INSTITUTES FOR THE IMPLEMENTATION OF COOPERATION IN CRIMINAL MATTERS WITHIN CRIMINAL LAW OF THE EUROPEAN UNION

Academician Miodrag Simović, PhD
Constitutional Court of Bosnia and Herzegovina; Faculty of Law, University of Banja Luka;
Academy of Sciences and Arts of Bosnia and Herzegovina
Amna Hrustić, MSc[1]
Faculty of Law, University of Zenica, Bosnia and Herzegovina

Abstract: The criminal law of the European Union in its development primarily aims to protect the financial interests of the European Union. Given that this is a single area and a single legal order, within which member states still retain clearly defined competences, and in order to effectively protect the interests of the Union, it was necessary to introduce certain institutes that allow or facilitate a greater degree of cooperation and cohesion among the member states in the fight against crime, which in this case also has a cross-border element. The intention was to improve the existing mechanisms of cooperation between the states within the framework of international criminal law in such a way that they become faster and more efficient. The paper presents the characteristics and the manner of application of each of the aforementioned institutes, with a brief overview of other forms of cooperation.

Keywords: criminal law, European Union, Interpol, cooperation.

INTRODUCTION

Traditional cooperation between states in criminal matters implies interstate relationship in which one sovereign state sends a request to another sovereign state, which then decides whether to act upon the request. It is a system that is slow and complex and no longer corresponds to the reality of today's European space. Faced with such a situation, modern states have begun to realize that a criminal phenomenon on a global scale requires joint and coordinated action. In this context, the European Union offers one of the most developed systems of international cooperation in criminal matters (An-

1 amna.hrustic@unze.ba

agnostopoulos, 2014: 9-24). This system is based on certain principles, of which the most important are undoubtedly the recognition and mutual trust between the states. In this regard, since 2002, a number of framework decisions and directives have been adopted, which together form a comprehensive mechanism for international cooperation in this area. The aim is to create a single space in which the decisions of one state would have the same legal force on the territory of any other member state (Stojanovski, 2009). Of all the decisions and directives, the most important is the one concerning the European arrest warrant (Reljanović, 2009: 71-89).

EUROPEAN ARREST WARRANT

The European Arrest Warrant (EAW) is the first, real and concrete legal (legislative) mechanism in the field of criminal justice cooperation within the European Union (Ivanović, Totić, 2017: 127; Haggenmüller, 2012: 95–106; Fichera, 2011: 547-551). It is based on the principle of mutual recognition of court decisions of member states, which can be considered the "cornerstone" of judicial cooperation between the EU member states (Pajčić, 2017: 554; Lukić, 2011: 542; Đorđević, 2011: 1).

The introduction of the European warrant has made progress primarily in interstate cooperation, which means that now there is no possibility of rejecting requests for differently defined criminal offenses. In addition, the possibility of extraditing a domestic citizen to another member state was introduced (Racsmany, Blekxtooon, 2004; Ivanović, Ivanović, 2015: 202; Ostroploski, 2014: 167-169).

The Framework Decision lists the criminal offenses for which a European arrest warrant may be issued, with the possibility of expanding the list. This warrant can also be issued for crimes that fall under the jurisdiction of the International Criminal Court - ICC. The decision also envisages the possibility of confiscating property in case that the requesting Member State has explicitly stated this in the arrest warrant (Simović, Blagojević, Simović, 2013: 551).

The framework decision does not require absolute mutual recognition, but even prescribes the reasons for which the warrant shall not be executed (Spencer, 2010: 474–482). The reasons are divided into two groups: the reasons why they will not necessarily be recognized and the reasons why they do not have to be recognized (Burić, 2007: 228).

Article 3 of the Framework Decision lists the grounds on which the Member State to which the European warrant is addressed must refuse to execute it (Burić, 2007: 229; Pajčić, 2017: 566-567). Article 4 prescribes relative reasons for refusing to execute a warrant. In addition to these obstacles, the obstacles for the execution of European warrant are also the privileges and immunities enjoyed by a certain person (Burić, 2007: 224).

