Zeitschrift: Zeitschrift für schweizerisches Recht = Revue de droit suisse = Rivista di diritto svizzero = Revista da dretg svizzer : Halbband II. Referate und Mitteilungen des SJV

Herausgeber: Schweizerischer Juristenverein

Band: 120 (2001)

Artikel: The judical co-operation in criminal matters : analysis of Community texts in force and in preparation

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DOI: https://doi.org/10.5169/seals-895700

The judicial co-operation in criminal matters. Analysis of Community texts in force and in preparation

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Contents

Traditionally, judicial and police co-operation among member states has developed through various means (bilateral Conventions, co-operation within the Council of Europe...). Since its founding the European Community's objective has been the economic integration of member states. For this reason, the E.U. only recently began to worry about the co-operation in matters of justice and the interior. In the seventies, an intergovernmental co-operation was established among the member States, outside of the institutional structure of the European Community (EC), (TREVI GROUP creation, biannual meetings of the Ministers of Justice and the Interior starting from 1984, celebration of the Agreement of Schengen in 1985...). The Treaty of the European Union (TEU), signed in Maastricht, which came into force on the 1st of November 1993, seeks to introduce better co-ordination and coherence, when placing under the responsibility of the European Union initiatives and political directives, which had previously been outside the jurisdiction of the EC.

The new Treaty includes, in addition to the traditional community pillar (EC, MINT and EURATOM), two new pillars of the European Union: the interaction on foreign policy and common security (Title V) and co-operation in the matters of justice and the interior (Title VIA), both based on intergovernmental co-operation rather than true integration.

In adherence to Title VI of the TEU, the co-operative is to consider such diverse questions of common interest as: asylum, the crossing of external borders, immigration, the fight against drugs, the fight against fraud on an international scale, the judicial co-operation in civil and criminal

matters, the co-operation of the police and customs. Due to disparity among the member States, the Agreement of Schengen, whose fundamental objective is the removal of border controls within the EU, is undermined. Title VI foresaw the possibility of adopting common positions, actions and Conventions among member States. These instruments are no juridical instruments of a community nature, such as the regulations or the directives; they obey an intergovernmental co-operation philosophy which is also reflected in other important aspects such as the necessity of unanimous vote in the Council or the exclusion of judicial control on the part of the European Court of Justice, unless the adopted texts have included an expressed attribution of competence.

The modification of the TEU for the new Amsterdam treaty, (October of 1997, came into force in May of 1999), has been an important advance. In order to create an area of freedom, security and justice, the new Treaty introduces a new Paragraph IV whereby Visa, asylum, immigration and other laws related to the free circulation of people are included as is the control of the external frontiers, asylum, immigration and judicial co-operation in civil matters. In consequence, these questions are introduced into the juridical system of the EU and are transferred via Title VI of the TEU to the TEC where they will be able to carry out the regulations and directives via the typical instruments of community law. Title VI only regulates the questions of police and judicial co-operation in criminal matters, following intergovernmental co-operation. Improvements are introduced with the object of speeding up the adoption and setting in practice of the adopted measures: this way, for example, it is foreseen that the Conventions can be put into force after their ratification by half of the States signatories, and new instruments are created, called „decisions framework" and „decisions"; these instruments have substituted to the Joint Action.

After the creation of a European currency, the following stage of the European construction should be the creation of a European judicial area in the framework of the «area of freedom, security and justice», picked up as an objective in the Treaty of Amsterdam. Freedom, security, and justice, are vital concepts. Freedom, a fundamental value of our democratic societies, can be threatened by an economic or social imbalance. In the matter that concerns us, the security of the citizens is one of the conditions of their right to freedom. To guarantee this security is one of the duties of the different police bodies, these in turn should be controlled by the Judicial Power, guarantor of the individuals freedom. Therefore, Justice is the regulation instrument of the exercise of freedom.

The free circulation of goods and people favours transborder criminality as well as organised crime and criminal money laundering. These crimes involving transit of state borders create complex problems for the judges and public prosecutors in their investigations.

The European Council held a special session in Tampere, on the 15th and 16th of October 1999, regarding the creation of this area of freedom, security and justice within the European Union. The Council consider this an important objective, and has agreed to treat it as a political priority in order to transform the area quickly into a reality.

In the criminal matter, the Council has called for increased co-operation to fight crime. The first step to fight against drug trade, human trade and terrorism, consisted in reinforcing the EUROPOL and creating a unit integrated for public prosecutors, magistrates or police agents, named «Eurojust» and whose mission is to facilitate the appropriate co-ordination of the national offices and to support the penal investigations in the cases of organized crime. As well as co-operating with the European judicial network; its main object is to simplify the execution of the rogatory commissions. The Council has planned the adoption of the necessary juridical instrument before the end of 2001. A complete list of the conclusions of the Council will be made in another section.

In criminal matters, the judicial co-operation consists of the application of certain instruments: the extradition and the international rogatory commissions; it is also dedicated to hurry and to improve the use of these instruments, such as the Europol, the European Judicial Network or the liaison magistrates.

Once examined -albeit in an extremely shallow, brief way the initiatives that affect the judicial co-operation in criminal matters will become clear. The instruments of judicial co-operation in criminal matters of bilateral type or whose origin is due to other international organizations, such as the Council of Europe, and also those actions or initiatives referring to aspects other than the judicial co-operation in criminal matters, won't be established.

1. Judicial assistance in general

The judicial assistance in criminal matters among the European States is successor, in great measure, to the Conventions formed under the Europe Council auspices (essentially, Convention of Extradition of 1957 and Convention on Mutual Assistance of 1959). The action of the EU in this matter has completed the juridical wealth and strengthened the relationships among its members. In 1996 a project of Convention of mutual assis-

tance was presented in criminal matters, which concluded with the approval on May 29 2000 of the Judicial Assistance Convention in criminal matters among the member States of the European Union, which has not yet come into force. The transcendency of this Convention determines its study specifically.

Other initiatives are the following:

A) Joint Action 96/277/JHA, of April 22 1996 (OJ L 105, 27/04/96), for which a mark of exchange of liaison magistrates is established, with the objective of facilitating the judicial co-operation and improving reciprocal understanding of the juridical systems of the other States. This Action is limited to establish the general framework, remitting its application to the bilateral or multilateral Conventions among States (art. 1). The mission of these magistrates would consist on facilitating the contacts among the authorities of the respective countries. It came into force April 27 1996.

B) The Council Resolution published in the OJ C 010, 11/01/1997, for which the Council invites the member States adopt the necessary measures so that people who have participated in a criminal organization, can collaborate with the legal authorities. The States are exhorted to grant advantages to those who break with a criminal organization and help the police or judicial authorities, contributing evidence of knowledge of crimes and to identify responsible criminals. The States are also invited to adopt the appropriate measures to protect these collaborators and their relatives.

The States must lend mutual assistance in those cases that apply to this type of collaborator: this way, the authorities of the required State will conform to the instructions or procedure demands from the petitioner State when taking statements from collaborators, unless it is contrary to the general principles of the Right of the required State.

C) Joint Action 98/428/JHA, of June 29 1998 (OJ L 191, 07/07/98), for which the European judicial Network is believed, with the objective of improving the mutual assistance and of fighting against the most serious forms of crime. For this, a net of judicial contact points is created, integrated by the central authorities of each State responsible for the international juridical co-operation. Each State will designate one or more contact points, according to its internal norms and its own allotment of competitions. The liaison magistrates contemplated in the Joint Action 96/227/JHA will also be able to have contact with the network, if the state believes this to be opportune to the State that the Magistrate sends. The Commission will also designate a contact point for the matters that are within its jurisdiction (art. 2).

The network should facilitate a flowing communication among the contact points, facilitating the judicial co-operation among the member States, particularly to act against the serious forms of crime (organized crime, corruption, drug trafficking and terrorism). For it, the contact points will develop the function of middlemen at the disposal of the local judicial authorities and of other authorities of its country, of the points of contact of the other countries, and also of the authorities – judicial or other – of the other countries (art. 4.1). In particular, they will provide the necessary information about the correct procedure of an application of judicial co-operation (art. 4.2).

Another network function is the organization of periodic meetings and the supply of certain information. Regarding the first aspect, the idea is that, besides allowing the mutual knowledge and the exchange of experiences, the periodic meetings constitute a debate forum to discuss the problems raised by the judicial co-operation (art. 5). The foreseen place for these meetings is the headquarters of the Council in Brussels (art. 7). In the second aspect, the creation of a mechanism to distribute information has been foreseen which allows a permanent and constant flow of up-to-date information to be at the disposal of the members of the judicial network administered by the General Secretary of the Council (art. 9).

The available information should consist of four points (art. 8):

- The complete data of the points of contact of each State,
- A simplified explanation of the judicial authorities and a repertoire of the local authorities of each State.
- Concise information on the procedural and judicial systems of the member States.
- The texts of the pertinent juridical instruments and the text of the declarations and reservations of Conventions.

The Joint Action came into force in August 7 1998.

D) Joint Action 98/427/JHA, (OJ L 191, 07/07/1998) about good practices of judicial assistance in criminal matters adopted the same day as the previous one and also published in the same official newspaper. It came into force on the day of their publication. With the purpose of improving the practical aspects of the co-operation, it is foreseen that, in the twelve months following the date of coming into force, each State shall deposit before the General Secretary of the Council a declaration of good execution practices and of presentation of applications of judicial assistance in criminal matters (art. 1). The declarations will also communicate to the European judicial Network (art. 3).

