

**JOINT INTERNATIONAL  
CONFERENCES**

**10<sup>TH</sup> EDITION**  
EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES

**5<sup>TH</sup> EDITION**  
THE GLOBAL ADVANCEMENT  
OF UNIVERSITIES AND COLLEGES

**Recognition and Enforcement of Judgments Passed in the Third Countries  
on Criminal Law Sanctions of Deprivation of Liberty**

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

**Abstract:** In the present work it is examined one of the most important institutions of international judicial cooperation in criminal matters, namely the recognition and enforcement of a judgment passed by a competent judicial authority of a State, which is not part of the European Union. The examination takes into consideration the duration and scope of the recognition procedure and the conditions for recognition and enforcement, as they are provided in the Romanian law, recently amended. The work can be useful for judicial bodies with responsibilities in this area, and for academics. The innovations consist in examining this institution, and the way in which it has increased its importance in the international judicial cooperation in criminal matters. The paper continues further studies in this area, which will be complete by reediting the master course of international judicial cooperation in criminal matters, by the end of this year.

**Keywords:** crime; punishment; conditions for recognition and enforcement

## **1. Introduction**

Since the second half of the 19<sup>th</sup> century, with the proliferation of transnational crime, some European countries have acknowledged the need to seek new methods and cooperation procedures leading to the reduction of this phenomenon, together with identifying and holding liability certain categories of people who evade the execution of punishment by fleeing in the territories of other states.

In this context, as time goes on, besides extradition (identified as being the first form of international judicial cooperation in criminal matters) they have gradually emerged also other such forms, which have contributed greatly to preventing and combating crime of this kind.

A review of the evolution of these forms of cooperation shows evidence that they have known an unprecedented growth, starting with the second half of last century.

This was due to the increased crime of all kinds and especially certain types of extremely serious crimes such as terrorism, trafficking in weapons, ammunition, explosives or radioactive substances, trafficking in women and children, etc.

At the same time, the organized crime groups have expanded their criminal actions in several countries or even continents, using increasingly sophisticated methods and procedures, causing great difficulties to the judicial authorities in discovering and proving criminal activities.

---

<sup>1</sup> Associate Professor, PhD, "George Bacovia" University of Bacau, Romania, Address: 157 Calea Marasesti, 600164 Bacau, Romania, Tel.: +4034116448, Fax: +4034116448. Corresponding author: av.ionrusu@yahoo.com.

Against this background, the most important problem that arose before the European countries and beyond was the recognition and enforcement of judgments of judicial bodies passed in a State, by the judicial authorities of another state, requested in this regard.

Although initially there were and still are at this point, some restraints in recognizing such a judgment, gradually since 2000 the recognition and enforcement of these types of judicial decisions have become a major concern of the states with recognized democratic regimes.

Conscious of the importance of this cooperation forms with third countries (other than members of the European Union) Romania has improved its legislation, adopting a series of amendments and supplements to the special law (Law no. 302/2004 on international judicial cooperation in criminal matters).

In this paper we will examine the main changes and additions brought to the special law, with direct reference to the recognition and enforcement of judgments passed in third countries concerning criminal law penalties of deprivation of liberty.

## **2. Measures Prior to the Notification of the Competent Court**

In order to initiate the procedure for recognition and enforcement of a deprivation of liberty judgment, it is necessary that the Romanian judicial authorities have the following information transmitted by the State in which the convicted person performs the applied criminal law sanction:

- the used name, nickname, alias only in the case of their knowledge, also the gender, nationality, identity card number or passport number, date and place of birth, photograph, last known address or residence, the languages that the person understands;
- the information about family, social or professional connections, that he has in Romania;
- the total duration of the sentence, the starting date of the execution, the date on which the penalty would be deemed as served, the served period, if applicable, the number of days to be deducted from the total penalty due to the effects of amnesty or previously granted pardon;
- Information on parole or early parole, if applicable;
- A copy, certified as appropriate, of the criminal ordinance or judgment given in the first trial and, if appropriate, in exercising the appeal ways;
- the applicable legal provisions;
- besides the case where the sentenced person is in Romania, the declaration of the convicted person compared to the application of execution in a prison or in a medical unit in Romania of the sentence imposed by the issuing State;
- where appropriate, any expertize, report or other medical documents attesting the physical and mental state of the convicted person, the treatment undergone by him in the territory of the issuing State and any recommendations for further treatment in Romania and, in the case where the convicted is a minor, the copy of the social inquiry report;
- information on the possibility of exercising by the sentenced person, after his transfer, of an extraordinary appeal against the conviction judgment;
- in the case of judgments given in absentia, in the case where the convicted person is in the territory of the issuing State, the information on a person's right to exercise an appeal, which has as effect the reexamination of the proceedings in his presence.

