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Transfer of criminal proceedings in European legislation

The article examines the current regulations on the procedure for transfer of criminal proceedings in the European legislation, focusing on the major international instruments in this field, in particular: the European Convention on the Transfer of Proceedings in Criminal Matters of the Council of Europe in 1972 and Framework Decision 2009/948/JHA of the EU Council of 30 November 2009 on prevention and settlement of conflicts of jurisdiction in criminal proceedings. The study highlights the importance of transfer of criminal proceedings as a form of international legal assistance in criminal matters between the European countries.

Key words: transfer, criminal proceedings, International Legal Cooperation.

European practices in the field of criminal justice shows that countries often face situations in which two or more of them have jurisdiction to investigate and bring prosecutions for the same or related offenses. To a duplication of jurisdictions can lead situations where the offense is committed in the territory of several countries, for example: trafficking in persons; trafficking and distribution of drugs or when the consequences of the crime have occurred on the territory of several countries, for example: cyber attacks; use of nuclear, chemical or biological weapons. There are cases where the jurisdiction of a state is based on the principle of territoriality /i.e. when the offense is committed in the territory of a particular State or the consequences of crime have occurred in its territory/ and in others cases -the jurisdiction is based on personal principle / i.e. when the offense is committed by one of its nationals or by a person residing in its territory/. There are also possible situations in which the State has jurisdiction to initiate criminal proceedings based on the universal principle.

Thus is likely to lead to parallel conducting of criminal proceedings in two or more countries for the same criminal act. The last, besides being contrary to the fundamental principles of law, such as the principle of avoiding the double criminality of the offense "Ne bis in idem", it also creates undesirable conflicts of jurisdiction between countries.

One of the forms of international legal cooperation, which helps to resolve the conflict of jurisdiction between states and to facilitate the administration of justice in criminal cases is the transfer of criminal proceedings. It is regulated procedural possibility to transfer criminal proceedings from one country to another and if the last agrees to host the proceedings and to continue it, undertakes the obligation to complete it with a valid Procedural Act. There are various reasons why the criminal proceedings would be better performed in another country than the country in which the proceedings has started, so the same should be transferred, e.g . when the offender is in the territory of the other State or when there are difficulties in securing evidence in the first state or if the suspect has already served prison sentences in other countries.

Currently, transfer and coordination of criminal proceedings between European countries are governed by several international instruments, as well as many bilateral and multilateral agreements. The main international instrument in this field is the European Convention on the Transfer of Proceedings in Criminal Matters of the Council of Europe / 1972 Convention / [1]. Currently, the 1972 Convention has been ratified by almost all Member States of the Council of Europe, including Bulgaria.

At the same time, some European countries still rely on the mechanism of the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe in 1959 [2], in conjunction with the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union since 2000 [3]. On the other hand, some countries use bilateral and multilateral agreements or informal cooperation, based on principle of reciprocity, in solving of the questions concerning criminal cases.

The main objective of the 1972 Convention is to resolve the issue of the applicable national law, when the power to prosecute in respect of the same offense appears in two or more Member States. Under certain circumstances and on a case by case allows the Contracting States to transfer started by a one of them criminal proceedings under the jurisdiction of another country.

Under the provisions of the 1972 Convention requested State may accept a request for transfer of criminal proceedings only when national courts have jurisdiction to examine it , and if the state can apply its do-

mestic law / when called “primary competences” / or the law of the requesting country / when called “subsidiary competence”/. In this sense, the 1972 Convention distinguishes between two types of criminal courts - initial / primary / and additional / subsidiary / .

Initial / primary / jurisdictions governed by Art. 3 of the Convention of 1972 and includes cases in which two or more countries have their own jurisdiction to prosecute an offense, but in the interest of better administration one of them renounces its jurisdiction in favor of another state. These are cases in which criminal proceedings shall be borne by the State of nationality of the alleged offender or the State in which territory they found most or the most important evidence of the criminal act.

