



**HANDBOOK
ON ROMANIAN LEGISLATION AND PROCEDURES ON
INTERNATIONAL JUDICIAL COOPERATION
IN CRIMINAL MATTERS**

- for the use of the foreign officials-

@ 2008 Directorate for International Law and Treaties
Division for International Judicial Cooperation in Criminal Matters

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INSTITUTIONAL AND LEGAL FRAMEWORK

§ 1. Ministry of Justice as a central authority

The Ministry of Justice (hereinafter MJ) is the ***central authority of Romania for extradition, European arrest warrant, transfer of the sentenced person and validity of foreign judgments, mutual legal assistance, transfer of criminal proceedings, confiscation orders and financial penalties.***

In cases of the mutual legal assistance the MJ is the central authority only for the receipt and transmission of such requests addressed *in the trial and post trial stages*. Their execution is in the competence of the local courts. There should be noted that the communication mentioned above is without to prejudice the application of articles 5 and 6 from the European Union Convention on mutual assistance in criminal matters of 29 May 2000 and its Protocol.

Every year, the MJ deals with more than eighteen thousand matters involving international judicial cooperation. Approximately two thousand of these concern the mutual legal assistance. MJ receives, examines and forwards requests to and from Romania in such matters as international judicial cooperation in criminal matters.

The MJ **Website** (www.just.ro) offers practical information on international judicial cooperation in criminal matters between Romania and foreign countries inside or outside the European Union. It is addressed both at the authorities concerned (judges, prosecutor, clerks and officials from the Ministry of Justice) as well as at individuals working in or affected by the field of international judicial cooperation in criminal matters (such as lawyers, students, professors).

An **Electronic Guide on international judicial cooperation in criminal matters** can be found on the website of the Romanian Ministry of Justice. The guide is divided into seven sections: extradition and surrender, recognition and execution of sentences, mutual legal assistance, transfer of the sentenced persons, international jurisdiction, immunities and forms. Each section provides checklists for the legal instruments applicable by Romania at the bilateral and multilateral level, gives users an insight into the applicable national legal documents and supplies them with the contact details of the national authorities

(http://www.just.ro/Sections/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83_penala/tabid/606/Default.aspx)

Note: For the moment the information on the website is available only into Romanian.

The tasks of the MJ as a central authority are handled by the
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You should note that MJ is not the only central authority with responsibility for the operative part of international judicial cooperation. The functions of central authority in judicial cooperation in the field of criminal law are performed also by the General Prosecutor's Office (only for mutual legal assistance during pre-trial stage) and by the Ministry of Administration and Interior (only for judicial records).

§ 2. Romanian Judicial Network in Criminal Matters

Since 2001, Romania has established a Judicial Network in Criminal Matters. This is actually a Romanian branch of the European Judicial Network. Its secretariat is assured by the Division for judicial cooperation in criminal matters (Directorate for International Law and Treaties).

The network is composed of the judges and prosecutors from all the courts of appeal and prosecutors offices at the same level and also from the High Court of Cassation and Justice, the General Prosecutor Office and also of officials from the MJ (in total 44 of Members).

Network members exchange experiences and discuss the practice and the legislation on judicial cooperation in criminal matters. Members hold periodic meetings in Bucharest least once every six months. The purposes of these meetings are to: a) enable the members to get to know each other and exchange experience, in particular as regards the application of the EU instruments based on the principle of mutual recognition; b) provide a platform for discussion of practical and legal problems encountered by the judges and prosecutors

in the course of the judicial cooperation; c) identify best practices in judicial cooperation in criminal matters; d) exchange data and views.

§ 3. Romanian Liaison Magistrates

Within the European Union, the institution of the Liaison Magistrates was created by the Joint Action of 22 April 1996. This is one of the first institutions arising from the Maastricht Treaty, and in particular from its first pillar.

Article 2 of the Joint Action of 22 April 1996 states that the creation of liaison magistrates seeks “to increase the speed and effectiveness of judicial cooperation and to promote the pooling of information on the legal and judicial systems of the Member States and to improve their operation”

Joint Action of 22 April 1996 only established the framework that would allow to the Members States to post or exchange magistrates or officials with experience in international judicial cooperation between themselves. The effective exchange operates on the basis of *ad hoc* bilateral agreements between the states concerned.

Their tasks include “any activity designed to encourage and accelerate all forms of judicial cooperation in criminal and, where appropriate, civil matters”.

Romania has established the national legal framework for posting or exchanging liaison magistrates not only in the European Union Members States, but also in the others states, based on a written agreement.

Since December 2007, Romania posted a liaison magistrate in Rome (Italy). An Italian liaison magistrate is working within MJ since December 2009.

§ 4. National Member to Eurojust - Judicial Cooperation Unit of the European Union

Since 2007 Romania has nominated a national member to Eurojust. The National Member is a prosecutor. For more information about Eurojust follow the link <http://www.eurojust.europa.eu/index.htm>.

§ 5. Romanian Contact Points to the European Judicial Network (EJN)

For the moment, the Romanian contact points are from the MJ (2), from the Prosecutor Office of the High Court of Cassation and Justice (4) and from the courts of appeal (3 judges). All of them are practitioners working in the field of the international judicial cooperation in criminal matters. The national correspondent to EJN is a contact point from MJ and the tool correspondent is also a representative of MJ.

They provide assistance to the Romanian and the others Members States judicial authorities in order to obtain, upon requests, information or documents necessary in criminal proceedings at different stages, including proceedings related with organized crime, terrorism and corruption, to establish hearings by videoconference or even to receive proofs of the service of documents before the date of the trial. Since 2007, among the most frequently cases corresponding are the European arrest warrants.

Contact points are acting as: c) active agents (proving the other contact points from the other Member States and the local judicial authorities with all the information needed), b) Advisors (advising national judicial authorities or of the others Member States when delivering or executing requests for judicial cooperation). e) Coordinators (assuring a better coordination). f) providers of information and advice (preparing and updating the information on judicial cooperation and disseminating the information to the local judicial authorities).

