

Difficulties in coordinating international judicial cooperation on corruption crimes

الصعوبات التي تعترض تنسيق التعاون الدولي القضائي بشأن جرائم الفساد

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abstract:

Given the expansion and spread of corruption crimes throughout the world, as well as the expanding scope of the danger and negative consequences they have caused, the international community has become increasingly aware of the necessity of cooperation among countries to eradicate this phenomenon. Without cooperation, effective combating of this crime will not be possible. Furthermore, countries must respond to international requirements in this area.

Due to the inherently international nature of corruption crimes, confronting them has become an imperative global necessity. Although these crimes fall within the scope of national laws in their content, they become international in nature if their effects extend beyond national borders, which require the international community to unite and cooperate in order to confront these crimes and their elimination through concerted international efforts. However, there are obstacles and difficulties that hinder international cooperation in the judicial field, mainly represented by the problem of extradition of criminals and the problem of implementing foreign criminal judgments.

Keywords: obstacles. Crimes of corruption. International cooperation.

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ملخص:

نظرا لتوسع وانتشار جرائم الفساد في كافة أنحاء العالم، وكذا توسع نطاق الخطورة والنتائج السلبية التي أحدثتها، إستوجب معها رد فعل المجتمع الدولي والذي توصل إلى قناعة مفادها إلزامية التعاون فيما بين الدول من أجل القضاء على هذه الظاهرة، ودون تعاون فلن يتم التوصل إلى درجة المكافحة الفعلية لهذه الجريمة، بإضافة إلى ضرورة استجابة الدول للمتطلبات الدولية في هذا المجال.

وبحكم الطبيعة الدولية لجرائم الفساد فإن مواجهتها تعد مطلبا دوليا، وعلى الرغم من أن هذه الجرائم تدخل في نطاق القوانين الوطنية في مضمونها، إلا أنها تصبح ذات صفة دولية إذا امتدت آثارها خارج الحدود الوطنية، الأمر الذي استوجب من الجماعة الدولية أن تتكاتف وتتعاون من أجل التصدي لهذه الجرائم والقضاء عليها بتضافر الجهود الدولية إلا أنه ثمة عراقيل وصعوبات تعترض التعاون الدولي في المجال القضائي تتمثل أساسا في إشكالية تسليم المجرمين وإشكالية تنفيذ الأحكام الجنائية الأجنبية.

الكلمات المفتاحية: معوقات. جرائم الفساد. التعاون الدولي.

Introduction:

In recent years, with the beginning of the third millennium, the world has experienced major changes that have affected several economic, political and social aspects, leading to economic openness and freedom of trade, which contributed to the ease of movement of people and goods between countries to make the whole world a single village due to two global phenomena, namely the phenomenon of globalization and the technological revolution.

There is no doubt that these two phenomena have brought with them a set of enormous benefits and benefits to humanity, almost incalculable, as the interaction between states has increased and barriers, restrictions and distances between them have been eliminated, which entailed an amazing growth in the movement of people and money and their transfer across national borders.

On the other hand, this scientific and technological progress has had a negative impact, as it has become an easy way to commit crimes and spread them locally, regionally and internationally, and from there Crime has evolved into a global issue that transcends regional and national boundaries, neither spatial nor temporal, to be the arena of the whole world.

In addition, the means of communication and transportation have contributed significantly to the consolidation of cooperation between criminals across the entire continents of the planet, which has led to the emergence of alarming criminal patterns, their spread around the world, the most prominent example of this is corruption, and other crimes aimed at achieving the greatest possible profit.

As a result of the widespread spread of criminal activities practiced by gangs of corruption crimes as a global criminal phenomenon, it has become a chronic concern for the rest of the world because it is one of the most serious crimes whose impact is not limited to the international level before it extends to threaten the security and internal stability of states. It represents the most important challenges. It is a real test of the ability of international and national legal norms to achieve effectiveness and success in countering the criminal activities practiced by these gangs.

Therefore, international cooperation in all its forms, whether security or judicial, is an urgent necessity to confront these crimes, but there are obstacles and difficulties facing states in coordinating among themselves to combat these crimes.

Therefore, the topic of this study deals with the difficulties that hinder international judicial coordination in the field of combating corruption crimes, and therefore the problem that arises is: what are the difficulties that hinder international judicial coordination in combating corruption crimes

In order to understand and become familiar with all aspects of the issue of difficulties in coordinating international judicial cooperation on corruption crimes, and from there to address the problem at hand, this study requires a statement of the problem related to the extradition of criminals in the first axis, while we address the problem related to the recognition of foreign criminal judgments in the second axis, relying in the study of this topic on the descriptive and analytical approach of various regulatory legal texts related to the subject.