All the information transmitted by the issuing State, are transmitted to the Ministry of Justice, through its specialized directorate, office attached to the court of appeal in the jurisdiction to which the convicted person resides, in order to notify the competent court of appeal.

After receiving the file case the prosecutor will verify if:

- the enforcement of the foreign judgment in Romania would be contrary to the principle of non bis in idem;
- the convicted person is prosecuted in Romania for the same offenses for which the foreign judgment was rendered;
- the convicted person is prosecuted in Romania for offenses other than those for which the foreign judgment was rendered;
- is incident any of the reasons for refusal provided for by law (there are considered the mandatory reasons imposing non-recognition and non-execution of the foreign judgment, which we will examine later);
- the convicted person benefits from the effects of the specialty rule; these provisions shall apply only if so specified in the applicable treaty in relation to the issuing State or it is in accordance with the reserve or declaration given by the issuing State to a multilateral treaty, accepted by Romania, the transfer is conditioned by the compliance with the specialty rule [article 134 paragraph (2) of Law no. 302/2004].

If, by the notification of the court, the issuing State demand or the request of the convicted person to transfer in Romania is withdrawn, the prosecutor classifies the case and returns the file to the specialized directorate of the Ministry of Justice.

### **3. The Duration and the Object of Recognition Procedure**

Within 10 days from filing the case to court, the president of the court of the elected judge shall set a date for trial, the duration of the recognition judicial procedure of the foreign judgment is of 60 days.

The court will hear such case in the preliminary chamber with a panel of one judge, with the mandatory participation of the prosecutor.

The object of recognition procedure of foreign judgment has a double valence, respectively:

- checking the conditions provided by law (mentioned above) and if they match, the foreign judgment will have legal effect in the Romanian territory;
- transfer of the convicted person to a prison or medical facility in Romania.

Other provisions relating to pecuniary penalties, the security measures or legal expenses and any other provision of the foreign judgment, other than those relating to execution of the sentence of life imprisonment or imprisonment or custodial measure not subject to recognition procedure, unless expressly requested by the issuing State. In this situation (when the issuing state requests it), the court will rule also on the recognition and enforcement of these provisions.

If the person has been convicted of several offenses, the verification of the conditions is achieved for each offense; when these conditions are fulfilled only for certain offenses, the court may order partial recognition of the foreign judgment; in such a situation, before taking the decision, the Romanian court may consult the issuing State through the specialized directorate of the Ministry of Justice.

If, before the final case, the issuing State withdraws the application, the court rejects it as being unsubstantiated.

After examining the foreign judgment and verification of the works attached to the file, the court will decide one of the following solutions:

1. Establishes by sentence, the recognition and enforcement of the sentence imposed by the foreign court.
2. Establishes by sentence, the refusal of recognition demand and enforcement of foreign judgment in Romania.
3. If the court finds that the nature or duration of the penalty imposed by the foreign court does not correspond to the nature and duration of the punishment provided by the Romanian law for similar offenses, the Romanian court will:
  - adapt, by the sentence, the sentence of deprivation of liberty, imposed by the foreign court (as required by the Romanian law), or when the adaptation is not possible,
  - establish and implement, through a sentence, the penalty for the committed offense.

In the recent Romanian doctrine, adapting the criminal sanction in such circumstances has been identified as its re-individualization, motivated by the fact that the court of the issuing State has achieved a first individualization, and this has been resubmitted to a new individualization (by the Romanian court), according to the Romanian law (Rusu, 2011, pp. 552-572).

The Romanian court will adapt the sentence imposed by the foreign court, where:

- in terms of its nature it does not match the name or the regime with the sanctions regulated by the Romanian law;
- its duration exceeds, where appropriate, the maximum limit of the punishment provided by the Romanian criminal law for the same offense or the general maximum limit of the imprisonment sentence under the criminal Romanian law or when the duration of the resulted penalty applied in the case of competitive offenses exceeds the total penalties established for concurrent offenses or general maximum limit of the imprisonment sentence allowed by the Romanian criminal law. In this case, the adaptation is to reduce the sentence to the maximum limit permitted by the Romanian criminal law for competitive offenses.