The declarations of the States mention the commitment of promoting certain practices: (art. 1.3) to acknowledge receipt of all written petitions

of information, to provide to the petitioner authority the data of the authority and, if possible, of the person in charge of the application, to give priority to the applications that the petitioner State considers urgent, unless it is opposed to the legislation of the required State, to treat the applications not formulated by authorities of other States in a way less favourable than the one at your disposal to inform the petitioner State of the causes that impede or hinder the benefit of assistance and, whenever possible, to study jointly with the authority of the petitioner State the way of clearing the difficulty, to check that the presented applications are adjusted to the pertinent international Conventions, to provide the required authority the data of the petitioner authority, indicating, if possible, the person in charge of making the application.

The previous Joint Actions, although of great interest, are limited to establish a very general co-operation framework, setting down some basic principles and establishing a network of contacts. They should be completed by a reciprocal assistance Convention, already projected some years ago, which today is one of the priorities of the Council, and of the Commission.

2. *Extradition procedures*

The general law of extradition is contained in the European Convention on Extradition (ETS no. 024) from December 13 1957 of the Council of Europe. The Convention of June 19 1990 applying the Agreement of Schengen of June 14 1985, has increased the effectiveness and the field of extradition relationships among the countries members. The creation of an information specialized system, the SIS (Schengen Information System), allows people's descriptions and objects to be looked for by a State immediately, and allows the police forces to know immediately how they should proceed The description of a person wanted for extradition in the SIS, can be used as grounds for a provisional detention (article 95 of the Convention).

- Convention of San Sebastián, signed April 19 1989, allows the transmissions of fax for extradition applications.
- Relative Convention to the simplified procedure of extradition, signed in Brussels March 10 1995 – ratified that same day for Denmark, Sweden and Portugal) allows the delivery of a person wanted for extradition in the briefest term in the event of consent being given (consent received by a judicial authority and possibility of a lawyer's assistance).

- Extradition Convention, signed in Dublin, September 27 1996, reduces to one year in the Petitioner State and to six months in the applied State, the limit of fulfilled punishment to allow extradition. This Convention ratified initially only for Denmark and Spain, solves some problems connected with double incriminations. It excludes the possibility of refusal to grant extradition for political reasons within the EU, mainly as regards terrorism and it outlines the extradition principle for a national of their own State.

These Conventions constitute one of the pillars of the European judicial area, limiting the control of the extradition applications for the required State and, awaiting the creation of a true order of European detention for immediate application inside the Union. It is desirable that the States ratify these Conventions with declaration of speedy application, as Spain has done with the Convention of Dublin 1996.

In this matter the co-operation among the States of the Union has been remarkably fruitful: the Convention of March 10 1995, for which the simplified procedure of extradition applies among member States of the EU (OJ C 78, 30/03/95), and the Convention September 27 1996, for which the Extradition Convention applies (OJ C 313, 23/10/96).

A) The Convention of March 10 1995 facilitates the application of the Convention on Extradition of the Council of Europe 1957 (art. 1); among the member States of the EU the procedure is simplified. To use this simplified procedure it is necessary that the accused person has given her consent (art. 2). The petitioner State will only communicate the accused person's identity, the authority that requests the arrest, the existence of a detention order, the nature of the infraction, the description of the circumstances of its commission and its consequences (art. 4). This must be communicated to the accused who will be offered the possibility to consent to extradition in the face of the judicial authority of the required State (art. 7).

B) The object of the Convention of September 27 1996 is to complete and to facilitate the application of other Conventions in force among the member States, such as the Convention of the Council of Europe 1957, the Convention of Repression of Terrorism of 1977 or the Agreement of Schengen 1990, regarding the gradual lifting of border controls within the EU (art. 1). This Convention foresees the crimes that can lead to extradition (art. 2), with certain special rules applicable to acts of terrorism or other particularly serious crimes, such as drug trafficking or endangering life (art. 3). The requested State is not empowered to refuse extradition should the crime be of a political nature. It will be possible to refuse if the accused is a national of the requested State. In this last case the Conven-

tion allows that the States can interpose a reservation for refusal to grant extradition of one of its own nationals. In principle, it will not be possible to refuse extradition if the crime committed is punishable by law in the requested State. However, it is allowed that the requested State may waive the previous rule when the reason for the extradition is contrary to the penal law of the requested State (art. 8). Extradition will not be granted when the crime has been the subject of an amnesty in the requested State (art.9).

3. The recognition of permission to enforce driving disqualifications

The object of the Convention of June 1998, (OJ C 216, 10/07/98) is to establish the mutual recognition, within the member States, of the right to enforce driving disqualifications. To be valid, not only in the State in which the offence is committed, but also in the State of residence of the offender.

Driving disqualification is a measure adopted by a judicial or administrative authority as a consequence of a traffic offence, (art. 1, letter a). The implementation of the Convention is as follows:

The authorities of the State where the offence occurs must notify the authorities of the offenders State of residence of the decision to enforce a driving ban, as a consequence of an offence committed in circumstances to be specified in the annex of the Convention (speeding, driving under the influence of alcohol or drugs, failure to give emergency assistance...). The State of residence will implement the order immediately, according to art. 4. The State of residence will only be able to refuse to implement the order in exceptional circumstances as foreseen specifically in art. 6. Whenever the implementation is refused, the authorities of the petitioning State will be informed of the reasons for justification (art. 10).

4. The International Rogatory Commissions (CRI)

As we know, they are directed to enforce instructions in other States (requested State) and to obtain documentation and evidence to be used to assist the conviction of offenders.

At the present time three methods of communication exist.

- In Article 15 of the European Convention on Mutual Assistance in criminal matters, signed in Strasbourg in April 1959. It is foreseen that communication with the CRI should be via diplomatic channels and through the Ministry of Justice of each of the two countries. This long

journey is the cause of big delays which, in the event of urgency, is not practical.

- The fastest way as foreseen by the article 15-2 of the same Convention of 1959 allows the direct contact of the CRI from the petitioner Authority to the required Authority. Direct contact between judges is recommended, especially in the case of a judge already being conversant with the same proceeding. Forwarding implementation documents by way of the Ministries of Justice can hinder this procedure.
- The implementation of the article 53-1 of the Convention applying the Agreement of Schengen, from June 19 1990, foresees that the applications for help can go between judicial Authorities without going via the Ministries of Justice or Foreign Affairs.

This way is much quicker and should be favoured as it cuts out all middlemen. In short, many Spanish judges have the habit of using the Interpol channel as foreseen in the article 53-2 of the application Convention, that which assumes this method to be unofficial and causes the instructions to arrive too late for diplomatic action.

5. *Other collaboration methods*

These consist of classic instruments of co-operation which receive a new treatment with the application of the Agreement of Schengen, responding to the new risks generated by the absence of controls on the internal borders of the States which form the «Schengen Area».

1. The classic techniques of penal co-operation

1.1 Techniques that allow the advance of a process or the execution of judicial decisions:

- Official accusations allow a State to use their penal procedure in another State which can act on their behalf to make penal persecutions this method foreseen in the Convention among member States from the relative European Communities allows legal and arrest procedures and the extradition of it's nationals to be carried out (article 6.2 European Convention on Extradition of the 13/12/1957).
- Prisoner's temporary delivery from one State to another for a limited period (article 11 of the Convention on Mutual Assistance in criminal matters of the 20/04/1959). This allows, for instance, a trial to continue when one of the detainees is imprisoned abroad-spontaneous transmis-

sion of information (article 10 of the Convention of the 8/11/1990 on apprehension and confiscation of the products of crime).
- The Convention of Vienna and the Convention of the Council of Europe from 8/11/1990). May be applied abroad to allow for the confiscation of the products of crime i.e. drugs.

1.2 Techniques postponement of sentencing

- Transfer of a sentenced person to their native country (Convention of the Council of Europe, signed in Strasbourg the 21/03/1983) which respects the Convention.
- Surveillance abroad of convicts in situation of conditional freedom.

2. *The new specific techniques of the States of the space Schengen*

These new forms of co-operation come from the Convention applying the Agreement of Schengen, which unites 10 of the 15 States of the European Union. These Instruments figure in the Title III of the Convention dedicated to the police co-operation, but the article 39.2 of the Convention indicates that the written information provided can only be used in connection with evidence.

It is essentially:

- The right of transborder observation allowed to police services in the framework of a judicial investigation for the article 40 of the Convention it demands the previous presentation (or in the event of urgency the transmission without delay) of a motivated application of judicial help and, therefore, of a control of the judicial Authorities, which is not always the case in practice, as from 1995 this observation right has been practiced by the police.
- Of the possibility of implementing the punishment when the convict to which it applies has escaped from the country which pronounced sentence and returned to his native country.

A deeper study will be made in another section.

3. *Europol*

It is not –strictly speaking- a method of judicial co-operation, but is so closely related that it deserves a brief mention

The creation of police's European office for the Treaty of Maastricht, Signed February 7 1992 (in the Title VI) was originally conceived as a police unit to analyse and exchange information within the scale of the EU,

to fight against drug traffic. It is not a federal office of the type of the North American FBI.

After the creation of a «Drugs unit» in 1994, signed, July 26 1995, The Convention Europol organises the operation of the Europol, whose attributes were enlarged to include serious crime (listed are 18 crimes, including terrorism and crimes linked to illegal immigration) around a «Central Unit Europol», located in The Hague and «National Units Europol» in each country. The operation of the Europol consists of the collection of general information, which includes the names of suspects and convicted criminals.

It is an important challenge for the justice of each country of the EU to guarantee the individual freedom, at the same time allowing the officials of Europol to efficiently fight international crime.

In the Council of Brussels of May 28 1999, (preparing the European Council of Tampere of the 15 and 16 of October of 1999, first meeting of the Heads of State and Government exclusively dedicated to matters of the interior and justice), the Ministers of Justice of the Union examined the development of Europol and deemed it necessary to transform Europol into a true force of European investigation, with magistrates or public prosecutors as well as policemen, creating this way a «European Public Prosecutors Office» which promotes a true European public action (at the announcement of the creation of «Eurojust» in Tampere it was said that it should be in operation in 2002).