Finally, at the end of this topic, we reviewed our findings and suggestions in this area.

The first axis: a problem related to the extradition of criminals

International cooperation in the field of extradition of criminals is an important mechanism in the arrest of the perpetrators of crimes at the International and regional level. international conventions are the legal basis for knowing the procedures followed and activated by international and regional mechanisms to arrest criminals and hand them over to justice, but what prevents this from being achieved are two problems, the first of which is

related to the problem of double extradition (first), related to the principle of non-extradition of nationals of the requested state (first)

First: the problem of double criminality.

The principle of double criminality is one of the basic principles of accepting or refusing extradition, therefore double criminality is the most important condition for the extradition of criminals in organized crime, and it is intended: The requested Act is subject to criminalization and punishment in the laws of both requesting and requested states¹.

however, the requirement of double criminalization does not require uniformity in the criminal act, as the basic requirement in this context is that the Act be considered a criminal regardless of the legislation under which it is punished, and therefore the existence of the requirement of double criminalization does not hinder the legal description applied to the act, but the most important is that the Act be criminalized to one degree without the need for an absolute match between the criminal descriptions in the two states².

One of the most important international conventions that stipulates the principle of dual criminality in the field of extradition is the United Nations Convention Against Transnational Organized Crime, where this convention urged states that the criminal act in respect of which the extradition of the accused is requested should be recognized and punished under the domestic law of both the requesting and the requested state³.

However, this condition can be faced with two important issues:

1-the issue of divergence of legislation between states:

The most prominent example given in this regard is that the requesting state punishes the act of forming an organized criminal group consisting of two elements, while in the requested state the crime is committed only if it consists of three people or more, and therefore extradition is not applied in this case if the number of members of the group is only two⁴, and they The person who is requested to be extradited has several nationalities or in the case of several requests for his extradition, especially in the absence of national and contractual legal texts that did not address this issue⁵.

Also, if the legislation is similar, the issue may arise of a state's failure to update its penal legislation to address new forms of crimes, which seems more obvious with regard to transnational organized crimes, in particular some of their new types, such as money laundering crimes, corruption, and cybercrimes.....Etc. that are not the subject of criminalization in some legislation that finds itself in one form or another in the extradition relationship⁶.

2. The issue of the absence of obligation in the formulations used in the field of extradition in treaties and legislation.

The relevant formulations in the field of extradition, both in national legislation and in international treaties, often range from permissibility, option, possibility of extradition... These statements indicate that states are absolutely free to extradite or not⁷. It is also worth mentioning that the question of the application of the AUT *dedere aut judicare* rule used in international treaties is not binding, since the wording of this rule in the relevant conventions on the subject of organized crime is incomplete, as it does not contain a mandatory and peremptory character, but is a matter of choice for states, as well as the lack of determining priority between extradition or trial⁸.

However, in spite of the foregoing, in order to alleviate the problem of double extradition and to ensure that the extradition system achieves its goal of enhancing international cooperation in the elimination of organized crimes and corruption crimes, States must work to update their legislation in accordance with the conventions governing double extradition, as confirmed by the United Nations Convention Against Transnational Organized Crime, which obliges states parties to take all legislative and other measures in order to criminalize all the acts that the convention envisages to criminalize, and therefore, when implementing this convention, it is assumed that the issue of double criminalization should not be raised with the requesting or requested state, which has ratified on This convention, which is in fact what domestic legislation has traditionally recognized the principle of extradition or punishment, no longer takes into account the differences that may exist between its domestic legislation in the legal adaptation of the crime attributed to the person being extradited⁹.

It is not enough to update legislation only, but in addition, there is a sincere desire to cooperate in this area because it can be the purpose of states to evade extradition and choose the path of trial by the country from which the extradition is requested, and the trial is only a sham intended to avoid the extradition procedure, a good example of this is what the United States of America did when it refused to extradite officer Calley, who was accused of the crime of exterminating the Vietnamese village (My lai) and the US military ordered his release¹⁰, so the extradition issue is as any matter Another international, subject to legal double standards imposed by major countries.

Second: the principle of the extradition of nationals of the requested state.

