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**The Applicable Surrender Procedure
between Romania, Norway and Iceland**

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Abstract: The paper aims at examining procedures for persons' surrender that have committed crimes in one of the territory of the three states in terms of internal and European legislation in this area, its importance resulting in the need for strengthening specific activities of judicial cooperation in criminal matters. The previous research conducted in this area has resulted in studies and articles published in professional journals or proceedings of international conferences. The work is useful to judicial bodies with powers of judicial cooperation in criminal matters and to those interested in researching this form of judicial cooperation in criminal matters between Romania and the two mentioned European countries, which are not EU members. The results of the essential contribution of the work, its originality, are focused on the general examination, in critical observations and proposals for supplementing and amending the European legislative act governing the act of surrender.

Keywords: crime; judicial cooperation; surrender procedure

1. Introduction

Preventing and combating crime of all kinds, especially the cross-border one, was a constant concern of all countries of the world since ancient times. As intensifying the cooperation in all fields between the countries of the world, especially at economic level, appeared various possibilities of movement of individuals on all continents.

Thus, the global crime has seen new forms of expression, some of extraordinary violence, the perpetrators of these types of actions succeed in many cases to avoid criminal liability, disappearing from the country where they committed the acts and hiding in the other states. (Rusu, 2010, p. 54)

Under these conditions, over time, the crime manifested in various violence forms, with threats to individual security of citizens or to the internal security of states. The creation of some real opportunities for citizens traveling in Europe (starting from the second half of last century) has caused new mutations in the structure of cross-border crime, mutations that are generally determined by the possibility of moving criminal elements, of ensuring efficient organization and logistics. (Rusu, 2009, pp. 18-19)

We may say that amid all these changes, especially in the recent decades, in Europe, as in the whole world, crime has known an unprecedented evolution manifested in various forms, some of extreme gravity, thereby threatening the safety of individual and collective safety, or even the existence of some states. (Rusu, 2009, p. 186)

This imminent danger, stemming from the growing organized crime, as the possibility of avoiding the prosecution or trial of perpetrators, hiding in other countries, has led governments to intensify the activity of international judicial cooperation in criminal matters, being the only way to prevent and combat the phenomenon as a whole.

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The research on judicial cooperation developments in criminal matters highlights that the oldest and still well-known form of international judicial cooperation in criminal matters is considered, on good reasons, the extradition.

The European states have dealt with this very complex problem on two levels, i.e. internally, through the adoption of legislation to support the extradition of persons, including their own citizens and externally by the continuing tendency of simplifying the procedures for surrender, based on bilateral or regional agreements.

Realizing the imminent danger for the entire European community, the Council of Europe adopted on 13 December 1957, European Convention on Extradition, the first major legislative act in the area, which over time it has been ratified by all European states. (Blan-Rusu & Rusu, 2011, p. 191)

The establishment of the European Union and later to Schengen Area, lead to facilitating the free movement of people and goods in an extended space, thus triggering some major changes in terms of crime, meaning that it determined the easy movement and, in general, without high risk of the offenders in any EU member state or the Schengen area and hence the possibility of avoiding criminal liability. (Bălan-Rusu & Rusu, 2011, p. 192).

In this very complex context, the EU has established two categories of measures, namely the adoption of a coherent regulatory framework that contributes to increasing specific activities the Cooperation in Criminal Matters within or between Member States and the adoption of international instruments of cooperation between Member States and other European or world's countries.

Currently, the Agreement between the European Union on one hand and Iceland and Norway on the other, on the surrender procedure between Member States of the European Union, Iceland and Norway, is the international instrument under which Romania can proceede either for extradition of certain categories of persons or to request extradition.

Given the subject of this paper, we proceed in examining this international instrument, with some critical opinions aimed at improving the legislation in this area.

The importance of this international instrument for judicial cooperation in criminal matters arises from the fact that it must be applied by all EU Member States, thus including Romania, its application contributing in helping to prevent and combat crime in all areas.

2. General Considerations

As a member of the European Union, Romania will apply the provisions of the European legislative act, having the power in its relations with the two European countries, to improve the surrender proceedings. Surrender one person will be achieved in all the circumstances based on the arrest warrants issued by the judicial authorities in Romania and the two mentioned states.

In agreement, the arrest warrant is defined as a judicial decision issued by a State for the arrest and surrender by another Member State of a wanted person, for the prosecution or under the purpose of executing a sentence or security measure involving deprivation of freedom.

The arrest warrant stated above, may be issued by a court in Romania or a competent judicial authority from one of two states, only if the following conditions are met:

- the facts that require the warrant are punishable in the issuing state with a penalty or a safety measure involving deprivation of liberty for a maximum period of at least twelve months;
- when it is ordered a sentence of a punishment or a safety measure, their duration being of at least four months.

Please note that in both cases, it must be performed also the condition of double incrimination, regardless of the legal elements or legal framework in the executing State.

After investigating in the legal standards contained in the Agreement, it results that in the application of the international of the legal instrument it may occur two exceptions as well, those related to political offenses or nationality.