For more information about EJM follow the link <http://www.ejm-crimjust.europa.eu/>

§ 6. National law on international judicial cooperation in criminal matters

Law no. 302/2004 on international judicial cooperation in criminal matters is an organic law, regulating cooperation procedures on: extradition, transfer of proceedings in criminal matters, recognition and execution of judgments, the transfer of sentenced persons, mutual legal assistance, including the search, seizure and confiscation of assets.

The EU procedures: European arrest warrant, freezing order, confiscation order and financial penalties are also covered by the Law no. 302/2004 on international judicial cooperation in criminal matters.

For each form of judicial cooperation, the law was harmonized with the new instruments of the European Union, such as the Convention on simplified extradition procedure between the Member States of the European Union of 10 March 1995 and the Convention relating to extradition between the Member States of the European Union of 27 September 1996, the European Union Convention on mutual assistance in criminal matters of 29 May 2000 and its Protocol and the relevant provisions on judicial cooperation of the Schengen acquis.

The law regulates others important instruments developed at the European Union level: freezing orders, confiscation orders and financial penalties.

Naturally, the most important measure is the European Arrest Warrant which is applied starting with 1 January 2007. Also, the provisions transposing the European Union Convention on mutual assistance in criminal matters of 29 May 2000 and its Protocol are of great importance. The Convention is applying for Romania starting with 1 December 2007 and regulates the direct contact with the authorities of the other Member States.

§ 7. National law on judicial organization

According to the Romanian law on judicial organization (Law no. 304/2004 - the English version is available on http://apps/ecris_1lds/AfisareAct.aspx?idAct=162970), justice shall be administered by the following courts: High Court of Cassation and Justice, courts of appeal, district courts, specialized district courts and local courts. Public Prosecutor's Offices are functioning attached to the courts.

In Romania, there is only one Supreme Court of Justice - High Court of Cassation and Justice, which is a legal entity and has its headquarters in the state capital: Bucharest. The courts of appeal are courts acting as legal entities, within the district of which several district courts and specialized district courts function. The district courts are organized at the level of each county and of Bucharest municipality, and, as a general rule, their headquarters are located in the county capital. The local courts are organized in the counties and in the districts of the Bucharest municipality.

The Romanian organization of justice is presented on the website of the MJCL at <http://portal.just.ro/> . The page is very well structured so as the information can be easily obtained. The map corresponds to the Romanian administrative organization and allows finding the respective judicial authorities circumscribed to each county. One click on one specific county will conduct to the presentation of all the courts corresponding to the county in case (local courts/district court/court of appeal). Each court has its own website.

From <http://portal.just.ro/> can be accessed also:

1. List of all Romanian Courts (<http://portal.just.ro/InstanteLista.aspx>)
2. Romanian Jurisprudence (<http://portal.just.ro/Jurisprudenta.aspx>)
3. Judicial Atlas (<http://portal.just.ro/AtlasJudiciar.aspx>), which allows the identification of the corresponding court (one has just to introduce the name of the county, the name of the town or of the street, the postal code).
4. Texts of national law. A complete database of the Romanian law can be found at the website of the MJ at <http://legislatie.just.ro/> (it is a free portal for legislation, available only into Romanian language). The national law is accessible also on <http://www.monitoruloficial.ro/>

Note: The information is available only in Romanian language.

More information (very well structured) about the Romanian judicial system can be found on <http://www.justitia-romana.org/> .

Note: This is for general information only. It does not give legal advice on the operation of the extradition law and should not be relied on as legal advice.

EXTRADITION

§1. Legal framework

a) Multilateral treaties

1. European Convention on extradition, Paris, 13 December 1957 (ETS 024);
2. Additional Protocol to the European Convention on extradition, Strasbourg, 15 October 1975 (ETS 086);
3. Second Additional Protocol to the European Convention on extradition, 17 March 1978 (ETS 098);
4. European Convention on the Suppression of Terrorism (ETS 090);
5. Convention on Cybercrime (ETS 185);
6. Relevant provisions of the United Nations Conventions.

b) Bilateral treaties¹

Algeria, Brazil, Canada, Australia, New Zealand², Bosnia and Herzegovina, People's Republic of China, North Korea, Cuba, Egypt, Morocco, Republic of Moldova, Mongolia, Syria, United States of America, Tunisia.

c) Reciprocity

d) Key legislation: Title II of the Law no. 302/2004 on international judicial cooperation in criminal matters

¹ With parties to ETS 024: according to article 28 of ETS 024, the Convention supersedes the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.

² As the United Kingdom of Great Britain and Northern Ireland is part to the ETS 024, the provisions of the treaty apply to the extradition procedure with Canada, Australia and New Zealand.

§2. Procedure for the arrest and extradition of the foreign citizens

This section applies both when the extradition is required based on the applicable extradition treaties or on reciprocity basis.

2.1. Arrest of the person sought

Channel of communication

As regard the provisional arrest for extradition this is only upon request, as follows:

- For States Parties to ETS 024: via Interpol or via MJ (according with article 16);
- For other states: in accordance with the provisions of the applicable treaty or, if no treaty is in force between the Romania and the Requesting State, via the Ministry of Justice.

Procedure

- In urgent cases, the requesting State may request the provisional arrest of the requested person, before a request for extradition is submitted. A provisional arrest request may be appropriate when it is believed that the person sought may flee the jurisdiction (it is not the case if the person is detained in order to serve a sentence applied by a Romanian court).
- Each extradition treaty specifies the documents required for a provisional arrest request. The request for provisional arrest must include the following information: the existence of a valid warrant for arrest or of detention order, a summary of the facts, the relevant law provisions, as well as data on the identity of the person sought, indicating also the citizenship and the place where the person may be found, if available and the statement that if the person is provisionally arrested then Romania will seek the person's extradition within the period required by the applicable treaty or the its national law. The request shall be accompanied by translations into Romanian language or into English or French.
- The request for the provisional arrest must be transmitted to the MJ, directly (by mail, telegraph, telex or fax), via Interpol or via diplomatic channels (as the treaty provides).
- The MJ verifies if the request is in conformity with the applicable treaty or the national law (if no treaty is applicable) and sends the request to the competent general prosecution office. Further on the general prosecution office of the competent court of appeal proceeds to the identification of the person sought and brings the case before the court of appeal competent to decide for his or her provisional arrest for extradition and to deal with the request for extradition.

