

# THE EXECUTION OF THE EUROPEAN ARREST WARRANT

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**ABSTRACT:** *The need for elimination between Member States of the European Union of the formal extradition procedure for all people trying to evade justice after having been definitive convicted and the accelerated extradition procedures concerning persons suspected of having committed a crime in any of the Member States of the European Union, has imposed the adoption by the European Union Council of the Framework Decision no. 2002/584 / JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. The paper examines the general aspects of the European arrest warrant, from definition to the content and form. Furthermore it shows the conditions for the execution of a European arrest warrant and the special conditions, the guarantees that the issuing State of the European arrest warrant must give. Mandatory and optional grounds for refusal to execute the European arrest warrant are also presented. In the second part of the paper relevant cases from jurisprudence are presented. One case would be the situation of the Romanian citizen who disagrees with the execution of the sentence in the sentencing State.*

**KEYWORDS:** *European arrest warrant, grounds for refusal, criminal procedure*

**JEL CODE:** *K 42*

## 1. GENERAL ASPECTS OF THE EUROPEAN ARREST WARRANT

An important step in improving the institution of extradition was achieved by adopting the European Convention on Extradition of 13 December 1957 and the two Additional Protocols to the Convention in 1975 and 1978. But in time the institution of extradition has proven deficiencies with negative effect in achieving the objectives of European Union to maintain and develop an area of freedom, security and justice.

The need for elimination between Member States of the European Union of the formal extradition procedure for all people trying to evade justice after having been definitive

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convicted and the accelerated extradition procedures concerning persons suspected of having committed a crime in any of the Member States of the European Union, has imposed the adoption by the European Union Council of the Framework Decision no. 2002/584 / JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

European Union and later the creation of the Schengen area opened new frontiers of action for transnational crime which acquired within a short time a great scale. This led to the establishment of new ways of surrendering offenders between Member States based on uniform rules and a simplified procedure to replace the classical extradition procedure.

The European arrest warrant has a scope identical to that of extradition, institution whom substitute and occupies a central place in the mechanisms of international judicial cooperation in criminal matters through which a person is being transferred from one Member State to another, through mutual recognition of decisions in court and which must be implemented across the European Union. (Rusu, 2009, pp. 19-20)

The institution of the European arrest warrant has replaced the procedure of extradition between Member States of the European Union, but the rules on extradition are applied further in relations between a Member State and countries that are not part of the European Union or between two countries that are not EU members only Council of Europe members.

### **1.1 The definition, the content and the form of the European arrest warrant**

The Council Framework Decision no. 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States was transposed into the Romanian legislation by Law no. 302/2004 on international judicial cooperation in criminal matters, in Title III, as amended by Law no. 224/2006 and Law no. 222/2008, republished later in the Official Gazette. no. 377 of 31 May 2011.

According to the definition from Article 1, The Council Framework Decision no. 2002/584/JHA of 13 June 2002, "*The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.*" (no.2002/584/JHA, 2002)

Thus, the national executing judicial authorities, the courts, undertake to recognize the request of the judicial authority of another Member State (the issuing judicial authority) on handing over persons after formal checks on the person as well as on the conditions for issuing the mandate. The European arrest warrant should not be confused with the warrant of law. The first is a judicial decision that is based always on an arrest warrant or execution of imprisonment or a custodial security measure issued under the law of the issuing State.

Issuing a European arrest warrant is achieved when an arrest warrant or a prison sentence or a measure involving deprivation of liberty can not be brought to fruition in the

issuing State, determined by evading the person subject of the mandate and who is on the territory of another Member State. (Daniel Gradinaru, 2013, pp. 3-4)

### **1.2 The Romanian judicial authorities**

In Article 85 of Law no. 302/2004 judicial bodies are designated to carry out activities under this simplified judicial, the courts as authorities for issuing the European arrest warrant, according to the competencies established by law and the courts of appeal as national judicial authorities for the execution of a European arrest warrant. (G. Tudor, 2009, pp. 29-30)

The Romanian authorities competent to receive a European arrest warrant are the Ministry of Justice and the Prosecutor's offices designated to the courts of appeal of the territory of the requested person. If the whereabouts of the requested person are unknown, the European arrest warrant is transmitted to the Prosecutor's Office by the Court of Appeal from Bucharest.

