INTERNATIONAL JUDICIAL COOPERATION IN THE CRIMINAL FIELD TO COMBAT CRIMES

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Abstract:

Under the pressure of rising crime rates and their threat to states, crime is no longer strictly a national issue; it has become an international concern affecting all countries, especially transnational crimes that require organized and effective international cooperation among competent judicial authorities to combat them. Therefore, addressing criminal phenomena with an international nature necessitates a criminal policy characterized by international collaboration. This leads to judicial cooperation in the criminal field among states, which encompasses all judicial actions taken by a state to facilitate the prosecution of crimes in other countries. Key components of this cooperation include the extradition of criminals, international judicial requests, and the enforcement of foreign criminal judgments.

***Keywords**: international judicial cooperation; extradition of criminals; international judicial requests; enforcement of foreign criminal judgments.*

INTRODUCTION:

As a result of technological advances, the intertwining of international relations, ease of transport and communication, crime has become international in some respects. This necessitates the internationalisation of judicial procedures to combat criminal activities that transcend national borders. These crimes are called global because they are spread over many countries, which means that there is no way to combat a criminal phenomenon with an international[1] character other than by means of a criminal policy with an international character.

It is certain that the effectiveness of the fight against crime requires a deep sense of solidarity among States, which leads to judicial cooperation in criminal matters, which is a prominent feature of contemporary international relations and an effective means of overcoming the prevailing notion that "international borders hinder judges but not criminals".

International judicial cooperation in criminal matters encompasses all judicial measures taken by one state to facilitate the prosecution of crimes in other countries. It seeks ways and means by which a State can benefit from the authorities or judicial bodies of another State in order to combat crime[2]. The most important forms of cooperation are the extradition of criminals, international legal assistance and the enforcement of foreign criminal sentences

The study of international efforts to combat crime through judicial cooperation and the issues surrounding it is of great importance because a state cannot undertake certain actions related to the fight against crime without making efforts to establish cooperative relationships with other states[3]. Moreover, the joint efforts of all states to find solutions to crime and their success in this regard represent a success in all strategic operations for development and security within the state.

This study aims to cover all aspects related to the fight against crime in the judicial field at the international level, studying its main forms through description and analysis, in order to understand the practical aspects of the problems of this cooperation, ultimately leading to knowledge of the results of the efforts made by States in general to combat crime.

From all the above, the research problem becomes clear, focusing primarily on the following question What are the international legal mechanisms adopted to combat crime and limit its spread?

In order to address this issue, this study will adopt a descriptive-analytical approach, as it is the most appropriate for the subject. The nature of the subject requires both precise description and analysis, focusing on the concepts of extradition, international mutual legal assistance and the enforcement of foreign criminal judgments, as well as the procedures involved in their implementation. This subject requires the analysis and interpretation of the texts of the relevant treaties and the provisions of Algerian law.

In view of the above, it is essential to define the framework and scope of this research in order to explore its objectives. We have done so according to a three-part plan. First, the extradition of criminals, then international legal assistance, and finally the enforceability of foreign criminal judgments.

1. Extradition of criminals

A criminal may commit a crime in one country or several crimes in several countries and then flee to another country to avoid prosecution or to serve a sentence[4]. Consequently, their criminal activity involves more than one country[5], which makes it necessary to extradite them, at the request of the country to which they have fled, to the country in which they committed their crime[6]. Algeria has introduced a system of extradition into its national legislation through Decree No. 155 on the Code of Criminal Procedure and has endeavoured to accede to several bilateral and international agreements in this field[7].

1.1 Definition of extradition and its conditions

The extradition system is one of the most important and effective systems of international judicial cooperation in the fight against crime, ensuring that criminals can be pursued and apprehended wherever they are and that they do not escape punishment simply by fleeing the territory of the State where they committed their crimes.

1.1.1 Definition of extradition

Extradition is defined as “the surrender of a person present in one State to another State, at the request of the latter, for the purpose of prosecuting him for an offence punishable under its law or of executing a sentence passed against him by one of its courts”[8].

It is also defined as “an act whereby the State to which a person accused or convicted of a crime has fled surrenders him to the State competent to prosecute or execute the sentence against him”[9].

In this context, the extradition of criminals concerns two categories of persons: those accused of committing an offence, who may be extradited to stand trial on the charges brought against them, and those who have already been convicted of an offence, in order to serve the sentence passed by a court in the requesting State.

