

**Mutual Recognition of Financial Penalties
between the EU Member States.
Critical Observations**

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Abstract: According to the special Romanian law, one of the forms of judicial assistance in criminal matters recognized in the relations between the EU member states is, among others, the one referring to the cooperation in applying the principle of mutual recognition of financial penalties. The European normative act that establishes the general cooperation norms in this matter is the Council's Decision Frame 2005/214/JAI on February 24, 2005 on the application of the principle of mutual recognition of financial penalties. This European normative act has been transposed in the internal legislation through Law no.302/2004, according to the international judicial cooperation in criminal matters, with the subsequent amendments and completions, the latter being represented by Law no.222/2008. The amendments and completions instituted by the abovementioned normative act establish the procedure of transmitting the decision, the procedures for recognition and execution of such a decision by the competent Romanian judicial authorities, the grounds of non recognition and non execution, the definition of used terms, as well as other aspects referring to the recognition and execution of such decisions. Commenting refers to a number of provisions in the law under both European and domestic in the special law, comments aimed in particular the replacement of terms of recognition or non-performance reasons, the procedure of identification of persons convicted when they are evade the enforcement of financial obligations and failure to transpose into national law of subsequent changes to European law.

Keywords: Cooperation; member states; procedure of transmitting and executing a decision; grounds of non recognition and non execution

1. Introductory Considerations

Within the international judicial cooperation in criminal matters, the mutual recognition of criminal decisions has represented a constant concern in all states with recognized democratic regimes and especially the European ones.

When analyzing the complex institution of recognizing the foreign criminal decisions and judicial acts, they have to comprise both the criminal decisions that stem from the Romanian judicial authorities and the ones stemming from the competent judicial authorities of other states (Boroi & Rusu, 2008, p. 347).

One of the most important normative acts issued in this context at the Europe Council's level is the European convention on the international value of repressive decisions, adopted in The Hague, on May 28, 1970¹.

“The European Convention on the international value of repressive decisions was elaborated by a sub-committee of experts of the Europe's Council, under the coordination of the European Committee in criminal matters and opened for signature on May 28, 1970² on the occasion of the 6th Conference of European Justice Ministers. The fundamental principle on which the Convention is based is the assimilation of a foreign decision through a national one. This principle is applied under three different aspects, namely:

- the execution of a decision;
- the *ne bis in idem* effect;
- taking into consideration the foreign decisions” (Radu, 2008, p. 95).

The European Council's reunion in Tampere in October 15 and 16 October 1999 approved the mutual recognition principle, that has been said to become the basis of the judicial cooperation both in civil as well as in criminal matter within the EU.

Subsequently, according to the Tampere conclusions, the 29 November 2000 Council adopted a measures program in order to apply the principle of mutual recognition of decisions in criminal matters, prioritizing the adoption of an application instrument for the principle of mutual recognition on financial penalties.

Aiming at transposing the principle of mutual recognition of criminal decisions into practice, a series of normative acts have been adopted at the EU level, such as: the Council's Decision Frame 2002/584/JAI on June 13, 2002 on the European

¹ Ratified by Romania through Government Ordinance no.90/1999, published in Official Monitor no.421 on August 31, 1999, approved through Law no.35/2000, published in Official Monitor no.158 on April 17, 2000.

² Ratified by Romania through G.O. no.19/1999, published in Official Monitor no.421 on August 31, 1999, approved through Law no.35/2000, published in Official Monitor no.158 on April 17, 2000.

arrest warrant and the procedures of delivery between member states¹, the Council's Decision Frame 2003/577/JAI on June 22, 2003 on the execution of the unavailability orders on goods or evidence within the EU², the Council's Decision Frame 2005/214/JAI on February 24, 2005 on the application of the principle of mutual recognition of financial penalties³, the Council's Decision Frame 2006/783/JAI on October 6, 2006 on the application of the principle of mutual recognition on confiscation decisions⁴, the Council's Decision Frame 2008/909/JAI on November 27, 2008 on the application of the principle of mutual recognition of injunction in criminal matters that imply custodial punishments or measures, with the purpose of executing them within the EU⁵, the Council's Decision Frame 2008/947/JAI on November 2008 on the application of the principle of mutual recognition of injunctions and taking of evidence decisions in order to supervise the taking of evidence measures and alternative sanctions and penalties.⁶

