

# DETAILED RULES FOR THE IMPLEMENTATION OF INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

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## Abstract

*This paper analyzes, on the one hand, the existing casuistry in relation to the applicability and functionality of the criminal procedural law in the everyday practice in international judicial cooperation, casuistry which concerns the territoriality principle as a fundamental principle, as well as the implications of this principle with respect to the crime phenomenon which requires the states' vigilance to fight against crime, this being possible under lawful conditions only by establishing certain jurisdiction rules (quod competit cuique) imperious both at internal and European level, and the exceptions from the territoriality principle of the criminal procedural law, and, on the other hand, theoretical and practical aspects related to the application of Law no. 302/2004, as subsequently amended, and the methods of international judicial cooperation in criminal matters. The examining of this issue is required given the importance of the notion analyzed in the light of the functioning of the criminal proceedings mechanism, and given the progress of the Romanian law system, characterized by relevant regulations, which tend to integrate the Romanian legislation into the legislative system of the European Union.*

**Keywords:** European arrest warrant, criminal matters, the territoriality principle, legislation

**JEL Classification:** K33, K40

## 1. Introductory Aspects

The harmonization of the legal systems within the European Union is an issue that has given rise to and further causes strong feelings among the civil law and international law experts.

Meanwhile, international groups of legal advisers of the European Union, led by teachers continue their efforts of identification and promotion of common principles for the European civil law.

Despite the internal and international legislative efforts made during the last few years in order to enable the cooperation and direct communication between the judicial bodies of the European countries, difficulties were encountered in the internal criminal judiciary practice, such as the G.B. case, who was unduly benefited from the asylum granted by the Kingdom of Sweden in the realization (by means of the international judiciary cooperation in the criminal field), which have an equivalent in the criminal procedural laws of other European states.

**Regulation EC no. 1346/2000.** This regulation is part of a much wider framework which also includes **Directive 98/26/CEE** of the European Parliament and of the Council of May 19<sup>th</sup>, 1998, on settlement finality in payment and securities settlement systems.

The purpose of the regulation, was interpreted by the resolution of the European Court of Justice of March 17<sup>th</sup>, 2005. The European Union Council under the Treaty establishing the European Community, in particular art. 61 letter (c) and art. 67 paragraph (1), under the initiative of Germany and Finland, under the approval of the European Parliament and given the Economic and Social Committee, whereas: the

*Art. 1. European Union set up as scope the establishment of a space of freedom, security and justice<sup>2</sup>.*

*Art. 2. The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively and this Regulation needs to be adopted in order to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.*

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<sup>2</sup> Aurel Ciobanu- Dordea, *Legislația comunitară privind cooperarea judiciară în materie civilă și penală*, C.H.Beck Publishing House, Bucharest, 2007, p. 57

Art. 8. *In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Community law measure which is binding and directly applicable in Member States.*

Art. 11. *This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of opening should also be allowed alongside main insolvency proceedings with universal scope.*

Art. 15. *The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State must be established by the national law of the Member State concerned.*

Art. 16. *The court having jurisdiction to open the main insolvency proceedings should be enabled to order provisional and protective measures from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are very important to guarantee the effectiveness of the insolvency proceedings. In that connection this Regulation should afford different possibilities. On the one hand, the court competent for the main insolvency proceedings should be able also to order provisional protective measures covering assets situated in the territory of other Member States. On the other hand, a liquidator temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those States.*

Art. 22. *This Regulation should provide for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member States. Recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise the court's decision.<sup>3</sup>*

## **2. The Conventional Acquis in the Field of Judicial Cooperation**

The purpose of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, adopted under art. 220 of the EEC Treaty, is the simplification of all formalities the judgments passed in other members state are subject to within Member States.

The adoption of consistent legal provisions in the field of jurisdiction and the enforcement of the judgments, ensures a more efficient legal protection of the rights of the persons residing in the European area and a simpler and more coherent civil circuit.

The rules of the Brussels Convention were extended to the states of the Free Trade Zone, by

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<sup>3</sup> Regulation no. 1346/2000 of May 29th, 2000 of the Council on the insolvency procedure.

means of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters.

The purpose of the Lugano Convention, the parallel convention to the Brussels Convention, is the extension of the positive effects of the standardization of the regulations in this field, they are members of the European Union, but the legislative and judicial systems of which enable the placement on the same bases of the acknowledgment and enforcement of the foreign court judgements.