2.1.1. Conditions for extradition

Several conditions must be met in order for a particular person to be extradited to the requesting State, either as an accused person or as a person sentenced by its courts. These conditions include

1.2.1.1. Conditions relating to the offender

- General conditions for extradition:

Some international treaties require that the person sought for extradition be a national of the requesting State, whether the offence was committed in that State or in a third State which is neither the requesting State nor the State from which extradition is sought. The burden of proving nationality is on the requesting State, failing which the request may be refused[10].

- Exception to the principle of extradition:

A common principle in the field of extradition is the non-extradition of nationals[11]. Most international extradition treaties provide that nationals of the requested State may not be extradited[12]. This is stated in Article 39 of the Riyadh Convention and in the laws of most countries[13]. The same principle is stated in Article 7 of the Arab League Extradition Treaty. The 1988 Vienna Convention also reflects this principle in Article 6(10), and the United Nations Palermo Convention follows suit in Article 16(1).

2.2.1.1. Conditions relating to the offence

- General conditions relating to the offence in the extradition system:

As extradition procedures are often complex, costly and lengthy, the offence must reach a certain level of seriousness in order to be extraditable. There are different methods for determining the offences that are subject to extradition:

- Exhaustive listing method: This method specifies the offences that are eligible for extradition under the relevant treaty. The offences are listed exhaustively in schedules or tables and are included in the treaty or in the national legislation of the State.

-General condition method: This method relies on the severity of the penalty as the primary criterion for determining which offences are eligible for extradition. For example, it may stipulate that felonies and misdemeanours punishable by imprisonment for at least one year are included, or that the sentence imposed on the convicted person should not be less than a certain threshold, such as three months' imprisonment.

- Exclusion method: This method combines the principle of extradition for serious crimes, where the sentence cannot be less than a certain length, with the exclusion of certain crimes from the scope of extradition, such as political and military crimes or minor offences where the sentence does not exceed one month's imprisonment. This method is currently the most modern approach used in all treaties[14].

Double criminality: This condition requires that the act for which extradition is sought must be an offence under the laws of the requested State in addition to being an offence under the laws of the requesting State[15].

No lapse of prosecution: The term "no lapse of prosecution" means that the prosecution has not lapsed. This means that it has not lapsed for any legally established reason, such as the statute of limitations, pardon or previous conviction.

- Exceptions to extradition: There are crimes for which extradition is not allowed, mainly political and military crimes. These exceptions are laid down in national legislation and international treaties.

1.1.2.3 Jurisdictional conditions: The condition of jurisdiction is essential in the extradition system, as extradition cannot take place if the requesting State does not have jurisdiction over the offence[16]. Jurisdiction is based on the principles of territoriality, personality and subject matter.

1.2 Extradition procedures: Extradition procedures consist of a series of legal acts prescribed by national laws or international treaties.

1.2.1 Submission of the request for extradition: The submission of a request to the authorities of the State from which extradition is sought is the first step in the extradition process[17]. The request must be made in writing, whether explicitly or implicitly required by national legislation or by international and regional agreements. For example, this is stated in Article 34 of the Algeria-Cuba Agreement.

The extradition request must be accompanied by documents which will enable the requested State to identify the person sought and to give a summary of the facts on which the prosecution is based. It should also be accompanied by a certified copy of the text of the law applicable to those facts and copies of any investigation documents, if any. If the request is specifically for the enforcement of a sentence, the documents required include an original or certified copy of the judgment imposing the sentence[18]. Some countries require these documents to be signed by official authorities, while others accept them through diplomatic channels, which serves as a guarantee of their authenticity.

Countries differ in the way in which the extradition request must be transmitted to the requested State; the request may be transmitted through diplomatic channels, between the Ministries of Justice of the two countries or through judicial procedures.

1.2.2 Temporary arrest procedure

The extradition system requires that lengthy and complex procedures be followed, which may result in the requested person becoming aware of the extradition request and leaving the country where he or she resides. As a result, the extradition measures taken may be futile. Therefore, countries have adopted the method of temporary arrest to temporarily detain the person sought for extradition until the extradition request is resolved.

