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The Transfer of Sentenced Persons Held in Third Countries, in order to serve the Sentence or the Measure of Deprivation of Liberty in a Penitentiary or a Medical Unit in Romania. Critical Observations

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Abstract: In the current study we have examined the institution Sentenced Persons Held in Third Countries, in order to serve the sentence or the measure of deprivation of liberty in a penitentiary or a medical unit in Romania, focusing on the recognition of the foreign judgment by the competent courts in Romania. The conducted examination has revealed some shortcomings of the Romanian special law, which refers specifically to the absence of the convicted person from hearing to the appeal of the case, and his inability to defend. Also, it has been highlighted the fact that no Romanian legislator has taken into account the possibility of requesting the transfer of a minor convicted in a third State to a penalty or an educational measure of deprivation of liberty. The novelty of the work covers both examining the institution in the light of the Romanian jurisprudence and the formulated proposals *de lege ferenda*. The work also continues other studies published in some journals or volumes of international or national conferences, achieved in the context of researching the institution of international judicial cooperation in criminal matters. The paper can be helpful to scholars, master students and practitioners in this field.

Keywords: The procedure for recognition of the foreign judgment; circumstances; obligatory grounds for non-recognition.

1. Introduction

Regarded as perhaps one of the most important form of international judicial cooperation in criminal matters, the recognition and enforcement of judgments in other states, in time it has appeared to be also one of the most complex forms of cooperation with major implications in terms of bilateral relations between the countries involved in the process.

As argued in doctrine, when we examine the particularly complex institution of recognition of criminal judgments and foreign judicial documents, they should cover the criminal judgments emanating from the Romanian judicial authorities and those emanating from the competent judicial authorities of other State. (Boroi & Rusu, 2008, p. 347)

On the other hand, it should be considered that a person (usually a Romanian citizen), convicted in another state, has the right to request his transfer for the enforcement of a criminal law sanction of deprivation of liberty in Romania.

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We specify that the transfer of a person in this situation and therefore enforcing the sanction of criminal law in Romania cannot be achieved until after the judicial authorities recognize the criminal ruling which has been applied to the person concerned in the third state.

Consequently, when according to the Romanian law, such a judgment is not recognized, transferring the person concerned cannot be achieved as this person would execute on the Romanian territory a sanction of criminal law applied by a court of a third country, that cannot produce legal effects on the Romanian territory.

The institution of transferring a convicted person held in third countries, in order to serve the sentence or measure of deprivation of liberty in a penitentiary or in medical unit in Romania is governed by the provisions of Title V, Chapter II, Section 1 of Law no. 302/2004 on international judicial cooperation in criminal matters.¹

In the present study we proceed to examine this institution in the light of the Romanian law and internal jurisprudence, with some critical comments; in order to avoid repeating the judicial act framework, i.e. Law no. 302/2004, whenever we refer to it we will use the phrase “The Special law”.

2. Measures Prior to Court’s Apprehension

After receiving the documents and information provided by law (referred to in article 132 mentioned above), the directorate of the Ministry of Justice sends them to the office attached to the court of appeal in whose territorial area resides the convicted person for the purpose of referral to the Court of Appeal with territorial jurisdiction.

We mention that the documents and information referred to the special law provisions concern the following:

- Name, surname, nickname, the used alias only if there is knowledge of it, as well as gender, nationality, identity card number or passport number, date and place of birth, photograph and last address or known residence, the languages that the person understands;
- Information about family, social or professional ties that he has in Romania;
- Total length of sentence, the date of commencement of the sentence, the date on which the sentence would be deemed as served, time served, if applicable, number of days to be deducted from the penalty due to the effects of amnesty or previously granted pardon;
- Information on parole or early release, if applicable;
- A copy, certified as appropriate of the criminal ordinance or judgment passed in the first instance and, where appropriate, in exerting the ways of appeal;
- The applicable legal provisions;
- Except the case where the sentenced person is in Romania, the declaration of the convicted person on the request of execution in a penitentiary or medical unit in Romania of the sentence imposed by the issuing State;