The Framework Decision guarantees certain rights to a person arrested on the basis of a European warrant, which follows from the Charter of Fundamental Rights of the European Union itself. The states are obliged to incorporate all these rights into their national legislation (Burić, 2007: 237; Der Mei, 2017: 888).

The issue of which judicial body is competent to issue or execute an arrest warrant is regulated by national law (Filipović, 2012: 188-203). However, given the way in which the Framework Decision defines a European arrest warrant, i.e. as a court decision, it is clear that this must be a body with the powers of a court, as explained above.

If the requested person is located within the territory of the requested State, it is its obligation to arrest the person without any delay. This is followed by the standard police procedure of verification and

determination of the identity of a person deprived of liberty, with the exercise of universal rights of a person deprived of liberty. Then, a preliminary hearing takes place in which the person is informed about his rights, i.e. the content of the European arrest warrant.

The main hearing takes place before a competent judge, and is scheduled within a reasonable time from the moment of arrest. There is a right of appeal against the decision of the competent judge. The deadline within which the competent judicial authority must make a decision on whether to deliver the arrested person to the requesting state is 60 days, and it is calculated from the day when the person was arrested.

If the location of the requested person is known, the judicial authority issuing the European arrest warrant may send that warrant directly to the enforcement authority in the Member State of enforcement. It is possible that the judicial authority issuing the arrest warrant is not aware of the competent judicial enforcement authority. In such a situation, it will request the necessary information through the contact points within the European Judicial Network (EAJ) in order to obtain this information from the enforcement Member State.

In order to reduce the risk of the requested person fleeing, the judicial authority issuing the European arrest warrant may send that warrant to its national SIRENE[2] bureau for transmission to the other Member states via the Schengen Information System (SIS).

The indirect way of executing the European arrest warrant is much more common. In such a situation, the European arrest warrant is sent to all Member states via the SIS. In case of certain doubts, possible legal dilemmas, gaps or other interpretations, the requesting state may request assistance from the European Judicial Network.

SCHENGEN INFORMATION SYSTEM

The Schengen Information System (SIS) is one of the most important compensatory measures for the abolition of internal border controls.[3] The main role of the SIS is to preserve internal security in the Schengen countries due to the absence of controls at internal borders. It is in fact an information body that provides support to external border control and police cooperation in the Schengen countries. Specialized national SIRENE bureaux serve to exchange additional information and coordinate SIS alert activities.

Three legal instruments strictly define the scope of the work of SIS: European Commission Regulation 1987/200635 (border police cooperation), Council's Decision 2007/533/PUP36 (police cooperation) and European Commission Regulation 1986/200637 (vehicle registration cooperation).

The SIS became operational on 25 March 1995 for seven member states of the European Union, and the next day, 26 March, those states abolished their internal state borders. After that, it experienced an upgrade in the form of SIS 1, and then SIS 1+. This was followed by SISone4ALL, and finally SIS II, which started operating on 9 April 2013 - simultaneously in all beneficiary countries of the previous system.

Today, SIS II is operational in all countries of the European Union that are members of the Schengen area and in the associated countries that are members of the Schengen area. There are special conditions for the European Union countries that are not members of the Schengen area.

2 Supplementary Information Request at the National Entries, see more at: *https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/sirene-cooperation_en*; 11 November 2019.

3 S. Pejaković-Đipić, *„Schengenski informacijski sustav – „čuvar" schengenskog područja"; 139. file:///C:/Users/User/Downloads/ZPR_br_2_2018_ZB_12032019_29_55.pdf*; 22 December 2019.

