



**Transferring Sentenced Persons, Held in
other Member States of the European Union
in order to execute the Sentence or the
Measure Involving Deprivation of Liberty in
a Penitentiary or Medical Unit in Romania.
Critical Reviews**

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Abstract: In this paper we have achieved the examination of the provisions of the Romanian law of one of the most important forms of international judicial cooperation in criminal matters in the European Union, respectively, transferring persons sentenced to a criminal law sentence involving deprivation of liberty in another Member State, in order to enforce the sanction in Romania. The novelty refers to examining the provisions of the Romanian law, formulating critical opinions about some contradictory provisions of the law and *de lege ferenda* proposals. The paper continues the examination of forms of international judicial cooperation in criminal matters, which materialized in the publication of a master course, a treaty, and several other studies and articles. At the same time, given the depth of the examination, the work can be useful to academics or master students studying the subject in question, and to practitioners in this field.

Keywords: Crime; criminal law sanctions involving deprivation of liberty; judgment; call

1. Introduction

The recognition and enforcement in a Member State of judgments by which there were applied sanctions of criminal law involving deprivation of liberty by a competent court of another Member State was and is a complex issue, involving primarily mutual trust in the judicial decisions adopted by another Member State. Over time, especially in the recent years, the recognition and enforcement of a foreign judgment was defined as a form of international judicial cooperation in criminal matters. Regarding the place and importance in relation to other forms of cooperation, we believe, acquired in the general by the European and Romanian doctrine, that, in terms of judicial cooperation in criminal matters between Member States of the European Union and the recognition and enforcement of judgments

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and other judicial documents emanating from another competent institution in another Member State, represent the most important form of cooperation (Rusu & Balan Rusu, 2013, p. 83). At the same time, if we refer only to this institution in the general context of its implementation by the Romanian judicial authorities we must take into consideration both criminal judgments emanating from the Romanian judicial authorities and those adopted by the competent judicial authorities of other countries (Boroi & Rusu, 2008, p. 347). In Romania the institution of recognition and enforcement of judgments that were arranged by the final judgment of conviction to punishments or other custodial measures by a Member State of the European Union is regulated in Title VI of Law no. 302/2004 on international judicial cooperation in criminal matters.¹ By this legislative act Romania transposed into the national law a part of the European legal instruments through which it is governed the institution of international judicial cooperation in criminal matters.

2. Preparatory Measures for the Referral to the Competent Court in Romania

In the case requesting the recognition and enforcement of judgments which ruled a penalty of criminal sanction on deprivation of liberty, in order to transfer the person for the enforcement of the sanction in Romania, after receiving the judgment and the certificate or where appropriate the information provided by the Romanian law, the specialized department within the Ministry of Justice will send to the prosecutor's office of the court of appeal where the convicted person resides, which will notice the competent court within 20 days from filing the case (Boroi, Rusu & Rusu, 2016, p. 647).

After receiving the file within the period prescribed by the law, the competent prosecutor verifies that:

a) the execution of the judgment transmitted by the issuing State in Romania does not violate the principle of *non bis in idem*; in this regard, the prosecutor will

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request information from the Romanian Police records, consulting and other records as well;

b) the convicted person is prosecuted in Romania for the same offenses for which the judgment was issued and transmitted by the issuing State;

c) the convicted person is prosecuted in Romania for offenses other than those for which the judgment was issued and transmitted by the issuing State. In this situation, if necessary, it informs the prosecutor who is conducting or supervising the prosecution or the court before which the case is pending for resolution on the effects of the specialty rule and when there are not applicable the provisions of art. 155 par. (1), letters a), b), d) and e) it calls the transmission of the information referred to in art. 86 para. (1); we specify that in art. 155 there are provided special conditions for recognition and enforcement of foreign judgment, and at art. 86 para. (1) it is the content and form of the European arrest warrant;

d) it is incident any of the reasons for non-enforcement provided for in art. 151 of the special law (Boroi; Rusu & Rusu, 2016, p. 648).

The Romanian Police and other institutions will submit the information required by the case prosecutor within 5 days of receipt.

If the case prosecutor finds that the convicted person is prosecuted in Romania for offenses other than those for which the judgment was issued, he shall inform the prosecutor conducting or supervising the prosecution or the court before which the case is pending for settlement, on the right of the convicted person for incurring the specialty rule, in accordance with the Romanian law.