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- If appropriate, any expertise, report or other medical documents attesting the physical and mental state of the convicted person, the treatment undergone in the territory of the issuing State and any recommendation for further treatment in Romania and, in the case of a convicted minor, a copy of the social inquiry report;
- Information on the possibility of exercising by the sentenced person, after his transfer, an extraordinary way of appeal against the conviction sentence;
- in the case of judgments given in absentia, when the convicted person is in the territory of the issuing State, the information about a person's right to pursue a way of appeal that has the effect of re-examination of the case in his presence (art. 132 of the special law).

After receiving the file the prosecutor appointed by the competent general prosecutor has the duty to verify that:

- a) the execution of the foreign judgment does not cause a breach of the non bis in idem principle;*
- b) the convicted person is prosecuted in Romania for the same offense/s for which it was passed the foreign judgment which is to be recognized;*
- c) the convicted person is prosecuted in Romania for offenses other than those for which the foreign judgment was passed;*
- d) it is incident any of the grounds for refusal provided for in article 136, par. (2);*
- e) the convicted person benefits from the effects of the specialty rule.*

The provisions relating to the specialty rule applies only where provided for in the treaty applicable in the relation with the issuing State or if appropriate the reserve or declaration given by the issuing State to a multilateral treaty, accepted by Romania, the transfer being conditioned by this rule (of specialty).

The law requires *that the information necessary for the verifications provided for in par. (2), letters b) and c) are communicated to the prosecutor within 5 days since the date of the request.*

Also, in the case where the prosecutor finds that the person benefiting from the effects of the specialty rule, it will inform the prosecutor who performs or supervises the criminal prosecution. This applies to the case against the convicted person where there are conducted criminal investigations for committing other crimes than those for which he was convicted abroad.

In the situation where, until informing the competent court, the application is withdrawn, the case prosecutor will decide ranking and returning the file to the specialized directorate of the Ministry of Justice.

In recent doctrine it was argued that, as shown by the case prosecutor there must be verified some data absolutely necessary to solve the case.

Relating to the case law, we find that all checks to be made by the case prosecutor refer to the consultation of records held by the National Police or local police units, or other institutions.

Thus, when verifying for possible incidence of the principle of *non bis in idem*, the case prosecutor must seek information from the Information and Operational Register Department of the police unit on whose territory the convicted person resides.

This applies for Romanian citizens, foreign citizens who are resident or have domicile in Romania cannot be verified in this manner.

In this context, how will the Romanian prosecutor verify the incidence of this principle, in the case where the convicted person is a foreigner residing in Romania, and for that citizen, the Romanian judicial authorities have no record of the committed offenses, except possibly those committed in Romania?

We believe that in such a situation that can be seen frequently in the judicial practice, the case prosecutor will have to request written information from the home state of the convicted; if he is not acting in this way, it is possible to breach of the *non bis in idem* principle.

In order to verify if the convicted person is prosecuted in Romania for the same offense/offenses for which he was finally convicted in the foreign state (in the case of a Romanian citizen), the case prosecutor must seek information from the police of the place of residence. The same situation applies also in the case where it is verified whether the convicted person is being investigated in Romania for other crimes.

The situation becomes more complicated however when it is about a foreign citizen who resides or has resided in Romania, the procedure to be followed is the one mentioned above.

A particular problem arises when verifying the incidence any mandatory reason for refusing the request, the reasons being set out in article 136, paragraph (2) of the law.

We take into consideration the concrete situation in which the case prosecutor has at his disposal only documents and information available in the file.

In case some of them might not seem difficult, however others are almost impossible to achieve, requiring complex checks, leading to the passage of a certain period of time.

Thus, as the Romanian prosecutor will verify if the person has been convicted on grounds of race, religion, gender, nationality, etc., as all courts in states that often violate these provisions try to disguise these convictions, focusing them towards offenses of common law? The mere reading and interpretation of the judgment is not sufficient to persuade the prosecutor.