In the so-called additional / subsidiary / jurisdiction that is governed by Art. 2 of the 1972 Convention, the requested State initially has no criminal jurisdiction to prosecute a particular offense, but acquires such jurisdiction, following request for transfer of criminal proceedings from another country with an initial competence. Typically, such a transfer of jurisdiction shall be made in respect of offenses committed abroad by foreigners against persons who are also foreigners, but the interests of justice requires criminal proceedings to be conducted in another state with additional jurisdiction. For example, when a foreign citizen escape to another country in order to avoid the punishment that awaits him in the State in which the offense was committed. In this case, the requested State applies its national criminal law, based on transfers from other state jurisdiction [4,5].

A key feature of subsidiary jurisdiction is that the same is entirely made dependent on the availability of primary jurisdiction of the requesting State. In this sense, if the country with primary jurisdiction loses jurisdiction to prosecute and condemn specific acts due to decriminalization, enactment of a law on amnesty or other similar reasons, it leads to the withdrawal of the criminal jurisdiction of the requested State, which shall immediately terminate proceedings initiated [6]. Such a requirement does not exist in the primary jurisdiction, in which after the transfer of criminal proceedings, it is fully applicable the procedural law of the requested State and the same is not bound by the jurisdiction of the requesting State.

Significant difference from the primary jurisdiction is provided for in Art. 17 of the 1972 Convention the obligation of the state with additional jurisdiction — before ruling on the application for transfer, to acquaint the suspect with the request for transfer of proceedings and to hear him. On the one hand, it means that the requested State can not respond, respectively to accept a request for transfer of proceedings if it fails to notify the suspect and to waive his explanations. On the other hand, this preliminary hearing procedure allows the suspect to get acquainted with the accusation against him and to say his opinion about in which country shall be conducted the criminal proceedings against him.

Another feature of the subsidiary jurisdiction is that the receiving competence state has no right to impose punishment that is more severe from the one that is provided for in the criminal law of the transferring State [5]. Such a restriction does not exist in the primary jurisdiction.

Last but not least, an important feature of the subsidiary jurisdiction, according to the provisions of Article 27 of the Convention of 1972, is the legal possibility of requested State to impose a temporary measure “detention in custody”, on condition that its law allows that measure for the same offense and if there are reasons to believe that the suspect will abscond or create danger for concealment of evidence. Application of the measure “temporary detention” shall be permitted on explicit demand by the requesting State, when the last has declared only its intention to transfer criminal proceedings, but before its actual transfer. As a ground for the imposition of that measure is required that in the requesting State has already been issued an arrest warrant or other act with the same meaning under its procedural law in argument of paragraph 2 of Article 27 of the 1972 Convention. Next, there is also a restrictive condition under which the requested State is obliged to release the detained person, unless it receives a request for transfer of proceedings from the requesting State within 18 days of detention.

Differences in the legal regime, governing the two types of criminal jurisdictions under the provisions of the 1972 Convention, will inevitably lead to differences in the implementation of procedures for transfer of criminal proceedings, based on them. And this is quite natural, given the importance of criminal jurisdiction as a higher right to apply a criminal repression towards a certain type of offenses and to a particular category of persons. Logically, once a country that do not usually has the power to prosecute a certain act and in most cases has no specific self interest than the best interests of justice internationally, the extent of its competence in criminal cases shall be set by the State, which is most interested from the disclosure of the offense and the punishment of the perpetrator. Precisely as a result of such interaction between countries are building the foundations of the international cooperation and the provision of this legal option creates conditions for more success in the fight against cross-border crime.

In both criminal jurisdictions, however, the act should be incriminated as a crime and the alleged perpetrator of the criminal act must be a carrier of criminal liability under the law of both Contracting States [6]. In contrario argument / "per argumentum a contrario" /, the transfer will not be possible if the act for which the request is made does not constitute a criminal offense under the criminal law of the requested State, and if the subject of the offense is not criminally responsible person under the law of the requested State. In this context, the double criminality of the offense and the criminal liability of the alleged perpetrator are the two absolute prerequisites for ensuring the transfer of criminal proceedings under the 1972 Convention.