1.2.3 Decision on the extradition request

Once the requested State has received the extradition request and the supporting documents, it is up to it to decide whether to accept or reject the request. However, the authority responsible for this task varies from one country to another. International conventions and national legislation indicate that there are two bodies responsible for deciding on the request, depending on whether the system is administrative or judicial[19].

1.3 Effects of extradition

In this case, the requesting State assumes the role of executing the extradition procedure and its jurisdiction is limited to the offence for which extradition is requested. This is discussed below.

1.3.1. Execution of the extradition

The issuance of an extradition decision by the requested State gives the requesting State the right to take custody of the person. Most treaties and legal texts, such as Article 711 of the Algerian Code of Criminal Procedure, set a time limit within which extradition should take place, usually one month. If extradition does not take place within this period, the requested State may release the person sought. Furthermore, some laws refuse extradition even if the request is renewed for the same offence[20].

As regards the place where the extradition request is to be executed, it is customary for this to take place at one of the ports or airports of the requested State, or at one of the border points in the case of extradition between neighbouring States.

1.3.2. Principle of specialisation

The principle of specialisation means that an extradited person may be tried or punished in the requesting State only for the charges or sentences specified in the extradition request[21], unless the treaty between the two States allows prosecution or punishment for other offences. If the accused is being tried or punished for

another offence that occurred before the extradition and was not included in the request, he or she may object to being tried or punished, and the judge must dismiss the case or suspend the execution of the sentence[22]. The principle of specialisation is confirmed by Article 14 of the 1990 United Nations Convention against Transnational Organised Crime.

From the above, it is clear that extradition of criminals is one of the most effective systems for prosecuting criminals and combating crime, which has become a threat to society, especially with the emergence of new cross-border crimes. This is in addition to other measures necessitated by the need for increased international efforts to combat crime, including international mutual legal assistance and the enforcement of foreign judgments, which will be examined in the following section.

2. International legal assistance

As a rule, it is the responsibility of the court hearing a case to examine and investigate it and, ultimately, to render a judgment. However, circumstances may arise which make it necessary to deviate from this norm[23], for example when the investigation requires certain procedures to be carried out outside the State of the court. This may hamper the work of the judiciary and make it impossible to deliver fair judgments in cases where sufficient evidence is lacking[24]. Consequently, national legislation and international treaties have sought to address this problem by allowing courts to use international legal assistance.

2.1 The concept of international mutual assistance

Opinions differ as to a specific definition of mutual legal assistance. Some define it as "an act by which a court authorises another court to carry out on its behalf, within the limits of its jurisdiction, one or more investigative or other judicial measures necessary to resolve the case before it which it is unable to carry out itself because of distance or other obstacles"[25].

Others define it as "a request by which the court hearing the case appoints another court to locate a witness, documents or objects, or to carry out the necessary procedure, draw up a report and return it when completed"[26].

Another perspective in the legal field defines it as "a delegation by which a judicial authority, in a case pending before its courts, entrusts to another judicial or diplomatic authority the task of gathering evidence or carrying out an investigation necessary to resolve the dispute presented, which it cannot naturally carry out within its jurisdiction"[27].

From our point of view, we can define international judicial assistance as a request from the delegating judicial authority to the executing authority for the purpose of carrying out an investigation or gathering evidence abroad, as well as any other action necessary to resolve the case before the delegating judge which he cannot carry out within his jurisdiction.

2.2. Conditions and procedures for mutual assistance

The rules governing mutual legal assistance, both in terms of its conditions and procedures, derive from legal texts contained in national legislation as well as international agreements, although there are no uniform rules in all countries defining the conditions and procedures for mutual legal assistance as a form of international judicial cooperation in the fight against crime.

1.2.2. Conditions for mutual legal assistance

National courts have the power to request international letters rogatory, but this power is not absolute. Certain conditions must be met, which the court must verify. These conditions are divided into substantive and formal conditions.

1.1.2.2. Objective conditions

The objective conditions for accepting a request for mutual legal assistance relate to jurisdiction and subject matter.

Jurisdiction for letters rogatory:

The court that accepts a request for mutual assistance must have jurisdiction over the subject-matter of the proceedings. It is impossible for a court to ask another court to take action that does not fall within its jurisdiction. Therefore, the requesting court must, in principle, have jurisdiction to hear the case in question, taking into account both subject matter and territorial jurisdiction[28].

