created and is based on the rule of law. Any action taken by the U.E. derived from treaties. These treaties have been approved voluntarily and democratically by all Member States

³ The Treaty of Rome gave birth to European civil society, which needed a legal basis, as legislative harmonization was needed, which would lead to the supremacy of Community law over national law

⁴ The Maastricht Treaty decided to improve legal cooperation

⁵ He established the Area of Freedom, Security and Justice

⁶ It is considered to be the structural principle of the whole of Community law, or the cornerstone of judicial cooperation

between judicial and police authorities, the principle of coordination of police and judicial investigations, the principle of indirect enforcement and the principle of horizontal sui generis cooperation. These principles were intended to lay the foundations for the construction of a European criminal law.

The Treaty of Nice entered into force on 1 February 2003.

The last treaty of the European Union is the Treaty of Lisbon which entered into force on 1 December 2009 and aims at "to make the EU a more democratic, efficient and capable entity in tackling global issues in unison".

All the Member States' actions were taken on the basis of those Treaties.

All Member States must agree on the Treaties, by mutual agreement, in a voluntary and democratic manner. In this way, the treaties become binding on all Member States. According to these treaties, European Union law is above national policy and interests.

European Union law may affect certain aspects of the sovereignty of the Member States.

However, Member States have voluntarily transferred parts of their sovereignty to the European institutions in order to build a stronger and more efficient Europe.

2. THE IMPORTANCE OF CRIMINAL REGULATIONS AT EUROPEAN LEVEL IN THE LISBON TREATY

The Treaty of Lisbon provides in art. 2 para. 2 that „The Union provides its citizens with an area of freedom, security and justice, without internal borders, within which the free movement of persons is ensured, in conjunction with appropriate measures on external border control, asylum, immigration, crime prevention and control this phenomenon”.

”The states of the European Union have recognized that it is better for them to work together than as independent states and outside the Union”.

The European Union is currently an extremely complex organization, made up of 27 European states following England's exit from the union.

Border controls between EU Member States have disappeared, citizens can move freely on almost the entire continent, which requires increased cooperation between states to protect against cross-border crime.

These are both cross-border, international crime, organized in organized groups, and individual crime to limit the possibility of criminals to take refuge in the territory of other states.

Cross-border crime has evolved a lot, transcended national borders, and the fight at national level has often proved ineffective, with cooperation between states becoming an essential element.

Forms of organized crime have proliferated in several states: international drug trafficking, trafficking in live meat, counterfeiting, theft and robbery facilitated by the development of international tourism. A dangerous alarm signal is caused by terrorist phenomena.

Measures must be taken against crime at European level.

The Treaty on the Functioning of the European Union devotes an entire chapter to laying the foundations of European criminal law.

Thus, Chapter 4 of the Treaty of Lisbon is reserved for judicial cooperation in criminal matters within the European Union: ”Judicial cooperation in criminal matters within the Union shall be based on the principle of mutual recognition of judgments and judgments and shall include the approximation of the laws, regulations and administrative rules of the Member States in the areas referred to in paragraph 2 and Article 69B”⁷.

The Union is working to ensure a high level of security through crime prevention measures.

⁷ Article 69 A, para. (1), Treaty of Lisbon, Chapter IV Judicial cooperation in criminal matters

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In this regard, it is provided that "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures on:

- the establishment of rules and procedures to ensure the recognition, throughout the Union, of all categories of judgments and judicial decisions;
- the prevention and settlement of conflicts of jurisdiction between Member States;
- supporting the professional training of magistrates and judicial staff;
- facilitating cooperation between the judicial or equivalent authorities of the Member States in criminal prosecution and enforcement"⁸.

Also "may lay down minimum rules to take account of differences between the legal systems of the Member States as regards:

- mutual admissibility of evidence between Member States;
- the rights of persons in criminal proceedings;
- the rights of victims of crime;
- other special elements of criminal procedure which the Council has previously identified by a decision".

The Treaty provides that the European Parliament and the Council, " may lay down minimum rules on the definition of offenses and sanctions in areas of particularly serious crime such as terrorism, trafficking in human beings and the sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, cybercrime and organized crime"⁹.

Another important provision refers to the fact that the European Parliament and the Council can support Member States in the field of crime prevention.

The Treaty strengthens its position Eurojust.

Eurojust is a central cooperation body set up in The Hague in 2003.

