DOI: 10.7256/2226-6305.2015.2.13385
При цитировании этой статьи сноска на doi обязательна

ИНТЕГРАЦИОННОЕ ПРАВО И НАДНАЦИОНАЛЬНЫЕ ОБЪЕДИНЕНИЯ

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THE EUROPEAN JUDICIAL NETWORK AND EUROJUST AS BASIC MEANS OF THE COOPERATION OF EU MEMBER STATES IN THE AREA OF CRIMINAL JUSTICE

Abstract: *This article considers the cooperation between Member States of the European Union in the area of criminal justice. Two important institutions which encourage the co-operation in the way that Member States are organized, are the European Judicial Network and Eurojust. Such aspects as the organization, the history of the creation, functions, powers and activities of Eurojust are considered.The author concludes that Eurojust, as a European Law Institute, which will provide the basis for establishing a European Prosecutor in future (Article 69 of the Lisbon Treaty), is nowadays the most advanced contributor to the cooperation of Member States in the field of criminal justice. However, the author notes that in such an area as criminal justice, where the loss of sovereignty of member states of EU is experienced the most strongly, Eurojust stays an authority, in the way EU member states' tribunals are organized, but it is not the European supranational institution. That is why it should be considered as a tool of interaction between the tribunals of EU member states, and not as an institution controlling the interaction between the judicial authorities of Member States and the EU justice system.*

Keywords: *European Union, Council of Europe, Judicial network, Eurojust, Member States, criminal justice, cooperation, functions, powers, activities.*

Аннотация. *Статья рассматривает взаимодействие между Европейским Союзом и государствами-членами и в сфере уголовного правосудия. Автор представляет Евроюст и Европейскую судебную сеть в качестве основных институтов участвующих в организации такого сотрудничества. В работе уделяется внимание таким аспектам темы как история создания, функции и деятельность Евроюста. Автор считает что Евроюст можно рассматривать как прототип паньевропейской прокуратуры, котором в частности упоминается в ст. 69 Лиссабонского договора. Автор отмечает что сотрудничество в сфере уголовного правосудия, а точнее осуществление таких функций на наднациональном уровне вызывает определенные сложности, так как уголовное право является одним из выражений суверенитета государства. Как следствие на сегодняшний день возможна только организация сотрудничества между государствами в сфере уголовного правосудия, а не исполнение данных функций на наданционаьном уровне.*

Ключевые слова: *Европейский Союз, Совет Европы, Судебная сеть, Евроюст, государства-члены, уговлоное правосудие, сотрдуничество, функции, власти, деятельность.*

DOI: 10.7256/2226-6305.2015.2.13385
При цитировании этой статьи сноска на doi обязательна

Within the European Union today there are no special courts dealing with criminal cases. In this regard, judicial cooperation within the framework of European law can be organized only between the tribunals of the Member States. In other words, the subjects of cooperation between the tribunals of the Member States are tribunals of the Member States. Nevertheless, at the European level, also there are organizations that take part in the arranging of the relations of the Member States tribunals that deal with criminal cases.

The first of these mechanisms that organize the tribunals of member states was created in the era of the *Maastricht Treaty*. It has been noted in the Russian science of European Law, that the first such mechanism was the creation of '*liaison magistrates*'[1], and their participation provided for the bilateral contacts of tribunals of the Member States. In the same period '*The European Judicial Network'* and *'Joint Investigation Teams'* were created that were conceived of as being decentralized tools of the plurilateral relations of tribunals.

If the aforementioned 'mechanisms', except for the '*European Judicial Network',* are rather weak cooperation mechanisms for the tribunals of the Member States, the existence of *Eurojust,* which appeared later (at the time of the Amsterdam Treaty), is, in our opinion, the greatest asset for cooperation in the area of criminal justice. Indeed, it is the use of this mechanism which suggests that the cooperation between the tribunals of the Member States has reached a new, more integrated level. And this level allows talking about the (partial) integration of the judicial systems of the EU Member States.

