

THE PRINCIPLES OF INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

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Abstract: *In view of its importance, all international judicial cooperation in criminal matters is carried out in compliance with certain general principles, principles that must be considered and analyzed on two priority coordinates, namely, on the one hand from the perspective of respect for the independence and sovereignty of each State, and on the other hand from the perspective of respect for and consistent application of international legal instruments.*

Keywords: *international judicial cooperation; principles; criminal matters; judicial instruments; norms; criminal law.*

Introduction

The 20th century was a century of unprecedented development of civilization, progress in science, technology and biomedicine. It is a century that will undoubtedly also be associated with human rights, which have become a norm of universal culture and civilization. International society has turned them into a requirement of democracy, considering them to be the supreme values safeguarded by humanity.

Human rights have not only taken on constitutional dimensions but have also entered the catalog of internationally protected values. Yet,

paradoxically, although human rights have never been so strongly defended and guaranteed as in the century that has just ended, they have more than ever been drastically violated. The 20th century has seen the most horrific wars, genocides on an unimaginable scale. In the history of the century that has just ended, there have been total wars, massacres and slaughters, deportations, purges along racial, ethnic and class lines, discrimination against minorities, etc. (Neagu, & Dediu, 2021, p. 9).

The unprecedented development of international relations in contemporary society has been accompanied by an equally unprecedented increase in international crime through the proliferation of organized forms of crime on the territory of several states.

Scientific and technical progress and the spread of democratization at international level have made it possible for people and goods to move around easily, leading to the development of human society as a whole. The undeniably beneficial effect, for humanity as a whole, has also created the possibility of a wide proliferation of crime worldwide.

The increasing danger posed by the growth of transnational crime, the need to prevent and combat it more effectively in a globally organized framework, has led to the adoption of regional or global instruments to unify the efforts of the world's states in stopping the proliferation of transnational crime.

In view of its importance, all international judicial cooperation in criminal matters is carried out in compliance with certain general principles, principles that must be considered and analyzed on two priority coordinates.

Thus, a first category of principles concerns respect for the independence of the sovereignty of each state, which presupposes a set of rules ensuring, on the one hand, that the law of the State in whose territory the crime was committed is applied and, on the other hand, that the recognition and enforcement of a criminal sanction imposed by another state does not prejudice the general rules of public order and public safety in the territory of the state which recognized the judgment.

The second category refers to the respect and consistent application of the provisions of international legal instruments to which the state

concerned is party and ensuring that they take precedence over domestic criminal law rules.

The principles of international judicial cooperation in criminal matters

In this context, with reference to the provisions of Romania's domestic normative acts, as well as the conventions or other bilateral or multilateral international instruments of this kind, I consider that the general principles underlying the activity of international judicial cooperation in criminal matters are: - respect for Romania's fundamental interests, the pre-eminence of international law, international comity and reciprocity, the principle of confidentiality, recognition of foreign judgments and mutual trust, non bis in idem, the principle of immunity from jurisdiction, the principle of humanism, the principle of legality, aut dedere aut judicial, the principle of specialty, the principle of calculating the length of sentences and preventive measures depriving of liberty.

1. Principles

1.1. Respecting Romania's fundamental interests

The legislator settles in Art 3 of the Law no 302/2004, under the marginal heading "The limits of judicial cooperation", the principle of respect for Romania's fundamental interests in the complex activity of international judicial cooperation in criminal matters. Thus, international cooperation is obligatory and necessary, under the international treaties and conventions concluded by our country, but it does not exclude certain particular cases in which the Romanian state has, in relation to a specific situation, its own interests stronger than those specific to the fight against crime.

From the interpretation of the legal provisions, it follows that the activity of international judicial cooperation in criminal matters will be carried out by the Romanian state, only under the conditions that ensure the protection of fundamental interests. In other words, the application of the provisions on international cooperation is subordinated to the

protection of Romania's sovereignty, public order, security and other interests, as defined by the Constitution.

Therefore, whenever, in the framework of international judicial cooperation in criminal matters, the aforementioned values will be jeopardized, the Romanian State, through the authorized institutions, will refuse cooperation. Thus, the cooperation itself will not be realized, even if all other conditions are fulfilled (Boroi, & Rusu, 2008, p. 19).