Under the situation where, until the notification of the court, the issuing State withdraws the certificate, the prosecutor decides the filing and he will return the dossier to the specialized directorate of the Ministry of Justice.

According to the recent Romanian doctrine, the preparatory measures for the complaint of the competent court of appeal fall within the exclusive competence of the prosecutor, consisting of checking on the compliance aspects of criminal law principles or scope of the grounds of non-recognition and non-enforcement.

However the text of law is in our view incomplete, as it does not provide for the procedure to be followed in the case where the prosecutor finds, during checks, the incidence of a cause of those provided at par. (2) art. 153 of the Special Law.

In other words, how will the prosecutor proceed in such a situation? It class the cause and it will send the case to the specialized directorate of the Ministry of Justice or to a competent court, which is to decide?

In this situation, in our opinion, the prosecutor is not competent to close due to the requirement to notify the competent court (which includes the findings of its referral), which will decide according to the law. On the other hand we find that the law provides a specific act by the prosecutor inform the competent court (address, report, etc.). We believe that in this situation, the prosecutor must prepare a report that includes verifications and findings and proposal, which may accept or reject the request recognition and enforcement of foreign judgment (Boroi; Rusu, & Rusu 2016, p. 648).

3. The Duration and the Object of the Judicial Procedure for Recognition and Enforcement of Judgment

After receiving the file, the president of the seized court of appeal or the judge established by it sets the term of court, which may not be less than 10 days from the date of registration of the case, the duration of the procedure is of 30 days from the date of registration of the case, unless it is necessary the consent of the issuer, when the procedure is of 60 days from the date of registration of the case in court.

According to the depositions of art. 154, par. (2) of the special law, *the court judges in a panel of one judge, in the council chambers, without summoning the convicted person. The prosecutor's presence is mandatory.*

In the Romanian doctrine it was recently expressed the view that, having regard the decisions of the Constitutional Court in the years 2014 following the entry into force of the new Code of Criminal Procedure in 2015, these provisions appear to be unconstitutional, as it violates the sentenced person's right to be on trial after deciding which country will serve a penalty or other sanction of criminal law involving deprivation of liberty. No doubt that person's transfer in Romania only for this process would require the extension in time of the trial, and additional expenses.

In this situation, we consider that after the referral, the court will require to the specialized directorate of the Ministry of Justice to inform the convicted person on the time, date, year and place of hearing, and the possibility of its to hire a lawyer to defend his/her rights. In the case where the convicted person

does not hire an attorney (for various reasons), it must be defended by a lawyer appointed by the court ex officio.

At the same time, we believe that this hearing should be public.

In conclusion, we consider that until the modification of the text, the courts in Romania should ensure the right of defense of the convicted person, under this procedure (Boroi; Rusu, & Rusu, 2016, p. 649).

According to the cited authors their opinion is correct, which is supported by the Constitutional Court Decision no.506 of 30 June 20014, the provisions of art. 459 par. (2) of Code of Criminal Procedure were declared as being unconstitutional.

To pass this decision, the Court held that the legislative solution contained in Art. 459, par. (2) of the Criminal Procedure Code, according to which the admissibility of the request for revision in principle to be examined by the court “without summoning the parties” is unconstitutional because it violates Art. 21 para. (3) of the Basic Law, and therefore in this case, in which the prosecutor participates, and it must be cited the parties, in order to ensure their ability to participate in this procedural stage.

Even if this solution does not refer directly to the provisions of art. 154, par. (2) of Law no. 302/2004 on international judicial cooperation in criminal matters, however, given its motivation in the sense that the law only allowed the presence of the prosecutor, and not the parties, in our case the convicted person, we consider that the text is unconstitutional. No doubt that by declaring unconstitutional the text of paragraph (2) the seized courts will have to adopt a procedure by which to be followed also the provisions of the Basic Law.

In this context, we consider that all hearing courts in Romania seized with such a case will settle by summoning the convicted (therefore in breach of art. 154, par. (2) of the special law which states that the settlement will take place without summoning the parties).

Under the special law depositions, the object of the procedure is the verification of the special conditions for recognition and enforcement, and, if they are met, the recognition and the enforcement of the judgment transmitted by the issuing State.