- The provisional arrest may cease if, within a term of 18 days of the proceeded against person's arrest, the Romanian authorities are not provided with the request for extradition and the supporting documents and shall cease anyhow after 40 days, if in this period the request for extradition and the necessary documents are not received. The provisional release does not exclude a new arrest in view to extradition, nor the extradition itself, if the request for extradition is subsequently received.
- It should be noted that if the arrest is requested based on a bilateral treaty, the term of 40 days applies unless the provisions of the bilateral treaty provide other terms longer than 40 days.

2.2. Extradition of the person sought

Channels of communication

Communication is done through the Central Authority (MJ) or through diplomatic channels, according to the relevant provisions of the applicable treaty.

Form of the request and supporting documents

The request for extradition should be made in written in an appropriate form and should be supported by:

- the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State;
- a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
- a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

Procedure

The procedure is purely judicial and the examination of the request of extradition is made solely on the documents submitted with the extradition request. The purpose of such examination is to verify whether the formal conditions for extradition have been met.

Thus, the Romanian law does not provide for an examination of the substance of the case, and of the evidence to determine whether there is 'reasonable and probable cause'. This is the system in common-law countries.

§3. Procedure for the arrest and extradition of the Romanian citizens

Emerged as a necessity within the Romania commitment in the fight against crime, the extradition of own citizens to countries that share the same democratic values and respect the fundamental human rights, it has been regulated as an exception in the Law that revises the Romanian Constitution.

The republished Constitution, after setting forth the rule according to which Romanian citizens may not be extradited (and expelled) from Romania, provides that “as a derogation from the provisions of paragraph 1, Romanian citizens may be extradited based on international conventions to which Romania is a party, according to the law and based on reciprocity” (article 19).

Romanian citizens may be extradited from Romania based on the multilateral international conventions to which Romania is a party and based on reciprocity, only if at least one of the following conditions is met: a) the person sought domiciles in the Requesting State at the date when the request for extradition is submitted; b) the person sought has also the citizenship of the Requesting State (double nationality); c) the person sought committed the act in the territory or against a citizen of a European Union Member State, if the Requesting State is a Member of the European Union.

In the events provided in a) and c), when extradition is requested in view of criminal prosecution or trial, a supplementary condition requires that the Requesting State provide assurances deemed as sufficient that, should he or she be sentenced to a custodial penalty through a final court judgment, the extradited person will be transferred to Romania to serve the penalty.

The condition of reciprocity is verified by the MJ before the case be submitted to the judicial authorities.

All the information provided in section §2 of the present Chapter are applicable as such.

§4. Statutes of limitation:

Extradition shall not be granted if the period of time limitation for criminal liability or the period of time limitation for penalty service has expired according either to Romanian legislation or to the legislation of the Requesting State.

The status of limitation for criminal liability are: a) 15 years, when the law provides life imprisonment or imprisonment for more than 15 years for the offence committed; b) 10 years, when the law provides imprisonment from 10 to 15 years for the offence committed; c) 8 years, when the law provides imprisonment for more than 5 years, while not exceeding 10 years, for the offence committed; d) 5 years, when the law provides imprisonment from one year to 5 years for the offence committed; e) 3 years, when the law provides imprisonment not exceeding one year or a fine. The terms shall be computed from the date of commission of the offence. For continuous offences, the term

starts at the date of termination of the action or inaction, and for continued offences, at the date of commission of the last action or inaction.

The status of limitations for the execution of the sentences are: a) 20 years, when the penalty to be served is life imprisonment or imprisonment for more than 15 years; b) 5 years, plus the length of the penalty to be served, while not exceeding 15 years, in case of the other penalties of imprisonment; c) 3 years, if the penalty is a fine. The terms shall be calculated from the date when the decision of conviction remains final. In case of revocation of conditional suspension of a penalty, of supervised suspension of penalty or, the case being, of penalty service at the workplace, the terms shall begin its course from the date when the decision of revocation remains final. Security measures are not subject to prescription

§5. Double criminality:

Extradition may be allowed only if the act for which the person sought has been accused or for which he or she has been convicted is provided as an offence both in the law of the Requesting State and in Romanian law. By exception, extradition may be granted even if the act concerned is not provided in Romanian law, if for this act the prerequisite of double incrimination is excluded by an international convention to which Romania is a party. The differences between the legal classification and the name given to the same offence by the laws of the two States are irrelevant, if an international convention or, in its absence, a declaration of reciprocity does not provide otherwise.

§6. Simplified extradition:

In case that the extraditable person consents to his or her extradition to the Requesting State, it is no longer necessary to present a formal request for extradition and the supporting documents if it is thus provided in the international convention applicable in relation to the Requesting State or if the legislation of that State allows such a simplified extradition procedure and it has been applied to requests for extradition submitted by Romania.

Thus, the simplified extradition can take place a) based on treaty, bilateral or multilateral, which provides the simplified procedure or, if does not regulate such procedure, at least the legislation of the Requesting State allows it and this legislation was applied to a request for extradition to Romania; b) in the absence of a treaty, based on reciprocity, if the legislation of the Requesting State allows it and this legislation was applied to a request for extradition to Romania.

§7. Relevant information:

According with the Romanian law the decision on extradition is taken only by the competent Romanian court (court of appeal), in the extradition procedure the Requesting state being represented by the prosecutor office. Also, representatives of the Requesting state can also be present to the procedure and assist to the hearing of the case, with the court approval. The MJCL is competent only to verify the compliance of the incoming extradition request with the applicable

treaty (international regularity), including to check if the reciprocity condition of the extradition on the own nationals is met.

