

THE EUROPEAN ARREST WARRANT AS A FORM OF INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS IN TERMS OF AMENDMENTS TO THE ROMANIAN LEGISLATION

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Abstract

During the post-accession period, in its quality of member of the European Union, Romania continues its process of harmonization of the national legislation with that of the other member countries, including the penal and criminal-procedure matters. Although, in principle, the penal and criminal-procedure matters cannot be the object of a legislative unification at a European level, there should be an approximation of the national penal and criminal-procedure dispositions, in order to effectively prevent and combat the criminal phenomenon. The field in which there is an obvious necessity though for a European legislative unification is that of judicial cooperation in criminal matters. Romania has taken important steps towards this, by adopting Law 302/2004, with the modifications and completions brought by Law 224/2006 and by Law 222/2008. Also, by adopting the new Romanian Code of Criminal Procedure (Law 135/2010) the intention was to ensure a regulatory framework regarding the international judicial cooperation that would meet those imperatives.

INTRODUCTION

In the context of globalization and European integration, the prevention and the fight against crime, both internationally and at the level of the Member States of the European Union, require the increase of the judicial collaboration between states, criminal matters included.

In its quality of newly accepted member of the European Union, in the post-accession

period, Romania must continue the process of harmonization of the national legislation with the one of the Member States, including in penal and criminal-procedure matters.¹

Each project of legislative unification may encounter obstacles of economic, cultural or political nature.² About the necessity of a legislative unification at European level, we can discuss though in the field of judicial cooperation in criminal matters. Romania took important steps in this direction, by adopting Law 302/2004,³

(¹) Antoniu, G. (2007), “The penal normative activity of the European Union”, *Revista de Drept Penal*, 1, p.10.

(²) Kahn Freund, O. (1974), “On uses and misuses of comparative law”, *The Modern Law Review* 1(37), pp. 3-4.

(³) Law 302/2004, republished in the Official Monitor of Romania no. 377/311 May 2011.





with the modifications and completions brought by Law 224/2006⁴ and by Law 222/2008,⁵ but also by adopting the new Code of Criminal Procedure.⁶

According to the current regulation, the concept of international judicial cooperation is approximated to the broad sense of the notion of international legal assistance in criminal matters, and the international judicial assistance is considered to be just one of the forms of international judicial cooperation.

Also, in the new Romanian Code of Criminal Procedure (Law 135/2010), the provisions about the procedure regarding the international judicial cooperation and the putting in application of the international treaties in criminal matters are regulated in Title IV (Special procedures) from the Special part.

In the new Code of Criminal Procedure, as opposed to the current regulation, there is an express reference to the concept of "international judicial cooperation".

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Therefore, the EU instruments on which basis the judicial cooperation in criminal matters within the EU is developed, are more and more often based on the principle of reciprocal recognition.⁷

The most spectacular result of applying the principle of the reciprocal recognition is the elaboration of the European arrest warrant, a true revolution in matter of criminal cooperation between states.⁸

Some of the most important legislative modifications intervened in the past years within the Romanian legislation regarding the forms of judicial cooperation in criminal matters, are those referring to the European arrest warrant.

Thus, the procedure of turning in a person on the basis of a European arrest warrant is regulated in Title III of Law 302/2004 – "Provisions regarding the cooperation with the Member States of the EU in applying the Framework-decision no.2002/584/JAI of the EU Council from 13 June 2002 regarding the European arrest warrant and the surrender procedures between the Member States".

Starting from the experience of the EU Member States in applying the Framework-decision regarding the European arrest warrant, through Law 224/2006 were brought several modifications and completions also to the Title III of Law 302/2004 (title referring to the European arrest warrant):

- Express regulations were issued for the procedural rights and guarantees of which the person sought through a European arrest warrant enjoys (for instance: the right of being informed about the content of the European arrest warrant);
- The procedure of issuing of an European arrest warrant by the Romanian competent authorities was regulated, this regulation having been absent from the initial text of Law 302/2004.

In view of perfecting the legislative framework of the European arrest warrant, considering the propositions and observations of the practitioners after the first months of applying the provisions of the Law 302/2004, were brought several modifications and completions through Law 222/2008.

