

Mechanisms of International Cooperation in the Implementation of Foreign Criminal Sentences

آليات التعاون الدولي في تنفيذ الأحكام الجنائية الأجنبية

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Abstract:

The subject of implementing foreign criminal judgments is considered one of the most important topics of private international law, due to the development that the world is witnessing in all areas of life, as crime is no longer limited to the borders of one country, but its impact has extended to affect the entire international community. Therefore, we must keep pace with this development and modernize the mechanisms for combating crime in accordance with the development of the phenomenon of crime. International cooperation in implementing foreign criminal judgments is considered one of the highest manifestations of this development. The importance of the issue is evident in the fact that the territorial borders of the state are not an obstacle between the criminal and the application of punishment to him, and that there is a reconciliation between the independence of each state in exercising its penal jurisdiction within the borders of its territory and the necessity of exercising its right to punishment on the one hand, and combating crime at the international and national levels on the other hand.

Keywords : International cooperation , execution , Foreign criminal judgement , border .

المخلص:

تنفيذ الأحكام الجنائية الأجنبية يعتبر من المواضيع المهمة في القانون الدولي الخاص ، وهذا نتيجة التطور الذي يشهده العالم في جميع مجالات الحياة ، فتأثير الجرائم لم يعد مقتصرًا على حدود إقليم واحد و إنما امتد أثره ليشمل جزءًا كبيرًا منه ، وهذا ما يستدعي إيجاد آليات تتوافق مع جسامة هذه الأفعال ، ويتجلى التعاون فيما بين السلطات العليا بأن لا تكون الحدود الإقليمية حائلًا بين المجرم وتطبيق العقوبة عليه وكذلك الاستقلالية في ممارسة الاختصاص الجزائي و بين ضرورة ممارسة الحق في العقاب ومكافحة الجريمة على الصعيد الدولي والوطني .

الكلمات المفتاحية : تعاون دولي ، تنفيذ ، حكم جنائي أجنبي ، حدود .

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Introduction:

Cooperation is considered an essential element in building relationships and achieving success in life, whether from a personal, national or international perspective. This has resulted in the emergence of a complete set of rules and applications for conflict. This is the result of achieving a balance between the various services in pursuing criminal judicial extension outside the headquarters. The movement and travel of individuals prompted the international community to search for new mechanisms that are compatible with the nature of the developments that occur in committing crimes and the multiplicity of methods of committing them. This resulted in signing many international treaties that criminalize many illegal activities, and work to follow them up and to control them and achieve their goals as a manifestation of assistance among them, how is this done and what are the means that have been harnessed to achieve the goal?

To answer this problem, we will address:

First: The nature of the foreign criminal ruling

Definition:

It is the order that is issued by a non-national court¹¹ that is functionally and objectively specialized and is issued in the name of that sovereignty regardless of the nationality of the opponents or the place of its issuance. Therefore, in order for it to be achievable, a set of characteristics must be present, which are as follows:

1-1- It must be a judicial act:

Jurists differed among themselves regarding its applicable nature². Some of them believe that it is obligatory to issue it by the courts, whether due to a dispute or not, and that it has the force of a res judicata. Others see it as decisive for the dispute in whole or in part and definitive, and they justify their position by relying on who issued it. What is noted is that despite the agreement on its issuance by a judicial body, there is a discrepancy regarding its

¹ - Baraa Moundher Kamal Abdellatif, Mouwaffak Ali Obaid, Implementing Foreign Rule in Iraq, a comparative study, Tikrit Journal, Human Sciences, Volume 15, Issue 11, Iraq, 2008 , p 201.

² - Hicham Sadik Ali Sadik, Hafida Sayyid Al-Haddad, Principles of Private International Law, Nationality and Foreigners' Status, Conflict of Laws and Conflict of Jurisdiction, University Press House, Alexandria, Egypt, 2001 , p 144.

authority. There are those who see it as possessing the authority of the *res judicata* before it includes the executive formula, and there are those who believe that it does not gain authority until after it is finalized¹.