Also the civil provisions, the provisions relating to pecuniary penalties, the precautionary measures or legal costs, and any provisions of the judgment forwarded by the issuing State other than those on the execution of imprisonment

or measure involving deprivation of liberty, which is not subject to this procedure [art. 154, par. (3) The Special Law].

From the interpretation of the above provisions, it results that in the case where the foreign judgment subject to the procedure for recognition and enforcement of a penalty or custodial measure contains other provisions as well (civil, insurance, pecuniary etc.), they will not be considered by the Romanian court.

Not being considered does not mean that they were or not recognized.

In other words, under this procedure the court of appeal will recognize or not only those provisions of the foreign judgment concerning the sentence or the measure of deprivation of liberty. The recognition and enforcement of other provisions will be subject to a new trial, in accordance with European legal instruments Romania transposed into the national law by Title VII entitled “Judicial Assistance in Criminal Matters” of Law no. 302/2004 on international judicial cooperation in criminal matters, republished, as amended and supplemented. It appears that in this situation, the Romanian court recognizes only partially the foreign judgment (Boroi; Rusu, & Rusu, 2016, p. 650).

The same authors consider that, as the law provides, in the case where the foreign judgment, in addition to the criminal law sanction of deprivation of liberty, provides and other sanctions as well, the Romanian court should recognize or not the entire foreign criminal judgment, including the other provisions (mentioned above).

No doubt that the provisions of Title VII of the Special Law may be incident in the case of some foreign judgment that contain only such provisions, excluding those containing criminal provisions by which there were applied sanctions of criminal law involving deprivation of liberty (Boroi; Rusu & Rusu, 2016, p. 650).

If the person concerned has been convicted for several offenses, the verification of the condition is carried out for each of them. When the court finds that the conditions are met for only one or some of the offenses, the recognition will be achieved only for them (so it will proceed to partial recognition). In this case prior to sentencing in para. (6) of art. 154, the court requires the issuing State, directly or through specialized directorate of the Ministry of Justice to clarify whether and under what conditions it agrees with the partial recognition, and if they withdraw the certificate. In the cases where before the final solution of the case, the issuing

State withdraws the certificate, the court rejects the request as being unsubstantiated [art. 154 par. (4) and (5) of the Special Law].

At the same time, the foreign issuing judicial authority may request partial recognition and enforcement of the sentence, in which case the Romanian court will comply.

For the purposes mentioned above, in the judicial practice it was decided that *if the requesting authorities have applied for recognition and enforcement of the decision only as regards the additional punishment of disqualification of rights, the court is bound to recognize the foreign judgment only within these limits* (Pastiu, 2012, p. 223).

As for the Romanian court, after examining the foreign judgment it will check on the file and it will apply one of the following solutions:

- a) it decides, by sentence, the execution of the sentence imposed by the court of issuing State in Romania;*
- b) in the case where the nature or duration of the sentence imposed by the foreign court does not correspond to the nature or duration of the punishment under the Romanian criminal law for similar offenses, it adapts, by sentence, the sentence imposed by the court of issuing State, par. (8) and (9);*
- c) it decides, through a sentence, rejecting the request for enforcement in Romania of the judgment transmitted by the issuing State.*

In order to pass one of the solutions mentioned above, the court may consult directly or through specialized directorate of the Ministry of Justice, the competent authority of the issuing State, the consultation procedure does not affect the term provided in par. (1) [Art. 154 par. (6) and (7) of the Special Law].

In the case mentioned above in letter *b)* *the court shall adapt the sentence imposed by the judgment transmitted by the issuing State, when:*

- a) it does not correspond to its nature, in terms of name or the regime, with the penalties regulated by the Romanian criminal law;*
- b) its duration exceeds, where appropriate, the maximum special punishment provided by the Romanian special law for the same offense or general maximum limit of prison sentence under the Romanian criminal law or when the resulting penalty applied to a series of offenses exceeds the total penalties set for concurrent offenses or the general maximum limit of imprisonment permissible by the*

Romanian criminal law. The adaptation of the court of the applied sentence imposed by the court of the issuing State is to reduce the sentence to the maximum limit allowed by the Romanian criminal law for similar offenses.

Also, the punishment established by the Romanian court according to par. (6) must correspond as far as possible, in terms of nature or duration, with the one applied by the issuing State and it shall not aggravate the sentenced person. The sentence imposed in the issuing State cannot be converted into a fine [art. 154 par. (8) and (9) of the Special Law].