Another prerequisite for the transfer of criminal proceedings is the existence of a contract between the two interacting states, governing the transfer. Countries that have ratified the 1972 Convention are performing the procedures in transfer in accordance with its provisions. In the absence of legal assistance treaty, it is sufficient the existence of relations of mutuality between the requesting and the requested State [7; 214–220].

Conditions, under which European countries can transfer criminal proceedings, are expressly mentioned in Art. 8 of the 1972 Convention. They are provided alternatively, i.e. having only one of them is the grounds for a transfer of proceedings. Conditions can be classified into several groups, depending on the reasons for the transfer of criminal proceedings, namely:

- Conditions relating to nationality and permanent residence of the alleged offender:
 - ✓ if the suspected person is ordinarily resident in the requested State;
 - ✓ if the suspected person is a national of the requested State or if that State is his State of origin.
- Conditions relating to the conduct of criminal proceedings:
 - ✓ if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
 - ✓ if proceedings for the same or other offences are being taken against the suspected person in the requested State;
 - ✓ if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
 - ✓ if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured.
- Conditions relating to the enforcement of the sentence:
 - ✓ if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;
 - ✓ if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so.

All preconditions for a transfer of criminal proceedings are consistent with fundamental principles of justice, fairness, procedural economy and full implementation of the right of defense in criminal process, which in the highest level should secure the interest of justice not only at the individual state, but also internationally.

1972 Convention provides that all the correspondence regarding to the transfer is carried out by the Ministries of Justice between the two interacting states and each state determines the state authorities, which in accordance with its national law are competent to present, respectively to receive requests for transfer of criminal proceedings. For example, in Bulgaria the central state authorities competent to receive, respectively to request the transfer of criminal proceedings are: the Supreme Cassation Prosecutor's Office, when the case is in the pre-trial phase and the Ministry of Justice, when the proceedings has reached the trial phase [8].

The requested State shall immediately inform the requesting State of the decision of its state authorities on the request for transfer. If the application is accepted, the decision together with all materials received regarding transfer of criminal proceedings shall be sent to the relevant competent authorities - prosecutor or the court, for the initiation, respectively for the continuation of the criminal proceedings.

It is important to note that the criminal proceedings after its transfer shall be held in accordance with the national legislation of the requested State. Furthermore all investigative actions, committed by the requesting State until the transfer, shall retain their probative value. Depending on the collected by the both parties facts and evidence, the requested State has the right to continue or discontinue criminal proceedings. In all cases, however, the requested State must rule with a valid procedural act, a copy of which should be sent to the requesting State for information.

Depending on the case and on explicitly specified in the Convention of 1972 conditions, the requested State has several possibilities: it might not take any action on the request for transfer; it may refuse to accept the request in whole or in part, or it may withdraw the initial acceptance of the request for transfer.

The grounds for refusal of the request for transfer are related to admissibility of criminal proceedings and are referred alternatively in Article 10 of the 1972 Convention. If the requested State does not possess the required competence to conduct lawful criminal proceedings, it shall reject the request as being inadmissible.

Requested State takes no action on the request if it does not comply with the absolutely essential prerequisites for this, namely: the subject of criminal proceedings should be an act, which constitutes a criminal offense under the criminal law of the requested State and the person suspected of committing a criminal act should be held criminally liable under its law.

Another case in which the requested State leave the request for transfer without movement is when initiation of criminal proceedings would violate the principle "Ne bis in idem", respectively when in another country has already been initiated criminal proceedings or has already been delivered an effective sentence for the same offense against the same person.