1-2- It must be issued by a non-national court:

This criterion means that it is issued in the name of the sovereignty of the state other than the one in which it will be applied, and it does not matter the nationality of the judges who issued it or the place where it was issued. This is the standard adopted in the European countries¹.

2- Procedures for achieving it:

There are two systems that are relied upon to complete this type of imposed punishment:

2-1- The new lawsuit system:

This means that in order for it to have an effect outside the scope in which it was issued, the person in whose favor it was issued must file a request before the national judiciary to claim again the right that the latter has approved as conclusive evidence of its validity², so that what was issued in the case by the national courts is capable of being performed in the state in every case in which it is not achievable under a treaty.

This means that everyone who has a final decision granted to him within a framework that adopts this system must take it as a conclusive argument before the judiciary in which he wants to achieve it, so that he has no choice but to enable him to do so in his territory and without opposition, and in order for the judge to rely on it and consider it conclusive evidence, these elements must be present:

2-2- Execution order system³

It means that every person who has an interest and seeks to resort to the judiciary in order to issue the order, according to which he is given a local advantage, and this system is adopted by both European and Arab countries including Algeria.

¹ - Abdenour Ahmed, Problems of Implementing Foreign Judgments, A Comparative Study, A Memorandum , for Obtaining a Master's Degree in Private International Law, Tlemcen, 2009 , p 08.

² - Duson. Kitic . Droit International Privé .Ellipses. Paris.2003, p 121.

A- Methods of following it up:

This work is subject to a set of steps, the aim of which is to prevent it from containing content that violates public order in the country in which it is to be implemented¹. As a result, either the review system or the monitoring system is adopted, and the latter is based on providing two interests:

- The first interest is based on providing what one wants. Every state enables the oppressed to have his right without obstacles and ensures that it is provided for him.
- As for the second interest, it relates to the entity in whose territory the act is committed. Here, the extent to which it fulfills only the formal conditions that differ from one region to another is monitored either by increase or decrease.

In this regard, the Algerian legislator allowed investigation by judicial institutions after it was registered in the executive form¹ without addressing the issue, and this is an application of the monitoring system².

B- How to submit it to the governing bodies:

To fulfill this element, there must be a lawsuit that is limited only to it without entering into disputes, and its issuance does not mean that it has become national. This requires the presence of two opponents, a plaintiff and a defendant, because it is not permissible to claim it except from those who were a party to the original dispute, that is, from the obligated parties. or who replaced them³.

As for its consecration in Algeria, it is granted this status by the courts held at the headquarters of the judicial councils in which the residence of the executed person or the place of enforcement is located, and the civil department is responsible for this even if what was issued from abroad is related to a commercial case, personal status, or a criminal case. This is done through a petition submitted by the concerned person, whether from the lawyer or in his presence, where the clerk of the court is responsible for writing a report and this is

¹ - Saleh Jad Al-Manzalawi, Jurisdiction in International Disputes and Recognition of International Restrictions on Foreign Judgments, New University House, Alexandria, Egypt, 2008 , p 193

² - Okacha Mouhamed Abdel-Al, Private International Law, International Jurisdiction in the Enforcement of Foreign Judgments, New University Publishing House, Alexandria, Egypt, 1996 , p 287.

³ - Amara Belghith, Implementation of Foreign Judgments, Institute of Legal and Administrative Sciences, Annaba University, Algeria, research to obtain a master's degree in 1989 , p 82

when the actions stipulated by the law are respected, after which he is treated in a normal manner and is marked with the executive form so that it is completed in accordance with what is applicable. In case he is not granted this right, it may be appealed in accordance with the established general rules¹.

3- Conditions of its implementation :

In order for it to be implemented on the ground, it must be appropriate to its legal system and consistent with the public order, but there is a difference between countries in this possibility and this is according to their own systems.