The same situation can be incidental and related to political offenses or others related to it or military.

Addressing these situations requires for the case prosecutor to study and interpret the state's legislation that issued the final judgment of conviction.

Given the importance of the institution of recognition of foreign criminal judgments, especially the frequency of such requests in the future, we believe that it is necessary the specialization of at least one prosecutor in each prosecutor's office attached to each court of appeal in this very complex domain; we equally believe that it is useful also in the case of courts of appeal regarding judges (Boroi, Rusu & Rusu, 2016).

In addition to the opinion, some being criticized, we believe that the way in which they were written, such texts exclude the possibility of transferring a minor who is serving a custodial educational measures.

We support this hypothesis by highlighting the text section title, which refers only to convicted persons held in third countries, to serve the sentence or measure involving deprivation of liberty in a penitentiary or health facility in Romania.

We note that the legislator excludes minors, since there is no reference to educational measures of deprivation of liberty or the execution thereof, even if in article 132, letter h) of the special law speaks of the *convicted minor*.

3. Conditions for Recognition and Enforcement of Judgment

The recognition of a foreign judgment by the competent Romanian authorities (courts of appeal), makes it necessary for it to be liable to legal consequences according to the Romanian criminal law, and to be fulfilled cumulatively the following conditions:

- The decision is final and enforceable;
- To establish the existence of double incrimination; if the foreign judgment regards several offenses; the verification on being fulfilled the condition of double incrimination is achieved for each crime separately;
- The person has agreed to serve the sentence in Romania, except the case where after serving his sentence should be expelled from Romania; in special circumstances concerning age, physical or mental health of the convict, the consent can be given by its representative;
- It is not incident any of the mandatory reasons for non-recognition and non-enforcement provided by the Romanian law (which we will examine below); as an exception to this rule, the court may recognize the foreign judgment if it considers that the execution of the sentence in Romania would contribute significantly to the social reintegration of the convicted person (in the judicial practice, this situation will be incident most often, when the convicted person is a Romanian citizen or resident and has his family in Romania);
- the execution in Romania of the sentence of life imprisonment, prison or custodial measure is likely to facilitate the social reintegration of the convicted person.

In the judicial practice the competent court (Court of Appeal) should first verify the cumulative fulfillment of these conditions.

In this regard, the judicial practice was decided that “In the case there have been fulfilled the conditions set by the law for recognition of a judgment passed abroad - including assuming such a duty of recognition to be made in an international treaty to which both countries are party and the right to a fair trial - the court will substitute the unenforced punishment applied by judicial Swiss authorities with appropriate punishment in the Romanian law, applying at the same time also the provisions of the Romanian Criminal Code on additional punishment and those relating to deduction of penalty of the period enforced in the preventive detention in Switzerland”. (George-Sorescu, in Morar, 2012, p. 280).

If it is found that it is not fulfilled even one of these conditions (with one exception) the competent court of appeal will not recognize the ruling.

The exception to which we refer regards the case in which, although it is incident one of the reasons mandatory for non-recognition of the judgment, the court is satisfied with serving the sentence in Romania, which would contribute significantly to the social reintegration of the convict (Boroi, Rusu & Rusu, 2016).

The mandatory reasons which as they are established by the Romanian Court lead to the non-recognition of foreign judgment are as follows:

a) recognition and enforcement of foreign judgment is contrary to the fundamental principles of the legal system of the Romanian state; although quite generic formulated, this plea is of major importance in terms of respecting the fundamental principles of rule of law in Romania; there are considered primarily the fundamental principles laid down by the Constitution, and then the criminal law and the Romanian criminal trial;

