

EURO-LATIN AMERICAN PARLIAMENTARY ASSEMBLY



RESOLUTION:

Cooperation on criminal justice in the EU and Latin America

based on the report by the Committee on Political Affairs, Security and Human Rights

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Thursday 14 April 2022 – Buenos Aires, Argentina

EUROLAT – Resolution of 14 April 2022 – Buenos Aires, Argentina

based on the report by the Committee on Political Affairs, Security and Human Rights

Cooperation on criminal justice in the EU and Latin America

The Euro-Latin American Parliamentary Assembly,

- having regard to the Universal Declaration of Human Rights of 1948,
- having regard to the International Covenant on Civil and Political Rights of 1966,
- having regard to the United Nations Convention against Transnational Organised Crime of 2000 and the Protocols thereto,
- having regard to the United Nations Convention against Corruption of 2002,
- having regard to the Statute of the International Criminal Court adopted in Rome on 17 July 1998,
- having regard to the Inter-American Convention on Mutual Assistance in Criminal Matters of the Organisation of American States (OAS), of 23 May 1992,
- having regard to the Charter of Fundamental Rights of the European Union, and in particular to Title VI thereof on justice,
- having regard to the Treaty on the Functioning of the European Union, in particular Part Three, Title V, Chapter 4 on judicial cooperation in criminal matters,
- having regard to Council Decision 2002/187/JHA establishing Eurojust (last amended by Council Decision 2009/426/JHA),
- having regard to the Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, of 29 October 1993,
- having regard to Decision 12/01 of the Council of the Common Market of 20 December 2001 laying down the Agreement on Mutual Judicial Assistance in Criminal Matters between the States parties of Mercosur, Bolivia and the Republic of Chile,
- having regard to the Central American Treaty on Arrest Warrants and Simplified Extradition, signed on 2 December 2005,
- having regard to the Framework Treaty on Democratic Security in Central America and the Mercosur arrest warrant,
- having regard to goal 16 of the UN Sustainable Development Goals entitled ‘Peace, justice and strong institutions’,
- having regard to its resolution on ‘Justice and combating impunity’, adopted at its

meeting on 20 September 2018 in Vienna, Austria,

- having regard to the resolution of the European Parliament of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter (2020/2134(INI)),
- A. whereas the globalisation and interconnection processes driven by economic and technological development have profoundly transformed modern society, affecting all areas, be they political, economic or social; whereas the perpetrators of illegal activities have also benefited from these advances, taking advantage of the loopholes left by legal voids or by uncoordinated or inconsistent national legislations;
- B. whereas it is known that criminal organisations do not limit their criminal activity to a specific country or to cross-border areas, but operate transnationally; whereas this is the case with regard to all criminal activities, including terrorism, the arms trade, drug and human trafficking, corruption, money laundering and tax evasion, as well as environmental crimes such as wildlife trafficking, illegal hunting and fishing of protected species and trafficking of waste and or raw materials such as timber, inter alia; whereas we have recognised this as being a geographically mobile phenomenon, it is imperative that the necessary organisations be bolstered to prevent criminal organisations from evading them by remaining on the move;
- C. whereas there are also other criminal acts which international law itself refers to as ‘international crimes’, which, in themselves, require a genuine ‘international’ response, the prosecution of which should, strictly speaking, fall under international criminal law; whereas the law in this area has evolved considerably over the past decades, resulting in the Statute of the International Criminal Court, to cite but one example; whereas environmental crimes are very serious and whereas it is necessary to include ecocide in the list of international crimes as soon as possible;
- D. whereas historically, certain factors have hampered cooperation, such as the fact that criminal justice remains one of the sectors at the heart of national sovereignty, and that states are reluctant to give up jurisdiction in this area; whereas, at times, judicial cooperation in criminal matters may be limited for reasons pertaining, or said to pertain, to national security, public order or the protection of fundamental rights of individuals; whereas criminal justice is deeply rooted in the culture and customs of a country, which has led some even to argue that universal principles and values can be interpreted differently from one country to another;
- E. whereas the evidence that transnational criminal acts pose a particular and, at the same time, global systemic threat has seen international cooperation in criminal matters bolstered in recent times, albeit frequently by means of procedures and structures which are not always consistent and efficient when devising mechanisms for bilateral, regional or international cooperation;
- F. whereas, in general, initial schemes for bilateral criminal judicial cooperation have been followed by regional and global cooperation institutions and procedures, and cooperation programmes have often followed models of concentric circles, without apparent connection or coherence between the different levels;