It should be noted that sovereignty, security and internal public order are fundamental values specific to each constitutional state, recognized as such in other international documents and applied in inter-state relations.

A relevant example of respecting Romania's fundamental interests in international judicial cooperation in criminal matters is the refusal to execute a European Arrest Warrant (EAW) or an extradition request under specific conditions.

This principle is explicitly stipulated in national legislation (e.g., Law no. 302/2004 regarding international judicial cooperation in criminal matters) and is essential for protecting sovereignty and public order.

Romanian law establishes mandatory or optional grounds for refusing extradition requests or European Arrest Warrants received from a foreign state.

1.2. Pre-eminence of international law

According to this principle, the provisions of the special law apply on the basis of and for the execution of the rules concerning judicial cooperation in criminal matters, mentioned in the legal instruments to which Romania is a party, which it supplements in non-regulated situations.

In other words, in the field of international cooperation, the rules derived from international legal instruments to which our country is a party take precedence over domestic normative acts, which are applied on the basis of and for the execution of international provisions, which they comply with in unregulated situations.

The analyzed principle is regulated by Law no. 302/2004, but it is also grounded in the provisions of the Constitution, in particular in the provisions of Art 11 Para 1-2, which states that “(1) The Romanian State undertakes to fulfill its obligations under the treaties to which it is a party, faithfully and in good faith; (2) Treaties ratified by the Parliament, according to the law, are part of the domestic law” and in the provisions of Article 148 Para 2, according to which: “As a result of accession, the provisions of the Treaties establishing the European Union and other binding Community rules shall take precedence over contrary provisions of national law, subject to the provisions of the Act of Accession”¹.

The principle of the pre-eminence of international law is also expressed in the provisions of the Code of Criminal Procedure, which provides that: “International judicial cooperation will be requested or granted in accordance with the provisions of the legal acts of the European Union, international treaties in the field of international judicial cooperation in criminal matters to which Romania is a party, as well as with the provisions contained in the special law (...), unless otherwise provided for in international treaties”².

An example in this respect is the rule stipulated by Art 19 Para 1 of the Romanian Constitution and Art 19 Para 1 letter a) of the Law no 302/2004, according to which extradition of Romanian citizens is not allowed. In view of this principle, however, the national normative provisions are subsidiary to the international treaties and conventions on extradition to which our country is a party. In concrete terms, in order to determine whether a Romanian citizen can be extradited from Romania, the international legal instrument must first be checked with the state requesting extradition. If, after consultation, it is established that the agreement, convention or treaty contains provisions which differ from the rule laid down in national law, the agreement, convention or treaty

¹ Art 11 and Art 148 of the Romanian Constitution

² Art 548 Para 1 of the Code of Criminal Procedure, (Bucharest: Rosetti International, 2008), 306

shall apply in priority. As a consequence, the application of national law is ruled out.

Thus, for example, if the extradition of a Romanian citizen is requested by Japan, the extradition treaty between Romania and Japan on extradition is checked. According to Art 3(a), the extradition request will not be accepted if the person concerned is a national of the requested party. In this case, the rule overlaps, in principle, with that laid down in national law. Therefore, the Romanian citizen cannot be extradited from Romania to Japan.

On the other hand, if the extradition of a Romanian citizen is requested by the United States of America, the extradition treaty between the two countries, ratified by the Law no 111/2008, will be checked. The provisions of Art 3 of these treaties indicate that the nationality of the person sought is not a ground for refusing extradition. In this case, it is obvious that the international rule contradicts the rule in domestic law. However, in accordance with the principle of pre-eminence of international law, the Romanian citizen may be extradited to the United States of America. By derogation from the provisions of Art 19 Para 1, the Romanian Constitution allows this legal mechanism, so that according to the provisions of Article 19(2), Romanian citizens may be extradited on the basis of international conventions to which Romania is a party, under the conditions of the law and on the basis of reciprocity.

1.3. The principle of confidentiality

This principle implies the obligation to ensure, as far as possible, the confidentiality of requests addressed to it in the areas of international judicial cooperation, at the request of the requesting state. The Romanian state, as the requested state, will inform the foreign state, if the condition of confidentiality cannot be ensured, which will decide accordingly.