1. The European Judicial Network

The European network of contact points in the area of justice was established by the *Common Action* on June 29, 1998[2], which, in turn, has recently been replaced by *Council Decision* of 16 December 2008[3] that reinforced the cooperation of tribunals within the network.

In relation to the *liaison magistrates* the *European Judicial Networ*k has greater significance. That was noted, in particular, in the Russian science of European law[4]. To our point of view, it is connected with the fact that the nature of this form is of institutionalized cooperation. Indeed, in contrast to forms of cooperation in the area of criminal justice that have existed for a long time, the *European Judicial Network* has an institutionalized form of organization such as the Secretariat. Also, so-called contact points have been created to realize the objectives within the *European Judicial Network*.

It should be mentioned that the Secretariat of the *European Judicial Network* is a part of the Secretariat of *Eurojust* despite the fact that it is an individual authority with its own autonomy. The Secretariat of the *European Judicial Network* uses the resources of *Eurojust*, which also reflects the presence of close cooperation between these institutions.

In that regard, it should be mentioned that so-called 'contact points', in accordance with the law (*Article 4* of the *Decision* of 16 December

[1] *Astapenko V. , Loysha D.* Eurojust: general legal description. / / International Law and International Relations. 2005, № 1.

[2] Cons. UE, action commune n° 98/428/JAI, 29 juin 1998, Journal Officiel des communautés européennes, 7 Juillet 1998.

[3] Cons. UE, action commune n° 98/428/JAI, 29 juin 1998, Journal Officiel des communautés européennes, 7 Juillet 1998.

[4] *Kayumova AR* Mechanisms for the implementation of criminal jurisdiction within the EU states forming a space of freedom, security and justice / AR Kayumova / / International Public and Private Law. – 2005. – № 4 (25). – P. 52

DOI: 10.7256/2226-6305.2015.2.13385
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2008) are defined as 'active intermediaries' that conduce to resolving specific cases through their participation. They are created to help tribunals and other competent authorities of their countries, and they are in constant contact with similar enforcements of other states, as well as contact points located within them. Thus, judges may apply to the contact points if they have met with difficulties concerning their cooperation with the judicial authorities of another Member State in their routine work. So, their functions include establishing the cooperation between judges of different states that is necessary within the course of justice in any particular case.

Each state designates persons, who will fulfil functions of their own points of contact. Most often this means the judges or representatives of the Ministry of Justice or other authorities that are competent in the area of the course of justice (see Art. 2, § 1). In accordance with the above *Decision* (see Art. 2, § 5) contact points of each State shall be submitted by individuals with extensive experience in the area of cooperation between the tribunals of different States, and who, possessing the necessary language skills, are able to establish the contact with their foreign colleagues.

So, states have room for manoeuvre in determining their points of contact, which partly explains their diversity, a fact that can be seen by examining the contact points of different states.

And, for the implementation of this feature, some states determined national authorities (in Belgium, for example, a contact point is represented by a Prosecutor), whereas in other states they are represented by decentralized tribunals (e.g. France).

In passing, it may be noted that the contact points of the European Judicial Network can be implemented by liaison magistrates also (e.g. France). It should also be mentioned that the number of contact points varies from one state to another.

In addition to the state contact points there are contact point within the European Commission. Also it should be mentioned that in addition to the last one and the contact points of the Member States, contact points exist in other states that participate in the *European Judicial Network*. There were about 400 by the middle of 2009.

The *European Judicial Network* itself operates in three main areas:

– Activities of the contact points in relation to specific cases (the primary activity of the *European Judicial Network*). This activity is carried out in an informal setting through the exchange of e-mail, faxes, phone calls, etc.;

– Periodic meetings of the *European Judicial Network*, which are held at least three times a year (*Article 5* of the above-mentioned Decision). Within these meetings, the issues of network operation and practical problems of the cooperation of the tribunals are discussed;

– providing through the *European Judicial Network* practical information and other tools that serve the justice system for the organization of its cooperation with their foreign colleagues. In particular, the tools of the Internet are used, and an internal network for the exchange of information within the cooperation of tribunals of different countries is established.

