INTERNATIONAL COOPERATION IN CRIMINAL MATTERS VERSUS EUROPEANISATION OF CRIMINAL PROCEDURE

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ŁUKASZ ROSIAK*

1. INTERNATIONAL COOPERATION MODEL IN THE CRIMINAL PROCEDURE CODE OF 1997 VS THE EUROPEAN MODELS

International legislation, including mainly that resulting from the European Union legislative activity, is among many factors that have considerable influence on the shape of the current criminal procedure. The process of adopting the EU law leads to many important changes in the Polish legal system, especially, to some extent, it causes modification of the way of conducting criminal proceedings.[1] The changes in this sphere are mainly based on the adoption of the new EU models of international cooperation in criminal matters. It should be highlighted that the phenomenon of such cooperation occurred relatively not long ago, in fact, in the period of the last two decades. As a result, the models of cooperation between Member States in the field of criminal procedure are still not completely defined because this process is just at the stage of formulating and organising its practical institutional framework. It is still a dynamic phenomenon intensely shaping procedures of cooperation between the states.

In general, the issue of Europeanisation[2] can be defined as a process of the European Union legislation's influencing, in a broad meaning, the shape of law in

* MA, doctoral student, Faculty of Law and Administration of Łazarski University in Warsaw; e-mail: l1rosiak@gmail.com

1 For more, see A. Górski, *Europeizacja procesu karnego*, [in:] P. Hofmański (ed.), *System Prawa Karnego Procesowego*, Vol. I, part 2, Warsaw 2013, pp. 166–192.

2 The institutional and functional grounds for the development and functioning of cooperation are laid down in Article 82 Treaty on the functioning of the European Union of 30 April 2004 (*ex* Article 31 TEU), OJ EU C 202 of 7.06.2016/Journal of Laws [Dz.U.] of 2004,

Member States.[3] The process of enacting the norms of proceedings "going beyond limits" is taking place based on the constitutional delegation of legislative competence of the state to the European institutions, thus in a way it is different from the situation typical of forming international law, where the principle of sovereignty prevails.[4]

The transformation of the criminal model that took place as a result of the Europeanisation of the Polish legal system, first of all, constitutes slow abandonment of the territorial principle in favour of adopting the universalism of criminal prosecution.[5] Although the proceedings in criminal matters in international relations is not a new phenomenon in the binding model of the procedure developed on the basis of the Criminal Procedure Code of 1997,[6] successive changes in this area, developed in the EU forum, contribute to the regulations being gradually made more specific and elaborate, which results in the development of a new, complex and, at the same time, non-uniform system of cooperation with other Member States.

The model of the procedure developed in CPC of 1997 included the instruments of judicial assistance and international cooperation in criminal matters.[7] The above issue was comprehensively regulated in Section XIII entitled "Cooperation in criminal matters in international relations",[8] which provides bases for cross-border criminal proceedings.[9] It concerned such issues as exclusion of persons granted with diplomatic immunity from Polish jurisdiction, including searches of venues belonging to diplomatic facilities (provisions of Chapter 61, Articles 578 to 584 CPC).[10] Moreover, CPC regulated the issue of judicial assistance in criminal matters, including necessary activities in criminal proceedings (provisions of Chapter 62, Articles 585 to 589 CPC).[11]

No. 90, item 862/2, which stipulates that it is based on the principle of mutual recognition of judgements and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in the Treaty.

[3] For the basis for the definition and the distinction, compare: T. Biernat (ed.), *Europeizacja prawa*, Kraków 2008; and A. Pacześniak, R. Riedel, *Europeizacja – mechanizmy, wymiary, efekty*, Toruń 2010.

[4] A. Górski, *Europeizacja procesu karnego*…, pp. 166–167.

[5] S. Waltoś, *Proces karny. Zarys sytemu*, Warsaw 2009, p. 597.

[6] Act of 6 June 1997: Criminal Procedure Code, Journal of Laws [Dz.U.] of of 1997, No. 89, item 555, as amended; hereinafter: CPC of 1997.

[7] Compare, M. Płachta, *Status i pojęcie międzynarodowego prawa karnego*, Prok. i Pr. No. 5, 2009, pp. 5–16.

[8] For more on this instrument, see H. Paluszkiewicz, B. Janusz, *Postępowanie w sprawach karnych ze stosunków międzynarodowych. Materiały do konwersatoriów*, Vol. 3, Poznań 2006.

[9] *Ibid*., p. 597.

[10] For more, see: M. Jachimowicz, *Immunitet zakrajowości w procesie karnym*, PS No. 11–12, 2004, pp. 102–123; by the same author: *Immunitet dyplomatyczny w procesie karnym*, WPP No. 3, 2007, pp. 33–47; *Przeszukanie pomieszczeń przedstawicielstw dyplomatycznych i placówek konsularnych*, Jur. No. 8, 2007, pp. 25–26; D. Tarnowska, *Immunitety zakrajowości jako wyłączenie jurysdykcji polskich sądów karnych wobec przedstawicieli dyplomatycznych i konsularnych państw obcych (art. 578–584 k.p.k.)*, [in:] T. Grzegorczyk (ed.), *Funkcje procesu karnego. Księga jubileuszowa Profesora Janusza Tylmana,* Warsaw 2011, pp. 197–207; J. Sutor, *Immunitet dyplomatyczny i immunitet państwa*, PS No. 4, 2008, pp. 81–96.

[11] For more, see: A. Walczak-Żochowska, *Współpraca sądowa w sprawach karnych*, [in:] B.T. Bieńkowska, D. Szafrański (ed.), *Europeizacja prawa polskiego – wybrane aspekty*, Warsaw 2007, pp. 159–179; B. Kolasiński, *Pomoc prawna i doręczenia w postępowaniu karnym przeciwko cudzoziemcom*, [in:] A.J. Szwarc (ed.), *Przestępczość przygraniczna. Postępowanie karne przeciwko cudzoziemcom w Polsce*, Poznań 2000, pp. 59–81; P. Kołodziejski, *Doręczenia w obrocie międzynarodowym w sprawach karnych*, Prok. i Pr. No. 4, 2012, pp. 73–94.

Cooperation and provision of judicial assistance took place in horizontal relations by mutual contacts of law enforcement bodies without the need to obtain whatever decisions of the executive power bodies (Article 588 CPC).[12]

In the original proceedings model of CPC of 1997, there was also an instrument of taking over prosecution from abroad in case of crimes committed there in the event they were not yet validly tried (provisions of Chapter 63, Articles 590 to 592 CPC).[13] The regulation did not envisage a possibility of filing a motion to the competent body of a foreign state to take over criminal prosecution. The initiative in this matter is the competence of the Minister of Justice and is subject to the principle of reciprocity.[14] The group of entities that may be subject to a motion includes Polish citizens, persons who have a permanent domicile in the territory of the Republic of Poland, persons who serve or will serve an imprisonment sentence in the Republic of Poland, and persons against whom criminal proceedings have been initiated in the Republic of Poland. The criterion for filing a motion includes an important interest of the law enforcement, and a competent body of a foreign state must be notified about the outcome of the proceedings concluded in Poland (Article 590 CPC). The procedure of taking over the prosecution of a foreigner for crimes committed in the territory of Poland was developed in a similar way (Article 591 CPC).[15] In this area, the principle of reciprocity is also applicable, however, if the aggrieved is a citizen of Poland, surrendering a perpetrator requires the consent of the aggrieved (Article 591 §2 CPC). Moreover, the procedure model envisaged one more instrument, i.e. taking over and surrendering convicts to serve a sentence, which was laid down in Chapter 66 CPC.[16] In the event of a valid conviction of a Polish citizen by a foreign court to a penalty of deprivation of liberty, the Minister of Justice may file a motion to a competent body of that state to take over the convict in order to execute the penalty of deprivation of liberty in the Republic of Poland (Article 608 CPC).