6. *Special study of the Agreement of Schengen*

The Agreement of Schengen 1985, or more correctly, the Convention applying the Agreement of Schengen 1990, is very important in this matter. The existence of this Convention determines the coexistence of two systems: The area of the European Union and the „Schengen Area". Due to the difficulty of fomenting the free circulation of people and the cooperation in matters of Justice and Interior in the European Community, France, Germany and the countries of the Benelux signed an Convention in this sense, in 1985, in Schengen, completed in 1990 by an application Convention whose objectives were to facilitate the stopping of border controls on the interior borders at the same time reinforcing the controls on the external borders and to harmonize the measures as regards Visa, asylum, police and judicial co-operation. The two systems relate to each other: the art. 13.4 of Schengen says „The dispositions of the present Convention will only be applicable insofar as they are compatible with the community right".

The supposition in fact that it leaves the Convention Schengen it is the commission of a criminal fact with repercussions in several States (1. because it is necessary to investigate the facts in another country, 2. because it is necessary to stop and to surrender to the State in which the crime was committed, 3. because the execution of the punishment is sought in another State).

The measures of Schengen are articulated at a duel level: that of police co-operation and of judicial assistance.

The police co-operation has the following objectives

a) The police assistance extends to the prevention of crimes, such as the investigation of criminal facts, it is articulated in three types of concrete measures, these are: – the assistance among police's national services, the transborder controls by the police and the establishment of material for the exercise of the police action.

The direct police assistance has two limitations: the judicial reservation and the application of coercive measures. In both cases application will be as prepared in the Convention as regards police assistance (art. 39).

b) The transborder surveillance consists of allowing foreign agents to carry out activities of surveillance within the territory of another State it can also be requested that the observation be carried out by agents of the State in which the crime occurred. The measure of transborder surveillance – according to the art. 40 – must be part of a judicial investigation and must center exclusively on the person who had participated in the crime This measure is limited to the suspect's exclusive surveillance, the agent is not allowed to enter homes or places not open to the public, nor to detain or interrogate the suspect For these cases a special judicial authorization is required.

c) The hot pursuit – art. 41 – allows that the States tolerate that in its territory a person may be pursued with the intention of arrest by foreign agents. This activity is bound to some very concrete requirements: 1) it must be the continuation of the persecution of a criminal found in flagranti; 2) it must be a serious or very serious crime (Spain has demanded a list of the type of crimes that can give rise to this activity: homicide, robbery, arson, forgery, drug trafficking, etc.); 3) that an authorization is obtained, 4) that the speed limits be respected (there is no fixed kilometre or time limit).

If the suspect is finally captured, the agents must hand him over to the authorities of the State in which the capture has taken place, and will assist in his identification and detention. This detention can only last six hours, not counting those between twelve at night and nine in the morning. Unless an application of provisional detention is received to effect an ex-

tradition within this time the detainee must be released. This is so unless the detainee is a national of the country where he has been arrested, in which case he will be handed over to the judicial authorities.

d) The observation of drug deliveries. The co-operating parties must agree to take measures to allow the deliveries in the illicit traffic of narcotics to be watched. Individual States determine the requirements and who will retain control within their territory. The observation can be terrestrial, by air or by sea among countries without a common frontier. The authorization of who should control the operation should be made, in favour of the Central Tribunal of Instruction, mainly because its territorial jurisdiction is geographically more extensive, but also because they are active in the detection of organised crime

e) The Schengen Information System (SIS) is the computer network for exchange of information for the use of the police and customs authorities In view of the Convention of the Council of Europe of January 20 1981 for the protection of electronically stored personal data the Schengen Convention establishes a series of protective principles, one of these being that it is necessary that the data is used exclusively for the purpose for which it is collected (mainly, for detention to effect extradition; searching for missing people; the special protection of threatened people; communication with people due to appear before the tribunals; the search for evidence to be used in penal processes, etc.), the obligation lies with the authorities of checking the accuracy of the data, and storing it.

The judicial assistance Schengen already uses a series of other Conventions existent as the European Convention on Mutual Assistance in criminal matters of 1959, the European Convention on Extradition of 1957, or the Convention on the Transfer of Condemned People of 1983. Their main objectives are:

a) The development of the judicial assistance: in procedures of grace; civil actions derived from illicit ends; the payment of penalties applies.

b) The notification of documents by mail, even without translation.

c) The use of rogatory commissions among judicial authorities is regulated directly.

„Judge to judge" direct system agreed in Schengen, is perfectly compatible with the Joint Action (6150/1996 JUST LIMITS 7), by the art. K.3 TEU, according to which it is possible to proceed with the creation of a co-operative connection between magistrates' which will improve the judicial co-operation among the member States of the EU. An important legal initiative is the exchange between magistrates or officials with special experience in procedures of judicial co-operation, on the basis of bilateral or multilateral Conventions whose main objective is to increase the speed

and effectiveness of the judicial co-operation in criminal matters and contribute to the exchange of information on the different systems and juridical classifications.

d) The execution of rogatory commissions is allowed with regards to registration or liens.

e) Non bis in idem: a person who has been judged and sentenced in one country cannot be pursued in another country for the same crime, irrelevant of sanctions in force in the country of judgement" (art. 54).

f) Facilitation of extradition, some rules: 1) always refer to the cases won in the petitioner State and not in the requested State; 2) Fiscal crimes are included: 3) The comparison of a „description" in the SIS to make a preventive petition of extradition; 4) The use of the communication made direct through the Ministries of Justice; 5) The inclusion of the simplified extradition, i.e. authorization of extradition without a formal procedure whenever the detainee accepts the due form of the judicial authority, previously having been informed of their rights to have a formal procedure of extradition.

g) Implementation of penal sentences, Three new methods are introduced: 1) When a country sentences a national of another country who has taken refuge in their country, the country in which sentence was passed may, instead of requesting extradition, ask that the sentence be carried out in that country 2) the requested country will be able to make a preventative detention; 3) Should the country which passed sentence ask to have it carried out in the country in which he has taken refuge it will be done without the consent of the convict.

7. Special study of the European Council of Tampere

The European Council held a special session in Tampere, on 15th and 16th of October 1999, to discuss the creation of an area of freedom, security and justice in the EU. Among the Conventions reached in this session it is necessary to highlight the following:

1) The Union must develop political parallels as regards asylum and immigration, bearing in mind the necessity to carry out controls of the external borders, to eradicate illegal immigration and to fight against organized immigration criminality.

2) The pursuit of freedom requires a centre of justice where people can appeal to the tribunals and the authorities of any member State with the same ease as to their own national one. Care should be taken to avoid legal loopholes amongst the varying judicial systems of the member States which criminals could use to their advantage. The sentences and resolu-

tions should be respected and executed in the whole Union, safeguarding the basic juridical security of people at the same time as those of the economic agents. It is necessary to achieve a compatibility and convergence of the judicial systems as the member States increase.

3) People are right to hope that the Union can avoid the threat of crime against freedom and their civil rights. A united mobilization of the police and judicial resources is necessary to guarantee that in the whole Union there is nowhere where criminals can hide or benefit from crime.

4) The area of freedom, security and justice should be based on the transparency principles and democratic control.

5) The European Council asks that the co-operation and the mutual technical assistance be reinforced among the services of border control of the States members, for example by means of exchange programs and technology transfer, especially in the marine frontiers. In this context, the Council welcomes the Convention between Italy and Greece to foment the co-operation between both countries, in the Adriatic and Ionic seas, in the fight against organized crime, smuggling and illegal immigration.

6) In an authentic European Area of Justice, incompatibility or complexity of the juridical and administrative systems of the member States should not impede people or companies to exercise their rights.

7) With the purpose of facilitating the access to justice, the European Council invites the Commission to co-operate with other pertinent forums, such as the Council of Europe, to start a campaign informing and publishing user's guides on the judicial co-operation in the Union and envelope the juridical systems of the member States. It also asks that a system of easily accessed information is formed and run by a net of competent national authorities.

8) A better mutual recognition of the resolutions and judicial sentences and the necessary approach of the legislations would facilitate the co-operation between authorities and the judicial protection of the individual rights. Consequently, the European Council make this the principle of the mutual recognition that, in its opinion, should be the cornerstone of the judicial co-operation in civil and criminal matters in the Union. The principle should be applied as much to the sentences as to other resolutions of the judicial authorities.

9) In criminal matters, the European Council urges the member States to ratify the Conventions of extradition of the EU of 1995 and 1996. It considers that the formal procedure of extradition should be suppressed among the member States in the case of sentenced people who can avoid justice by merely being extradited, in conformity with article 6 TEU. There should also be quicker procedures of extradition, still respecting the

principles of fair trial. The European Council invites the Commission to formulate proposals in that sense, by the light of the Convention applying the Agreement of Schengen.

10) The principle of mutual recognition should also be applied to acts leading up to the trial, in particular to those that allow the competent authorities to act quickly to obtain tests and to levy goods that can be transferred with ease; the evidence obtained legally by the authorities of a member State will be acceptable before the tribunals of other member States keeping in mind the one that is applied in them.

11) The European Council requests that the Council and the Commission adopt a programme of measures to take up the practice of mutual recognition by December 2000.

12) The European Council is firmly resolved to fight against serious organized and international crime. The high level of security in the area of freedom, security and justice presupposes an effective and exhaustive focus in the fight against all forms of crime. A balanced development of measures should be made to help the Union fight crime, protecting the freedom and the juridical rights of people at the same time as those of the economic agents.

13) The European Council requests national and international programmes for the prevention of crime. They should be treated as a priority much like foreign policy or the interior politics of the Union and to be kept in mind when preparing new legislation.