- b) the foreign judgment concerns a political offense or an offense connected with a political offense or a military offense which is not an offense of common law; this reason is therefore current, as we consider here the recognition and enforcement of judicial decision passed in any country in the world except the Member States of the European Union; this applies to the possibility for the courts in Romania to be put in a situation to recognize a judgment given in a State where there are criminally sanctioned the political offenses or those related to them;
- c) the sentence has been imposed on grounds of race, religion, sex, nationality, language, political or ideological opinion or membership in a particular social group; opinions expressed on the reason why from the letter b) they are incident in this case as well;
- d) the person has been finally convicted for the same criminal offenses in Romania. However, the Romanian court may order partial recognition, if the other conditions prescribed by law are fulfilled; Therefore this reason is provided in all international legal instruments to which Romania is a party, representing in its essence the principle of *non bis in idem*;
- e) the person has been convicted in another state for the same crimes, and once the foreign judgment is passed in that state was recognized in Romania;
- f) a convicted person benefits in Romania from immunity from prosecution;
- g) the sentence has been imposed on a person who is not criminally liable under the Romanian law;
- h) the penalty consists of a measure of psychiatric or health assistance that cannot be enforced in Romania or, where applicable, it provides for medical or therapeutic treatment which cannot be supervised in Romania, in accordance with the national legal or healthcare system;
- i) the convicted person has left Romania and established domicile in another state, and its links with the Romanian state are not significant;
- j) the convicted person has committed a serious crime, which would alarm the society, or has had close relations with members of criminal organizations, likely to cast doubt upon his social reintegration in Romania;
- k) there is objective evidence that the judgment was given in breach of fundamental rights and freedoms, in particular, that the sentence has been imposed to penalize the convicted person on grounds of sex, race, religion, ethnic origin, nationality language, political beliefs or sexual orientation and the convicted person had no possibility to challenge these circumstances to the European Court of Human Rights or other international bodies (Boroi, Rusu & Rusu, 2016).

So, being mandatory, whenever it will be found any of these reasons, the foreign judgment shall not be recognized and implicitly enforced in Romania.

We should mention that these mandatory grounds leading to rejection of a foreign judgment are not inventions of the Romanian legislator, they can be found in an almost identical wording in some international legal instruments and bilateral or internal laws of some states with recognized democratic regimes, especially in Europe.

In the judicial practice it was decided that “A State may not claim the application of a provision of the European Convention on the International Criminal Judgments by another state, as long as it has a reservation concerning the refusal of enforcement of judgments in absentia.

Regarding the assessment of the decision whose recognition is requested, from the perspective of “in absentia” phrase, found in the Convention, the judgment was passed in absentia as the person sought was not present at any hearing or at trial nor on appeal.

The request for international judicial assistance regarded the communication towards the Romanian citizen of the summons for a hearing, being mentioned also the subsequent hearings, but the request for international judicial assistance does not cover the absence of the defendant at trial, which concerns exclusively the communication of some procedural relations by the Romanian citizen”. (Juverdeanu, in Morar, 2014, p. 225).

However the Romanian legislator foresaw one exception, that even if it is incident one of the mandatory non-recognition reasons and non-execution of a foreign judgment, it will still be recognized by the competent court in Romania.

This exception aims the case where the Romanian court, after examining the foreign judgment and the documents in the file, is convinced that the execution of the sentence in Romania would contribute significantly to the social reintegration of the convicted person.

Such situations occur frequently in the judicial practice, and it should be considered by the courts in Romania, in particular, when the convicted person abroad is a Romanian citizen and lives with his family in Romania, or though he is a foreigner he lives with his family in Romania or is a family member of a Romanian citizen who lives in the country.

On the other hand, the Romanian court must take into consideration the conditions of detention and those ensuring the social reintegration of the convicted in the issuing State.

In addition to mandatory reasons for non-recognition and non-enforcement of a foreign judgment, the Romanian law provides some optional reasons, namely:

- The person is under investigation in Romania for the same offense for which he was convicted abroad. If the judgment has been given for other criminal offenses, the court may order partial recognition of it, if the other conditions are fulfilled;
- When the issuing State has refused an application in order to supplement the requested information.

