

THE CONVENTIONS ADOPTED WITHIN THE EUROPEAN UNION WITH REGARD TO THE INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

VICTORIA CRISTIEAN*

Abstract

The study of the legal and penal mechanism by which European Union Member States jointly act for preventing and combating certain categories of crimes, includes the analysis of conventions regarding legal assistance that Member States undertake to grant each other the catching and prosecution of people who commit crimes on their territory, either violating the domestic criminal law or the international criminal law represented by international conventions that require signatory states to incriminate or punish certain categories of crimes, against which they pledged to fight together. Conventions adopted at European Union level concerning international legal assistance in criminal matters, give legal expression to the most complex and most effective form of cooperation between States in the fight against crime, establishing brand new ways of international legal assistance in criminal matters. The importance of the Conventions regarding legal assistance in criminal matters result from the fact that they ensure the correct application of European criminal law relating to combating the worst types of crimes, making possible criminal liability and conviction of various crimes, with the help of other member states of the European conventions.

Keywords: convention, extradition, international legal assistance in criminal matters, international cooperation, European Union.

Introduction

Taking into consideration the importance of the international legal assistance in criminal matters - as a main form of cooperation among the European states in the fight against criminality, and as a means to ascertain the unity of the member states with regard to such an important target - a series of Conventions have been adopted by the European Union, Conventions meant to regulate the modalities through which the international legal assistance can be assured. The adopted Conventions complete the European penal legislation by providing the signatory states the ways toward a mutual assistance meant to apply the respective Conventions to the fight against the international criminality.

This paper aims to identify the conventions adopted within the European Union with regard to the international legal assistance in criminal matters.

The study of the legal and penal mechanism by which European Union Member States jointly act for preventing and combating certain categories of crimes, includes the analysis of conventions regarding legal assistance that Member States undertake to grant each other the catching and prosecution of people who commit crimes on their territory, either violating the domestic criminal law or the international criminal law represented by international conventions that require signatory states to incriminate or punish certain categories of crimes, against which they pledged to fight together.

In order to apply this principle of cooperation and, implicitly, of the international legal assistance in criminal matters, several international Conventions have been issued as meant to fight against the transnational criminality:

* Senior Lecturer, Ph. D., Faculty of Juridical and Administrative Sciences "Dimitrie Cantemir" Christian University (email: victoria_cristiean@yahoo.com).

- the first category of such international documents is the one concerned with the Conventions issued under the aegis of the European Council (a category to be enlarged upon in the present paper);
- another category refers to the Community Conventions that have a larger area of appliance and which hint to the cooperation among the member states with regard to the penal international juridical assistance (they will be spoken about and enlarged upon in the present paper);

Consequently, within the European Union there was and still is a permanent preoccupation for issuing Conventions and documents regarding the penal juridical assistance, among which: the Convention on penal juridical assistance among the member states of the European Union; the Convention on extradition among the member states of the European Union; the Convention on the simplified extradition procedure among the member states of the European Union; the European extradition arrest warrant.

1. The Convention on the simplified extradition procedure among the member states of the European Union

This Convention was issued in the basis of art K 3 of the Treaty on the European Union and later settled in Brussels by the Bill of the Council on March 10, 1995 with a view to simplifying the extradition procedure and of meliorating the penal judiciary cooperation among the member states of the European Union.

The member states of the European Union - considering it necessary to facilitate the appliance - on December 13, 1957 - of the European Convention on extradition by simplifying and improving the extradition procedure, have passed a Bill concerning the simplified extradition procedure among the member states of the European Union on the ground of the following aspects:

- the necessity to simplify the extradition procedure in compatibility with the fundamental principles of their internal law, and with the principles of the European Union on defending man's rights and his fundamental liberties, as well;
- the fact that in a large number of extradition procedures, the person under discussion has no objection for her/ his being extradited;
- improving the criminal juridical cooperation among the member states with regard to both pursue and sentence the person under discussion;
- the importance of extradition within the judiciary cooperation to the carrying on of these targets;
- the necessity to drastically reduce the period necessary for the extradition or for the imprisonment which are prior to the extradition proper.
- the provisions of the European Convention with regard to extradition continue to be applicable to all the aspects that are not regulated by this Convention.

