

EUROPEAN ARREST WARRANT - INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

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ABSTRACT: *The resolution of cases within a reasonable period of time is desirable both for the internal jurisdictional procedures, carried out at the national level, and for the international judicial cooperation procedures.*

However, it is noted that both over the course of court proceedings in the member states of the European Union, and in terms of the implementation of international judicial cooperation procedures, there are unreasonably long deadlines recorded, thus these long periods of time may render the act of justice ineffective, depriving it of its finality.

In the present study, we have lined up a situation in which the Greek justice requested the implementation of a court decision 22 years after the act was committed and 19 years after the decision for conviction remained final.

The devastating consequences of this unreasonable term are materialized by the impossibility of enforcing a court decision, finding that the statute of limitations has expired. To all this must be added the fact that the judgment of the Greek court concerned a prison sentence imposed on a minor, and the recognition of the judgment by the Romanian courts involved its adaptation considering that according to the Romanian criminal law minors cannot be punished with imprisonment, but only educational measures.

KEYWORDS: *international judicial cooperation in criminal matters; recognition of the criminal judgment pronounced in another EU state; execution of the European arrest warrant; prescription.*

JEL Code: *K14, K33*

Following the Treaties of Maastricht (1992) and Amsterdam (1997), several states within the European Union had to amend their constitutional provisions in view of the introduction of the European arrest warrant, which also happened in France on March 25, 2003. In Romania, this was introduced in national legal provisions by Law no. 302/2004 on international judicial cooperation in criminal matters.

With regard to the perspective of a European judicial and legal space, within the European Union there has been a legislative rapprochement, especially in the matter of

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asylum and migration, as well as through the cooperation of the police and justice services within Europol and Eurojust, but also through the formation of the European Public Prosecutor's Office. (David, Ruzié; Gérald, Teboul, p.38, 2023)

After the attacks in New York and Washington (September 2001), the European Union decided, in June 2002, to implement a European arrest warrant that replaced the extradition procedure. It is a faster and less random procedure, being entirely jurisdictional, without the intervention of political power.

For this, a single European area of justice and security was created, in which the rights of citizens were strengthened by the possibility of benefiting from said rights throughout the territory of the European Union and by simplifying the procedures (Ximena Moldovan, Lucian Chiriac, 2017), as well as improving the methods of repression of cross-border crime, terrorism, cybernetic attacks and various forms of trafficking - of human beings, weapons, drugs, etc. (David, Ruzié; Gérald, Teboul, p.114, 2023)

After the ratification of the Treaty of Lisbon, the urgent preliminary ruling procedure provided for in Title V of Part 3 of the FEU Treaty (Treaty on the Functioning of the European Union) was implemented, which applies when a preliminary question is invoked in a case pending before a national court regarding a detained person. Thus, art. 267, para. 4, of the EU Treaty as introduced by the Treaty of Lisbon, provides that the Court rules in the shortest terms, and the procedure was used for the first time in case D-492/22 PPU, of 8.12.2022. (Leclerc, 2023)

On 29.12.2020, the Prosecutor's Office of the Constanța Court of Appeal submitted the documents for the execution of a warning regarding the European arrest warrant issued on 11.05.2018 by the prosecutor from the Prosecutor's Office attached to the Court of Appeal Thessaloniki - Greece, regarding the execution of the 6-year prison sentence imposed by a criminal sentence handed down in 2016. It was noted that the remaining sentence to be served is 5 years, 11 months and 29 days in prison.

The criminal sentence handed down by the court in Greece found the defendant guilty of the crime of grand larceny with aggravating circumstances, provided for and punished by art. 26 paragraph 1a, art. 27 paragraph 1, art. 45, art. 372 paragraph 1 and art. 374 point d of the Criminal Code of Greece.

This offense is also criminalized by the Romanian criminal law, namely the crime of grand larceny provided for and punished by art. 229 para. 1 lit. d and para. 2 lit. b of the Criminal Code, with application. Art. 5 para. 1 of the Criminal Code, the punishment provided by law being imprisonment from 2 to 7 years.

In this sense, the Center for International Police Cooperation - SIRENE Bureau, through the address dated 17.12.2020, requested the Prosecutor's Office attached to the Constanța Court of Appeal to take measures to search for, identify and catch the person in question, so that they be brought in before the Constanța Court of Appeal in order to enforce the notification of the judicial authorities in Greece (sent on 15.12.2020), regarding the European arrest warrant shown above.