Thus, decisions about personnel concerning mutual recognition of decisions in the area of criminal justice resulted in the spread of certificates intended for decisions to be executed 'within the secure telecommunication system of the *European Judicial Network*'[5]. One particular function

[5] See e.g. art. 10 of Personnel Decision n° 2002/584/JAI.

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of the *European Judicial Network* is carried out by representatives of the judiciary in the Member States, if they meet a problem within a particular case in which there is an extraterritorial element, and the arranging of cooperation with the tribunals of other countries is necessary to solve it. In such cases, the magistrate may apply to the contact point, so that, for example, he may get help in making a request for legal assistance and to transmit it to the competent foreign colleagues, or to establish contact with the tribunal of a foreign state, which he directs (or that he sent) a request for mutual assistance. Judges may also apply to the contact points to clarify features of the legislation of a foreign state with which they need to establish a cooperative relationship; for help in identifying a particular competent person for cooperatig with the tribunal of a foreign state, etc.

Despite the fact that neither the *Common Action* in 1998, nor *Decision* in 2008 not settled the question about competence of the contact points, most often in practice, tribunals apply to points of contact of their own states. Communication with the contact points is fairly simple, as in the closed part of the Internet site of the *European Judicial Network* (http://www.ejn-crimjust.eu/contact_points.aspx) there is all the necessary information. Also this part of the site contains information on the differences in competence between the *European Judicial Network* and *Eurojust*, which allows magistrates to address their request properly.

The activities of these participants of cooperation are complementary, as their purpose is to help tribunals of Member States to facilitate cooperation between them in the framework of the resolution of specific cases. Distribution of competences between the *European Judicial Network* and *Eurojust* depends on two factors: the bilateral or plurilateral type of the relationship, as well as the complexity of the case. It should be mentioned that the impact on the distribution of competences between the subjects of cooperation of Member States tribunals also has the form of specific assistance that is needed by the tribunals. So, if it comes to the bilateral cooperation of tribunals in the framework of the case, that is not complicated: it is logical that an appeal should be directed to one of the contact points of the *European Judicial Network*.

2. Eurojust (Council Decision 2002/187/JAI on February 28, 2002)

An example of the cooperation of the tribunals of the Member States, which deserves more attention, is *Eurojust*. This *European Law Institute*, established by the *Council Decision* of 28 February 2002 [6], and slightly modified by the *Decision* of December 16, 2009, and not being a European authority, yet it is a member of the joint organization of EU Member States in the area of criminal justice, which shows more than just the elements of success mentioned by us above, but also the existence of integrated relations in this sphere. Indeed, the establishment of a permanent and centralized member that organizes plurilateral relations between the tribunals of different European countries suggests that the relationship of tribunals of the

[6] Cons. UE, déc. n° 2002/187/JAI, 28 févr. 2002 instituant Eurojust afin de renforcer la lutte contre les formes graves de criminalité, Journal Officiel des communautés européennes, 6 Mars 2002.

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European states have reached a new level, and that *Eurojust* may be introduced in the future as part of a European integrated criminal justice system. Taking into account some of the provisions of the *Lisbon Treaty* (see Art. 86), we can assume that this instrument of European law can serve as a prototype for the future establishment of a 'European Prosecutor's Office'[7].

It should be mentioned that, despite of the fact that *Eurojust* is not a separate authority of the European Union, its creation helped the cooperation between tribunals of the Member States in the area of justice to reach a new level. Indeed, with its advent, cooperation in this area rose from the classical intergovernmental level to a deeper level, as the cooperation between the tribunals within *Eurojust* is straightforward. Moreover, the introduction of the principle of mutual recognition of judicial decisions in criminal justice has brought some significant changes (such as the abolition of the principle of necessity of double blameworthiness (double jeopardy) of acts, the abolition of the grounds for refusal of cooperation, etc.). This evolution was accompanied by the necessity of the enhancement of cooperation in the area of criminal justice.