The Convention is a flexible juridical frame, in as much as the stipulated procedure is applicable to all the cases of the agreement of the competent authority of the required State and of its consideration concerning legality and opportuneness¹. Besides, from the very first article, the aim of the Convention is clearly underlined: to facilitate the application - among the member states of the European Union - of the European Convention with regard to extradition by completing its dispositions without being altered by the more favourable dispositions mentioned alongside with mutual or multilateral agreements in force among the member states².

The basic principle of the Convention lies in the obligation of handing over the pursued person; the member states commit themselves to hand over the pursued persons with view to their

¹ Ioan Hurdubaie, *European Judiciary Cooperation. Penal Conventional Frame* (Bucharest: Ministry of Administration and Interior Printing House, 2003), 151.

² See art 1 paragraph 1 and 2 of the Convention on the Simplified Extradition Procedure among the Member States of the European Union.

being extradited in the basis of their own accord and in the basis of the agreement of the requested state, both situations being under the conditions of the provisions of the present Convention - the way of obtaining and registering the pursued person is stipulated by art 7.

In at least ten days since the extradition decision was communicated, the person shall be handed over; otherwise he/she shall be let free on the territory of the requested country.

In case the pursued person agrees with his/her extradition, at the end of the ten-days period stipulated by the Convention in art 8, the requested state can act into two ways: to either apply the simplified extradition procedure, in case a second new official extradition claim from the requesting state was issued, or this procedure can be applied even if such a request appeared in between³.

When no request regarding a preventive custody was issued and when the agreement was given after the receipt of such an extradition request, the required state can resort to the simplified procedure as provided by the present Convention⁴.

2. The Convention on extradition among the member states of the European Union

The discussions around title VI of the Treaty on the European Union with regard to various serious forms of criminality very clearly revealed that, when speaking about extradition, it is only by a definite and firm intervention in the very essence of the problem that might lead to a significant melioration of the more important penal procedures, as for instance, those referring to terrorist actions or to organized criminality⁵.

On this given basis it was possible to elaborate those articles from the Convention referring to the double incrimination, political transgressions, extradition of the nationals or referring to problems concerned with the rule on specialty (more insisted upon than upon other really important provisions); all these turn this new instrument into a real innovation in the domain of extradition, in perfect agreement with the general will of the European Union to adapt the whole ensemble of judiciary cooperation from within the penal domain to the present and future needs and requirements⁶.

When referring to the extradition of the nationals, the European Convention, concluded between all member states of the European Union, provides that extradition cannot be refused on the ground that the extradited person might be a national of the requested state. There were numerous reserves in connection with this Convention and, thus the applicability area was visibly reduced.

The Convention provides modern dispositions, as for instance those stipulating that then of a conspiracy or an association of transgressors appears, the requesting state cannot refuse extradition only because its own legislation does not include the item according to which the same behaviour is not considered to be an infringement of the law.

The role of this Convention⁷ is mentioned in art 1: to complete the provisions of the European Convention of 1957 on Extradition, the Convention of 1977 meant to repress terrorism, the Convention of 1990 meant to apply the 1985 Schengen Agreement and, on the other side, to facilitate their being applied by the member states of the European Union, without influencing other mutual or multilateral extradition agreements stipulating a more favourable juridical regime in the domain.

3. The European extradition arrest warrant

The European extradition warrant was the object of a draft-resolution within the Council of the European Union (no 2002/584/JAI) of June 13, 2002, with a view to create a more rapid and

³ Hurdubaie, European Judiciary Cooperation, 153.

⁴ See art A 12 paragraph. 2 of the Convention on the Simplified Extradition Procedure among the European States.