The Brussels and Lugano Conventions include regulations which establish the principles on the establishment of the jurisdiction for the settlement of the disputes with an extraneity element. Therefore, an unitary legislative framework is created, eliminating the possibility of contradictory court judgements passed in different states.

The criteria for the establishment of the jurisdiction of the courts of a Member State consist of the domicile and the citizenship. The conventions broaden the concept of domicile, the court with jurisdiction over the defendant's residence also having jurisdiction to settle a dispute with an extraneity element.

In what concerns the acknowledgment of the foreign court judgements, the Conventions establish the principle of the *de jure* acknowledgment thereof, the grounds for the refusal of the acknowledgment being exhaustively provided. The enforcement of the foreign court judgements is contemplated by the *exequatur* procedure, a procedure characterized by simplicity.<sup>4</sup>

### 3. Extradition – a form of international cooperation based on the sovereignty of the states

Historically, the extradition concept developed continuously, from extradition as a discretionary act of a sovereign, to a procedure that is almost exclusively judicial, as regulated by the **Framework Decision of the European Union Council** on the European arrest warrant and the surrender procedures between Member States.

Extradition is one of the forms of the international judicial cooperation in criminal matters, and can be defined as the procedure whereby a sovereign state (the requested state) agrees to surrender to another state (the requesting state) a person who is on its territory and who is prosecuted or sued for a crime or wanted in order to serve a sentence in the requesting state.

Extradition is as a bilateral act which emerges between two states, the state where the refugee offender is located and which the extradition request is addressed to (the requested state) and the state interested in the punishment of the offender. Given its end, extradition is an international legal assistance act in the criminal field, whereby an offender is transferred from one state to another in order to be held liable.<sup>5</sup>

Extradition is defined in the public international law as a sovereignty act of the state. In one of its decisions, the International Court of Justice provided that an extradition decision implies the normal exercise of the national sovereignty, so that the refusal of the extradition and the granting of the asylum is the natural expression of sovereignty.

According to the Convention on the extradition between Member States, adopted on September 27<sup>th</sup>, 1996, no offense can be considered political. In what concerns the time barring of the criminal liability related to the serving of a sentence, only the provisions of the law of the requesting state shall be applicable. The amnesty granted in Romania does not prevent extradition, unless the offense provided for by the criminal law falls under the competence of the Romanian courts of law.<sup>6</sup>

In Romania art 19. par (4) of the Constitution sets out that the extradition is decided by the

<sup>4</sup> Ioana Huma, *op.cit.*, p. 156.

<sup>5</sup> Cristian Eduard Ștefan, Ligia Teodora Pintilie, *Cooperarea internațională judiciară și polițienească*, Sitech Publishing House, Craiova, 2007, p 42.

<sup>6</sup> Anca-Lelia Lorincz, *Aspecte procesuale privind cooperarea judiciară internațională în materie penală*, Pro Universitar Publishing House, Bucharest, 2008, p 42.

justice, namely by the judicial power, this regulation being the base for Law no. 302/2004 on the international judicial cooperation in criminal matters, as further amended and supplemented, wherefrom the *de lege lata* legal character of of the extradition procedure in the Romanian system results.

The great majority of the multilateral extradition conventions entitle party member States to declare that they do not extradite their citizens, subject to the correlative obligation, emerging from the *aut dedere aut judicare* principle, to take over the criminal prosecution and to initiate judicial proceedings against the extradited person.

A Romanian citizen cannot be extradited, but, notwithstanding these provisions, a Romanian citizen can be extradited from Romania under the international conventions it is party to, on a reciprocal basis, provided that at least one of the following conditions is fulfilled:

- the requesting state, in order to initiate the criminal prosecution and the trying, provides sufficient assurances that, in case of a conviction to imprisonment by a final court judgement, the Romanian citizen will be transferred to Romania to serve the sentence.
- the Romanian citizen domiciles on the territory of the requesting state on the date of the extradition request
- the Romanian citizen also has the citizenship of the requesting state
- the Romanian citizen committed an offense on the territory or against a citizen of an another Member State, if the requesting state is a member of the European Union

A person to whom the right of asylum in Romania was granted cannot not be extradited.

International extradition convention have certain common elements concerning the conditions for granting extradition. These conditions can be grouped in conditions regarding the extraditable person, regarding the criminal prosecution, judgment or the serving of the sentence, conditions on the extradition request.