The literature argues that this principle must be respected even when it is not requested, but operational interests require it, because the application of specific cooperation activities in this area (taking custodial measures, seizure of property, etc.) requires confidentiality in order to

achieve the objectives proposed in one case or another (Rusu, 2015, p. 32).

It is therefore necessary to respect this principle to ensure the effectiveness of international judicial cooperation in criminal matters.

Failure to comply with the principle of confidentiality can in many cases lead to particularly serious consequences, such as the disappearance of wanted persons, property or documents, etc.

An excellent example illustrating the principle of confidentiality in international judicial cooperation relates to situations where time and secrecy are critical to achieving the goal of the request, such as when dealing with financial crime or fugitive apprehension.

Here is an hypothetical example demonstrating how Romania, as the requested state, applies this principle:

Scenario:

The French Republic (applicant state) sends a request for mutual legal assistance to the Romanian Ministry of Justice (requested state). The request concerns a major money laundering investigation.

The Request

The french authorities ask Romania to perform two specific actions:

1. Simultaneously search the residence of a key suspect in Bucharest.
2. Immediately freeze bank accounts registered in that suspect's name in a Romanian bank.

Application of the principle of confidentiality

The French request explicitly asks for strict confidentiality because any prior leakage of information would allow the suspect to:

1. Transfer the funds from the accounts before the freezing order is executed.
2. Destroy evidence before the search is conducted.

Action by romanian authorities (adherence):

1. The romanian authorities, specifically the Prosecutor's Office, adhere rigorously to the principle:
2. They ensure the request is processed through secured channels and limit access to the information to the minimum number of necessary personnel (prosecutors and police officers).
3. They organize the search and the freezing order simultaneously and preemptively, ensuring the suspect is notified of the legal action *only at the exact moment* the police arrive at the residence and the bank executes the freezing order.
4. This operational confidentiality ensures the objectives of the French request (securing funds and evidence) are successfully achieved.

The notification obligation (The "If" condition):

If, hypothetically, romanian law required a public court hearing or a public decree to authorize the search (a condition that would inevitably break confidentiality), the Romanian State would be required to:

1. Inform the French Republic that the condition of confidentiality cannot be guaranteed under romanian procedure.
2. Wait for the french state to decide whether to proceed with the execution under the non-confidential terms or to withdraw the request.

This secondary step guarantees that Romania does not compromise the applicant state's operation without its consent, thereby fulfilling the core requirements of the principle of confidentiality.

1.4. International courtesy and reciprocity

Generally, cooperation takes place by virtue of a multilateral or bilateral convention or treaty. However, the absence of an international legal instrument is not an absolute bar to judicial cooperation.

This principle is also laid down in Art 5 Para 1 of the Law no. 302/2004, which stipulates that: "in the absence of an international convention, judicial cooperation may be carried out by virtue of

international comity, upon a request transmitted through diplomatic channels by the requesting state and with a written assurance of reciprocity given by the competent authority of that state”.

Consequently, according to this principle, judicial cooperation in criminal matters can be achieved by virtue of international courtesy, which implies the transmission of a request through diplomatic channels by the requesting state, with a written assurance of reciprocity given by the competent authority of that state, in the absence of an international legal instrument.

Therefore, the provisions of the framework law constitute, in this case, the common law for the Romanian judicial authorities in the field of cooperation.

According to the special law, even in the absence of reciprocity, the Romanian State may comply with a request for international legal assistance in criminal matters, if one of the following situations applies¹:

- the request is necessary due to the nature of the crime or the need to combat certain serious forms of crime;
- the request may contribute to improving the situation of the accused or convicted person or to his social integration;
- providing assistance may serve to clarify the judicial situation of a Romanian citizen.

When the Romanian State formulates a request under the above-mentioned conditions, on the basis of international courtesy, reciprocity will be granted, upon reasoned request of the Romanian judicial authorities, by the Ministry of Justice, whenever necessary, for each individual case².

Here is an hypothetical example of international courtesy and reciprocity:

Legal Context:

The principle states that, while cooperation is typically based on treaties, the absence of a treaty is not an absolute bar. Cooperation can

¹ Art 5 Para 3 of the Law no 302/2004 with subsequent modifications and amendments

² Art 6 of the Law no 302/2004 with subsequent modifications and amendments

still be granted based on the premise of reciprocity, which is the promise that the applicant state would provide similar assistance to Romania in a future case.