It is essential that the authority requested to execute the mutual legal assistance is also competent[29]. Identifying the foreign court and determining its jurisdiction in relation to the measure to be executed is not an easy task. Therefore, researching its jurisdiction may require time and effort[30]. Therefore, the requesting court should address the request for assistance to the judicial authority of the requested State and ensure that the foreign court has the necessary territorial jurisdiction to carry out the requested measure[31].

DETERMINING THE SUBJECT-MATTER OF THE ASSISTANCE

The subject matter of the letters rogatory will normally consist of investigative, evidence-gathering or proof-gathering measures which cannot be taken by the requesting judge in person[32]. Investigation proceedings are judicial acts that fall within the scope of criminal proceedings, and each proceeding is a judicial act in its own right. The subject matter of mutual legal assistance may include the taking of testimony or confessions, the service of legal documents, searches and seizures, the examination of objects and inspection of places, the provision of information and evidence, expert opinions and the provision of original documents or certified copies of documents, the identification of proceeds of crime or of property, tools or other objects, or the tracing of their whereabouts in order to obtain evidence[33].

2.1.2.2. Formal conditions

These conditions relate to the form of the request for mutual legal assistance and the information that must be included in the request for it to be accepted by the requested State.

Form of letters rogatory:

The request for mutual legal assistance must be made in writing, as it is considered an official document. It cannot be made orally; even if it is made orally by the judge, it must be made in the presence of the court clerk, who will record it. For this reason, procedural measures are usually taken in the form of written documents known as judicial documents. In addition, the request for judicial assistance may be sent by fax or telex as a matter of urgency, as this saves a great deal of time and effort and ensures that the documents arrive easily and quickly[34].

As regards the language in which the request for mutual legal assistance is drafted, this is not an issue for requests between Arab countries, since the agreements concluded between them do not specify a particular language, since Arabic is the official language in each of them. However, for agreements with non-Arab countries, it is generally agreed that requests for mutual legal assistance and the accompanying documents should be in the language of the requested State. If they are in the language of the requesting State, they must be accompanied by a translation into the language of the requested State[35].

Information required in the letters rogatory

In accordance with the provisions of international, regional and bilateral agreements, the following information must be included in the letters rogatory:

- Identification of the requesting authority

- Identification of the authority requested to execute the letters rogatory

- Date of issue of the request

- Signature of the issuing authority

- The subject matter of the case and a summary of the facts.

2.2.2. Procedures for letters rogatory

The procedures for mutual legal assistance consist of a series of legal acts laid down in the national legislation of the States, in addition to the international conventions on legal and judicial cooperation. These procedures can be divided into the following stages:

1.2.2.2 - Sending a request for assistance

The first step is to submit the request to the authorities of the State that is required to take investigative or other judicial action on its territory. The request must be accompanied by documents that enable the requested State to understand all aspects of the requested action, specifying the nature of the case and including documents summarising the facts. For example, if a request is made to hear the testimony of witnesses, the request should include documents giving the names and addresses of the persons to be heard. Some countries require these documents to be signed by official authorities, while others are satisfied with receiving them through diplomatic channels, which guarantees their authenticity[36]. The request for mutual legal assistance is sent through diplomatic channels[37].

2.2.2.2 - Examination of the request

The requested State, which will provide assistance, examines the request for judicial assistance. It checks that the conditions are met and that it is competent to respond to the request, in accordance with the provisions agreed in the treaty with the requesting State[38].

3.2.2.2 - Decision on the request for assistance

After receiving the request and the accompanying documents, and after examining the request, the requested State decides whether to accept or reject it. If the requested State considers it appropriate to execute the request, it will do so in accordance with its law[39].

Most international treaties provide that the execution of a request for mutual legal assistance shall not entitle the requested State to claim any expenses or fees, except for the fees of experts not employed by the requested State and the fees of witnesses, which shall be paid by the requesting State in accordance with the terms of the request. The requested State may charge its own fees in accordance with its law for documents produced in the execution of the request[40].

If the requested State refuses to execute the request or if execution is impossible, it must immediately inform the requesting State and return the documents, stating the reasons for the refusal or for the impossibility of execution[41].

It is clear from the above that mutual legal assistance is one of the most important forms of international judicial cooperation in the fight against crime, as it aims to facilitate criminal proceedings between States, to ensure the necessary investigations to bring the accused to justice and to overcome the obstacle of territorial sovereignty which prevents foreign States from exercising certain judicial acts on the territory of other States. Another equally important form of judicial cooperation between States is the recognition and enforcement of foreign criminal judgments.