## **2. THE EXECUTION OF THE EUROPEAN ARREST WARRANT**

### **2.1 Conditions for the execution of a European arrest warrant**

In Article 96 Law no. 302/2004 are mentioned distinct categories of offenses for which a European arrest warrant can be enforced by the Romanian judicial authorities, as they were taken from the decision and are exempt from the rule of dual criminality regardless of the name they have in the issuing state law.

The list of 32 offenses listed in subsection (1) of Article 96 is not restrictive; The European Union Council, after consulting the European Parliament can add other crimes or delete existing ones.

### **2.2 Special conditions, the guarantees that the issuing State of the European arrest warrant must give**

In order to make the procedure for enforcing the European arrest warrant and surrender the requested person, the issuing judicial authority must provide certain procedural guarantees to the national judicial authority regarding the retrial of the convicted person when missing, the revision of the sentence to life imprisonment or measure involving permanent deprivation of liberty and transferring after conviction of the nationals or residents to the executing Member State, conditions in relation to which the national court - the court of appeal competence - can appreciate over the execution of the mandate. (Daniel Gradinaru, 2013, pp. 8-9)

Decision no. 1118 of 26 March 2008 of the ICCJ criminal section, decision of this case where the Supreme Court held that the guarantee offered by the issuing State of a retrial regarding the convicted person does not contravene the principle of "*ne bis in idem*", according to which a person may not be tried twice for the same act. (Jurisprudentei, 2008, pp. 924-926)

### **2.3 Grounds for refusal to execute the European arrest warrant**

The Council Framework Decision no. 2002/584/JHA of 13 June 2002 as transposed into Law no. 302/2004 provides two categories of some mandatory and some optional situations when the executing judicial authority may refuse to execute a European arrest warrant.

#### **2.3.1 Mandatory grounds for refusal to execute the European arrest warrant**

According to Article 98, alin (1), Law no. 302/2004 the following situations are considered obligatory grounds for refusal to execute the European arrest warrant :

- When the requested person has been finally judged for the same offenses by a Member State other than the issuing State provided that, in case of conviction, the sentence has been served or being served or to be prescribed, the penalty was pardoned or the offense was amnestied or another reason that prevents execution under the law of the sentencing State.
- When the offense that the European arrest warrant is based on, is covered by amnesty in Romania, if the Romanian authorities have jurisdiction to prosecute that offense, according to Romanian law.
- When the person who is subject to a European arrest warrant is not criminally liable because of his age for the facts that the arrest warrant is based. (Daniel Gradinaru, 2013, pp. 10-11)

#### **2.3.2 Optional grounds for refusal to execute the European arrest warrant**

There are some optional grounds for refusing enforcement of a European arrest warrant by the competent Romanian judicial authority, as follows :

- When surrendering is conditional upon the fact that the offense motivating the issue of the European arrest warrant is also criminal offense under Romanian law, except for the regime of taxes, customs and exchange, when execution of a European can not be refused because the Romanian law does not impose the same regulations.
- When the person subject to a European arrest warrant is undergoing criminal proceedings in Romania for the same act that motivated the European arrest warrant.
- When the European arrest warrant has been issued for the purpose of executing a sentence with imprisonment or deprivation of liberty safeguards, if the requested person is a Romanian citizen and he refuses to serve the sentence in the issuing Member State.
- When the person who is the subject of a European arrest warrant had a final judgment for the same facts in a third state which is not a member of the European Union.
- When the European arrest warrant relates to offenses which, according to Romanian law, are committed on the territory of Romania.

- When the European arrest warrant includes offenses that have been committed outside the territory of the issuing State and the Romanian law does not allow prosecution of these acts when they were committed outside the territory of Romania.
- When responsibility for the offense, under its laws, which are based on the European arrest warrant or penalty applied, were prescribed if the facts were under the competence of the Romanian authorities.
- When a Romanian judicial authority has decided either not to prosecute or to terminate the criminal investigation

### 3. JURISPRUDENCE

#### 3.1 The case of a European arrest warrant and the necessary balance between mutual recognition and fundamental rights in the EU

The execution of a European apprehend warrant must be deferred if there is an authentic risk of inhuman or degrading treatment because of the conditions of detention of the person concerned in the Member State where the warrant was issued. (Union, 2016)

If the esse of that risk cannot be discounted within a plausible period, the ascendancy responsible for the execution of the warrant must decide whether the surrender procedure should be brought to a cessation.

In Case C-404/15, a Hungarian investigating magistrate issued two European apprehend warrants with reverence to Mr Pál Aranyosi, a Hungarian national, so that a malefactor prosecution could be brought for two offences of coerced ingress and larceny, allegedly committed by Mr Aranyosi in Hungary.

