

CONSIDERATIONS REGARDING THE TRANSPOSITION BY ROMANIA OF THE FRAMEWORK DECISION No. 2008/947/JAI OF THE COUNCIL DATED NOVEMBER 27th, 2008

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Abstract: *The application of the principle of mutual recognition in the case of court decisions in criminal matters represents one of the important aims of the European Union, not only in the matter of punishments or custodial measures, but also of suspended sentences or alternative sanctions to detention and decisions on conditional release. This study aims to present the way in which Romania transposed the Framework Decision no. 2008/947/JAI of the Council dated November 27th, 2008 in the national legislation, Law no. 302/2004 on international judicial cooperation in criminal matters, with regard to probation measures and alternative sanctions must be mandatorily supervised, during the execution phase of the sentence, even if it is executed in another (requested) state than the one of conviction (applicant), in order to increase the chances of social reintegration of the convicted person. The study will also analyse some of the solutions of the Romanian courts, the jurisprudence in the application of these provisions being in an early stage.*

Key words: *principle of mutual recognition, alternative sanctions to detention, probation, reintegration, convicted person, framework decision.*

1. The principle of mutual recognition in the case of court decisions in criminal matters

One of the important objectives of the European Union in achieving an area of freedom, security and justice is to offer a high level of security to all its citizens, which requires the respect of the principles of freedom, democracy, respect for human rights and fundamental freedoms by the member states.

On the same level, it is necessary for each of the member states to be able to enforce a judgment given in another member state, having full confidence in the judicial procedures carried out by the latter. This, since the existing freedom of movement, especially within the European Union, creates various situations in which a convicted

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person does not have his usual legal residence in the state where a sentence was imposed, whether it is an enforceable one or not involving deprivation of freedom, which implies the supervision of some suspensory measures ordered by the judicial authorities.

Thus, it was decided that one of the fundamental principles underlying relations between member states, in terms of creating an area of freedom, security and justice at the level of the European Union, is the one of mutual recognition in case of court decisions issued in criminal matters, affirmed for the first time in the conclusions of the European Council meeting held in Tampere on October 15-16th, 1999 and reaffirmed in the Hague Program of November 4-5th, 2004.

In applying the principle of mutual recognition, Member States must promote direct contacts between their competent authorities in order to carry out the necessary activities in an expeditious manner, thus avoiding intermediate authorities.

2. The need and purpose of the adoption at the level of the European Union of the Framework Decision no. 2008/947/JAI of the Council of November 27th, 2008

Although, as far back as the Program of Measures adopted by the Council on November 29th, 2000, it was stated that in order to implement the principle of mutual recognition of court decisions, cooperation is also required in the matter of suspended sentences and conditional release, the principle was initially regulated only with reference to court decisions in criminal matters that impose penalties or involving deprivation of freedom for the purpose of their enforcement in the European Union.

In this respect, the Council Framework Decision 2008/909/JHA of November 27th, 2008 was adopted, which only concerned the mutual recognition and enforcement sentences involving deprivation of freedom.

With respect to measures which do not involve deprivation of freedom, the Council of Europe Convention of November 30th, 1964 on the supervision of offenders sentenced to parole or paroled was adopted at the European Union level, but it was ratified by only 12 of the member states, so that its application was very limited.

As a result, at the level of the European Union, on November 27th, 2008, the Council adopted Framework Decision 2008/947/JAI on the application of the principle of mutual recognition in the case of court decisions and probation decisions in order to supervise probation measures and alternative sanctions.

The entry into force of this Framework Decision arose out of necessity as it was found that the application of probation measures or alternative sanctions to detention is difficult to achieve when the persons under criminal investigation do not live in the Member State where the criminal trial is being conducted.

In the event of the conviction of these persons to such measures, the respective member state would be unable to enforce them, as the convicted person lives in another member state, the elements related to transborderity making another member state better able to carry out the activities which ultimately lead to the social rehabilitation of the convicted person.

