EUROPEAN AREA OF JUSTICE

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Abstract: *European area aims to different fields of major importance for the functioning of our societies, while aimed at ensuring the free movement of persons and the protection of citizens' fundamental rights, but also at solving issues of immigration and asylum, organizing judicial cooperation in civil and criminal matters within the European Union, the fight against crime and terrorism, as well as the management of common borders of the Union. "The European Union is an area of freedom, security and justice with respect for fundamental rights and for different legal systems and judicial traditions of the Member States"*[1].

Key-words: *cooperation, justice, security.*

1. European cooperation in JAI plan

European cooperation in justice and home affairs is a relatively recent phenomenon. Following a number of ad-hoc partnerships, such as the TREVI group of police chiefs later incorporated into the Single European Act, concrete arrangements were provided in the main by the Schengen Agreement of 1985, the Convention of 1990 concerning the application of the Schengen Agreement and the 1999 Europol Convention. It was only the Maastricht Treaty (1993), though, which first introduced cooperation in the area of justice and home affairs, with the creation of the "third pylon".

Article 29 of the Treaty establishes a fundamental objective in the sense that, subject to Community competence, the European Union has to offer citizens a high level of safety within an area of freedom, security and justice by developing a common action among Member States in the fields of police and judicial cooperation, in criminal matters and by preventing and combating racism and xenophobia.

This objective is achieved by preventing and combating organized crime or other type and in particular terrorism, human beings trafficking and crimes against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities from Member States both directly and through Europol, according to art. 30 and 31 of the Treaty;

- Closer cooperation between competent judicial authorities and other authorities, including the European Judicial Cooperation Unit (Eurojust), in accordance with Art. 31 and 32, creating Eurojust was set in the Presidency Conclusions of the European Council from Tampere, between 15-16 October 1999.

- Approximation, where necessary, of rules on criminal matters of Member States in accordance with Art. 31 points. e)[2].

Maastricht informal cooperation rests on justice and home affairs until then on a proper legal basis, although if one which avoids the institutions of European Community in favour of an approach from state to state known as "the third pylon" of the European Union. The third pylon covered nine issues of what was defined as "common interest". These were: asylum policy, rules governing immigration and external border control in the Union, immigration, combating drug addiction, international fraud, judicial cooperation in civil and criminal matters, customs cooperation and police cooperation to prevent terrorism, drug trafficking and other serious forms of

[1] Article 61, paragraph 1 from the Lisbon Treaty.
[2] Octavian Manolache, *Tratat de drept comunitar*, Ed. CH Beck, Bucureşti, 2006, p. 517.

international crime, the latter including the organization of an information exchange system within the European Police Office known as Europol. There were many elements that could trigger warnings especially on civil liberties because the Parliament has been excluded from the decision-making process[3].

With the Treaty of Amsterdam (1999), this cooperation was recognised as a separate category of cooperation and the European Union set itself the goal of gradually creating an area of freedom, security and justice (FSJ). This means that citizens are able to move freely, live in safety, enjoy equal access to justice and have their fundamental freedoms respected within this area.

This area of freedom, security and justice therefore covers multiple issues, centred mainly on four basic domains: (i) visas, asylum, immigration and external border control; (ii) judicial cooperation in criminal matters and police cooperation; (iii) judicial cooperation in civil matters; and (iv) access to justice.

The Council and the Commission have co-product, in 1999, an Action Plan to implement the optional rules of the Treaty of Amsterdam concerning the establishment of an area of freedom, security and justice (AFSJ)[4]. The plan envisaged the incorporation of Schengen, an agreement between most Member States aimed to build freedom of movement in UE context and sketched a program for the free movement of persons, the fight against human trafficking and other organized crime, development of Europol and a closer judicial cooperation[5].

The Action Plan defines the following concepts "area of freedom, security justice." It also refers to the components of the justice area involving: judicial cooperation in civil and criminal matters, cooperation in respect of procedural rules and border processes. The Action Plan stresses the priority to be pursued in the work of the European Union to create the area of freedom, security and justice, as well as the measures to be taken in this regard: measures related to free movement of persons, police cooperation and judicial cooperation in criminal matters.