In 2009, a part of the European normative acts abovementioned have been modified and completed by the Council's Decision Frame 2009/299/JAI on February 26, 2009, modifying the Decision Frame 2002/585/JAI, 2005/214/JAI, 2006/783/JAI, 2008/909/JAI and 2008/947/JAI, consolidating the procedural human rights and encouraging the application of the principle of mutual recognition on the decisions taken in the absence of the person in question from the trial.⁷

The principle of mutual recognition must be applied to financial penalties imposed by the judicial or administrative authorities, in order to facilitate the application of these penalties in another member state than the one in which the penalties were imposed.

The European normative act that regulates this cooperation activity is the Council's Decision Frame 2005/214/JAI on February 24, 2005 on the application of the principle of mutual recognition of financial penalties, that completes the European normative acts that do not impede a member state from applying its constitutional

¹ Published in the European Union's Official Journal no.L 190/2002, pp.1-20.

² Published in the Official Journal no.L 196/2003, pp.45-55.

³ Published in the Official Journal no.L 76/2005, pp.16-30.

⁴ Published in the Official Journal no.L 328 on November 2006, pp.59-78.

⁵ Published in the European Union's Official Journal no.L 327/27 on 5.12.2008.

⁶ Published in the European Union's Official Journal no.L 337/102 on 16.12.2008.

⁷ Published in the European Union's Official Journal no.L 81/24 on 27.03.2009.

norms on respecting the legality, freedom of association, freedom of the press and the freedom of expression within the media.

Consequently to the obligation assumed as a member state of the EU, Romania transposed the provisions of the European normative act in its internal legislation by adopting Law no.222/2008, amending and completing Law no.302/2004 on international judicial cooperation in criminal matters.¹

Thus, Law no.302/2004 on international judicial cooperation in criminal matters, with its subsequent completions and amendments² provisions in Title VII- Judicial assistance in criminal matters, Chapter 2- Dispositions on judicial assistance applicable in the relation with EU member states, section 4, a series of norms that refer to the cooperation between the Romanian judicial authorities and similar institutions within the member states in what concerns the application of the principle of mutual recognition of financial penalties.

Note that although the European legislator uses the term "financial penalty", in particular our law used the term "financial penalty".

2. Definition of some Terms

In order to avoid some unilateral interpretations that cannot be in accordance with the European legislator's will, within the Decision Frame, a series of terms used in executing the European normative act have been defined.

Thus, the term *decision* defines a definitive decision that imposes the payment of financial penalties to a private or judicial person, when the decision was taken by:

- a judicial instance of the issuer state for a criminal act in accordance with the law of the issuer state;
- an authority of the issuer state, other than the judicial instance, for a criminal act in accordance with the law of the issuer state, on condition that

¹ Published in the Official Journal no. 758 on November 10, 2008.

² Law no. 302/2004 on international judicial cooperation in criminal matters was published in the Official Monitor no.594 on July 1st, 2004, completed and amended through the following normative acts: Law no.224/2006, published in the Official Monitor no.534 on June 21st, 2006, Government Emergency Ordinance no.103/2006 on measures to facilitate the international police cooperation, published in the Official Monitor no.275 on April 25th, 2006 and Law no.222/2008 published in the Official Monitor no.758 on November 10th, 2008.

the person in question has had the possibility to have his/her cause trialed by a judicial instance with special competence in criminal matters;

- an authority of the issuer state, other than the judicial instance, for acts incriminated by the internal law of the issuer state, constituting violations of norms of law, on the condition that the person in question has had his/her cause trialed by a judicial instance with special competence in criminal matters;
- a judicial instance with special competence in criminal matter, when the decision was taken in what concerns the abovementioned.