An alert introduced in the **Schengen Computer System** is equivalent to an international search warrant for extradition purposes.<sup>7</sup>

The conditions on the offense: the gravity of the offense or of the punishment shall be taken into account, then the condition of the double incrimination of the deed, when the extradition is requested, it is provided as offense both by the law of the requesting state, and by the law of the requested state. The offense must not be time-barred, since this can be an impediment to extradition, on the background of the differences between the criminal laws and the serving of a sentence. Extradition treaties lately request for the offence not to be time barred in the requesting state.<sup>8</sup>

The European extradition Convention of Paris of December 13<sup>th</sup>, 1957 and the Additional Protocols in Strasbourg of October 15<sup>th</sup>, 1957 set out as follows:

- offences which allow extradition
- an exception from the rule on the extradition obligation
- enable Member States to grant extradition for minor offenses
- political offenses, enabling the requested state to decide whether an offense is or not political
- enable the requested state to refuse extradition on common law grounds, if it believes that the request was filed to prosecute or punish a person on the grounds of race, religion, nationality, political opinion.
- prohibits extradition for military offenses, which are not common law offences
- refer to fiscal offenses, enabling party Member States to grant extradition for such offenses based on an agreement between them.
- enable the requested state to refuse extradition for an offense committed in full or in part on its territory or in a place deemed to be its territory
- the judicial authorities, if the requested state does not extradite a person on grounds of citizenship, shall be bound, upon the request of the requesting state, to submit the case to its competent authorities, so that the person is not left unpunished.

<sup>7</sup>Anca-Lelia Lorincz, *op.cit.*, p 40.

<sup>8</sup>Dumitru Maziliu, *Integrare Europeană. Drept comunitar și instituții europene*, Lumina Lex, Publishing House Bucharest, 2008, p. 107.

- in which the capital punishment is concerned, extradition can be refused for such offenses punished by death by the law of the requesting state.<sup>9</sup>

#### **4. The European arrest warrant, a modern instrument within the framework of the international judicial cooperation for criminal matters.**

The European cooperation in the security field started in 1970, in an informal manner. In 1977, the ministers of domestic affairs of the EU Member State set up the Tervi Group, in order to unify all police units of all member states. Following the execution of the **European Single Act**, negotiations were carried out between the Member States on matters of security and justice within the European political cooperation, an informal framework different from the community institutional framework.<sup>10</sup> In 1985, the execution of the Schengen Agreement between five member states of the European Community laid the basis of the cross-border security cooperation. The Schengen Agreement was integrated in the community *acquis* following the execution of Amsterdam Treaty.<sup>11</sup>

The European arrest warrant is a real revolution in terms of the procedure for the extradition and surrender of the individuals who elude criminal prosecution, trying or the serving of a sentence. The adoption of the Framework Decision on the European arrest warrant, at least in the current form, although it was an objective targeted by the European Council, may have not occurred had it not been for the tragic attacks in the United States of America of September 11<sup>th</sup>, 2001. It was only after this tragic event that the EU member became aware of the need to adopt a simplified mechanism for the surrender of the persons who elude justice, which also represents a particularly effective means to fight terrorism and other aggravated forms of transnational crime<sup>12</sup>.

By Framework Decision no. 2002/584/J.A.I of the European Council of June 13<sup>th</sup>, 2002 on the European arrest warrant and the surrender procedures between Member States, the resolution adopted by the Member States within the European Council of Tempere on October 16<sup>th</sup>, 1999 was materialized, namely the resolution on the replacement of the formal extradition procedure for the persons who elude the serving of an imprisonment sentence, enforced under a final conviction judgement, with a simplified surrender procedure, and on the acceleration of the formal extradition procedure for the persons who elude criminal prosecution and trying respectively<sup>13</sup>.

It should be mentioned that, at least currently, we cannot speak, within the European Union, about the harmonization of the material and procedural criminal law, but only about a mutual acknowledgment, based on the common values of the Member States. Therefore, there is no unified European criminal law, but only a criminal (community) law, consisting of all the community regulations which regulate this field.

Therefore, Framework Decision of June 13<sup>th</sup>, 2002 is the solution for an enhanced quicker and more efficient cooperation, being designed as a legal instrument able to replace the previous extradition mechanisms, being implemented by the Romanian legislator in Law no. 302/2004 on the international judicial cooperation on criminal matters.