Note: This is for general information only. It does not give legal advice on the operation of the EAW law and should not be relied on as legal advice.

EUROPEAN ARREST WARRANT

§1. Legal Framework

a) EU legal framework

- Council Framework Decision no. 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
- Council Framework Decision 2009/299/JHA of 26 February 2009 enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial
- Agreement between the European Union and Iceland and Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway , Vienna 28 June 2006

b) Key legislation: Title III of the Law no. 302/2004 for the international judicial cooperation in criminal matters

§2. Execution

Romania has not made any declaration regarding the offences committed before the entry into force, for itself, of the Framework Decision, and thus it accepts a European arrest warrant regardless of the date when the offences were committed.

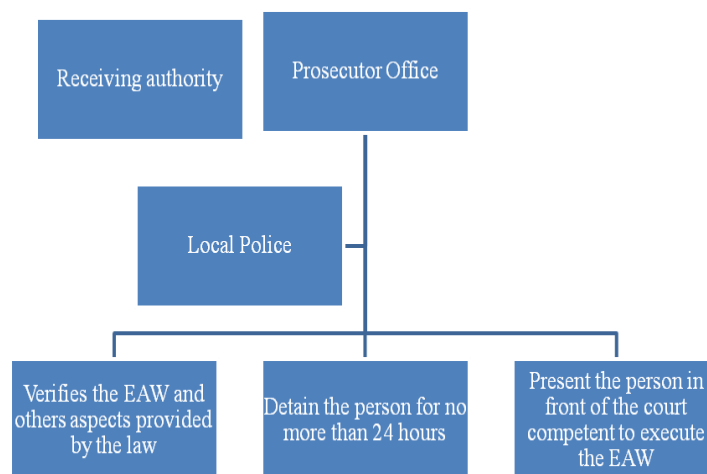
In case that person sought has been arrested before 1 January 2007 on the basis of a request for provisional issued by a Member State, and the request for extradition has not yet reached in Romania, the extradition procedure set forth in the European Convention on Extradition made in Paris on 13 December 1957 will continue to apply.

Romania notified the the Council of Europe of the new system (Article 28 of the European Convention on Extradition of 13 December 1957).

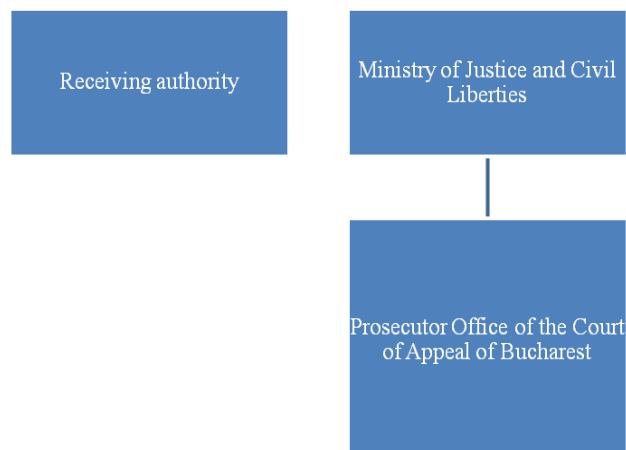
Receiving authorities

According with the Romanian law in force, the prosecution offices of the courts of appeals are the receiving. Also, the MJ receives EAW issued by judicial authorities of other Member States of the European Union and sends them to the prosecution office of the court of appeal in the jurisdiction of which the requested person has been located or to the Prosecution Office of the Court of Appeal in Bucharest whenever the requested person has not yet been located, or whenever the issuing judicial authority is unable to send the European arrest warrant directly to the receiving Romanian judicial authority

a. Receiving authorities: 15 prosecution offices of the courts of appeal



b. MJ as a receiving authority



When the issuing judicial authority of the other Member State knows the location of the person sought, it may transmit the EAW directly, by any secure means capable of producing written records, to the prosecution offices of the court of appeal in whose jurisdiction the person sought has been founded.

In this respect please consult the coordinates available at <http://www.ejn-crimjust.europa.eu/documents.aspx?doclink=Y&country=Romania>).

If the issuing judicial authority does not know the location of the person sought, it may transmit the EAW to MJ. Regardless of the procedure followed, the judicial authority of the issuing Member State shall transmit the EAW in its materiality translated either in Romanian, either into English or French.

Retention and arrest of the person sought

Within 24 hours following the person was placed in custody - garde à vue - the public prosecutor shall present the person in front of the court. The court shall ordain arrest of the person sought, for a period of up to 30 days. During the proceedings, the court shall, after hearing the public prosecutor's conclusions, decide every 30 days, whether to uphold the measure of arrest or to release the person sought and, in the latter case, it shall take all the steps required to make sure that the person does not escape, including the preventive measures provided in the Romanian Criminal Procedure Code.

The court shall inform the person sought about the existence of a European arrest warrant against him or her, about the contents thereof, about the possibility of consenting to surrender to the issuing Member State, as well as about his procedural rights: the right to be informed about the contents of the European arrest warrant, the right to be assisted by a legal counsel chosen by him or appointed by the court, the right to appeal on points of law against the measure of arrest ordained by the court of appeal, and where he does not understand or speak Romanian, the right to an interpreter provided free of charge by the court.

Recording of consent

Consent to surrender is given only before the court. Minutes shall be drawn up. Once expressed, consent is irrevocable. Renunciation of entitlement to the specialty rule is also expressed before the court. Such renunciation is irrevocable.

§3. Time limits

Where the person sought consents, the decision shall be taken within 10 days from the date when the person sought expressed his or her consent. Where the person sought does not consent, the decision shall be taken within no more than 60 days from the date of the arrest.

Extension of time limits: both when the person consents and when he or she does not consent to the surrender, the time limits may be extended. Thus, where, for justified reasons, a decision cannot be taken within such time limit, the court may postpone delivering such decision for 30 days, making this known to the issuing judicial authority of the other Member State, along with the reasons of the postponement, while upholding the measures required in view of surrender. Such reasons include the event where the court requests to the issuing judicial authority of the other Member State guarantees for returning of the surrendered person after the proceedings are over (only where the person is a Romanian national) or safeguards that the case will be tried again (where the person was sentenced in absentia).