We should note, however, that in the case where the issuing State gives notice that it does not accept the adaptation of the sentence and calls for its enforcement as it was passed, the penalty will be adapted and the judgment shall not be recognized (Boroi; Rusu, & Rusu, 2016 p. 651). In this regard, the judicial practice was decided that *since the penalty imposed on the convict - prison on indefinite duration, with the possibility of parole after 4 years and 6 months of imprisonment - is inconsistent as nature and duration with the Romanian legislation, it cannot do the conversion of the conviction, as long as the sentencing State has requested to preserve nature and duration of the sanction* (Stanciu, Popa, Rotaru apud Radu, 2014, p. 214).

In another case, concerning the adaptation of a supplementary penalty, it was decided that *because the Romanian law did not permit a supplementary punishment for an indefinite period, the Romanian court will adapt the penalty according to the Romanian law, namely on the maximum length allowed by the Criminal Code* (Stanciu, Popa, Rotaru apud Radu, 2014, p. 215).

By another decision it was established that *in the case where the conditions of transferring the sentenced person are met in order to serve the sentence in a penitentiary in Romania, and the penalty imposed by the final decision rendered in the State of conviction for the offense of manslaughter is life imprisonment, the penalty is incompatible with the Romanian criminal law, the court recognizes the final judgment of conviction adapts life imprisonment to the sanction provided by the Romanian criminal law for the offense of the conviction - to the special maximum of imprisonment of 25 years prescribed in the Romanian criminal law for the offense of murder under art. 159, par. (1) of Law no. 302/2004 and it decides the sentenced person's transfer to a prison in Romania to serve the sentence of 25 years of imprisonment* (Criminal Division I.C.C.J., 2013, available on www.scj.ro).

In connection with the above provisions [para. (6) letter a) and c) of the Special Law], we have some doubts, as the Romanian court must decide by sentence, firstly the recognition of the foreign judgment, after which its enforcement in Romania; the current text makes no reference on recognition. This view is supported by the recent doctrine, where it argues that *“the provisions of art. 154 par. (6) letter a) respectively, c) - the court decides, by sentence, the execution in Romania of the sentence imposed by the issuing court and respectively the refusal of enforcement in Romania of the judgment transmitted by the issuing State - are deficient, as it must first recognize the foreign criminal judgment and then enforce it (art. 154 is actually entitled “The Duration and object of the judicial procedure for recognition and enforcement of the judgment” (Morar, 2012, p. 131).*

Also, *“this text is unrelated to art. 73 The New Criminal Code regulating the situation of computing the penalty enforced already outside the country, a hypothesis that can occur when applying for a merger of an objection to execution, but firstly the foreign criminal judgment must be recognized, even if the penalty has been fully executed for computing” (Morar, 2012, p. 131).*

The sentence is drawn up within 10 days from the decision and it is communicated directly to the convicted person or through the authority designated by the issuing state. Against this sentence the convicted person may declare appeal within 10 days, the prosecutor and the injured party. *For the prosecutor the deadline starts from the decision, and for the convicted person the deadline starts from the notification of the copy from the device (Boroi; Rusu, & Rusu, 2016, p. 652).*

In the recent doctrine it was expressed the view according to which the above mentioned provisions are at least questionable, as on the one hand the law provides for the sentencing in 10 days and its communication to the convicted person (without being provided a deadline), and secondly that the convicted person may declare appeal within 10 days from the notification of the copy on the device. The interpretation of these provisions leads to the conclusion that the court will first inform the convicted person with a copy from the device, and then, after writing the sentence. We believe that it would be much more effective if the deadline of 10 days to appeal flowed from the date of the sentence, this way is likely to simplify the work of the court which will have to make a single communication, not two. If an appeal is declared (by the prosecutor or the convicted person), the file will be sent to the competent court (High Court of Cassation and Justice) within 3 days.

According to the law, the appeal shall be heard within 10 days, in closed session, without summoning the convicted person. The presence of a prosecutor is obligatory (Boroi; Rusu, & Rusu, 2016, p. 653). With the same observation concerning the unconstitutionality of the above mentioned text, in that the appeal is necessary to judge in the presence of the convicted person or the participation of lawyer chosen by the convicted person (in the event that the convicted person cannot be present). In the case of the recognition of the foreign judgment, the enforcement of the penalty is achieved under the provisions of the Code of Criminal Procedure. The court informs the final judgment and a copy of the warrant for the execution of the punishment of life imprisonment or imprisonment or a sentence, where appropriate, the competent authority of the issuing State, the Centre for International Police Cooperation, as well as copies of the specialized directorate of the Ministry of Justice.