Practical situation:

Issuing State: Republic Alpha (a state with which Romania has no specific bilateral treaty for mutual legal assistance in criminal matters, and which is not part of the EU).

Requested State: Romania.

The Request: Republic Alpha requests that Romania identify and interview (take testimony from) a key witness (a romanian citizen) who holds vital information in a tax fraud case being investigated in Alpha.

Application of courtesy and reciprocity

1. Analysis (courtesy): The Romanian authorities (the Prosecutor General's Office) analyze the request and confirm that the requested action (witness testimony) does not contravene Romania's national security or public order and is not prohibited by the Constitution. They also verify that internal law permits the action.

2. Condition (reciprocity): Because a treaty is absent, Romania notifies Republic Alpha that it will execute the request on the basis of reciprocity. This means Romania imposes the condition that Republic Alpha must provide similar assistance (e.g., interviewing a Romanian witness on Alpha territory) should Romania request it in the future.

3. Execution: Republic Alpha confirms it will grant similar assistance. Romania proceeds to execute the request (the Romanian prosecutor interviews the witness), and the official report (proces-verbal) is transmitted to the state of Alpha.

This example demonstrates that the principle of courtesy is not a mere politeness, but a pragmatic mechanism that provides flexibility to the justice system. It ensures that critical criminal cases are not blocked solely by the formal lack of a legal instrument, but can be resolved based on trust and the promise of mutual aid.

1.5. Recognition of foreign judgments and mutual trust

Traditionally, international judicial cooperation in criminal matters has been based on the “principle of request”, the essence of which is that any form of cooperation starts with a request from one state (the requesting state) to another state (the requested state), the latter having the possibility to decide whether or not to comply with the request (Barbe, 2007, p.7).

Subsequently, as a result of changes, the traditional principle of request was replaced by the principle of mutual recognition, which was to become the “cornerstone of international judicial cooperation in criminal matters” (Dediu, p. 633).

This principle entails, on the one hand, the recognition in one state of judgments and judicial acts adopted by the competent authorities of another State and, on the other hand, the enforcement of their provisions, subject to certain conditions, which generally concern the law of the state of enforcement.

Recognition of foreign judgments and mutual trust have over time become the most effective tools for preventing and combating cross-border crime. Moreover, against the background of the development of relations in this area, judicial cooperation is inconceivable without mutual trust in the legal systems of the participating states, in the cooperation mechanism and in the fundamental guarantees they offer in the criminal process.

There is a clear causal link between the recognition of judgments and mutual trust, so that in the judicial cooperation procedure mutual trust implicitly leads to the recognition of foreign judgments, thus contributing to the speed and efficiency of the criminal proceedings.

At EU level, the first concrete measure in the field of criminal law, with direct implications for international judicial cooperation in criminal matters, which implements this principle, is the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States.

1.6. Non bis in idem

The principle mentioned by the provisions of Art 8 of the Law no 302/2004 stipulates that the international cooperation mechanism cannot be carried out if the person concerned has already been trialed in another state for the crime for which the request for cooperation is made.

In other words, international judicial cooperation is not admissible if a criminal trial for the same offense has been conducted in Romania or in any other state and if:

- a) a final judgment has ordered acquittal or termination of the criminal proceedings;
- b) the sentence imposed in a case by a final judgment has been served or has been the subject of a pardon or amnesty, either in its entirety or in respect of the part not served;
- c) a final judgment has ordered a waiver or postponement of the enforcement of the sentence and the term provided for in Art 82 Para 3 of the Criminal Code and the 2-year term of supervision provided for in Art 84 of the Criminal Code have expired without revocation or annulment (Bucur, 2020, p. 94).

Criminal doctrine holds that the principle of non bis in idem means that no one can be trialed, convicted or sentenced twice for the same act (Crisu, 2020, p. 83).

Therefore, the possibility of refusal of international cooperation in criminal matters by Romanian judicial bodies is materialized by this rule in two situations:

- when a final judgment has ordered the acquittal or termination of criminal proceedings against the same persons for the same offense in criminal proceedings conducted in Romania or another state;
- where the sentence imposed by a final judgment has been served, or has been the subject of a pardon or amnesty, in full or in part.