⁵ Convention relative a l' extradition entre les Etats membres de l'Union Europeenne, Rapport explicatif, Journal officiel no. C 191 of 23 June, 1997.

⁶ Hurdubaie, European Judiciary Cooperation, 155.

⁷ The Convention referring to the extradition from among the member states of the European Union was adopted on September 27, 1996 in Brussels.

simpler extradition procedure. It was thus emphasised that “in the future the formal extradition procedure might be abolished from among the member states for those persons who avoid law after the last verdict was given, and replaced by a simple transfer of these persons, in conformity with art 6 of the Treaty of the European Union”⁸.

Unlike the formal extradition procedure, the European arrest warrant is a procedure applied at the judiciary level only (among judges); in such a case the political instances shall no longer interfere. The arrest warrant establishes fixed and compulsory conditions for the development of the procedure, asks for the usage of a unique form and restricts the refusal motivations to a minimum, as enumerated in the draft-resolution.

The adoption of the draft-resolution with regard to the European arrest warrant - although it was an accepted objective since the Tampere European Council (October 15-16, 1999) - could not be carried on if the tragic events of September 11, 2001 had not happened in the States. Such a tragic event had to happen for the member states of the European Union realized the necessity of adopting a simplified mechanism through which the persons avoiding the law should have to be committed to the courts of law; this mechanism is, at the same time, an extremely efficient means of fight against terrorism and against other serious forms of transnational criminality.

The assaults of July 7, 2005 in London, once again, demonstrated the efficiency of this handing over system, when the persons suspected of terrorism were handed over to the British authorities by the Spanish authorities in only three days, while a normal extradition procedure from Spain elsewhere lasts for more than one year, sometimes⁹.

The European arrest warrant is applied by all the member states of the European Union provided, on one side, of the transposition of the draft-resolution to their own national law, and on the other side, because of the declarations given by the respective states in conformity with art 32 of the draft-resolution. Article 32 leaves it up to the member states' decision the choice of the information according to which the European arrest warrant shall be applied, on the condition that this decision shall be taken no later than August 7, 2002¹⁰.

The novelty and originality of the European arrest warrant lies in the fact that it is used all through the area of the European Union¹¹.

Taking into consideration the suggested objective - that of avoiding or reducing formalism which can turn the extradition procedure into a burdensome procedure - the new handing over system - in the basis of a European arrest warrant - eliminates the administrative stage; in this way cooperation in the domain of handing over of the persons who avoid the criminal pursuit, judgment and execution of the penalties are almost exclusively solved between the competent judiciary authorities of the member states of the European Union; the central authorities can, at least, support the competent judiciary authorities of the member states of the European Union or assume the role of transmitting authorities¹².

The European arrest warrant aims to replace the present system of extradition by imposing each and every national judiciary authority (executive authority) to recognize, ipso facto, and by

⁸ Commission of the European Communities, Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States, COM (2001) 522 final (JOCE no. C 322 E, 27.11.2001), point 4.1.

⁹ Florin Răzvan Radu. “The Main Juridical Instruments of the European Union in Extradition and Handing over the Transgressors”, *The Law* 9 (2007): 148.

¹⁰ France, for example, opted on November 1, 1993. Consequently, A European execution warrant cannot be executed in the case the incriminated deeds have been committed before November 1, 1993.

¹¹ M.Platha. “European arrest; revolution in extradition”, *Journal of crime, Criminal Law and Criminal Justice* (2003): 193.

¹² Florin Răzvan Radu. “Law no 302/2004 referring to the international penal judiciary cooperation – an important step forward to Romania’s integration within an area of liberty, security and justice of the European Union and a definite answer against the new attacks of the transboundary criminality”, *The Law* 2 (2005): 14.

means of least controls, the request of remitting a person as it was expressed by the judiciary authority of another member state (issuing authority). Still, the member states are free to apply and conclude bilateral agreements able to better simplify the handing over procedures¹³.