In this regard, many agreements were concluded that regulate this issue and included main conditions governing this process, which are as follows

3-1-Preserving state sovereignty²:

It is fulfilled by achieving two important principles:

B-The principle of reciprocity:

The judge before whom these cases are brought must treat them in the same way as national judgments, i.e. apply the monitoring system. However, if the foreign country whose sentences are to be signed follows the implementation order system, this will be taken into consideration. This is what we find in the letters exchanged between Algeria and France regarding the amendment of the Algerian-French judicial protocol, which stipulated respect for this principle, as well as Tunisian law, Iraqi law, Kuwaiti law, Libyan law, Syrian procedural law, Bahraini law, and Jordanian law, all of which stipulated it.

C-It does not violate public order:

Public morals differ from one country to another and from one time to another, and their primary purpose lies in protecting the internal system from any threat that affects or

¹ - Mohemd Issad .Exécution des décisions étrangères en droit algériens .Recueil Pénal 1974,p275.

² - Miteb ben Abdoullah Sanad, International Cooperation in Implementing Foreign Criminal Judgments and its Impact on Achieving Justice, a thesis submitted in fulfillment of the requirements for obtaining a master's degree in criminal justice, Riyadh, 2011, p 79.

undermines its foundations. Whenever these sentences contradict the components of Algerian society, they are not applied.

C-It does not conflict with sentences previously issued by the Algerian judiciary:

What is issued by the Algerian courts is an indication of the truth guaranteed by the validity of the *res judicata*, and it is forbidden to confess anything that contradicts this truth because it is considered a waste of national sovereignty.

D-Controlling its legitimacy:

Two basic conditions must be met to control legitimacy:

- **Issued from abroad:**

In this case, the judge is not obligated to consider whether the body from which it was issued is competent, qualitatively or regionally, unless that jurisdiction makes it invalid, and therefore he orders its implementation whenever it is issued by a competent court.

- **Possessing the power of *res judicata*:**

This means that when the ordinary and extraordinary methods of appeal have been exhausted and it becomes final, it can be activated.

- **Decision must be decisive¹:**

This means that we will not be able to complete the obligations if the matter is related to decisions that are not decisive in the matter, they must be acquittal or conviction with completion, postponement or suspension. However, there are exceptions to this that require urgent action in order to obtain evidence or seize funds to prevent their smuggling, arrest suspects, hear a witness, or seize bank accounts. For example, if there is a verdict to confiscate items, it is subject to the procedures stipulated in the European document signed on May 28th, 1970².

¹ - Huet et Koering-r . joulin .op .p247.

² - Djamel Saif Fares, International Cooperation in the Implementation of Foreign Criminal Judgments, A Comparative Study, Dar Al-Nahda Al-Arabi, Cairo, Egypt, 2003

Second: Methods of implementation

They are the means used to combat crime, which are as follows:

1- Extradition of criminals:

It means any act whereby the State extradites an accused or convicted person competent to the country competent to try him, prosecute him criminally, or punish him¹, and this is according to the following:

1-1 The seriousness of the crime:

It is determined either by relying on the numerical method, through which the names of crimes are included in international clauses or in special texts related to extradition, or by the exclusion method, which determines the crimes by the minimum or maximum penalty prescribed for them and for which extradition is requested. It was introduced for the first time in the era of international criminal law signed in 1899 in the city of Monte Vido.

1-2- Dual criminality:

This means that the act for which extradition is requested is criminal in both countries, and in this regard, the Algerian legislator has permitted it in:

- All cases punishable by law with a felony penalty.
- All acts punishable by law with a misdemeanor penalty not exceeding a maximum of two years and a minimum of two months.

1-3- Place where the incidents were committed:

This means that the public lawsuit is for the crime committed by the person whose extradition is requested, and the penalty issued against him is still valid and has not been dropped or expired for any reason of expiry. If it is not fulfilled, extradition loses its importance and becomes useless.

¹ - Djanhi Hisn Abdoul Amir, Extradition of Criminals in Iraq, first edition, Baghdad Foundation for Legal and Constitutional Books and Publications, Baghdad, Iraq, 1988 ,p 51.