§4. Appeals

Where the person sought consents to the surrender, the decision may not be appealed against, as it is final and enforceable. Where the person sought did not consent to the surrender, the decision that ordained surrender may be appealed against on points of law within 3 days from delivering. The time limit is calculated in free days, and thus the day when the time limit begins to run and the day when it expires shall not be taken into account. The appeal shall be solved by the High Court of Cassation and Justice within 3 days from its registration.

Note: This is for general information only. It does not give legal advice on the operation of the law on this matter and should not be relied on as legal advice.

INTERNATIONAL TRANSFER OF SENTENCED PERSONS AND VALIDITY OF FOREIGN JUDGEMENTS

§1. Legal framework

- a) Multilateral treaties
 1. Convention on the Transfer of Sentenced Persons, Strasbourg, 21 March 1983 (ETS 112)³
 2. Additional Protocol on Convention on the Transfer of Sentenced Persons, Strasbourg, 18 December 1997 (ETS 167)
 3. European Convention on international validity of criminal judgments, Hague, 28 May 1970 (ETS 070)
 4. Relevant provisions of the United Nations Conventions.
- b) Bilateral treaties
- c) Reciprocity
- d) Key legislation: Law no. 302/2004 on international judicial cooperation in criminal matters

§2. Transfer of the sentenced persons

Channels of communication

The communication shall be done directly through the central authorities.

³ Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Macedonia, Turkey, Ukraine, United Kingdom, Australia, Bahamas, Bolivia, Canada, Chile, Costa Rica, Ecuador, Israel, Japan, Korea, Mauritius, Mexico, Panama, Tonga, Trinidad and Tobago, United States, Venezuela.

Conditions

The transfer of the person in case could take place, under certain conditions:

- 1) if the person is a national of the administering State, when Romania is the sentencing State;
- 2) if the judgment is final, when Romania is the sentencing/administering State;
- 3) if, at the time of the receipt of the request for transfer, the person in case still has at least 6 months of the sentence or if the sentence is an indeterminate sentence, when Romania is the sentencing/administering State;
- 4) if the transfer is consent to by the person in case, or where in view of his age or her physical or mental condition, by the sentenced person's legal representative, when Romania is the sentencing/administering State;
- 5) if the acts or omissions on account on which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute if it would be committed on its territory, when Romania is the administering State;
- 6) if there is an agreement on this matter.

According to the Romanian law the decision on the transfer of the sentenced person is issued by the competent judicial authority, in accordance with the national legislation. The main characteristic of this procedure is that only the judicial authority is empowered to finally decide on the request for the transfer, and that has the sole power to take the appropriate decisions. The MJ is entitled only to coordinate the procedure with a view to facilitate the procedure in practice (as registering the request, centralizing and preparing the documents provided the administering\sentencing State, transmitting the documents), but also to assure that the procedure is ruled in a promptly manner. MJ can provide the administering state with a preliminary agreement.

Transfer from Romania

If a person sentenced by the Romanian judicial authority is seeking to be transferred to the administering State, he or she may addressed a request either to the National Administration of the Penitentiaries trough the Penitentiary direction or directly to the Ministry of Justice as the central authority coordinating the procedure. The transfer may be also request by the administering State trough its central authority when the person sentenced understood to address to this one.

For the purpose of this procedure, the Ministry of Justice will collect the relevant documents and will transmit this one to the central authority from the administering State. Further, the administering State has to provide the followings:

- i.a certificate or a statement that the sentenced person is a national of that one;
- ii.a copy or a certificate of the relevant law of the provisions revealing that the acts or omissions on account on which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute if it would be committed on its territory;

- iii. a statement on the manner of enforcement: immediate enforcement of the sentence or convert the sentence into a decision of the administering State.
- iv. the documents shall be accompanied by a translation into Romanian language or into one of the language accepted in accordance with the applicable convention, usually English or French.

As soon as the administering communicates the documents specified above, the MJ exams the documents and, if need be, takes the necessary measures to assure that the documentation is complete indicating to the administering State the documents that has to be further transmitted, as well as to translate the documents. The documentation is transmitted further to the competent prosecutor office for bringing the case before the court in order to decide to. The decision could be appealed by the sentenced person as well as by the prosecutor to the High Court of Cassation and Justice. The final decision is communicated to the MJ which informs the administering State on the decision issued by the Romanian court.

The take over procedure is handled by the Ministry of Administration and Interior trough the Interpol National Office.

Transfer to Romania

If is the case of a Romanian citizen sentenced by the judicial authorities of the sentencing State, the transfer may be requested by the sentenced person himself either directly to the MJ or trough the Romanian Embassy, or by the sentencing State.

- a) For the purpose of this procedure, the sentencing State shall transmit to the MJ the following:
 - (i) personal data of the sentenced person concerning name as well as the day and place of birth, and his or her address;
 - (ii) a statement of the facts committed;
 - (iii) a certified copy of the final decision as well as of the relevant law
 - (iv) information on the service of the sentence, including data on any pre-custodial detention ;
 - (v) the consent of the sentenced person on his transfer, or if the sentenced person is the subject to an expulsion or detention order, his declaration;
 - (vi) the medical or social report concerning the sentenced person, any information on the treatment followed by and indication of any medical prescription.
 - (vii) the documents shall be accompanied by a translation into Romanian language or into one of the language accepted in accordance with the applicable convention, usually English or French
- b) The documents will be examined by the MJ and transmitted to the competent prosecutor office for bringing the case before the court in order to

decide to. The decision could be appealed by the sentenced person as well as by the prosecutor to the High Court of Cassation and Justice. The final decision is communicated to the MJ which informs the administering State on the decision issued by the Romanian court.

c) The take over procedure is handled by the Ministry of Administration and Interior.