INTERPOL

Interpol (*International Criminal Police Organization*) is an intergovernmental organization consisting of 194 member states. It was formed in 1923 for the purpose of international criminal-police cooperation. It is currently the second largest organization in the world (after the United Nations), and is funded by annual contributions from member states. Due to its politically neutral role, the Statute of Interpol,[4] which is its basic legal act, does not allow participation in intrastate criminal actions, and the resolution of political, military, religious or racial crimes. Interpol's work focuses on public safety, anti-terrorism, the fight against organized crime, smuggling, human trafficking, money laundering, child pornography, financial, high-tech crime, and corruption.

The highest governing body is the General Assembly, which consists of the delegates from the Member states. They meet annually and make all important decisions related to the organization's policies, resources, working methods, finances, activities and programs. The other governing body is the Executive Board headed by the president of the organization.

Interpol is a key partner of the European Union in the field of external security, irregular migration, anti-terrorism and organized crime. In its work, Interpol cooperates with European Union agencies (Europol, Eurojust, Frontex,[5] CEPOL,[6] EU-LISA[7]) on joint projects to increase the access to databases, training and capacity building programs of Interpol and on other initiatives.

EUROPEAN EVIDENCE ORDER

Mutual assistance between the member states of the European Union in terms of obtaining or submitting evidence, documents, and data necessary in criminal proceedings is regulated by a European evidence order. The procedures and guarantees for the Member states, on the basis of which the European evidence order should be issued and executed, are governed by Council Framework Decision 2008/978/PUP of 18 December 2008 on the European Evidence Order for the purpose of obtaining the case, documents and data for use in criminal proceedings.[8] This form of criminal justice cooperation is an upgrade to the European arrest warrant, and the introduction of the European evidence order has completed criminal justice cooperation between the member states.

The Framework Decision on the European Evidence Order complements the Framework Decision on the freezing of assets and evidence by applying the principle of mutual recognition of warrants with specific aim of obtaining objects, documents and data that can be used in criminal proceedings (Klimek, 2012). European evidence order is issued by an authorized body of a Member State: a competent judge or court, a competent investigative body or a public prosecutor, or any other judicial body designated for an individual and specific case by the issuing State. Police authorities or other admin-

4 Adopted at the 25th Session of the General Assembly in Wienna, in June 1956, and entered into force on 13 June of the same year.

5 European Border and Coast Guard Agency based in Warsaw, *https://frontex.europa.eu/*; 12 January 2020.

6 European Union Legislative Training Agency based in Budapest, *https://www.cepol.europa.eu/*; 12 January 2020.

7 European Agency for the Operational Management of Extensive Information Systems in the Area of Freedom, Security and Justice (eu-LISA), based in Tallin, *https://www.eulisa.europa.eu/*; 12 January 2020.

8 Council Framework Decision 2008/978/PUP of 18 December 2008 on European Evidence Order in terms of obtaining cases, documents, and data for use in criminal proceedings, "Official Journal of the European Union", L 350/72, 18 December 2008, available at: *https://eur-lex.europa.eu/legal-content/ HR/TXT/HTML/? uri= CE LEX :32 008F0978&from=HR*; 10 November 2019.

istrative authorities, however, are not authorized to issue this order and may only propose issuance to another competent issuing authority.[9]

The types of criminal proceedings for which a European evidence order may be issued are set out in Article 5 of the Framework Decision. The situations in which the executing State may refuse to execute a European evidence order, within 30 days of its receipt, are also prescribed under the Framework Decision.

EUROPEAN CRIMINAL RECORD

The European Crminal Record or European Criminal Records Infromation System (ECRIS) is a computerized database that allows the member states of the European Union to exchange data from criminal records for their citizens (Simović, Blagojević, Simović, 2013: 553). The main purpose of the ECRIS is to provide prosecution authorities, as well as some other competent authorities, with information on facts and circumstances that are important for the prosecution of a particular person.

The ECRIS program collects and contains information on the member states of the European Union. For the data of citizens of non-member states, the states still have to turn to each other (Turudić, Borzić, Bujas, 2015: 1057-1098).