The creation of *Eurojust* was also a necessary consequence of the existence of *Europol*. Indeed, the weakness of cooperation in the area of criminal justice in the 90s of the last century reflects badly on the existence of law enforcement cooperation, which also could create a significant bias in favour of the last form of cooperation. The experience of creating *Europol* was used during the creation of *Eurojust*.

The Organization of *Eurojust*[8]

Eurojust consists of representatives of the Member States, with one member from each state. Representatives of Member States, as members of *Eurojust*, continue to carry out the functions given to them by the directives of the Member State, which is of interest for the functioning of *Eurojust*. Despite of that, they operate on a permanent basis, residing in the headquarters of *Eurojust* in The Hague. Most often, the representatives of the Member States are Prosecutors (from 2002 to 2007 *Eurojust* consisted exclusively of prosecutors from EU Member States), law enforcement officials; that is because the core competence of *Eurojust* to assist in the conduct of investigative activities is carried out by law enforcement authorities, not the judiciary as in some countries.

Members of *Eurojust*, designated by Member States, form the *College of Eurojust*, which consists of 27 members, and is the governing authority of that institution. The *College of Eurojust* meets twice a week in order to implement its two core competencies: internal organization and the carrying out of the examination of individual cases.

The first category includes all competencies that concern the internal functioning of *Eurojust*. Giving such competence of the collegial authority demonstrates the necessity of increasing the guarantees of the independence of *Eurojust*, which in turn is due to the nature of its judicial competence. (This fact is also proved by its competence to appoint the *Administrative Director of Eurojust* and control over his activities). In other words, a

[7] A. Perrodet, *Étude pour un Ministère public européen*, LGDJ, 2001, 412 p.

[8] See **S. de Biolley**, *La coordination des enquêtes et des poursuites : la mise en place d'Eurojust, in D. Flore, Actualités de droit pénal européen,* Bruxelles, La Charte, 2003, p. 167

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significant feature of *Eurojust* in comparison with other European authorities is the lack of an administrative council, which in most European courts (including at *Europol*) is acting as superior authority, which allows the Member States to monitor the European authorities.

The *College of Eurojust* has competence in relation to specific cases. Thus, within the specific case, *Eurojust* may appeal to the justice of a Member State, in the person of the *College*, and not by one of its members. The *College* also determines whether a particular matter is within the competence of *Eurojust,* etc.

The functions, powers and activities of *Eurojust.*

Eurojust was established to provide assistance to the tribunals of the Member States. In accordance with the Positive Law (see Art. 3 Decisions № 2002/187/JAI) *Eurojust* is intended to assist in the coordination of investigative actions, and in the cooperation of Member States in cases of European (international) type (from the territorial point of view). The purpose of the creation of *Eurojust* consisted in providing assistance to the tribunals of the Member States, and shows that at the moment it has no right to replace the actions of the tribunals of the Member States, and to carry out investigations itself.

Despite the existence of a certain level of integration of the judicial systems of the Member States, the creation of an authority with the competence to adopt binding decisions in cases of an international (European) character is still out of the question. Moreover, *Eurojust* is not competent to participate in any cases of an international (European) character, but only in those in which its assistance could be significant due (in part) to the fact that it is a permanent authority.

Nevertheless, this instance shouldn't be underestimated because, as it is important, it has competence, which it carries out upon its own initiative. In other words, its activity is not limited only by cases in which the activity is initiated by the EU Member States.