Continued enforcement or transformation of sentence:

As administering State, both procedures can be applied (art. 10 and art. 11 from the Convention ETS 112). In the situation of a Romanian citizen convicted abroad, the Romanian court in charge has to recognize the foreign judgment and either to continue the execution of the sentence applied abroad or to converse the sentence, if the type of the sentence imposed or its length is incompatible with the Romanian legislation. In case of the conversion, the sentence applied must correspond to the type of the penalty imposed the sentencing state.

Conditional release:

As regard the release on parole, after having served at least two thirds of the penalty, in the case of imprisonment not exceeding 10 years or at least three fourths of imprisonment that exceeds 10 years, convicts who are consistent in their work, well-disciplined and show serious improvement, while taking into account also his/her criminal antecedents, can be released on parole before the full service of the penalty. In the calculation of fractions of the penalty provided above the part of the penalty that can be considered, according to the law, as served based on the work carried out, shall be taken into account. In this case however, parole cannot be granted before the actual service of at least half of the penalty of imprisonment under 10 years or of at least two thirds for imprisonment over 10 years. When the convict is serving several penalties of imprisonment that are not to be merged, the penalty fractions shall be calculated according to the total of the penalties. When applying the previous provisions, one shall take into account the length of the penalty being served by the convict.

Relevant information:

The Romanian system does not know the indeterminate sentences all the penalties provided for the criminal offences being determinate (*absolute* as life imprisonment or *relative* as the sentence from 15 to 25 years imprisonment). The penalties are provided either as a singular penalty or as multiple penalties (cumulative or alternative). Only the main penalty and the complementary penalty can be cumulated. According with the Romanian Criminal Code in force the penalties are: main, complementary or accessory. The main penalties are: a) life imprisonment; b) imprisonment from 15 days to 30 years; c) fine from 100 lei to 5.000 lei. The complementary penalties are: a) the prohibition

of certain rights from one to 10 years and b) military degradation. The accessory penalty is the prohibition of certain rights expressly provided by the law.

Life imprisonment is served in prisons expressly destined for this purpose, or in special sections of other prisons. The service of life imprisonment is regulated by the Law on the service of penalties. Life imprisonment is not applied to those who, at the date when the sentence is handed down, have completed the age of 60. In this case, the penalty of life imprisonment shall be replaced by the penalty of imprisonment for 25 years and the penalty of prohibition of certain rights, the latter for its maximum duration. If a person sentenced to life imprisonment has reached the age of 60 during the service of the penalty, life imprisonment is replaced by imprisonment for 25 years. Persons convicted to life imprisonment can be released on parole after the actual service of 20 years of imprisonment, if he/she is consistent at work, well disciplined and shows serious improvement, while also taking into account his/her criminal antecedents. Male convicts over the age of 60 and female convicts over the age of 55 can be released on parole after the actual service of 15 years of imprisonment, if the other conditions provided above are also met. A penalty is deemed as served if within 10 years from parole the convict has not committed any new offence. If during this interval the convict has committed a new offence, the court revokes the parole. In cases of commutation or replacement of life imprisonment with the penalty of imprisonment, the period of imprisonment served is considered a part served from the penalty of imprisonment.

In case of concurrence of offences (plurality of offences), the penalty for each offence is established separately, and from among these the penalty shall be applied in one of the following ways: a) when a penalty of life imprisonment and one or more penalties of imprisonment or fine have been established, the penalty of life imprisonment shall be applied; b) when only penalties of imprisonment have been established, the heaviest penalty shall be applied, which can be increased up to its special maximum, and when this maximum is not sufficient, an increase of up to 5 years can be added; c) when only fines have been established, the heaviest penalty shall be applied, which can be increased up to its special maximum, and when this maximum is not sufficient, an increase of up to half of that maximum can be applied; d) when a penalty of imprisonment and a penalty of fine have been established, the penalty of imprisonment shall be applied, to which the fine can be added, either wholly or in part; e) when several penalties of imprisonment and several penalties of fine have been established, the penalty of imprisonment shall be applied, according to letter b), to which the fine can be added, according to letter c). The application of the previous provisions cannot exceed the total of the penalties established by the court for concurrent offences.

§3. Validity of foreign judgements

European Convention on International Validity of Criminal Judgments (Hague, 28 May 1970) ratified by the Romania Ordinance of the Government of Romania 90/1999 which was approved by the Law no. 35/2000, adopted by the Parliament of Romania.

This convention is applicable to the enforcement of sanctions involving deprivation of liberty; fines or confiscation and disqualifications

The Central Authority is the MJ.

Note: This is for general information only. It does not give legal advice on the operation of the extradition law and should not be relied on as legal advice.

TRANSFER OF THE CRIMINAL PROCEEDINGS

§1. Legal framework

a) Multilateral treaties

1. Art. 6 paragraph 2 of the European Convention on extradition, Paris, 13 December 1947 (ETS 024)
2. Art. 21 of the European Convention on mutual assistance in criminal matters, Strasbourg, 20 April 1959 (ETS 030)
3. European Convention on Transfer of proceedings in criminal matters, Strasbourg, 15 May 1972 (ETS 073)
4. Relevant provisions of UN Conventions.

b) Bilateral treaties: -

- c) Key legislation: Law no. 302/2004 on international judicial cooperation in criminal matters

§2. Channels of communication and translations

The request should be transmitted directly to the MJ. The request could be also transmitted through diplomatic channels, according to the relevant provisions of the applicable Convention, and then forwarded to Central Authority as it was specified above.

The request and the supporting documents has to be translated into one of the language that Romania indicated in the declaration made to the applicable instrument.

§3. Principles of criminal law

Territoriality principle (Art.3 from the Romanian Criminal Code in force):
Criminal Law shall apply to offences committed on Romanian territory.

Active personality principle (Art.4 from the Romanian Criminal Code in force):
Criminal law shall apply to offences perpetrated outside the Romanian territory, if the

perpetrator is a Romanian citizen or if he/she, while having no citizenship, domiciles in this country.