The third case in which the requested State takes no action on the request is when the limitation period for prosecuting criminal offense under the law of the requesting State has expired, at the time of receiving the request. It follows that the transfer of criminal proceedings is inadmissible where the limitation period has already expired in the requesting State, whichever is the moment of receiving the request in the requested State.

In this respect, Article 22 and Article 23 of 1972 Convention expressly states that a request for proceedings leads to an extension of the limitation period in the State for six months, but the Contracting States have the right to express their reservation in respect of this provision. The extension of the period for prosecution, however, is in force, provided that it is not completely expired under the criminal law of the requesting State.

The preconditions under which the requested State may refuse to accept in whole or in part a request for transfer of proceedings are alternatively allowed under the Article 11 of the 1972 Convention. In its essence the grounds for refusal of transfer are peculiar obstructions, lack of conditions, that hinder the integrity of the criminal proceedings in the State and therefore contradict to its original purpose.

The requested State may accept the request in part, when it finds that there are no any necessary conditions favorable to conducting criminal proceedings on its territory, but it agrees to perform certain investigative actions or other procedural acts in the form of legal assistance to requesting Member.

The requested State may refuse to accept the request in whole or in part, if it determines that:

- ✓ The grounds on which the claim is justified is not enough. Judgment on the merits of the request for transfer is carried out taking into account the provisions of the national law of the requested State and the implementation of the imperative conditions laid down for implementation of the transfer of proceedings under the 1972 Convention. In this sense, if the requested State consider that there are no prerequisites for the transfer of criminal proceedings, respectively if there is an obstacle in its implementation and/or if it considers that the objectives of justice will not be attained, the transfer request must be rejected.

- ✓ Suspected person does not reside in the requested State or if the suspect is not a national of the requested State and is not permanently resident in that State at the time of the offense. The requested State may refuse a transfer, if its provides that conducted the proceedings under its territory would not be in the best interest of providing the objective truth, due to the violation of the personal principle and /or the inability to ensure the personal presence of the suspect during prosecution against him, which is an essential element of its rights of defense in criminal proceedings.

- ✓ The act for which the request for transfer was made is of political character or is absolutely military or absolutely tax offense, i.e. if the act is related to national security, internal policy or administrative organization that are issues within the exclusive jurisdiction and sovereignty of individual states.

- ✓ There are substantial grounds for believing that the request for proceedings was made by considerations of race, religion, nationality or political beliefs. It is well known that the principle of non-discrimination is one of the fundamental principles enshrined in European legislation [9].

- ✓ According to the penal law of the requested State, upon receiving the request the possibility of criminal prosecution of the offense — subject to the transfer case, was time-barred. This rule applies in cases where applicable is the penal law of the requested State, in the hypothesis of Article 3 of the 1972 Convention. At the same time, the Convention explicitly states that this hypothesis does not apply in the provisions of art. 26, paragraph 2, under which any valid action that interrupts the limitation period in one of the Contracting States have the same effects in other countries. Thus is guaranteeing the right of the requesting State to continue the prosecution in respect of the same offense after receiving the refusal of the requested State.

- ✓ According to the penal law of the state with additional jurisdiction, upon receiving the request for transfer the criminal proceedings have been time-barred, even after it has taken into account the extension of the limitation period for six months, that is provided in Article 23 of the Convention of 1972.

✓ The offense was committed outside the territory of the requesting State. There are various reasons why a state may conduct criminal proceedings in respect of a particular act, although the same is not committed in its territory or on the territory of the requesting State. As mentioned, this is admissible under the provisions of jurisdiction, based on personal or universal principle, as in the case of subsidiary / additional / jurisdiction. That jurisdictions, however, could be exercised only with the agreement of the requested State to which transfer represents a legal possibility, depending on the assessment of its competent authorities, which are not obliged to approve the application of the requesting State.

✓ Conducting the criminal proceedings would be contrary to the international obligations of the requested State or to the basic principles of its national law.