The dialogue between national jurisdictions and the Court of Justice of the European Union in the field of judicial cooperation in criminal matters is significant in the case of the European arrest warrant. As a first manifestation and a primary element of the principle of mutual recognition, the European arrest warrant constitutes an important institution of criminal judicial cooperation and at the same time a good ground for experimentation, a veritable representative laboratory of the achievements, challenges and difficulties

encountered by the European Criminal Area. Thus, the examination and evaluation of the dialogue between the national jurisdictions and the Court of Justice regarding the European arrest warrant, constitutes an instructive representation for the entire criminal sector.¹

The requested person was heard in the presence of the chosen defender, on which occasion he did not express his consent to be handed over to the judicial authorities in Greece. Detention was ordered for a duration of 24 hours.

The court rejected the proposal to take the measure of provisional arrest against the requested person, formulated by the Prosecutor's Office attached to the Constanța Court of Appeal.

Based on art. 102 para. 5 lit. b of Law 302/2004, republished in ref. to art. 214 of the Criminal Procedure Code, it was ordered to take the measure of judicial control against the requested person, for a duration of 30 days, ordering the immediate release of the requested person.

At the same time, it was ordered to send an address to the issuing authority, namely the Prosecutor's Office attached to the Court of Appeal of Thessaloniki - Greece, in order to forward the criminal judgment pronounced by the Greek state, from which the date of its definitive stay, the period of the sentence established by the court can be determined, as well as the information of whether the requested person was present at the trial of this case.

The legalized copy of the criminal sentence of the Thessaloniki Court of Appeal, translated into Romanian, final on 05.01.2017, was submitted to the file, stating that the requested person was detained for one day, from 08.05.1998 until on 09.05.1998 and the European arrest warrant was attached, in 2 copies, in Greek and in Romanian, one copy of which was handed to the requested person.

Also, the issuing authority was requested to communicate whether the requested person was legally summoned and whether he had appointed an ex officio defender, given his status as a minor at the time of the criminal act.

From the response sent by the issuing authority, it appears that the requested person was summoned to the indicated address and did not wish to use the services of a lawyer.

Thus, by the criminal sentence of the Thessaloniki Court of Appeal, final on 05.01.2017, *it was decided to sentence the requested person to 6 years in prison*, for committing the crime of grand larceny provided for by art. Art. 26 par. 1a, art. 27 par. 1, art. 45, art. 372 par. 1 and art. 374 point d' of the Criminal Code of Greece, a deed that has a counterpart, in Romanian legislation, in the provisions of art. 228 - 229 para. 1 lit. d and para. 2 lit. b of the Criminal Code with application. Art. 5 Criminal Code and art. 113 Romanian Criminal Code.

As to the facts of the situation, it is noted that, on 08.05.1998, together with another participant, an Albanian citizen, based on a prior agreement, they broke into the building - apartment belonging to the injured person, located in Ambelokipi, Thessaloniki - Greece from where they stole 10,000 drachmas and a bottle of brandy.

From the judgment submitted to the file, it appears that the goods were recovered as a result of the Greek police catching the perpetrators in the act.

¹Anne Weyembergh et Vanessa Ricci - *Les interactions dans le secteur de la coopération judiciaire: Le mandat d'arrêt européen*, în Collection de UMR de droit comparé de Paris, Vol. 19, Cour de Justice et Justice Pénale en Europe - *Sous la direction de Geneviève Giudicelli* - Delage et Stefano Manacorda - Coordination: Juliette Tricot, 2010, Ed. Société de Législation Comparée, Paris, p. 203

According to art. 99 para. 2 lit. c from Law no. 302/2004, constitutes grounds for refusal of execution "when the European arrest warrant was issued for the purpose of executing a prison sentence or a custodial security measure, if the requested person is a Romanian citizen or lives in Romania and has a residence continues and is legal on the territory of Romania for a period of at least 5 years and it declares that it refuses to carry out the punishment or security measure in the issuing member state."

Also, according to art. 99 para. 3 of law no. 302/2004, "In the situation where, in the case, the incident is exclusively the case provided for in para. (2) lit. c), prior to the pronouncement of the decision provided for in art. 109, the executing Romanian judicial authority requests the issuing judicial authority to transmit a certified copy of the conviction, as well as any other necessary information, informing the issuing judicial authority of the purpose for which such documents are requested. The recognition of the foreign criminal conviction is done, incidentally, by the court in front of which the procedure for the execution of the European arrest warrant is pending. In the event that the Romanian judicial enforcement authority has recognized the foreign criminal conviction, the mandate for the execution of the sentence is issued on the date of the pronouncement of the judgment provided for in art. 109".

The requested person is a Romanian citizen and declared that he refuses to serve the sentence in the issuing state, agreeing to the execution of the decision in Romania.

The issuing authority was informed of the requested person's request for recognition of the decision issued by the Greek state, indicating the nature and amount of the educational measures provided for by Romanian legislation, in the context that the requested person was a minor at the time of the act.

