Clinical Cancer Investigation Journal-ISSN: 2278-0513

European Convention on Judicial Assistance in Criminal Matters 1959

Abstract

The present study aims to examine the European Convention on Judicial Assistance in Criminal Matters. Generally, the globalization of connections between nations involves the implementation of measures to facilitate these contacts in order to eliminate existing hurdles and issues that unavoidably create these developments in relations between countries and their populations. The conclusion of judicial aid agreements, such as the European Criminal Assistance Agreement of April 20, 1959, is the outcome of this mindset. This study took a descriptive-analytical approach to this pact. The findings revealed that this convention was reached with the nations' consent, based on principles of international criminal law and public international law. Meanwhile, the process of concluding similar agreements in the Islamic Republic of Iran is beset by difficulties due to the country's unique legal system and the Guardian Council's unique interpretation of sharia. Indeed, the Guardian Council's objections represent a rejection of the principles regulating the treaty's conclusion. The requirement for judicial cooperation between Iran and other nations, on the other hand, requires the appropriate authorities to adhere to international law's norms and regulations and to authorize the parliament through the Expediency Council's procedure.

Keywords: *Judicial Assistance, European Convention, Humanitarian Actions, Judicial Cooperation*

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Introduction

The globe is faced with numerous facilities in the domains of tourism, trade, studies, scientific research, and other concerns, and international relations in today's world, where we are witnessing the development and expansion of contacts between nations and boundaries have taken on new meaning. The establishment of contact between countries in many dimensions is unavoidable, and the current state of affairs in countries and the modern civilized world necessitates more than ever that countries work and cooperate to address their issues and problems. The necessity of establishing international contacts makes the appearance of numerous issues unavoidable. One of them is the transfer of citizens to another country, which has resulted in several legal and judicial changes between nations.

Looking at internal developments and what a citizen experiences in practice, we can see that he is unavoidably involved in trade and economic connections with other citizens and persons in his nation. However, he deals with various legal and civil matters during the process, such as whether he plans to marry or if he has the proper qualifications to conduct business with others. Meanwhile, he may, intentionally or unwittingly, commit a crime that will surely result in a trial and punishment. It is obvious that such a person in another nation is not far away from dealing with such challenges and problems and will do so to some level. As a result, countries collaborate in settling such issues with one another based on their interests and policies. On the other hand, the rise of the new century's scourge, terrorism, which has entered a new period after September 11, 2001, has pushed the international community to respond to the threats of cross-border crime. The Security Council has adopted a series of resolutions in this respect, urging nations to increase their international judicial cooperation in this area. Countries cooperate in judicial matters in a variety of ways, the most important of which is through "Judicial Assistance Treaties."

There is no judicial assistance between nations that are physically and politically adjacent without a treaty. Treaties on extrajudicial and extrajudicial agreements have been signed-in Europe, for example, between the Benelux countries (the Benelux Convention on Extradition and Judicial Assistance, dated 26 June 1962) and the European Union (the European Convention on Extradition, dated 12 December 1957, and the European Convention on Criminal Aid, dated 20 April 1959), (the Schengen Agreement of 19 June 1990; the Treaty of 27 September 1996 is the Treaty of the European Union between member states of the union, etc.). Except for some transnational offenses, the foregoing cases indicate that judicial collaboration is only formed by contract.

While the Islamic Republic of Iran has signed several bilateral judicial aid treaties in the areas of criminal collaboration, particularly in the areas of extradition of criminals and legal, civil, and economic cooperation, in this regard, it has ratified international multilateral treaties, the most notable of which is the United Nations Convention against Illicit Traffic in Narcotic Drugs, which was signed in 1988. Due to objections raised by the Guardian Council, the aforementioned accords have had to go through a separate and lengthy process to enter

into force in the Iranian legal system. As a result, relevant entities, particularly the judiciary, plan to govern judicial aid agreements with other nations in such a manner that they are less likely to be condemned by the Guardian Council and, to the extent practicable, do not require referral to the Expediency Council. However, the Guardian Council's approval of legislative approval is substantially hampered by the precise substance of such treaties, which in some manner conflicts with the scope of Shari'a practice. This study seeks to answer the question of what judicial help is, what its structure is, and what its position is in criminal situations under the European Convention on Legal Assistance with these explanations.

1. The concept of judicial assistance

A) Literal concept

Assistance is an Arabic infinitive and from the root of azd, meaning to interact, cooperate, assist and ask for someone's help (Moein, 1996: 4213), to be someone's arm, to help each other and help and assist someone (Dehkhoda, 1988: 665). Generally, it refers to a bilateral and reciprocal practice that involves the notion of reciprocity, and if the court and judicial procedures are mentioned, it may be interpreted as mutual judicial aid in the realm of judicial matters.