The first exception to the general rules executing an arrest warrant (mentioned above) is in the compulsoriness of executing such warrant in relation to the acts of any person who contributed to the commission, by a group of persons acting in common purpose, of one or more offenses on terrorism, provided by article 1 and 2 of the Convention for the suppression of terrorism, and article 1, 2, 3 and 4 of the Framework Decision of 13 June 2002 on combating terrorism, illicit trafficking in narcotic drugs and psychotropic substances and crimes of homicide, serious injury, kidnapping, hostage taking and rape, punishable by a penalty or a security measure involving deprivation of liberty, with a maximum duration of at least twelve months, even if this person does not participate in the actual execution of the offense in question; such contribution should be intentional and achieved with knowledge that such participation will contribute to the criminal activity of this organization.

The second exception covers the case of certain types of offenses for which double incrimination is not a required condition, but these facts should be punished in the issuing State with a penalty or a security measure involving deprivation of measure for a maximum duration of at least three years. Not mentioning that these types and crime are expected to be executed in the same way in most European legal instruments on judicial cooperation domain in criminal matters.

3. The Procedure of Surrender a Person under the Arrest Warrant

1. Sending an arrest warrant, the rights of the wanted person, the decision of competent authority

In the case of judicial authority of the Romanian state or of one of two states, knowing the location of the person concerned, the issuing judicial authority may transmit directly to the executing judicial authority warrant, without requiring the execution of other formalities. Also, in all cases, the issuing authority may decide to report the wanted person in the Schengen Information System (SIS). This SIS alert has an arrest warrant value, indicating that signaling must be accompanied by the information provided in the warrant.

When the issuing judicial authority does not know the competent executing judicial authority, it shall make the necessary inquiries to establish the authority, including with the help of the information obtained from the executing State. If it is not possible the requiring to SIS's services, the issuing authority will require the notification of the arrest warrant by the International Criminal Police Organization (INTERPOL). Also, the issuing judicial authority may transmit the arresting warrant by any secure means able to produce written records under the conditions which allow the authentication of the executing State. When the authority receives an arrest warrant and it is found that it is not competent to execute this warrant, it will send to the competent authority and inform the authority which issued the warrant. Any difficulties arising in the transmission or the authenticity of the arrest warrant will be solved through direct contact between the involved judicial authorities, or by direct contact between the deciding central authorities of the two involved countries.

Regarding the rights of the arrested person, we first mention that it will be first informed, in accordance with the state law enforcement about the existence and content of the arrest warrant and the possibility given to consent its surrender to the issuing judicial authority. It will also be informed that it has the right to be assisted by a lawyer and an interpreter in accordance with the state law enforcement. The decision to keep the wanted person in custody belongs to the competent judicial authority of the executing State in accordance with law. It can be released at any time in accordance with the national law of the executing State, under the condition that the competent authority of that State takes any measures that it considers necessary to prevent the person's absconding.

When the arrested person indicates that he or she consents to surrender, the granted consent and, where appropriate, the express renunciation of the specialty principle, it will be granted before the executing judicial authority under the State law enforcement. These statements by the wanted person

should be given under the conditions which show that the person has expressed freely and in full awareness of the consequences to which it is exposed. However, the sought person is entitled to a legal counsel. The consent and waiver shall be recorded in the official report, according to the procedure under national law of the executing State. In principle, the consent to surrender is irrevocable. However, each State may provide in its legislation that the revocation and renunciation may be revoked. In these situations, the period between the date of consent and revocation shall not be taken into account in determining the terms set out by the international instruments. Norway and Iceland, on one hand and the European Union, in the name of any of its member States, and on the other hand, it can be made a statement indicating that they wish to use this option and specify the ways in which it is possible the revocation of consent, and any amendments thereto.

If after his arrest, the person does not consent to surrender, it is entitled to be heard by the executing judicial authority, in accordance with state law enforcement.

When two or more states have issued a European arrest warrant or an arrest warrant for the same person the choice for the arrest warrant that is to be executed by the executing judicial authority, taking into account all circumstances accordingly, in special the relative seriousness and location of the offenses, the respective dates of arrest warrants and that the warrant was issued for the prosecution or serving a security measure involving deprivation of liberty. In special cases, the executing judicial authority of a Member State may request the advice of Eurojust in order to establish the execution of the arrest warrants. When there is a conflict between an arrest warrant and extradition request presented by a third state, the decision to give priority to enforcement will be adopted by the competent authority of the executing State, which will take into account all the circumstances, particularly those mentioned above, and the applied deposition of the Convention.

2. Postponed and conditioned surrender and transit. After deciding to execute the arrest warrant, the executing judicial authority may postpone the surrender of the person sought, so that it can be prosecuted, or if already convicted, to execute the sentence. However, instead of postponement of surrender, the executing judicial authority may temporarily surrender the requested person issuing State under the conditions to be determined by written agreement.

In the transit, the general rule established by legislative act is that every state will allow the transit on its territory of a person subject to execution of an arrest warrant, provided that the transit state to be received prior information about:

- identity and citizenship of the person under the arrest warrant;
- the existence of an arrest warrant;
- the nature and legal classification of crime;
- description of the circumstances of the offense, including date and place.

