

## Power and Knowledge of Decisions Foreign Judicial Penalties

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**Abstract:** One of the most worrying issues around the world has been and remains the growth of criminality. Faced with the principle of territorial sovereignty, states were unable to prosecute persons who were already in the jurisdiction of another state. The only option was the application of the principle of territoriality which allowed States to apply their criminal legislation for offenses committed within that territory irrespective of the nationality of the author. Faced with such a situation, the states were more than aware that there was a need for international co-operation to put the perpetrators accountable. The interest to cooperate in this area emerged early after World War I and this cooperation became concrete after World War II. Initially as a co-operation to condemn war crimes and then other crimes. International criminal policies for combating and preventing criminality of criminal offenses have been numerous, but due to the increase of cross-border criminality, the practical implementation of these policies has become difficult. To avoid this, the states began to cooperate with each other through bilateral agreements in the criminal field. International co-operation dates back to mid-century. XVIII with the First Mutual Assistance Treaty between Italy and Monaco, which was later followed by other bilateral and tripartite treaties, mainly in the area of extradition. In addition to the extradition there was another disturbing problem, the punishment twice for the same offense as the perpetrator was punished by the state where he committed the basic crime of the principle of territoriality and by the state whose nationality he was based on the principle of active personality. Here was the co-operation for the recognition of foreign court decisions. The lines of cooperation in the field of the power of foreign court decisions date later than the extradition, the most important conventions that reflect this co-operation are: the European Convention on the International Validity of Judgments of Criminal Matters of 1970 and the Convention on Transfer Of prisoners with deprivation of liberty. "1983. In Albania, the beginnings of international cooperation in the criminal field are evidenced around 1925 with the adoption of the First Criminal Code.

**Keywords:** Power and decisions of judicial, judicial penalties, criminal code

### GENERAL HISTORICAL OVERVIEW ON COOPERATION RELATIONS IN CRIMINAL MATTERS

The rise of criminality has been and remains one of the most troubling issues around the world. Since criminal law is characterized by dynamism, due to the ever-growing development of society, these developments are often a cause for increasing criminality or increasing the number of criminal offenses. Creating facilities in the movement of people or goods that led to the creation of a common European market (31 December 1992) [1], has affected the global spread of criminality. This facilitated the organization of crime and the movement of criminals as well as their escape. Faced with the principle of territorial sovereignty [2], states were unable to prosecute persons who were already in the jurisdiction of another state. The only option was to implement the principle of territoriality, which allowed states to apply their

criminal legislation for offenses committed within that territory, irrespective of the nationality of the author. Faced with such a situation, the states were more than conscious of the need for international co-operation to put the perpetrators accountable. The interest of states for co-operation in the criminal field was born before World War I and became stronger after the Second World War, where the number of crimes and mostly international crimes such as war crimes, crimes against humanity, etc. The creation of these courts was a step forward for international co-operation, but in their competencies were only international crimes, thus failing to solve the problem of other criminal offenses, which did not enter the commission of these courts. To avoid this, the states began cooperating in bilateral agreements in the criminal field. The main purpose of international co-operation is to help states and assist in the delivery of justice.

### **European convention on the international validity of criminal judgments (1970)**

The creation of the Council of Europe in 1949 [3], as a European organization for intergovernmental and inter-parliamentary cooperation, had the main purpose of protecting one's rights, pluralist democracy and the rule of law. This co-operation should be as close as many international crime offenders were rescuing the trial due to their legal position. That is why in 1970, at a conference held in The Hague, the "European Convention on the International Validity of Criminal Judgments" was signed. Albania became part of the council in 1995. This convention was adopted at The Hague on 28 May 1970 and the main aims of this Convention were:

- The use of modern and efficient means and tools in the fight against criminality.
- Respecting human dignity and promoting the rehabilitation of perpetrators
- Pursuing a common criminal policy in order to protect society

In the interpretation of the Articles of this Convention it is noteworthy that, contrary to the extradition, the danger of the offense does not matter. It is, however, clearly stated that the Articles of this Convention shall apply to:

- a) Sanctions involving the abolition of liberty.
- b) Fines or seizures.
- c) Lifting or limiting one or more rights.

The Convention also provides that a convicted person, imprisoned in the requesting State, can not be prosecuted, tried, punished by the requested State for another act other than that for which the decision to execute has been issued, *kërkuara* [4].

### **Convention "on the transfer of convicted persons"**

Council of Europe member states understood that after the adoption of the "European Convention on the International Validity of Criminal Judgments", the time had come to deepen the international co-operation in criminal matters. Therefore, in 1983, member states signed a "Convention on the Transfer of Convicted Persons", through which the parties that had ratified the engagement offered to each other cooperation on the transfer of convicted persons. Just as in the 1970 Convention, this cooperation would only be achieved if the conditions of Article 3 laid down in this convention were fulfilled:

Pursuant to this Convention, a convicted person could be transferred only under the following conditions:

- if that person is a national of the executing State.

- whether the decision is final.
- if at the time of receiving the transfer request the convicted person still has at least six months of the sentence to serve or if the sentence is unspecified.
- if the consent of the convicted person is given for the transfer.
- if the acts or omissions on the basis of which the punishment is given constitute a criminal offense in accordance with the law of the executing State.
- whether the sentencing State and the enforcing state agree to the transfer.