In what Romania is concerned, it did not make any statement on the offenses committed prior to the enforcement of the Framework Decision and accepted the European arrest warrant without taking into account the date of the offense. Nevertheless, according to the provisions of the Romanian law, only those European warrants issued after January 1<sup>st</sup>, 2007 are accepted, this being the date when the Framework Decision came into effect in Romania.<sup>14</sup>

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<sup>9</sup>Florin Răzvan Radu, *Cooperare judiciară internațională și europeană în materie penală*, Wolters Kluwer Publishing House, Bucharest, 2009, p. 52.

<sup>10</sup>Dumitru Maziliu, *op. cit.* p. 102.

<sup>11</sup>Cristian Eduard Ștefan, Ligia Teodora Pintilie, *op.cit.*, p. 38.

<sup>12</sup> The attacks of London of July 7<sup>th</sup> 2005, proved once again the efficiency of this surrender system, when terrorism suspects were surrendered to the British authorities by the Spanish authorities in three days, while the extradition procedures of Spain usually last more than a year.

<sup>13</sup>Florin Răzvam Radu, *op cit.*,p 124.

<sup>14</sup>Anca Nedelcu Inei, *Drept comunitar*, Cordial Lex Publishing House, Cluj Napoca, 2008, p. 76.

The procedure for the enforcement of a European arrest warrant submitted to the Romanian legal authorities shall be carried out under the direct coordination of the competent court of appeal, as follows:

- the check, by the court, of the substance and form conditions that an European arrest warrant has to fulfill
- the request addressed by the court to the general prosecutor of the court of appeal concerning the taking of all the measures required to identify the requested person, to place him/her into custody and present him/her before the court
- the presentation of the person before the court within no more than 24 hours as of the placement into custody and incarceration in the police detention facilities, according to the decision of the court.

If the European arrest warrant is issued by the court of Romania, the law provides that the warrant can be issued in the following situations:

- for criminal prosecution or for trying, if the offense is punished by the Romanian criminal law by imprisonment for at least 1 year term
- for serving a sentence, if the enforced sentence is greater than 4 months

The surrender of the prosecuted person shall be performed by the police, following the prior notification of the authorities designated in this respect by the issuing judicial authority on the place and date, within 10 days as of the passing of the surrender court judgement.

The surrender can be postponed for serious unanimous grounds (such as the existence of sufficient grounds to believe that the surrender will endanger the life and health of the requested person), or if the person is criminally prosecuted in Romania or has to serve a sentence enforced for an offense different than the one contemplated by the European warrant, but the temporary surrender of the prosecuted person shall be granted<sup>15</sup>.

When the requested person is subject to an international arrest warrant for extradition purposes, the court shall immediately inform the Center for International Police Cooperation and Administrative Reform on the issuance of the European arrest warrant. The offenses which can result in the issuance of an European arrest warrant and in the surrender of the prosecuted person are the following: the participation in a organized criminal group, terrorism, human trafficking, sexual exploitation of children and child pornography, illicit traffic in drugs and psychotropic substances, illicit traffic in guns, ammunitions and explosives, corruption, fraud, including the one against the financial interest of the European Community, laundering of crime proceeds, Euro currency counterfeiting, offenses related to cyber crime, environmental offenses, traffic in endangered protected animals and plant species, facilitation of illegal entry and residence, murder and aggravated bodily harm, illicit traffic in human tissues and organs, illegal deprivation of liberty, kidnapping and hostage-taking, illegal traffic in cultural goods, racism and xenophobia, organized or armed robbery, embezzlement, counterfeiting and piracy of goods, forgery of public documents and the use of forged public documents, forgery of means of payment, illicit traffic in nuclear or radioactive materials, stolen vehicles trafficking, crimes within the jurisdiction of the International Criminal Court, illegal seizure of ships and aircrafts.

In order to comply with the concept of court judgement or judicial decision as defined by Law no. 224/2006, an European warrant shall meet the following conditions:

- procedural deed, which involves the explicit issuance procedure
- procedural deed, whereby the enforcement of the order included in the procedural deed of the judgement to request the arrest and surrender of the requested person is requested.<sup>16</sup>

Although it was argued that the judicial cooperation procedure between the Member States entails no risk of violation of the human rights, since all the Member States are party to the European Convention on Human Rights, this risk exists due to the fact that the access to the European Court of Human Rights is generally limited in the extradition field, and the Charter of Fundamental Rights and Freedoms of the European Union still lacks binding power. In which the

<sup>15</sup>Anca-Lelia Lorincz, *op.cit.* p 50.

