

JOINT INTERNATIONAL CONFERENCES

10TH EDITION
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

5TH EDITION
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Recognition and Enforcement of Foreign Judgments in the Case Where a Convicted Person is in Romania

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Abstract: The paper analyzes the institution of the recognition and enforcement of foreign judgment, in the case where a convicted person is in Romania, as well as some references to the conditions of Romanian law to be fulfilled in order to have the recognition and enforcement of such a judgment. Also, according to our research it results that the Romanian legislator has not provided the mandatory legal assistance to the person concerned, which is why we have made proposals *de lege ferenda*. The paper may be useful to practitioners in this field, and academics. The innovations consist in examining the institution of the recognition and enforcement of foreign judgment, in the case where a convicted person is in Romania, with the new amendments to the Romanian special law and the wording of the proposals of *de lege ferenda*. The paper continues further studies and research conducted in the field of judicial cooperation in criminal matters, in particular the form of legal assistance in criminal matters in the European Union area.

Keywords: Persons convicted in another state; offense; preventive measures; proposals of *de lege ferenda*

1. Introduction

The recognition and enforcement of a foreign judgment by the competent judicial authorities in Romania is one of the most important forms of international judicial cooperation in criminal matters (Boroi & Rusu, 2008, p. 348).

The importance of this institution results from the fact that, regardless of their content, all other forms of judicial cooperation is achieved between two or more states, based on mutual recognition and trust in judgments adopted at the level of world states.

Moreover, at the level of the European Union states, the recognition and mutual trust in judicial decisions is both a fundamental form of judicial cooperation in criminal matters between the Member States and a fundamental principle in the field of cooperation (Rusu, 2011, pp. 552-555).

This form of judicial cooperation in the recent years has established itself as a direct consequence of increasing the cross-border crime, especially that committed by the organized crime groups and hence the need to prevent and combat it more effectively at regional or global level.

Being aware of the obligations assumed at international level and wishing to participate actively in the overall effort of preventing and combating the crime of this kind, Romania has acted in two main directions.

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Thus, on the one hand it has initiated or it has actively participated in the adoption and signing of international treaties and agreements, and on the other hand it has perfected the internal law, so that it becomes compatible with the laws of other states with democratic regimes recognized in the world.

The institution of recognition and enforcement of foreign judgments, reported to the way of ruling in its relations with the EU Member States, experienced a number of differences, which are generally related to a number of additional conditions required by the Romanian law (Boroi, Rusu & Balan – Rusu, 2012, p. 136).

The evolution of transnational crime on the one hand, the treaties and agreements concluded by Romania, on the other hand, have imposed the amendment of Law no. 302/2004 on international judicial cooperation in criminal matters.

We consider that the latest changes and additions of the legislative act framework by Law no. 300/2013 contribute greatly to the improvement of the institution of recognition and enforcement of judgments emanating from a competent judicial authority of another State.

2. The Documents and Information Transmitted by the Issuing State

In the recognition and enforcement of judgments or orders of foreign criminal judicial bodies, the Romanian authorized bodies will have to receive from the issuing foreign judicial authority the following documents and information:

- the used name, nickname, the used 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;
- 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. (article 132 of Law no. 302/2004).

The examination of the information and documents described above leads to the conclusion that they are absolutely necessary for the Romanian state as a state which will recognize and consequently execute the foreign judgment.

At the same time, it can be seen that the documents and information required in this situation are much wider than for recognition and enforcement of a judgment given in a Member State of the European Union motivated by mutual trust, which in the case of a third country it is determined by some delays (justified in fact).

3. The Procedure for Recognition of the Foreign Judgment and for Taking Preventive Measures

After receiving the documents and information provided by the Romanian law, the Ministry of Justice, through its specialized directorate, submits them to the office attached to the court of appeal in whose territorial jurisdiction the convicted person resides or, if he is in detention in the territorial jurisdiction of the place of detention, in order to seize the competent court of appeal.

After receiving the file the designated prosecutor shall 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;
- there are considered incident any of the mandatory reasons imposing the non-recognition and non-execution of the foreign judgment, provided for by the Romanian law;
- the convicted person benefits from the effects of the specialty rule;

Doubtless that the verifications required by law require the prosecutor to use other Romanian state institutions, or possibly to some European institutions or with attributions at global level, in which case the prosecutor will request the necessary information from these bodies.

Noting that the necessary documents are complete, the prosecutor notifies the competent court to judge this case.

The court will hear the case in a panel formed by one judge, in the council room, summoning the convicted person, where the presence of the prosecutor is required.

The president of the court or the judge of this court shall specify the period, which shall not be less than 10 days from the date of registration of the case to court, and the duration of these proceedings is of 60 days, starting from the date of registration of the case.

The object of the recognition procedure of the foreign judgment is to verify the conditions stipulated by the Romanian law, namely:

- The judgment is final and enforceable;
- The act for which the penalty would have been applied, in the case where an offense had been committed on the territory of Romania. If the sentence has been imposed for several offenses, the verification of the condition is achieved for each of them;
- There are not incident any of the grounds for non-recognition and non-execution provided by the Romanian law [article 136, paragraph (2) of Law no. 302/2004]; if the court finds the incidence of any of these reasons, it may apply recognition only if there is the certitude 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.