The state executing an arrest warrant for nationals under certain conditions may also, under the same conditions, refuse transit of nationals on its territory or submit the transit to the same conditions. Contracting Parties shall notify each other which is the designated authority in each State to receive transit applications and required documents and any other official correspondence relating to transit requests.

4. Critical Remarks

Given the importance of this international instrument of international judicial cooperation in criminal for Romani in its relation to Iceland Norway and the need to respect its provisions, we will formulate some critical opinions which would contribute to improving the cooperation as a whole.

We appreciate that the first and perhaps the most important observation concerns the absence of a procedure for recognition of the arrest warrant issued by a judicial authority of a Member State or a competent judicial authority in Norway or Iceland.

We believe that the examined international instrument would have provided a special recognition of the arrest warrant, seen as a concrete result which embodied a judgment. In other words, it must be recognized first that judgment that led to the issuance of that arrest warrant.

Another criticism concerns the definition of the arrest warrant, where it is not considered a person arrested and surrendered for trial. According to the provisions of article 2, line (5) of the examined international instrument, the warrant is a judicial decision issued by a State to arrest and surrender by another Member State of a wanted person, for prosecution or serving a sentence or security measure involving deprivation of liberty. We deem it absolutely necessary to supplement those provisions by which it is considered the option of the person sought for the arrest and surrender of its judgment, but only when the court considers that the presence of such persons is required.

Although, as mentioned, the international instrument does not mention this possibility, we consider that the relations between the judicial bodies of the Romanian state and the two countries can highlight the principle of reciprocity, where a person can be surrendered also for its judgment.

Another criticism is about ensuring the right of defense of the sought person, in case of consent to surrender. The current provisions require only that the person is entitled to a lawyer, but not the judicial authorities to execute the arrest warrant in order to ensure mandatorily its assistance by a lawyer (article 16). We believe that these provisions violate article 6 paragraph 3, letter. b) and c), the European Convention on Human Rights and Fundamental Freedoms. In this context, we consider that those provisions should be supplemented by a new paragraph that would provide the compulsoriness of the judicial bodies of the executing State to secure the right to defense through an elected attorney or appointed ex-officio. Adoption of such amendments would avoid any possible abuse of the court involved and therefore would entrench the fairness of taking the consent to surrender.

A special case concerns the surrender of a person enjoying certain privileges and immunities established under the State law enforcement or international agreements or treaties. According to article 23, that the executing State or, where appropriate, issuing state, will address to the relevant institutions by which it will require raising these privileges or immunities, after the lifting process, to follow the surrendering. The provisions of international instrument stop here, making no reference to where a privilege or immunity is lifted, where the person will not be surrendered, and the consequence being that it will not be held criminally liable for the offense. We believe that in this situation, the international instrument should stipulate the possibility of surrender after the wanted person will not benefit from the privilege or immunity.

Finally, one last critical opinion regards the absence of previous legal proceedings on issuing the arrest warrant, different procedures, depending on the issuing State. Thus, for Romania, the competent court will first issue an arrest warrant, which is valid on the national territory. If after the police investigation, the Romanian state institution empowered with concrete tasks of caching and imprisonment of the person under arrest warrant, it results that the person has fled or is hiding in the territory of a EU Member State, the same court will issue the European arrest warrant. If after checking it appears that the same person hides within Norway or Iceland, the same court will issue an arrest warrant under the examined international instrument. In Romania, we think it is possible to issue simultaneously both warrants, given the possibility of moving the person sought throughout the EU area or Norway and Iceland. If the issuing State is Norway or Iceland, and according to the checks that are carried out by competent bodies the requested person is in Romania, the judicial bodies of the two states will issue the arrest warrant that they will send for execution to that State.

5. Conclusions

As Norway and Iceland are not part of the European Union, the European arrest warrant could not be applied, therefore, in order to surrender suspected elements or prisoners, it was found a new way, that is surrender according to a warrant arrest.

The arrest warrant is set out through examined international instruments and it should not be confused with the European arrest warrant or the arrest warrant issued by a court in any case.

Arrest warrant issued under the examined international instrument is considered a judicial decision, which may be taken by the judicial authorities of any EU member state or by the judicial authorities of Norway or Iceland, for prosecution or executing a sentence against an individual who evades criminal prosecution or execute a sentence and it is hiding in a Member State, including Romania, Iceland or Norway.

Although the international instrument does not provide, we consider that issuing an arrest warrant procedure is specific domain, meaning that until issuing, there should be other executed judicial activities, which may vary, depending on the issuing State (if a member of the European Union or whether it is Norway and Iceland).

As a general conclusion we consider that the establishment of the arrest warrant (with all the critical remarks) is an important step in the activity of preventing and combating crime in Europe.

As a member of the European Union, Romania must apply precisely the provisions of the Agreement, under its national legislation.

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***Agreement on mutual legal assistance between the EU and USA, Agreement on extradition between the EU and USA, Agreement between the European Union and Japan on Mutual Assistance in Criminal Matters.