<sup>16</sup>Crisitan Eduard Ștefan, Ligia Teodora Pintilie, *op.cit.*, p 52.

right to a fair trial is concerned, as set out by art. 6 of the European Convention, it entails, just as in the case of extradition and surrender based on a European arrest warrant, the right to a defender and to an interpreter.<sup>17</sup>

## 5. International Judicial Assistance in Criminal Matters

Assistance is the assistance provided by the judicial bodies of a member state during a criminal trial to the judicial bodies where the judicial activity takes place and which consists of the drafting, delivery or service of the procedural documents required for the settlement of the case.<sup>18</sup>

It is well known that borders have a long time ago ceased to represent an obstacle for the offenders. Unfortunately, they are still a barrier for the law enforcement authorities. Therefore, for example, as a consequence of the sovereignty of the states and of the principle of territorial applicability of the criminal law, a judicial authority of Romania is not entitled to directly seize an amount of money deposited in an account from abroad. Due to the fact that the sovereignty of the states remains one of the limits of the cooperation between the member states against criminality, the only solution is the assistance that the states grant one another for fighting crime.

The main forms of international legal assistance in criminal matters is the communication or service of the procedural documents, the magistrate shall take into account, when it proceeds to the service of a procedural document abroad, not only the provisions of the Code of Criminal Procedure, but also the international, bilateral, multilateral treaties Romania is a party to, which are an integral part of the domestic law and the special provisions of which are mandatory for the validity of the procedure.

The service of the judicial documents and the hearing of the witnesses, experts and defendants: the service needs to be interpreted in a broad sense, as referring to both the simple dispatch and the official notification. Nevertheless, it is not necessary for the document to be handed personally to the person to whom it is addressed, unless this is specifically set out in the law of the requested state and is compatible with the law of the requesting state and desired by it. Criminal record and exchange of information: art.22 introduces the rule on the automatic service of the criminal record information, while art. 21 regulates the reporting of a crime for prosecution purposes.<sup>19</sup>

The judicial assistance in the field of taxes and excises can be refused when the estimated total value of the customs duties not paid in full or evaded does not exceed the amount of EUR 25,000 or the RON equivalent thereof or when the estimated value of the merchandise exported or imported without authorization does not exceed the amount of EUR 100,000 or the RON equivalent thereof, unless, given the circumstances or the identity of the defendant, the requesting state considers the case to be very serious.<sup>20</sup>

The Convention of the European Union of May 29<sup>th</sup>, 2000 on Mutual Assistance in Criminal Matters is the main legal instrument in the field between the Member States. The provisions of this new convention on mutual assistance in criminal matters have as purpose the provision of fast, efficient and full judicial assistance between the European Union Member States in order to fight criminality. This convention was adopted by the European Union Council in order to facilitate the Convention of April 20<sup>th</sup>, 1959 of the European Council which it supplements.<sup>21</sup>

Within the Schengen area the provisions on the judicial cooperation of the Convention on the enforcement of Schengen Agreement of June 14<sup>th</sup>, 1985, on the gradual abolition of common border control, are applicable.

If the Romanian authorities request assistance, the requests in question must be drawn up as clearly as possible, and, unless standard forms are used, they must include both the mandatory

<sup>17</sup> Florin Răzav Radu, *op.cit.*, p 138.

<sup>18</sup> Crisitan Eduard Ștefan, Ligia Teodora Pintilie, *op.cit.*, p 71.

<sup>19</sup> Florin Răzvan Radu, *op.cit.*, p 90.

<sup>20</sup> Anca- Lelia Lorincz, *op. cit.* p 60.

<sup>21</sup> Felician Cotea, *Drept comunitar european*, Wolters Kluwer Publishing House, Bucharest, 2009.

elements of any assistance request and the particular ones, depending on the requested activity. Furthermore, when the Romanian law requires certain formalities or procedures (hearing, preliminary explanation, witness's oath), if they are missing, in the Romanian criminal procedure act, it is advisable to include a note in such respect in the assistance request or to make a separate note consisting of the provisions of the Code of Criminal Procedure requesting such procedures or formalities. The requested authorities shall fulfill these requirements unless they violate their own legal principles. Generally the assistance is granted in as broad as possible a manner, without such requests representing reasons for refusal.<sup>22</sup>

The answer to the assistance request shall only consist of the documents requested by the foreign authorities or of the instruments which could be relevant for it (under no circumstances shall the full file be delivered).