3. Recognition and enforcement of foreign criminal judgments

One of the concepts that must be overcome to strengthen the ties of international judicial cooperation is the non-enforceability of foreign judgments, under the pretext that a criminal judgment is, in essence, a manifestation of state sovereignty and its right to impose punishment[42]. This issue is not limited to the negative effects of foreign criminal judgments, such as the prohibition against trying a person twice for the same act. The goal of enforcing foreign criminal judgments is to achieve compatibility regarding mutual recognition among the concerned states of the international effects of foreign judgments, especially in combating crimes, particularly transnational crimes that require organized and effective international cooperation between competent judicial authorities throughout the stages of criminal proceedings until the enforcement of the criminal judgments issued concerning them[43].

1.3. The enforcement of foreign criminal judgments in legal texts

The recognition of foreign criminal judgments and the enforcement of all their penalties, whether primary, supplementary or precautionary measures, have been addressed in certain international agreements and in the national legislation of some countries. These will be discussed below:

1.1.3. The enforcement of foreign criminal judgments in international agreements

International agreements have focused on recognising the executive power of foreign criminal judgments before national courts, considering it as a precedent. This is reflected in paragraph five of Article Three of the 1988 Vienna Convention[44].

Recognition of the executive effect of foreign criminal judgments is also embodied in Article Seventeen of the Arab League Convention. In addition, Article Fifty-Five of the Arab Riyadh Agreement on Judicial Cooperation allows for the enforcement of foreign criminal judgments. From the content of this agreement, it can be seen that it sets out specific conditions for the enforcement of foreign criminal judgments, which include:

- The requirement of a conviction of less than one year’s duration in order for the judgment to be enforced in a Contracting State other than the issuing State.

- The requirement of a request for enforcement from the issuing State to the requested State.

- The requirement of the consent of the sentenced person to the enforcement of the judgment in the requested State.

Recognition of the enforcement of foreign criminal judgments also extends to specific penalties, such as confiscation, which is considered an effective sanction in the fight against money laundering. It acts as a deterrent to the offender, whether natural or legal, and also represents an additional resource for the treasury and for the authorities responsible for combating drugs and money laundering. The confiscation of property or objects linked to the offence is confiscated for the benefit of the State, and it is enforced by coercion, since it is ordered by a court decision and does not fall under the suspension of execution when the execution of the original sentence is suspended[45].

Recognising the importance of confiscation as a punitive measure, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Financial Action Task Force and the 2000 Palermo Convention have focused on establishing a comprehensive framework for recognising the enforcement of foreign criminal judgments ordering confiscation[46]. Consequently, these international instruments promote the recognition of the enforcement of foreign criminal judgments ordering the confiscation of assets derived from organised crime, their proceeds or property of equivalent value, as well as property, instrumentalities or other means used or intended for the commission of such offences. This

applies when a State receives a confiscation request from another State where a money laundering offence has occurred and a judgment has been issued for the confiscation of these and other proceeds[47].

The Financial Action Task Force has identified the recognition of enforcement of foreign confiscation judgments as one of the most important aspects of international cooperation in combating money laundering. It urged states to establish a designated authority responsible for taking urgent action in response to foreign requests to identify, freeze, seize and confiscate proceeds and other property of equivalent value related to money laundering or related crimes[48].

International conventions have helped to establish international guidelines for the enforcement of foreign criminal judgments involving the confiscation of property derived from crime or its proceeds. These guidelines include:

- The State requested by another State with jurisdiction over a money laundering offence must confiscate any proceeds, property, instrument or other means that may be located within its territory. It should execute this request to the fullest extent possible within its legal framework with respect to the proceeds of the crime located on its territory.

- The items that may be seized and surrendered are those that serve as evidence, as well as funds or assets derived from money laundering offences found before or after the surrender of the money launderer, and any assets acquired in exchange for items derived from the crime.

The State requested for assistance shall make every effort to determine the source of the funds, property or illegal assets. That State may take the necessary measures to trace, freeze, seize or take precautionary measures for the purpose of confiscation in order to prevent any transaction or transfer of the proceeds of money laundering pending a final decision.