International conventions and national legislation almost agree that the fact that the person whose extradition is requested is considered a national of the requested state and who has its nationality constitutes a serious reason for refusing extradition and the reason at the time of the commission or commission of the requested crime¹¹.

The Algerian legislature, as already mentioned, has regulated the provisions on extradition of criminals in accordance with the code of Criminal Procedure, article 695 of which stipulates that: "a person may not be extradited to a foreign government unless he has been subjected to follow-up measures for a crime provided for in this law, or has been sentenced for it. "as an exception to this rule, a non-Algerian person may be extradited to a foreign government at its request if he is found in the territory of the Republic, provided that he has been subjected to follow-up measures on behalf of the requesting state, or has been sentenced by its courts¹².

In fact, the implementation of the principle of Prohibition of extradition is no longer compatible with the requirements of combating transnational organized crime. sometimes combating such crimes requires upholding the rule of justice and achieving effective prosecution at the expense of considerations of national sovereignty. the application of the principle of Prohibition of extradition may weaken the penal policies adopted at the International and national levels in combating such crimes, and lead to a reduction in the right of the state in which the crime is suppressed or its interests are infringed to punish the offender. in addition, the principle of Prohibition of extradition may also hinder judicial cooperation in the field of extradition.

In order to alleviate this prohibition, the United Nations Convention Against Transnational Organized Crime has equipped the requested state to extradite the offender with measures to be taken in case of refusal of extradition, including the transfer of the accused to the competent judicial authority without delay for his trial, in addition to cooperation with the requesting state in procedural aspects to ensure effective prosecution¹³.

If the refusal concerns a convicted person, the aforementioned Convention obliges the requested state, at the request of the requesting state, to consider the execution of the guilty verdict or the execution of the remainder of the sentence sentenced in accordance with domestic law¹⁴ The latter is another problem that we are dealing with in the next axis.

The second axis: a problem related to the recognition of foreign criminal judgments

In addition to the problem related to extradition, which can prevent the completion of the trial procedures in corruption crimes, there are other forms related to the recognition of foreign criminal sentences imposed by a matter of principle of sovereignty(first), and the issue of divergent legislation regarding corruption crimes(second).

First: the principle of national sovereignty.

Despite the fact that international conventions, including the United Nations Convention against corruption crimes, have addressed this issue in their legal texts, the authority of foreign criminal judgments in relation to the fight against organized crime is still an obstacle .this issue has been dealt with in only one paragraph, paragraph 12 of Article 16 devoted to the topic of extradition, in order to avoid the negative consequences that may result from non-extradition¹⁵.

It is necessary to enact legislation implementing the provisions of this convention and achieving its objectives for the states that have acceded to it, and the matter is becoming more difficult and problematic for the states that have not acceded to this convention, on the other hand, most national legislations hesitate to recognize the positive impact of foreign criminal sentences, which can be an obstacle to the effectiveness of the required fight in the field of transnational organized crime¹⁶.

One of the most prominent examples in this context is the Algerian legislation, where foreign criminal sentences do not have executive power in the territory, unless there is a cooperation agreement in this regard between Algeria and the foreign state that issued the sentence to be implemented¹⁷.

In this context, States should realize that the recognition of the executive power of foreign criminal rule does not constitute a waiver of national sovereignty, but represents a kind of international cooperation in the fight against organized crime and corruption crimes.despite the unwillingness of states to cede part of their sovereignty or cede it to others, it is necessary to overcome this obstacle to adequately meet the requirements of international justice.

Given the complexities of transnational organized crime and corruption crimes, international cooperation becomes essential to effectively counter them, hence the recognition of the executive power of foreign criminal sentences can be an important step towards achieving such cooperation and enhancing the effectiveness of efforts to combat organized crime.

In general, such actions should be governed by the principles and values of international justice and respect for fundamental rights, ensuring a balance between the fight against crime and the protection of individual rights and national sovereignty at the same time.

Second: different legislations regarding corruption crimes.

The fact is that the problem of diverging legislation obstructs all stages of follow-up with corruption crimes, although it most often appears in relation to the recognition and implementation of foreign judgments, what is permissible in one system may be a criminal act and not permissible in another, an example of this is the criminalization of drug trafficking and drug use, in some countries this is dealt with very strictly and harsh penalties are imposed on those involved, while in other countries drug use is seen as an issue related to individual freedom and individuals are not punished for their use, also for human trafficking, sexual exploitation and other criminal activities, which is another example the wide variation in legislation and applications In some countries, such acts are considered serious crimes and those involved in them are strictly punished, while in some other countries such acts can be non-criminal or be punished more leniently¹⁸.