The judicial assistance may be requested under the following:

- the bilateral treaties, unless they were repealed by multilateral treaties which Romania and the requesting state are party to
- the multilateral conventions adopted at the level of the European Council and of the United Nations, which both Romania and the requesting/requested state are party to, which regulate the judicial assistance in criminal matters or which contain provisions in this respect, adopted for certain categories of offenses.
- reciprocity.

Furthermore, according to art. 5, in the absence of an international convention, the judicial cooperation can be performed by virtue of the international courtesy, upon a request sent by diplomatic means by the requesting state and under the written assurance of reciprocity given by the competent authority of the respective state. In this case Law no. 302/2004 represents the common law in the field for the Romanian judicial authorities. There are mainly three ways of judicial assistance, direct assistance, assistance by means of the central authorities and assistance by diplomatic means<sup>23</sup>.

## 6. The acknowledgment of the criminal judgements

In this chapter we will review the procedure for the acknowledgment of the criminal judgements and of the procedural documents, under the provisions of the European Convention on the international validity of criminal judgements, adopted in Hague on May 28<sup>th</sup>, 1970, as well as of the Romanian legislation in force.

The acknowledgment of the criminal resolutions passed by the foreign courts, or of other foreign legal deeds can also be performed by main proceedings, by the court of law notified in such respect by the convicted person or the prosecutor. In this case the the court decides under the competence of whose judge the jurisdiction having in mind the locatiron of the convict.<sup>24</sup>

The fundamental principal which represents the basis of this Convention is the assimilation of a foreign judgement with a national criminal judgement. This principle is applied under three different aspects: the enforcement of a judgement, the *ne bis in idem* effect, the taking into account of the foreign judgements.<sup>25</sup>

The judgement must have been passed in full compliance with the fundamental principles of the European Convention for Human Rights, especially art. 6 concerning a fair trial, the deed which led to the conviction of the person in state where the judgement was passed must be classified as a crime according to the law of the requested state – double incrimination condition – the judgement, except for an *in absentia* judgement, must be final and enforceable in the state where it was passed, a valid request must have been filed by the state where the judgement was passed, the requested state may refuse the enforcement for the limited reasons set out in art. 6, the *ne bis in idem* effect, as

<sup>22</sup> Felician Cotea, *op. cit.*, p.78.

<sup>23</sup> Crisitan Eduard Ștefan, Ligia Teodora Pintilie, *op.cit.*, p. 76.

<sup>24</sup> Anca Nedelcu Ienei, *op. cit.* p. 109.

<sup>25</sup> Florea Răzvan Radu, *op.cit.* p 95.

defined in the Convention.

What is new is the fact that in Law no. 224/2006 implementing the Convention of June 19<sup>th</sup>, 1990 implementing the Schengen Agreement, the *non bis in idem* principle was provided for, according to which a person which is the object of a final judgement on the territory of a Member State part of the Schengen area cannot be prosecuted, tried for the same deeds if, in case of a conviction, the judgement was enforced, it is being enforced or can no longer be enforced according to the laws of the state which passed the conviction judgement.<sup>26</sup>

The enforcement of the criminal judgements and Romanian judicial documents abroad: A Romanian court may request the acknowledgement and enforcement of a court judgement by a Member State in the following cases:

- the convicted person is a citizen of the requested state or of a third country or is stateless and is domiciled on the territory of that state, and, according to the law of the requested state, the extradition of the convicted person in Romania for the enforcement of the sentence is not admissible or the foreign state refuses to grant the extradition
- the convicted person is a Romanian citizen domiciled on the territory of the requested state or has the citizenship of the requested state as well, and the foreign state refuses to grant the extradition.

These provisions are not applicable, if the circumstances of the case require it, under a treaty executed with the foreign state, when the extradition is enforced as a safety measure. The filing of an acknowledgement and enforcement request is also admissible if the convicted person is serving a sentence in the requested state for a deed that is different than the one which resulted in the conviction. In case of the filing of a criminal judgement acknowledgement request, criminal judgement under which a punishment was enforced. The acknowledgement shall be requested in case of the non-aggravation, in the foreign state, of the punishment enforced by the judgement passed in Romania. The acknowledgement of the deeds issued by the competent Romanian authorities abroad takes place under the terms of the applicable international treaty.