As a matter of fact, the mechanism of a European arrest warrant refers to the forced handing over of a person from one member state to another (replacing the traditional extradition procedure) and becomes a horizontal system able to substitute all other types of extradition, by extension, through a mutual recognition in front of the court that shall be automatically executed all over the European Union¹⁴.

This system of the European arrest warrant shall replace the present traditional systems of extradition, as imposed by the exigencies of a mutual area of liberty, security and justice, where the national frontiers lose in importance.

The importance of the draft-resolution regarding the European arrest warrant derives from the very new elements brought about by the procedure of handing over the transgressors, due to a mutual agreement between the member states, through the simplification and operativity with which the judiciary cooperation is achieved within the European Union.

As provided by the very preamble of this draft-resolution, the European arrest warrant is considered to be the first concrete measure in the domain of penal law able to implement the principle of the mutual recognition.

In art 1, paragraph 1 the draft-resolution gives the definition of the European arrest warrant: a judiciary resolution issued by the competent judiciary authority of a member state of the European Union with a view to arresting and handing over to another state of the European Union a requested person as to be criminally prosecuted, judged or forced to complete a punishment or a prison sentence.

In conformity with the provisions of the draft-resolution, the specialized literature¹⁵ mentions that "the European arrest warrant is a judiciary decision issued by competent judiciary authorities of a European Union member state with a view to arrest and hand over to another state of the European Union a requested person as to be penally prosecuted, judged or forced to complete a punishment or a prison sentence".

Consequently, the European arrest warrant is a judiciary resolution that replaces the extradition request and the whole afferent documentation for such a request. It is, practically, said¹⁶ that the European arrest warrant transferred the extradition procedure from the politicians to the judiciary authorities. Taking into account the aim of this transfer or the limitation of formalism able to turn the extradition procedure into a burdensome procedure, the new system of handing over - in the basis of a European arrest warrant - avoids the administrative stage; the cooperation in the domain of handing over the persons avoiding the penal prosecution and the completion of a sentence are almost exclusively accomplished by the competent judiciary authorities of the member states of the European Union; thus, the central authorities might support the competent judiciary authorities or take over the role of transmitting or receiving authorities.

The European arrest warrant contributes to the improvement of the international judiciary cooperation and to the reducibility of the barriers connected with the national sovereignty, and so, the handing over of suspects or convicts to another member state is nothing but a judiciary decision¹⁷.

¹³ Ioan Hurdubaie, *Instruments of the International Cooperation in the Domain of Turning to a Good Account the Forensic Means of Probation* (Bucharest: Era Printing House, 2007), 146.

¹⁴ G. Stroe, "The European Arrest Warrant", *The Romanian Law, in the conditions of the post-adherence to the European Union*, vol. V, Institute for Juridical Researches (Buchrest: Dacoromână TDC Printing House, 2007) 281.

¹⁵ D.Mercan, "European Arrest Warrant. Procedure of Execution", *Penal Law Review* 3 (2007): 70.

¹⁶ J.Komarek, *European Constitutionalism and European Arrest Warrant: Contrapunctual Principles in Disharmony* (New York University School of Law, 2005).

¹⁷ Al. Boroi and I. Rusu, *Penal International Judiciary Cooperation* (Bucharest: C.H. Beck, Printing House, 2008), 303.

Such a draft-resolution fixes the rules in whose bases a member state executes a European arrest warrant on its own territory although the warrant was issued by a judiciary authority of another European member state. The “European arrest warrant” is defined in art 3 and is a request issued toward a judiciary authority of a member state in order to support, pursue, arrest, detain and hand over any person who is the object of a sentence or of a judiciary decision as mentioned in art 2 of the draft-resolution.

The European arrest warrant can be issued in conformity with art 2:

a. to execute certain final judicial decisions uttered in criminal proceedings and certain decisions issued *in absentia* that involve the loss of liberty or a surety measure of about 4 months in the issuing state;

b. to apply other judiciary executory decisions uttered during the criminal prosecutions which involve loss of liberty or is the object of a transgression that necessitates a surety measure of a maximum 12 months period in the issuing state.