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[12] Compare, D. Tarnowska, *Udzielanie pomocy prawnej organom procesowym państw obcych przez polskie sądy i prokuratorów (art. 588 k.p.k.) jako przejaw suwerenności państwa polskiego*, [in:] I. Gawłowicz, I. Wierzchowiecka (ed.), *Koncepcja suwerenności. Zbiór studiów*, Warsaw 2005, pp. 267–272.

[13] For more, see: Z. Gostyński, *Przekazanie i przejęcie ścigania karnego*, [in:] A.J. Szwarc (ed.), *Przestępczość przygraniczna. Postępowanie karne przeciwko cudzoziemcom w Polsce*, Poznań 2000, pp. 82–93; A. Górski, K. Michalak, *Przejęcie i przekazanie ścigania karnego jako instrumenty rozstrzygania konfliktów jurysdykcyjnych – uwagi do regulacji k.p.k.*, EP No. 6, 2015, pp. 33–37; E. Janczur, *Przejęcie i przekazanie ścigania karnego*, Prok. i Pr. No. 5, 1999, pp. 61–85. A. Nepera, *Przekazanie ścigania karnego – sposób realizacji karnej jurysdykcji państwa bądź odstąpienia od niej*, Acta UWr. Prz. Prawa i Admin. No. 66, 2005, pp. 151–165.

[14] The principle was discussed in detail in S. Steinborn, *Zasady międzynarodowej i europejskiej współpracy w sprawach karnych*, [in:] P. Hofmański (ed.), *System Prawa Karnego Procesowego*, Vol. III, part 2, Warsaw 2014, pp. 1721–1731.

[15] See, K.A. Kruk, *Zgoda pokrzywdzonego na przekazanie ścigania*, Prok. i Pr. No. 3, 2002, pp. 60–67.

[16] See, M. Hudzik, *Przejęcie skazania – węzłowe zagadnienia i problemy w stosowaniu instrumentów prawnomiędzynarodowych*, [in:] L. Gardocki, J. Godyń, M. Hudzik, L.K. Paprzycki (ed.), *Interpretacja prawa międzynarodowego i unijnego w sprawach karnych*, Jachranka 2006, pp. 129–142; R. Kierzynka, *Przekazywanie skazanych na karę pozbawienia wolności w Europie*, Ius Novum No. 2, 2009, pp. 94–112; H. Kuczyńska, *Wybrane problemy przekazywania skazanych na tle orzecznictwa Sądu Najwyższego*, Pal. No. 9–10, 2006, pp. 47–67.

It must be firmly emphasised that extradition, both active and passive one,[17] was also known in the Polish system of criminal procedure, that is why, the changes in the procedure after the country's accession to the European Union are not a novelty. Both instruments were regulated under Chapter 64 "Motion to surrender or transport of requested or convicted persons residing abroad and to deliver goods", and Chapter 65 "Motions from foreign states to surrender or transport persons requested or convicted or to deliver goods". What is important, the regulation has its place in the legal system and has not been derogated because of the dynamic process of implementing the procedure of the European arrest warrant (EAW).

In case of the former regulation, courts and prosecutors file motions via the Minister of Justice to a foreign state to surrender a person against whom criminal proceedings have been initiated, to surrender a person in order to conduct judicial proceedings or to execute a valid imprisonment sentence. Such motion can also be filed to make it possible to transport a requested or convicted person from the territory of a foreign state and to deliver substantive evidence or objects obtained by a perpetrator as a result of crime from the territory of a foreign state (Article 593 CPC). The motions are initiated by the Polish bodies and addressed to a foreign state's bodies, which is called active extradition.[18]

In the latter case, a foreign state's body files a motion to surrender a requested person in order to conduct criminal proceedings against him/her or execute a penalty or an adjudicated preventive measure. The motion filed by a foreign state initiates proceedings, which is called passive extradition.[19]

Leaving aside the doubts whether the provisions concerning EAW are in conformity with the Constitution,[20] the instrument of extradition was known in the Polish procedure model and international cooperation in criminal matters. Changes resulting from the accession to the European Union consisted in the introduction of a detailed specification or implementation of the new forms of instruments already known in our legal system. It is true that the instruments such as EAW were not in force to the extent known at present but the origins were present, though those were laborious and time-consuming procedures requiring political decisions. However, their existence provided solid foundations of the future instruments and resulted in their easy adaptation to our legal system.

It is necessary to emphasise that, although the mechanisms of international cooperation in criminal matters were known in our legal system, they proved to be insufficient to meet the needs resulting from the necessity of combating criminality in the 21st century.[21] The classical mechanisms seemed to be too heavy, lengthy and formalised to the European legislator. That is why, each change resulting from

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17 S. Waltoś, *Proces karny…*, pp. 608–661.

18 *Ibid.*, p. 607.

19 *Ibid*.

20 Constitutional Tribunal judgement of 27 April 2005, P1/05, Journal of Laws [Dz.U.] 2005, No. 77, item 680.

21 A. Górski, *Sądząc europejski nakaz aresztowania. O konstytucyjnych granicach integracji europejskiej w sprawach karnych*, [in:] P. Hofmański (ed.), *Aktualne problemy procesu karnego*, Warsaw 2009, p. 585.

the obligation to transpose the European Union law did not serve the change of the existing regulations but the introduction of new mechanisms simplifying and de-formalising the existing ones.

2. EUROPEANISATION OF CRIMINAL PROCEEDINGS: REPORTING APPROACH

The shape of current norms regulating international cooperation framework in criminal matters is the result of several amendments to the Criminal Procedure Code transposing forms of cooperation proposed by the European legislator. The development of regulations in this area underwent a process based on a typical evolution of patterns and concepts. First of all, there was a need to develop a mechanism of efficient cooperation, which resulted in the development of the European arrest warrant (EAW) as an instrument increasing the quality and efficiency of combatting criminality.[22] The implementation of this instrument into the Polish legal system was based on the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States,[23] and came into force on the basis of the Act of 18 March 2004 amending Act: Criminal Code, the Act: Criminal Procedure Code and the Act: Misdemeanour Code.[24] EAW is defined in the Act introducing it as a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order (Article 1(1) Council Framework Decision 2002/584/JHA).