The penalty established by the Romanian court, under the circumstances mentioned above, must correspond as far as possible, in terms of nature or duration, with the one used in the issuing State, and it shall not aggravate the situation of the sentenced person. The sentence applied in the issuing State cannot be changed in a pecuniary penalty.

In the second case (when the court determines and applies the punishment, by sentence), the establishment and application of the punishment for the committed offense, the court is bound by the finding of facts, conditions and circumstances in which they were committed, so as reflected explicitly or implicitly in the foreign judgment, also:

- it will not change a custodial sentence into a pecuniary penalty;
- it shall deduct fully from the sentence applied to the executed period by the convicted person in the issuing State;
- it will not aggravate the situation of the sentenced person and it will not be bound by the minimum limit of the penalty provided for in the Romanian criminal law for the committed offense.

The provisions referred to above shall not be applied when the treaty applicable in relation to the issuing state excludes the conversion of conviction or if the issuing State expressly stated that the

transfer will be given only if the Romanian state will execute either the sentence imposed by the foreign court, either the penalty applied by the Romanian court, according to the above.

The sentence passed by the court under the situation of re-individualization of punishment will be prepared within 5 days of the ruling, and it will be transmitted to the specialized directorate of the Ministry of Justice in order to communicate to the convicted person. The sentence may be appealed within 10 days, by the prosecutor, ex officio or at the request of the Minister of Justice, and also by the convicted person. For the prosecutor, the period runs from the ruling, and for the convicted person from communicating the copy of the notice. The file will be submitted to the court of appeal within three days, and the appeal will be judged in 10 days, in closed session without summoning the convicted person; the prosecutor's presence is mandatory.

The enforcement of the sentence is achieved according to the provisions of the Code of Criminal Procedure. The final decision and a copy of the warrant of execution of the sentence of life imprisonment or imprisonment, as appropriate, it shall be communicated to the specialized directorate of the Ministry of Justice.

In the situation where, after issuing the warrant of execution of the sentence of life imprisonment or imprisonment, the issuing State:

- informs that the transfer cannot take place, the Romanian court orders the cancelation of the warrant execution of imprisonment or life imprisonment. In this situation, the sentence of recognition of the foreign criminal judgment is enforceable only in terms of post-release recidivism, unless the transfer is no longer possible because of granting amnesty or due to the fact that it was later established that the person was not guilty of the offense or as a result of the death of the convicted person in the issuing State;
- transmits a new judgment for the enforcement of another sentence, the provisions of the Code of Criminal Procedure relating to the legal dispute to execution, that are not contrary to the special law, it shall apply accordingly.

In the legal practice there may be situations where, after transferring the convicted person, the issuing State would transmit a new judgment for the execution of another sentence, in which case the recognition procedure should be the same.

If the Romanian court refused to recognize the foreign judgment, the request of the convicted person or the issuing State may be reexamined, only if there are new elements.

#### **4. Optional and Mandatory Conditions for the Recognition and Enforcement of a Foreign Judgment**

In the recent Romanian doctrine it was argued that for the recognition and enforcement in Romania of a final judgment passed in a third country (the third is everyone else who is not part of the EU) there are required a series of optional or mandatory conditions. (Boroi & Rusu, 2008, pp. 350-355)

These two distinct categories of conditions are provided in the Romanian law and also in the bilateral or regional agreements concluded by Romania or in the EU legislation (Boroi, Rusu & Balan-Rusu, 2008, pp. 136-152).

Accordingly, we will proceed in examining separately the compulsory and optional conditions that the court should consider when sentencing.

#### **4.1. Optional Conditions for Recognition and Enforcement**

In addition to the previously discussed conditions for recognition and enforcement of a judgment given in a third State, the Romanian court will verify the following conditions:

- the judgment is final and enforceable;
- the offense for which the penalty would have been applied, in the case where it had been committed an offense on the Romanian territory; if the penalty was imposed for several offenses, the verification of this condition is achieved for each offense separately;
- the convicted person has consented to the execution of the sentence in Romania, unless after the execution of the sentence, the person would be expelled in Romania. Regarding the consent, in relation to age and physical or mental condition of the convicted the person, it may be given by his representative;
- it is not incident any of the grounds for non-execution and non-recognition provided by the Romanian law; in the case where the court finds that it is incident one of the cases of non-recognition and non-execution, it may rule the recognition only if there is the conviction that the execution of the sentence in Romania would significantly contribute to the social reintegration of the sentenced person;
- the execution in Romania of the sentence of life imprisonment or imprisonment or custodial measure is likely to facilitate the social reintegration of the sentenced person.