- G. whereas the EU has set up mechanisms such as Eurojust, Europol, OLAF and the European Public Prosecutor's Office, and has developed cooperation mechanisms such as those provided for in the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union¹, the European arrest warrant², the enforcement in the EU of orders for the freezing of assets or securing evidence³, or the mutual recognition of judgments in criminal matters⁴; whereas there is a call to extend the mandate of the European Public Prosecutor's Office to environmental crimes⁵; whereas the EU has developed specific rules to harmonise national laws on crimes, which by their very nature are carried out within a transnational framework, and is drafting a proposal for a directive on countering money laundering by criminal law⁶;
- H. whereas in Latin America significant progress has also been made towards strengthening and continuing legal and judicial cooperation, prominent examples of which include the Latin America Financial Action Task Force (GAFILAT) and REMJA (meetings of the Ministers of Justice of the Americas) established to exchange information and experience, issue recommendations to the OAS States and follow up on the recommendations adopted; whereas REMJA includes working groups such as Judicial Cooperation in Criminal Matters and the Hemispheric Network for Judicial Cooperation in Criminal Matters, seeking to make cooperation and the exchange of information in criminal matters more effective;
- I. whereas in Latin America, hemispheric conventions have also been adopted in areas of criminal law such as mutual assistance, extradition, enforcement of preventive measures, warrants or letters rogatory, or the serving of criminal sentences abroad, and, although the level of ratification of these instruments is generally quite satisfactory, there are still significant anomalies as is the case with the conventions on extradition and on letters rogatory;
- J. whereas, similarly, foundations have been laid and mechanisms established for harmonisation and cooperation in criminal matters at a sub-regional level, such as the Central American Treaty on Arrest Warrants and Simplified Extradition, signed in 2005, the Framework Treaty on Democratic Security in Central America and the 2010 Mercosur arrest warrant and surrender procedures between States which are parties to MERCOSUR and associated States;
- K. whereas there can be no justice where there is no democracy, and there can be no cooperation where there is no trust;
1. Stresses that cooperation requires shared values and principles, and that any cooperation in criminal matters needs to be based on some universal values and principles, including respect for democratic principles and the rule of law, respect for fundamental rights and freedoms (including the guarantee of the right to effective defence and fair trial), the principle of the separation of powers and, in particular, the independence of the

¹ OJ C 197 of 12 July 2000, p. 1.

² OJ L 190 of 18 July 2002, p. 1.

³ OJ L 196 of 2 August 2003, p. 45.

⁴ OJ L 327 of 5 December 2008, p. 27.

⁵ <https://www.europarl.europa.eu/news/en/press-room/20210517IPR04121/environmental-liability-rules-need-revamping>

⁶ 2016/0414(COD)

judiciary and of prosecutors, legislative simplification and harmonisation (while respecting the autonomy and independence of each state and the principles of subsidiarity and proportionality), and the principle of peaceful settlement of disputes and mutual trust; to this end, considers it necessary to strengthen protection mechanisms for judicial officers at all levels of the criminal justice system, so that they can carry out their mandate in complete freedom and independence and without fear of reprisals and/or fear for their physical or moral integrity;

2. Considers that international legal cooperation in criminal matters is an essential element for the consolidation and defence of the rule of law and of democratic political systems, and that the effective functioning of a national criminal justice system is a fundamental prerequisite for successful international cooperation;
3. Regrets that international criminal law and cooperation have often been insufficient, slow or ineffective in tackling the problem of international crime, with the result that it has often been felt that, rather than being proactive, justice has been reactive and slow;
4. Assumes that the fundamental values enshrined in law and the systemic structure of the legal systems of most Latin American and European countries could contribute to an even greater development of cooperation in criminal justice in the EU and Latin America;
5. Stresses that, given the global threat of transnational crime, it would be a mistake to limit cooperation to a bilateral or regional level, and considers that there is a need to set up structures for cooperation between regions or even spanning the whole world; welcomes in this regard the inclusion of chapters on cooperation in criminal matters such as terrorism, cybercrime, trafficking in drugs, persons or weapons, or money laundering and tax evasion, among others, in the EU's association agreements with Latin American countries (and with other countries and regions), as well as the ratification by Latin American countries of European conventions in criminal matters;
6. Points to the need to make progress on the establishment of mutual legal assistance agreements between the countries of Latin America and the Caribbean and between those countries and the European Union, as a preliminary step towards signing a binding agreement at bi-regional level, which would appear to be the ultimate solution for ensuring stable, certain and effective cooperation in criminal matters; notes that this could help create a virtuous circle that would give rise to a common legal culture to combat crime and reinforce free societies;
7. Notes with interest the possibility provided for in the decision establishing Eurojust for that body to conclude agreements with third countries and other organisations, such as Interpol or the Ibero-American International Legal Cooperation Network, Iber-RED, or for Eurojust to act as an observer in certain organisations or networks; welcomes the existing police cooperation agreements between Europol, Ameripol and Interpol, and calls for their reinforcement;
8. Considers that the appointment of units or officials as 'contact points' for coordination in criminal matters (including some representatives of Latin American countries) and the setting up of joint investigation teams, provided for in the decision establishing Eurojust, constitute very useful examples of cooperation in criminal matters, which