In conformity with the new system, then when a person belonging to a certain state avoids, depending on each separate case, the penal prosecution, judgment or execution of the penalty on the territory of that member state, the respective competent judiciary authority (known as the issuing authority) issues a European arrest warrant of at least 1 year, in the basis of a final loss of liberty sentence, or a preventive detention which is sent to execution to the competent judiciary authority of the member state on whose territory the respective person lives (known as executing judiciary authority, under the note that the handing over conditions respect the European arrest warrant and that the handing over rules are similar to those of the “classical” extradition system)¹⁸.

The draft-resolution provides in chapter 2 the procedural modalities meant to assure a good application of its dispositions and, in chapter 3 both the arrest and detention of the prosecuted person are analysed.

Chapter 4 - made up of two articles - regulates those situations in which the handing over of the arrested person can be refused after having analysed the principle of reinsertion, integration and video-conference.

Chapter 5 deals with solving particular cases and the two articles of chapter 6 deal with the relationship with other juridical international instruments.

Yet, an important difference from the classic system cannot be overlooked when speaking about the conditions referring to the nature of the deed: the new system sets up certain exceptions from the rule of the double incrimination and so, in certain very serious infringements - mentioned in art 2 in the list that is open to be completed by the Council (among which: participation in a criminal organization, terrorism, traffic of flesh, illicit traffic of narcotics, etc) - the handing over is executed without checking the existence of a double incrimination¹⁹.

One of the most important progresses registered by the draft-resolution is the generalization concerning the handing over of the national which eliminates the refusal of the handing over because of the citizenship of the respective person²⁰.

In agreement with art 43 of July 1, between the member states there will be no orders in connection with the following juridical instruments:

- The Extradition European Convention of December 13, 1957, its additional protocol of October 15, 1975, the second additional protocol of March 17, 1978 and the European Convention for reprimanding terrorism of January 27, 1977 with regard to extradition;

¹⁸ Radu, “Law no 302/2004”, 14.

¹⁹ Radu, ““Law no 302/2004”, 14.

²⁰ Two member states - Portugal and Slovenia - anticipated these difficulties and succeeded in overcoming them before the draft-resolution was transposed. Later, France revised her Constitution by a law on March 2003.

- The Agreement between the member states of the European Community referring to the simplification and modernization of the modalities of transmitting the extradition requests of May 26, 1989;
- The Convention of March 10, 1995 referring to the simplified extradition procedure between the member states of the European Union;
- The Convention of September 27, 1996 referring to extradition between the member states of the European Union.

The dispositions of the draft-resolution will not influence certain bilateral or multilateral agreements providing simplified procedures.

The last chapters of the draft-resolution contain a series of provisions meant to assure the practical appliance of the draft-resolution, as well as other general and final dispositions.

The European arrest warrant is considered to be a genuine revolution in as far as the extradition and the handing over of persons avoidin the criminal prosecution, judgment and execution of sentence.

The first European arrest warrant was in force was in January 2004, on the territory of the European Union, against a Swedish citizen who was arrested - in the basis of the warrant - in Spain and extradited to the Swedish authorities.

The most important cases in which the European arrest warrants were successfully applied were those regarding the terrorist assaults in Madrid, on March 11, 2004, when the Spanish instances issued European arrest warrants on the names of certain suspects. In 2005 the judiciary authorities from within the European Union issued 6,500 European arrest warrants, and the statistics indicate that in the same year 1,700 pursued persons were localized and identified in the basis of the warrants²¹.

At the same time, the European arrest warrant enabled an extremely quick transfer from Italy of Mr Hamdi Issac, of one the presumed authors of the London attacks, on July 21, 2005.