The fact is that this disparity in legal practices is partly due to the difference in cultures and values between countries, as well as the difference in the challenges you face for a country and the economic and social pressures it faces. It is important that the international communities strengthen international cooperation to combat corruption crimes and exchange information and experiences to achieve justice and promote safety and peace around the world.

It should be noted that the definition of corruption crimes is also a reason for the divergence of legislation, as it is considered a complex and variable matter based on the culture and context of the law relevant to you for a state, and this complexity leads to a divergence and diversity in legislation and legal practices between states. moreover, there may be reservations or objections from some states to some items of international conventions, such as the United Nations Convention Against Transnational Organized Crime, as they interfere in the national sovereignty and internal affairs of states.

The discrepancy in legislation is also due to the multiplicity of types of organized crimes and corruption crimes and their forms, which can vary depending on the economic, social and cultural conditions in each country .for example, some countries may deal differently with crimes such as human trafficking or drug smuggling based on their traditions and cultural values, as mentioned above¹⁹.

Finally, it can be said that states face multiple challenges in the field of combating crimes and corruption, including international cooperation and unification of efforts in this area, but the balance between combating crime and respect for national sovereignty and the rights of individuals remains sensitive and complex. Achieving this balance requires joint and continuous efforts at an international level.

In order to overcome the legal obstacles arising from the absence of a bilateral or multilateral treaty regulating mutual legal assistance between requesting and requested states, the Convention on Combating Organized Crime was considered a legal basis for such assistance, so that the requirement of dual criminality or banking secrecy could not be invoked as an obstacle. For the purposes of this Convention, the crimes covered by its provisions shall not be regarded as financial crimes, political crimes, or crimes of a humanitarian nature. This reflects the intention of international criminal policy theorists to address this type of crime, the gravity of which threatens the entire international community.

In light of the strategy formulated by the Naples Declaration to combat organized crime, emphasis was placed on the recognition of national sentences, given the importance of the criminal record when adjudicating criminal cases. A previous conviction reflects the seriousness of the offender and therefore enables the imposition of an appropriate punishment proportionate to both the gravity of the crime on the one hand, and the dangerousness of the offender, as revealed by his criminal record, on the other.

As a result, the foreign judgment rendered in respect of the principal offense acquires binding authority for the prosecution of the accomplice. This is particularly significant, since certain criminal legislations have not adopted specific provisions on corruption offenses that would place the contribution of the accomplice, aimed at furthering the criminal purposes of such offenses, on an equal footing with the conduct of members of the criminal organization. Accordingly, the liability of the accomplice is not contingent upon that of the principal perpetrator. This position was affirmed by the Italian judiciary, which held external accomplices accountable for acts committed by members of the criminal group, thereby recognizing corruption offenses as collective crimes²⁰.

Third: The Problem of Jurisdictional Conflicts as an Obstacle to Coordinating International Cooperation in Combating Corruption Crimes

It is commonly recognized that territorial jurisdiction over crimes is determined according to legally established criteria, namely: the place where

the crime was committed, the residence of the accused, or the place where the accused was apprehended²¹.

Domestic corruption offenses do not generally raise difficulties in terms of jurisdiction, since States have traditionally confined themselves to defining the scope of their criminal legislation with respect to crimes committed within their territory, while also setting forth the rules that allow the extension of such legislation to crimes committed outside the territory.

However, some States have explicitly provided for the principle of universal criminal jurisdiction in addressing organized crime, of which corruption is one of the most prominent forms. Algeria is among these States, as paragraph 2 of Article 37 and Article 40 of the Code of Criminal Procedure, as amended and supplemented by Law No. 04-14 of 10 October 2004, expressly authorize the extension of the territorial jurisdiction of both the Public Prosecutor and the Investigating Judge to the jurisdiction of other courts in cases involving drug trafficking, transnational organized crime, offenses against automated data processing systems, money laundering, terrorism, and offenses related to foreign exchange regulations.

On this basis, the application of the principle of territoriality of criminal procedure has led to offenders escaping punishment, which prompted some legislations to adopt it as a means of broadening the concept of the place where the crime is committed²².

However, a problem arises in the case when corruption crimes have shifted their operations outside the borders or are associated with non-national elements, which is the characteristic of corruption crimes, it may happen that the crime is committed in the territory of a particular state by a foreigner, so the crime in this case is subject to the criminal jurisdiction of the first State on the pretext and based on the principle of territoriality, while the second state invokes jurisdiction based on the principle of personality²³.