The need for the new, simplified system of recognition of criminal judgments handled

by a member state is based on a high degree of trust between member states in terms of respecting the fundamental rights recognized by the European Charter of Human Rights and the principles recognized at the level of the European Union.

The Framework Decision provides in its very first article the purpose of its entry into force, namely the establishment of rules based on which a member state, the executing state, recognizes and enforces a court decision and suspensory probation measures or alternative sanctions to detention ordered by another member state, the sentencing state, being able to make all the necessary decisions for their effective execution.

As stated in its preamble, the Framework Decision aims at the mutual recognition and supervision of suspended sentences, alternative sanctions, and conditional release decisions, all with the aim of increasing the chances of the convicted person's social reintegration. In this respect, on the one hand, for the convicted person to maintain linguistic and cultural ties with his family, and on the other hand, for him to be monitored, in order to supervise compliance with probation measures and alternative sanctions ordered by a member state.

Some of these measures are common to all or several member states, such as those aimed at the obligation to stop drinking alcohol, that of changing habitual residence, in the case of domestic violence crimes, that of prohibiting movement in certain places or to certain activities carried out in free time or limitations on the ways of carrying out a professional activity.

These types of probation measures and alternative sanctions are supervised, in principle, by all member states, they aim at an easier reintegration into the community of the convicted person, the prevention of his recidivism, but also a protection granted to the victims of the crime.

Other measures or obligations ordered during the period of supervision, such as community service, may be refused if they do not comply with the law of the executing state or if they cannot be executed within a certain period.

The scope of the Decision includes only: the recognition of court decisions and, as the case may be, probation decisions, namely those court decisions by which it was established that an individual committed a crime and to whom a prison sentence or any measure involving deprivation of freedom was imposed, but subsequently a parole decision, a suspended sentence, or other alternative sanction has been issued in respect to it, and the transfer of responsibility for the supervision of probation measures and alternative sanctions to another state is required rather than to the sentencing member state.

The Framework Decision 2008/947/JAI does not apply to the execution of court decisions in criminal matters whereby prison sentences or custodial measures have been applied that fall within the scope of the Framework Decision 2008/909/JAI, nor on the recognition and enforcement of financial sanctions and confiscation orders falling within the scope of the Council Framework Decision 2005/214/JHA of February 24th, 2005 on the application of the principle of mutual recognition of financial sanctions and the Framework Decision 2006/783/JAI of the Council of October 6th, 2006 on the application of the principle of mutual recognition of confiscation orders.

3. Transposition by Romania of the provisions of Framework Decision no. 2008/947/JHA of the Council of November 27th, 2008. Scope

According to the provisions of art. 288 of the Treaty on the Functioning of the European Union (TFEU), in the exercise of the powers of the Union, normative documents are adopted at their level, consisting of regulations, directives, decisions and recommendations, all of which are binding, after their publication in the Official Journal of European Union.

Although, according to European Union regulations, only directives need to be transposed into national law by member states to enter into force, while regulations and decisions become automatically binding on the date they enter into force, many of the member states transpose into national law these documents as well.

Romania has transposed the framework decisions relating to the application of the principle of mutual recognition, as well as the one relating to judicial decisions in criminal matters that impose penalties or custodial measures for the purpose of their execution in the European Union (the Framework Decision 2008/909/JAI of the Council of 27 November 2008), as well as regarding court judgments and probation decisions in order to supervise probation measures and alternative sanctions (the Framework Decision 2008/947/JAI of the Council of November 27th, 2008) in Law no. 302 of 2004 regarding international judicial cooperation in criminal matters, republished.

The provisions of the Council's Framework Decision 2008/947/JAI of November 27th, 2008 were implemented by our country through the provisions of Title VII, Chapter II of Law no. 302 of 2004 on international judicial cooperation in criminal matters, republished, entitled "*Provisions on cooperation with the member states of the European Union in the application of the Council Framework Decision 2008/947/JAI of November 27th, 2008 on the application of the principle of mutual recognition in the case of court decisions and of probation decisions in order to supervise probation measures and alternative sanctions*".