Its objective provided for in the Treaty is "

strengthen coordination and cooperation between national investigative and prosecuting authorities in relation to serious forms of crime affecting two or more Member States", his duties may include:

- " the initiation of criminal investigations and the proposal to initiate criminal proceedings by the competent national authorities, in particular those relating to offenses affecting the financial interests of the Union
- coordination of investigations and prosecutions
- strengthening judicial cooperation".

Official acts of judicial procedure are carried out by the competent national authorities.

The Treaty regulates the possibility conferred by unanimous vote of the Council to establish by regulation a European Public Prosecutor's Office with the consent of the European Parliament.

It would have the power to investigate, prosecute and prosecute, where appropriate in collaboration with Europol, the perpetrators and co-perpetrators of offenses affecting the financial interests of the Union, and may extend its powers to include the fight against serious criminal offenses. cross-border dimension as regards perpetrators and co-perpetrators of serious crime affecting several Member States.

Cooperation in criminal matters is essential between states. In this sense, the means of criminal law used at European level are:

- The application of the principle of universality of the criminal law, according to which the Romanian criminal law can be applied also to the crimes committed by foreigners outside the Romanian territory with the observance of the application conditions provided in art. 11 Romanian Criminal Code:

⁸ Article 69 A, para. (1), Treaty of Lisbon, Chapter IV Judicial cooperation in criminal matters

⁹ Article 69 B, para. (1), Treaty of Lisbon, Chapter IV Judicial cooperation in criminal matters

- the deed to be committed outside the territory of our country
- the deed committed to be another crime than those provided in art. 10 Penal Code

an act committed by a foreign national or a stateless person not domiciled in the country (stateless person)

- the offender is voluntarily in Romania

- Extradition, ie the bilateral act of international legal assistance in criminal matters, by which a state hands over to another state upon request the offender who is on its territory in order to judge or execute punishments or measures ordered by their judicial authorities.

This legal institution finds its legal regulatory framework in art. 19, Romanian Constitution, art. 14, Romanian Criminal Code and in Title II of Law no. 302/2004 with subsequent amendments and completions.

- The European Arrest Warrant, a legal instrument that has been in use since 2004 and is used to replace lengthy extradition procedures.

It includes a request from the authorities of a State to detain and hand over a particular person for the purpose of prosecuting or serving a custodial sentence or the application of a measure of pre-trial detention addressed to another State.

This legal institution finds its regulatory framework in Title III of Law no. 302/2004 with subsequent amendments and completions.

- The transfer of proceedings in criminal matters aimed at the conduct of criminal proceedings or the continuation of proceedings instituted by the authorities of a State by another State to which that person is bound by origin, nationality or residence.

This legal institution finds its regulatory framework in Title IV of Law no. 302/2004 with subsequent amendments and completions.

- Recognition and enforcement of judgments, criminal orders and judicial acts in relation to third countries

This legal institution finds its regulatory framework in Title V of Law no. 302/2004 with subsequent amendments and completions.

- Transfer of convicted persons, a legal institution that aims to facilitate the social rehabilitation and reintegration of convicted persons, goals that are easier to achieve when the sentence is executed in the state where the convicted person is to be released. Sometimes it can become necessary due to personal reasons or health problems.

This legal institution finds its regulatory framework in Title V, chap. II and Title VI of Law no. 302/2004 with subsequent amendments and completions.

- International legal assistance in legal criminal matters which finds its regulatory framework in Title VIII of Law no. 302/2004 with subsequent amendments and completions and includes the following activities:

- ” a) international letters rogatory
- b) videoconferencing hearings
- c) the appearance in the requesting State of witnesses, experts and persons pursued
- d) the notification of the procedural documents that are drawn up or submitted in a criminal trial
- e) criminal record
- f) other forms of legal aid”.

CONCLUSIONS

The opening of the European Union's borders to the free movement of persons has also led to exposure of Member States to various forms of cross-border crime. A convergent fight must be waged against it by both national and European criminal law. Slowly but surely there is talk of a European criminal law. This requires the development of a criminal justice system for the European Union.

Criminal regulations at European level have not been a priority area of the European Community.

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Gradually, rules and principles applicable to criminal law emerged.

The moment that marked the beginning of the transition to a European criminal law was the Maastricht Treaty.

The Treaty of Lisbon has given priority to criminal law.

The great innovation brought by the Treaty in the field of criminal law is that the European Parliament and the Council now have the possibility to establish minimum rules on crimes and sanctions in areas of particularly serious crime that affect several Member States with the possibility for the Council to adopt unanimously, regulations and other areas of criminal law.

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