However, specific measures are set to develop a common European policy on control and on the right to enter at the EU borders and in particular concerning asylum and immigration. In a period of five years after the Treaty entered into force all Member States should take measures aimed at:

- suppression of any control of persons at internal borders, be it the citizens of the EU', whether the citizens of third countries;
- establishment of common rules and procedures concerning the control of persons at external borders of the EU and of common rules concerning visas for a maximum stay of three months.

Treaty also defined, minimum rules concerning:

- Reception of asylum seekers in Member States;
- Conditions to be met by citizens of third-countries in order to request refugee status;
- Procedures for granting and withdrawing refugee status in the Member States of the Union;
- Temporary protection of persons from the third-countries who can not return to their home country and those who otherwise need international protection.

With The Treaty of Amsterdam, a part of the areas that belonged, in accordance with the Maastricht Treaty, to the third pillar of the Union, were transferred in the first pillar (free movement of persons, asylum, immigration etc.). Thus, in Title VI (police and judicial cooperation in criminal matters) there are the activities to prevent and combat racism and xenophobia, terrorism, human trafficking and crimes against children, drug trafficking, arms trafficking, corruption and fraud.

The incorporation of the Schengen system and the general expansion of EU powers regarding the civil liberties came under fire first by those who were concerned that the type of democratic control over the police and courts that exist in the Member States will be undermined or weakened. For example, while Europol would not be in any way under the effective control of

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[3] Steven McGiffen, *Uniunea Europeană – ghid critic,* Monitorul Oficial, Bucureşti, 2007, p. 62.
[4] Gavril Paraschiv, *Drept penal al Uniunii Europene,* Ed. CH Beck, Bucureşti, 2008, p. 23.
[5] *The Schengen Acquis and its Integration into the Union,* http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm

national courts, European Court of Justice could not have powers to hear individual complaints related to civil liberties or to exercise any jurisdiction in the overall behaviour police or other law enforcement bodies.

The European Council highlighted the need to extend access to justice for citizens, to develop minimum rules to simplify the procedure for prosecution, trial and execution of the sentence. It also stressed the need for mutual recognition of judicial decisions, for improvement of the fight against crime across the EU, for the cooperation development in preventing and combating crime and for conducting specific actions in the fight against money laundering derived from crimes.

As a result of the European Council meeting in Tampere, Finland (between 15-16 December 1999), The Work Program of the European Union concerning the development of an area of freedom, security and justice has entered a new stage, after the Council's decision to make from this area of freedom, security and justice a priority for the European Union as a necessary element to speak of a true "Union", by adopting such a program that has defined the guidelines, the benchmarks and a timetable for implementing for the period 1999-2004.

The European Council reaffirmed the importance of dealing with human rights, of the development of democratic institutions within the European Union. In order to achieve full stability it is necessary to ensure an area of justice in which every citizen can recourse to the courts and the authorities of any Member State as he would address to the authorities of their country, not to give offenders the opportunity to take advantage of differences between the legal systems of Member States, and the judicial bodies to be respected and enforced[6].

During the recent years, the EU has played an increasing role in determining the police, customs and judicial cooperation, as well as in implementing a coordinated policy on asylum, emigration and external border control. Union and its Member States security problem shall also make a renewed sharpness, especially in the light of terrorist attacks committed in the United States in 2001, in Madrid in 2004 and London in 2005.

In 2005, the European Council invited the European Commission to elaborate an Action Plan for achieving the goals and the priorities of the work schedule until 2007. In this program are incorporated and embodied the objectives of the action programs in order to fulfil fundamental rights, to strengthen freedom and security but also police cooperation and judicial bodies, for preventing crimes, combating organized crime and corruption, establishing an effective strategy in the fight against drugs, strengthening the justice, increasing mutual trust, mutual recognition of judgments, and in order to approximate the laws of both the procedural aspects and in terms of substantive law, both having a cross-border dimension[7].

During the meeting in Brussels (16-17 June 2005) the European Council presented a new multi-annual program, which was called Hague Program[8], which is directed towards improving the capacity of the joint European Union and its Member States to ensure respect for fundamental rights over minimum procedural safeguards and access to justice, enhancing cross-border fight against organized crime, against terrorism and serious crimes, advocating the proper use of the potential of Europol and Eurojust.