14) The exchange of better practices should be developed, to reinforce the net of competent national authorities as regards the prevention of crime and the co-operation among the competent national organisations involved in the matter; the possibility should also be explored of establishing a programme financed by the Community. The main priorities of this co-operation could be juvenile and urban delinquency, and drug related crimes.

15) The maximum benefit of the co-operation should be felt among the authorities from the member States when investigating international crime in any member State The European Councils combined teams of investigation (as contemplated in the Treaty,) are taking first steps to fight drug trafficking, illegal immigration and terrorism. In this sense, as they become accustomed to it the teams representing Europol participate in a worthwhile job.

16) The European Council asks that a Unit operative of European police chiefs meet to exchange, information and experiences with a view to improving the information on the current tendencies of international crime as well as contributing to the planning of co-operative actions.

17) Europol plays a fundamental part supporting the prevention, analysis and investigation of criminal actions within the Union. The European Council requests that the Council provide Europol with the necessary resources. In the near future their paper should be reinforced.

18) To reinforce the fight against organized crime, the European Council has agreed to create a unit (EUROJUST) made up of public attorneys, magistrates or agents of police of equivalent organisations, given temporarily by each member State The EUROJUST mission will focus on facilitating the appropriate co-ordination of the national offices and in supporting the penal investigations in the cases of organized crime. The European Council requests to the Council that it adopt the necessary juridical instrument before the conclusion of 2001.

19) European Police Academy should ask for the formation of a body of police officials of superior range, which act like a net of national formation within institutes already in existence. The Academy should also be open to the authorities of the countries candidates.

20) The European Council considers that, with regard to the national penal law, the work to agree definitions, inculpated and common sanctions should be centred in the first place on a limited series of sectors of special importance, such as the financial delinquency (money laundering, corruption, euro forgery, drug traffic illegal immigration, in particular the exploitation of women, the sexual exploitation of children high technology crime and ecological crime.

21) The economic criminality includes more and more fiscal aspects involving customs officers. Therefore, the European Council requests the member States to facilitate judicial assistance in the causes of serious economic crime.

22) The European Council highlights the importance of drug problems in a global way. The Council request that the European strategy against drugs for the period 2000-2004 is adopted before the meeting of the European Council of Helsinki.

23) The European Council asks for the approach of the penal and procedural law.

8. *Special study of Convention of May 2000 establishing the Convention on Mutual Assistance in criminal matters between the Member States of the European Union*

The penal judicial assistance that today rests in the Convention of Strasbourg (1959) regarding notification of documents and judicial resolutions, witness appearance and expertise is today profoundly, insufficient.

In the first place, judicial assistance can be refused in the case of tax infractions; this is now of legal importance and in opposition with the current position of the European Union, which is to protect the community budget, impelling international co-operation.

In the second place, it highlights the importance that is granted to the Executive Power, through the Ministry of Justice, in the procedure of the rogatory commissions which we understand to be an apparent interference in the development of the process, of exclusive jurisdictional competition. This was established in 15.1 of the Convention, when the required procedural action is the related one in the articles 3, 4 and 5 as instruction judicial actions, to transmit evidence, files or documents, witness declaration or expertise, and the registration and goods lien. Certainly, direct communication is admitted among judicial authorities but always for reasons of urgency that are not explained. Until this is clarified, the judicial actions executed by the Rogatory Commission will be made through the Ministry of Justice. It is only the direct communication to transmit criminal records. The mediation of the Executive Power is very important, and in cases of accusation „centred on one contracting party whose object is to file a process before the tribunal of another party", it will also be through the Ministry of Justice, who will make it be known immediately to the Public Attorney or the judicial authorities. In declarations and reservations the States abide by the Convention, in general, the condition is accentuated by the judicial assistance, mainly in the cases of registration and goods levy; many of them based on the double incrimination principle.

The Agreement of Schengen, objective the gradual lifting of border controls didn't receive enough signatories to pass as a directive. The article 9 explained that the contracting parties will reinforce co-operation among their customs and police authorities especially in the fight against crime, tax evasion and smuggling. „And, in the same precept it contained a commitment to reinforce, within the framework of the national legislations, the mutual assistance against the irregular movements of capital. For, to add that – article 18 – discussions will begin on the possible difficulties in the application of the Conventions of international judicial assistance and of extradition....".

Finally, in the Convention applying this Convention, of June 1990, certain Conventions are reached that aim to improve the Convention of Strasbourg, chapters 2 and 5, under the title Judicial Co-operation in penal and other matters, contained in the articles 48 and 69 however, they are far from removing the obstacles, (their matter of territorial application is much more limited that that of the Convention of 1959). It doesn't apply to the problem, essential for the fight against organized crime, nor to the con-

trol of the irregular movements of capital. But neither can certain advances be ignored. „The problem is increased by judicial assistance procedures linked to the National Law of one of the two contracting parties such as infractions of regulations; another practical innovation in the article 50 of the Agreement of Schengen is the possibility to give judicial assistance by infractions to the legislation as regards taxes on specific articles, VAT and Customs. Lastly, the most important modification that is experienced in the regulation of the instruments of judicial assistance picked up in the Agreement of Schengen in the article 53, which establishes that the applications of judicial assistance will be able to be made directly with the judicial authorities and they will be able to use the same means of communication which was previously only admitted in the Convention of 1959 in cases of urgency.

It becomes necessary to create a Project of Convention on Mutual assistance among the member States to guarantee the working of the rogatory commission according to the legislation of the petitioning State to end the demand of the principle of double incrimination, and the current reservations that the States impose for the execution of the article 5 of the Convention to form a rogatory commission whose objective is the search or seizure of goods, as well as to overcome the absence in the Convention of all reference to the forfeit, already considered indispensable for an effective confrontation of organized crime and, in particular, in the suspicion of money laundering. In such a situation the need for a new Convention is urgent.

As a result of this Council Act of May 29 2000, relating to the mutual assistance in criminal matters among member States of the European Union. It stands in their antecedents that is the first to be adopted from the Treaty of the European Union since it came into force, in response to the problems detected in a seminar of professionals of penal law in 1995. The Conventions first objective is to improve the judicial co-operation developing and modernizing the existent dispositions as regards judicial assistance, at the same time it is to facilitate such assistance into being quicker and more effective; the disappearance of the frontiers demands new weapons to fight appropriately against international crime; it has also kept in mind the evolution of the new technology which allow rapid co-operation (videocall, telephone call, etc.). This Convention constitutes an international law instrument, which obeys certain unknown norms in the Convention of 1959, the article 35 TEU which that attributes competence to the European Court of Justice to interpret the dispositions of the Convention. Lastly, It is written down that the dispositions of the Convention foreseen in article 2 constitute a development of the wealth of Schengen and they

are applicable to the relationships, between each Member State of the European Union, Iceland and Norway.

In article 1 the relationship sets down other Conventions of judicial assistance, highlighting that the new Convention completes the enumerated instruments which means that it would prevail when in conflict with the enumerated instruments. At the same time the subsidiary character of the bilateral or multilateral Conventions sets down when they establish more favourable norms of judicial assistance. Article 2 establishes the relationship of the Convention with the wealth of Schengen and as such sets down that measured they modify or develop such wealth. Article 3 extends the effectiveness of the Convention, not only to penal processes but also to behaviours determined in administrative sanctions. Article 4 regulates the steps for the execution of the applications of judicial assistance; it sets down the general principle that all state member who execute an application will observe the process and other suitable procedures expressly for the state petitioner member, with the purpose of facilitating the use of that obtained in the following phases of the process, although, the petitioner State will indicate you only process them and indispensable procedures for its investigations, and will be able to refuse when the steps are contrary to the fundamental principles of its law or be regulated in the Convention. Number 2 the terms of the benefit of the assistance. In the section 3 and 4 the situations are regulated in that an application cannot be executed totally or partially according to the steps indicated by the State Member or the suitable term cannot be completed. Article 5 regulates the shipment form and notification of procedural documents, settling down like general rule which can send the person that is in the territory of the other state member directly by mail. Article 6 regulates the transmission of applications of judicial assistance, intending to promote the direct contacts among the judicial authorities, although with some exceptions; a novelty of the Convention is the possibility to not only carry out in writing the transmission of applications, but also being able to use the fax, electronic mail or other telecommunication (in certain cases verbal communication is permitted), it also foresees asking for the assistance of Interpol in urgent cases.

– Article 7 regulates the spontaneous exchange of information, it allows the exchange of information which that has been obtained in criminal matters, at the same time setting down the possibility to establish conditions for the use of the information.

The second title of the Convention regulates the specific application of the co-operation.

– Article 8 develops the restitution of objects obtained by illicit means to the Petitioner State.

- Article 9 regulates the temporary transfer of detainees to be investigated. It foresees the procedure and the conditions of time and distance as well as when the detainee's consent is required the reason for the transfer should necessitate the detainee's appearance, as a witness or to give a statement
- Article 10 regulates the audition for videocall. It facilitates the use of new technology so that a person who is in a State and be not able to appear in person can communicate through those. It is foreseen for experts or witnesses and the requirements and conditions are developed so that it should be carried out. Section 9 allows the member States to enlarge this group to include inculpated people.
- Article 11 regulates the audition for phone conference. It is foreseen to support the previous article for use in routine matters.
- Article 12 regulates Observation of drug deliveries. It is a precept that requires the co-operation among the member states regarding the observation of drug deliveries, but not limiting their application to the crimes of traffic of drugs.
- Article 13 takes charge of the study of the Combined Teams of investigation. It is specifically to regulate the creation of the combined teams of investigation as well as its organization and operation, fundamentally in the investigation of international criminality.
- Article 14 regulates undercover investigations
- Article 15 and 16 study the eligible penal and civil responsibility of the officials who fulfil the functions foreseen in the previous articles.