(4) Law 224/2006, published in the Official Monitor of Romania no. 534/21 June 2006.

(5) Law 222/2008, published in the Official Monitor of Romania no. 758/10 November 2008.

(6) Law 135/2010 regarding the Code of Criminal Procedure, published in the Official Monitor of Romania no. 486/15 July 2010.

(7) The principle of the reciprocal recognition assumes the fact that that which is a product, a service or a legal decision coming from a state legal order has to be recognized too by the other Member States of the EU.

(8) Antoniu, G., (2008), "The Romanian Criminal Law in the post-accession conditions", *Revista de Drept Penal (Penal Law Review)*, 2, p. 15.



Firstly, to remove certain vagueness existing in the prior text of the law,⁹ the European arrest warrant was redefined as “a judicial decision through which a competent judicial authority of a EU Member State requests the arrest and surrender of a person by another Member State, with the purpose of prosecution, trial or execution of a punishment or of a freedom-depriving safeguards measure”.

In principal, through the modifications brought by Law 222/2008 the intention was to solve certain aspects that generated the non-unitary practice of the Courts of Law or that raised other practical problems:¹⁰

- The prosecutors of the Courts of Appeal were designated as competent judicial authorities for receiving the European arrest warrants issued by other EU Member States (the courts of appeal being, further, the competent authorities for executing the European arrest warrants);
- With regard to the issuing procedure, is given an answer to a question that had previously risen in the judicial practice – whether it is necessary to have a closing in order to order the issuing of a European arrest warrant. According to the current regulation: “the competent judge verifies the fulfillment of the conditions foreseen in the law and acts accordingly:
 - a) issues a European arrest warrant;
 - b) decides, in a motivated conclusion, that the conditions stipulated by law to issue a European arrest warrant are not fulfilled”.

Therefore, the issuing of a European arrest warrant doesn’t presume the compilation of a closing, this one not being a jurisdictional procedure.

With regard to the execution procedure of the European arrest warrant, for easing this procedure, new provisions that regulate a series of existing procedures were introduced; these existing procedures *emphasize the prosecutor’s role* in the procedure of execution of the European arrest warrant, especially for avoiding the situations in which the Courts of Appeal, as executing judicial authorities, being notified directly by foreign judicial authorities issuing a European arrest warrant, ascertained (after compiling the file and establishing a trial term) that the sought person was no longer on the territory of Romania;

- It was expressly provided the necessity of issuing an internal arrest warrant when the arrest based on a European warrant is disposed; this provision is based on the fact that a European arrest warrant is a judicial decision that replaces the classic request for extradition and that, despite its name, does not have the legal nature of an arrest warrant (in the sense that it is not an act of execution, but an act of disposition);¹¹
- There were also clarified certain aspects related to the institution that ensures the surrender of the sought person, mentioning that within the General Inspectorate of Romanian Police the competent service is the Center for International Police Cooperation;¹²

CONCLUSIONS

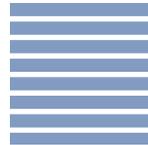
In conclusion, by adopting Law 302/2004, with the modifications and completions brought by Law 224/2006 and by Law 222/2008, Romania has taken important steps towards this, for a European legislative unification on the field of judicial cooperation in criminal matters.

(9) The initial text of the law defined the European arrest warrant as a „judicial decision issued by the relevant judicial authority of a EU member state for another state to arrest and hand over a person requested, for criminal investigation or trial purposes, or for the purpose of carrying out a punishment or a measure that involves deprivation of freedom”.

(10) *Legislative information guide*, Ministry of Justice, International Law and Treaties Department, Information no. 121650 from 11 November 2008, www.just.ro.

(11) In certain states, for instance in Hungary, the European arrest warrant is equivalent with an intern warrant, but for that there are express procedural dispositions in the internal legislation.

(12) By the Law 201/2010 (amending and supplementing Ordinance 103/2006 on measures to facilitate international police cooperation), published in the Official Monitor of Romania no. 718/28 October 2010, the phrase “International Police Cooperation Centre of the Ministry of Interior” was replaced by “International Police Cooperation Centre of the General Inspectorate of the Romanian Police.”



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