

GENERAL PRINCIPLES OF COOPERATION IN REGARDS TO INTERNATIONAL CRIMINAL LAW

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ABSTRACT: *This paper will present the general principles of cooperation in international criminal matters, crimes that are usually the cause of collaboration between states by their nature and. The chosen practical case presents a situation that is unfortunately too common in Romania, namely, a criminal group organized in Romania that forced a number of women to practice prostitution on the territory of other states through manipulation, threats and violence.*

KEY WORDS: *international law, human trafficking, prostitution, international criminal law, criminal law.*

INTRODUCTION

The cooperation of states in criminal matters is an undertaking of a legislative, political and judicial nature through which they assume the responsibility of assisting each other in cases of violation of criminal law beyond state jurisdiction and in most cases are serious violations of human rights through the lens of international law

1. PRINCIPLES OF COOPERATION IN CRIMINAL MATTERS

The cooperation of states in international criminal matters can be seen in a narrow sense as a number of legal situations in which two or more states assist each other in resolving criminal cases. Cooperation in this area is based on the principle of legal aid, the principle of "aut dedere, aut iudicare" and the principle of "non bis in idem".

"Judicial assistance in criminal matters is a principle of international judicial cooperation. Legal aid is requested when a State is unable to initiate an investigation or procedure on its own and needs the assistance of another State in this regard, for example, to hear witnesses or to monitor criminals moving outside the territory of the requesting State. During a criminal trial, the judicial bodies of the state in which the trial takes place shall receive the procedural documents necessary for settlement from another state."¹

Broadly speaking, international criminal assistance is an institution of criminal procedural law that encapsulates a number of laws and activities of both national and international nature in order to assist the requesting state or states involved in a criminal investigation into certain facts that are committed in the territory of a state other than the one in which the perpetrator is located or acts which took place in the territory of several states.

¹ Anastasiu Crișu, *Drept procesual penal* ediția a-2-a (revizuită și actualizată), Editura C.H. Beck, 2007, București.

All actions that fall under the umbrella of legal aid made by or towards Romania must comply with the requirements imposed by art. 172 of Law 302/2004.²

These are the following:

- a) The name of the judicial institution requesting assistance and the name of the institution which is requiring assistance;
- b) Objectives and reasons for the request for assistance;
- c) Legal qualification of the acts;
- d) Identification data of the accused, defendant or convict or of the witness or expert, as the case may be;
- e) The legal classification of the committed deeds and a summary of the committed deeds;
- f) If necessary, documents will be attached to support the request;
- g) All judicial paperwork that is attached will have to be certified by the court because these acts are not regulated in a super legalized way.

The legislative processes that make up the legal aid institution are:

- a) The International rogatory letters are a form of legal assistance which consists in the empowerment of a state by another state to carry out certain processes of a legal nature towards the resolution of certain criminal cases by proxy;
- b) Videoconferencing is the procedure by which the authorities of a State may obtain statements from witnesses or experts in cases where it would be inconvenient or impossible for them to be present in the territory of the requesting State to testify before the law.
- c) In cases where the Romanian state considers that it could help another state with information that could lead to a criminal investigation or to the request for legal assistance, it may transmit information spontaneously. The Romanian State may impose certain conditions on the use of information;
- d) At the request of another state, the Romanian state may execute a supervised delivery in order to facilitate a criminal investigation. Delivery will be made in accordance with Romanian law and if the Romanian state requires a supervised delivery, the present rules will apply in the same manner (delivery will be made by the requested state in accordance with its laws);
- e) In the case of undercover investigations, several states may agree to mutual assistance. These States must concretely agree on the forms of assistance and the methods by which they will cooperate in the investigation;
- f) Joint investigation teams can be set up through legal aid for the purpose of conducting an international criminal investigation in which several states are involved and must act in a coordinated and organized manner;
- g) Cross-border surveillance may be carried out in situations where another state conducts a criminal investigation and a person who took part in the act investigated by the foreign authorities is on the territory of Romania. This surveillance must be allowed by the Prosecutor's Office attached to the Romanian Supreme Court and the Border Police authorities. Surveillance can only be allowed for certain serious acts such as murder, robbery, deprivation of liberty, trafficking in human beings and so on.
- h) The interception and recording of conversations and communications is allowed if the pursued persons are on the territory of Romania and the requesting state requires technical assistance to intercept the communications of people who have committed criminal acts on the territory of the requesting state. The requesting State must have issued an interception request and prosecution warrant in regards of the criminal act, the warrant must specify information on the offender, state the reasoning of the interception, the duration of the interception and sufficient technical details to comply with the request;

² Legea 302/2004 privind cooperarea judiciară internațională în materie penală, publicată în M. Of. Nr. 411 din 27 mai 2019.

