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**The Recognition of Forensic Psychiatric  
Expertise in European Union**

**Ion Rusu<sup>1</sup>**

**Abstract:** In this paper we examine the internal and European provisions governing the institution of recognizing the forensic psychiatric expertise in the European Union, based on the European and internal legislation in the field. We previously conducted research on the recognition of judgments and judicial foreign acts emanating from another Member State, research that have resulted in studies and articles published in national or international specialized journals or proceedings. The work is useful for practitioners who work in this area, and also for those interested in researching this institution. The essential contribution of this paper consists of the examination of the institution recognition in the light of the national and the European legislation, the critical observations relating to certain provisions of the European legislative acts and proposals for completing and amending the European legal instruments.

**Keywords:** critical opinion; judgment; judicial cooperation; EU

**1. Introduction**

In our opinion, the biggest problem of the European Union, after the economic one, is represented by the growth of crime of all types and implicitly the concrete methods adopted by the Member States to prevent and fight against crimes in European Area.

This very complex activity, with major implications in economic and political stability of the Member States, and European institutions, is required to be solved urgently, as the lack of reaction of European governments can compromise the European construction as a whole.

A very complex matter of preventing and fighting against crime of all kinds, and in particular terrorism, trafficking of arms, ammunition, explosives, drugs, human beings and other manifestations of organized crime can be solved only by increasing specific activities of judicial cooperation in criminal matters between Member States.

We believe that the most important form of legal cooperation in criminal matters between the Member States is and will always be the recognition of each Member State of judgments and other judicial documents issued in another Member State. (Rusu & Rusu, 2010, p. 224)

So, there is the question of recognition and enforcement of two distinct categories of legal acts, namely, final judgments and other judicial documents that produce legal effects in the issuing State. In both cases, these two categories of judicial acts will have to produce legal effects in the issuing State, identical (as those produced in the executing State), in other words it should be recognized and enforced in their entirety, by any other State.

Consistent with its European aspirations, but also aware of the need to strengthen the specific activities to prevent and fight against crime of all kinds, Romania adopted Law no 302/2004 on international

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<sup>1</sup> Senior Lecturer, PhD, "Danubius" University of Galati, Faculty of Law, Romania, Address: 3 Galati Blvd, Galati, Romania, tel: +40372 361 102, fax: +40372 361 290, Corresponding author: ionrusu@univ-danubius.ro.

judicial cooperation in criminal matters with subsequent amendments, republished, a regulatory framework that governs all judicial activity in the field. (Boroi & Rusu, 2010, p. 14)

Under the special law, the Romanian judiciary authorities, the responsible authorities of another State (even outside the EU), will recognize and enforce a judgment or a judicial criminal act emanating from a competent authority, complying to certain conditions, upon which we will not insist, because they are not the subject to this proposed research.

Regarding the recognition in another state of judicial act issued by a competent authority of the Romanian state, in which case we do not include the forensic psychiatric expertise, the law provides that it shall be achieved by complying with the applicable international treaty.

We note that, although Title V of the law is entitled “Recognition and Enforcement of criminal decisions and judicial documents,” therein is not even one provision for the recognition of judicial acts, the rest referring only to judgments.

After examining and inter-relating the mentioned legal texts, for the Romanian legislator, it has proven to be a constant concern only the recognition and enforcement of final judgments and less the recognition of documents issued by competent authorities in Romania, including here the psychiatric and forensic examination.

At EU level, in order to recognize the final judgments, in 2008 two acts were adopted, both supplemented and amended in 2009, by another legislative act.

Thus, there were adopted the Framework Decision 2008/909/JHA of 27 November 2008, Framework Decision 2008/947/JHA of 27 November 2008 and 2009/299/JAI Council Framework Decision of 26 February 2009. The purpose of adopting the three legislative acts is to enhance the recognition and enforcement of judgments to become final, in any Member State, to facilitate the social rehabilitation of the convict, in strict compliance with the European Convention on Human Rights and Fundamental Freedoms.