Financial penalty refers to the obligation to pay:

- a sum of money when condemned for a breach, determined by a decision;
- a compensation imposed within the same decision benefitting the victims, when the victim cannot be a civil part in the procedures and the judicial instance acts in accordance with its criminal competence;
- a sum of money for the judicial or administrative expenses, related to the decision;
- a sum of money for the public fund or an organization for victims' support, imposed in the same decision.¹

Assuming the abovementioned dispositions, provisioned by the European normative act, in our special law the two terms are defined as follows:

1. *The decision* is a definitive decision that led to the application of a financial penalty that has to be executed towards a private or judicial person, if the decision was taken by:

- a judicial instance from the issuer state, on a breach provisioned by the criminal law of the issuer state;
- an authority of the issuer state, other than an instance, on a breach provisioned by the criminal law of the issuer state, on the condition that the person in question has had the possibility to solicit the cause to be trialed by a competent instance in judicial matters;
- a competent instance in judicial matters, if the decision was taken related to an abovementioned decision.

2. *Financial penalty* defines the obligation to pay:

¹ The Council's Decision Frame 2005/214/JAI, art.1.

- a sum of money as conviction for a breach established through a decision;
- a compensation established by the same decision in the benefit of the victims, if the victim cannot be constituted as a civil part in the trial and the judicial instance acts according to its competence in judicial matters;
- a sum of money related to the expenses of the judicial or administrative procedure that led to the decision;
- a sum of money to the public fund or an organization for victims' support, established within the same decision.¹

It is observed that, regarding the provisions in the European normative act, within our internal legislation the term *decision* is replaced by the term *judgment* and *financial penalty* by *pecuniary penalty*.

Given the complex casuistry in this context within the EU member states, as well as the necessity of avoiding abuse from the state organisms in this field, the European normative act provisions the situations that are not included in the financial penalty collocation.

Thus, according to the abovementioned, the following are not included in the financial penalties to which the provisions of the European normative act apply:

- the orders to confiscate the instruments or products of the breach;
- the orders that have civil nature and derive from a compensation or restoration request and are enforced according to the Council's Regulation (CE) no.44/2001, on December 22, 2000 on the competence, recognition and execution of injunctions in civil and commercial matter.

In the same time, the special law, assuming the provisions of the European normative act, mentions the following dispositions that are not considered to be pecuniary penalties:

- dispositions to confiscate the instruments or products of the breaches;
- civil dispositions that derive from an action in damage and restoration and are enforceable according to the Council's Regulation (CE)

¹ Law no.302/2004 on international judicial cooperation in criminal matters, with the subsequent modifications and completions, art 187; the article's provisions were introduced through Law no.222/2008.

no.44/2001 on December 22, 2000 on the judicial competence, recognition and execution of decisions taken in civil and commercial matters.

Note that the Romanian legislature replaced the phrases confiscation orders and orders that a civil nature, with provisions for confiscation and the provision of civil nature.

3. *By issuing State means the Member State* in which a decision was given, and the state is executing Member State which has been transmitted such decision to be enforced.

The Romanian authorities that are competent in issuing or executing a decision are the judicial instances.

The Ministry of Justice and Civil Liberties is the central authority that has the role to assist the judicial instances and transmit and receive the decisions in case direct contact is not possible.

3. The Procedure of Transmitting the Decision

After issuing the decision, the competent Romanian competent instance will send it, together with the certificate provisioned by law, directly to the competent execution authority in the member state in which the private or legal person against whom the decision is issued has goods or an income, resides or has its social headquarter, for legal persons. The certificate must be drafted according to the standard form provisioned in the European normative act, has to be signed, and its content has to be certified as corresponding, by the issuing Romanian judicial authority.

The decision, or a certified copy of it, together with the abovementioned certificate, will be transmitted by the competent Romanian authorities to the competent authorities in the executing state through any means that allow a written recording, under conditions that can allow the executing state establish the authenticity. Upon request from the executing state, the original decision or a certified copy of it, together with the original certificate will be transmitted to it. All the official communications will be made directly between the competent authorities. A decision cannot be transmitted simultaneously to several executing states.

In case the Romanian issuing judicial authority does not know the competent authority in the executing state, the Romanian authority will make all the necessary investigations, including by using all the contact points of the European Judicial Network, in order to obtain the necessary information from the executing state.

The Romanian issuing authority immediately informs the competent authority in the executing state on any decision or measure after which the decision is no longer enforceable or is withdrawn from the executing state for any other reason.