The new decentralized system of the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN) provides an easier way for the authorities of one Member State to collect the data from third-country nationals convicted in another Member State.[10] However, after 2016, when new rules on the beliefs of citizens of countries that are not members of the European Union were presented, it became clear that the decentralized system would still create certain problems, especially on the issue of certain finger samples. Therefore, in June 2017, the European Commission presented the Regulation on the Centralized ECRIS-TCN System.

ECRIS-TCN consists of a centralized database that will be managed by the so-called EU-LISA - European Union Agency for Large IT Systems. The centralized database will contain identification data such as fingerprints, and in some cases photographs.

After the system became operational in 2012, the information that can be obtained through the system can be used in criminal proceedings (then the provision of information is mandatory) or in other cases, except for criminal proceedings (in which situations information can only be obtained if permitted by the national law of both Member states involved in the exchange of information). Information on any changes in criminal records must also be provided to the state from which the citizen in question is (Jones, 2019, 53). Three European Union agencies will have access to this system, and these are: Europol, Eurojust and the European Public Prosecutor.

ORDER FOR CONFISCATION OF PROPERTY OR ITEMS

A framework decision on freezing and confiscation of proceeds of crime was made in 2001.[11] The purpose of this decision was to ensure a common approach to solving criminal offenses for which it is necessary to provide for a confiscation of property.

11 Council Framework Decision of 26 June 2001 on money laundering, identification, monitoring, freezing, seizure and confiscation of property and proceeds of crime, "Official Journal of the European Communities" L

The 2005 Framework Decision on Confiscation seeks to ensure even greater approximation of legislation of Member states in the field of confiscation of proceeds of crime.[12] The Framework Decision on the mutual recognition of confiscation orders lays down the rules under which the judicial authorities of one Member State shall recognize and enforce a confiscation order in their territory issued by the competent judicial authority of another Member State.[13]

A confiscation order is often preceded by a freeze on the property. In order to allow the competent judicial authorities to seize property at the request of judicial authorities of another Member State, in 2003 a Framework Decision on the freezing of property and the provision of evidence was adopted.[14]

A directive to facilitate confiscation of proceeds of serious and organized crime by the Member states of the European Union was adopted in 2014. The Directive seeks to simplify the existing rules and eliminate important shortcomings exploited by organized criminal groups (Galiot, 2017: 553-554).

RECOGNITION AND ENFORCEMENT OF FINE DECISIONS

European Union law, in particular Framework Decision 2005/214/PUP,[15] applies the principle of mutual recognition to fines, which allows a judicial or administrative authority to deliver a fine directly to an authority in another EU country and to recognize and enforce that penalty without further formalities (Vuletić, 2016: 83; Hržina, 2019; Turudić, Borzić, Bujas, 2015: 1080-1084). The principle applies to all offenses for which fines may be imposed, and double criminality checks are abolished for 39 offenses (e. g. participation in criminal organizations, terrorism, trafficking in human beings, rape, theft, traffic offenses). Penalties must be imposed by judicial or administrative authorities of the Member State and this decision must be final, i. e. there must be no possibility of appeal.

The State to which the decision has been delivered may refuse to enforce the decision only in a limited number of cases. The enforcement of the decision is regulated by the law of the enforcing State. In this way, in the event of an uncollected fine, imprisonment or other penalties provided for by national law may be imposed. The funds obtained from the enforcement of decisions shall belong to the enforcing State, unless otherwise agreed by the Member states concerned.[16]

182/1, 5 July 2001, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32001F0 500 &qid=1434704882469&from=EN;* 18 December 2019.

12 Council Framework Decision 2005/212/PUP of 24 February 2005 on Confiscation of Proceeds, Funds and Assets from Crime, "Official Journal of the European Union" L 68/49, 15 March 2005, available at: *https:// eur-lex.europa.eu/legal content/HR/TXT/PDF/?uri=CELEX:32005F0212&qid=1434705529437&fr om =HR;* 18.12.2019.