Pursuant to art. 99 para. 2 lit. c from Law no. 302/2004, the complaint filed by the prosecutor's office regarding the execution of the European arrest warrant was rejected.

According to art. 167 of Law no. 302/2004 republished, "(1) The Romanian court recognizes and enforces the court decision sent by the issuing state, if the conditions stipulated by the law are met.

Through the lens of these legal provisions, it was found that the conviction is final, the deed has a counterpart in the Romanian criminal legislation, respectively in the crime of grand larceny, provided by art. 228 - 229 para. 1 lit. d and para. 2 lit. b of the Criminal Code with application. Art. 5 Criminal Code and art. 113 Criminal Code et seq.², and the requested person is a Romanian citizen and agreed to execute the judgment in Romania.

According to art. 166 para. 6 of Law 302/2004 "The court examines the foreign court decision, checks the files and, based on the findings, pronounces one of the following solutions:

a) orders, by sentence, the execution in Romania of the punishment applied by the court of the issuing state;

b) if the nature or duration of the punishment applied by the foreign court does not correspond to the nature or duration of the punishment provided by the Romanian criminal law for similar crimes, adapt, by sentence, the punishment applied by the court of the issuing state, according to para. (8) and (9);

² Criminal Code - Law no. 286/2009 published in the Official Gazette no. 510 of July 24, 2009.

c) orders, by sentence, the rejection of the request for execution in Romania of the court decision sent by the issuing state".

In accordance with art. 166 para. 8 of Law no. 302/2004 "(8) In the case provided for in para. (6) lit. b), the court adapts the penalty applied by the judgment sent by the issuing state, when:

a) its nature does not correspond, in terms of name or regime, to the penalties regulated by the Romanian criminal law;

b) its duration exceeds, as the case may be, the special maximum limit of the punishment provided for by the Romanian criminal law for the same crime or the general maximum limit of the prison sentence provided for by the Romanian criminal law or when the duration of the resulting punishment applied in the case of a contest of crimes exceeds the total of the punishments established for concurrent crimes or the general maximum limit of the prison sentence allowed by the Romanian criminal law. The adaptation by the court of the punishment applied by the court of the issuing state consists in reducing the punishment up to the maximum limit allowed by the Romanian criminal law for similar crimes.

(9) The penalty established by the Romanian court according to para. (6) must correspond, as far as possible, from the point of view of nature or duration, to that applied by the issuing state and will not aggravate the situation of the convicted person. The penalty applied in the issuing state cannot be converted into a pecuniary penalty"

Therefore, in order for a judgment pronounced by a member state of the European Union to be recognized, there must not be any mandatory reason for refusal of recognition, provided by art. 163 of law no. 302/2004.

Under this aspect, it was found that by the criminal sentence pronounced by the Court of Appeal of Thessaloniki - Greece, it was decided to sentence the requested person to 6 years in prison for committing the crime of grand larceny, which has a counterpart in Romanian legislation in the provisions of art. 228 - 229 para. 1 lit. d and para. 2 lit. b of the Criminal Code with application. Art. 5 Criminal Code and art. 113 Criminal Code et seq.

The requested person was born on May 29, 1980, and the act for which he was definitively convicted was committed on May 8, 1998, when the requested person was 17 years old, being a minor on the date of the act.

Regarding the nature of the punishment applied to the requested person, a minor at the time of the act, according to art. 114 of the Criminal Code, a non-custodial educational measure is taken against the minor who, at the time of the crime, was between 14 and 18 years old, and according to para. 2 lit. b, in relation to the minor provided for in para. 1 a custodial educational measure can be taken when the punishment provided by law for the crime committed is imprisonment for 7 years or more times life imprisonment.

Therefore, it is found that there is an incompatibility regarding the nature of the punishment applied by the Greek state and the Romanian legislation in the event that the custodial sentence applied by the conviction does not exactly correspond, in terms of the name and regime, to the custodial sanctions regulated in the Romanian criminal law.

According to art. 115 para. 2 of the Romanian Criminal Code, educational custodial measures are: admission to an educational center and admission to a detention center, and according to para. 2 the choice of the educational measure to be taken against the minor is

made, under the conditions of art. 114, according to the criteria provided by art. 74 Criminal Code.

Through the prism of individualization criteria, without prejudice to the res judicial authority of the decision pronounced by the Greek state, based on the principle of reciprocity, but also in accordance with the Romanian legislation, which provides that only educational measures can be taken against minors, in relation from the date of committing the act, May 8, 1998, the concrete way of committing the act of grand larceny, by breaking and entering, but also by violating the residence of the injured person, the modest value of the damage caused (10,000 Greek drachmas was equivalent, on May 8, 1998, to the amount of 27.37 lei, but also the value of the stolen cognac bottle), as well as the personal circumstances of the requested person, at the time of the request he was 40 years old, married, socially integrated, with 2 minor children to support, the adaptation was required of the punishment, in the procedure of recognition of the decision, with the educational measure of internment in an educational center for a period of 3 years, as provided by the provisions of art. 124 para. 1 and 2 Criminal Code.