As for the *scope of application* of these legal provisions, they only cover the relationship with the member states of the European Union or with other states with which Romania has concluded a bilateral or multilateral treaty on this matter, regarding a *final court decision* by which a court ordered against an individual who committed a crime one of the following sanctions: (i) suspension of the execution of the sentence under supervision; (ii) postponement of the application of the penalty; (iii) conditional release, if the remainder of the sentence remaining unexecuted at the date of release is 2 years or more; (iv) an alternative sanction - any other sanctions not involving deprivation of freedom, other than a financial sanction, and which consists of an obligation or coercive measure and which has an independent existence or a *probation decision* made pursuant to a court decision, by which a probation measure was applied or conditional release was ordered.

The probation measure was defined as any measures, obligations or restrictions among those provided for in art. 203, established for an individual in connection with the suspension of the execution of the sentence under supervision, the postponement of the application of the sentence or the conditional release.

Probation measures are considered: a) the convicted person's obligation to inform a certain authority regarding any change of residence or workplace; b) the obligation not to enter certain localities, places or areas defined in Romania or in the issuing state; c) the obligation not to leave the territory of the executing state; d) provisions regarding behavior, residence, education and training, leisure activities or containing limitations regarding the methods of carrying out a professional activity; e) the obligation to appear before a certain authority on set dates; f) the obligation to avoid contact with certain persons; g) the obligation to avoid contact with certain objects that have been used or could be used by the convicted person for the purpose of committing a criminal act; h) the obligation to repair, from a financial point of view, the damage caused by the crime and/or the obligation to provide proof of the fulfillment of this obligation; i) the obligation to provide work for the benefit of the community; j) the obligation to cooperate with the probation service or with another institution or social service that has responsibilities regarding convicted persons; k) the obligation to follow a therapeutic or detoxification treatment; l) the obligation to communicate information that could control the means of existence of the convicted person.

4. Recognition of court decisions and probation decisions that establish probation measures or alternative sanctions given by the courts or authorities of other member states of the European Union, for the purpose of their execution in Romania (Romania is the requested state)

4.1. Jurisdiction to recognize the decision. The necessary conditions for the admission of the application

The recognition of judicial decisions and probation decisions by Romania, as the requested state, executing state, is carried out based on the principle of mutual trust, but only when the concrete measures are likely to produce legal effects according to the Romanian criminal law and if they do not contravene the public order of our state.

The competence regarding the recognition of the court decision or the probation decision pronounced by a court, or another authority of a member state rests in Romania, as a rule, with *the tribunal in whose jurisdiction the convicted person lives*. As an exception, it is possible to achieve recognition incidentally, by the court that judges another crime committed by the person convicted by the foreign court decision, a crime that could attract the revocation or annulment of the sanction pronounced by the foreign court.

In order to be able to order recognition, it is first of all necessary that the court decision has ordered either the suspension of the execution of the sentence under supervision, or the postponement of the application of the sentence, or the conditional release or another alternative sanction, and the probation measures or the alternative sanction established in that decision to have a counterpart in Romanian law and be compatible with it, but also that the act for which the sanction was applied would have constituted a crime, according to Romanian law, if it had been committed on the territory of our country.

It is also necessary for the convicted person to be on the territory of Romania or, if he

is on the territory of the sentencing state, to have Romanian citizenship and to live or to stay in Romania, or, in the situation where he does not have Romanian citizenship, to have the right of residence or the right of stay on the territory of Romania or to be one of the family members of a Romanian citizen or of a person who has the right of residence or the right of stay on the territory of Romania, or to prove that he is going to work on the territory of Romania a gainful activity, studies or professional training.

The total duration provided by Romanian law for the recognition of the foreign court decision is a maximum of 60 days from the moment of receipt of the request and the documents. The deadline can be exceeded by a maximum of 60 days only in exceptional situations, for example, if the translation of documents or additional information from the authority in the requesting state was needed.