As for the fight against terrorism, The Hague Program contains a list of ten priorities of the Union in order to strengthen the area of freedom, security and justice in the next five years. The program is based on the balance of the Commission concerning the implementation of the Tampere Program, set in 1999. Thus, the Hague Program is a global and indispensable response, if someone wants to fight effectively against terrorism. The Commission has focused on preventing terrorism and exchanging information. It supports Member States in the fight against terrorism, focusing on issues aimed at recruiting and financing terrorism, prevention, risk analysis, infrastructure protection and crisis management. To achieve this, significant efforts have been taken focused on the following directions: prevention, protection, punishment and response to terrorism.

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[6] George Antoniu, *Dreptul penal şi integrarea europeană*, RDP nr. 3/2001, p. 24.
[7] Gavril Paraschiv, *op. cit.*, p. 25.
[8] JOCE C53/2005.

2. The international and institutional context

The delineation of freedom, security and justice space cannot remain an internal problem of UE. On the contrary, the fields of interest for SLSJ mainly refer to its direct neighbours and the third countries with which the Union concluded cooperation agreements. This thing was demonstrated clearly, in the case of migration, but it also applies in many other fields: phenomenon such as terrorism and organized crime can no longer be solved by other states unless they act isolate.

As direction for the development of partnerships with the third countries, UE adopted, in November 2005, "the strategy regarding the external dimension of the internal justice and affairs: freedom, security and justice in the entire world". This strategy underlines three main objectives: the management of migration, the fight against terrorism and actions against the organized crime. To accomplish this mission efficiently, it is necessary that the Union to complete a greater harmonization and a better use of its own resources and of those of the member states. These means must be applied in partnership with the third countries and with international organizations to obtain a positive and optimal effect. In this way, the European citizens will benefit of this space, not only between the borders of the European Union, but also outside them, and the Union will have an important contribution to the stability and peace of the world. That is why, intense contacts are established in the fields of justice and internal affairs, with countries from Balkans, North Africa, Russia and United States, and the agreements negotiated with these partners always include a section regarding the cooperation in the field of freedom, security and justice. It must also be mentioned the fact that, as a consequence of the tsunami disaster from 2004, the Union takes into consideration some means to guarantee a more efficient intervention when the European citizens are victims of the natural disasters (both between and outside the borders of UE).

The SLSJ problem is a touchy subject, because justice and internal affairs are directly linked with the security, public order and national judicial systems, which, often developed along centuries, at national level, and are, in most cases, orders and homogeneous, natural, judicial practices, but different one of another. In the ad-hoc negotiation treaties, the member states carefully decide in the main fields, fact reflected in the humanity rule and in the more restrained competences of the Commission, European Parliament and the European Court of Justice, especially in the case of the criminal and constabulary cooperation.

Once legitimating the Nisa Treaty, the problems related to immigration, visas, the check at the external borders, the home and the civil, judicial cooperation are "community" matters. Starting with the 1st of January 2005, a disposition of the Nisa Treaty is used to apply the qualified majority and the right to co-decide of the European Parliament in all the matters that are related with these aspects, with the exception of the legal immigration. The judicial cooperation in criminal and constabulary matter is reflected in frame-decisions, reflected at intergovernmental level and is governed by the rule of humanity. The European constitutional treaty represents a considerable amelioration in comparison with the existent treaties in the fields of justice and internal affairs, especially because of the entire "communitarian" sector (with the exception of the family law) as well as the abrogation of the humanity rules.

Once with the revision of the Hague Program, it was observed that, indeed, the rule of humanity regarding the criminal judicial and constabulary cooperation stops the use of these ambitious objectives. The importance and the impact of certain adopted instruments faced some limitations, compromises, exceptions and other techniques destined to make them acceptable for all the member states. They lose their value and their use by the judges is problematic. This type of cooperation necessitates that the instruments to be transposed in the national legislation and, they remain outside the European Parliament control (that can formulate only notice) and of the Court of Justice. These instruments or their transposing in the national judicial order cannot be contested.

The Lisbon Treaty includes the greatest part of the innovations found in the Constitutional Treaty (the elimination of the structure on pylons and the introduction on a large scale in the process of co-

decision of the qualified majority – with some exceptions)[9], but also introduces some modifications, regarding a series of important problems is the introduction of an automatic cooperation consolidated in the fields in which humanity cannot be obtained (example the operative cooperation of the police) and the growing importance of the national parliaments (the principle of subsidiary). The provisions referring to SLSJ were gathered in a single title that will be introduced in the Treaty regarding the function of the Union that includes five chapters: (i) general provisions, (ii) the politics regarding the border checks, homes and immigration, (iii) the civil, judicial cooperation, (iv) the criminal, judicial cooperation and (v) the constabulary cooperation.