Title III of the Convention concerns the general study of the Intervention of Communications. It is the first time that an Convention of multilateral judicial assistance in criminal matters treats this topic in a specific way. In their regulations they have kept in mind that a balance should exist between the effectivity of the investigations and the respect to the individuals freedom, besides the current and future technological development. Competent authorities are to investigate the intervention of telecommunications, studying the intervention applications, as well as other possibilities, should the intervention of another country be necessary, or a supplier be located in another country, etc.

Title IV studies the Protection of personal data, the exchange of data between two or more countries as well as the official use of the data.

Lastly it is necessary to highlight that this Convention, differs from the norms of previous Conventions of the Union, in that it will go into effect ninety days after the date concluding the necessary procedure to adopt the Convention. It is permitted for it to be applied before this date among member States if it should be needed.

The valuation of the present Convention is positive and it is of importance to see that prompt application is possible.

9. *Commission communication to the Council and the Parliament about the Mutual Recognition of Final Decisions in Criminal Matters (COM/2000/0495 final)*

Article 31 a) TEU sets down that the action in common on judicial co-operation in criminal matters will include the facilitation and acceleration of the co-operation between ministries and competent judicial or equivalent authorities of the member States in connection with [... 1 the execution of resolutions]. The traditional judicial co-operation in criminal matters is based on a variety of international juridical instruments that are characterized for the most part by what is called the „petition" In principle: a sovereign State formulates a petition to another sovereign State, which will determine his course. In some cases, the execution norms are quite strict and they don't leave much option; in others, the requested country has great freedom of decision. In almost all the cases, the State applicant should await the answer to its petition before obtaining what its authorities need to prosecute a criminal matter.

This traditional system is not only slow, but also complicated, and it is sometimes quite uncertain which result the judge or the fiscal applicants will obtain. Therefore, using concepts that have worked very well in the creation of the unique market, the idea has arisen that the judicial co-operation could also benefit from the concept of mutual recognition by simplifying it means that a measure, once adopted, like a resolution dictated by a judge in the exercise of his official duties as a member State, providing that it has international implications, will be automatically accepted in all the other member States where it will offer the same or similar opportunities. The Commission is fully aware that what seems simple on paper is often very difficult when one goes into details, and it is the main purpose of this Communication to help the Commission that the European Union to overcome these difficulties.

The European Council of Tampere declared that a better mutual recognition of the resolutions and judicial sentences and the necessary approach to legislation would facilitate the co-operation between authorities and the protection of the individuals rights. Therefore, the mutual recognition should not only assure the execution of the sentences, but also that they are completed, so protecting the individual rights. For example, the sentence could also be carried out in another member State if it allows the criminal's better social reinstatement.

The mutual recognition principle is of great value for use with the resolutions adopted before the final resolution, especially in sentencing. This Communication is the heart the mutual recognition of the final resolutions.

The present Communication expresses the idea of the Commission for the purpose of the mutual recognition of final resolutions in criminal matters. It is a new and complex topic. In many cases, the Communication does not intend to respond with a definite answer to the questions raised, but rather tries to define possible development.

The second main purpose of the Communication is to contribute to the programme of measures to apply the principle of the mutual recognition demanded by the European Council of Tampere in October of 1999 on Justice and Matters of the Interior.

The Commission requests the European Parliament and the Council to take note of this Communication and forward their opinions on the projected suggestions.

The concept of this project of mutual recognition is based on a principle of understanding, owning, that while a State cannot treat a certain matter in the same or similar way as another State, the results will be such that they will be accepted as equivalent to the decisions of their own State. Mutual trust is an important element; not only trust in the adaptation of the norms of the partners, but also that these norms are applied correctly. On the basis of this idea of equality and trust it is thought that the results obtained in other States can influence each other. Therefore, a resolution adopted by an authority in a State could be accepted as such in another State, although in this a comparable authority does not exist, cannot make such resolutions, or had used an entirely different resolution in a comparable case.

The recognition of a foreign resolution in criminal matters can be understood in the sense that it provides effects well outside of the State in which it has been dictated, providing him with the juridical rights as foreseen by international law Taking into consideration that it provides the effects foreseen by the penal law of the country of recognition.

10. Index of more important norms

1. European Convention on Mutual Assistance in Criminal Matters, Strasbourg 20/04/59 (ETS no. 030).
2. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg 17/03/78 (ETS no. 099).
3. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg 08/11/90 (ETS no. 141).

4. Treaty on European Union, Maastricht 07/02/92 (OJ C 191, 29/07/92).
5. Convention of June 25 1991 of Adhesion of the Kingdom from Spain to the Convention applying the Schengen Convention of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, to which the Italian Republic also adheres.
6. Treaty of Amsterdam amending the Treaty on European Union, the Treaty establishing the European Communities and certain related acts, Amsterdam 02/10/97 (OJ C 340, 10/11/97).
7. Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), Brüssel 26/07/95 (OJ C 316, 27/11/95).
8. Joint Action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the Europol Drugs Unit (OJ L 062, 20/03/95).
9. Joint Action of 16 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union extending the mandate given to the Europol Drugs Unit (OJ L 342, 31/12/96).
10. Commission Decision of 28 April 99/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office (OLAF) (OJ L 136, 31/05/99).
11. Regulation (EC) No 1073/1999 of the European Parliament and of the Council 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31/05/99 – Corrigendum OJ L 210, 10/08/99).
12. Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31/05/99 – Corrigendum OJ L 210, 10/08/99).
13. Interinstitutional Convention of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) (OJ L 136, 31/05/1999).
14. Joint Action of 22 April 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning a framework for the exchange of liaison magistrates to improve judicial co-operation between the Member States of the European Union (OJ L 105, 27/04/96).
15. Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 07/07/98).

16. Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal assistance in criminal matters (OJ L 191, 07/07/98).
17. Common position of 6 October 1997 defined by the Council on the basis of Article K.3 on the Treaty on European Union on negotiations in the Council of Europe and the OECD relating to corruption (OJ L 279, 13/10/97).
18. Second Joint position of 13 November 1997 defined by the Council on the basis of Article K.3 of the Treaty on European Union on negotiations held in the Council of Europe and the OECD on the fight against corruption (OJ L 320, 21/11/97).
19. Conclusions of the European Council of Tampere of 15 and 16 October 1999 (http://europa.eu.int/council/off/conclu/oct 99/oct99_en.htm).
20. Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12/07/2000).

The judicial co-operation in the criminal matters. Analysis of Community texts in force and in preparation

ENRIQUE LÓPEZ Y LÓPEZ

Summary

Traditionally, the judicial and police co-operation among States members has been developed through different instruments (bilateral Conventions, co-operation in the breast of the Council of Europe...). On the other hand, in its beginnings, the European Community used its efforts in the economic integration objetive. For this reason, the E.U. begun to worry about the co-operation in matters of justice and interior recently. In seventy years, an intergovernmental co-operation is established among the States members, outside of the institutional structure of the European Community (TREVI GROUP creation, biannual meetings of the Minister of Justice and Interior starting from 1984, celebration of the Agreement of Schengen in 1985...). The Treaty of the European Union (TUE), signed in Maastricht, and that came into force the first of November of 1993, seeks to introduce bigger co-ordination and coherence, when placing under the responsibility of the Union European initiatives and political, that previously had been gestated outside of the mark of the CE. In and of itself, the new Treaty includes, next to the traditional community pillar (CE-Treaty, MINT and EURATOM), two new pillars of the European Union: the relative dispositions to the foreign policy and of common security (Title V) and the relative ones to the co-operation in the matters of justice and interior (Title VIA), based both in mechanisms of intergovernmental co-operation more than of true integration.

Regarding the I Title VI of the TEU, the co-operation affected to diverse considered questions of common interest: the asylum, the crossing of external bordies, the immigration, the fight against the drugs, the fight against the fraud to international scale, the judicial co-operation in civil and penal matter, the police co-operation and the co-operation in customs. Due to the disparity of approaches among the States, the system of the Agreement of Schengen whose fundamental objective is the suppression of the controls in the interior frontiers, is to the margin of the new structure. The Title VI foresaw the possibility to adopt common positions, common actions and Conventions among States. These instruments are no juridical instruments of community nature, like the regulations or the directives; these obey a intergovernmental co-operation philosophy that was

reflected also in other important aspects like the necessity of unanimous vote in the Council or the exclusion of judicial control on the part of the Tribunal of Justice of the European Community, unless the adopted texts have included an expressed attribution of competence.

The modification of the TEU for the new Amsterdam teatry, (October of 1997, came into force May of 1999), has supposed an important advance. With the objective of creating a space of freedom, security and justice, the new Treaty introduces a new Title IV in the Treaty relative CE (Visa, asylum, immigration and other politicians related with the free circulation of people and also are included the control of the external frontiers, the asylum, the immigration and the judicial co-operation in civil matter. In consequence, these questions are introduced in the juridical system of the Union European, and are transferred since the Title VI of the TUE to the TCE and, therefore, they will be been able to regulate by means of the typical instruments of community law, essentially the regulation and the directives. In the Title VI only can be regulated the questions of police and judicial co-operation in penal matter, obeying a logic of intergovernmental co-operation. Anyway, some improvements are introduced with the spirit of speeding up the adoption and setting in practice of the adopted measures: this way, for example, it is foreseen that the Conventions can came into force after their ratification on the part of half of the States signatories, and new instruments are created, called „decisions framework" and „decisions"; these instruments have substituted to the common action.