Indeed, the reference of a Member State is necessary for the initiation of activities of *Eurojust* only when cases do not have a transnational nature and are limited by the territory of one state (and the matter is not specifically attributed to the competence of *Eurojust*). In other cases, *Eurojust* may act upon its own initiative. Moreover, *Eurojust* has strategically important issues in its activities: it coordinates a network of joint investigation teams; participates in the development of the European internal security strategy, etc.

Specifically, the competence of *Eurojust* in material terms is limited by the following categories of offences[9]:

– The first category includes cases subordinate to *Europol*. This category is quite lengthy, in particular, since the competence of *Europol* was extended[10];

– Special competences, concerned to specific criminal phenomena. This, in particular, comes to violations in computer science, fraud, corruption (as well as any related crimes infringing the financial interests of the European Community), money funds, offences in the sphere of

[9] *F. Dehousse et J. Garciamartinez,* «*Eurojust*» et la coopération judiciaire pénale*,* JTDE n° 1 – 2004, vol. 12, p. 161-174

[10] See Cons. UE, déc. n° 2001/C 362/01, 6 déc. 2001, Journal Officiel des communautés européennes, 18 Décembre 2001.

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ecology and finally, crimes involving organized crime;

– Competences, related to the previous two categories of offence;

– Should be mentioned, finally, that the competence of *Eurojust* defined quite gently, as one of the categories of offences in respect of which it has jurisdiction, meaning any offence which is referred to it by the Member State.

Despite such material limit of the competence of *Eurojust*, in practice, its activities are focused on crimes related to drug trafficking and fraud, which indicates, in our opinion, that it is engaged in the most complex criminal cases. From the territorial point of view, the competence of *Eurojust* is concerned, primarily, with crimes of a transnational (cross-border) character, i.e. crimes committed (or linked) on the territory of two or more States. Nevertheless, *Eurojust* may be induced to participate, when it comes to offences in respect of which exclusive jurisdiction has only one Member State. In respect of such offences assistance of *Eurojust* may be requested on two sets of circumstances:

First, assistance may be requested by *Eurojust* when the offense involves a third country with which the European Union have a special relationship, and with which *Eurojust* signed a corresponding agreement.

Second, the competence of *Eurojust* is also provided in cases where the offence concerns only one of the Member States, and at the same time concerns the European Union. Also, in our opinion, the financial crimes concern the interests of the Member States and the EU.

Eurojust activities are carried out either in its own right or by competences held by representatives of Member States, working in *Eurojust* (see Art. 6 and 7 of the decision)[11]. Depending on whether *Eurojust* acts through one of the representatives of the Member State or in its own right, the content of its activities will vary, while the means of implementation of its initiatives remain unchanged, regardless of whether one of members of *Eurojust* is acting individually or as an institution. Also it should be mentioned that the representatives of the Member States in *Eurojust*, in addition to competencies they possess in this capacity, can also be endowed with other competencies by Member States, the use of which may be carried out by them in the framework of *Eurojust* activities.

Most often, the activities of *Eurojust* are realized by one of its members. Nevertheless, it is specifically provides that *Eurojust* operates on a collegial basis in three cases:

– When one or more members of *Eurojust* require collegial intervention;

– When investigations are undertaken relevant to the Union, or could affect the interests of third party countries;

– When it comes to general issues concerning the activities of *Eurojust*.

In other words, *Eurojust* operates on a collegial basis, when the present case is of particular importance, and requires all the resources of *Eurojust*.

Eurojust activities are implemented in three forms:

– In the form of periodic meetings of the College, in which cases are considered, the complexity of which presupposes their consideration in a collegial manner;

[11] See. D. Flore, *D'un réseau judiciaire européen à une juridiction pénale européenne,* Eurojust et l'émergence d'un système de justice pénale, in G. de Kerchove et A. Weyembergh, L'espace pénal européen : enjeux et perspectives, d. de l'Université de Bruxelles, 2002, p. 9

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– Meetings of members of *Eurojust*, designated by the Member States, where certain deliberate offences were committed;

– In the form of meetings, which involved not only the members of *Eurojust*, who were determined by the countries where the considered violations have been occurred, but also the tribunals and law enforcement agencies of these countries.