B) Legal concept

In terms of international law, judicial aid is a set of partnerships that countries give to one another in their bilateral relationships in order to make legal procedures in another country that are way linked to their government easier. In other terms, judicial help is the provision of judicial assistance by one state to another in conformity with international treaties, regional or bilateral agreements, or international custom or decency. The concept of national sovereignty indicates that no state may wield sovereignty over another state's territory. This is true, for example, while acting overseas, which is intrinsically a public (governmental) act under foreign law (Falsafi, 2011: 362). Nonetheless, the application of universal principles of justice and fairness forbids a lawsuit from being filed in one nation without the defendant in that litigation being notified of the proceedings in another country. Furthermore, the need that a court to hear all of the events in a case in order to conclude may necessitate the creation of facts in a different nation. For the reasons stated above, countries will unavoidably require some form of judicial collaboration to resolve these issues. As a result of the foregoing, it may be stated that judicial aid is: a collection of precise procedures and strategies by which governments collaborate in the area of justice and expand the reach of their courts in each other's territory.

2. History of Judicial Assistance

Procedures like judicial representation, verdict notification, and referral of cases should be regarded as the result of new judicial systems that emerged after Montesquieu's idea of separation of powers was established. Nonetheless, nations have traditionally assisted one another in limited judicial cooperation, which is frequently tied to extradition. There are two areas where historical advancements in judicial assistance may be tracked:

A) Judicial assistance in civil and commercial matters

As a result of the Hague Conference on International Law's efforts, the subject of judicial aid and the formation of consistent processes via the completion of multilateral agreements should be taken into consideration. The prominent Dutch jurist T.C.M.Assser initially hosted this conference in 1893, with the major focus of its issues being civil procedure. Indeed, this conference brought together representatives of European law, particularly case law (Almasi, 2016: 59). Following a hiatus caused by the crises of the 1930s and 1940s, the Conference restarted its work in 1955, unveiling a new statute saying that its purpose was to harmonize the norms of private international law thoroughly and comprehensively. Despite the conference's international nature, it is nonetheless led by a commission of Dutch attorneys.

In terms of judicial aid in civil and commercial concerns, the conference also aimed to remove current barriers to court processes that are subject to specific restrictions in the territory of another government. The Hague Convention on the Notification of Judicial and Non-Judicial Documents, dated 1965, is known as the Hague Notification Convention, while the Hague Convention on the Study of Evidence Abroad, dated 1970, is known as the Hague Study of Evidence Convention. Other international groups and organizations have also been active in this regard, including multilateral documents prepared by the Organization of American States, such as the Montevideo Civil Procedure Convention 1889, the Monte International Convention on Civil Procedure 1940, and the Convention, American Judicial Representation 1970, as well as documents prepared by the Legal-Advisory Committee of Africa and Asia, judicial notification and the study of evidence, can be mentioned (Falsafi, 2016: 66).

B) Judicial assistance in criminal matters

Because it does not participate in this local Arab dispute with the perspective that both the common legal system and the subject matter of criminal law have and that these rights are beyond the jurisdiction of private law, the Hague Convention has not been active in criminal problems in principle (Aliabadi, 2014: 25). Furthermore, governments have been skeptical about collaborating in criminal procedures, viewing it as activities connected to acts and omissions that are significant under specific government laws and have a well-defined territorial character from a restricted perspective. However, with the rapid expansion of communications and the ability to travel quickly from one country to another, as well as the growth of international trade on the one hand and the emergence of a sinister phenomenon known as organized

crime on the other, governments decided to respond to these dangerous facts by reducing their sensitivity to their jurisdiction in the public interest (Falsafi, 1985: 6-8). To do so, governments were compelled to abandon the previous concept of total national sovereignty and lower the high barriers of international justice to the point where countries might investigate crimes (Aliabadi, 2014: 22).

Finally, it is worth noting that, while the endeavor to give judicial aid in criminal cases began slowly compared to civil and commercial cases, in recent years, we have seen remarkable progress. Global attention to issues like drug trafficking, international terrorism, and international crime, in general, has resulted in the formation of special groups and organizations to combat these phenomena, as well as a slew of conventions containing materials related to judicial assistance in quality matters, which has more than made up for this section's lag.

3. European Convention on Human Rights

The European Court of Human Rights, which has 47 European member states, was created in 1950 under the European Convention for the Protection of Human Rights and Fundamental Freedoms. This convention is an international treaty under which the Council of Europe's member states agrees to protect fundamental civil and political rights not only for their citizens and citizens (with a population of almost 800 million) but also for all people on their territory (Janipour, 2010: 10).

The treaty establishes a judicial protection mechanism in Strasbourg to deal with alleged human rights violations and formally calls on member states to follow the convention and the European Court of Human Rights. The tribunal was founded in 1959 and had the authority to deliver binding decisions on human rights abuses at the request of persons. Since 1988, the court has been open full-time. It has 47 judges, with an equal number from each member state, and they handle a large number of cases each year (ibid). When the European Court of Justice finds a violation of the Convention, it requires the respondent government to pay both for the consent and, under the supervision of the Committee of Ministers, to consider general or special measures in accordance with its internal legal order in order to prevent future violations and, to the extent possible, to eliminate the effects of the violation (Zamani et al., 2007: 43). The European Court of Human Rights gave 1,565 votes in 2006, 1,553 votes in 2007, and 1,225 votes in 2008. Turkey (1857 votes), Italy (1789 votes), France (613 votes), and Poland together accounted for more than half of the votes cast in 2008. (601 votes). More than 83 percent of the European Court of Human Rights' judgments made since 1998 have identified at least one human rights infringement in the complainant nations (Janipour, 2010: 10).