Thus, in the Lisbon Treaty, the Union will benefit of an extended capacity of action regarding the freedom, security and justice that will bring direct advantages in what regards the Union capacity to fight against terrorism and criminality. The internal security of UE, through the SLSJ institutionalization but also through the institutionalization of the structural Cooperation for the defence is the base of a combined defence at UE level. The new provisions regarding the civil protection, human help and public health have as objective to enhance the capacity of the Union to react to the threats at the address of the European citizens' security[10].

3.EuropeanAreaofJustice

A. Judicial cooperation in civil field

The purpose of the adoption of instruments in the field of judicial cooperation is to help European citizens who face cross-border cases and procedures. The adopted instruments aim at mutual recognition of taken decisions, parental responsibility, legal assistance, the significance and notification of judicial and extra judicial documents, the acquirement of proofs in civil and commercial field, the insolvency proceedings. Being given the limited legal basis, we are talking about a minimal approach in the procedure field for cross-border cases, but not in material law.
Among "the most ancient" instruments from this field, we can mention the following:

- "Brussels I" Regulation in 2000 concerning the jurisdiction, the recognition and execution of the resolutions in civil and commercial matters, simplifies and accelerates the exequatur procedure. This regulation places the Brussels Convention of 1968 pertaining to the same subject at Community level. The regulation concerning the European executor title from 2004 goes even further, eliminating the exequatur procedure for uncontested claims and introduces a certificate that allows obtaining immediate execution of a decision in another country.
- "Brussels II" Regulation from 2000 concerning the competence, recognition and the execution of judicial decisions in matrimonial matters is applied to civil proceedings referring to divorce, separation and marriage revocation. However, this one does not work as the precedent. Indeed, the exequatur procedure, although simplified, was maintained, as well as the right of the judge from the other country to proceed, on its own initiative, to a series of assessments and, depending on the case, and to refuse the execution. However, the reasons of refusal, both for recognition and execution, have been limited.
- Since March 2005, "Brussels II" has been replaced by a new regulation called "Brussels II bis" concerning the jurisdiction, the recognition and execution of judicial decisions in matrimonial and parental responsibility matters, regulation adopted in November 2003. The regulation concerning the significance and the notification of judicial and extra judicial documents, as well as that one referring to obtaining proofs in civil and commercial matters, adopted in 2001, aim also to improve and simplify the judicial cooperation between the member states by facilitating, in particular, the transmission of judicial and extra judicial documents between the member states. Thus, the court of a member state may ask the court of another member state to carry out an act or to proceed directly to take evidence in another member state.

The Council directive 2003/8/EC of 27th January 2003 of improvement the access to justice in cross-border disputes by establishing some minimum common rules concerning the legal aid for such disputes[11] is aimed at improving the access to justice in cross-border cases. Thus, common

[9] Iordan Gheorghe Bărbulescu, *Procesul decizional în Uniunea Europeană*, Ed. Polirom, Iaşi, 2008, p. 100.
[10] http://europa.eu/lisbon_treaty/glance/index_ro.htm
[11] JOL 26 from January 31, 2003.

minimum standards are set on legal aid. If financial resources do not allow a litigant to bear the costs of cross-border procedures, he may ask to receive legal aid.

In addition to its legislative activity, the Council created, in May 2001, the European Judicial Network in civil and commercial matters. This network, composed of contact points designated by each member state, allows the ease and the hastening of judicial cooperation in civil matters, in some specific cases (by its point of contact, a judge can quickly obtain all the practical information concerning the law/ procedure in another country).The network strengthens the cooperation mechanisms between the member states and, to that end, organises meetings of these contact points, at the Commission initiative. A meeting of all network members is held annually. In 2008, the decisions of the Council have been taken to create a similar network in criminal matters.

There are also a number of objectives in the field of judicial cooperation in civil matters, in the multi annual schedule in Hague, aimed at strengthening the area of freedom, security and justice in European Union. These ones aim to facilitate the cross-border proceedings; tracking the mutual recognition of decisions, the improvement of the cooperation, to assure the consistency and to improve the quality of EU legislation, to ensure the consistency between communitarian judicial law and international judicial law.

