

# Judicial Cooperation in Criminal Matters in Europe

Module I.- Judicial Cooperation in criminal matters in Europe: from judicial  
assistance to the principle of mutual recognition

Unit 1:

Evolution of international judicial cooperation in criminal matters: in particular,  
judicial cooperation in criminal matters in Europe

Author

Amaya Arnaiz Serrano

Lecturer of Procedural Law

Universidad Carlos III de Madrid

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1. Why is it more appropriate to talk about international legal cooperation than judicial cooperation at this moment in time?<sup>1</sup>

- a) Because judicial cooperation refers only to collaboration in a bilateral context.
- b) Because judicial cooperation refers only to collaboration based on what is known as minor assistance.
- c) Because strictly speaking judicial cooperation refers to cooperation aimed at favouring the judicial proceedings.
- d) Because judicial cooperation strictly speaking refers to cooperation in a multilateral context.

2.- In what contexts can international legal cooperation take place at present?<sup>2</sup>

- a) Solely and exclusively in criminal matters.
- b) Both in a criminal context and in contentious-administrative matters related to sanctioning proceedings.
- a) In a criminal context, in contentious-administrative matters and in internal clemency proceedings as well as in indemnification and civil actions related to a crime.
- b) In a criminal context and in contentious-administrative matters related to sanctioning proceedings and in all civil proceedings related to indemnification derived from a criminal act.

3.- What is the main mission of the cooperation networks?<sup>3</sup>

- a) To report the failure to apply the international legal cooperation instruments.
- b) To resolve the problems of interpretation and application of the international legal cooperation instruments.
- c) To prepare drafts for the development of new international legal cooperation instruments.
- d) To improve the awareness, understanding and coordination in the execution of international legal cooperation policies.

4.- What is the original basis for legal cooperation?<sup>4</sup>

- a) The principle of mutual recognition.
- b) The principle of mutual trust.
- c) The principle of international courtesy.
- d) The principle of harmonisation.

5.- What legal principle of criminal law did the international legal cooperation instruments originally affect?<sup>5</sup>

- a) The principle of legality.
- b) The principle of territoriality.
- c) The principle of *ne bis in idem*.
- d) The principle of non-retroactivity.

6.- Can a bilateral convention be used to transform or alter the cooperation provisions established for a multilateral ambit? Explain your answer<sup>6</sup>.

- a) Yes, always.
- b) No, never.
- c) Yes, when the multilateral convention envisages as much.
- d) No, unless authorised by the body responsible for the cooperation instrument.

7.- What international instrument contains the first definition of legal cooperation?<sup>7</sup>

- a) The United Nations Charter of 1945.
- b) The European Extradition Convention of 1957.
- c) The Council of Europe Convention on judicial assistance in criminal matters of 1959.
- d) The United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

8.- What is the greatest achievement of the cooperation instruments developed under the Council of Europe?<sup>8</sup>

- a) Their broad subjective scope: they all have a universal vocation, allowing states that do not belong to that ambit to join.
- b) Their integrity: they are conventions that do not allow the signatory states to include reservations.
- c) Their broad objective scope; these instruments cover the majority of problems related to international legal cooperation in criminal matters.
- d) Their executive nature: all members undertake to directly enforce the Conventions.

9.- How can the failure to apply or incorrect interpretation of Council of Europe Conventions be reported?<sup>9</sup>

- a) Via diplomatic channels.
- b) The ECJ.
- c) No channels exist.
- d) Before the Council of Ministers.

10.- What instrument in the context of the European Union contains the first step in the development of judicial cooperation policies?<sup>10</sup>

- a) The Treaty of Lisbon.
- b) The Treaty of Schengen.
- c) The Treaty of Nice.
- d) The Treaty of Amsterdam.

<sup>1</sup> The correct answer is c), as judicial cooperation originally referred exclusively to the instruments that made it possible for a state to exercise its jurisdictional power; meanwhile, at present, cooperation extends to areas that —while closely related to the proceedings—, fall outside what can strictly be understood as judicial cooperation, as it deals with mechanisms aimed not so much at favouring judicial proceedings (because 'judicial' should be understood as referring to the trial or court proceedings), but also to other activities that while related, go beyond it. For this reason, cooperation increasingly tends to push towards a common approach to criminal rules both of a procedural and substantive nature.