Also, given the specific circumstances of each case, the court may refuse the recognition and enforcement of foreign judgment, if:

- the person is investigated in Romania for the same offense for which he was convicted abroad; in the case where the judgment was passed for other offenses, the court may order its partial recognition, if there are fulfilled other conditions;

- the issuing State has refused the application under article 134, paragraph (1) of Law no. 302/2004.

If the convicted person is under investigation in Romania for the crime for which he was convicted abroad, instead of refusing the recognition, the court may order the recognition of the foreign judgment, or suspend the proceedings until taking a decision in criminal proceedings before the Romanian judicial authorities.

Also, the foreign judgment shall not be recognized or, if recognized, it would not be enforced when, according to the Romanian criminal law, the amnesty has intervened, the decriminalization of the act, and any other cases provided by the law.

In the cases where the above conditions are met, the court will recognize and it will enforce the execution of the foreign judgment.

At the same time, depending on the nature of the punishment and if the conditions provided by Romanian law are met, the court may order the application of a measure of individualization (re-individualization) of the sentence execution.

Regarding the preventive measures, we mention that at the express request of the issuing State to the convicted person it can take one of the requirements of the Romanian Code of Criminal Procedure. This applies to judicial control, the judicial control on bail, house arrest and detention.

For the choice of one of the preventive measures mentioned above it will be taking into account the sentence imposed in the issuing State, the nature of the crime, health, age and criminal record of the person against whom the measure is taken.

The detention on remand may be taken against the convicted person if the offense is committed in one of the categories of the offenses for which it occurs turning in some persons without verification the of double incrimination requirement, under the condition where the maximum penalty provided by the law of the State in question shall be at least three years, and there is one of the following situations:

- The convicted person has fled from the issuing State in order to evade prosecution, trial or execution of sentence and he took refuge in Romania; or
- The sentence imposed by the foreign court or the remainder of the execution is of least one year in prison.

The duration of the preventive measure cannot be longer than 180 days; the preventive measures will cease rightfully:

- at the deadline set by the law or at the expiry date, if the term period was established by the Romanian judiciary authorities;
- when, before a judgment for recognition of the foreign judgment, the duration of the preventive detention or house arrest has reached the duration of imprisonment imposed abroad; and

- in case where preventive detention was decided prior to the request for recognition and enforcement of foreign judgment, when, within 30 days from the date of preventive detention the documents and information required by the Romanian law were not received by the directorate of the Ministry of Justice.

At the same time, the legal status of the convict cannot be aggravated as a result of the duration of the preventive measure of deprivation of liberty imposed by the Romanian judicial body.

The sentence shall be written in 10 days from the decision. An appeal against that judgment may be presented within 10 days, the prosecutor, ex officio or at the request of the Minister of Justice and also the convicted person. For the prosecutor, the term starts from the delivery, and after the delivery for the convicted person or, in the case of not being present at the debates and at the final decision, since the receiving the copy on the device. The file will be submitted to the court of appeal within three days, and the appeal shall be heard within 10 days, in the council room, without summoning the convicted person and the presence of the prosecutor is required.

4. The Notification of the Foreign Judgment and the Appeal of the Convicted Person

In the case where the foreign judgment was rendered in absentia, the prosecutor receiving the file notifies the convicted person on the decision. The notification must contain the following mentions:

- that it was received an execution request of a sentence in Romania;
- it is entitled to challenge the foreign judgment and submit complaint in this regard, if that right is conferred by the regarded state law;
- that the appeal is subject to the jurisdiction of the issuing State;
- the deadline for appeal is 30 days and it begins on the date of receipt of notification;
- the failure to submit the appeal within the period of 30 days has as consequence the consideration that the foreign judgment has been passed in his presence.

If since the expiry of 30 days the person in question has not filed for appeal, the prosecutor notifies the competent court for trial.

If within the period of 30 days the person has filed for appeal, the case prosecutor will order its classification and it will hand back the file to the specialized directorate of the Ministry of Justice and also it will send the complaint and the documents submitted by the sentenced person.

The examination of the above mentioned provision leads to the conclusion that the Romanian legislator taken information from the European law, on the situation regarding the absence of the convicted person from his own trial, in which case, it was established the obligation of the Romanian judicial authorities to facilitate the retrial possibility in the sentencing State.

5. Conclusions

The evolution of transnational crime imposed the improvement of internal laws for the world's states, towards facilitating the recognition and enforcement of judgments passed in another state.

In this context, the Romanian legislator has made a series of changes and additions to the legislative act framework, regulating the case where it is required the necessary recognition and enforcement of a foreign judgment for a person who is in Romania.

The research mentioned legal rules leads to the conclusion that the Romanian legislator has imposed a number of additional conditions in relation to identical situations, but when the decision submitted to recognition and enforcement belongs to the judicial authorities of a Member State of the European Union.

Although these provisions are in line with the European legislation and it contributes greatly to improving the complex business of international judicial cooperation in criminal matters at the level of the world's countries, we consider that the judicial proceedings in these cases must take place with the participation of the lawyer chosen or appointed ex officio of the person concerned.

De lege ferenda, in order to ensure the rights of defense of the convicted person who is in Romania, we propose completing the special law with the mandatory participation of the lawyer in judicial proceedings before the prosecutor and the court of Romania.

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