1. Judicial assistance in general

- Joint Action 96/277/JHA, of April 22 1996
- The Resolution published in the OJC 10 11/01/97
- Joint Action 98/428/JHA, of June 29 1998
- Joint Action 98/427/JHA,

2. Extradition procedures

The general law of the extradition is content in the European Convention of Extradition of December 13 1957 of the Council of Europe. The Convention of July 19 1990 of application of the Agreement of Schengen of June of 1985, has allowed to increase the effectiveness and the field of extradition relationships among the countries members, in particular, certain tribute infractions, mentioned as bases for the extradition (articles 50-1

and 63 of the Convention). The creation of a information specialized system, the SIS (System of Information Schengen), allows to have people's descriptions and objects looked for a State immediately, and to police's forces to know immediately how they should proceed with occasion of the controls. The descriptive of a person in the SIS, for their extradition, can be used in a provisional detention (article 95 of the Agreement).

3. Recognition of permission to enforce driving disqualifications

It deserves certain attention the Convention from relative June of 1998, relative to the decisions to enforce driving disqualifications (DOCE C 216, of 10.7.1998) whose objective is establishing the mutual recognition of such decisions among States members, when allowing that the decisions dictated in the State where the infraction is made they are effective also in the State of the offender's residence.

4. The International Rogatory Commissions (CRI)

As it is known, they are directed to make complete in another State (required State) instruction acts or to obtain communication of documents, evidences objects or conviction pieces.
At the present time three transmission ways exist:

- The instrument of the article 15 of the European Convention of Mutual Assistance in penal matter, signed in Strasbourg April of 1959.
- The way of urgency, foreseen by the article 15-2 of the same Convention of 1959 that it allows the direct shipment of the CRI from the petitioner Authority to the required Authority
- The instrument foreseen by the article 53-1 of the Convention applying the Agreement of Schengen, of June of 1990, 19 according to which the applications of help can go, as much to the going as to the turn, of judicial Authority to judicial Authority, without going by the Ministries of Justice neither of foreign Matters.

5. *Other collaboration instruments*

1. The classic techniques of co-operation in criminal matters
1.1 Techniques that allow the advance of a process or the execution of judicial decisions:
- Official denounce that allows to a State to send a penal procedure to another State and this can make the penal.
- Prisoner's temporal delivery from a State to another for a certain period.
- Spontaneous transmission of informations.
- Execution abroad of a confiscation decision

1.2 Techniques used sentence later:
- Transfer of a sentenced person to their origin country.
- Surveillance abroad of convicts in situation of conditional freedom.

2. The new specific techniques of the States of the Schengen Area
3. EUROPOL

The creation of police's European office for the Treaty of Maastricht, Signed February 7 1992 (in the Title VI) was in their origin conceived as a police unit of analysis and exchange of information to scale of the UE, to fight against the traffic of narcotics, without action possibility or of beginning of investigations. It is not a federal office of the type of the North American FBI.

6. *Special study of the Agreement of Schengen*

The Agreement of Schengen 1985, or more correctly, the Convention applying the Agreement of Schengen 1990, is very important in this matter. The existence of this Convention determines the coexistence of two systems: The space of the European Union and the Schengen Area. (Treated Schengen). Due to the difficulty of fomenting the free circulation of people and the co-operation in matters of Justice and Interior in the European Community, France, Germany and the countries of the Benelux signed an Convention in this sense, in 1985, in Schengen, completed in 1990 by an application Convention whose objectives were to facilitate the suppression of the controls in the interior frontiers reinforcing the controls at the same time in the external frontiers, and to harmonize the measures as regards Visa, asylum and police and judicial co-operation. The two systems are nested to each other: the art. 13.4 of Schengen settle down: „The dispositions of the present Agreement will only be applicable in the measure in that are compatible with the community Right".

7. *Special study of the European Council of Tampere*

The European Council has celebrated a special session in Tampere, the days 15 and 16 of October of 1999, about the creation of a space of freedom, security and justice in the European Union.

8. *Special study of Agreement of may of establishing the Mutual Assistance in criminal mattesr between the Member States of the European Union*

The criminal judicial assistance that today rests in the Convention of Strasbourg (1959) about notification of documents and judicial resolutions and witness appearance and experts, and it is professedly insufficient.

The Convention is elaborated in May of 2000, 29, relative to the judicial assistance in criminal matters among Member States of the European Union. In their antecedents stands out that it is the first that is adopted from the Treaty of the European Union came into force, ands responds to the necessities detected in a seminar of professionals of the criminal law in 1995. The Convention first objective is to improve the judicial co-operation developing and modernizing the existent dispositions as regards judicial assistance, at the same time that it is to facilitate such an assistance being quicker and more effective; the disappearance of the frontiers demands to generate instruments that allow to fight in appropriate way against the international delinquency; it has also been kept in mind the evolution of the new techniques that allow to speed up the co-operation (videocall, telephone call, etc.). This Convention constitutes a international law instrument, that obeys certain unknown norms in the Agreement of 1959, the rule 35 of the Treaty of the European Union that attributes competence to the European Communities justice Tribunal to interpret the dispositions of the Convention. Lastly, it settles down that the dispositions of the Convention foreseen in the article 2 constitute a development of the wealth of Schengen and they are applicable to the relationships, between each Member State of the European Union and Iceland and Norway.

La coopération judiciaire en matière pénale. Analyse des textes communautaires en vigueur et en préparation

ENRIQUE LÓPEZ Y LÓPEZ

Resumé

Divers instruments assurent traditionnellement la mise en œuvre de la coopération judiciaire et policière entre Etats membres (accords bilatéraux, coopération au sein du Conseil de l'Europe ...). Par ailleurs, dès le début, la Communauté européenne s'est engagée en faveur de l'intégration économique. C'est la raison pour laquelle, l'UE a récemment commencé à se soucier de la coopération en matière de justice et d'intérieur. En soixante-dix ans, la coopération intergouvernementale a été mise en œuvre entre les Etats membres, en dehors de la structure institutionnelle de la Communauté européenne (création du Groupe Trevi, réunions semestrielles des ministres de la Justice et de l'Intérieur à partir de 1984, célébration de l'Accord de Schengen en 1985 ...). Le Traité de l'Union européenne, signé à Maastricht et entré en vigueur le 1er novembre 1993, cherche à introduire une coordination et une cohérence accrues, en plaçant sous la responsabilité de l'Union européenne des initiatives et des politiques qui étaient préalablement conçues sans l'empreinte de la CE. Outre le pilier communautaire traditionnel (Traité CE, MINT et EURATOM), le nouveau Traité inclut deux nouveaux piliers de l'Union européenne: les dispositions relatives à la politique étrangère et à la sécurité commune (Titre V) et celles qui ont trait à la coopération en matière de justice et d'intérieur (Titre VI A), basées toues deux sur des mécanismes de la coopération intergouvernementale plutôt que d'intégration véritable.

En ce qui concerne le Titre VI du TUE, la coopération portait sur plusieurs questions d'intérêt commun: l'asile, le franchissement des frontières extérieures, l'immigration, la lutte contre la drogue, la lutte contre la fraude à l'échelle internationale, la coopération judiciaire en matières civile et pénale, la coopération policière et la coopération douanière. En raison de la disparité des approches entre Etats, le système de l'Accord de Schengen, dont l'objectif fondamental est la suppression des contrôles aux frontières intérieures, est en marge de la nouvelle structure. Le Titre VI prévoyait la possibilité d'adopter des positions communes, des mesures communes et des accords communs entre Etats. Ces instruments ne sont pas des instruments juridiques de nature communautaire, tels les règlements ou les directives; ils obéissent à une philosophie de coopération in-

tergouvernementale qui a également été illustrée dans d'autres aspects importants tels que la nécessité de l'unanimité de vote dans le Conseil ou l'exclusion du contrôle judiciaire de la part du Tribunal de justice de la Communauté européenne, à moins que les textes adoptés n'incluent une attribution de compétence déterminée.

La modification du TUE en nouveau Traité d'Amsterdam (octobre 1997, entré en vigueur en mai 1999) constitue un progrès important. Le nouveau Traité, qui a pour but de créer un espace de liberté, de sécurité et de justice, introduit un nouveau Titre IV dans le Traité relatif à la CE (visa, asile, immigration et d'autres questions politiques relatives à la libre circulation des personnes) et inclut également le contrôle des frontières extérieures, l'asile, l'immigration et la coopération judiciaire en matière civile. En conséquence, ces questions sont introduites dans le système judiciaire de l'Union européenne et sont transférées, depuis le Titre VI du TUE, au TCE et pourront donc assurer la régulation requise au moyen des instruments typiques du droit communautaire, à savoir essentiellement les règlements et les directives. Dans le Titre IV, seules peuvent être réglementées les questions de coopération policière et judiciaire en matière pénale, en obéissant à une logique de coopération intergouvernementale. Certaines améliorations ont en tout cas été introduites afin d'accélérer l'adoption et la mise en œuvre des mesures adoptées: c'est ainsi, par exemple, qu'il est prévu de permettre la mise en vigueur des accords après leur ratification par la moitié des Etats et de créer de nouveaux instruments, appelés „décision-cadres" et „décisions"; ces instruments ont été substitués à l'action commune.

1. L'assistance judiciaire en général

- Action commune 96/277/JA1 du 22 avril 1996
- Résolution publiée dans le DOCE C 10, 11-1-1997
- Action commune 98/428/JAI du 29 juin 1998
- Action commune 98/427/JA1

2. Les procédures d'extradition

La loi générale d'extradition est contenue dans l'Accord européen d'extradition du 13 décembre 1957 du Conseil de l'Europe. L'Accord du 19 juillet 1990 sur l'application de l'Accord de Schengen de juin 1985 a permis d'améliorer l'efficacité et le champ des relations d'extradition entre les pays membres, en particulier en ce qui concerne certaines infractions

mentionnées comme bases de l'extradition (articles 50-1 et 63 de l'Accord). La création d'un système d'information spécialisé, le SIS (Système d'information de Schengen), permet d'obtenir immédiatement la description de personnes et d'objets recherchés par un Etat et pour les forces de police de savoir immédiatement comment elles doivent procéder à l'occasion de contrôles. La description d'une personne dans le SIS, en vue de son extradition, peut être utilisée pour la détention provisoire (article 95 de l'Accord).