By way of exception, even if one of the above-mentioned situations applies, judicial cooperation is admissible where assistance is sought for the purpose of reviewing the final judgment on one of the grounds justifying one of the extraordinary legal remedies available under

national law. According to the Romanian criminal doctrine, we consider the appeal for annulment, revision, appeal in cassation and reopening of the criminal trial in the absence of the convicted person (Udroiu, 2019, p. 584).

Also by way of exception, the *non bis in idem* principle does not operate when an international treaty to which Romania is a party contains more favorable provisions in terms of this rule.

Because of its importance and applicability, in particular with regard to respect for human rights, this principle is universally recognized, being mentioned in the normative acts of states with democratic regimes and expressly provided for in a number of documents relating to international judicial cooperation in criminal matters. These include the European Convention on Extradition, the Convention implementing the Schengen Agreement, the European Convention on the Transfer of Proceedings in Criminal Matters.

An excellent example demonstrating the application of the principle of *non bis in idem* in the context of international judicial cooperation is a scenario involving the refusal to prosecute or extradite a person because they have already been finally judged for the same facts by another state.

1.7. The principle of humanism

According to this principle, which is mentioned in most international legal instruments, as well as in Romania's domestic legislation, international judicial cooperation in criminal matters must be carried out with respect for fundamental human rights and freedoms, the principle of humanism being the foundation of all judicial activities that concern a series of measures ordered by competent bodies against a person.

It is inadmissible, in granting a request for extradition, to cause physical suffering or humiliation to the person of the offender or, worse still, to grant such a request in the clear situation of inhuman, degrading or lethal treatment in the requesting state (Cristiean, 2013, p. 169).

Under these circumstances, the Romanian State through the competent judicial bodies may refuse or postpone the execution of a request for international cooperation, when it finds a violation of this principle.

Specifically, according to the provisions of Article 21 Para 1, Romania will not grant extradition if there are serious grounds to believe that the person concerned has not been respected the right to a fair trial, within the meaning of the European Convention on Human Rights and Fundamental Freedoms or any relevant international instrument ratified by our country or when there are serious grounds to believe that extradition is requested for the purpose of pursuing or punishing a person on grounds of race, religion, nationality, sex, gender, language, political or ideological opinion or other discriminatory reason.

Article 22 Para 2 also mentions the possibility for the Romanian State to refuse or postpone the extradition of a person if the surrender of the person concerned is likely to have particularly serious consequences for him or her, in particular because of his or her age or state of health.

Here is an hypothetical example of the application of the principle of humanism:

The Scenario (The Request):

A Member State of the European Union (Issuing State) issues a European Arrest Warrant (EAW) requesting the surrender of a citizen currently located in Romania to serve a prison sentence.

The Analysis (The principle of humanism):

The Romanian judicial authorities (the Court of Appeal) conduct an analysis of the situation in the Issuing State, as required by the jurisprudence of the European Court of Human Rights (ECtHR) and national legislation (Law no. 302/2004).

The following is established:

1. There is clear and current evidence (e.g., ECtHR reports, reports by the European Committee for the Prevention of Torture – CPT, or previous court judgments) demonstrating that the penitentiary system in the Issuing State suffers from structural and systemic problems (for

example, chronic overcrowding, poor hygiene conditions, lack of minimum vital space per inmate).

2. These conditions are so severe that they would constitute a violation of Article 3 of the European Convention on Human Rights (the prohibition of torture and inhuman or degrading treatment).

The Decision (The Refusal)

1. Conditioning: The Court of Appeal does not automatically refuse the surrender, but instead requests individual and specific guarantees from the Issuing State that the person will be incarcerated under conditions that comply with ECtHR standards (e.g., guaranteeing a minimum space of 3-4 sqm per inmate).

2. Final Refusal: If the Issuing State cannot provide legally binding guarantees, or if the guarantees provided are deemed untrue or insufficient, the Court of Appeal refuses to execute the EAW.

This example demonstrates that the principle of humanism is not merely a statement of intent but a mandatory procedural legal norm. It guarantees that no form of judicial cooperation can take place if it would predictably lead to exposing an individual to inhuman or degrading treatment in the requesting country. Respect for the fundamental rights of the person (including the right to a fair trial or non-discrimination) is an inalienable foundation of all cooperation activities.