According to an estimation made by the Commission in 2005, the impact of the warrant - since it entered in force on January 1, 2004 - was considered to be positive from the point of view of depolitization, efficiency and the quickness of the handing over. In spite of the initial delay in transposition, the European arrest warrant was operational all through the European Union and in the majority of the cases. The handing over of a person by a member state used to last almost 13-43 days there, where previously, an extradition lasted more than 9 months²². According to the same estimation report of the Commission of February 23, 2005, 2,603 arrest warrants were issued, 653 persons were arrested and 104 were transferred until September 2004.

In agreemnet with the 2005 statistics transmitted to the Council by the member states²³, out of the 6,900 European arrest warrants, France issued 1914, being of the top of the list. Poland is on tthe second place with 1448 issued warrants, followed by Spain wit 519 warrants. As for the countries that receive most of the European arrest warrants, England if on the top of the list followed by Spain, France and Netherlands

In spite of a useful common statistics of the member states for 2006, the information transmitted by the member states acknowledges a generalization of the use of the European arrest warrant and the efficiency of this procedure.

So, in 2006²⁴ out of the 5,832 European arrest warrants 1,456 persons of 14 member states were handed over. Out of the handed over persons more than a half - more precisely 51% were

²¹ C. Drăghici and C.E. Stefan, "Theroretical and Practical Aspects Referring to the Execution of the European Arrest Warrant", "The Law" 10 (2007): 218.

²² Hurdubaie, Instruments of the International Cooperation, 148.

²³ Document 9005/5/06 REV % of January 18, 2007.

²⁴ Only the data communicated by the member states until July 9, 2007 were taken into account.

handed over in the basis of their own consent²⁵. This survey, resulted from the application of the European arrest warrant, seems to be satisfactory yet, they are to be interpreted from the point of view of the difficulties of transposition faced by numerous member states.

4. The Convention on criminal legal assistance among the member states of the European Union

Trying to meliorate the criminal legal assistance among the member states of the European Union and starting from the general interest that these states shall assure its functioning in a more efficient, more rapid and more compatible manner as to go hand in hand with the fundamental principles of their internal laws and with the respect for the individual's rights and for the principles of the European Convention on the safeguarding of men's rights and of his fundamental liberties - signed in Rome on November 4, 1950 - through the Brussels Council Bill of May 29, 2000 - the Convention on criminal legal assistance among the member states of the European Union was issued in conformity with art 34 of the Treaty on the European Union²⁶.

The Convention on criminal legal assistance among the member states of the European Union is the main juridical instrument, in the domain, to be applied among the member states of the European Union as it contains provisions that enable these procedural documents to be sent by mail; at the same time it regulates the modern ways of assistance as examination, video-conference, under cover investigations, supervised handing-overs, telecommunication interceptions.

The provisions of the Convention on criminal legal assistance among the member states of the European Union are meant to assure a more efficient, rapid and more complete judiciary assistance among the states of the Union in their fight against criminality²⁷.

In conformity with the provisions of art 26, the Convention is applied within the European Union as it was in the case of Island and Norway.

As for France, the Convention on May 29, 2000 is applied to the metropolitan area as well as to overseas departments, but not to overseas territories. In the case of United Kingdom of Great Britain and Northern Ireland, the Convention will be applied for Gibraltar at the same moment it entered in force for the United Kingdom. For the Anglo-Norman Isles and for the Man Isle, the entering into force of the Convention shall be accompanied by a written notification to the Council and by a unanimous decision from the part of the United Kingdom.

Provided some possible declarations the Netherlands might express, the Convention shall also be applied to her whole territory as to all her overseas dominions.

The Convention entered into force for a part of the member states on August 23, 2005, as it was only then that the clause of the 8 ratifications was fulfilled. The Convention entered into force in Romania on December 1, 2007 and is applied in relation with the other member states that subscribed to it up to now²⁸.