3. *La reconnaissance des décisions relatives a la privation du permis de conduire*

L'Accord de juin 1998 concernant les décisions relatives à la privation du droit de conduire (DOCE C 216 du 10-7-1998) dont l'objectif est d'établir la reconnaissance mutuelle de telles décisions parmi les Etats membres en permettant que les décisions prises dans l'Etat où l'infraction a été commise produisent également leurs effets dans l'Etat de résidence du contrevenant.

4. *Les commissions rogatoires internationales (cri)*

Comme on le sait, les commissions rogatoires internationales sont destinées à accomplir des actes d'instruction dans un autre Etat membre (l'Etat requis) ou à obtenir la communication de documents, de preuves, d'objets ou de pièces à conviction.

Trois modes de transmission existent actuellement:

- L'instrument de l'article 15 de l'Accord européen d'assistance judiciaire en matière pénale signé à Strasbourg, en avril 1959.
- La voie de l'urgence, prévue par l'article 15-2 du même Accord de 1959 qui permet l'envoi direct de la CRI de l'autorité requérante à l'autorité requise.
- L'instrument prévu par l'article 53-1 de l'Accord d'application de l'Accord de Schengen du 19 juin 1990 en vertu duquel les demandes d'aide peuvent émaner, tant en ce qui concerne leur déroulement que leur issue, d'autorité judiciaire à autorité judiciaire, sans passer par les ministères de la Justice ou les Affaires étrangères.

5. *Autres instruments de collaboration*

1. Les techniques classiques de coopération pénale
1.1 Techniques permettant de faire progresser un processus ou d'exécuter des décisions judiciaires:
- Dénonciation officielle qui permet à un Etat d'envoyer une procédure pénale à un autre Etat
- Livraison temporaire d'un prisonnier par un Etat à un autre Etat pendant une certaine période
- Transmission spontanée d'informations
- Exécution à l'étranger d'une décision de confiscation

1.2 Techniques utilisées dans le cadre de condamnations
- Transfert d'une personne condamnée vers son pays d'origine
- Surveillance à l'étranger de condamnés en situation de liberté conditionnelle

2. Les nouvelles techniques spécifiques des Etats de l'espace Schengen
3. EUROPOL

A l'origine, l'Office central européen de police, qui a vu le jour le 7 février 1992 (dans le Titre VI), lors du Traité de Maastricht était conçu comme une unité de police en charge de l'analyse et de l'échange d'informations à l'échelle de l'UE. Il était chargé de lutter contre le trafic de drogue, sans avoir la possibilité d'agir ou d'entamer des enquêtes. Il ne s'agit pas d'un office fédéral du type du FBI nord-américain.

6. *Etude spéciale de l'accord de Schengen*

L'Accord de Schengen de 1985, ou plus exactement, l'Accord d'application de l'Accord de Schengen de 1990, est très important en cette matière. L'existence de cet Accord détermine la coexistence de deux systèmes: l'espace de l'Union européenne et l'Espace Schengen (Traité de Schengen). En raison de la difficulté de favoriser la libre circulation des personnes et la coopération en matières de justice et d'intérieur dans la Communauté européenne, la France, l'Allemagne et les pays du Benelux ont signé un accord dans ce sens, en 1985, à Schengen, complété en 1990 par un accord d'application dont les objectifs étaient de faciliter la suppression des contrôles dans les frontières intérieures en renforçant en même temps les contrôles aux frontières extérieures, et d'harmoniser les mesures concernant les visas, l'asile et la coopération policière et judiciaire. Les deux systèmes sont liés: l'article 13.4 de Schengen stipule: „Les dispositions de l'Accord actuel ne seront applicables que dans la mesure où elles sont compatibles avec le droit communautaire".

7. *Etude spéciale du conseil européen de Tampere*

Le Conseil européen a organisé une session spéciale à Tampere, les 15 et 16 octobre 1999, concernant la création d'un espace de liberté, de sécurité et de justice dans l'Union européenne.

8. *Etude spéciale de l'accord de mai 2000 concernant l'assistance judiciaire en matière pénale parmi les Etats membres de l'Union européenne*

L'assistance judiciaire et pénale trouve son fondement dans l'Accord de Strasbourg (1959) concernant la notification des documents, les résolutions judiciaires et la comparution des témoins et des experts et est, dit-on, insuffisante.

L'Accord élaboré le 29 mai 2000 a trait à l'assistance judiciaire en matière pénale entre les Etats membres de l'Union européenne. Il est stipulé dans ses antécédents qu'il s'agit de la première décision, adoptée par le Traité de l'Union européenne et entrée en vigueur, et qu'elle répond aux nécessités décelées lors d'un séminaire de professionnels du droit pénal, en 1995. L'accord a pour premier objectif d'améliorer la coopération judiciaire en développant et en modernisant les dispositions existantes concernant l'assistance judiciaire et de contribuer à rendre cette assistance plus rapide et plus efficace. La disparition des frontières contraint à créer des instruments permettant de lutter de manière appropriée contre la délinquance internationale. En outre, l'évolution des nouvelles techniques permettant d'accélérer la coopération (vidéoconférence, appel téléphonique, etc.) a également été prise en compte. Cet accord constitue un instrument juridique international qui obéit à certaines normes inconnues de l'Accord de 1959, telles que la règle 35 du Traité de l'Union européenne qui donne compétence à la Cour de justice des Communautés européennes pour interpréter les dispositions de l'Accord. Enfin, il expose que les dispositions de l'Accord prévues dans la règle 2 constituent un développement de l'acquis de Schengen et sont applicables aux relations existant entre chaque Etat membre de l'Union européenne et l'Islande et la Norvège.

Rechtliche Zusammenarbeit in Strafsachen. Analyse geltender und vorbereitender Gemeinschaftstexte

ENRIQUE LÓPEZ Y LÓPEZ

Zusammenfassung

Traditionellerweise wurde die rechtliche und polizeiliche Zusammenarbeit zwischen den Mitgliedsstaaten mittels verschiedener Instrumente, wie z. B. bilateraler Abkommen und Zusammenarbeit über den Europäischen Rat, entwickelt. Auf der anderen Seite konzentrierte sich die Europäische Gemeinschaft in den Anfangsjahren auf die Verwirklichung des Ziels einer wirtschaftlichen Integration. Aus diesem Grund begann die EU jüngst, sich über die Zusammenarbeit in den Bereichen Justiz und Inneres Gedanken zu machen. In den 70er Jahren wurde zwischen den Mitgliedsstaaten eine von der institutionellen Struktur der EG unabhängige zwischenstaatliche Zusammenarbeit aufgebaut, wie z. B. durch die Schaffung der TREVI-GRUPPE, halbjährliche Treffen der Justiz- und Innenminister ab 1984 und den Abschluß des Schengener Abkommens im Jahre 1985 usw. Durch den in Maastricht unterzeichneten und am 1. November 1993 in Kraft getretenen Vertrag über die Europäische Union (EUV) sollten eine verstärkte Zusammenarbeit und mehr Kohärenz erreicht werden, indem Initiativen und politische Angelegenheiten, die zuvor außerhalb der EG geregelt worden waren, nun unter die Verantwortung der EG gestellt wurden. Der neue Vertrag beinhaltet neben dem traditionellen Gemeinschaftspfeiler (EG-Vertrag, MINT und EURATOM) die zwei neuen Pfeiler der Europäischen Union: die Bestimmungen zur Gemeinsamen Außen- und Sicherheitspolitik (Titel V) und der Zusammenarbeit in den Bereichen Justiz und Inneres (Titel VIA), die jedoch beide eher auf einer zwischenstaatlichen Zusammenarbeit denn auf einer echten Integration beruhten.

Bei Betrachtung von I Titel VI EUV bezog sich die Zusammenarbeit in verschiedenen Fragen von gemeinsamem Interesse, wie z. B. Asyl, Überschreitung der Außengrenzen, Immigration, Drogenbekämpfung, Bekämpfung von Schmuggel auf internationaler Ebene, Zusammenarbeit in den Bereichen Justiz und Inneres sowie von Polizei und Zoll. Auf Grund der unterschiedlichen Ansätze in den einzelnen Staaten steht das Schengener Abkommen, dessen Hauptziel in der Abschaffung von Kontrollen an den inneren Grenzen besteht, am Rande dieser neuen Struktur. In Titel VI war die Möglichkeit zur Verabschiedung gemeinsamer Standpunkte, gemeinsamer Maßnahmen und Abkommen zwischen den Staaten vorgesehen. Al-

lerdings handelt es sich hierbei um keine Rechtsakte auf gemeinschaftlicher Ebene, wie z. B. Verordnungen oder Richtlinien; sondern diese folgen dem Geist einer zwischenstaatlichen Zusammenarbeit, was sich auch anhand anderer wichtiger Aspekte, wie z. B. der Notwendigkeit eines einstimmigen Ratsbeschlusses oder des Ausschlusses einer rechtlichen Kontrolle durch den Gerichtshof der Europäischen Gemeinschaft, zeigte. Letzterer war nämlich nur zuständig, wenn dies in den verabschiedeten Texten ausdrücklich vorgesehen war.