By the way, it is worth adding that several years' period of being in force shows that this instrument has firmly rooted in our legal system and become a frequently used instrument. Almost a third of all EAWs in the period 2005–2009 were issued in Poland.[25]

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[22] J. Trzcińska, *Europejski nakaz aresztowania a ekstradycja*, Prok. i Pr. No. 6, 2004, p. 89.

[23] OJ EU L 190 of 18.07.2002. For more on the issue of the nature of the Framework Decision in the light of its binding power and transposition to domestic criminal regulations, see A. Górski, *Sądząc europejski nakaz aresztowania…*, pp. 585–590; and for general information, compare A. Grzelak, *Unia Europejska a prawo karne*, Warsaw 2002.

[24] Journal of Laws, [Dz.U.] of 2004, No. 69, item 626. Apart from changes in the model of criminal procedure, the Act also amends the Misdemeanour Code by the introduction of a description of a new type of prohibited acts, capital fraud, and a change in the scope of penalisation of the types of prohibited acts featured in Articles 200 and 202 Criminal Code, concerning child pornography and abuse of minors under the age of 15, as well as introduces a new crime of "interference of the work of a computer system"; moreover, the amendment of 18 March 2004 serves the implementation of the Convention on cybercrime adopted in Budapest on 23 November 2001 (signed by Poland on the same day) and ratified directly (Journal of Laws [Dz.U.] of 2014, item 1514), and the Convention on the protection of the European Communities' financial interests adopted in Brussels on 26 July 1995, directly ratified by Poland (Journal of Laws [Dz.U.] of 2009, No. 208, item 1603).

[25] In the period 2005–2009, Polish courts issued a European arrest warrant 17 thousand times, which constitutes 31% of all EAWs issued in the entire EU; compare, M. Tomkiewicz,

Further strengthening of the process of cooperation between states resulted in the introduction of provisions concerning the development and functioning of investigation teams within conducted criminal proceedings. The mechanisms originate from the provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters adopted in Brussels and the regulations of the Second Protocol to the Convention on Mutual Assistance in Criminal Matters, adopted in Strasbourg on 20 June 1959, and, first of all, the Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.[26]

The new form of assistance is to be an alternative to the present one, based on the Polish model of procedure, classical instrument of legal assistance internationally.[27] However, a joint investigation team alone was not known to our legal system before.[28] Moreover, the changes applied to the regulations concerning substantive criminal law.[29]

Further evolution of the process of cooperation resulted from the Council Framework Decision 2003/577/JHA of 23 July 2003 on the execution in the European Union of orders freezing property and evidence.[30] It resulted in the introduction of seizure of property or evidence based on a motion filed by other states' bodies.[31] Although the instrument was known in the Polish model of procedure, because the former regulation envisaged such a possibility based on legal assistance laid down in Chapter 62 CPC, the introduced regulation improves this procedure. Earlier, all activities were conducted on a motion of a court or a prosecutor via the Minister of Justice and the decision issued by an applicant state's body was subject to the approval of a Polish judicial body in the form of a ruling (Article 588 CPC).[32] The new mechanism stipulates that a decision issued by an applicant state's body, and not a motion and a decision of a Polish court or a prosecutor as it was before, constitutes direct grounds for the provision of legal assistance in freezing property or evidence.

The intensified process of Europeanisation led to the development of a series of successive mechanisms of cooperation. The new provisions of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the

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Zarządzenie wykonania kary za przestępstwa stanowiące podstawę przekazania osoby ściganej w ramach Europejskiego Nakazu Aresztowania, Prok. i Pr. No. 5, 2013, p. 106.

[26] OJ EU L 162 of 20.06.2002. Its transposition to the Polish legal system took place on the basis of the Act of 16 April 2004 amending the Act: Criminal Code and some other acts, Journal of Laws [Dz.U.] of 2004, No. 93, item 889.

[27] Justification for the Bill, paper no. 2407, IV term, p. 15.

[28] For more on the teams, especially their nature, in the Polish law, see Cz.P. Kłak, *Międzynarodowe zespoły śledcze. Wybrane uregulowania międzynarodowe a ustawodawstwo polskie,* [in:] P. Hofmański (ed.), *Węzłowe problemy procesu karnego,* Warsaw 2010, pp. 595–627.

[29] Especially, by the introduction of a definition of terrorist crime to Polish law and establishing a stricter penalty for organising illegal border crossing as well as the introduction of punishment for facilitating illegal stay of foreigners in the territory of the Republic of Poland in order to obtain financial or personal benefits.

[30] OJ EU L 196 of 2.08.2003.

[31] On the basis of the Act of 7 July 2005 amending the Act: Criminal Procedure Code and the Act: Misdemeanour Procedure Code, Journal of Laws [Dz.U.] of 2005, No. 143, item 1203.

[32] For more, see D. Tarnowska, *Udzielanie pomocy prawnej…*, pp. 267–272.

principle of mutual recognition to financial penalties,[33] implemented by the Act of 24 October 2008 amending the Act: Criminal Code and some other acts,[34] laid down procedural grounds for the European Union Member State's application for execution of a ruling issued in another state of the Community. A similar regulation was known in our model of criminal procedure in the form of adoption and delegation of rulings to be executed (Chapter 66 CPC). However, the former regulation stipulated that in case of receipt of a valid ruling issued in another state, the Minister of Justice, serving as a go-between in the operation, applied to a Polish court to issue a decision concerning admissibility of execution of a ruling in the territory of Poland (Article 609 CPC). A court determined in its decision the legal classification of an act in accordance with Polish law and a penalty or measure that was subject to execution and other possible solutions such as recognition of penalties or measures executed abroad.

The new mechanism introduced pursuant to the amendment is a little different in nature. It simplifies the procedure and imposes an obligation on a judicial body to execute a ruling of another state without the need to issue a formal decision determining criminal classification as well as a penalty and penal measures, while the former regulation stipulated that grounds for the execution of such a ruling in Poland should be in fact a ruling of a Polish court. The introduced solution serves de-formalisation of mechanisms in force in relation to rulings originating from the European Union Member States. The regulation concerning the execution of rulings laid down in Chapter 66 remains unchanged, thus the procedural model did not suffer from the amendment, but in addition, a new justified de-formalised instrument is now in force.[35]

Further development of cooperation resulted in the introduction of such mechanisms to the legal system that make it possible to execute confiscation orders directly based on competent courts' rulings in other European Union Member States. It was the effect of the provisions of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.[36]

As it has already been mentioned above, at the time of discussing the directives of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, a dichotomy occurred in our legal system consisting in the simultaneous functioning of two mechanisms: the traditional one (Chapter 66) and the improved one (Chapters 66a

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[33] OJ EU L 76 of 22.03.2005, L 159M of 13.06.2006. For comparison of the above act and other framework decisions concerning mutual recognition, see S. Buczma, *Zasada wzajemnego uznawania orzeczeń między państwami członkowskimi Unii Europejskiej. Etapy kształtowania, zakres funkcjonowania i podstawowe cele*, Ius Novum No. 2, 2009, pp. 64–93.

[34] Journal of Laws [Dz.U.] 2008, No. 214, item 1344.