In case of rejection of the request for enforcement of foreign judgment, the final decision shall be communicated to the competent authority of the executing state and the specialized directorate of the Ministry of Justice. When, after the release of the warrant for the penalty of life imprisonment or imprisonment, the issuing State:

- Withdraws the certificate, the court decides the cancellation the warrant. In such a situation the sentence (decision) of recognition has legal effects only in terms of recidivism state, unless the revocation of the certificate was made on the grounds of application of amnesty or due to the fact that it was later established that the person is not guilty of the offense or following the death of the convicted person;
- Submits a new certificate for the execution of another punishment, the provisions of the Code of Criminal Procedure on appeal to execution, which are not contrary to special law, is applied properly. In this circumstance the enforcement court is the court of appeal which passed the decision.

If, after transferring the convicted person, a new certificate is sent by the issuing state for the execution of other penalties there will be applies the provisions of art. 159 (preparatory measures).

In the case where the court refused to recognize the foreign judgment, the request of the issuing State or convicted person may be reexamined if new elements emerges [art. 154 par. (15) of the Special Law].

On the latter provision of the special law, we mention that is not provided the procedure to be applied in order to reexamine the application in question (Boroi; Rusu, & Rusu, 2016, p. 655).

4. Special Conditions for Recognition and Enforcement of Foreign Judgment

Under Romanian law, the Romanian court recognizes and enforces the judgment forwarded by the issuing State if the following conditions are met:

- a) the judgment is final and enforceable;*
- b) the offense for which the punishment was applied would have been, in the case in which it had been committed on the Romanian territory, an offense and the perpetrator would have been punishable;*
- c) the convicted person has Romanian citizenship;*
- d) the convicted person agrees to serve the sentence in Romania. The consent is not required if the convicted person is a Romanian citizen and lives in Romania, or even if the person lives in Romania, will be expelled to Romania. If necessary in relation to age or physical or mental condition of the convicted person, the consent can be given by its representative;*
- e) is not incident any of the grounds for non-recognition and non-enforcement provided for in art. 151.*

Also, the judgment forwarded by the issuing State may be recognized and enforced when the convicted person does not have Romanian citizenship, but lives in Romania and he has uninterrupted legal residence in Romania for a period of at least five years and he will not lose the right of permanent residence in Romania. In this situation, the convicted person's consent is required. So the above mentioned conditions, established by the legislator as being the special conditions, must be checked by the Romanian court for each case and for each offense when the foreign judgment or applied several penalties or measures of deprivation of liberty in the same case (Boroi; Rusu & Rusu, 2016, p. 656).

Regarding the consent of the sentenced person to be transferred to execute the sentence in Romania and subsequently its withdrawn, in the judicial practice it was decided that *one of the provisions of art. 143, letter d) of Law no. 302/2004, republished, for the convicted person to continue serving the sentence in Romania,*

is the manifestation of the will agreement in full knowledge of the legal consequences arising on the transfer. Since the transferable person reanalysed the agreement of will, manifested initially in order to operate the transfer in order to continue the execution of punishment, there no longer met the conditions required to allow notification (Nedelcu in Radu (eds.), 2014, p. 214).

5. Enforcement of Foreign Judgment as a Result of a European Arrest Warrant

In the case where surrendering a Romanian citizen of Romania, under a European arrest warrant, it was conducted under the condition of being transferred, in case of conviction in order to enforce the sentence in Romania, the consent mentioned above in point d) is no longer necessary. Transferring in Romania in view of executing the penalty is conducted based on the certificate provided for in Annex no. 5 and the judgment transmitted by the issuing State.

Taking under escort the convict, receiving and keeping in penitentiary thereof is achieved under the sentence ordering the earlier surrender of the person convicted and, where appropriate, the sentence which was granted consent of his investigation for other offenses than those who covered the first sentence. Keeping in the penitentiary based on the sentence is for a period which does not exceed 90 days from the date of taking over the convicted person. The 90 days period shall be deducted from the sentence imposed to the convicted person.