Passive personality principle (Art.5 from the Romanian Criminal Code in force):

(1) Criminal law shall apply to offences committed outside Romanian territory, against the security of the Romanian State or against the life of a Romanian citizen, or which have caused serious injury to the corporal integrity or health of a Romanian citizen, when they are committed by a foreign citizen or by a person with no citizenship who does not domicile on the territory of our country.

(2) The initiation of criminal action for the offences provided in the previous paragraph shall be done solely with prior authorization from the General Prosecutor.

Universality principle (Art.6 from the Romanian Criminal Code in force):

(1) Criminal law shall apply also to offences other than those in Art. 5 para. (1), committed outside Romanian territory, by a foreign citizen or by a person with no citizenship who does not domicile on Romanian territory, if:

- a) the act is provided as an offence also by the criminal law of the country where it was perpetrated;
- b) the perpetrator is in our country.

(2) For offences against the interests of the Romanian State or against a Romanian citizen, the offender can be tried also in the case when his/her extradition has been obtained.

(3) The previous paragraphs shall not apply when, according to the law of the State where the offender committed the offence, there is any cause that prevents the initiation of criminal action or the continuation of the criminal lawsuit or the service of the penalty, or when the penalty has been served or it is considered to have been served. If the penalty has not been served or has been served only partly, the course of action shall be in accordance with the legal stipulations regarding the recognition of foreign judgments.

Subsidiary principle (Art.7 from the Romanian Criminal Code in force): Articles 5 and 6 shall apply, if no international convention ordains otherwise.

Note: This is for general information only. It does not give legal advice on the operation of the extradition law and should not be relied on as legal advice.

MUTUAL LEGAL ASSISTANCE

§1. Legal Framework

b. Multilateral treaties

1. European Convention on mutual assistance in criminal matters, Strasbourg, 20 April 1959 (ETS 030) European and its Additional Protocol (ETS 099) and Second Additional Protocol (ETS 182);
2. Relevant provisions from other Conventions of the Council of Europe: art. 8 from European Convention on the suppression of terrorism (CETS 090), Chapter III from the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141), Chapter IV from Criminal Law Convention on Corruption (CETS no. 173), Chapter III from the Convention on Cybercrime (CETS 185), Chapter IV from Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198);
3. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union, Brussels, 29 May 2000;
4. Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union, Luxembourg, 16 October 2001;
5. Relevant provisions from the UN Conventions.

c. Bilateral treaties⁴

⁴ With countries parties to ETS 030:

See article 26 of ETS 030: "The Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties. The Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.

The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.

Albania, Algeria, Belgium , Bosnia and Herzegovina, Bulgaria, Canada, Czech Republic, China, North Korea, Croatia, Cuba, Egypt, France, Greece, Italy, Morocco, Republic of Moldavia, Poland, Russia, Serbia, Montenegro, Syria, Slovakia, United States of America, Tunis, Republic of Hungary.

d. Key legislation

1. Law no. 302/2004 on international judicial cooperation in criminal matters;

2. Criminal Procedure Code

§2. Channels of communication (sending, receiving and returning of requests)

MLA requests may be sent via Central Authorities or directly to the competent judicial authorities as provided in Convention ETS 30 and in the Second Additional Protocol ETS 182 (if the Requesting State is also party to the Second Additional Protocol).

In case of the request delivered in the in the trial and post trial stages, the MLA requests should be directed to the competent court having territorial jurisdiction or to the Central Authority which is the MJ.

In case of the MLA requests delivered in the prosecution stage, the requests should be directed to the competent prosecutor offices having territorial jurisdiction or to the Central Authority which is: **Prosecution Office of the High Court of Cassation and Justice.**

Pursuant to the Romania declaration deposited to the articles 17, 18 and 19 of the Second Additional Protocol ETS 182, the MLA request for cross border observations shall be transmitted to the Ministry of Justice; for controlled delivery and covert investigations shall be transmitted to the Prosecution Office of the High Court of Cassation and Justice.

Also, the requests addressed based on the articles 11 and 21 from Convention ETS 30 and articles 13 and 14 from the Second Additional Protocol ETS 182 shall be transmitted to the Ministry of Justice.

According with the Romanian law requests for MLA **may be sent directly** by the requesting judicial authorities to the requested judicial authorities if the international judicial instrument applicable in the relation between the Requesting State and the Requested State regulates this type of transmission.

With the exception of the case mentioned above requests for international judicial assistance, requests can be sent directly by the requesting judicial authorities to the requested judicial authorities in case of emergency; however, in these cases, a copy of

these shall be sent simultaneously to the MJ or to the Public Prosecutor's Office of the High Court of Cassation and Justice, according to case. The procedures mentioned above shall be used also for transmitting replies to emergency requests for judicial assistance.

Direct transmissions can be made also through the International Criminal Police Organization (Interpol), if so provided by the applicable instrument and only if there is urgency.

Where a request for mutual legal assistance in criminal matters is referred via the central authority, the MJ ensures that it is forwarded swiftly and will give absolute priority to the requests marked "urgent", or bearing a deadline, dispatching them to the competent judicial authorities within maximum 3 days of their arrival using the fastest means available and indicating their urgent status. MJCL will ensure that the same procedures are followed where acts implementing a request are returned through it, except if particularly complex operations are involved.

Also, the MJ plays an active role ensuring that requests for mutual legal assistance conform to the requirements of domestic and international law, in clarifying any unclear aspects with the requesting or requested State and in coordinating execution of a request (if necessary).

Starting with 1st of December 2007 Romania has been applying the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union.

Thus, the service of procedural documents has to be done as stated in article 5 directly by post or via the judicial authorities with territorial competence.

The transmission of the requests for mutual legal assistance has to be made also directly between the judicial authorities, except those which have to be transmitted to the MJ⁵ or the Prosecutor Office of the High Court of Cassation and Justice⁶.

The identification of the competent prosecutor office or court may be done using the EJN Atlas or with the assistance of the Romanian national contact point to the EJN or of the MJ.