4. European Convention on Bilateral Cooperation in Criminal Matters, adopted in 1959

One of the first international cooperation treaties to play a significant role in the creation and extension of judicial collaboration was the 1959 Council of Europe Convention on Mutual Cooperation in Criminal Matters, which went into force in 1962. The 1957 European Convention on Extradition is now complete. However, other treaties have addressed concerns such as the transfer of detainees and the transfer of judicial processes (Zamani et al., 2007: 46).

Because the expert group that drafted the 1959 Convention distinguishes between judicial and police cooperation, judicial and police action is outside the purview of this instrument and the Convention. The 1959 Convention, which was approved by the United Kingdom on August 29, 1991, is now binding on all EU states. Member States are committed to further cooperating to the fullest extent of their ability to take judicial action on matters falling within the jurisdiction of the judicial authorities of the Member States.

5. Areas of application for cooperation in the Convention

A judicial authority must request cooperation, not an administrative official. Hence requests cannot be made or received by an administrative entity.

A) Financial and political crimes

If the requested Government determines that the violation involves a financial or political infraction, the requested State may refuse to comply. As a result, countries can avoid collaborating on financial crimes. Furthermore, the requesting country has the right to refuse to cooperate with the request if it considers that doing so would jeopardize its national sovereignty or public opinion. The Additional Protocol, which was negotiated in 1978 and went into force in 1982, was added to the 1959 Convention. The 1959 Convention was expanded to cover financial violations in this agreement. "States Parties must not refuse to cooperate only because the offense involves a financial infraction," says Article 1 of the Additional Protocol. Requests for cooperation are typically exchanged between the relevant judicial ministries, although in emergencies, the request may be submitted and accepted by the judicial authorities. Additionally, the Convention stipulates that "the transfer of witnesses must be recorded and for legitimate grounds, and must be returned as quickly as feasible" (Gilgar, 1998: 87). Note 2 The European Convention on Bilateral Cooperation in Criminal Matters, which was established in 1959, states in Article 1: "If the evidence requested was obtained by duress or torture, the application might be denied. If the evidence is protected by the Privileges Act, governments may also refuse applications."

B) Writing court rulings

In the sphere of authoring court judgments, a request for collaboration can also be made. Being on the list of conditions

allows the requested government to refuse to carry out requests for evidence seizure and inspection unless there are unique circumstances to support it. In other words, unless the crime in issue can be prosecuted and extradited according to the laws of both nations, the request for inspection and seizure of evidence and property might be denied (Zamani et al., 2007: 51).

6. How to implement the request for legal assistance in the Convention

A request for judicial aid is typically carried out in line with the requesting country's national legislation. The Locusregitactum rule governs this. Although gathering evidence in this manner may result in difficulties being accepted in criminal proceedings in the requesting nation, the Convention does not address the question of evidence admission. This issue might potentially be utilized to undermine some of the Convention's goals. The requesting State must outline the nature of the inquiry and the assistance it seeks in detail in order to expedite the request's execution. Before coming to court to provide evidence, state parties must guarantee that witnesses are safe and secure from being punished for crimes. Witnesses should also not be imprisoned in conjunction with high-profile prosecutions (Turkan Dor Banaz, 2009: 42).

Application execution is subject to judicial approval in the requesting state. The Mutual Legal Assistance Division in the United Kingdom evaluates all petitions before sending them to the appropriate court body for approval. These processes are in place to ensure that cooperation requests are compliant with international and UK law. Administrative and judicial monitoring may be time-consuming and tiresome. Such requirements, on the other hand, surely ensure a balance between competing interests and protections against governments abusing the process of mutual collaboration (ibid.).

Conclusion

We attempted to explore the European Convention on Judicial Assistance in Criminal Matters (1959) and the legal principles that regulate its conclusion in the context of the Iranian legal system in this paper. The nations agree to this convention, which is based on principles of international criminal law and public international law. Meanwhile, the process of concluding similar agreements in the Islamic Republic of Iran is beset by difficulties due to the country's unique legal system and the Guardian Council's unique interpretation of sharia. Indeed, the Guardian Council's objections represent a rejection of the principles regulating the treaty's conclusion. The requirement for judicial cooperation between Iran and other nations, on the other hand, requires the appropriate authorities to adhere to international law's norms and regulations and to authorize the parliament through the Expediency Council's procedure. Despite the Guardian Council's numerous objections to the treaty due to non-compliance with Shariah norms in agreed-upon cases, this treaty and the others in question will eventually be ratified and enforceable per the specific international principles and standards governing such agreements and, of course, after lengthy processes. Generally, joining this agreement and other human rights conventions that include provisions on criminal law principles and fair trials can assist our courts in ensuring and respecting human rights. Furthermore, the aforementioned factors can undoubtedly assist us in judicial collaboration. In this context, joining these accords should be done with as few requirements as feasible.

Acknowledgments

None.

Conflict of interest

None.

Financial support

None.

Ethics statement

None

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