According to the provisions of the law, the execution right is recovered by the Romanian state:

- If it is informed by the executing state on the total or partial non performance or the non recognition of the decision in the cases mentioned in article 187, except for the one mentioned in article 187, al. (2), a) and the one mentioned in article 187, al. (1) from the Law, as well as in the case mentioned in article 20, al. (3) of the decision-frame; or
- In case the decision is withdrawn from the executing state according to the dispositions abovementioned.¹

If, after transmitting a decision, a Romanian authority receives any sum of money that the convicted person willingly paid in virtue of the decision, that authority will immediately inform the competent authority in the executing state.

The issuing Romanian judicial authorities will translate the certificate in the language or in one of the official languages in the executing state or in any other language that is accepted by it, according to the declarations notified to the EU's General Secretariat, by the specific state.

4. The Procedure of Executing à Decision

4.1. The Scope

Under the law, recognition and enforcement shall be conducted by the Romanian judicial bodies, not to verify the existence of double criminality for a range of crimes, if they are punished in stable issuer as defined in its legislation².

¹ These provisions have been introduced through Law no.222/2008, article 187, al.(2).

² These crimes are referred to in Art. 18,740 al. (1) of the special law.

For other categories than the ones mentioned above the execution is subordinated to the condition that the actions the decision refers to are crimes according to the Romanian law, irrespective of its constitutive elements and irrespective of the way it is described.¹

4.2. Recognition and Execution of the Decisions

According to the provisions of the law, the Romanian executing judicial authorities will recognize a decision of this type without other formalities and will immediately take the necessary measures to execute it, except for the case in which one of the grounds for non recognition or non execution is applicable.

In case the Romanian judicial authority that received the decision does not have the competence to execute it or take the necessary measures to proceed to its execution, this authority will send the decision to the competent authority. In the same time, the Romanian judicial authority will inform the competent authority of the issuer state about this situation through the means provisioned by law.²

4.3. Grounds for Non Recognition and Non Execution.³

The Romanian judicial authorities can deny the recognition and the execution of a decision if the certificate provisioned by law was not delivered, if is incomplete or it does not correspond with the decision.⁴ The interpretation of this disposition leads to the conclusion that the Romanian judicial authorities can refuse, but at the same time execute such a decision, the decision to do so belonging to them. In both cases, we assert that the competent judicial Romanian authorities will solicit that the certificate is returned, completed or modified.

¹ These modifications are introduced through Law no.222/2008. Through these modifications the dispositions in article 5, Decision Frame 2005/214/JAI on February 24, 2005 on the application of the principle of mutual recognition of financial penalties have been transposed in the internal legislation.

² These provisions have been introduced through Law no.222/2008.

³ Both the grounds for the non recognition and those of non execution mentioned in the law have transposed in our legislation the dispositions of article 7 in the Decision Frame.

⁴ Through these dispositions the provisions of article 7, al.(1) of the Decision Frame have been transposed in the internal legislation, where there is mentioned that the competent authorities in the executing state can refuse the recognition and execution of the decision if the provisioned certificate mentioned in article 4 is not presented, is incomplete or is inadequate with the decision.

Besides the situations mentioned above, the Romanian judicial authorities of execution can refuse the recognition and execution of a decision if it is established that:

- a) Against the convicted person and for the same actions, a decision was taken in Romania or in any member state, other than the issuer state and, in the latter case, the decision has been executed;
- b) The execution of the decision is prescribed, according to law, and the decision refers to actions that do not fall under the competence of the Romanian state;
- c) The decision refers to actions that:
 - i) Are considered by the Romanian law as being totally or partially committed within the Romanian borders or in a place as such; or
 - ii) Were committed outside the territory of the issuer state and the Romanian law does not allow the pursuit of the same crimes when committed outside the Romanian territory;
- d) There is immunity on the Romanian territory, which makes impossible the execution of the decision;
- e) The decision was taken involving a private person who, according to the Romanian law and given his/her age, shouldn't be criminally responsible for the actions leading to the decision;
- f) According to the certificate mentioned by law, the individual:
 - i) In case of a written procedure and according to the law of the issuer state, was not informed personally, or through a competent representative regarding his/her right to contest the cause and the terms of appeal; or
 - ii) Did not present personally, except for the case in which the certificate mentions that:
 - The individual was informed personally or through a competent representative according to the national law, regarding the procedure unfolded according to the law of the issuer state; or
 - The individual did not contest the cause.
- g) The pecuniary penalty is less than 70 euro or than its equivalent in lei.