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

Also, the foreign judgment shall not be recognized or, if recognized, would not be enforced when the criminal law Romanian intervened amnesty, decriminalization of the offense and any other cases provided by law (Boroi, Rusu & Rusu, 2016).

4. The Duration and the Object of the Procedure for the Recognition of the Foreign Judgment

Under the Romanian special law, within 10 days from filing the complaint, the presiding judge or the judge of the court fixes a judgment term (within that term). The total duration of the procedure for recognizing a foreign judgment is 60 days from the date of registration of the case to court.

The provisions of article 135, paragraph (2) of the special law provide that the *court judges in a different panel made up of one judge in Council chamber, without summoning the parties. The prosecutor is mandatory.*

As we expressed in other papers, we maintain our view according to which the depositions where the trial procedure without summoning the parties is established but with the mandatory participation of the prosecutor is unconstitutional.

Considering the Constitutional Court Decision no. 506 of 30 June 2015¹ and legal practice completed by some opinions of doctrine, we consider that these provisions are inapplicable.

As until the date of the publication of this paper the Romanian legislator has not made the necessary changes, it is naturally to question the mode of action of the court, meaning they will quote or not the convicted person. We believe that by the implementation of Decision No. 506/2015 of the Constitutional Court, the court will summon the convicted person.

We believe also that to the convicted person it must necessarily provide the legal assistance, in the case where the person concerned has not hired a lawyer.

The court is obliged to check within the hearing, the requirements provided by the Romanian law for recognition and enforcement of foreign judgment, and if it finds that they are satisfied, it assigns enforceable foreign judgment in Romania and it decides the transfer into a penitentiary or medical facility in Romania of the sentenced person.

In the judicial practice it will be checked whether the conditions were laid down in article 136, par. (1) of the special law, and it is not incident one of the cases provided for in article 136, paragraph (2) thereof. We note that in article 136, paragraph (2) of the law there are mentioned reasons for non-recognition and non-execution of a foreign judgment. On the reasons for non-recognition and non-execution options provided by the law, they will be examined separately by the court, and then it will decide.

We appreciate that in the judicial practice, this examination will take place on three levels, in the order mentioned above, namely: cumulative verification of the fulfillment of the conditions referred to in article 136, paragraph (1), establishing the lack of any mandatory reason for non-recognition provided for in article 136, paragraph (2) and optional verification of the reasons provided for in article 136, paragraph (3) which requires the appreciation of the court in relation to the effect of any of these reasons.

The provisions that may regard the pecuniary penalties, or the legal expenses or insurance measures and others in the foreign judgment are not under the jurisdiction of the Romanian court, but only in the case where the issuing State expressly requests it.

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In the situation where the foreign State requests to be considered by the Romanian court provisions other than those expressly provided for in the Romanian law, and the court will rule also on the recognition and enforcement of other criminal provisions of the judgment.

When by the judgment the person has been convicted for several offenses, the Romanian court will check the fulfillment of the conditions stipulated by the Romanian law for each of them; in the case it is found that the conditions only for certain of these offenses, it may be ordered the recognition of the foreign judgment, but before passing it, the court may consult the issuing State through the specialized directorate of the Ministry of Justice.

In the judicial practice situations can occur while the procedure for recognition of the foreign judgment is pending before the Romanian courts, the issuing State withdraws the application; in such circumstances, the court noting the withdrawal of the application, the Romanian court rejects it as being unsubstantiated.

Within the procedure for recognizing foreign judgment after examining and verifying other documents in the file, Romanian court will decide one of the following solutions:

- it decides by judgment the recognition and enforcement of the sentence imposed by final judgment to a foreign court; or
- it decides the judgment, rejecting the application for recognition and enforcement of the foreign judgment; in this situation, the application of the sentenced person or the issuing State may be reconsidered if new elements emerge.

In the judicial practice it may also occur the situation where, when examining foreign judgment, the court finds that the nature or duration of the sentence imposed by the foreign court does not correspond to the nature and duration of the punishment provided by the Romanian law for the same offense or similar offenses.