<sup>2</sup> The correct answer is c), because in recent years the scope of application of cooperation has been extended (when it was originally restricted to criminal infringements —in principle excluding fiscal or political crimes—), to include administrative proceedings when the infringement by the administrative authority can be brought by the affected party before a court; to indemnification proceedings due to unjustified investigations or sentencing measures; to clemency proceedings and to civil actions related to criminal actions before the criminal court has issued a final judgment on the crime.

<sup>3</sup> The correct answer is d), as the complexity that the regulatory framework of international legal cooperation has acquired nowadays has made it necessary to create different kinds of bodies and institutions responsible for facilitating it, including the cooperation networks such as the European judicial network; the Schengen consultative network; the European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes and the European crime prevention network.

<sup>4</sup> The correct answer is c) because cooperation can be said to have emerged originally as a manifestation of the most primitive international law since this collaboration in criminal matters arose as a means of enabling states to satisfy their own national interests. In an area such as criminal matters, constructed on the basis of the principle of territoriality, the appearance of cross-border disputes or proceedings with a foreign element, highlighted the inability of states to deal with these new phenomena individually. Therefore, its original basis was none other than *comitas gentium ob reciprocam utilitatem* (international courtesy or reciprocal use) and the principle of *pacta sunt servanda* (agreements must be kept); because ultimately what the states sought in this regard was the execution of their own law.

<sup>5</sup> The correct answer is b), as the internationalisation of criminal conduct means that international cooperation for the suppression of crime between states is evolving, allowing it to be based in principles that objectively restrict the sovereignty of each country, thus disdaining classical national sovereignty theory, which was based on the principle of territoriality and non-intervention and favoured the impunity of international crimes.

<sup>6</sup> The correct answer is b), because even though international legal cooperation in criminal matters has its origins in bilateral intergovernmental policies that evolved rapidly towards multilateral environments, this has in no way meant the disappearance of cooperation between two states, as generally speaking this tends to constitute an improvement on the provisions established at a regional level. For this reason international instruments usually permit enhancements by means of bilateral conventions. Thus, for example, in a multilateral environment such as that of the European Union, provisions such as the 2000 ECJACM contain clauses such as Article 1.2 which states that: «This Convention shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States ...». This represents acknowledgement that on occasion the relation between two states derived from proximity or historical, political or cultural links can be sufficient to achieve better cooperation instruments. Even though globalisation has led to states fighting crime jointly, it is also true that the instruments achieved at a regional level often cannot compare with those that can be achieved by means of bilateral agreements between states that share complete trust in each other's legal systems because they have historically evolved in the same direction.

<sup>7</sup> The correct answer is d), as the first definition contained in a treaty of what we understand as "judicial assistance" is in the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988. Article 7 contains a thorough definition of the types of

cooperation, with the exception of extradition which is dealt with in Article 6. This definition, despite being quite broad in scope, has inspired multiple bilateral and regional conventions on judicial assistance in criminal matters that have seen the light of day in the years that followed its signing.

<sup>8</sup> The correct answer is a), because the importance of these Council of Europe instruments is that while they are not universal conventions, as in principle they can only be signed by states belonging to the Council of Europe, the Committee of Ministers can invite third-party states, even non-European ones, to join, and this mechanism has made it possible to extend their initial scope, thus improving the effectiveness of the instruments envisaged therein.

<sup>9</sup> The correct answer is a), because while the scope for the incorporation of third-party states to the Conventions of the Council of Europe has been the great success of its judicial cooperation system, its failing has been that of not establishing a judicial body along the lines of the ECJ, as any conflicts regarding interpretation or application have no judicial avenue of resolution, meaning that it is necessary to resort to the always complex and delicate diplomatic channels.

<sup>10</sup> The correct answer is d), because in the scope of the European Union, we have to look for the development of judicial cooperation policies in the Treaty of Amsterdam; it is there that the construction of an area of freedom, security and justice was contemplated for the first time. This treaty represents a substantial improvement on the regulation of this field under what is known as the Third Pillar. On the one hand the objectives are set out, namely the strengthening of police and judicial cooperation with a view to avoiding impunity and public insecurity, while on the other it incorporates a new instrument, i.e. the framework decision, which can replace interstate conventions.