Consequently, in light of the provisions of art. 166 para. 6 lit. b and of art. 166 para. 8 lit. a and para. 9 of Law no. 302/2004 republished, but also of art. 115 Criminal Code and art. 114 of the Criminal Code, it was imposed to adapt the 6-year prison sentence initially applied, in the procedure of recognition of the decision, with the educational custodial measure of internment in an educational center, for a period of 3 years.

The provisions of art. 166 para. 9 of Law no. 302/2004 republished, according to which "the penalty established by the Romanian court according to para. (6) must correspond, as far as possible, from the point of view of nature or duration, to that applied by the issuing state and will not aggravate the situation of the convicted person". However, the situation is different in the case of punishments compared to educational measures, as criminal sanctions that can be applied to minors who commit crimes, the Romanian legislator foreseeing a wide range of non-deprivative and custodial educational measures precisely in order to be able to adapt the sanction applied to the degree of concrete social danger of the committed act, but also of the minor's personality, the purpose of these measures being his social reintegration, by capitalizing on his skills.

According to art. 132 para. 2 Criminal Code "Educational custodial measures are prescribed in a term equal to the duration of the educational measure taken, but not less than 2 years", and according to para. 3 "prescription terms for the execution of educational measures are interrupted and suspended, under the conditions provided by the law for adults".

The criminal sentence pronounced by the Court of Appeal of Thessaloniki - Greece, remained final on 05.01.2017, and following its adaptation, as a result of its recognition, it was replaced by the educational measure of internment in an educational center for a duration of 3 years, finding that the statute of limitations for enforcement has expired on 05.01.2020. It should be noted that the notification was sent to the judicial authorities in Greece on 15.12.2020, and was received by the Romanian authorities on 17.12.2020.

The incidence of the reason for refusing the recognition of the criminal judgment pronounced by the Greek state was found, according to art. 163 para. 1 lit. f from Law no. 302/2004, republished, respectively when, according to the Romanian criminal law, the prescription of the execution of the custodial educational measure of internment in an educational center, for its maximum duration of 3 years, intervened. And under this aspect,

it is found that it was not possible to proceed first to the recognition of the judgment of conviction pronounced by the issuing authority, and then to the determination as prescribed of the execution of the educational measure of internment in an educational center, since it is mandatory to comply with the conditions prev. of art. 167 and art. 163 of Law no. 302/2004, in the procedure for the recognition of judgments issued by the member states of the European Union, precisely for the purpose of guaranteeing the execution of punishments, custodial educational measures or security measures, and then, for the purpose of producing the other legal consequences that derive from the recognition of the work authority judged of foreign judgments, respectively the eventual incidence, in the future, of recidivism, intermediate plurality, concurrence of crimes.

Consequently, based on art. 99 para. 3 of Law no. 302/2004, with reference to art. 166 para. 6 lit. c from Law no. 302/2004, art. 166 para. 8 lit. a from Law no. 302/2004, art. 163 para. 1 lit. f from Law no. 302/2004, art. 124 Criminal Code and art. 132 para. 2 Criminal Code, the application regarding the recognition and execution of the Criminal Sentence pronounced by the Court of Appeal of Thessaloniki - Greece was rejected.

Also, noting that at the time of the act the requested person was a minor, the punishment was adapted through an educational measure, although Law no. 302/2004 does not provide for the application of an educational measure, but only speaks of punishments and custodial security measures. Overcoming this aspect, the punishment was adapted to a similar one, or as close as possible to the measure of imprisonment, that is, admission to a detention center, following that the duration of this measure was also adapted to the special maximum.

The paradoxical situation was thus reached, that after a period of 22 years from the commission of the act, and 19 years from the finality of the judgment pronounced by the Greek judge, an European arrest warrant was issued for a 40-year-old person, who committed a crime when he was 17 years old, with a damage of 27 lei and a bottle of brandy, damage fully recovered, for which a sentence of 6 years imprisonment was imposed, without taking into account that the perpetrator was a minor, and without providing him with an ex officio defense attorney, although legal assistance was mandatory.

The courts in Romania adapted the sanction applied, and the punishment was transformed into an educational measure, as the prescription for its execution was established.

It is an obvious case of an unfair trial for all these violations of the criminal procedural provisions, as well as for the unreasonable term of judgment and execution of the pronounced judgment.

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