[35] For more, see G. Krysztofiak, *Zasada wzajemnego uznawania orzeczeń w sprawach karnych w Traktacie Lizbońskim*, Prok. i Pr. No. 7–8, 2011, pp. 190–212.

[36] OJ EU L 328 of 24.11.2006. It was implemented on the basis of the Act of 19 December 2008 amending the Act: Criminal Procedure Code and some other acts, Journal of Laws [Dz.U.] 2009, No. 8, item 39.

and 66b).[37] Until the adoption of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, the maintenance of the former model resulted in the fact that "Polish courts are obliged to ensure the implementation of an order to confiscate the property of the accused based on mutual recognition to confiscation orders, while the execution of valid and final judgements concerning confiscation of property is subject to traditional procedure of international law, for which there are no rational grounds".[38]

Moreover, in order to implement the Council Framework Decision 2006/783/JHA, Chapter 66b was added. It concerns the procedure of Polish courts application to competent courts or competent bodies of other Member States for direct execution of valid confiscation orders.

A noticeable increase in activity of the European Union legislator in the field of tightening cooperation between Member States in criminal matters resulted in the development and adoption of the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.[39] The transposition of the provisions of the above regulation into the Polish system required, first of all, that the substantive criminal law be amended.[40]

In accordance with the regulation of judicial proceedings, it was necessary to enable a Polish court adjudicating on the execution of an EAW issued in order to execute the penalty of deprivation of liberty not only to determine legal classification of an act in accordance with Polish law but also, in some situations, to administer a penalty subject to execution.[41]

The adopted regulation stipulates that in a situation when a penalty or a measure adjudicated by a judicial body of a state of EAW issue exceeds the maximum statutory penalty pursuant to the Polish law, a court determines a penalty or measure to be executed in accordance with the Polish law and the maximum statutory level taking into consideration the period of actual deprivation of liberty abroad and the penalty or measure served there (Article 607s CPC). The adoption of such a solution is not in conflict with the provision of the Council Framework Decision of 2002.[42]

Regular development of mechanisms of cooperation resulted, however, in considerable differences in the way of their application. Improvement of some aspects of international cooperation in criminal matters required some adjustment because judgements in the absence of one state that were subject to execution in another state were not always binding on the latter. Thus, on 26 February 2009, the Council issued Framework Decision 2009/299/JHA amending Council Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and

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[37] See, R. Kierzynka, *Wzajemne uznawanie kar o charakterze pieniężnym*, Europejski Przegląd Sądowy No. 8, 2009, pp. 13–19.

[38] Justification for the Bill, paper no. 894, VI term, p. 6.

[39] OJ EU L 220 of 15.08.2008.

[40] Inter alia, Articles 92a, 107a, 114a Criminal Code were amended.

[41] Justification for the Bill, paper no. 3597, VI term, p. 2.

[42] For more, see *ibid.*, pp. 29–45.

2008/947/JHA, thereby enhancing procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.[43]

It is necessary to remind that in accordance with the assumptions of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States constituting Chapters 65a and 65b CPC, in a situation when a judgement is issued in the absence (called *in absentia*), recognition of the judgement in another state depends on the guarantees of the state of issue that it will ensure an opportunity to file a motion to re-examine a matter and to be present when the judgement is issued in that state.

On the other hand, the Council Framework Decision 2005/214/JHA of 24 February 2005 on the mutual recognition to financial penalties and the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders contained a regulation in accordance with which the issue of a decision in the absence of the accused constituted facultative grounds for refusal to recognise the final decisions issued in other Member States because of the failure to ensure procedural guarantees. Thus, the conditions for the issue of a judgement *in absentia* were regulated in a different way.[44] That is why, the adopted regulation aimed at standardising the provisions in force so that it established a rule that the issue of a judgement in the absence of the accused constitutes facultative conditions for refusal to recognise such a decision. At the same time, the criteria for precluding the issue of a judgement *in absentia* were consolidated.

Further activity in the field of strengthening cooperation resulted in other legal changes. Those were the addition of two new chapters to the Criminal Procedure Code: Chapter 66f concerning a Polish court request that another Member State execute a custodial sentence; and Chapter 66g regulating the matter of another Member State requesting execution of a custodial sentence in the territory of Poland, in accordance with the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty.[45]

Next, pursuant to the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the suspension of probation measures and alternative sanctions,[46] two successive chapters were introduced to the procedure

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[43] OJ EU L 81 of 27.03.2009. It was implemented to the Polish legal system on the basis of the Act of 29 July 2011 amending the Act: Criminal Code, the Act: Criminal Procedure Code and the Act on liability of collective entities for prohibited acts carrying a penalty, Journal of Laws [Dz.U.] of 2011, No. 191, item 1135.

[44] Justification for the Bill, paper no. 3597, VI term, p. 6.

[45] OJ EU L 327 of 5.12.2008. It was implemented on the basis of the Act of 16 September 2011 amending the Act: Criminal Procedure Code, the Act on the Public Prosecution Service and the Act on the National Criminal Record, Journal of Laws [Dz.U.] 2011, No. 240, item 1430.

[46] OJ EU L 337 of 16.12.2008. It was implemented on the basis of the Act of 16 September 2011 amending the Act: Criminal Procedure Code, the Act on the Public Prosecution Service and the Act on the National Criminal Record, Journal of Laws [Dz.U.] 2011, No. 240, item 1430.

of international cooperation: Chapter 66h regulating proceedings in case a Polish court requests a Member State to execute a custodial sentence with a conditional suspension of its execution, a penalty of limitation of liberty, an independent penal measure and a decision on conditional release and conditional discontinuation of criminal proceedings; and Chapter 66i regulating the procedure of a Polish court in case of requesting a Member State to execute a judgement on probation.[47] The former model of adopting and referring judgements to execution based on the provisions of Chapter 66 CPC did not ensure full implementation of standards laid down in the Council Framework Decisions of 27 November 2008: 2008/783/JHA and 2008/947/JHA. The European regulation requests a change in the method of surrendering convicts from the traditional legal assistance to mutual recognition to judgements. A potential refusal to execute a decision to surrender a convict, although it is admissible, was possible only in enumerated cases. An additional proposal, which was not adopted in the Polish procedure before, resulted from the necessity of eliminating the intermediary role of an executive body, the Minister of Justice. Courts and other competent bodies should contact each other independently of central authorities. This way, the successive proposal of the European regulation to eliminate a state's consent to execute a sentence is indirectly approved of. However, it is not an absolute condition because the necessity of obtaining a state's consent is admitted in case of surrendering a convict to another state different from the state of which a convict is a citizen and in which he resides or to which he would be expelled (Article 611ta CPC). The efficiency of the whole procedure also requires that the conditions for a convict's consent be limited (Article 611t §5 CPC), and binding deadlines be determined for taking a decision on a sentence recognition and execution of a penalty, which was laid down to be 90 days (Article 611tj §3 CPC), and in case of a convict's transfer, to be 30 days (Article 611tf §1 CPC).[48]

The development of close cooperation in the field of criminal prosecution requires new instruments ensuring its efficient implementation, also in situations of potential conflicts between proceeding bodies. In accordance with the assumptions adopted in autumn 2009,[49] the mechanism of preventing and solving jurisdictional disputes, first of all, consists in the rule of mandatory liaison and an obligation to respond to a request and start direct consultations.[50] Very often, former contacts with other states' law enforcement bodies may help to avoid unnecessary concentration.