1.8. The principle of immunity from jurisdiction

This principle provides that persons enjoying immunity from jurisdiction may not be prosecuted or tried in the territory of the state in which they are accredited or in the territory of another state in which they are present in their capacity as official representatives of their states. Consequently, these categories of persons will not be subject to international judicial cooperation in criminal matters.

The rule is unanimously recognized by all states of the world and is regulated at international level in various documents such as the Convention on Diplomatic Relations, the Convention on Consular Relations. It is also mentioned, at national level, in the provisions of Art

122, suggestively entitled “Immunities and privileges”, as well as in Art 19 Para 1 letter c) of the Law no 302/2004.

The laws cover the hypothesis in which the person to whom the European arrest warrant refers enjoys immunity in Romania, in which case the executing judicial authority will immediately request the competent authority to waive this privilege, as well as the situation of foreign persons who enjoy immunity from jurisdiction in our country, under the conditions and within the limits set by conventions or other international agreements, and are exempt from extradition.

Here are some short examples of applying the principle of immunity from jurisdiction:

1. Diplomatic immunity:

-Situation: A foreign state requests that Romania extradite a diplomat accredited to its embassy in Bucharest, who is accused of tax fraud committed in the requesting state prior to his appointment.

-Application of Immunity: Romania refuses the extradition request because the diplomat benefits from absolute criminal immunity during his mandate, according to the Vienna Convention on Diplomatic Relations. The only action possible is to declare the person as *persona non grata* and expel them from the country.

2. Head of State immunity

-Situation: Romania receives a European Arrest Warrant (EAW) or an extradition request for a serving president or head of government of a foreign state, accused of a war crime committed in the past.

-Application of Immunity: Romania refuses to execute the request. Heads of State (and other high-ranking officials, such as foreign ministers) benefit from absolute immunity from criminal jurisdiction while in office. This immunity is recognized by customary international law.

3. Consular immunity (limited)

-Situation: A state requests that Romania compel the testimony of a Romanian consular officer in connection with a criminal offense.

-Application of immunity: The consular officer benefits from immunity only for acts performed in the exercise of official functions. If

the offense is outside their official duties (e.g., driving under the influence of alcohol), immunity does not apply, but Romanian authorities must still follow the specific procedure provided by the Vienna Convention on Consular Relations.

Conclusion: In all these cases, the obligation to cooperate ceases when confronted with Romania's obligation to respect the norms of public international law that grant immunity to certain individuals, regardless of the gravity of the offense.

1.9. The principle of legality

In the literature the laws were defined as “the conditions under which people – independent and isolated, tired of living in a constant state of war and enjoying a freedom rendered useless by the uncertainty of its preservation – united in society” (Beccaria, 1965, p. 12).

With regard to the importance and necessity of the application of the laws, it is held in the doctrine that “no magistrate (who is part of the society) may not apply, by right, punishments outside the law, against another member of the same society, and a punishment that exceeds the limit set by the laws means a just punishment plus another punishment; therefore a magistrate may not increase the punishment set by law for a citizen who has committed a crime, under the pretext of zeal in the performance of his duty or under that of the public good”.

By analogy, the principle of legality lays down the rule that all proceedings carried out in the field of international judicial cooperation in criminal matters must be conducted in accordance with the provisions of the applicable international legal instruments and the domestic law of each state.

Ensuring respect for the principle of legality in all forms of international judicial cooperation in criminal matters entails, *inter alia*, ensuring the right of defense, where the situation so requires (David, 2014, p. 128).

An excellent example demonstrating the application of the principle of legality in international cooperation relates to the dual criminality requirement—the fundamental idea that cooperation can only

be granted for an act that constitutes a crime in both the Requesting State and the Requested State.

This principle is directly rooted in the core concept of *nullum crimen, nulla poena sine lege* (no crime, no punishment without law).

1.10. Aut dedere, aut judicare

This Latin adage – translated *either you surrender or you judge* – expresses the rule that refusal of international judicial cooperation in criminal matters imposes an obligation on the requested state to submit the case to the competent judicial authorities for prosecution and trial, at the request of the requesting state (Neagu, 2012, 12).