After transferring in Romania the sentenced person, the enforcement of the court's judgment of the issuing State will be made by the competent Romanian court under art. 160 [art. 156 par. (3) and (4) of the Special Law].

According to the law, the provisions set out above apply only if the certificate and the judgment shall be sent by the issuing State within 3 months of the date on which the judgment can be enforced. If the certificate and the judgment shall be sent after that deadline, there are applicable the provisions of art. 154 (Boroi; Rusu, & Rusu, 2016, p. 657).

In our recent doctrine it was expressed the view that *"1. It would be appropriate to recognize and enforce, by the competent court of appeal, the judgment of the court of the issuing State, previous to the transfer of the convicted person in Romania.*

2. *Otherwise - that is the convicted person to be transferred to Romania and subsequently to be transmitted by the issuing state the certificate provided for in Annex no. 5 and the related judgment, and taking under escort the convict, receiving and keeping him in penitentiary, taking place under the sentence by which it was ordered previously the takeover of the convicted person and, where appropriate, the sentence by which it was granted consent for his investigation and for offenses other than those which were the subject of the first sentence – it would be the problem of legal detention of that person in Romania through the art. 5, para. 1, letter a) of the European Convention on Human Rights (no one can be deprived of his liberty except, among others, he is in lawful detention based on the conviction passed by a competent court) and in the situation described the sentence as mentioned, yet to be recognized in Romania, and the recognition would involve the issuance of a warrant for penalty enforcement.*

There is no longer the question of incidence in art. 5, para. 1, letter f) of the Convention, as the procedure of execution of a European Arrest Warrant was already completed by the delivery of the person to the issuing judicial authority of the European arrest warrant.

The condition for delivering a Romanian citizen from Romania, under a European arrest warrant, subject to being transferred in case of conviction in order to serve the sentence in a penitentiary or medical facility in Romania, is only relevant only in terms of the person's consent (this consent is no longer needed).

On the other hand, art. 43, para. (1) of Law no. 254/2013 on the execution of sentences and custodial measures ordered by the court within criminal proceedings provides that the receipt of the convict in a penitentiary is always based on a warrant for the execution of the punishment of deprivation of liberty.

Judgment ordering the earlier delivery of the person convicted under a European arrest warrant cannot activate arrest, which at that time he was willing to surrender during the enforcement proceedings of the European Arrest Warrant, or detention of a person condemned by the State which has issued the European arrest warrant, which occurred after the conviction, because that judgment was not recognized as such, it has not issued an enforcement warrant of the penalty which applies in Romania.

Such a situation would be subject to exceptions of unconstitutionality, being violated the provisions of art. 23, para. (12) of the Romanian Constitution". (Morar, 2014, pp. 132-133)

In our view, the critical opinions expressed by the author are accurate and scientifically argued, which is why we are fully agreeing to them.

We also believe that the provisions of art. 156 par. (3) of the Special Law can always be the object of an exception of unconstitutionality, because in their essence, they have taking over the escorted the convicted person and holding him in penitentiary, based on previous sentences, which cannot produce such legal consequences; the legal consequences concerning the arrest of the person in question occurred only during the execution of a European arrest warrant at the request of the issuing Member State, and not later after his condemnation.

On the other hand, the convicted person cannot be kept in custody under a foreign judgment which was not recognized by the competent court of appeal;

In this case, taking into consideration also the provisions of Law no. 254/2013, we are in a situation where the convicted person brought into the country under escort, shall be received in penitentiary, in which case his release is necessary, until the recognition of the foreign judgment and the warrant for the execution of the penalty or the measure of deprivation of liberty.

The solution that emerges is urgent, that is the modifications to the text of par. (3) in the sense of transferring the convicted person, after the recognition of the foreign judgment and after issuing the warrant for penalty's execution or measure of deprivation of liberty.

By operating these special law changes, we appreciate that the courts of Romania will either decide transferring the convicted person in Romania only after the recognition of the foreign judgment (Boroi; Rusu, & Rusu, 2016, p. 658).

6. The Specialty Rule

The specialty rule requires that a person transferred from another Member State of the European Union in Romania, cannot be prosecuted or sanctioned with another measure of deprivation of liberty for an offense committed prior to his transfer, other than that for which it is transferred.