In order to be able to recognize the court decision pronounced in the requesting member state (the state of conviction), it is necessary for its judicial authority to complete the Certificate according to the model provided in the Framework Decision, which it sends to the court in whose territorial area the convicted person lives, together with the court decision or the probation decision that is sought to be recognized, as well as with the statement of the convicted person through which he expresses his intention to return or settle in Romania within the next 30 days from the date of the statement, in the event that he is still on the territory of the issuing state. Also, the request will be accompanied by any other documents submitted by the convicted person to the authority of the issuing state.

4.2. Admissibility in principle of the request

The first procedural stage concerns *the admissibility in principle of the request*, which must be carried out within a maximum period of 5 days from the date of registration of the case at court, by a judge sitting alone.

As *preliminary measures*, the judge charged with resolving the case checks whether aspects related to the way of completing and sending the request, for example, whether the certificate is thoroughly completed or whether the accompanying documents are translated into Romanian. If he finds certain non-compliant aspects, the judge directly requests the issuing judicial authority their remedy within a period of no more than 15 days. On the same occasion, if deemed necessary, the judge may request additional documents, such as, for example, an evaluation report drafted with regard to the convicted person.

The examination of the application for admission must in principle be carried out within a maximum of 5 days from the date of registration of the case at the court.

In the situation where he finds that the submitted documents meet the requirements or have been completed or corrected, *the judge in principle admits the request, by concluding, and sets a deadline for its resolution.*

At the same time, *he informs the probation service and request its advisory opinion* regarding the probation measures or the alternative sanction ordered by the sentencing state, regarding the possibility of their execution on the territory of the Romanian state, according to the legal provisions.

In the situation when he finds that the submitted documents do not meet the

requirements and have not been completed, corrected, or submitted in their entirety, *the judge rejects, by final sentence*, the request and sends an informative note about this solution to the judicial authority of the issuing state.

At the same time, it is possible that after the submission of the request, the issuing state withdraws its certificate, so that *the judge will take note of the withdrawal of the request, will be dispossessed by a final sentence, and will return the documents received* to the judicial authority of the issuing state.

After admission in principle, the judge will move on to the deadline fixed for this purpose, *to the substantive resolution of the request for recognition* submitted by the issuing state of the court decision or the probation decision.

4.3. Resolution of the request for recognition

The request for the recognition of the judgment pronounced by the requesting state is resolved by a single judge, in *the council chamber*, with the *mandatory citation of the convicted person and the probation service*. Also, *the participation of the prosecutor is mandatory*.

The court will check the conditions provided by the provisions of art. 202 of Law no. 302/2004 regarding international judicial cooperation in criminal matters, provided in point 4.1., and will be pronounced within 10 days from the date of admission in principle, by sentence.

The decision must be drafted *within 5 days at the latest* and communicated to the convicted person and the probation service. The prosecutor, ex officio or at the request of the probation service, as well as the convicted person, can file an *appeal* against the sentence *within 5 days*. The file must be submitted to the court of judicial review within 3 days from the filing of the appeal.

The appeal will be resolved by a *single judge* within 5 days. *The decision is drafted within 5 days at the latest* and is communicated to the convicted person and the probation service. The urgent procedure established by Romanian law is thus noted.

When in accordance with the conditions provided by the provisions of art. 202 of Law no. 302/2004, republished, none of the grounds for refusal of recognition are incident, the Romanian court *will admit the request for recognition of the foreign court decision or the probation decision*, and will immediately communicate this aspect to the competent authority of the issuing state.

The court's solution can aim either at the recognition of the court decision and thus order the supervision of the probation measures or the alternative sanction as they were established in the court decision of the issuing state, or the adaptation of the latter, according to the provisions of the Romanian legislation, in the situation when the issuing authority has expressed agreement in this sense.

The Romanian court *will adapt the probation measures or the alternative sanctions* ordered by the judicial authority of the issuing state, when the duration of the measure or the trial period established by the foreign court for the crime committed does not correspond in terms of the amount or exceeds the general maximum limit of the probation measure or the trial period that applies, according to Romanian law, or when the legal nature of the probation measure or the alternative sanction does not

correspond to those that apply, according to Romanian law.