The principle of aut dedere, aut judicare (either extradite, or prosecute) is a cornerstone of international criminal law and cooperation. It means that a state must either surrender an alleged offender to a state that is willing and able to prosecute them, or, if the state refuses to surrender the offender (often due to legal or constitutional bars, such as the offender being a national), then the state must submit the case to its own competent authorities for the purpose of prosecution.

This principle ensures that there are no safe havens for perpetrators of serious international crimes (like terrorism, genocide, or serious offenses defined in multilateral treaties).

1.11. Calculation of the duration of custodial sentences and pre-trial detention measures

According to Art 15 Para 1 of Law no 302/2004, in the fulfillment of a request for cooperation made by the Romanian authorities, the duration of the sentences and custodial measures shall be taken into account and shall be computed from the duration of the sentence imposed by the Romanian courts.

For example, when the Romanian authorities issue a European Arrest Warrant with a view to surrender a person to be prosecuted or serve a sentence in Romania, the time the person concerned has been in custody in the executing State will be deducted from the length of the sentence that the Romanian court will impose, in case of conviction.

Here is an hypothetical example:

Scenario:

A Romanian citizen, Mr. A, commits a crime in Romania. The Romanian Prosecutor's Office issues a European Arrest Warrant (EAW) for Mr. A's surrender. Mr. A is later apprehended in Germany (Executing State).

The Sequence of Events

1.Arrest in Germany (Executing State): On January 1, 2025, german police arrest Mr. A based on the EAW issued by Romania.

2.Pre-trial detention: Mr. A is held in pre-trial detention in a german facility pending the decision on his surrender. This detention lasts exactly 90 days (until March 31, 2025).

3.Surrender: On April 1, 2025, Mr. A is surrendered to the romanian authorities.

4.Final conviction in Romania (Issuing State): The Romanian court eventually convicts Mr. A and imposes a final sentence of 3 years (1095 days) of imprisonment.

Application of the principle (Art. 15 Para 1, Law 302/2004)

-The Romanian court, in its final judgment, must apply Article 15 Para 1 of Law 302/2004, which mandates the deduction of time spent in custody abroad.

-Total sentence imposed: 1095 days

-Time deducted (custody in Germany): 90 days

-Net sentence remaining to serve: $1095 - 90 = 1005$ days

The principle ensures that the 90 days Mr. A spent in the german prison waiting for the EAW to be executed are fully credited against his final sentence. This avoids double punishment for the pre-trial period and upholds the fairness and proportionality of the sentence. The Romanian court explicitly states in the judgment that the sentence shall be calculated starting from the date of the german arrest, acknowledging the cooperation period.

1.12. The principle of specialty

In the application of this principle, the person targeted by an international cooperation mechanism may not be prosecuted, trialed or deprived of liberty for another act committed prior to surrender. The rule is mainly relevant to extradition and the European Arrest Warrant, but also applies in other areas.

For example, requests for legal assistance to obtain evidence, which can be used only in the case giving rise to the request.

There are also exceptions to this principle, by virtue of which the person concerned may also be prosecuted, tried or punished in Romania for other acts committed prior to surrender. Thus, the following situations constitute exceptions to the principle of specialty:

- the executing state consents to it;
- the person concerned has expressly waived the specialty rule before the executing judicial authorities;
- the requested person has not left the territory of the Member State to which he or she has been surrendered within 45 days of his or her final discharge, although he or she had the opportunity to do so;
- if a custodial sentence is not imposed at the time of the judgment, or the offense is not punishable by a custodial sentence¹.

Conclusions

Scientific and technical progress and the expansion of the democratization process at international level have provided the opportunity for the easy movement of people and goods, leading to the development of human society as a whole. The undeniably beneficial effect for humanity as a whole has, however, also created the possibility of the diversification and development of crime of all kinds.

¹ Art 17 Para 4 of the Law no 302/2004 on international judicial cooperation in criminal matters

The growing danger posed by the proliferation of transnational crime, the need to prevent and combat crime more effectively, have required legislative developments.

International judicial cooperation in criminal matters should be seen as a set of rules under which the states of the world provide mutual support to each other with the aim of curbing cross-border crime.

In view of its importance, all international judicial cooperation in criminal matters is carried out in accordance with certain general principles, which have been briefly set out and analyzed above.

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