Our purpose is not to examine these very important legislative acts, with major implications in the entire activity of judicial cooperation in criminal matters between Member States, but only mention that they have not been implemented currently in our legislation. However, under the Constitution, our internal legislation and EU basic treaties, namely the Treaty on European Union and the Treaty on functioning the European Union, both modified and supplemented by the Treaty of Lisbon, these regulations have legal effects also in Romania.

We note however that the European legislator, under the three legislative acts did not provide the recognition of some legal acts, but the recognition of final judgments.

No doubt there is a forensic psychiatric expertise outside the criminal trial that cannot be taken into account, as that report is included in the case file, file which certifies that judgment.

The direct link exists between such internal legislative act, the three European legislative acts and the recognition of forensic psychiatric expertise which we will examine subsequently, through the existing internal and European legal framework.

## **2. General Considerations on Forensic Psychiatric Expertise**

According to the legal stipulations, in Romania the forensic activity is *an integral part of healthcare and is an inquiry, examination, findings, laboratory tests and other forensic work on living bodies, corpse, biological products and material evidence in order to establish the truth in cases of offenses against life, body and health integrity of people or in other circumstances stipulated by law, and in conducting forensic psychiatric expertise and filiations research.*

*Also the forensic activity provides scientific evidence to the prosecution, courts, and upon request to those interested in solving criminal cases, civil or other nature, contributing to specific means provided by law, in establishing the truth.*

In this legislative context, one of the main tasks of forensic institutions is that of performing *forensic examinations and findings of the disposal of the prosecution or the courts, and also in cases of inadequate care or where appropriate, there are required forensic psychiatric expertise.*

The expertise commission is mandatory in the cases where the law requires, and when it is *to assess a person's mental capacity in order to determine the elements needed to assess the criminal or civil liability.*

A forensic psychiatric examination is performed only by a direct person, through a Commission consisting of a coroner, who is chairman of the committee, and two psychiatrists.

According to the depositions of the law, in order to clarify the facts or circumstances of the case, to find for the truth, there are necessary the expert knowledge, the prosecutor or the court orders, upon request or ex officio, an expertise. As for a psychiatric expertise, it is mandatory for offenses of aggravated murder cases and when the prosecution or the court has doubt about the defendant's mental state. In these situations, the expertise is performed in specialized medical institutions, ordering the defendant the internment of the offender in due time.

Regarding the forensic psychiatric expertise, it can be achieved by the "Mina Minovici" National Institute of Legal Medicine in Bucharest, forensic institutes of academic medical centers and county forensic services.

According to the law, when the prosecution or the court finds, upon request or ex officio, that the expertise is not complete, it orders an additional survey by the same expert or by another. The law provides the possibility to perform a new expertise, when the prosecution or the court has doubts about the accuracy of the conclusions of the expert report.

When making application for a new forensic psychiatric expertise, it will be performed by another medical commission.

At central level, it operates the higher forensic Commission, which scientifically verifies and approves, at the request of the legal bodies, the findings of various forensic acts and it decide on possible conflicting conclusions of expertise with the new forensic results or other forensic acts.

Monitoring and evaluating the forensic activity is achieved by joint commission consisting of forensic specialists from the Ministry of Health and legal experts of the Justice Ministry, established by joint order of the two ministries. The joint commission is established whenever there are indications of committing irregularities in conducting forensic activity, and one of the two ministries requires some verifications.

### **3. The Recognition of Forensic Psychiatric Expertise Performed in Romania by the Competent Legal Authorities of the EU Member State**

From the earlier overview of the organization and operation of forensic activity in Romania, it results that it is integral part of health care system and at the same time it carries out the expertise and other works, which acts collectively forensic at the request of judicial authorities (or other natural or legal entity).

These activities are embodied in expert and findings reports, certificates, test reports and notifications. In order to avoid some unilateral interpretations that are not in agreement with the will of the legislator, the acts have been defined specifically, definition that we present below.