should be further encouraged, given that they allow for a smoother transfer of information, a more in-depth knowledge of the realities of the jurisdictions of the participating countries and enable officials to work together, thereby allowing for closer cooperation between the parties; considers, moreover, that this greatly facilitates the identification of problems in cooperation and the exchange of best practices;

9. Recalls that the decision establishing Eurojust also provides for the possibility for liaison magistrates to be seconded to a third country, and calls for further efforts to be made to implement this as soon and as widely as possible;
10. Considers that the International Criminal Court (ICC), established on the basis of the Rome Statute, is a decisive element for international peace and justice; considers universal adherence to the Rome Statute and the recognition of the ICC to be of the utmost importance, and regrets the recent spate of threats by certain states to withdraw from the statute, on the alleged grounds that the ICC is biased;
11. Takes the view that international cooperation in criminal justice must incorporate all three pillars of the criminal justice system: police cooperation (including customs and finance surveillance services), judicial cooperation in the strict sense and cooperation between prison systems; considers that this presupposes coherent and structured cooperation in the administrative, technical, technological and IT fields, the exchange of information and experience, and the organisation of joint staff training and harmonisation and legislative and administrative simplification programmes;
12. Recalls that it is essential to carry out criminal law reforms that protect the fundamental rights of citizens, and considers that international cooperation is needed to develop and/or bolster legislation, procedures, policies and practices with regard to prisons, to bring them into line with international standards, such as the Nelson Mandela Rules;
13. Values, in this regard, the EU programmes for strengthening institutional and legal capacity in Latin America in this area, such as the PAcCTO and COPOLAD programmes, co-funded by the EU under the Development Cooperation Instrument¹, and the Cocaine Route Programme, co-funded by the EU under the instrument contributing to stability and peace², and considers that they should continue to be implemented with a financial envelope commensurate with their needs;
14. Stresses that cooperation in criminal justice is a complex, broad and open process in which the legislature and civil society play a fundamental role, in particular as regards the drafting, adoption and supervision of criminal rules, and the monitoring of compliance with the fundamental principles and rights on which cooperation in criminal matters is based; emphasises that a strong and independent legislature and civil society are therefore a guarantee of fair and effective cooperation in criminal justice;
15. Recalls that goal 16 of the UN Sustainable Development Goals entitled ‘Peace, justice and strong institutions’, includes targets that require cooperation between states in criminal matters; points out that cooperation in criminal matters is, therefore, also a

¹ Regulation (EU) No 233/2014 of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020.

² Regulation (EU) No 230/2014 of 11 March 2014 establishing an instrument contributing to stability and peace.

decisive instrument for sustainable development worldwide;

16. Stresses that judicial cooperation in criminal matters is an effective tool for tackling impunity, which is a failure of states to comply with their duty to ensure that justice is done;
17. Highlights the crucial role played by whistle-blowers, persons reporting criminal offences, journalists, and human-rights and environmental activists; reiterates its concerns regarding the increase in violence against such persons and stresses the need to protect their physical and moral integrity both physically and legally from any threats or attacks;
18. Considers that in order to ensure a coherent and effective functioning of the criminal justice system, it is necessary to improve access to justice for victims, in accordance with the international conventions and agreements that have been adopted, such as the Aarhus Convention at the European level and the Escazú Treaty at the Latin-American level;
19. Instructs its Co-Presidents to forward this resolution to the Council of the European Union and the European Commission, to the parliaments of the Member States of the European Union and of all the countries of Latin America and the Caribbean, to the Latin American Parliament, the Central American Parliament, the Andean Parliament and the Mercosur Parliament, the Secretariat of the Andean Community, the Committee of Permanent Representatives of Mercosur, the Community of Latin American and Caribbean States, the Permanent Secretariat of the Latin American Economic System, the CELAC Pro-Tempore Presidency and the countries making up the CELAC Troika, and the Secretaries-General of the Organisation of American States and the United Nations.