In this first case, the Romanian court will tailor the sentence to imprisonment imposed by a foreign court when:

- The nature of this punishment does not correspond in terms of denomination or of executing regime with punishments stipulated by the Romanian law;
- The penalty duration exceeds, where appropriate, the maximum special limit of the punishment provided by the Romanian criminal law for the same offense or the duration of the penalty imposed by the foreign court exceeds 30 years, or when the resulting penalty duration are applied in the event of multiple offenses it exceeds the total penalties established for competitive offenses or general maximum of the prison sentence provided for under the Romanian law.

In the legal sense, adapting the sentence imposed by the foreign court consists in reducing the sentence to the maximum limit allowed by the Romanian criminal law for similar offenses.

Following the adjustment (re-individualization), the penalty established by the Romanian court, it should correspond as far as possible, in terms of nature or duration with the one applied by the issuing State and it shall not aggravate the situation of the sentenced person. Also in the process of adaptation, the Romanian court cannot modify a prison sentence into a monetary punishment.

In the second situation, the Romanian court establishes and applies by the penalty sentence for the committed offense.

Thus, within the process of determining and applying the punishment for the committed crime, the Romanian court is bound by the findings of fact, the conditions and circumstances in which they were committed, as shown explicitly or implicitly in the foreign judgment.

In the judicial practice it was decided that *in the application of article 6 of the Criminal Code, of the Decision No. 1/2014 and Decision No. 13/2014, issued by the High Court of Cassation and Justice - unraveling points of law in criminal matters, the Romanian court may not reduce under the provisions of article 39, paragraph (1), letter b) of the Criminal Code, the resultant penalty applied, concurrently arithmetic, in the case of a series of offenses, the judgment of conviction rendered by a foreign court, as, pursuant to article 135, paragraph (7), letter b) of Law no. 302/2004, adapting the resulting penalty imposed for a series of offenses is permitted only if it exceeds the total of the punishments established for concurrent offenses for crimes or the general maximum limit of the punishment of imprisonment.*

Therefore, in the hypothesis where the foreign court applied the resultant penalty by the arithmetic average, if the Romanian court has reduced the penalties established by the sentencing decision handed down by a foreign court for crimes competing under Decision No. 13/2014 of the High Court of Cassation and Justice - for unraveling points of law in criminal matters, the new resultant penalty does not apply according to article 39, paragraph (1), letter b) of the Criminal Code, but by maintaining overlapping the arithmetically average applied by the foreign court as a judged authority. (I.C.C.J., Criminal Division, 2014, www.scj.ro).

Please note that by Decision No. 13 given by the Panel for unraveling some matters of law in criminal matters of the High Court of Cassation and Justice, on 5th June 2014, the Supreme Court ruled that *the provisions of article 6, paragraph (1) of the Criminal Code concerning the more favorable law after the final judgment of the case are applicable on the sentence pronounced against Romanian citizens, if it was recognized in the procedure regulated by Law no. 302/2004 on international judicial cooperation in criminal matters (I.C.C.J., criminal section, 2014 www.scj.ro).*

However, the High Court of Cassation and Justice, for unraveling points of law in criminal matters, by the Decision no. 1/2014 of 14 April 2014 decided that *in the application of more favorable criminal law, after the final judgment of the case before the entry into force of the new Criminal Code, offenses for the hypothesis of offenses contest, in a first stage, it is verified the incidence of the provisions of Article 6 of the Criminal Code regarding the individual penalties. In the second stage, it will be verified if the applied resulting penalty under the old law exceeds the maximum that can be reached under the new law, according to article 39 of the Criminal Code. If the resultant penalty imposed under the old law exceeds the maximum that can be reached on the basis of article 39 of the Criminal Code, the resulting punishment will be reduced to that maximum (I.C.C.J., criminal section, 2014 www.scj.ro).*

In connection with the application of more favorable criminal law in case of transfer of the sentenced person in order to enforce the sentence of deprivation of in Romania, it raises the question of applying the more favorable criminal law, respectively, while acknowledging the foreign criminal judgment and re-individualization of the sentence applied or subsequently by the enforcement court?