✓ The requesting State has violated procedural rules laid down in the 1972 Convention. For example, when the requesting State does not provide the requested State all necessary documents and materials on the transferred case or if it continues to lead the prosecution on its own territory, in violation of agreements between the two countries. In this regard, the 1972 Convention on the provision of Article 15, paragraph 1, provides that the request for criminal proceedings shall be applied with the original or a certified copy of the criminal case, together with all other required documents, including documents evidencing coercive measures, taken regarding the suspected person. Furthermore, pursuant to paragraph 2 of Article 15, the requesting State shall inform in writing the requested State for all taken by it procedural actions or measures under the prosecution, after transmitting of the request.

In all these hypotheses there is a procedural option, not an obligation of the requested State to accept or reject the request for transfer of criminal proceedings, which is subject to the discretion of the competent authorities. Of course, this assessment should be consistent with international rules and standards, as well as legal assistance treaty that countries are bound.

It should be noted that the receipt of the request for transfer of criminal proceedings is not an irrevocable act. Requested State has the power to withdraw its acceptance of the request, if subsequently any of the circumstances listed in Article 12 of the Convention of 1972 occur, namely:

✓ If it turns out that the personal presence of the suspect can not be provided during the proceedings in that State;

✓ If the sentence that could be issued, can not be performed in this state;

✓ If before the case is submitted to the court arises one of the grounds for refusal under Article 11;

✓ And in other cases where the requesting State has given its consent.

Here, it means the newly emerged or newly discovered circumstances, which were unknown to the the Requested State when receiving the request for transfer.

When considering the transfer requests, the requested State should be guided not only by domestic law, but also by the provisions of international criminal law as the primary purpose of the procedure for transfer of criminal proceedings is to conduct a full and effective prosecution, corresponding the overall objective of achieving an area of "freedom, security and justice" among European countries.

Refusal to accept the request for transfer and withdrawal of acceptance by the requested State automatically restore the right of the requesting State to continue the prosecution under national law. The same applies to cases where the requested State informs the requesting State of its decision not to initiate proceedings or to terminate it / Article 21, paragraph 2, b."d" of the 1972 Convention/.

Convention of 1972 also provides an opportunity for the requesting State to withdraw his transfer request first, before receiving a response from the requested State /Article 21, paragraph 2, b. 'e'/. Thus the criminal jurisdiction, i.e. the right to prosecute and issue effective sentence on the criminal act, remains in the requesting State before the criminal proceedings has been transferred.

Other international instrument related to the procedure for transfer of criminal proceedings, which governs in particular the issue of criminal jurisdiction of the European countries is Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings between European countries, adopted by the EU Council [10]. It refers to situations where several Member States have criminal jurisdiction to conduct criminal proceedings for the same facts, involving the same parties. The Framework Decision establishes a comprehensive procedural framework for exchange of information and direct consultations, aimed to prevent violations of the principle "Ne bis in idem", respectively to avoid adverse consequences arising from the conduct of parallel criminal proceedings, which will lead to a final decision in two or more Member States.

Framework Decision 2009/948/JHA contain essential procedural requirements, expanding the legal framework of the 1972 Convention, as it complements the established standards on exchange of information

between Member States. First, construing the provisions of Article 2 and Article 3 of the 1972 Convention, it refers predominantly cases where criminal proceedings have been instituted or is to be instituted by a Member State, which in the interest of better administration decides to transfer the criminal proceedings to another Member State, which until the transfer has not conducted any investigation on the same facts and against the same persons. Thus the 1972 Convention provides the general hypothesis of transfer of criminal proceedings from one Member State to another. While the Framework Decision 2009/948/JHA shall apply only if there is so-called "Parallel proceedings" [11] in several countries, which after reaching a consensus among themselves decide to transfer their criminal proceedings into a Contracting State, uniting them in this way in one common criminal proceedings.