Article 10 of this Convention stipulates *that the enforcement team is obliged to adhere to the nature and duration of the sentence as defined in the sentencing State. If the punishment by its nature or content is incompatible with the law of the executing State, or when its law provides, that State may adopt the sanction with the punishment and the measure laid down by its legislation for the offense* [5].

Always adapting to the development of the society, together with these conventions, their additional protocols and other conventions have been adopted, which nowadays are almost all states that support the rule of law.

### **THE POWER OF FOREIGN COURT DECISIONS IN ALBANIA STRANDS**

#### **Period 1925 – 1939**

If we take a historical look at the international cooperation in the criminal field in Albania, we will note that the beginnings of international cooperation in Albania are found around 1925 with the endorsement of the First Criminal Code. In this Code apart from extradition, which was done by agreement between states but not allowed for Albanian citizens, we find some provisions which in an extended interpretation can be one of the forms of cooperation and precisely the recognition of foreign court decisions but An incomplete or even limited confession [6]. Personally I think we are before the decision of a foreign court is granted, as the author is excluded from the trial in the country of origin, recognizing the decision of the court of the foreign state. This recognition, as set out above, is not recognized in all cases, as this code gives more priority to the passive personality.

#### **Period 1939 - 1990**

With the establishment of the Council of Europe, the cooperation in the criminal field has increased even more, but as I mentioned earlier, participants in this council were the countries of Western Europe, while the countries of the former communist bloc, including Albania, became part of this council after the 1990s.

The cooperation relations between these countries were limited among them, and Albania's cooperation relations in these years are bilateral treaties with these countries, but mainly extradition treaties. There are treaties with the USA [7], which is the most important in 1933, followed by Czechoslovakia in 1950 and Hungary in 1960. While in the area of recognition of foreign court decisions in the Albanian state, there are no agreements with other states, even In the Criminal Codes of 1952, 1977, 1982 there is no provision to provide for the enforcement of decisions of a foreign court.

#### **THE LEGAL FRAMEWORK ON THE POWER AND RECOGNITION OF FOREIGN COURT DECISIONS UNDER THE CONVENTIONS RATIFIED BY THE ALBANIAN STATE AND THE CRIMINAL CODE**

In the 1990s with the overthrow of the monist system, the right in general was followed by significant changes, but in addition to the importance given to domestic legislation, attention was also focused on adapting this legislation to European standards. In 1995, Albania became part of the Council of Europe, this shows even more the desire of the Albanian state to consolidate the cooperation relations with the European countries and to adapt the domestic legislation in line with the legislation of these countries [8]. One of the first conventions ratified by the Albanian state was the Convention on the Transfer of Convicted Persons. Through this convention, the Albanian state commits itself to granting and receiving co-operation with states participating in this convention, as well as engaging in the transfer of foreign nationals sentenced to these States participating in the convention. Another important convention that the Albanian state ratified by Law No. 9068, dated 15.05.2003, was the European Convention on the Validity of Criminal Judgments. This was one of the most important conventions regarding the power of foreign court decisions in Albania. This convention provided for the conditions when a judicial decision would have power in the territorial jurisdiction of another state, in our case of the Albanian state, and when an Albanian state decision would have power in a foreign state.

#### **The power of foreign court decisions in Albania under the Albanian Penal Code.**

Article 10 of the Albanian Criminal Code provides: Criminal decisions issued by foreign courts against Albanian citizens proving the commission of a criminal offense, unless otherwise provided by bilateral or multilateral agreements, apply to Albania within the limits of Albanian law, as follows:

For the effect of repeating the qualification of the person who committed the criminal offense;

- to enforce decisions containing additional penalties;
- for the implementation of security measures;
- for repayment of damage or other civil effects.

It is also possible that the foreign court, in addition to the principal punishment, has given a subsidiary punishment, the Albanian court will also recognize this additional punishment that the perpetrator may suffer in Albania if he or she has not completed his or her suffering. The same is true if we are faced with the decision to impose a security measure that may be detention, house arrest [9], etc.

#### **CONCLUSIONS**

Collaboration, power, and recognition of foreign court decisions as a special form of it has developed with the development of society. The more society developed, the more felt the need for international cooperation in the criminal field. This cooperation began with the European Council in 1949 and continues to develop today. Many states are increasingly trying to adapt their legislation to these European standards. One of these states is Albania, which since the 90's has tried to adopt these European standards precisely and to adapt its legislation to these standards.

This is noted with the participation of the Albanian state in the Council of Europe as well as the adoption of numerous bilateral or multilateral conventions and agreements. However, we must be aware that implementation in practice of legislation often has problems. One of these issues is the one discussed above, that our courts often reduce the amount of sentence imposed by foreign courts, which has caused these courts to lose to Albanian justice. Often when the conversion of the sentence is made, the Albanian court refers to provisions different from those determined by foreign courts.

However, in conclusion, we can say that the Albanian legislation with all the problems that it may have encountered in adapting to European standards has best managed to adapt to these standards. Only the courts remain in the courts to make a more correct application of the Albanian legislation by giving the deserved punishment for anyone who violates applicable laws.

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