13 Council Framework Decision 2006/783/PUP of 6 October 2006 on Application of Principle of Mutual Recognition of Confiscation Order "Official Journal of European Union", L 328/59, 24 November 2006, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32006F0783&qid=1434705734143&from =EN ; 18 December 2019.*

14 Council Framework Decision 2003/577/PUP of 22 July 2003 on Enforcement of Decisions on the Freezing of Property and the Provision of Evidence "Official Journal of the European Union" L 196/45, 22 July 2003, available at: *https://eur-lex. europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32003F0577&from=HR;18. December 2019.*

15 Council Framework Decision 2005/215/PUP of 24 February 2005 on Application of the Prinicple of Mutual Recognition to Fines "Official Journal of European Union" L 076/16, available at: *https://eur-lex.europa.eu/ legal-content/ HR/TXT/HTML/?uri=CELEX:32005F0214&from=HR;* 17 December 2019.

16 *https://e-justice.europa.eu/content_payment_of_fines-388-hr.do*; 21 December 2019.

RECOGNITION AND ENFORCEMENT OF JUDGMENT IMPOSING SENTENCE OF IMPRISONMENT OR A MEASURE INVOLVING DEPRIVATION OF LIBERTY

This issue is regulated in Council Framework Decision 208/909 PUP of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing sentences of imprisonment or measures involving deprivation of liberty with the aim of enforcing them in the European Union.[17] The implementation deadline was 5 December 2011 (Krbec, 2014: 417). For the implementation of judicial cooperation concerning the recognition and enforcement of a court judgment imposing sentence of imprisonment or a measure involving deprivation of liberty, whereabouts of the convicted person during the initiation of this type of proceedings is of no importance.

RECOGNITION AND ENFORCEMENT OF JUDGMENTS AND DECISIONS IMPOSING PROBATION MEASURES AND ALTERNATIVE SANCTIONS

The issue of recognition and enforcement of judgments and decisions imposing probation measures and alternative sanctions is regulated by Council Framework Decision 2008/947/PUP of 27 November 2008 on the application of the principle of mutual recognition of judgments and probation decisions having the aim to monitor probation measures and alternative sanctions.[18] The aim of the Framework Decision is to facilitate social rehabilitation of convicted persons, to improve protection of victims and public, and to apply the appropriate probation measures and alternative sanctions in case of perpetrators of criminal offenses who do not live in the Member State where the sentence was imposed.

The existing instrument until then was the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Convicted or Conditionally Released Offenders. However, this Convention has been ratified by only 12 Member states with, in some cases, numerous reservations, making it ineffective legal instrument.

CONCLUSION

The institutes presented in the paper have the aim to enable faster and more efficient implementation of cooperation between Member states in criminal matters. The basic intention is to create a system within a unique legal order of the European Union, in which the interests of the Union will be equally protected and the criminal justice systems of the Member states will reach such a level of cooperation that they themselves function as a single system - from arresting and handing over a suspect/accused/convict, to transferring evidence, but also of all the necessary data not only for the purpose of preventing the commission of criminal offenses, but also for easier finding and identification of perpetrators of criminal offenses. In the traditional way of cooperation between the States in criminal matters, there were often obstructions, non-fulfillment of obligations under international agreements, refusal to extradite perpetrators of criminal offenses, etc. and it would be naive to expect that, in no time, these institutes will achieve the goals for which they were introduced. Therefore, the criminal

17 "Official Journal of European Union" L 81/08, 27 November 2008.
18 "Official Journal of European Union" L 337/102 of 16 December 2008.

law of the European Union is developing gradually and fragmentarily, where the bodies of the Union, adopting new regulations, much more prefer regulation rather than directive as the legal basis and the reason are its characteristics, which make it the most suitable source of criminal law of the Union, if primary sources of law are excluded. In any case, it is not to be expected that the Union will abandon its intention, but on the contrary, spreading the scope of action, the adoption of new regulations and the establishment of a Euro-comfortable interpretation of regulations - wherever possible.

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