In this case, we believe that the application of more favorable criminal law is for the national court to decide, before which it is the recognition of the foreign judgment.

From the interpretation of the provisions of article 135, paragraph (9) of the special law, it results that the Romanian court has no jurisdiction to examine and evaluate the evidence based on which the conviction was imposed by the foreign court, but only the final decision of that court.

On the occasion of adjusting the sentence in this case, the Romanian court will not have jurisdiction to change a custodial penalty into a financial penalty and it will not worsen the situation of the convicted person, but it will not be bound by the minimum punishment provided by the Romanian law for the committed offense.

Also, the Romanian court has jurisdiction to deduct the full sentence imposed by the foreign court from the executed period by the person convicted in the issuing State.

These provisions do not apply in the case where the treaty applicable in the relation to the issuing excludes the conversion of the conviction or if the issuing State has expressly stated that it will provide transfer only if the Romanian state will execute either the sentence imposed by the foreign court or the punishment adapted by the court Romanian.

Each time, the conversion of the conviction will not only target the main sentence imposed by the foreign court, but also the supplementary sentences.

In this regard, the judicial practice has decided that *the court seized for the recognition of a foreign criminal judgment of conviction and transfer of the convicted person to perform custodial sentence in a penitentiary in Romania shall decide on imprisonment also on the penalties of deprivation of liberty imposed by foreign the criminal judgment of conviction. In the case where the types of imposed supplemented punishments are inconsistent with the Romanian law, the court shall adapt, pursuant to the provisions of article 159, paragraph (1) of Law no, 302/2004 – the provisions regarding the conversion of conviction - these penalties apply to the penalties provided by the Romanian law to the acts upon which the sentence was passed. Therefore, in this case, the court decides the recognition of foreign criminal judgment of conviction on both the deprivation of liberty punishment and on additional punishments, according to article 159, paragraph (1) of Law no. 302/2004, republished, decides the conversion of additional punishments recognized in the additional punishments corresponding to those provided in article 64, paragraph (1) of the Criminal Code.*

Court's failure to rule the additional punishments imposed by foreign criminal judgment of conviction is not an obvious clerical error within the meaning of article 195 of the Criminal Procedure Code, the procedure ruled in these provisions are not incident, as it involves a process of deliberation on the compatibility of additional punishments imposed by the foreign criminal judgment of conviction with the Romanian legislation. (Stanciu, Popa, Rotaru in Radu, 2014, p. 205)

Even with the change of the Romanian law the number of articles listed in the decision no longer correspond, in its substance it is current.

After the ruling, the sentence will be drafted within 5 days and it will be sent to the specialized directorate of the Ministry of Justice for transmission to the convicted person. This sentence can be appealed within 10 days, by a prosecutor, ex officio or at the request of the Minister of Justice and by the convicted person. For the prosecutor term starts from the ruling, and for the convicted person it starts from the date of informing on the decision. The file will be submitted to the appellate court within three days, and the appeal shall be heard within 10 days, in closed session, without summoning the convicted person, and the presence of the prosecutor is mandatory.

We consider that these provisions which exclude the presence of the convicted person in the court of appeal are unconstitutional, which is why we consider that the person should be summoned, so that in the conditions where the person had not hired a lawyer, it should be assured also legal support.

The enforcement of the sentence shall be achieved according to the Romanian Code of Criminal Procedure.

The final decision and a copy of the warrant for the execution of the punishment of life imprisonment or imprisonment it shall be communicated to the specialized directorate from the Ministry of Justice.

In the case where after the releasing the warrant for executing the penalty of life imprisonment or imprisonment, the issuing State informs that the transfer may not take place, the court seized with such provision shall order the cancellation of the warrant. In such a situation, the recognition sentence of the foreign criminal decision will produce legal effects only in terms of recidivism of the convicted person, unless the transfer is not possible due to granting amnesty or as a result of the fact that it was later established that the person is not guilty of the offense, or following the death of that person in the issuing State.