In Case C-659/15 PPU, a Romanian court issued a European apprehend warrant with veneration to Mr Robert Căldăraru to secure the enforcement in Romania of a prison sentence of one year and eight months imposed for driving without a driving licence.

The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen, Germany), which has to decide whether those warrants should be executed, found that the detention conditions to which Mr Aranyosi and Mr Căldăraru might be subject in the Hungarian and Romanian prisons respectively were contrary to fundamental rights.

The German court seeks to ascertain from the Court of Equity whether, in such circumstances, the execution of European apprehend warrants can or must be relucted or made subject to the condition that information adequate to establish that detention conditions are compatible with fundamental rights is obtained from the Member State where a warrant was issued.

If, in the light of the information provided or any other information available to it, the ascendancy responsible for the execution of the warrant finds that there is, for the individual who is the subject of the warrant, an authentic risk of inhuman or degrading treatment, the execution of the warrant must be deferred until there has been obtained supplemental information on the substructure of which that risk can be discounted. If the

subsistence of that risk cannot be discounted within a plausible period, that ascendancy must decide whether the surrender procedure should be brought to a cessation. (Union, 2016)

### **3.2 The situation of the Romanian citizen who disagrees with the execution of the sentence in the sentencing State.**

The incidentally recognition of the sentence. Rejection of the appeal.

Mandatory verification by the judicial authorities of the requested State of the compliance, during the adjudicate procedure by the judicial authorities of the issuing State of procedural rights and guarantees recognized by the ECHR jurisprudence.

Associated fields: human rights, criminal procedure.

Judicial practice: Folder no.378/36/2011 Constanta Court of Appeal Criminal Division and for juvenile and family cases.

Folder no 7947/2/2009 - Bucharest Court of Appeal – Second Criminal Division and for juvenile and family cases.

On 01.06.2010 was issued the European Arrest Warrant by the General Prosecutor of Italy near the Detached Section of Sassari Court of Appeal based on the execution order for detention no.32 / 2010 SIEPA of 19.04.2010 on the LPG requested person.

The European arrest warrant has been issued for execution of the sentence imposed by the decision no 316 / 25.07.2008 pronounced by the judge for preliminary hearings in the Sassari Court in case nr.3711 / 2006, partially modified by sentence no. 180 of 03.04. 2009 issued by the Cagliari Court of Appeal - Sassari Detached Department irrevocable on 09.04.2010 by rejecting the appeal in cassation by the Supreme Court by the Decision of 09.04.2010.

By that judgment LPG requested person was sentenced to prison for 7 years and 4 months and a fine of 26,000 Euros for an offense under paragraph 2 of Article 81 Penal Code Article 110 Penal Code Article 73 paragraph .1 and 1 bis of Presidential Decree no.309 / 1990, respectively illicit trafficking of narcotics, criminal act punishable by the Romanian law by Article 2 paragraph 1 and 2 of Law no.143 / 2000.

Being heard in accordance with the provisions of Article 90 paragraph 2 of Law no.302 / 2004, the LPG requested person said that he refuses to surrender requesting that the execution of the sentence that was imposed by the Italian judicial authorities to be executed in Romania, relying on Article 88, paragraph 2, letter c ind.1 of Law no.302 / 2004.

According to this legal provision, the Romanian judicial authority for execution may refuse to execute a European arrest warrant when it was issued serving a prison sentence or a measure involving deprivation of liberty, if the requested person is a Romanian citizen and he declared that he refuses to execute the sentence or the safety measure in the issuing member state.

Although in the Law no.302 / 2004 refusal to surrender covered by the provisions of Article 88, paragraph 2, letter c ind.1 is considered as being an optional reason for

refusal, we appreciate, corroborating the provisions of Article 88, paragraph 2, letter c ind.1 and Article 88 of the enactment mentioned that this is practically an inversion of the optional character in a compulsory one.

Thus, if the requested person, Romanian citizen, indicates that he refuses the enforcement of the sentence in the sentencing State, in the application of the provisions of Article 88, paragraph 3, the court is obliged to initiate the procedure of incidentally recognizing the sentence in Romania.