Moreover, according to Article 14 and Article 15 of the 1972 Convention, the Contracting States shall communicate with each other and shall exchange information after the submission of a request for transfer of criminal proceedings and therefore these consultative procedure appears to be subsequent to already started procedure of transfer. While the Framework Decision stipulates the possibility for competent authorities of both countries to consult each other prior to a request for transfer of criminal proceedings in order to overcome any uncertainty and to avoid submission of the request when there are no necessary conditions for the realization of the transfer.

Next, the 1972 Convention in its part IV "Multiple criminal proceedings" provides the hypothesis of "parallel criminal proceedings", which is subject to regulation by the Framework Decision 2009/948/JHA. Thus, according to Article 30, paragraph 1 of the Convention of 1972: "Each Contracting State, which before initiating or during the proceedings for an offense for which it considers that the is not of a political or a military nature, becomes aware for the proceedings pending in another Contracting State against the same person for the same offense, shall consider whether to terminate or temporarily suspend its proceedings, or transfer it to another country.» In any case, the Convention requires a decision to be taken on the merits, as the countries concerned shall use their best efforts in order to determine which of them to continue the proceedings. It can be concluded that these "best efforts" are expressed in mutual consultation and exchange of information between Member States. Precisely this consultation procedure is regulated in detail by the Framework Decision 2009/948/JHA to complement the basic principles, laid down in the 1972 Convention.

For implementation of the goals, the Framework Decision 2009/948/JHA uses the terms - competent authority, contacting authority and contacted authority, as each Member State has the right to determine which authorities under its national legislation are competent to act in accordance with that decision. According to Article 4, paragraph 3, Member States may, if necessary, created by the organization of their internal system, designate one or more central authorities to assist the competent authorities in the administrative transmission and reception of requests and to assist them in the consultation process.

According to Article 5 of the Framework Decision, where a competent authority of a Member State has reasonable grounds to believe that in another Member State is conducted parallel criminal proceedings, it shall contact the competent authority of that Member State, in order to receive confirmation of the existence of such parallel proceedings. When the contacted authority confirm the existence of parallel proceedings, the competent authorities of the Member States concerned enter into direct consultations in order to reach consensus about which Member State should continue the criminal proceedings, respectively which country should terminate her proceedings in favor of the other.

Pursuant to Art. 10, paragraph 2, the competent authorities shall inform each other of any important procedural measures that have been taken in the proceedings until they are consulting directly. Nevertheless, it is expressly stated that when a competent authority is requested to provide specific information that could harm essential national interests in the security field or endanger the safety of individuals, it shall not be obliged to provide the requested information.

The envisaged consultation procedure considerably facilitates the competent authorities in making decisions regarding the transfer of jurisdiction. Direct consultations enable the competent authorities to thoroughly familiarize themselves with the information from the two countries on the crime committed and decide which is the most appropriate way, in terms of the best interests of justice, to be conducted the criminal proceedings without violating the principle "Ne bis in idem".

Framework Decision provides that if during the direct consultations consensus is reached about concentration of the criminal proceedings in one Member State, the competent authority of that Member State shall inform the competent authorities of the other Member State of its closure, which is in accordance with Article 16, paragraph 2 of the 1972 Convention.

In case the two Contracting States are unable to reach consensus, each of them has the authority to refer the dispute to Eurojust in accordance with the Eurojust Decision [12], which obliges Member States to inform it of any case of a dispute of jurisdiction or the likelihood of such a dispute, where at least one of them considers it appropriate.

As evident from the above, the guiding objective of transfer of criminal proceedings as one of the forms of mutual legal assistance in criminal matters is to ensure a more efficient, transparent and flexible justice, outside the jurisdiction of individual states. At this stage, using the accepted international legal mechanisms, European countries have enough resources to dwell with the adverse effects of cross-border crime. This, of course, does not mean that efforts in this direction should not be continued. On the contrary - the rapidly changing socio-economic and geopolitical situation in Europe and around the world requires a constant renewal and improvement of used international legal instruments, particularly those, which regulate relations between states regarding the fight against criminality.