The schedule from Hague has provided a number of new tools, the following being significant: In April 2006, the Council reached at a political agreement concerning the Regulation on the law applicable to no contractual obligations (Rome II Regulation[12]). The Regulation aims to standardize the requirements for the no contractual obligations and, thus, to harmonize the private international law in civil and commercial matters The parties may decide in advance the applicable law to a particular judicial situation. The European Parliament finally amended this compromise and a final agreement took place in June 2007. In collaboration with the European Parliament, a political agreement was concluded in December 2007 aiming at a regulation on the applicable law to contractual obligations (Rome I[13]). This regulation aims to replace and modernize the Rome Convention in 19th June 1980 and to establish the rules concerning the conflict of laws in contractual plan, both in civil and commercial matters.

It is the Council which made, in November 2007, an agreement relating to a proposal for a directive on certain aspects of the mediation in civil and commercial matters, a directive which aims to facilitate the access to disputes settlements and to promote the amicable settlement of disputes by encouraging the use of mediation and ensure a balanced relationship between mediation and judicial proceedings.

Moreover, a regulation adopted in 2005 aims to introduce an European proceeding on payment summons. The regulation aims to simplify, to speed up and reduce the costs of proceedings in cross-border disputes concerning uncontested pecuniary claims and to ensure the free movement of European payment summons in all member states. The Council took a position in April 2008 on a common reference for European contractual law which could possibly offer an impetus for the European Code of commerce.

B. Criminal judicial cooperation

The European Council from Tampere included the principle of mutual recognition of judicial decisions, as the base stone of judicial cooperation. This principle aims to ensure the free movement of decisions, so in a cross-border issue, the European citizen is certain of the fact that decision issue by a court of a member state will be also recognised in another member state and will be executed without excessive formalities.

Another instrument of cooperation lies in appropriation of criminal legislations. A certain harmonization of criminal law is really necessary to reinforce the mutual confidence and, thus, to facilitate cooperation. The Union has also adopted framework decisions which aim at approximation of national legislations by defining certain crimes such as terrorism, drug traffic, counterfeiting of the euro, money laundering, human traffic, sexual exploiting of children, and

[12] 9751/7/2006 - C6-0317/2006 - 2003/0168 (COD).
[13] COM(2005)0650 – C6-0441/2005 – 2005/0261(COD)

corruption in private field. This alignment is most often minimal because the criminal law is, in fact, considered by some member states as being closely related to national sovereignty.
Having in view the difficulties related to the condition of ratification of conventions and the difficulties related to traditional forms of cooperation with the coming into effect of the Treaty of Amsterdam (1st May 1999), it was elected a double change of strategy. Firstly, this change has not eliminated all the problems because the framework decisions don not have a direct effect and they must be transposed by member states into national law. A positive element is the fact that this implementation is mandatory in the absence of ratification, condition specific to conventions. The negative element is given by the fact that, in the Pillar III, the Commission cannot release an infringement proceeding in front of the Court of Justice in the vent that a member state is not fulfilling its obligations to transpose[14]. Secondly, the EU imposed in criminal matters, in addition to legal aid, the traditional form of cooperation, and mutual recognition of decisions. The special meeting of the European Council held in Tampere, on 15th –16th October 1999, concluded: " strengthening the mutual recognition of judicial decisions and judgements and the harmonization of legislations will facilitate the cooperation between the authorities and the judicial protection of human rights. The European Council approves the mutual recognition principle, principle which must become the cornerstone of judicial cooperation, both in civil and in criminal matters within EU" (section 33)[15].

The principle of mutual recognition was reflected mainly by adopting the European arrest[16] warrant which allows simplification of extradition procedures. Mutual recognition technique was also extended to decisions to freeze assets, to financial penalties and to confiscation decisions.
The objective of European warrant for taking evidence, adopted in June 2006, is establishing a mechanism for obtaining evidence in cross-border cases on the principle of mutual recognition. It is about obtaining objects, documents and information to be used in criminal proceedings.