- The requested State shall, to the extent permitted by its laws, seize and surrender the property, funds or illicit assets to the requesting State, even if surrender is impossible because of the death, disappearance or flight of the money launderer.

- The surrender of funds, assets or property subject to confiscation may be postponed if it is related to criminal proceedings under the jurisdiction of the requested State.

- The requested State or others may acquire rights to the funds related to the money laundering offence if they originate from illegal sources; in that case, they shall be returned to that State as soon as possible, free of charge, immediately after the completion of the proceedings in the territory of the requesting State[49].

In addition to international agreements, Algeria has concluded bilateral agreements in the criminal field, namely the Agreement on Judicial Cooperation in Criminal Matters between Algeria and the United Kingdom of Great Britain and Northern Ireland, signed in London on 11 July 2006, and the Agreement on Judicial Cooperation in Criminal Matters between Algeria and Portugal, signed in Algeria on 22 January 2007. These two agreements did not deal with the enforcement of foreign criminal judgments imposing custodial sentences or fines, but only with foreign criminal judgments ordering confiscation.

2.1.3. The enforcement of foreign criminal judgments in Algerian legislation

Initially, Algerian legislation did not address the enforcement of foreign criminal judgments in Algeria, implicitly suggesting that it adopted the traditional view that foreign criminal judgments have no executive power outside the territory of the issuing State; thus, a foreign criminal judgment cannot be enforced in Algeria.

However, an examination of Article 57 of Chapter Five of Law No. 06/01 of 20 February 2006 on the Prevention of and Fight against Corruption reveals that, in the area of judicial cooperation, the law specifically seeks to promote the exchange of legal assistance between Algerian judicial authorities and their foreign counterparts

to the greatest extent possible, in accordance with the principle of reciprocity. The aforementioned article states that "Subject to the principle of reciprocity and within the limits permitted by treaties, agreements and relevant regulations and laws, relations of judicial cooperation shall be established to the widest possible extent, in particular with the States party to the agreement, in the field of investigations, prosecutions and judicial proceedings relating to the offences specified in this law".

With regard to foreign criminal judgments involving confiscation, the Algerian legislator has addressed this issue in Article 63/1 of the Anti-Corruption Law No. 06/01 of 20 February 2006, which states that "Foreign judgments ordering the confiscation of property acquired through one of the offences defined in this law, or of the means used to commit them, are enforceable on Algerian territory in accordance with the rules and procedures established".

It is clear from this article that the Algerian legislator has decided to enforce foreign criminal judgments that involve the confiscation of property acquired through one of the crimes specified in the Anti-Corruption Law, which is the only case in which the Algerian legislator has recognised the possibility of enforcing a foreign criminal judgment.

2.3. Conditions for the execution of a foreign criminal judgment

The conditions for the execution of a foreign criminal judgment can be derived from the texts of international treaties and some national laws of countries that recognise the execution of foreign criminal judgments, in addition to the conditions established by the Ninth International Conference on Criminal Law held in The Hague in 1964. These conditions are:

1. Criminal nature of the judgment

A judgment is considered criminal if it is rendered in a criminal case, i.e. it must involve a penalty or a precautionary measure, regardless of the court that rendered it. If the judgment is given in a civil, commercial or personal status matter, this provision does not apply. In addition, judgments handed down by disciplinary tribunals have no authority[50].

2. The finality of a criminal judgment

In this context, a judgment is final when it is irrevocable, i.e. when all ordinary remedies, such as opposition and appeal, and extraordinary remedies, such as cassation and requests for retrial, have been exhausted. The finality of the judgment is determined by the law of the judge who delivered it. The importance of this condition lies in the stability it provides, which is not present when a judgment lacks res judicata effect if it is set aside by the courts of the issuing State after having been ordered to be enforced by the courts of the executing State.

As a result of the requirement that the judgment be final, the enforcement of a foreign judgment subject to immediate enforcement is not permitted. In addition, the enforcement of non-final and provisional foreign judgments is also prohibited, as these proceedings relate to civil security. Therefore, a State does not permit the enforcement of a foreign judgment that is not final or provisional in its territory[51].

3. Jurisdiction of the issuing State

The jurisdiction of the issuing State must be examined, which is assessed from two angles: general jurisdiction and special jurisdiction.

General jurisdiction refers to the question of whether the State that issued the foreign judgment is internationally competent to do so.

Special jurisdiction means that it is necessary to determine which court within the internationally competent State has the power to issue the judgment[52].