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[47] Moreover, the amendment aimed to introduce directives concerning cooperation between the Polish Prosecution Service and the European Union body, Eurojust, which on the basis of the Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending the Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, was strengthened and obtained a new extended structure based on coordinated activities in the European Union Member States.

[48] Justification for the Bill, paper no. 4583, VI term, pp. 5–8.

[49] On the basis of the Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ EU L 328 of 15.12.2009), and the Council Framework decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ EU L 294 of 11.11.2009), which were transposed to the Polish legal system on the basis of the Act of 31 August 2012 amending the Act: Criminal Procedure Code, Journal of Laws [Dz.U.] of 2012, item 1091.

[50] Justification for the Bill, paper no. 492, VII term, pp. 4–5.

Former Polish provisions of Chapter 63 CPC concerning the procedure of taking over and forwarding prosecution did not envisage the above-mentioned mechanism preceding this stage of taking over and forwarding.[51] The change introduced by the amendment of 31 August 2012 consists in the introduction of a new instrument that makes it possible to establish contacts between judicial bodies of Member States before the stage of taking over and forwarding prosecution.[52]

With this solution, it was decided to accept the earlier proposals concerning procedural cooperation between Member States, i.e. the obligatory go-between function of the Minister of Justice was abolished and a court or a prosecutor was authorised to deal with the matter directly (Article 592a §1 CPC). A relatively short time limit for a response was also established as it was laid down that it must be done without delay, unless it was stipulated otherwise (Article 592b §1 CPC) and the possibility of refusing to provide information was limited to two situations: a breach of security of the Republic of Poland or exposure of a party to the proceedings to a threat to one's life or health (Article 592c §3 CPC).

Apart from the consultation mechanism, a new instrument of judicial cooperation in criminal matters was introduced to the Polish legal system, which made it possible to forward supervision over non-custodial preventive measures to the state of permanent residence of the accused. To that end, two new Chapters were introduced: 65c entitled "Requesting the European Union Member State to administer a preventive measure" and 65d enabling the EU Member State to request the execution of a decision issued in order to ensure an appropriate course of proceedings. The regulation of Chapter 65c applies to a situation in which a Polish court or a prosecutor strive for the administration of a preventive measure and the judicial bodies of a Member State are the addressees of that request. On the other hand, the next Chapter 65d contains norms regulating a Member State competent body's request to administer a preventive measure in Poland. The above instruments make it possible to efficiently monitor the movement of the accused who, residing in one state and being accused in another state, may be monitored by competent bodies of that state. At the same time, they promote non-custodial preventive measures making it possible to mutually monitor undertaken means of supervision.[53]

Summing up, most of a dozen amendments to the Criminal Procedure Code resulting from the influence of the EU legislation were aimed at introducing new mechanisms to the Polish legal system. These include, first of all, the European arrest warrant (Chapters 65a and 65b CPC), legal assistance through the establishment of joint investigation teams (Articles 589b to 589f CPC), assistance in evidence-related proceedings (Chapters 62a and 62b CPC), assistance in the administration of a preventive measure (Chapters 65c and 65d CPC), and cooperation in the execution of judgements, especially a penalty of deprivation of liberty (Chapters 66f and 66g CPC), execution of penalties with view to probation (Chapters 66h and 66i CPC), and execution of financial sentences (Chapters 66a and 66b CPC) and forfeiture sentences (Chapters 66c and 66d CPC).

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[51] *Ibid*., p. 5.

[52] See, A. Górski, K. Michalak, *Przejęcie i przekazanie ścigania karnego…*, pp. 33–37.

[53] See, Preamble to the Council Framework Decision 2009/829/JHA, OJ EU L 294 of 11.11.2009.

Each of the above mechanisms, with some exceptions established because of a given instrument's purposefulness, is characterised by the same features aimed at improving and de-formalising cooperation between the European Union Member States. Classical instruments of the Polish criminal law regulation are insufficient to implement those features. That is why, there is a need to introduce new mechanisms of the EU cooperation to the former procedural model.

The proposal to eliminate the executive power as a go-between in cooperation and authorising proceeding bodies, i.e. a court and a prosecutor, to act directly should be treated as a feature of the discussed instruments. Excluding the Minister of Justice from this cooperation, on the one hand, releases justice administration bodies from potential political pressure (because their activities depend on the decisions made by the executive power) and, on the other hand, considerably accelerates cooperation of judicial bodies from different Member States.

A successive proposal concerns the speed of acting within the cooperation. Each mechanism requires that another state's body requested to implement a particular task or to provide assistance implement it without delay, within the bounds of possibility in 24 hours (e.g. Article 589g §3 CPC, Article 589n §1, Article 589p §1, Article 611fu §3 CPC) or within another determined time limit (e.g. Articles 607m, 607n, 607zj §§1 and 3). Such a solution facilitates and accelerates cooperation and results in other benefits, e.g. by eliminating lengthiness of proceedings protects the interests of the parties to the proceedings.

The EU legislator also aims at the most complete improvement of assistance possible. Although, in general, it thoroughly enumerates the method, aim and nature of the undertaken activities in every mechanism, it uses instruments that make it possible to deal with a matter in a reliable and appropriate way, and quickly at the same time. The obligation to add information allowing appropriate performance of an activity or provision of assistance to a motion filed to a foreign state's body (e.g. Articles 611fn §5, 611fu § 2, 611ff §2, 611fa §3, 607zh §2, 607zd §4 CPC) and an obligation to translate the documents into the official language of the state where the activity is performed or assistance provided or another language indicated by this state (e.g. Articles 589g §6, 607zd §5, 611fa §4, 611fn §6 CPC) may serve as examples.

The limitation of a possibility of refusing to perform an activity or provide assistance is an additional advantage improving the functioning of the mechanisms introduced to the Polish legal system. Most of the mechanisms have enumerated obligatory conditions for refusal to undertake action (e.g. Articles 589m §1, 607zk §1, 611b §1, 611fw §1 CPC). Apart from them, there are usually conditions for facultative contestation of assistance (e.g. Articles 607zk §3, 611fg, 611fw §§2 and 3 CPC). Positive conditions for undertaking activities are also established with the application of a general condition, which is the interest of the administration of justice (Articles 592c §1, 592d §2, 607b CPC).[54]

[54] The application of a general condition of the interest of the administration of justice was known in the former statutory model, especially in relation to international cooperation (Article 590 §1(4), 591 §2, 592 §§1 and 3 CPC), so it is not a novelty in the Polish procedure model.

The above-presented instruments, on the one hand, facilitate the mode of assistance provided, because they protect against total freedom and arbitrariness of a state in its refusal to perform activities or provide assistance and, on the other hand, serve a state that is requested to perform given activities so that it can refuse other countries' requests that pose a threat to the interest of justice or act against the interest of this state.