In judicial assistance field in cross-borders case it was adopted the Convention on mutual judicial assistance in criminal matters between member states of European Union[17], on 29th May 2000, and the Additional Protocol of 16th October 2001[18].
A number of new instruments have been adopted over the coming years, the representative criminal judicial cooperation being:

- The framework decision 2005/214/JHA of 24th February 2005 on the principle of applying the mutual recognition of financial penalties[19];
- The framework decision 2006/783/JHA of 6th October 2006, on the applying the principle of mutual recognition to confiscation orders[20];
- The framework decision2008/947/JHA of the Council of 27th November 2008, on the principle of mutual recognition to judicial decisions and probation decisions for the supervision of probation measures and alternative sanctions[21];
- The framework decision 2008/909/JHA of the Council of 27th November 2008 on the applying the principle of mutual recognition to judicial decision in criminal matters which impose punishments or measures of loss of liberty to execute them in EU[22] ;

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[14] Diana Ionescu, *Legea nr 222/28 octombrie 2008 pentru modificarea şi completarea legii nr. 302/2004 privind cooperarea judiciară internaţională în materie penală (II)*, în CDP nr. 2/2009, p. 5.
[15] *The Conclusions of the European Council from Tampere*, October 15-16 1999(www.europarl.europa.eu).
[16] The frame decision of the European Union Council from July 13,2002 regarding the European arrest warant and the procedures of surrender between the member states. (2002/584/JAI).
[17] The convention is based on the dispositions of the European Convention for judicial assistance in criminal matter elaborated by the Europe's Council on April 20 1959.
[18] The Act of the Council regarding the setting, in accordance with art. 34 from the Treaty regarding the founding of the European Union, of the Convention for judicial assistance in criminal matter between the member states of the UE.
[19] JO L 76/22.03.2005.
[20] J.O. L 328/24.11.2006.
[21] J.O. L 337/16.12.2008.
[22] J.O. L 327/5.12.2008.

- The framework decision 2008/978/JAI of the Council of 18th December 2008 on the European evidence for the purpose of obtaining objects, documents and data to use them in criminal matters proceedings[23];
- The framework decision 2009/299/JAI of the Council of 26th February 2009 amending the framework decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, to strengthen the procedural rights of persons and to encourage the application of the principle of mutual recognition of decisions rendered in the person's absence from trial[24].

The principle of mutual recognition of the decisions will witness a new phase of development with the coming into effect of the Treaty of Lisbon. The next art. 83 par (1) of the Treaty of functioning of EU provides: " judicial cooperation in criminal matters within the Union is founded on the mutual recognition of judicial decisions and of judgements and includes the alignment of laws, regulations and administrative provisions of member states in areas previewed in par (2) and at art. 83".

Besides this express dedication in this new phase of evolution, yet, having in view the negative vote of Irish referendum, still under uncertain sign, the principle of mutual recognition will benefit from the change of the competence of promulgation and of legal instruments adopted, being opened the way of regulations in this area. In addition, according to art 82 para (2) and (3), the harmonization of criminal legislation and of criminal procedural, in the measure which it is necessary to apply to the principle of mutual recognition, may be subject to regulation by means of directives[25].

C. Compliance and active promotion of human rights

Since 1970, European Court of Justice has raised the human rights to the rank of fundamental principle of community rights (besides primacy, direct effect, subsidiary, etc.): *Internationale Handels-gesellschaft, Nold* etc, having as main source of inspiration the European Convention of Human Rights (as the Court held in the case *Rutili* in 1975[26]).

In 1991, the Luxembourg Court said that: "as this Court has already ruled consistently, the fundamental rights form an integral part of the general principles of law, whose end is ensured in the end, the Court inspires from the common traditional traditions of the member states and from guidelines provided by the international treaties for the protection of human rights to which the member states have collaborated or of which they are signatories. (…) The European Convention has a particular significance in this regard (…). The Community cannot accept measures which are not compatible with the human rights as recognised and guaranteed"[27]. The recognition of fundamental laws as a principle of community law was later enshrined in a treaty (art. F§2 Maastricht, art. 6§ 1 Amsterdam).

All these evolutions, from the purely economical nature of European Communities, to a complex union, political-judicial, has led to the need, accepted by the majority of member states, of adoption of an unique document able to express the conception of the Union on human rights, document which represent *a summum* of common European values, of traditional constitutional traditions of member states, of common constitutional traditions in field and of previous experiences of the Union. This document was adopted and it is now *The Fundamental Rights Charta of European Union* and, in the same time, part of the Lisbon Reform Treaty. The founding ideas, political and economical, of the Charta were inspired by the fact that Europe and its essence lie in a global process of transformation to a consolidates union based on common values[28].