Such meetings allow organizing meetings between different subjects of law using *Eurojust* that allows investigators from different countries, investigating unrelated criminal cases, to share information and problems in the investigation, and mutually help each other in this way in the investigation of cases. For example, according to statistics in 2006 91 meetings of this type were organized[12].

Eurojust activities are also performed by requests to the national authorities of the Member States. These requests are implemented by the actions of the College, and by means of requests sent to members of the College alone (see Art. 6 and 7 of the *Decision*). These requests are not required to be performed, but still remain the official requests of *Eurojust*. With the help of these requests *Eurojust* may request the competent tribunals of the Member State:

– To undertake investigative actions;

– To coordinate with the investigating authorities of other states;

– To establish an investigation team;

– To provide information in a particular case.

Through these requests *Eurojust* may, if necessary, for example, ask the investigating authorities of one State to submit the case to the investigating authorities of another state (if it is reasonable).

It is worth recalling, however, that the national authorities are not required to respond to the requests of *Eurojust*. Although, there is a duty to justify a refusing a to implement a *Eurojust* request (valid only for requests made to the College), which, in our opinion, urges the tribunals of the Member States to implement the requests of *Eurojust*.

Eurojust activities that are undertaken not collectively but individually, that is, through the actions of the representatives of States in *Eurojust*, can be carried out by them as representatives of *Eurojust*, and since they are also members of the tribunal of the Member States. In the latter case, the member of *Eurojust* may receive a request for mutual assistance not as a member of *Eurojust*, but as a representative of the tribunal of the State that he represents. In this case it is suggested that a request for mutual assistance has been received by a Member State, and not by *Eurojust*.

Among the special competences of *Eurojust* should be mentioned the competence concerning with the introduction of the European arrest warrant. St. 16 of the *Personnel Decision* from June 13, 2002[13] mentions that in case of a positive conflict of competence caused by the issuance of a European Arrest Warrant against the same person in several states, there should be the possibility of issuing the opinion of *Eurojust* on the subject.

Finally, the competencies of members of *Eurojust* to which they are entitled as representatives of the tribunals of the Member States should be mentioned separately. According to Art. 9 of the *Decision* mentioned above, Member States define the competences of their representative in *Eurojust*, which he has as a representative of

[12] Rapport annuel 2006, http://www.eurojust.europa.eu/

[13] Journal Officiel des communautés européennes, 18 Juillet 2002

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the authorities (tribunal) of the State, and that he is competent to carry out in its territory. This reference to the national legislation shows the flexibility in competencies and activities of *Eurojust*, as it allows the most ambitious Member States to move much further in cooperation between tribunals than it was provided for in general. Specifically, it is about the operational powers that the judicial authorities of the Member States have. This, for example, can be about opening the investigation; granting a European Arrest Warrant; controlling the suspect, etc. Not all states provide such powers to their representatives in *Eurojust* [14], which indicates that the potential of *Eurojust* is not fully used today.

So, *Eurojust*, as the Institute of European Law that in future will provide the basis for establishing a *European Prosecutor* (Article 69 of the Lisbon Treaty), is nowadays the most advanced part of the cooperation between the tribunals of the Member States in the area of criminal justice. Nevertheless, it should be mentioned that in such an area as criminal justice, where the loss of sovereignty of member states of EU is 'experienced' the most strongly, *Eurojust* stays an authority, within the way in which the cooperation of EU member states' tribunals is organized, but it is not the European supranational institution.

That is why *Eurojust* should be considered as a tool in the interaction of the tribunals of EU member states, and not as an institution of the interaction between the judicial authorities of Member States and the EU justice system.

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[14] According to the statistical data this is applied to around a quarter of the EC Member States. See. Cons. UE, doc. n° 11943/05

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