In the cases abovementioned at al. (1) and al. (2), b) and f), before deciding upon the non recognition or non execution of a decision, the executing Romanian judicial authority will consult with the competent authority in the issuer state, through all the adequate means and, if necessary, will solicit immediate further information.¹

The dispositions mentioned above transpose the provisions of article 7 of the Decision Frame in our internal legislation.

As mentioned in the introductory section, the examined Decision Frame was amended and completed through the Council's Decision Frame 2009/299/JAI but this modification was not transposed in our internal legislation, although it should have been accomplished.

Thus, the European normative act mentioned above brings a series of completion and modification in what concerns the grounds for non recognition and non execution of some definitive decisions that entail financial penalties against private or judicial persons.

The European normative act stipulates that the dispositions provisioned in lit. g), are replaced as follows:

h) According to the certificate mentioned in article 4, in case of a written procedure. The individual was not personally informed, or through a competent representative, according to the national legislation of the issuer state, concerning his/her right to contestation and the terms for the appeal;

The second modification and completion aims at the introduction of new dispositions, through i) and j), as follows:

i) In due time

- (i) Either was personally summoned and thus was informed on the date and the place established for the trial that led to taking the decision, or effectively received, through other means, an official information regarding the date and the place established for the specific trial, thus unambiguously establishing that the individual had notice of the established place;

¹ These dispositions have been introduced through Law no.222/2008, art.187.

and was informed that a decision can be taken that established the fact that the individual is not present at the trial

or

(ii) Being acquainted with the established trial, mandated a lawyer appointed by the person in question, either by the state to defend the person at the trial and was truly defended by that lawyer in the trial

or

(iii) After receiving the decision and being informed regarding the right to have the cause retrial or have the right to an appeal, to which the individual has the right to present and that allows the reexamination of the cause and the evidence and that can lead to changing the initial decision, has expressly indicated that he/she does not contest the decision or solicits the retrial of the cause nor promotes an appeal within due time.

j) According to the certificate mentioned in article 4, the person did not present personally, except for the case in which the certificate declares that the individual, after being expressly informed regarding the procedures and the possibility to personally attend the trial, expressly declared that renounces the right to hearing and expressly indicated that he/she does not contest the cause.

Also, the European legislative act in question provides that, Art. 7 al. (3), is replaced by the following:

“in the cases provisioned in al. (1) and al. (2), c), g), i) and j), before deciding upon the non recognition and non execution of a decision, totally or partially, the competent authority in the executing state consults the competent authority in the issuer state through all the adequate means and if necessary, asks for immediate further necessary information.”¹

We mention that in line with the provisions of the normative act of completion and amendment, the certificate provisioned in the appendix of the European normative act was modified as well.

¹ We assert that all these modifications have been presented as they are provisioned by the Decision Frame for modification and completion.

4.4. Establishing the Amount to be Paid

If it is determined that the decision refers to actions that have not been committed on the territory of the issuer state, the Romanian executing judicial authority can decide to reduce the amount of the executed penalty to the maximum sum provisioned by the Romanian law for similar actions, when the actions fall under the competence of the Romanian instances. Also, the Romanian executing judicial authority changes, if necessary, the penalty in the currency of the executing state, according to the appreciation of the say the decision was taken.

4.5. The Law Governing the Execution

In case the execution of a decision is not possible, either totally or partially, the Romanian executing judicial authority can dispose the replacement of the fine, under the conditions provisioned by the Criminal Code.¹

Without prejudice to the provisions mentioned above, the execution of the decision is governed by the Romanian law, in the same manner as for a pecuniary punishment applied by a Romanian judicial instance. Only the Romanian authorities have the competence to decide upon the execution procedures and establish all the necessary measures related to it, including the grounds for stopping the execution.

In case the convicted person can prove the total or partial payment made in any state, the Romanian executing judicial authority consults with the competent authority in the issuer state, according to the provisions of the law. Any art of the penalty that has been recovered in any other way from any state has to be totally deducted from the amount to be executed in Romania.

The amnesty and pardon can be granted both by the issuer state as well as by Romania. Any review of the decision is under the exclusive competence of the issuer state.