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i) Confiscation of property may be requested by another State in the event of the commencement or conduct of the investigation provided that the confiscated property or information is directly related to the act;

j) The appearance of relevant witnesses or experts on the territory of the requesting state may be solicited or the Romanian state may request their appearance. The requesting State must transmit the necessary documents relevant to the criminal procedure it's undertaking. The State has 40 days before the appearance of the witness or expert.

Another basic principle of cooperation is "aut dedere, aut iudicare ". This Latin phrase is roughly translated as "either extradite or trial" and is manifested in practice through the transfer of court proceedings. The expression itself is used to indicate the right of a person found guilty of a crime committed in the territory of a State other than his State of origin to choose the country in which one of the 2 States he will serve his sentence.

If the transfer of the procedure serves the good administration of justice or facilitates the social reintegration of the convicted persons, in certain cases provided by the criminal law the Romanian judicial authorities may request the relevant authorities from other states to perform preliminary procedures or continue them or even refuse a convicts request to serve his sentence in Romania due to the nature of his crime.³

It must be noted that the transfer of criminals and general application of all the mentioned principles must abide to the sovereignty of the Romanian state and the sovereignty of any other state that is involved in the transfer of judicial procedures⁴

A final principle to be mentioned when discussing cooperation in criminal matters is "Non bis in idem" which translates to "not twice for the same thing", this principle is manifested by the impossibility of criminally convicting the same person for the same criminal act by two different states or convicting the same person twice for the same deed.

2. CRIMINAL OFFENCES OFTEN ENCOUNTERED IN THE FIELD OF INTERNATIONAL CRIMINAL COOPERATION

Now that the principles of judicial cooperation have been introduced, it is necessary to look at certain criminal acts that are often the subject of international cooperation in criminal matters, given their nature, these offences are founded in the Romanian Criminal Code⁵.

The trafficking of people consists in the recruitment, kidnapping or reception of a person for the purpose of exploitation by coercion, abuse of authority, abduction, deception, by taking advantage of the person's inability to defend himself or to express his will or by exploiting vulnerability of the person. If a person serving as a civil servant commits the crime of trafficking in persons in the exercise of his function he may be punished by imprisonment from 5 to 12 years. If a person who has authority over the trafficked victim accepts money or other benefits to allow the offender to commit the act, he can be punished with imprisonment for a period of 3 to 10 years. This criminal act cannot be justified by the consent of the trafficked person.

Enforcing forced labor can be punishable by imprisonment from 1 to 3 years. This act consists in forcing a person to perform work against his will or to do compulsory labor and is generally connected to trafficking as most people that are in the situation have to perform some sort of activity.

Organizing a prostitution ring is considered a criminal offence in Romania. Practicing prostitution is understood as providing sexual services in order to obtain patrimonial benefits for oneself or for someone else. The creation of a prostitution ring is punishable by imprisonment for 2 to 7 years and the banning of certain rights. If the person was determined by coercion before or during the period in which it prostituted itself, it will be punished with

³ Noul Cod Penal actualizat în 2020, Partea Generala, Titlul I, Capitolul 2, Secțiunea 2, art.9 lit. (1).

⁴ Art. 3 din Legea 302/2004.

⁵ Noul Cod Penal Partea Specială, Titlul I, Caputlul VI – Infrațiuni contra libertății persoanei, Capitolul VII – Traficul și exploatarea persoanelor vulnerabile, Capitolul VIII – Infrațiuni contra libertății și integrității sexuale.

imprisonment between 3 and 10 years and deprivation of rights. Forcing a minor to part take in prostitution activities leads to an extension of the prison sentence from 3 to 10 years and a half (from 4 years and 6 months to 15 years).

The exploitation of beggars is defined as the determination or coercion of a person, whether a minor or an adult, who suffers from a physical or mental disability to resort to the mercy of the public to obtain material aid or goods for himself or for someone else. The deed is punishable by imprisonment for between 3 months and 6 years. If the act was committed by a member of the victim's family or was carried out by coercion, the punishment is between one and 5 years.

Now that the theoretical elements and the current legislation regarding Romania have been presented, we are going to analyze a practical case, in this legal case we can observe the principle "aut dedere, aut iudicare", more precisely, we observe how a Romanian court transposes a sentence as given by a court in the United Kingdom.