This Convention is made up of 30 articles divided into 5 titles and creates - in the basis of the Convention of the Council of Europe of April 20, 1959 - the legal framework for a criminal legal assistance to be fulfilled. Its aim is to complete the provisions of the European Convention on criminal legal assistance and of its additional protocol (1978), the Convention on the application of the Schengen agreement and of the Treaty on extradition and criminal legal assistance concluded

²⁵ See the second estimation report referring to the stage of the transposition of the European arrest warrant draft-resolution and the handing over procedures from among the member states, of July 11, 2007, Brussels.

²⁶ Pavel Abraham and Ioan Hurdubaie, *Penal European Conventions* (Bucharest: National Printing House, 2001), 58.

²⁷ See "Guide for Judges and Prosecutors for the Application of the Union Main Juridical Instruments Regarding the Penal Judiciary Cooperation." - Report no. 137620 of November 28, 2007, issued by Ministry of Justice, International Law and Treaties Department.

²⁸ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Denmark, Estonia, Spain, France, Great Britain, Hungary, Lithuania, Latvia, Holland/ the Netherlands, Portugal, Poland, Sweden, Finland, Slovenia, Slovakia.

between Belgium, Luxembourg and the Netherlands in 1962 and amended by the 1974 Protocol, as well as the facilitation of turning into practice of their provisions with regard with the member states of the European Union.

The Convention on criminal legal assistance among the member states of the European Union will not influence the application of certain more advantageous provisions included in the bilateral or multilateral agreements between the member states, as provided by art 26(4) of the European Convention regarding the criminal legal assistance, the measures taken in the domain of the of mutual assistance in penal cases agreed upon in the basis of the uniform legislation or of a special system providing the mutual use of assistance measures in their respective territories²⁹.

With a view to harmonize the provisions of the Convention with the provisions of the European Convention on Man's Rights, in art 3 it was inserted a provision according to which the legal assistance is also granted in the procedures debating deeds which are punished by neither the national law of the requested member state nor by the national law of the requesting member state, nor by the both of them and considered to be offences to the regulations controlled by administrative authorities whose decisions may lead to appeal to a competent jurisdiction specialized in criminal matters.

All requests for judiciary assistance and all spontaneous exchanges of information/ data are made in written or in any possible way that can be considered to be written, as for the recipient member state be able to check its genuineness; in emergencies, these requests are intermediated by the International Criminal Police Organization or by any other competent body, as stipulated by the Treaty on the European Union.

Title II of the Convention regulates the special forms of judiciary assistance among the member states of the European Union, forms that - for some of them - although new in the domain prove to be efficient in the fight against international criminality. These special forms are: restitution of objects, temporary transfer of detained persons for being trained, hearing witnesses and experts by means of video-conferences, supervised hand-overs, joint investigation teams, private investigations.

Intercepting communications - better said the way this operation is done - is stipulated by title III of the Convention and stipulates: the competent authority able to order the interception of communications, the content of the interception request, interception of telecommunications on the national territory through informers, interception of telecommunications without any technical assistance of another member state and conclusion of certain bilateral agreements.

Article 23 is the very IV -th title of the Convention and regulates the protection of the personal data.

The Convention ends with the final provisions comprised in the V-th title and refers to declarations regarding competent authorities commissioned with the application of the Convention; these declarations that can be issued by the member states when notifying the carrying on of the constitutional procedures concerning ratification, reserves, territorial application, adherence of new member states, entering in force for Island and Norway, as well as the person in charge with the Treaty.

The Convention is also completed by the declaration of the Council with regard to art 10 paragraph 9, by the Declaration of the United Kingdom with regard to art 20 and by the official statement of the secretary general of the Council of the European Union in virtue of art 30, paragraph 2 of the Convention, settled by the Council in conformity with art 34 of the Treaty of the European Union regarding the criminal legal assistance among the member states of the European Union.

The provisions of the Convention were completed with the additional Protocol of October 16, 2001, that came into force on October 5, 2005. Nowadays it is applicable among Austria, Belgium, Denmark, Finland, Latvia, Lithuania, France, Holland/ the Netherlands, Slovenia, Spain, Sweden and

²⁹ Al. Boroi and I.Rusu, Penal, 408-409.