In addition to verifying the jurisdiction of the court that issued the judgment, it is necessary to ensure that the standards of a fair and just trial have been observed, including notification, the provision of legal guarantees, the freedom to defend oneself and the presence of a lawyer[53].

4. Consistency with public policy

It is clear that any judgment which is not in conformity with the rules of public policy and the mandatory provisions of the executing State will not be respected and therefore cannot be enforced by the public authorities[54].

Non-contradiction with public policy means that the judgment must not contain provisions contrary to the requirements of public policy in that State, and the judge responsible for enforcement is the one who assesses the existence of such a contravention[55].

In addition to the above conditions, the Ninth International Conference on Criminal Law, held in The Hague in 1964, added two further conditions for the execution of a foreign criminal judgment:

5.2.3. The sentence may not be pronounced for a political or military crime.**

Political crimes have a unique character that distinguishes them from other crimes, because they presuppose noble motives on the part of the perpetrator. A political criminal enjoys a special status that distinguishes them from ordinary criminals, as these crimes do not involve base personal motives, but rather stem from the political criminal's conviction and belief in an idea that they believe serves the interests of their community, achieving an optimal level of existence that a citizen aspires to in life[56].

As far as military crimes are concerned, their main characteristic is that they fall within the jurisdiction of special courts, namely military courts[57]. There are purely military crimes, including desertion and breaches of honour or duty, as well as crimes against military order and violations of military instructions, in addition to common law crimes committed by military personnel in the course of their duties or within military institutions[58].

Therefore, due to the specific nature of these crimes, criminal judgments rendered for political and military crimes are not enforceable in any State other than the State that rendered the judgment.

6.2.3. The act must be criminalised in both States

This condition requires that the act for which the foreign judgment is to be enforced must be criminalised under the national legislation of the State requested for enforcement and must also constitute an offence under the legislation of the requesting State[59].

The requirement of dual criminality does not mean that the legal characterisation of the criminalised acts must be identical; it is sufficient that the acts are the same. For example, if the act punishable under the law of the requesting State is described as investment fraud, while the same act is described as fraud in the requested State, this does not prevent the condition of dual criminality from being met.

The 1952 Convention, which obliges States Parties to enforce foreign criminal judgments, contains a condition that is not covered by other international conventions and was not mentioned by the Ninth International Conference on Criminal Law held in The Hague in 1964. This condition provides that the judgment must not have been finalised by a court of the requested State and that the case must not be pending before the courts of that State.

CONCLUSION

The current challenges posed by the globalization of crime and its spread across various countries have compelled these nations to rely on judicial mechanisms for international cooperation to combat such crimes,

rather than excessively adhering to the principle of national sovereignty and the territoriality of criminal law. Consequently, they have resorted to numerous means of judicial cooperation, the most important of which include the extradition of criminals, international judicial assistance, and the execution of foreign criminal judgments.

The main findings of this study are:

- In the absence of pressure mechanisms on countries to cooperate in criminal matters, the success of cooperation mechanisms remains dependent on the responsiveness of requesting countries and their support for these efforts.

- International judicial cooperation mechanisms are subject to numerous conditions, procedures and exceptions that weaken their effectiveness.

- A request for judicial cooperation may be refused if the receiving State considers that its execution would prejudice its sovereignty, security, public order or other fundamental interests.

- The term “extradition of offenders” applies only to persons convicted of an offence, while persons under investigation may be extradited only before a conviction.

- The object of the mutual legal assistance to be provided is the taking of evidence or any other judicial act, in particular during the period between the institution of the proceedings and the last act before the judgment. The effects of the mutual legal assistance are concentrated on the territory of the requesting State where the original action was brought.

- Once a final judgment has been handed down, the foreign criminal judgment can be enforced. This means that the execution of a foreign criminal judgment concerns only judicial decisions and its effects are concentrated on the territory of a State other than that of the issuing court.

Finally, we recommend:

- The need to include provisions on international judicial cooperation in the fight against crime in national criminal legislation, addressing the issues raised in relation to requests for mutual legal assistance.

- Efforts should be made to simplify judicial cooperation procedures to prevent countries from using complexity as a pretext for refusing to cooperate.

- Intensify international efforts to establish a comprehensive, clear and durable definition of the phenomenon of crime.

Footnotes:

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