3. THE ISSUE OF SYSTEMIC PLACEMENT OF THE PROVISIONS CONCERNING INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

The analysis of the normative impact of cooperation between Member States in criminal matters shows that the EU legislator has serious problems with systemic reasoning, while developing the institutional basis for cooperation. The lack of regularity and succumbing to political pressure[55] as well as short-term temporary aims resulted in a considerable bewilderment in the whole system of cooperation in criminal matters. As a result of the latest transposition of the EU legislative outcomes, non-homogenous regulation within Section XIII CPC was developed, which cannot be described in terms of systemic coherence. It is absolutely necessary to come back to proposals put forward some time ago to exclude the regulation concerning international cooperation in criminal matters from the regulations of the Criminal Procedure Code and develop a separate legal act.[56]

A comparative analysis of the place of regulations concerning international cooperation in Europe conducted by S. Steinborn[57] shows that we deal with three different models of approach to the considered problem. The first model, typical of inter alia Poland, Lithuania or Russia, assumes placement of regulations concerning international relations within a criminal procedure code. It is the most common model in Europe. The second one assumes that the matter of international cooperation is regulated, as a rule, in one single legal act of national law,[58] however, separate from a criminal procedure code. It is especially typical of German-speaking countries: Germany, Switzerland and Austria. The third model, most popular with the EU Member States, including Belgium, the UK and Scandinavian countries, assumes regulation of international cooperation, as a rule, outside a criminal procedure

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[55] A. Górski, *Europeizacja procesu karnego*…, p. 186.

[56] Compare, M. Płachta, *Status i pojęcie*…, p. 14 ff; P. Hofmański, A. Sakowicz, *Reguły kolizyjne w obszarze międzynarodowej współpracy w sprawach karnych*, PiP No. 11, 2006, p. 42; S. Steinborn, *O potrzebie uchwalenia ustawy o międzynarodowej współpracy w sprawach karnych*, [in:] J. Jakubowska-Hary, C. Nowak, J. Skupiński (ed.), *Reforma prawa karnego. Propozycje i komentarze. Księga pamiątkowa Profesor Barbary Kunickiej-Michalskiej*, Warsaw 2008, pp. 436–450.

[57] S. Steinborn, *O potrzebie uchwalenia ustawy*…, pp. 439–445.

[58] In Hungary, belonging to this group, there are two legal acts regulating international cooperation in criminal matters: one general in nature, and the other regulating cooperation between the European Union Member States; a similar situation is observed in Austria, where there is an additional third act regulating cooperation with international courts. See, S. Steinborn, *O potrzebie uchwalenia ustawy*…, p. 442.

code,[59] but differs from the second model because each instrument is transposed to the national system in a separate legal act developed *ad hoc*.

The choice of an optimal model for our domestic regulation requires, first of all, determining whether the whole regulation of international cooperation should be kept within a criminal procedure code or whether it would be purposeful to transfer it to a separate act.

First of all, the nature of criminal proceedings in matters related to international relations must be determined. It is necessary to make a certain distinction that will help to determine it. The nature of proceedings typical of a state requesting assistance is different from proceedings typical of a state requested to provide assistance. While in case of the former, the proceedings under international cooperation will be auxiliary, ancillary, in relation to the main proceedings,[60] in case of the latter they will be the main proceedings. However, as M. Płachta indicates, it does not mean that they will be assigned a status of criminal proceedings.[61] Recognition of the proceedings in matters concerning international assistance provided by a state requested as criminal ones requires Article 1 CPC in the Polish legal system. As the legislator decided to incorporate international cooperation in criminal matters into CPC, the cooperation is subject to general provisions, thus also Article 1, the literal interpretation of which requires that it be assumed that matters subject to judicial proceedings and proceeded pursuant to the CPC provisions belong to the category of criminal proceedings. Thus, it is each time necessary to meet procedural guarantees typical of criminal procedure. However, the Constitution of the Republic of Poland indicates in Article 91 that a ratified international agreement after promulgation thereof in the Journal of Laws (Dziennik Ustaw, Dz.U.) constitutes part of the domestic legal system and must be applied directly, and moreover, it has precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes. In addition, CPC itself, in Article 615 §1, gives the application of the provisions of ratified international agreements precedence in the event of a conflict with statutory regulations.

In the face of the above facts, it is necessary to place the proceedings in criminal matters within international relations in the category of criminal proceedings. However, because of their specificity, one should warn against "applying criminal procedure regulations automatically".[62] Such an approach to the issue makes it possible to exclude the provisions concerning international cooperation in criminal matters from the Criminal Procedure Code because if one warns against applying criminal procedure provisions automatically, it is not necessary to include this type of matters in codified systems.

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[59] It is different in the Netherlands where the regulation of cooperation is partly done by the criminal procedure code and, partly, it is introduced to the national legal system by separate acts in the course of development of new forms of cooperation. See, S. Steinborn, *O potrzebie uchwalenia ustawy…*, p. 443.

[60] S. Steinborn, *O potrzebie uchwalenia ustawy…*, p. 445.

[61] M. Płachta, *Przekazywanie skazanych pomiędzy państwami*, Kraków 2003, pp. 209–210.

[62] S. Steinborn, *O potrzebie uchwalenia ustawy…*, p. 446.

Secondly, the increase in legislative activity of the European Union legislative bodies and the resulting process of better adaptation of many new solutions within cooperation between Member States in criminal matters caused enormous growth of the provisions of Section XIII CPC. At the same time, unfortunately for the general coherence of the act, the provisions concerning exclusive cooperation between the EU Member States were placed within the former regulations concerning classical assistance. This way, the regulations on classical assistance were mixed up with the regulations involving exclusively the European Union Member States. It is in conflict with the ideas behind cooperation in criminal matters within the process of Europeanisation, i.e. abandonment or considerable limitation of classical methods of international cooperation.[63]

Thirdly, the structure of the present Section XIII CPC inspires introduction of fundamental changes. Before the beginning of the process of transposition of the European Union law, the provisions regulating the procedure in criminal matters in international relations were laid down in the total of seven chapters, including 37 articles. At present, there are 24 chapters composed of almost 200 articles. Moreover, the regulation is inconsistent and lacks systemic coherence. In fact, it constitutes a group of provisions gathered together in a chaotic way. Its incoherence is mainly reflected in the arrangement of Section XIII, where as many as four successive chapters use the same marking of Article 607 with one or two-letter symbols added to it, and the twelve successive chapters use the marking of Article 607 with one, two or three-letter symbols added. This results in considerable editorial difficulties and is in conflict with a call for clarity and systemic coherence of regulations.[64] As a consequence, the text is not clearly legible and raises interpretational doubts. In addition, as it has already been indicated, the majority of the instruments of international cooperation between the European Union Member States have some features in common, which, in case of every chapter regulating a separate mechanism of proceedings under international assistance, are duplicated automatically, which leads to excessive growth of the normative content. The lack of organised arrangement within the system of international cooperation becomes a key argument for the exclusion of the regulation from the Criminal Procedure Code and its transfer to a separate legal act. This step would make it possible to formulate a general part, common for all mechanisms of cooperation, based on the features enumerated in this paper, which would allow the segregation of particular instruments and give them the features of model coherence.