1-4- It is not permissible to extradite nationals:

It is not permissible to extradite nationals, whether they are indigenous or naturalized regardless of the nature of the acts committed and attributed to them.

1.5 Non-extradition of those who have been tried for the crime for which extradition is sought:

It is forbidden to transfer persons who are under investigation and trial for the same acts for which their transfer is sought, in order to avoid being sentenced to a double penalty.

1-6- Delivery procedures:

It means the method that must be followed in transporting criminals.

What the bodies requesting extradition do:

The latter, through the prosecution and indictment authorities at the competent judicial council, issues a petition in which it explicitly expresses its desire to receive the criminal, attached to a file containing all the documents supporting it, and this is done through diplomatic channels in Algeria¹. In Egypt, this petition is prepared by the prosecution and accusation authority of the office of the first public defender in accordance with the Article 1712 of the instructions of the Public Prosecution. In the United States of America, this assignment is submitted by the state courts, by its public defender, or by a private local representative. In France, it is written by the indictment agent, who in turn sends it to the Public Prosecutor, and the latter sends it to the Ministry of Foreign Affairs, which in turn sends it to its embassy, with its pledge not to pursue and try him for a previous crime or to extradite him to a third country except after the approval of the country that extradited him and to do so in a capacity Fair and impartial, while providing guarantees for his defense³.

C- What the country from which extradition is requested does:

After receiving this request, an investigation will be carried out, evidence will be collected, he will be arrested, interrogated, and he will be detained in pretrial detention, or

¹ - Information card about the National Symposium on International Judicial Cooperation in the Criminal Field in the Arab World, held by the International Institute for Postgraduate Studies in Criminal Sciences in Siracusa, Italy from 05 to 11 December 1993, p01.

he will be released with or without bail, while preventing him from leaving the country until the matter is decided. Then, after such acts, the application is decided either by admissibility and a decision is issued containing the type of crime for which the person was extradited or a decision is made by refusal.

• **International judicial rogatory¹:**

What is meant is the decision issued by the competent investigating judge, and this is within the framework of the investigation of a file open before him regarding facts that constitute a crime, and the latter is directed to foreign parties in order to obtain information or to conduct an investigation complementary to the case and related to it, and this is due to the impossibility of interrogating him because he is outside the district or In order to view relevant documents, and this is a result of the development witnessed in the commission of crimes in the global forum, which hinders the normal course of trials and the follow-up of criminals, this summons shall be signed, dated, and stamped with the seal of the concerned authorities.

• **Its legal basis:**

Its performance is not binding on the assigned mandate⁵ except when it is a party to a charter, whether bilateral or multilateral, and this is out of respect for the principle of sovereignty. Its role is limited to conducting an investigation, such as hearing witnesses or carrying out inspections, as well as providing expert information and carrying out inspection and examination of objects.

• **Hearing witnesses:**

They are people whose testimony has an impact on the course of the case². Hearing them enables the truth to be revealed, and when it is necessary to hear them, a petition is submitted to the relevant authorities, and this is in accordance with the laws regulating that. Whenever they are summoned, they are obliged to attend to give their statements and

¹ - Faiza Younes Al-Bacha, Organized Crime under International Agreements and National Laws, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2001, p 151.

² - Benouda Nabil, an article entitled Criminal Judicial Delegation in the Penal Field, Abdelhamid Benbadis University, Journal of International Law and Development, Volume 7, Issue 02, year 2019, Mostaganem ,p 151.

take the legal oath. Accordingly, every witness summoned to hear his testimony during a judicial delegation must attend, take the oath, and give his testimony.

- Carrying out inspections:

After obtaining permission to search homes and people, judicial police officers (the investigating authority) move to the homes of these suspects and search them. This is in accordance with the text contained in Module 2B3 of the Manual on International Cooperation in criminal matters to combat terrorism issued by the United Nations Office on drugs and crime in 2009¹.