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[23] J.O. L 350/30.12.2008.
[24] J.O. L 81/27.03.2009.
[25] Diana Ionescu, *op. cit.*, p. 6.
[26] CEJ, *Rutili* v. *Minister of the Interior*, case 36/75 (1975).
[27] CEJ, *ERT v. DEP*, case C-260/89 (1991).
[28] „ The Union is based on the values of the human dignity, freedom, liberty, democracy, equality and the respect for the human rights including the rights of the persons belonging to a minority. These values are common to the member states in a society based on pluralism, nondiscrimination, tolerance, justice, solidarity and equality between men and women." (Bianca Selejan-Guţan, *Spaţiul european al drepturilor omului. Reforme. Practici. Provocări*, Ed. CH Beck, Bucureşti, 2008, p. 9).

The Charta contains a number of general principles which refer to its field of application, its autonomy, and its limitations to rights. As for the rights catalogue, the document reaffirms the classical rights- human dignity, freedom, equality, justice, containing a rich catalogue of social rights: right to work, social security, social aid, at strike etc. Currently, the Charta is on track to become part of "European Union law" (primary legislation) as defined by the Treaty of Lisbon (December 2007). Unlike the constitutional Treaty, the Lisbon Treaty will not include the Charta, but it will give this one *per se* value of primary right.

Worthy of note is that the fact that, in the spirit of Hague schedule, the Union developed a decision of establishing a framework-schedule "Fundamental and justice laws", which includes, especially, specific programs to "Fundamental and Citizens Rights", " Fighting violence" and "Drug prevention and information"". Furthermore, EU supports the protection of females and children, but the protection of personal data represents a permanent objective of all actions taken in freedom, security and justice.

As mentioned above, the protection of the personal data represents an essential element for the Union, the guideline of the whole legislative activity in the justice and internal affairs field.
As mentioned above, the protection of personal data is an essential element for the Union, the guideline of all legislative activities in justice and home affairs.

After the adoption of the Directive 95/46/EC[29] concerning the personal protection of data, generally, a framework-decision was adopted concerning the protection of personal data processed within legal and police cooperation in criminal matters.

The Directive has a fields of application extremely large, given the fact that it is applied to „the processing of personal data, all or partly automated, as well as the non-atomised personal data included or intended to be included in this file[30]. There are identifies some principles regarding the quality of data (accurate and relevant) and processed (in accordance with the principles of security, purpose, proportionality and transparency). In addition, the persons whose data are included in the files must have the right to information, access, rectification and deletion.

These provisions have been specified also in the Directive 97/7/EC of 20th May 1997[31], subsequently replaced by the Directive 2002/58/EC concerning the processing of personal data and the protection of private life in telecommunication matters. These were completed by the framework-decision from 2008 concerning the protection of personal data within the police and legal cooperation in criminal matters[32].

In accordance with the political mandate of European Council, in February 2007, it was adopted the regulation[33] which transforms the European Centre of monitoring of racism and Xenophobia in a fundamental rights agency of European Union, based in Vienna. The mission of this new agency is to assist the European institutions and member states of the Union in the development and implementation of community law so, in theirs competences, the fundamental citizen's rights to be fully respected.

4. Romania's legislative policy

Within every state of the European Union, the space of justice has as foundation, the existence of an independent judicial power and well-trained magistrates. Furthermore, the recognition and the enforcement of the decisions regarding the civil and criminal matter, as well as the insurance of the same guarantees during the procedures, will have to provide the same sense of justice for all citizens of Member States.

Currently, within the European Union, there are a variety of judicial systems, which determines a number of difficulties, when several Member States are involved in the legal

[29] JOL 281 from November 23 1995.
[30] D. KORFF, *Data Protection Law in Practice in the European Union*, Bruxelles/New York, 2005.
[31] The directive 97/66/CE of the European Parliament and Council from December 15 1997 regarding the private data processing and the protection of the private life in telecomunications. .
[32] The frame decision 2008/977/JAI from November 27, 2008.
[33] The statute (EC) nr. 168/2007 from February 15, 2007.

procedures. Moreover, the process in a Member State, other than the case when the citizen is judged, may create difficulties for individuals and legal entities.