Being retained the LPG requested person is a Romanian citizen, the European arrest warrant has been issued for the execution of the sentence imposed based on the decision no 316 / 25.07.2008 pronounced by the judge for preliminary hearings in the Sassari Court in case nr.3711 / 2006 partially modified by the sentence no. 180 of 03.04.2009 pronounced by the Cagliari Court of Appeal - Detached Department - Sassari irrevocable on 09.04.2010 by rejecting the appeal in cassation by the Supreme Court by the decision of 09.04.2010 and the fact that the person refuses to serve the sentence in the issuing State, the conditions imposed by the legal text are met for the Romanian judicial authority to refuse to execute the European arrest warrant.

Such situations impose the execution of the sentence in Romania to give effectiveness for the imperative that during the sentence, the requested person is entitled to family life, taking into the consideration the fact that convict's family, that he keeps in touch, is in Romania, and he may receive material and moral support during the sentence, the requested person lives in Romania, so a contrary measure would be disproportionate for private and family life.

Moreover, this refusal to surrender is required for the compliance with the convict's right to labor, being important, that, after the execution of the sentence, to ensure for the requested person a real effective and expeditious social reintegration.

By proceeding according to stated legal provisions for observing fundamental human rights, in application of article 94 of Law no.302 / 2004, the court rejected the request for enforcement of the European arrest warrant issued on 01.06.2010 by the General Prosecutor of the Republic of Italy on the Detached Department of Sassari Court of Appeal, based on execution order for detention no.32 / 2010 SIEP of 19.04.2010 and triggered the incidental recognition procedure of the foreign criminal sentencing decision, under Article 119 and Article 116 paragraph 1 of Law no.302 / 2004.

According to Article 116 paragraph 1 of Law no.302 / 2004, the recognition in Romania of a foreign criminal judgment or a foreign judicial act can occur if: Romania has assumed such an obligation by an international treaty to which it is party; It has been observed the right to a fair trial, according to art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, ratified by Romania by Law no. 30/1994; It has not been imposed for a political offense or a military offense that is not common right offense; respects the public policy of the Romanian state; judicial decision or act can produce legal effects in Romania, Romanian

criminal law; it has not been pronounced a conviction against the same person for the same acts in Romania; it has not been pronounced a conviction for the same facts against the same person in a different state, which was recognized in Romania.

For the verification of the conditions imposed by the legal text and to ensure that for the requested person have been observed the procedural rights during the trial before the judicial authorities of the issuing State, were requested, from the mandate issuing judicial authority, relations on the conviction decision on the basis of which has been issued the European arrest warrant, the offenses for conviction, if the requested person was present at the trial or if there were disclosed subpoenas for him. if he had legal aid and whether he had access to read the documents in native language.

In the reviewed cause there were found to be fulfilled those conditions, that there were observed the procedural rights of convicted person during court proceedings and appeal instance in the sentence state and hence the fairness of the trial, for which, it was incidental recognized the decision no 316 / 25.07.2008 pronounced by the judge for preliminary hearings in the Sassari Court in case no.3711 / 2006, partially modified by sentence no.180 of 03.04.2009 pronounced by the Cagliari Court of Appeal - Detached Department - Sassari irrevocable on 09.04.2010 by rejecting the appeal in cassation by the Supreme Court by the sentence of 09.04.2010, on LPG requested person by which he was sentenced to prison for 7 years and 4 months and a fine of 26,000 Euros for an offense under Article 81 paragraph 2 of the Penal Code Article 110 Penal Code Article 73, paragraph 1 and 1 bis of Presidential Decree no.309 / 1990, respectively illicit trafficking of narcotics, criminal act punishable by the Romanian law under Article 2 paragraph 1 and 2 of Law no.143 / 2000, given that the trafficked substance in Italy was cocaine.

There is the possibility that, in the recognition procedure, to ascertain that the conditions stipulated by the special law on recognition of the judgment of conviction in Romania are not fulfilled. Thus, the criminal sentence no. 225 / F of 11.09.2009 issued by the Court of Appeal - Section II criminal and juvenile cases and family, in case no. 7947/2/2009, it was considered that it was not observed the right to a fair trial within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Romania by Law no.30 / 1994, since the requested person had no knowledge about the process started against him and during the process, the requested person has not received representation or the services of any counsel and dismissed both applications for recognition in Romania of the sentence and the request of the execution of the European arrest mandate.

## CONCLUSION

We believe that, in the procedure of execution of a European arrest warrant, it is essential to check that the convicted person had a fair trial and this right was observed by

the judicial authorities in front of which was conducted the procedure, imposing legislative changes that would oblige the requesting states that, with the transmission of the European arrest warrant, to communicate the information not only allowing a formal analysis and but also about the content of the imperative for observance of fair trial standard.

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