Identifying these conditions as being optional and not mandatory, it follows from the way the Romanian legislator stated, i.e. *the foreign judgment may be recognized* [article 136, paragraph (1) of the Special Law].

From the interpretation of the legal provisions it results that the Romanian court may decide the recognition and enforcement of such a judgment, even if the mentioned above conditions are not met. It is important to note is that these conditions must be examined in relation to each case because in the judicial practice there may be specific features of one case or another.

Consequently, even if these conditions are met, the Romanian court may refuse the recognition and enforcement of such judgment passed in a third State.

#### **4.2. Mandatory Conditions of Non-recognition and Non-execution**

Unlike the optional conditions that allow the Romanian court to adopt a decision for recognition and enforcement, or conversely, non-recognition and non-execution of a foreign judgment, the prerequisites require the Romanian court the non-recognition and the non-execution of such a decision. (Rusu & Balan-Rusu, 2013, pp. 83-94)

On the basis of international legal instruments to which Romania is a party, and those of the special law, the foreign judgment shall not be recognized and enforced by the Romanian competent court in the following cases:

1. Recognition and enforcement in Romania of the foreign judgment would be contrary to the fundamental principles of the legal system of the Romanian state [article 136, paragraph (2), letter a) of Law no. 302/2004].

We note that the wording used by the Romanian legislator is general, without a specific reference to those principles, as in the Romanian law there are not well established such principles (we are

referring to the expression used by the legislator, *the fundamental principles of the legal system of the Romanian state*).

However, we consider that the Romanian legislator took into account both the fundamental principles set out in the Constitution and the fundamental principles of criminal law and Romanian criminal proceedings.

2. The judgment concerns a political offense or an offense connected to a political offense or a military offense that is not an offense of common law [article 136, paragraph (2), letter b) of Law no. 302/2004].

The identification of this condition requires, *inter alia*, studying the law of the issuing State, the provision of the Romanian law being as current as possible, seen in the light of scientific progress of criminal law and criminal procedure throughout the world.

3. The penalty was imposed for reasons of race, religion, gender, nationality, political or ideological opinions or membership to a particular social group [article 136, paragraph (2), letter c) of Law no. 302/2004].

This provision was necessary given the different laws of other world's states, whose democratic regimes are questionable, beings often judged as dictatorship regimes. No problem arises when it comes to European states and other countries of the world with recognized democratic regimes.

4. The person has been finally convicted in Romania for the same crimes. If the foreign judgment has been given for other offenses, the court may order partial recognition of it, if the other conditions are met [article 136, paragraph (2), letter d) of Law no. 302/2004].

The provision required under the principle of *non bis in idem*, a unanimous principle recognized both in the European law and the laws of some states with recognized democratic regimes.

5. The person has been convicted in another state for the same crimes, and the foreign judgment passed in this state has been previously recognized in Romania [article 136, paragraph (2), letter e) of Law no. 302/2004].

6. The convicted person enjoys criminal jurisdiction immunity in Romania [article 136, paragraph (2), letter f) of Law no. 302/2004].

7. The penalty was imposed on a person who is not criminally liable under the Romanian law [article 136, paragraph (2), letter g) of Law no. 302/2004].

This condition is consistent with the Romanian law, meaning that the Romanian judicial authorities may not recognize and enforce a judgment which concerns primarily a person who is not criminally liable; this applies to justifiable and the non-imputable causes referred to mainly in articles 18-31 of the Criminal Code; there will also be considered other causes, such as those provided in article 152-159 of the Criminal Code.

8. The penalty consists of a measure of psychiatric or medical assistance that cannot be ensured in Romania or, where appropriate, it provides a medical or therapeutic treatment that cannot be supervised in Romania, in accordance with the national legal or healthcare system [article 136, paragraph (2), letter h) of Law no. 302/2004].

9. The convicted person has left Romania, and he has established the domicile in another state, and its links with the Romanian state are not significant [article 136, paragraph (2), letter i) of Law no. 302/2004].