In this case a person sentenced to 15 years in prison by the Harrow Crown Court (the hierarchical equivalent of a Tribunal in Romania). The person named X was charged and found guilty of⁶:

- trafficking of human beings, regulated by the Law of Sexual Offenses 2003, which finds the corresponding punishment in the Romanian legislation through art. 210 Romanian Criminal Code. (two separate charges)

- organizing prostitution activities to obtain personal benefits, punished by section 53 paragraph. (1) of the Law on Sexual Offenses 2003, having a correspondent in the Romanian legislation in the form of the crime of organizing a prostitution ring, regulated of art. 213 Romanian Criminal Code.

- 5 individual rape offenses, regulated by section 1 paragraph (1) of the Law on Sexual Offenses of 2003, which find their correspondent in the Romanian legislation in the crime of rape, regulated by art. 218 Romanian Criminal Code.

- the use of a false document with illegal intentions, provided by section 4 of the Law on Identity Documents 2010, which has a correspondent in the Romanian legislation in the form of the crime of use of forgery, regulated by art. 323 Romanian Criminal Code.

In the first instance, a procedural error was committed in violation of Article 42 paragraph (1) of Law no. 302 published on the 26th of June 2004⁷, this article confers material jurisdiction in cases of transcription of criminal sentences to the Court of Appeal in whose district the extradited person resides or the district in which the criminal has residence. The Arad Court declared itself incompatible and transferred the case to the Arad Court of Appeal. The Arad Court of Appeal transcribed the sentence resulting in a sentence of 12 years from which 2 years were deducted (period in which the defendant served his sentence in a penitentiary in Great Britain), this was the maximum punishment attributable to the perpetrator in the basis of art. 218, paragraph. 3. let. (c) and (e) of the Criminal Code. Defendant X challenged this decision citing some perplexities regarding the procedure for transcribing the sentence; he argued that he should be convicted on the basis of 5 separate charges, not on the basis of 9 charges for which he was found guilty in the sentencing of the Harlow Crown Court. This case came before the High Court of Cassation and Justice (the Romanian equivalent of the UK's Supreme Court) for settlement. After the High Court of Cassation and Justice analyzed the evidence presented and the claims of the defendant decided that this appeal is unfounded given that the defendant had 5 different victims resulting in 5 separate charges that added to the other acts reached a total of 9 criminal actions judged under the regime of the competition of crimes.

CONCLUSIONS

⁶ Sexual Offences Act 2003.

⁷ Art. 42 alin (1) Legea nr. 302 din 26 iunie 2004 (*republicată*) privind cooperarea judiciară internațională în materie penală.

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Although the theory supporting international cooperation in criminal matters seems to be effective, clear and an important tool in regulating and stopping international crime, the reality of the problem is much grimmer.

According to the statistics present in the Case Study on Trafficking of People⁸ for the purpose of their exploitation published in 2015 (the most recent statistical study on the subject) at that time in Romania, a member country of the European Union, there was the largest number of internationally trafficked persons.

It is also pointed out that there are problems at the national level in the field of human trafficking. Although the jurist can easily get lost in the totality of the theory relevant to any subject, in the subtleties of the laws and estimates of social revenge decided in the supposed wisdom of the judiciary, it is necessary to remember that, as jurists, regardless of our role in the legislative ecosystem we do not operate in the realm of statistics or numerical estimates typical of economists and physicists. We operate in a realm of individual pain and the precise solutions needed to maintain social order. In a journalistic investigation in 2019, ProTv news⁹ managed to present the reality of judicial cooperation from the perspective of the Romanian state.

This investigation focused on human trafficking between Romania and Italy, more precisely, it focused on the defects of the police and judicial system that facilitates through its shortcomings the trafficking of minors for the purpose of pimping. Because prostitution is legal in Italy, it is difficult for Italian authorities to arrest pimps. The journalistic investigation showed evidence that the Romanian authorities are not adequately prepared or equipped to deal with criminal networks, networks that were compared by the carabinieri (Italian police officers) interviewed in the investigation with the Italian mafia which mainly consists of various criminal groups with hundreds years of history and hierarchy.

A more worrying fact presented in the investigation is the fact that the Romanian authorities are facing well-trained criminals who have developed new ways to avoid or fool the judicial or police system. We can see testimonies from some victims of these networks about the treatment they suffered at the hands of these criminals describing horrible scenes of abuse such as "punching, ripping hair from the head, sword hits" or, "robbed, raped and left alone in a random forest."

The journalistic investigation reveals that between 2015 and 2019 there were no changes to address and streamline systems for combating international crime and to facilitate cooperation in criminal matters with other states. On the contrary, the situation has become grimmer than in the past, transforming the realm of individual pain suffered by victims and precise solutions into a realm of statistics lacking humanity or empathy with inefficient and aged solutions that are in grave need of updating and reinforcing.

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