Die Änderung des EUV durch den neuen Amsterdamer Vertrag vom Oktober 1997, der im Mai 1999 in Kraft trat, sollte einen wichtigen Fortschritt darstellen. Mit dem Ziel der Schaffung eines Raums der Freiheit, der Sicherheit und des Rechts wurde durch den neuen Vertrag ein neuer Titel IV in den EG-Vertrag eingefügt (Visumangelegenheiten, Asyl, Immigration; andere politische Sachverhalte im Bereich des freien Personenverkehrs, wie z. B. die Kontrolle der Außengrenzen, Asyl, Immigration und justitielle Zusammenarbeit in Zivilsachen wurden ebenfalls eingeschlossen). Infolgedessen wurden diese Fragen in das juristische System der Europäischen Union integriert und übertragen – auf Grund Titel VI des VEU zum EG-Vertrag – und können künftig auch mittels der typischen Instrumente des Gemeinschaftsrechts, wie z. B. Verordnungen und Richtlinien, geregelt werden. In Titel VI können nur Fragen zu polizeilicher und justitieller Zusammenarbeit in Strafsachen geregelt werden, was damit der Logik einer zwischenstaatlichen Zusammenarbeit folgt. Durch den Willen zu einer beschleunigten Verabschiedung und einer schnelleren Umsetzung verabschiedeter Maßnahmen werden aber dennoch einige Verbesserungen eingebracht, denn auf diesem Wege ist vorgesehen, dass die Abkommen nach Ratifizierung durch die Hälfte der Unterzeichnerstaaten in Kraft treten; außerdem werden neue Instrumente geschaffen, die als „Rahmenbeschluß" und „Beschlüsse" bezeichnet werden. Diese Instrumente ersetzten die gemeinsame Aktion.

1. Rechtshilfe im Allgemeinen

- Gemeinsame Aktion 96/277/JHA, vom 22. April 1996
- Die in Abl. C 10, 11.1.1997 veröffentlichte Entschließung
- Gemeinsame Aktion 98/428/JHA, vom 29. Juni 1998
- Gemeinsame Aktion 98/427/JHA

2. *Die Auslieferungsverfahren*

Das allgemeine Auslieferungsrecht ist Bestandteil des Europäischen Auslieferungsabkommens vom 13. Dezember 1957 des Europäischen Rates. Das Abkommen vom 19. Juli 1990 zur Anwendung des Schengener Abkommens vom Juli 1985 verbesserte die Zusammenarbeit in Auslieferungsangelegenheiten zwischen den Mitgliedsstaaten; dies gilt insbesondere bei schwer wiegenden Verstößen, die als Grundlage für die Auslieferung aufgeführt werden (Art. 50-1 und 63 des Abkommens). Durch Schaffung eines speziellen Informationssystems, des SIS (Schengen-Informationssystem), kann ein Staat auf Personenbeschreibungen und gesuchte Objekte zurückgreifen; die Polizei weiß dadurch sofort, wann sie eine Kontrolle zu veranlassen und wie sie dabei vorzugehen hat. Die Angaben einer Person im SIS in Bezug auf die Auslieferung können für eine Sicherungsverwahrung verwendet werden (Art. 95 des Abkommens).

3. *Anerkennung von Beschlüssen zum Entzug der Fahrerlaubnis*

Ein gewisse Beachtung verdient das Abkommen vom Juni 1998 hinsichtlich der Beschlüsse zum Entzug der Fahrerlaubnis (DOCE C 216 vom 10.7. 1998), mit dem die gegenseitige Anerkennung solcher Beschlüsse zwischen Mitgliedsstaaten erreicht werden soll; danach wäre ein Beschluss in dem Land, in dem die Übertretung begangen wird, auch im Staat des Wohnsitzes des Führerscheininhabers wirksam.

4. *Internationale Rechtshilfekommissionen (CRI)*

Wie bereits bekannt, werden diese Kommissionen zur Vervollständigung von Ermittlungsverfahren in einem anderen Staat (dem ermittelnden Staat) oder zur Übermittlung von Dokumenten, Beweisstücken o. Ä. eingesetzt.

Gegenwärtig bestehen drei Übermittlungsarten:

- Instrument von Art. 15 des im April 1999 in Straßburg unterzeichneten Europäischen Abkommens über Rechtshilfe in Strafsachen.
- Anerkennung einer Dringlichkeit, vorgesehen von Art. 15-2 desselben Abkommens von 1959, wonach die direkte Zustellung von Rechtshilfsunterlagen von der Antragsbehörde zur ermittelnden Behörde zugelassen ist.
- Das durch Art. 53-1 des Abkommens über die Anwendung des Schengener Abkommens vom 19. Juni 1990 vorgesehene Instrument, wonach die Hilfeleistung sowohl in die eine als auch in die andere Richtung von

Gerichtsbehörde zu Gerichtsbehörde erfolgen kann, und zwar ohne zuerst über das Justiz- oder das Außenministerium zu gehen.

5. Sonstige Zusammenarbeitsinstrumente

1. Klassische Formen einer Zusammenarbeit in Strafsachen
1.1 Methoden zur Beschleunigung eines Verfahrens oder der Vollstrekkung gerichtlicher Entscheidungen:
- Offizielle Verzichtserklärung, mit der ein Staat ein strafrechtliches Verfahren einem anderen Staat übertragen kann.
- Zeitweilige Auslieferung eines Gefangenen an einen anderen Staat.
- Spontane Übermittlung von Informationen.
- Vollstreckung eines Beschlagnahmebeschlusses im Ausland.

1.2 Methoden für ein später erfolgendes Strafurteil:
- Verlegung einer verurteilten Person in ihr Ursprungsland.
- Überwachung von Verurteilten im Ausland bei vorläufiger Entlassung.

2. Neue Spezialmethoden der Staaten des Schengen-Raums
3. EUROPOL

Die durch den am 7. Februar 1992 unterzeichneten Maastricht-Vertrag (in Titel VI) geschaffene europäische Polizeibehörde war ursprünglich als eine Behörde für Untersuchung und Informationsaustausch auf EU-Ebene zur Bekämpfung von Drogenhandel vorgesehen – allerdings ohne hierbei gezielte Maßnahmen oder Ermittlungsverfahren einleiten zu können. Es handelt sich hierbei nicht um eine föderale Behörde nach Art des nordamerikanischen FBI.

6. Spezielle Betrachtung des Schengener Abkommens

Das Schengener Abkommen von 1985 beziehungsweise das Abkommen über die Anwendung des Schengener Abkommens von 1990 ist in dieser Hinsicht von großer Bedeutung. Durch das Bestehen dieses Abkommens kommt es zur Koexistenz zweier Systeme – des EU-Raums und des Schengen-Raums (Treated Schengen). Auf Grund der schwierigen Umsetzung des freien Personenverkehrs und der Zusammenarbeit in den Bereichen Justiz und Inneres in der EG unterzeichneten Frankreich, Deutschland und die Benelux-Staaten 1985 in Schengen zu diesem Zweck ein Abkommen, das 1990 durch ein Abkommen über die Anwendung ergänzt wurde, dessen Ziele in der Erleichterung einer Abschaffung der Kontrollen an Innengrenzen – bei gleichzeitiger Verstärkung der Kontrollen an den Außengrenzen – und der Harmonisierung von Maßnahmen in Bezug auf Visumangelegenheiten, Asyl und einer Zusammenarbeit in polizeilichen und gerichtlichen Angelegenhei-

ten bestanden. Die beiden Systeme sind jedoch ineinander verwurzelt, denn in Art. 13.4 des Schengen-Abkommens heißt es: „Die Bestimmungen des vorliegenden Abkommens sind nur insoweit anwendbar, als sie sich mit dem Gemeinschaftsrecht vertragen".

7. *Spezielle Betrachtung des Europäischen Rates von Tampere*

Der Europäische Rat kam am 15. und 16. Oktober 1999 in Tampere zu einer Sondersitzung zusammen, bei der es um die Schaffung eines Raums der Freiheit, der Sicherheit und des Rechts in der EU ging.

8. *Spezielle Betrachtung des Abkommens vom Mai 2000 über Rechtshilfe in Strafsachen zwischen den Mitgliedsstaaten der Europäischen Union*

Die nach dem Straßburger Abkommen von 1999 über die Übermittlung von Schriftstücken und Gerichtsbeschlüssen sowie über Vorladung von Zeugen und Sachverständigen noch übrig bleibende Rechtshilfe in Strafsachen ist erklärtermaßen unzureichend.

Das Abkommen über Rechtshilfe in Strafsachen zwischen Mitgliedsstaaten der Europäischen Union trat am 29. Mai 2000 in Kraft. Schon im Vorfeld erweist sich dieses Abkommen als das Erste seit Inkrafttreten des Vertrags über die Europäische Union; außerdem trägt es jenen Notwendigkeiten Rechnung, die 1995 von Fachleuten für Strafrecht in einem Seminar festgestellt worden waren. Erstes Ziel des Abkommens besteht in der Verbesserung der justitiellen Zusammenarbeit durch Entwicklung und Modernisierung bestehender Bestimmungen im Rechtshilfebereich; gleichzeitig soll eine solche Hilfe schneller erfolgen und wirksamer sein. Die Beseitigung von Grenzen erfordert nämlich die Schaffung von Instrumenten zur angemessenen Bekämpfung internationaler Kriminalität; außerdem wurde die Entwicklungen neuer Methoden zur Beschleunigung der Zusammenarbeit hervorgehoben (wie z. B. Videokonferenzen, Telefongespräche usw.). Das Abkommen stellt ein Instrument des internationalen Rechts dar, das einigen unbekannten Normen des Abkommens von 1959 Rechnung trägt. Regelung 35 des Vertrags über die Europäische Union räumt dem Gerichtshof der Europäischen Gemeinschaften die Zuständigkeit zur Deutung der Bestimmungen des Abkommens ein. Schließlich ist in ihr festgeschrieben, dass die in Regelung 2 vorgesehenen Bestimmungen des Abkommens zur ordnungsgemäßen Entfaltung des Schengener Abkommens beitragen und für die Beziehungen zwischen jedem Mitgliedsstaat der Europäischen Union und Island und Norwegen gelten.