Thus, the forensic expertise report is *the document prepared by an expert on the demand of the prosecution or the court which includes data on the expert examination. A forensic examination is carried out in cases provided in article 116 and 117 of the Criminal Procedure Code.*

The Report finding forensic is *the document written by the coroner on the demand of the prosecution or the court which includes data on the carried out investigation. Forensic finding is made in the cases provided in article 112 and 114 of the Criminal Procedure Code.*

The Medical certificate is *the document written by the coroner on the demand of the interested persons including data on forensic examination.*

The analysis bulletin is *the document written by the forensic specialists or competent people in the forensic institutions, at the request of interested persons, including data on complementary examination.*

Forensic notification is *the document prepared by the High forensic Commission as well as review boards and control of medical documents at the request of judicial authorities, endorsing the content and conclusions of forensic documents; they recommend further surveys or draw their conclusions.*

Next we will consider the report of forensic psychiatric expertise, from two perspectives, namely as forensic document certifying the carrying out of the expert forensic psychiatric expertise imposed by the judicial bodies through ordinance, respectively, means of evidence in the forensic notification achieved by the High Forensic Commission.

In this context, practically the document can be a means of evidence in the criminal proceedings, it is the forensic psychiatric report, a document that, records, among other issues, also the conclusions of the experts in the matter of subject expertise.

We mention also that under the law, the medical examiner is an expert in this juncture, a quality involving a series of rights and obligations.

From the mentioned provisions of the European legislative acts, it results that the general rule in the European Union is the judgments by which there are ordered penalties or other custodial or non-custodial measures, which recognized and enforced in all Member States (under certain conditions).

In our analysis we consider those situations where the Romanian courts have ordered some forensic psychiatric expertise, and the expertise report was considered as evidence under which they issued the judgment of conviction of a physical entity.

An important aspect to be considered is that, as part of the case file, the forensic psychiatric report is recognized implicitly with the recognition of judgment when ordering a custodial or non-custodial measure or any another extent.

In order to examine the legal implications on the recognition ratio of forensic psychiatric expertise in Romania issued by a competent judicial authority of any Member State, it will have to consider a series of domain-specific features.

The special situation that we consider now is when by a final court decision in Romania, it is sentenced a citizen of another Member State, in the case file that there is a report of forensic psychiatric expertise, a report resulted following the request to carry out a forensic psychiatric expert by the prosecution or the court. In this case, the forensic psychiatric expertise is sought by the prosecutor or the court, according to article 117, paragraph (1) Criminal Procedure Code, because one of these organs has doubts about the defendant's mental state. In other words, the prosecutor or the court will require the expertise to determine whether the defendant had criminal liability when the crime for which it is investigated was committed.

In this case, after the final court decision to a custodial sentence, according to the Framework Decision 2008/909/JHA, it (the judgment in question), at the request of the convicted person or ex officio will be passed by the Romanian judicial authority with a certificate to the Member State whose citizen is convicted, in order to acknowledge it and subsequently to enforce it.

We emphasize that in these circumstances, the judicial body empowered by the executing State will consider the recognition of the judgment, in its complexity, and not according to the administrated and existing evidence in the case file. No doubt that recognizing the final judgment rendered by a Romanian court, involves an implicit recognition of all existing evidence on case file, evidence under which the individual concerned was convicted.

Next, we will examine the case where, after the recognition of the Romanian judgment by the executing Member State and transferring the convicted person during the execution of the sentence, the convicted requests for retrial and to carry out a forensic psychiatric expertise, arguing that at time of the offense he suffered some mental disorders, and the psychiatric forensic examination carried out in Romania did not find this very important issue, which represented the main evidence that resulted in taking the measure of conviction.

In this context, the authority of the executing Member State will have three options, namely: it will not approve the convict's request, as the recognition of a final judgment issued by the Romanian court justifies the involvement and the recognition of the forensic psychiatric expertise (as existing evidence in the case file); it will accept the request of the convict, having carried out a forensic psychiatric expertise by the competent authorities of that state, or it will ask the Romanian judicial authorities to check and approve scientifically the report's conclusions, by the High Forensic Commission in Romania.

We specify that the European legislative act framework does not provide for such situations, noting only the compulsory recognition and enforcement of judgments, not of forensic documents.