For solving this situation, there were introduced some measures that would lead to greater harmonization and cooperation between the legal systems of Member States. To this end, Romania is passing through a vast process of reforming the internal legislation, with profound implications for the society, contributing to the development of a viable market economy, social stability and security of social life and to strengthening the state. In this respect, it is worth being exemplified:

- Framework Decision on the European arrest warrant and surrender procedures between Member States of the European Union was fully implemented in Title III of the Law 302/2004 on international judicial cooperation in criminal matters, as amended and supplemented by Law no. 224/2006 and Law no. 222/2008.

- European Convention on judicial assistance in criminal matters drawn up by the Council of Europe on April 20th 1959, was ratified in Romania by the Law no. 236/1998, and in February 2007 Romania notified the General Secretary of the European Union Council, about the statements regarding Romania's application of the Convention on mutual judicial assistance in criminal matters between the Member States of the European Union and the application of the Additional Protocol.

National legal framework that regulates the judicial cooperation with the Member States of the European Union is particularly represented, by the Law no. 302/2004 on international judicial cooperation in criminal matters, with subsequent changes and additions, Law no. 58/2006 for the ratification of the Agreement on cooperation between Romania and Eurojust signed at Brussels on December 2nd, 2005, and for the regulation of some actions regarding the Romanian representation to Eurojust, during the period preceding the accession and after accession to the European Union - in criminal matter and Law no. 189/2003 on international judicial assistance in civil and commercial matter, amended and supplemented by Law no. 44/2007 - in civil matter. This is supplemented by multilateral agreements that are part of the acquis communautaire and by the community regulations in civil and commercial matters and by the Treaty of Accession of Romania (and Bulgaria) to the European Union, under which our country has become party to a number of conventions and protocols relating to judicial cooperation field. The Romanian Central Authority in international judicial cooperation in criminal and civil matters is the International Law and Treaties Department from the Ministry of Justice.

a. Judicial cooperation in civil matters

Since January 1st 2007, the moment when Romania accessed to the European Union, the judicial cooperation has taken place directly between the competent judicial authorities, for the identification of which there is used the European Judicial Atlas[34], published on the website of the European Judicial Network for cooperation in civil and commercial matters[35].

The Romanian Judicial Network for cooperation in civil and commercial matters was established in 2004, similar to RJE comprising judges from courts of appeal and coordinated by the national contact points for the European Judicial Network, designated by the Ministry of Justice.

Internally, the framework law on international judicial cooperation is Law no. 189/2003 on international judicial assistance in civil and commercial matters developed according to the latest relevant Community instruments that regulate the conditions on which the communication of judicial and extrajudicial documents abroad and from abroad, taking evidence from international commissions, obtaining information on foreign law and access to justice for the foreigner.

The changes and additions to Law no.189/2003 by Law No. 44/2007, allow the application of Community instruments in the field. Practical implementation of these new instruments of cooperation did not face any particular problem, but rather, it was appreciated by Romanian magistrates as being more effective and much faster than the previous one, when the cooperation existed only through the Ministry of Justice.

[34] http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm
[35] http://ec.europa.eu/civiljustice/

b. Judicial cooperation in criminal matters

By Law no. 302/2004 on international judicial cooperation in criminal matters, with subsequent changes and additions, Romania has transposed into national law, the Council's Framework Decision no. 2002/584/JHA of June 13th 2002 on European arrest warrant and surrender procedures between Member States of the European Union - the first evident action in the field of judicial cooperation in criminal matters between Member States of the European Union when applying the principle of mutual recognition, the European Union Convention of May 29th 2000 on legal assistance in criminal matters between Member States and its Protocol of October 16th 2001, the Convention of June 19th 1990 for implementing the Schengen Agreement of June 14th 1985 on the gradual abolition of checks at common borders and other relevant rules to judicial cooperation in criminal matters with the Member States of the European Union.

2002/584/JHA Framework Decision of 13th June 2002 on the European arrest warrant and surrender procedures between Member States was implemented by Title III of Law no. 302/2004, and the practical application of this instrument of cooperation, meaning the issue and execution, despite some legislative failures, did not encountered difficulties Romanian judicial authorities being very open to the principles on which the European arrest, for recognition and mutual trust.

By the harmonization of procedures of different legal systems, it will be easier to obtain the recognition of judgments issued in one state and applicable to another. The recognition principle is a key factor for developing an area of freedom, security and justice, but also for increasing protection of fundamental rights. Realizing the fact that a decision made by a state will not be appealed to, by another state, the recognition of decisions will help to ensure the legal certainty within the European Union.