¹ Replacing the fine penalty is mentioned in article i63, where it is mentioned that if the convicted intentionally avoids the execution of the penalty, the instance can replace this penalty with imprisonment, within the limits provisioned for the crime, taking into account the part of the fine that has been acquitted.

The funds obtained from executing the decisions by the Romanian executing authorities are turned to the state budget, if there are no other specifications from the issuer state, together with the Romanian one.

The expenses incurred by the Romanian state in applying the provisions of the law represent the responsibility of the Romanian state.

4.6. Information

In executing the examined dispositions, the Romanian executing judicial authority will immediately inform the competent authority of the issuer state through any means that allows a written recording, on the following matters:

- Transmission of the decision to the competent authority, when it was received by a Romanian authority that does not have the competence to solve it;
- Any decision to non recognize or non execute the decision and the grounds on which it has been taken;
- Total or partial non execution of the decision and the grounds on which it has been taken;
- Executing the decision immediately after the execution is terminated;
- Replacing the pecuniary penalty with another penalty.

Informing the foreign judicial authorities on the measures disposed by the Romanian judicial authorities within the procedure of recognition and execution of a foreign injunction is mandatory in the process of applying the principle of mutual recognition of financial penalties, at the level of EU member states.

5. Conclusions and Critical Remarks

By its conclusions, the reunion of the European Council in Tampere on October 15 and 16, 1999 approved the principle of mutual recognition, that should become the cornerstone of judicial cooperation, both in civil as well as in criminal matters, within the European Union.

In this context, the principle of mutual recognition has to be applied to financial penalties too, imposed by the judicial or administrative authorities in order to

facilitate the application of these penalties in another member state, other than the one in which they have been imposed.

There is no doubt that the examined European normative act is part of the category of normative acts designed to contribute at improving the judicial cooperation in criminal matters between the member states.

The European normative act, through its dispositions, tries to establish a series of general rules that have to be respected by the member states, in order to execute such decisions.

Nevertheless, the examination of the normative act as well as the way in which it has been transposed in our internal legislation, asks for a series of comments.

One first issue is related to the way it has been named, meaning that the European normative act uses the collocation *financial penalties*, while in our special law it is replaced by *pecuniary penalties*.

Although the difference is not very big, we assert that the collocation *pecuniary penalties* has a more vast meaning and the reason the Romanian legislator has adopted it is the absence of the collocation *financial penalties*.

At the same time we mention that, the term adoption of *pecuniary penalties* rather than *financial penalties*, not contrary to European legislation, because it involves an extension have not contrary to European legislation, because it involves an extension of the measure, part accepted and even indicated by European legislation.

Another observation is related to how it is defined in our legislation the financial penalty. Thus, the Romanian legislature uses the term *pecuniary penalty*, while the European legislative act expressly mentions *financial sanction*; the modes are defined, not any difference in that the Romanian legislature takes in all European notions frequently used in the law.

Using words pecuniary punishment by Romanian legislature, leads implicitly to the idea that the measure itself has the character of criminal punishment imposed by a court, as a consequence of an offense.

At the same time, there are other differences in what concerns the definition of the decision in the European normative act. Thus, while the European normative act uses the term *decision* out internal legislation uses the term judgment. Of course

that this time there are no special aspects, as the definition of both terms is similar in both normative acts.

Also, another critical observation aims at the failure to transpose the modifications brought by the adoption of the Council's Decision Frame 2009/299/JAI on February 26, 2009 in our legislation, as these modifications are very important and impose a series of situations in which such a decision is recognized by the executing state.

In these conditions, even if the new amendments and completions of the European normative act haven't been transposed in our internal legislation (in an accurate manner through the amendment and completion of the provisions of Law no.302/2004) the Romanian judicial instances that will transmit such a decision to be executed by other judicial authorities in an EU member state will have to respect and fully apply them. Because the dispositions for amending and completing are imperative and introduce new grounds for non recognition and non execution of such decisions, the Romanian instances are forced to respect and apply them, or the decision might not be recognized and thus executed by the judicial organs of that member state.

Also, the Romanian judicial instances are obliged to respect the amendments and completions in case the executing instances are established and the solicitation is sent by another judicial competent organ of a member state.