If after issuing the warrant for executing the penalty the issuing state makes a new decision of execution of another punishment, the depositions of the Code of Criminal Procedure referring to execution, which are not contrary to the provisions of the special law is applied properly. In this circumstance the enforcement court is the court of appeal that passed the sentence.

In the case where, after transferring the convicted person, the issuing state a new court decision in order to be executed another punishment, the procedure for recognition and enforcement differs (this will be examined in the next subsection).

In the case where after issuing the warrant, the issuing State communicates that the sentenced person's transfer cannot take place as the convicted person has revoked the consent for transfer, all expenses being sustained by the person based on the deposition adopted by the Ministry of Justice or the General Inspectorate of the Romanian Police.

In the judicial practice it was decided that “In the case where by a foreign criminal judgment it was ordered both conviction to imprisonment and sentencing to fine penalty, the court may, on the recognition of judgment of foreign criminal conviction in its entirety and transferring the sentenced person to continue the execution of the measure of deprivation of liberty in a prison in Romania, decide both on the deprivation of liberty punishment and on foreign criminal fine imposed by the conviction judgment, pursuant to article 122 of Law no. 304/2004”. (Î.C.C.J., Criminal Section, 2010 www.scj.ro).

Even if the provisions invoked by the Supreme Court are not in the article to which the reference is made, the decision is up to date.

We should specify, however, that the Romanian court must verify that the conditions laid down by Romanian law for each of punishments are fulfilled, not being obliged to recognize also the fine penalty, in the case where it has been applied for another offense.

In the case where the foreign court pronounced for the same offense imprisonment and fine, the recognition will be achieved in full in the sense that there will be recognized both penalties. (Boroi, Rusu & Rusu, 2016)

We note that although the title of this subsection referred to the special law is *transfer of sentenced persons held in third countries, to serve the sentence or the measure involving deprivation of liberty in a penitentiary or medical facility in Romania*, specifically those provisions concerning the *procedure of recognition and enforcement a judgment passed in third countries*, and some concrete provisions also concerning the transfer of the concerned person.

Starting from the wording used by the legislator in the very title mentioned above, we find that, making claims referring only on punishment or custodial measures in order to enforce them in a penitentiary or medical facility in Romania, the legislator entirely ruled out the recognition and enforcement, including the transfer in Romania of a minor against whom it was decided an educational measure involving deprivation of liberty.

We believe it is necessary to complete the legislative act framework with express provisions in order to include procedures for the recognition, enforcement and implicitly transferring to Romania the minors in detention on the territory of another State in order to serve the sanction of criminal law in Romania. This is absolutely necessary as regards the minors who have Romanian citizenship.

5. Conclusion

Consistent with its policy in the domain of international judicial cooperation in criminal matters and taking into account the obligations undertaken with the ratification of international legal instruments, Romania has regulated separately in its national law the institution of recognition and enforcement of judgments by which there were set punishments or measures involving deprivation of liberty in order to enforce those penalties in a penitentiary or medical unit in Romania.

The conducted examination revealed the procedure before the court in Romania and the conditions that must be met in order to recognize and enforce such a decision.

We note that this time, compared to other forms of judicial cooperation in criminal matters, the recognition aims at transferring the convicted person for the purpose of executing the penalty or the measure involving deprivation of liberty in a penitentiary or in a medical facility in Romania.

Following this analysis there were also highlighted some inadequacies of the law which generally aim at breaching the rights of defense of the convicted person, both in the judgment phase at first instance and on appeal.

The provisions of the law are not considering transferring minors against whom a third State has imposed a criminal sanction of deprivation of liberty.

Despite these shortcomings of the law, which in time will surely be improved, we consider that the legislative act is in its essence an important step made by Romania, in the domain of enhancing the concrete activities on judicial cooperation in criminal matters with other world states other than the states of the EU.

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