It is also possible *to admit only part of the request for recognition*, for example when the conviction issued by the requesting state concerns two crimes, and for one of them, the person was convicted in Romania, or if only some of the probation measures established in the court decision or foreign probation decision can be executed in Romania.

However, the request for recognition *will be rejected by the Romanian authority*, in accordance with the conditions provided by art. 202 of Law no. 302/2004, republished. The Romanian court will also reject the request for recognition if the person was convicted in Romania for the same deed for which he had been convicted by the requesting state or in another state for the same deed, and the foreign judgment given in this state had been previously recognized and enforced on the territory of Romania.

Likewise, a judgment cannot be recognized if the convicted person benefits from immunity from criminal jurisdiction according to the Romanian law or is not criminally liable due to his age or the prescription of the execution of the sentence has intervened, according to the Romanian criminal legislation.

A rejection solution will also be adopted when the sanction involves the execution of a measure aimed at the person's state of health, and this cannot be implemented in Romania or provides for a medical treatment that cannot be supervised in Romania, in accordance with the national legal or health system, or the duration of the supervision period or the duration of the probationary measures, or the remaining time until their completion is less than 6 months or 60 hours in the case of community service.

An additional guarantee is granted when the convicted person was not personally present at the trial in the requesting state, unless the issuing state informs that the person was informed, in due time, about the day, month, year and the place of appearance and the legal consequences in case of non-appearance, or having knowledge of the day, month, year and place of appearance, mandated his chosen or ex officio appointed lawyer to represent him, or after he was personally served with the judgment of conviction, the convicted person either expressly waived the right of appeal, or did not declare, within the term provided by law, the said right of appeal.

A new request regarding the same court decision is inadmissible, except for the situation in which the request was rejected for failure to meet the formal conditions, when analysing the admissibility in principle.

The execution of supervision measures, in the event that the application is accepted, will be *governed by Romanian law*, the court that recognized the foreign judgment *becoming the enforcement court* and having the authority to take the subsequent measures after the recognition, and the Probation Service will supervise the execution of the probation measures and of alternative sanctions in accordance with Romanian legislation in the field of probation.

The judicial authority of the issuing state will, however, retain the competence to judge an appeal in order to abolish or modify the foreign court decision, while amnesty or pardon may be granted both by the issuing state and by the Romanian authorities.

5. Recognition of court decisions establishing probation measures or alternative sanctions given in Romania for the purpose of their execution in other member states of the European Union (Romania is the requesting state)

5.1. Necessary conditions for issuing the request

Law no. 302/2004 on judicial cooperation in criminal matters, republished, also regulates the situation in which Romania is the member state that requests the recognition of a court decision issued by its own courts, regarding a convicted person who lives on the territory of another member state, in which case our country will have the status of requesting state or state issuing the decision.

In order to be able to request the execution of the decision handed down by a court in Romania by another member state, the executing state, it is necessary that the Romanian court, through the final court decision, order the defendant to be sentenced to a prison sentence with the suspension of the execution of the sentence under supervision or one of the non-custodial educational measures (civic training course, supervision, recording at the end of the week, daily assistance) or to have ordered the suspension of the application of the sentence or the conditional release of the convicted person.

Another condition that must be met concerns the remaining time until the completion of the supervision term established by the Romanian court, which must be longer than 6 months, as well as the fact that the convicted person is not being prosecuted or tried for other crimes in our country. Equally, it is necessary to have an evaluation report drafted by the Probation Service, which shows that the execution of probation measures on the territory of the executing state is likely to ensure the social reintegration of the convicted person.

5.2. The procedure to be followed and the effects of the request

In this case, *the competence rests with the judge delegated with execution* within the enforcement court, who will complete the Certificate provided in annex no. 9. If the decision that is sought to be recognized was pronounced by the High Court of Cassation and Justice, the Certificate must be completed by the delegated judge of the Bucharest Court.

The certificate, the court decision and the evaluation report drafted by the probation service must be translated into the official language of the enforcement statute or into the language that this state accepts and are sent by fax, e-mail or by any means of communication, directly to the foreign authority.