The conclusion is that the Romanian judicial instances, being both executing instances as well as instances that solicit the execution of such a decision, are obliged to respect the amendments and completions of the European normative act, even if they haven't been transposed in our internal legislation.

Other objectionable aspects aim at the way in which the grounds for non recognition and non execution of such decisions are transposed in our internal legislation.

Thus, proceeding in analyzing the two texts, namely the article 7 of the Decision Frame and article 187 of Law no.302/2004, with the subsequent amendments and completions, we observe that there are some differences that can lead to confusion in what concerns the mandatory or optional grounds for recognizing or execution of such a decision.

Thus, the text of art. 7 of the Decision Frame, stating that "competent authorities in the executing State may refuse recognition and enforcement if the certificate

provided for in art. 4 are presented, are incomplete or manifestly do not correspond to the decision. Interpretation of legal rules set leads to the conclusion that the judicial authorities of the executing State may refuse recognition or enforcement of such a decision if particular incidents mentioned in the law in Europe. Using the term may lead to the conclusion that the decision not to recognize or not to execute a decision, in such circumstances it is optional for the judicial body empowered the State of enforcement.

Law no.302/2004, with its subsequent amendments and completions (the latter introduced by law 302/2004), stipulates in article 187 that “the executing Romanian judicial authorities can refuse to recognize and, execute a decision if the certificate mentioned in annex no.3 hasn’t been presented, if the certificate is incomplete or inadequate with the decision”. Also, in al. (2) the same expression is used: “the executing Romanian judicial authority *can refuse* “. Thus, the provisions in the special law leave the Romanian judicial organs the possibility to recognize or not and execute or not the decision of unavailability of some evidence or goods.

We appreciate that both Europe and the Romanian legislature, have to differentiate clearly the reasons for the optional binding to refuse recognition and enforcement of such judgments.

Thus, in our opinion, all countries in the European Union will not recognize and enforce judgments (decisions), which are as follows:

- against the person convicted and was given the same facts was rendered a decision which became final in any state in the world, ruling that has been executed;
- judgment is prescribed in the State of enforcement;
- there is immunity from jurisdiction in the execution for the convicted person;
- natural person convicted; due to requirements of state criminal law enforcement is not criminally responsible.

Since the special law does not provide exactly what the courts are competent to recognize and execute a decision, the power will belong to any instance in Romania, since the court. We believe that, given the complexity of this activity, the power would have to be attributed to the tribunal in whose domiciled or resident legal or natural person convicted.

According to the provisions of the special law, in case the transmission of a definitive decision is imposed to a competent judicial organ from another member state in view of execution, when this instance is not known to the Romanian judicial organ, this will make all the necessary investigations, including through the European Judicial Network, in order to obtain the necessary information from the executing state.

In what concerns these dispositions, we must express some reserves, as the necessary investigations are very difficult to conduct by some instances and it will take too long to establish the competent judiciary authority in the executing state. We assert the fact that in these specific situations provisioned by law, the Romanian competent instances have to address to the Ministry of Justice and Civil Liberties who, through the special directory will make the necessary investigations and will establish the competent judicial organ in the solicited state, where the specified documents will be sent. We argue this point of view based on the fact that the special directory in the Ministry of Justice and Civil Liberties has many more possibilities to identify the competent organ in the solicited state and this activity can be strategically accomplished.

There is no doubt that in order to transmit such a disposition to the judicial authority of that state, first the legal or judicial person against whom the decision will be executed has to be searched, identified and localized.

In this context, we assert that prior to the transmission of the decision to the instance and the certificate to the competent judicial authority in the solicited member state, the instance will have to intercede in view of identifying the private or judicial person against whom the disposed measure is executed. In this line, the issuer Romanian judicial authority will solicit the Centre of International Police Cooperation within the Romanian General Inspectorate of Police that, through the means available in police cooperation within the EU, to identify the private or judicial person, localize him/her and transmit the information necessary to the judicial authority that solicited it.

We assert that these demarches are absolutely necessary in the often conditions met in the last years of judicial practice, in which the sanctioned persons avoid the sanctions disposed by the judicial organs, proceeding in different ways and more and more divers.

As a general conclusion, we state that in the present conditions offered since the extension of the EU, both the European normative act as well as the special law offer the possibility of perfecting the activity of judicial cooperation in criminal matters between the member states.

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