Irrespective of the applied procedure, before taking a decision regarding the acknowledgment of a foreign criminal judgement, the competent court of law may, on the request of the foreign state, sent by means of the Ministry of Justice, or ex officio, order the preventive detention of the person who represents the object of the judgement the acknowledgment of which is requested or another precautionary in order to avoid his/her fleeing from the territory of Romania.<sup>27</sup>

## 7. Conclusions

This presentation about freedom, security and justice argues that the long thought of objectives of several treaties have finally resulted in a harmonization, difficult but possible, of the European community. The opening of the internal borders between the Member States is a great advantage for the population of the community, because people can travel freely, without being subject to customs clearance activities. The free circulation on the territory of the European Union must be accompanied by the reinforcement of the control at the external borders of the EU in order to efficiently control drugs and persons trafficking, organized crime, illegal immigration and terrorism. Member states cooperate in the justice and police matters in order to ensure increased security.

The integration in the field of justice and domestic affairs was not provided for in the Treaty establishing the European Community. Nevertheless, in time to become clear that the free circulation of the persons entails the need for every citizen to benefit from the same degree of legal protection and access anywhere on the territory of the European Union. Thus a space of freedom, security and justice was created, by the successive amendment of the founding treaties by the Single European Act, the Treaty establishing the European Community and the Maastrich Treaty and the Amsterdam Treaty.

<sup>26</sup> Crisitan Eduard Ștefan, Ligia Teodora Pintilie, *op.cit.*, p 56.

<sup>27</sup> Crisitan Eduard Ștefan, Ligia Teodora Pintilie, *op.cit.*, p 59.

The free circulation of the persons on the EU territory causes security problems to the Member States because they have no control on their internal borders. That is why it is necessary to adopt security reinforcement measures at the external borders of the EU. Moreover, it is necessary to increase cooperation for controlling transnational crime which could take advantage of the freedom of circulation. One of the most important actions for facilitating the circulation on the territory of the Union occurred in 1985, when the governments of Belgium, France, Germany, Luxemburg and the Netherlands signed a Schengen Agreement. These states decided the elimination of the customs controls on the persons, irrespective of their nationality at their common borders, the harmonization of the controls at the EU external borders and adopt a common policy in the field of visas. Therefore these states achieved a borderless area.

Europe is proud of its tradition of receiving foreigners and offering asylum to refugees. Currently, the governments of the Member States must handle an increased number of legal and illegal immigrants, in a space without internal borders. The Government decided the harmonization of the regulations in this field so as to ensure the examination of the asylum requests according to some basic principles recognized at community level. In 1999, Member States established this objective of adopting a common asylum procedure and granting an equal status throughout the EU to the asylum beneficiaries. Despite the large scale cooperation between the national governments, the design of a common asylum and immigration policy remains an achievable objective. Currently, in addition to the fact that it is the greatest commercial power in the world, which holds the second best currency in terms of value at world level and five hundred millions of consumers, Europe is a place where the citizens' rights are respected and their security is protected.

But are the citizens of Europe really aware of their rights and responsibilities? Are they in a position to exercise them? The Stockholm Program, which paves the way in the fields of justice, freedom and security for the next five years, is EU's answer to these questions. So far, there have been numerous successes. The Schengen enlargement allows over 400 million citizens to travel without being subject to border checks from the Iberian Peninsula to the Baltic States.

Fighting international crime and terrorism is a problem and in order to create a viable common asylum and immigration policy, the European Union must implement an effective system for managing migration flows, for controlling the external borders and preventing illegal immigration. A sustainable effort is required in order to combat criminal gangs who traffic people and exploit vulnerable persons, especially women and children.

Organized crime is becoming increasingly sophisticated and regularly uses the European or international networks. Terrorism has already shown that it can strike brutally anywhere. One of the most effective methods is to track any illegal funds. For this reason, as well as for cutting off the funding of the criminal and terrorist organizations, the EU has developed a legislation meant to prevent money laundering. The most important achievement in recent years in the area of the cooperation between the law enforcement authorities was the establishment of Europol, a EU body based in Hague consisting of police and customs officers. Twenty years ago the Berlin Wall fell marking the beginning of a new era of freedom and solidarity for Europe.

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