No doubt that in this situation, without having clear provisions in the European legislative act, each Member State will consider first its own legislation, always acting according to it.

However, we consider that in such a situation it is ruled out the possibility of ordering by the competent court the disposition to undertake a new forensic psychiatric expertise by a competent authority of the executing Member State.

We argue this opinion on the following considerations:

- the existence of a coherent legislative framework, with a proper organization and operation system of forensic activity;
- the possibility of checking and notifying of the forensic psychiatric documents by the High Forensic Commission;
- the possibility of making new forensic psychiatric expertise, at the request of the legal bodies or person concerned, the regulated and legal opportunity before passing a court decision;
- the high level of development of medical sciences in Romania, the recognition of professional competence of Romanian forensic experts at European level;
- the existence of modern criminal procedure, with explicit provisions on the rights of defense of suspects and defendants;
- lack of procedures developed at European level, about the possibility of examining the existing evidence in a case file where it has already been taken a decision which became final when the competent court in the executing State has available only that judgment and the certificate that it accompanies.

In our opinion, being excluded the possibility of disposing the development of a new forensic psychiatric expertise available to the competent judicial bodies of the executing State, it will remain the other two mentioned variants. Thus, if the request of the convicted is rejected, the required solution is to demand a verification and approval of forensic psychiatric expertise by the High forensic Commission.

Under the above mentioned arguments, we consider that the request for verification and approval of the forensic psychiatric report by the High forensic Commission is the optimal solution that can be adopted by the competent Member State of execution to such judgment, in the case where the convicted does not reject the request. This decision is in our opinion, an act of partial recognition of forensic document issued in Romania, a matter that does not contravene to EU legal acts in force; on the contrary, it contributes to the execution of its provisions. On the other hand, the action of rejecting the application of performing a new forensic psychiatric expertise, and (to some extent), the application for the notification of High forensic Commission is in our opinion an act of mutual trust, in the scientific and evidential value of forensic documents emanating from Romanian forensic authorities.

Naturally, this request will be made by judicial authorities of the two involved states, being excluded the possibility of sending a direct request between the two forensic institutions.

However, we believe, normally, considering the European legislative acts, which rise to the level of principle the recognition and enforcement of judgments in another Member State, other than the convicting one, the correct solution that is to be adopted by the executing court of that Member State, is the rejection of the convict's request, the reason being that with the recognition of the judgment there were recognized all the existing evidence on case file, evidence based on which the legal decision on convicting was passed. Even if the report of the forensic psychiatric evidence is in some circumstances crucial evidence that determined the decision to prosecute an individual, note that this document is part of the evidence which led to the measure of conviction, and therefore is recognized in the initial phase with the judgment of conviction as a whole. In this context, we note that under the depositions of the European legislative act, the authority of the executing State shall not proceed in examining and acknowledging each sample given to the case file, but only the judgment become final as a whole. In fact, the examination of the existing evidence cannot be achieved because the court of the execution state has at its disposal only the judgment and the certificate, the case file being kept by the sentencing court in Romania.

#### **4. Conclusions**

The complexity and importance of forensic psychiatric expertise in Member States (i.e. in Romania), at the request of judicial authorities or other natural or legal entities, result in the implications arising from the special report forensic psychiatric expertise, regarded as evidence in the act of criminal justice.

We here consider also the more visible tendencies of persons who have committed crimes, some of extreme gravity, trying to escape the criminal liability, claiming the occurrence of psychiatric disorders during the execution of the action or inaction which represents the material element of objective side of the offense of which he is guilty, and thus the lack of criminal liabilities.

The drawn conclusion from the present examination is that the report of the forensic psychiatric expertise effects after being conducted a survey of this kind has a great evidential value in criminal proceedings, contributing decisively, in certain circumstances to the achievement of justice in any EU member state. In this context, the arguments are likely to lead to the recognition idea of the report of forensic psychiatric expertise in criminal cases, as forensic scientific act, with important implications in determining the criminal liability of persons convicted in Romania of various offenses.

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