At the same time, the delegated judge will request information regarding the maximum duration of deprivation of liberty provided by the legislation of the executing state for the crime on which the court decision was pronounced in Romania and which could be imposed on the convicted person in the event of his violation of the measures of probation or of committing a new crime. Also, the statement of the executing state is requested regarding the assumption or non-assumption of the decisions subsequent to the recognition of the court decision.

The certificate sent to the competent foreign authority can be withdrawn by the judge

delegated with the execution, if before the recognition of the decision by the executing state, the revocation or annulment of the sanction ordered by the Romanian court is required or when it is found that the maximum duration of the deprivation of freedom provided by the legislation of the executing state is superior to that provided by Romanian law.

The same withdrawal solution is also required when the Romanian judge assesses that the probation measures established by the executing state are not likely to correspond to those ordered in the Romanian court decision or to ensure the social reintegration of the convicted person.

The information regarding the maximum duration of deprivation of liberty regulated by the legislation of the executing state and the measures that can be ordered and executed on its territory are requested by the judge delegated with the execution, and after receiving them, within a maximum period of 10 days from receiving the information, the judge will decide whether to maintain the Certificate or withdraw it.

Just as in the situation in which Romania is the executing state, and when it has the capacity of the requesting state, after the recognition of the decision pronounced by the court in our country, the execution of probation measures is governed by the law of the executing state, while the jurisdiction of the court regarding an appeal for annulment or modification of the court decision belongs to the Romanian courts. Amnesty or pardon can be granted both by the Romanian state, the issuing state, and by the executing state.

Likewise, after the recognition of the Romanian court decision, the executing state is competent to make all subsequent decisions regarding the sanction applied by the Romanian court decision, except for the previously mentioned situations. Only when the executing state declares that it does not assume the decisions subsequent to the recognition of the court decision, the Romanian court of execution regains the competence regarding the revocation of the sanction applied by the court decision.

6. Aspects from the court precedents regarding the application of the provisions of the Framework Decision no. 2008/947/JAI of the Council of November 27th, 2008

Although the Framework Decision no. 2008/947/JHA of the Council of November 27th, 2008, has been transposed into Romanian legislation for quite some time and is recognized as a form of international cooperation in criminal matters of real value, a rich jurisprudence has not yet been developed regarding recognition.

Several causes of application of the mentioned provisions were identified on the execution of the court decisions, by the Probation Services which, thus, appealed to the judge delegated with the execution from the court that pronounced the decision, in order to initiate the procedure for the execution of it in another member state. The first requests of this kind concerned citizens of a nationality other than Romanian, who lived with stability and continuity on the territory of the state of which they are a national. Thus, the Arad Court sentenced the defendant K.K., a Bulgarian citizen, residing in Paradzhic, Bulgaria, to 1 year and 8 months in prison, with the suspension under supervision of the execution of the sentence for a period of 3 years of supervision, by

the Criminal Sentence no. 1490/27.08.2020 of the Arad Court, final on October 21st, 2020, supervision being entrusted to the Arad Probation Service. During the term of supervision, the person was required to attend one or more social reintegration programs and the obligation to perform unpaid work for the benefit of the community for a period of 60 days.

On December 4th, 2020, the convicted person appeared before the Arad Probation Service for the first supervision meeting and was informed that there is a possibility of international transfer of his supervision, aspects recorded in a report. On 04.05.2021, the convicted person completed a Minutes including the Declaration of Will regarding the international transfer and submitted supporting documents regarding residence on the territory of the Bulgarian state. On the same day, the Arad Probation Service submitted to the Arad Court the minutes regarding the Proposal to initiate the international transfer procedure.

On May 7th, 2021, the judge delegated with execution from the Arad Court issued the European Certificate referred to in art. 6 of the Framework Decision 2008/947/JAI and forwarded it to the competent judicial authority in the Republic of Bulgaria. On July 8th, 2021, Decision no. 21/08.06.2021 was pronounced by the Pazardzhik Court in Bulgaria, which recognized the criminal sentence no. 1490/27.08.2020 pronounced by the Arad Court. Consequently, on July 8th, 2021, the Arad Probation Service drew up the report on the completion of the supervision exercised by the Romanian authority until that date and archived the file.