From this general rule are exempt the following situations:

a) *the convicted person has agreed to be transferred to Romania; or*

- b) the convicted person expressly waived the right to apply the specialty rule on the offenses committed prior to the transfer in Romania. In the case of the convicted person transferred in Romania, the prosecutor conducting or supervising the prosecution or the court shall hear the sentenced person in the presence of the lawyer chosen or appointed *ex officio*. The declaration shall be in writing and signed by the convicted person, the attorney, by the prosecuting authority or the presiding judge and court clerk and an interpreter when the statement was taken through an interpreter. The renunciation of the specialty rule is irrevocable; or
- c) the convicted person did not leave Romania within 45 days of his final release, although he could be allowed to leave the territory of Romania or, although the person has left Romania in this time, the person returned subsequently voluntarily or he was brought back legally in a third State; or
- d) the act is not punishable under the Romanian law with a punishment or a measure of deprivation of liberty or the criminal investigations do not result in the application of a measure restricting personal freedom; or
- e) the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or equivalent, even if the penalty or measure may lead to a restriction of personal freedom; or
- f) in any cases other than those referred to a) -e) when the issuing State agrees that the person is prosecuted or punished for an offense committed prior to its transfer (art. 157 of the Special Law).

Designed to provide some protection to its citizens transferred to another Member State, the specialty rule can be found in all legal instruments adopted at EU level and is now taken over the Romanian law (Boroi; Rusu, & Rusu, 2016, p. 659).

7. The Procedure for Requiring the Consent of the Issuing State

According to provisions of the Romanian special law, if the competent court of appeal finds that they are not incident the situations mentioned in letters a), d) and e), it makes the request for granting consent, *ex officio* or upon a reasoned proposal of the prosecutor. The application for consent will include the data contained in the European Arrest Warrant, the data were transmitted at the request of the court of appeal by the prosecutor conducting or supervising the criminal investigation or the court before which the case is pending for settlement. The application for consent

is translated by an authorized translator and it will be transmitted directly or through specialized directorate of the Ministry of Justice to the competent authority of the issuing State. In this case the appeal court it will postpone the proceedings, setting a time that cannot be less than 15 days from the date of submission of the request to the competent authority of the issuing State.

In the case where the convicted person transferred to Romania, where they are not incident the provisions of art. 157 letters a) -e), the application for granting consent shall be made by the competent court according to art. 88, para. (3). The application for granting consent includes the information specified in art. 86, para. (1), translated by a certified translator and submitted directly or through specialized directorate of the Ministry of Justice, to the competent authority of the issuing State.

We mention that in art. 88 para. (1) of the Special Law there are provided that the judicial bodies may issue a European arrest warrant, in the prosecution phase, trial and execution of criminal law sanction which became final and art. 86, para. (1) where there are provided information to be listed in the European Arrest Warrant. The guarantees required by the issuing state shall be provided by the applicant judicial authority, except those within the jurisdiction of the Ministry of Justice (Boroi; Rusu, & Rusu, 2016, p. 659).

8. Conclusion

Regarded as one of the most important forms of judicial cooperation in criminal matters in the European Union space, the recognition and enforcement of decisions taken by another Member State of the European Union can be considered both in terms of the Requesting State and the requested state. On the other hand it is necessary to consider that recognizing and transferring the enforcement of the sanction in Romania, may also relate to sanctions on deprivation and non-deprivation of liberty. The examination of the Institution on the recognition and enforcement of criminal law sanctions of deprivation of liberty in another Member State of the European Union and hence the transfer of these categories of persons for enforcement of sanctions in Romania, has highlighted the importance of this institution, as a form of international judicial cooperation in criminal matters. Also in the examination we had to carefully identify possible imperfections of the provisions of Romanian law, with a major impact in terms of respecting the rights and freedoms of the convicted persons.

Among those provisions at least questionable we mention the cases when judging the application and the appeal to be made in the presence of the convicted person (not without its participation as required by the applicable legal requirements), or when this is not possible, for objective reasons, the judgment must take place with the participation of a lawyer of the convicted person. Another critical opinion that we made it addresses the need to transfer the person convicted to a criminal law penalty of deprivation of liberty, after recognizing the judgment carried out by competent court of appeal in Romania. One general conclusion we consider that the Romanian law regulating this institution, even with some shortcomings, is an important step made by Romania in the common effort to prevent and combat crime of all kinds throughout the European Union.

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