References

- 1 Signed in Strasbourg on 05.15.1972.
- 2 Signed in Strasbourg on 04.20.1959.
- 3 Signed in Strasbourg on 29.05.2000.
- 4 Under Article 4 of the 1972 Convention: "The requested State shall discontinue proceedings exclusively grounded on Article 2, when to its knowledge the right of punishment is extinguished under the law of the requesting State for a reason other than time-limitation, to which Articles 10.c, 11.f and g, 22, 23 and 26 in particular apply".
- 5 Under Article 25 of the 1972 Convention: "In the requested State the sanction applicable to the offence shall be that prescribed by its own law unless that law provides otherwise. Where the competence of the requested State is exclusively grounded on Article 2, the sanction pronounced in that State shall not be more severe than that provided for in the law of the requesting State".
- 6 Article 7, paragraph 1 of the 1972 Convention, in conjunction with Article 7, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: "No one shall be held guilty of any act or inaction which at the time of his execution was not qualified as an offense under national or international law. Can not be imposed a heavier penalty than what was provided for the offense at the time when it was committed".
- 7 *Girginov A.* "International Legal Assistance in Criminal Matters" — By: Sophie-R, 2012, p. 214–220.
- 8 Section IV, Chapter XXXVI, Art. 478 — art. 479 of the Criminal Procedure Code of the Republic of Bulgaria.
- 9 European Convention for the Protection of Human Rights and Fundamental Freedoms, Art.14: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." In relation to the Charter of Fundamental Rights, Art. 21, paragraph 1: "Any form of discrimination based on sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited".
- 10 Signed in Brussels on 30.11.2009, OJ L № 328 of 15.12.2009.
- 11 According to Article 3, b. "a" of Framework Decision 2009/948/JHA of the Council of the EU: "parallel proceedings" means criminal proceedings, including pre-trial and trial phases, which are held in two or more Member States on the same facts and the same person.
- 12 Decision 2002/187/JHA of the Council of Europe on 28 February 2002 setting up Eurojust in order to improve the fight against serious crime (OJ L 63, 6.3.2002), which was last amended by Decision 2009/426 / JHA Council of Europe of 16 December 2008 on the strengthening of Eurojust (OJ L 138, 4.6.2009).

Р.Войнова

Еуропа заңнамасындағы қылмыстық іс жүргізуді тапсыру

Мақалада Еуропа заңнамасындағы қылмыстық іс жүргізуді тапсыру тәртібі жөніндегі ережелер осы саладағы негізгі халықаралық құжаттарға, соның ішінде 1972 жылғы Еуропа кеңесінің қылмыстық істер бойынша соттық іс жүргізуді тапсыру жөніндегі Еуропалық конвенция және Қылмыстық іс жүргізу қызметіндегі кикілжіңнің алдын алу әрі реттеу бойынша 30 қараша 2009 жылғы ЕК Рамалық шешіміне көңіл аударып отырылып, қарастырылған. Зерттеуде еуропалық елдер арасындағы қылмыстық істер бойынша халықаралық құқықтық көмек берудің нысаны ретінде қылмыстық істерді тапсыру мүмкіндігінің маңыздылығы аталып, көрсетілген.

Р.Войнова

Передача уголовного производства в Европейском законодательстве

В статье рассмотрены существующие правила о порядке передачи уголовного производства в Европейском законодательстве. Отмечены основные международные документы в этой области, в частности, Европейская конвенция о передаче судопроизводства по уголовным делам от Совета Европы в 1972 г. и Рамочное решение 2009/948 / ПВД Совета ЕС от 30 ноября 2009 г. по предотвращению и урегулированию конфликтов юрисдикции в уголовных разбирательствах. Автором подчеркивается важность передачи уголовного дела в качестве формы международно-правовой помощи по уголовным делам между европейскими странами.

Репозиторий КарГУ