Likewise, the transfer procedure of the execution of a sentence with suspension under supervision and of the measures and obligations ordered by a Romanian court was also used when the convicted persons, Romanian citizens, had actually lived for several years, having their habitual residence on the territory of another member state.

Thus, in one case, the Court of Constanța ordered the conviction of the defendants O.C.F and Z.C.B. to a sentence of 3 years in prison, with the suspension of the execution of the sentence under supervision, for a term of supervision of 3 years. On this date, the initiative to transfer the supervision of the execution of the sanction belonged to the defendants' lawyer, who sent the Bucharest Probation Service an address requesting the *start of the procedures for the transfer* of the sentence for execution in Italy, since the convicted persons reside on the territory of the *Italian state*, submitting supporting documents in this regard.

The Bucharest Probation Service drew up a report whereby they notified the judge delegated with the enforcement within the enforcement court, and through which they requested the analysis of the need to initiate the transfer procedure. The delegated judge from the Constanța Court completed the Certificate provided for by Law no. 302/2004 and forwarded it directly to the competent authority in Italy, the General Prosecutor's Office of the Court of Appeal in Florence - "Procura generale presso la Corte di Appello di Firenze". In order to speed up the recognition procedure, some courts adopted another way, by which, through the very provisions of the sentencing decision, if from the documents of the file it appears that the defendant has his habitual residence on the territory of another member state, they ordered that the definitive sentence abide by the measures provided for by art. 220 of Law no. 302/2004.

In this sense, we mention the criminal sentence no. 825/29.10.2021 pronounced by the Bucharest District Court 1 (unpublished), which ordered the conviction of the defendant P.M. to a resulting sentence of 9 months and 10 days in prison, in the form of supervised suspension of the execution of the sentence, for a period of 2 years. At the same time, it was decided that she should perform unpaid work for the benefit of the community, for a duration of 60 days, and attend a social reintegration program. The court found that the defendant resides on the territory of France, from the file it appears that she had lived on the territory of this state for 3 years, having her residence and place of work there, and she intends to return to France as soon as possible, so it considered that it is necessary that the supervision and enforcement of the ordered obligations be transferred to this state.

According to art. 219 of Law no. 302/2004 republished, if on the date of the pronouncement, the convicted person declares that he intends to return or has returned to the territory of another member state, after the court decision had become final, but before its transmission to the probation service, the judge delegated with the carrying out of the sentence from the enforcement court will apply the provisions of art. 220. Although the way the first instance proceeded is not expressly provided for by Law no. 302/2004, in fact, we appreciate that it represents only a way of notifying the judge delegated with execution, which will follow the procedure provided by law. In this situation, the execution of the decision by the competent probation service is avoided by its finding that the convicted person resides in another member state hence notifying the judge delegated with the execution to start the procedure of recognition and transfer of the execution in that Member State.

References

- Council Framework Decision 2008/947/JAI of November 27, 2008 on the application of the principle of mutual recognition in the case of court judgments and probation decisions in order to supervise probation measures and alternative sanctions, published in the Official Journal of the European Union no. L 337/102 of 16.12.2008.
- Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of recognition mutual in the case of court decisions in criminal matters that impose penalties or privative measures of freedom for the purpose of their execution in the European Union, published in the Official Journal of the European Union no. IT 327/27 of 05.12.2008.
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of recognition of mutual financial sanctions, published in the Official Journal of the European Union no. L 76/16 dated 22.03.2005.
- Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of recognition mutual agreements for confiscation decisions, published in the Official Journal of the European Union no. L 328/59 of dated 24.11.2006.
- Law no. 302 of 2004 regarding international judicial cooperation in criminal matters, republished in the Official Gazette of Romania, Part I, no. 411 of May 27, 2019.