Fourthly, the rules of the legislative technique formulated by the legislator constitute a key motive for the exclusion of the regulation of international relations in criminal matters from the Criminal Procedure Code. The principle of a democratic state governed by the rule of law results in the legislator's obligations expressed in the necessity of saturating the enacted law with democratic values, on the one hand, and basing the whole process of development, interpretation and application

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[63] *Ibid*., p. 447.

[64] Compare, §60(1) Annex to the Regulation of the President of the Council of Ministers of 20 June 2002 on "Rules of legislative technique", Journal of Laws [Dz.U.] 2016, item 283, uniform text.

of law on democratic regimes, on the other hand.[65] In this context, it is extremely important to comply with the rules defined as the principles of decent legislation. The starting point is the principle of the protection of citizens' trust in the state, sometimes called a rule of the state's loyalty towards citizens.[66] It requires that a state body treat citizens with the minimum rules of honesty.[67] The Constitutional Tribunal abundant case law helps to precisely define the rules of the principle of trust as well as ones of decent legislation.[68]

Apart from the above-mentioned rules, there are rules of the legislative technique connected with them,[69] which should be understood as a set of purposefulness-related directives indicating a proper way of editing a legal text.[70] The rules are referred to in connection with other issues, including the principle of legal certainty (well-defined law), the principle of decent legislation, editing provisions delegating powers, law interpretation and validation.[71] Thus, referring to all those rules, i.e. the principle of citizens' trust in the state bodies, the principle of good law and the principle and rules of the legislative technique, is absolutely necessary in this context. The way in which Section XIII CPC should be amended must be based on the above observations because the maintenance of the legal system coherence is absolutely indispensable.[72] Thus, changes aimed at organised arrangement of the area of international cooperation in criminal matters must be recognised as imperative. Drafting a separate legal act and transferring the provisions of Section XIII CPC to it seems to be the only step to achieve the indicated aim. Concern about the legal system coherence is a priority,[73] and the transfer of the regulations to a separate act is possible and even desired if it leads to undisturbed transformation.

The idea of a new codification is right because of a considerable number of amendments to the regulation of Section XIII CPC of 1997 and it would be nothing else but the implementation of legal provisions, i.e. §84 of Annex to Regulation

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[65] T. Górzyńska, *Zasada praworządności i legalności*, [in:] W. Sokolewicz (ed.), *Zasady podstawowe polskiej Konstytucji*, Warsaw 1998, p. 94.

[66] L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2002, p. 63.

[67] *Ibid*., p. 63.

[68] For more on the influence of case law on the shape of those rules see, inter alia: Z. Czeszejko-Sochacki, *Zasady techniki prawodawczej w orzecznictwie Trybunału Konstytucyjnego*, PL No. 2, 1997, p. 103 ff; K. Działocha, T. Zalasiński, *Zasada prawidłowej legislacji jako podstawa kontroli konstytucyjności prawa*, PL No. 3, 2006; S. Wronkowska, *Zasady przyzwoitej legislacji w orzecznictwie Trybunału Konstytucyjnego*, [in:] *Księga XX-lecia orzecznictwa Trybunału Konstytucyjnego*, Warsaw 2006; T. Zalasiński, *Zasada prawidłowej legislacji w poglądach Trybunału Konstytucyjnego*, Warsaw 2008; J. Zaleśny, *Zasady prawidłowej legislacji*, [in:] J. Błuszkowski, J. Zaleśny (ed.), *Oblicza polityki*, Warsaw 2009, and others.

[69] The rules were defined in the Constitutional Tribunal case law as "a praxeological canon which should be respected in a democratic state governed by the rule of law"; see, Constitutional Tribunal judgement of 21 March 2001, K 24/00, OTK 2001/3/51.

[70] O. Bogucki, A. Choduń, *Zasady techniki prawodawczej w orzecznictwie Trybunału Konstytucyjnego w odniesieniu do zasady demokratycznego państwa prawnego*, [in:] M. Aleksandrowicz, A. Jamróz, L. Jamróz (ed.), *Demokratyczne państwo prawa. Zagadnienia wybrane*, Białystok 2014, pp. 46–47.

[71] *Ibid*., p. 46.

[72] For more, see Z. Czeszejko-Sochacki, *Sądownictwo konstytucyjne w Polsce na tle porównawczym*, Warsaw 2003, p. 332 ff.

[73] *Ibid*., p. 440 ff.

of the President of the Council of Ministers of 20 June 2002 concerning "Rules of legislative technique".[74] The act lays down conditions for the requirement of a new statute in case amendments to the existing one are numerous or damage its structure or coherence, or in the event the statute has been already amended many times.

As far as the first point is concerned, it concerns limitation of the frequency of amendments to an act. Over the period of 20 years of the CPC of 1997 being in force, the provisions of Section XIII have been amended 18 times, including the adoption of the EU rules of cooperation 12 times. However, what is important, each amendment resulting from the necessity of transposing the EU law served not the change in the provisions in force but enactment of new mechanisms simplifying and de-formalising the existing ones. The original 37 editorial units were extended by over 500%, which is an unprecedented phenomenon in case of the whole Code.

The second condition laid down in §84 of "Rules of legislative technique" concerns the issue of a new statute in a situation when the introduction of amendments damages coherence of an act. The above-mentioned arguments concerning the lack of systemic coherence correspond to the indicated condition. The difficulty with looking through Section XIII CPC caused by multi-letter marking of articles, numerous repetitions of a matter in relation to many mechanisms, the lack of clearly distinguished general part of Section XIII show serious limitation to coherence of the regulation concerned.

In addition, the above-mentioned rules of the legislative technique require abandonment of amendments and development of a new statute in a situation when the former has been amended many times. It should be indicated that until the moment the latest amendment to Section XIII CPC was made,[75] CPC had been amended 79 times.[76] This number in relation to the whole statute meets the condition of numerous amendments as this means that there were on average five amendments per year, which S. Waltoś rightly summed up pointing out that: "systemic reasoning was not the strongest side of Polish legislation".[77] With respect to Section XIII originally having 37 articles, with 18 amendments, the number of changes unambiguously advocates the development of a new statute.

Apart from that, it is necessary to determine whether it is purposeful to develop one act or to transpose the provisions of individual framework decisions in single acts. In a situation where 12 acts of the EU law were transposed to our legal system, it becomes purposeful to propose a uniform common act. Firstly, this will make it possible to systematise the norms that were put together in a chaotic way and develop a coherent system of law on international cooperation in criminal matters,

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[74] Journal of Laws [Dz.U.] of 2002, No. 100, item 908.

[75] Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings transposed to the Polish legal system by the Act of 31 August 2012 amending the Act: Criminal Procedure Code, Journal of Laws [Dz.U.] of 2012, item 1091.