10. The convicted person has committed a serious crime, likely to alarm the society, or has had close relations with members of a criminal organization likely to make questionable his social reintegration in Romania [article 136, paragraph (2), letter j) of Law no. 302/2004].

This condition is not mentioned in the international legal instruments, but its adoption was imposed amid new mutations occurred in the structure of transnational organized crime, terrorism in particular.

11. There are objective indications that the judgment was given in breach of fundamental rights and freedoms, notably the sentence has been imposed to punish the convicted person on grounds of gender, race, religion, ethnic origin, nationality, language, political beliefs or sexual orientation, and the convicted person had no opportunity to challenge these circumstances at the European Court of Human Rights or other international bodies [article 136, paragraph (2), letter j) of Law no. 302/2004].

Besides these grounds for non-recognition, the Romanian courts, depending on the particularities of each case, may refuse the recognition and enforcement of foreign judgment in the following cases:

- the person is investigated in Romania for the same offense for which he was convicted abroad. In the case where the judgment was given for other offenses, the court may order its partial recognition, if the other conditions are met [article 136, paragraph (3), letter a) of Law no. 302/2004];
- when the issuing State has refused an application under article 134, paragraph (1) of the special law.

If the person is investigated in Romania for the same offense for which he was convicted in the third state, instead of refusing recognition, the court may order either the recognition of the foreign judgment or the suspension of the cause by taking a decision in the criminal proceedings under the investigation of the Romanian judicial authorities.

Foreign judgment shall not be recognized or, if recognized, would not be enforced when, according to the Romanian criminal law, the amnesty, pardoning, decriminalization of the offense intervene, and any other cases provided by the law.

## **5. Conclusions**

The evolution of the crime at global crime level, especially the cross-border ones coordinated by the organized crime networks, has required the adoption of an effective legal framework which would allow effective prevention and combating crime of this kind. The main problem that caused different reactions of world states was that of recognition and enforcement of a judgment established in another State, a problem which in time was largely solved. Romania, by adopting special domestic law, and through the active participation to the complex activity of international judicial cooperation in criminal matters was limited to signing international legal instruments, has shown that is actively involved in the global effort oriented in this direction. Amid European orientations in the field, Romania has adopted a series of specific provisions in relation to the recognition and enforcement of judgments emanating from another state (which is not part of the European Union); the provisions of this law from this point of view are more restrictive. The general conclusion that emerges is that the current regulation of this form of international judicial cooperation in criminal matters from the Romanian state law is current, being desirable for other countries in the world to regulate this institution, in the manner, which it should give mutual confidence in the decisions emanating from the judicial authority of another State. Undoubtedly, depending on the political regime at the head of each state of the world, there will always be some reserves, which are always justified when the political regime of that State



is subject to certain criticisms regarding the rights and freedoms of the citizens to the standards recognized by the UN.

## **6. Bibliography**

Rusu, Ion (2011). *Individualizarea sancțiunilor de drept penal, Curs master/Individualization of criminal law sanctions, Master Course*. Bucharest: Universul Juridic.

Boroi, Alexandru & Rusu, Ion (2008). *Cooperarea judiciară internațională în materie penală, Curs master/Judicial cooperation in criminal matters, Master Course*. Bucharest: C.H.Beck.

Rusu, Ion & Balan-Rusu, Minodora-Ioana (2013). *The European Arrest Warrant, Romanian and European Legislation, Doctrine and Jurisprudence*. Germany: LAP LAMBERT Academic Publishing.

Boroi, Alexandru; Rusu, Ion & Balan-Rusu Minodora-Ioana (2012). *The Judicial Cooperation in Criminal Matters in the European Union, EU Judicial Cooperation*. Germany: LAP LAMBERT Academic Publishing.

Morar, Ioana-Cristina (2012). *Buletinul Rețelei Judiciare Române în materie penală/The Bulletin of the Romanian Judicial Network in criminal matters*. Bucharest: Hamangiu.

*Law no. 302/2004 on international judicial cooperation in criminal matters, as amended and supplemented, republished, published in the Official Monitor of Romania, Part I, no. 377 of 31 May 2011.*

*Law no. 300/2013 amending and supplementing Law no. 302/2004 on international judicial cooperation in criminal matters, published in the Official Monitor of Romania, Part I, no. 772 of 11 December 2013.*