Hungary. For the rest of countries belonging to the European Union the Protocol will come into force in conformity with the notifications made by these states and that shall be analysed, after being posted on the site of European Union.

The essential objective of the Protocol is to include in the text of the Convention the commitment of the participating states to exchange the most complete and detailed bank information/data. The request can refer to the identification of the bank accounts opened on the name of a natural or legal person (art 1), the description of the bank transactions for a given period of time (art 2) and the control over the bank transactions for a certain period of time (art 3)³⁰.

Conclusions

The brief analysis this paper tried to present with regard to the most important Conventions - international instruments in the domain of the international legal assistance in criminal matters - invites to a general analysis of the progresses recorded in the domain, in Europe.

The importance of the Conventions regarding the criminal legal assistance resorts from the fact that it assures a correct application of the European criminal legislation in connection with the fight against the most serious categories of offences, making it possible for their authors to criminally be incriminated and even convicted for their deeds, by the help of the other states members of the European Conventions. Consequently, the adoption of these Conventions by the European Union, which mainly stand for the European Law in force, plays an essential role in creating a new system of laws.

Conventions issued over time were an expression of cooperation among States, born out of their desire to successfully face the international criminality, by both finding the most flexible means of intensifying international cooperation and by strengthening the legal assistance among states. Unfortunately, a significant part of the international documents, issued in order to repress violence within relations among states, were not ratified, depriving them of any legal authority.

The theme chosen and presented all through this paper, proves the necessity of materializing a regional system meant - by the efforts of all states - to help the prevention and removing of certain serious deeds committed in Europe in the latest decades.

Another measure under consideration, is that of the necessity of diversifying the instruments meant to achieve the international criminal legal assistance. In this respect there appears the proposal that the EU shall adopt new forms of international criminal legal assistance - since they are the result of the changes occurred in the evolution of society; therefore the nowadays trend is directed towards the increase and generalization of the above mentioned forms of assistance.

References

Books

- Abraham, Pavel and Hurdubaie, Ioan. Penal European Conventions. Bucharest: National Printing House, 2001.
- Boroi, Alexandru and Rusu, Ioan. Penal International Judiciary Cooperation. Bucharest: C.H. Beck, Printing House, 2008.
- Hurdubaie, Ioan. European Judiciary Cooperation. Penal Conventional Frame. Bucharest: Ministry of Administration and Interior Printing House, 2003.
- Hurdubaie, Ioan. Instruments of the International Cooperation in the Domain of Turning to a Good Account the Forensic Means of Probation. Bucharest: Era Printing House, 2007.

³⁰ See "Guide for Judges and Prosecutors for the Application of the Union Main Juridical Instruments Regarding the Penal Judiciary Cooperation." Report no. 137620 of November 28, 2007, issued by Ministry of Justice, International Law and Treaties Department.

- Komarek, J.. European Constitutionalism and European Arrest Warrant: Contrapunctual Principles in Disharmony. New York University School of Law, 2005.

Journal articles

- Drăghici, Constantin and Stefan, Cristian Eduard. "Theroretical and Practical Aspects Referring to the Execution of the European Arrest Warrant". "The Law" 10 (2007):204-224.
- Mercan, D.. "European Arrest Warrant. Procedure of Execution". Penal Law Review 3 (2007).
- Radu, Florin Răzvan. "The Main Juridical Instruments of the European Union in Extradition and Handing over the Transgressors". The Law 9 (2007).
- Radu, Florin Răzvan. "Law no 302/2004 referring to the international penal judiciary cooperation – an important step forward to Romania's integration within an area of liberty, security and justice of the European Union and a definite answer against the new attacks of the transboundary criminality". The Law 2 (2005): 5-23.
- Stroe, G.. "The European Arrest Warrant", The Romanian Law, in the conditions of the post-adherence to the European Union, vol. V, Institute for Juridical Researches. Bucharest: Dacoromână TDC Printing House, 2007.