[76] From the moment the Act: Criminal Procedure Code of 1997 entered into force till 31 August 2012 there were 63 amendments to it and the Constitutional Tribunal judged 16 times that its provisions were in conflict with the Constitution.

[77] S. Waltoś, *W dziesięciolecie obowiązywania kodeksu postępowania karnego*, PiP No. 4, 2009, p. 18.

which will allow formulating a coherent, legible regulation that would limit potential problems with interpretation. A comprehensive and uniform collection of rules of cooperation may turn out to be especially helpful for judicial bodies, which either must provide or obtain assistance and, at the same time, will simplify the whole procedure. Secondly, the solution will allow transformation of the former regulation so that it will be possible to determine a general part common for the whole subject matter and special detailed provisions for each of the instruments concerned. Thirdly, it will be useful in the implementation of potential new rules of cooperation creating an obvious place for their transposition.

In the above context, it is necessary to determine whether it is essential to enact a separate statute regulating cooperation with the European Union Member States exclusively or whether it is purposeful to develop a complex statute regulating international cooperation as a whole. As it has been indicated, international cooperation in criminal matters between the European Union Member States is governed by different rules from classical cooperation, although, undoubtedly, both concern the same scheme of providing assistance. The general rule, Article 615 §2 CPC, based on the Constitution,[78] laying down the principle of subsidiarity covering the whole Section XIII CPC,[79] gives primacy to the provisions of international agreements in case of their collision with the provisions of this section. This leads to certain inconsistency because the area of instruments of international cooperation within the EU, based on framework decisions which cannot be recognised as international agreements, matches, as it has been mentioned above, the mechanisms of classical cooperation that originate from international agreements adopted by the Council of Europe. Article 615 §2 stipulates that, in case of a conflict between the two systems of assistance, the EU one and the classical one, the classical cooperation has primacy, provided that it is based on an international agreement.[80] It is hard to reconcile it with the general assumption that the EU mechanisms should depart from or even abandon classical instruments of cooperation for the purpose of creating "more efficient and advanced forms".[81]

However, the above is not an obstacle to regulating the classical and EU cooperation in one statute. The only condition is the application of adequate taxonomy taking into consideration the conditions of proper selection and use of appropriate forms of cooperation. Otherwise, i.e. in the event of enacting the regulations in two separate statutes, it would be necessary to duplicate some provisions, which in the future might trigger additional conflicts resulting from concurrence of a regulation of the two forms of cooperation.[82]

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[78] See, the Supreme Court ruling of 14 January 2004, V KK 319/03, OSNKW 2004, issue 3, item 27.

[79] S. Steinborn, *O potrzebie uchwalenia ustawy…*, p. 447.

[80] For more on the inconsistency, see P. Hofmański, A. Sakowicz, *Reguły kolizyjne…*, pp. 29–43.

[81] Justification for the government Bill amending the Act: Criminal Code, the Act: Criminal Procedure Code and the Act: Misdemeanour Code, paper no. 2031.

[82] S. Steinborn, *O potrzebie uchwalenia ustawy…*, p. 448.

Moreover, the features of cooperation instruments indicated in this paper perfectly match the above-proposed process of excluding the regulations of Section XIII CPC and transferring them to a separate statute. They may constitute an outline of a general part of the future act specifying a general model of cooperation, supplemented with detailed constructions of adopted mechanisms.

The exclusion of regulations of Section XIII from CPC and transferring them to a separate statute is a perfect proposal for the legislator. Although such steps will not stop accruing problems,[83] they will certainly contribute to unification of the existing regulations and make it possible to systematise the whole scope of the EU legislation implemented to the Polish legal system in a coherent and orderly system. Otherwise, if the nature and pace of changes remain the same, as M. Płachta predicts, "with time, the amount of Section XIII CPC will account for the volume of the rest of the Code".[84]

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INTERNATIONAL COOPERATION IN CRIMINAL MATTERS VERSUS EUROPEANISATION OF CRIMINAL PROCEDURE

Summary

The paper presents the issues of cooperation in criminal matters analysed in the context of the process of Europeanisation. In the Polish legal system, the process mainly results in the development and implementation of new and varied forms of cooperation in criminal matters with the European Union Member States. The mechanisms of cooperation transposed to the Criminal Procedure Code are, in fact, nothing new for the current model of proceedings developed in accordance with the Code of 1997, because it envisaged most of the already operating forms of international cooperation. The institutions of cooperation, although already regulated on the basis of Polish law, lacked some important basic features and were mainly based on political decisions of the executive power. That was the reason for the necessity of implementing the EU models increasing the framework of cooperation in criminal matters by gradually making the regulations more specific and elaborate. This, as a result, has led to the development of a new, complex and at the same time inconsistent system of cooperation with Member States.
The creation of a completely composite regulation within Section XIII CPC, about which it is difficult to speak in terms of the system coherence, was a side effect of the implementation of provisions concerning the development of cooperation in criminal matters. The removal of the regulation of Section XIII from the Criminal Procedure Code and enacting it as a separate legal act may be a remedy for the present situation.

Keywords: Criminal Procedure Code, international cooperation in criminal matters, Europeanisation of criminal procedure, rules of legislative technique

MIĘDZYNARODOWA WSPÓŁPRACA W SPRAWACH KARNYCH A PROCES EUROPEIZACJI POSTĘPOWANIA KARNEGO

Streszczenie

Przedmiotem opracowania jest problematyka współpracy w sprawach karnych, analizowana w kontekście procesu europeizacji. Proces ten skutkuje dla polskiego porządku prawnego przede wszystkim opracowaniem i wdrożeniem nowych i różnorodnych form współpracy między państwami członkowskimi Unii Europejskiej w sprawach karnych. Transponowane do Kodeksu postępowania karnego mechanizmy współpracy nie są w istocie niczym nowym dla obowiązującego modelu procesu, ukształtowanego na gruncie kodeksu z 1997 roku, który przewidywał większość z wypracowanych już form współdziałania międzynarodowego. Instytucje współpracy, choć już uregulowane na gruncie prawa polskiego, pozbawione były jednak pewnych zasadniczych własności, a opierały się przede wszystkim na decyzji politycznej władzy wykonawczej, stąd konieczność implementacji wzorców unijnych zwiększających ramy kooperacji w sprawach karnych poprzez stopniowe uszczegóławianie i pogłębianie regulacji. W rezultacie poskutkowało to powstaniem nowego, złożonego i równocześnie niejednolitego systemu współpracy z państwami członkowskimi.
Efektem ubocznym implementacji przepisów dotyczących rozwoju współpracy w sprawach karnych okazało się powstanie w obrębie działu XIII Kodeksu regulacji zupełnie niejednorodnej,

o której trudno jest mówić w perspektywie spójności systemowej. Receptą na zaistniałą sytuację staje się wyłączenie unormowania działu XIII poza Kodeks postępowania karnego, przenosząc normy współpracy międzynarodowej w sprawach karnych do odrębnej ustawy.

Słowa kluczowe: kodeks postępowania karnego, współpraca międzynarodowa w sprawach karnych, europeizacja procesu karnego, zasady techniki prawodawczej

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