- Providing expertise information³:

This work is carried out by every technically competent person regarding an incident that has an impact on the merits of the case. He must assign experts in the field of investigation to enable accurate information to be obtained that cannot be revealed by anyone.

• Interpol's role in its implementation:

The International Police seeks to strengthen its means of confronting private organized crime in the light of technological developments, as its role lies in supporting the subject under study and disseminating it on the largest scale. This is through preparing systems that limit the fight against actions that violate legal frameworks cross borders through:

- Organizing international conferences and seminars²:

This is in order to exchange experiences in the field of investigation and combating criminals.

¹ - Guide to International Cooperation in Criminal Matters to Combat Terrorism, United Nations Office on Drugs and Crime, Vienna, New York, 2009, viewed online, on 12/12/2022 .

² - Halima Kharaz, International Criminal Police Organization and its Role in Combating Terrorism, Journal of Comparative Legal Studies, Faculty of Law and Political Sciences, Abdelhamid Benbadis University, Mostaganem, Algeria, Volume 2, First Issue, 2015, p 150.

-Training judicial police officers:

This is done by conducting courses for directors of police institutes as well as employees of the states who are member of the organization, where they are taught information and techniques that are in line with the development of the committed crimes.

- Verifying the identity of criminals¹:

When a criminal escapes from the punishment assigned to him, the first thing he does is change his name and appearance. Here, great efforts are made to identify him and verify his name, especially in the case of death and if the body is unknown.

- Extradition of violators of the law:

It is one of the most prominent tasks carried out by this cell.

- Searching for and retrieving lost items:

The general secretary publishes bulletins containing numbers and specifications for missing items such as weapons and passports.

- Announcement of crime statistics:

This work takes place once every two years and explains the goals of crime and ways to combat it in various sectors. These reports are prepared by the police agencies which in turn send them to the national central offices, and then it is delivered to the general secretary of Interpol.

Conclusion:

The primary goal of the union lies in working to establish the foundations of international law, the basis of which is to support the achievement of security and peace and the common international interest. Since any law is hoped to be effective and respected in its sentences, the ratification by governments of treaties that confer a criminal character on acts committed by individuals is in itself a mechanism for cooperation in combating crimes as well as the exchange of experiences.

However, there are difficulties that prevent achieving the goal. This appears in the lack of general agreement among the parties regarding some crimes and the way of execution against their perpetrators. What is considered permissible in one place is considered

criminal in the other as well as the lack of communication channels whose goal is to collect evidence and confront crimes committed by certain criminals and specific penalties are applied to them. The existence of what is known as dual criminality as well. There are some actions committed in one country that are criminalized in a certain way, while they are criminalized in another country in a different way. An example of this is crimes committed by relying on means of communication and the Internet.

Among the difficulties also the lack of approval by the provinces on some sentences included in the treaties as the condition of respecting human rights, many governments refuse to participate in case this conflicts with article three of the United Nations convention against torture, neither party may expel a person, return him or extradite him to another country. In this context, it is possible to do the following:

- Prepare a charter in which viewpoints are unified among countries concerning the issue of jurisdiction conflict with regard to penalty execution, as well as tracking down perpetrators and keeping abreast of the developments that occur and the various violations that occur.
- • Interpol Police organize training courses and seminars during periods of time to train policemen from various centers in order to develop their competencies and provide them with the latest developments in the field, as well as introduce to them advanced and innovative means of committing violations.
- • Call the states to adopt domestic legislation that includes effective means to combat international crimes.
- Collect information on criminals and crimes across the territories of member states to form an integrated archive that can be consulted.
- • Strengthening solidarity in the fight against crime by providing all relevant documents or copies of them, exchanging data, locating people, and conducting searches and inspections.
- • Encouraging mutual assistance between criminal police authorities within the limits of applicable laws.
- • Getting rid of the idea of borders without infringing on territorial sovereignty, because these crimes are committed in one country and achieve results in another country, especially what is known as cybercrime.

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