This crime may be one of the crimes that pose a threat to the security and safety of another state and fall within its jurisdiction on the basis of the principle of in kind.

In order to achieve the idea of balancing the right of the state to exercise its jurisdiction and to overcome this problem, some agreements have proposed a compromise solution, aware of the international dimension of corruption crimes and preventing impunity for criminals, and in an effort to prevent overlapping jurisdictions²⁴.

In application thereof, both the United Nations Convention against Transnational Organized Crime of 2000 and the United Nations Convention against Corruption of 2003 called for the necessity that the States concerned

with a single case agree on one State to conduct the investigation and prosecution. The proceedings are then transferred to that State, and once a final and conclusive judgment is issued against the accused, the sentence shall be enforced in the prisons of his home country²⁵.

From our point of view, this approach and consensus is difficult to achieve in light of the literal adherence to the idea of national sovereignty, the desire of states to grant immunity to the actions of their presidents and governments, considering that criminal justice is a manifestation of national sovereignty.

Within the framework of the bypass, and as a second step to overcome the problem of jurisdictional conflicts in corruption crimes, it is complemented by the need to conclude international agreements, whether bilateral or collective, on the basis of which the points of view regarding the rules of jurisdiction are unified and brought closer, in addition, the need to update substantive and penal laws in light of the wide spread of this type of crime²⁶.

As a follow-up to the above, relying on the conclusion of international agreements, whether bilateral or collective, to solve the problem of conflicts of jurisdiction in practice is the optimal solution, as this allows reducing the chances of impunity for perpetrators, especially since the local character of the means taken by each individual state in its internal legislation, whether in the Penal Code or the code of Criminal Procedure, proceeding from the idea of regional national sovereignty, results in a contradiction in light of the widening scope of the global character of crimes, corruption and the Union of criminal organizations.

Conclusion:

In this study, we have proved that the problem of extradition of criminals and other forms related to the recognition of foreign criminal sentences is still considered one of the most important obstacles that stand in the way of bodies and authorities in charge of combating, which can only be overcome if efforts are joined together between various national, regional and international bodies concerned with combating in order to find an arresting solution between these obstacles and the requirements of combating, and the percentage of crimes that are on the rise and increasing daily, all these obstacles were due to the expansion of the crime, and hence it has become necessary to emphasize international action at all levels and give it priority in the face of this kind of criminality.

Recommendations:

1-the need for cooperation at the regional level between countries, especially neighboring countries, is far from all narrow calculations, after the state fortifies itself internally, it must fortify its external borders, and the most prominent example of the weakness of regional cooperation between neighboring countries, which results in weak results in combating crimes and corruption, the failure of the Maghreb countries to unify their borders and tolerance of each other due to some political differences.

On the other hand, as we pointed out in the results, we find that the Algerian state was credited with the decisive role in the birth of the African Criminal Police Organization, which is considered one of the main pillars in uniting and strengthening international cooperation in the region, which confirms the determination of the Algerian state to combat this type of crime.

2-working to strengthen the mechanism of international cooperation in the field of mutual legal assistance in various forms, such as judicial warrants, joint investigations and other procedures, in addition to working on the extradition of criminals who are found to be involved in committing crimes of corruption and work to overcome obstacles that stand in the way of activating these procedures.

3- In the same regard, we believe that it is necessary to recognize the validity of foreign criminal judgments issued on corruption crimes by state courts before the courts of another state, especially with regard to the confiscation sentence, considering that the latter plays an important role in depriving organized criminal gangs of the enjoyment of the proceeds of their criminal activities, as funds are the source of maintaining their survival and a guarantee of the continuity of their criminal activity.

4-unified international legislation should be developed through which it is proposed to outline what can be done within the frame of work of cooperation and coordination between different states in an attempt to eliminate the problem of divergence and inconsistency of legislation and control procedures between different states.

5-the need to support and synergize the leading countries that have experience and experience in combating corruption crimes, as well as possessing material and human capabilities with developing countries that do not have the ability to withstand criminal gangs.

6-imposing international sanctions on countries that adopt encouraging and lenient measures and provide a climate for corruption crimes gangs, because of their need for sources of funding.

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¹³Article 16, paragraph 10 of the United Nations Convention Against Transnational Organized Crime.

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