The declarations of Romania at the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union are available at:

http://www.consilium.europa.eu/cms3_Applications/applications/Accords/details.asp?cmsid=297&id=2001090&lang=EN&doclang=EN

⁵ Requests for temporary transfer or transit of the persons held in custody as referred in article 9 of the Convention; requests within the meaning of article 21 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959;

⁶ Requests for controlled delivery, joint investigation team, covert investigations and interception of telecommunications.

§3. Content of a request

A MLA request shall include: the requesting authority from the foreign State (indicating if it is a judicial or administrative authority) and the competent authority conducting the investigation or court proceedings to which the request relates (if it is a different authority); the personal data of the accused or, as the case may be, of the victim or the witnesses or the expert if their examination is requested; the description of the assistance sought (explicit list of the requested actions); a description of the facts alleged to constitute the offence and the texts of the relevant law, except the cases of a request for service of documents; the reasons for and details of any particular procedure or formalities that the requesting State wants to be followed; the indication of any time-limit within which compliance with the request is intended and the reasons for such time-limit; the contact person (that may be contacted if clarifications or details need to be provided); other information that the Requesting authority deems as being necessary to be known for the proper execution of the request.

In case of requests for service of documents, it should be also indicated the name (name and surname) and the address of the person to be served (to that end, the address has to include for the cities: the locality, the county (district), the street, number and the apartment house where the person to be served lives, and for the communes: the county (district), the commune and the village; where necessary, it will be also indicated any other data necessary for establishing the address of the person to be served - date of birth or/and the name of his or her parents).

In case of the requests for search and seizure, the request shall indicate whether the criminal action has been started or not (if the person is accused/charged with or he or she is a suspect). Also, it would be practicable and advisable to attach the certified copies of the domestic decisions on search and seizure.

In case of the requests for the hearing of witnesses, experts or prosecuted persons the list of the questions to be asked should also be annexed.

§4. Measures

Mutual legal assistance can notably include: taking evidence or statements from persons; hearing (including interrogation and confrontation, identification of persons and objects); service of judicial documents; searches and seizures ; providing information and evidentiary items; providing originals or certified copies of relevant documents and records; use of special investigative means; judicial records and exchange of information from judicial records;; videoconference.

According with the Romanian declaration to the article 7 from Convention ETS 30 the service of a summons on an accused person who is in the Romanian territory, will be notified to the competent Romanian authority at the latest 40 days before the date set for the appearance.

Note: This is for general information only. It does not give legal advice on the operation of the extradition law and should not be relied on as legal advice.

HEARINGS THROUGH VIDEOCONFERENCE

§1. Legal Framework

a. Multilateral treaties

1. European Convention on mutual assistance in criminal matters, Strasbourg, 20 April 1959 (ETS 030) European and its Additional Protocol (ETS 099) and Second Additional Protocol (ETS 182);
2. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union, Brussels, 29 May 2000;
3. Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union, Luxembourg, 16 October 2001;
4. Relevant provisions from the UN Conventions.

b. Bilateral treaties: the only bilateral treaty in force which expressly provides the hearing through videoconference is the one with USA

c. Key legislation:

Art. 165 from the Law no. 302/2004 on international judicial cooperation in criminal matters.

§2. Legal information

If a person is in Romanian territory and has to be heard **as a witness or expert** by the judicial authorities of a foreign State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in the following paragraphs.

Such a request may be accepted by Romania provided that it is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing by videoconference.

Requests for a hearing by video conference shall contain, in addition to a usual MLA request, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

The witness or expert shall be summoned according to Romanian law.

The judicial authorities competent are:

- the **courts of appeal**, during trial (all the 15 courts of appeal are equipped and may provide such assistance)
- the **Prosecutor's Office of the High Court of Cassation and Justice**, during criminal prosecution.

With reference to hearing by video conference, the following rules shall apply: a) the competent Romanian judge or prosecutor shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of Romanian law. If he is of the view that during the hearing the fundamental principles of Romanian law are being infringed, the judge or prosecutor shall immediately take the necessary measures to ensure that the hearing continues in accordance with the Romanian law; b) measures for the protection of the witness or expert shall be agreed, where necessary, between the competent Romanian authorities and those of the requested State; c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting State in accordance with its own law; d) the witness or expert may be assisted, where appropriate, by an interpreter, under Romanian law; e) the witness or expert may claim the right not to testify which would accrue to him or her under the law of either Romania or the requesting State.

Without prejudice to any measures agreed for the protection of witnesses, the Romanian judicial authority shall draw up minutes indicating the date and place of the hearing, the identity of the person heard, any oaths taken and the technical conditions under which the hearing took place. The minutes shall be forwarded to the competent authority of the requesting State. The provisions of the Criminal Procedure Code shall apply accordingly.

The hearing through videoconference may apply also for the hearing of accused or defendants, where the person concerned consents and there is an agreement in this respect between the Romanian judicial authorities and those of the requesting State.

Costs relating to establishing a video link, those related to the making available of this link in the requesting State, the remuneration of interpreters and the indemnities paid to witnesses and experts, as well as travelling expenses shall be reimbursed by the foreign requesting State to Romania.

§3. Practical points

In relation with the EU Member States: How to identify the court of appeal competent to execute the request? Using the information available on the website of EJN or asking the assistance of the Romanian national contact points to EJN. Also, the MJ may be contacted at dreptinternational@just.ro .

In relation with the EU non-Member States: the request should be transmitted to the MJ or to the Prosecution Office of the High Court of Cassation and Justice (see the declaration made by Romania to the applicable treaty). If no treaty is in force, the request should be transmitted to MJ (along with the assurance of reciprocity).

When the request is made some practical points should be taken into account:

- the hearing is made in the courtroom and for this reason the hours should be established in coordination with the court of appeal executing the request;
- the technical details should be always indicated (including about the connection);
- the test should be done with at least 3 days before the hearing;
- a contact person (including other person than the one in charge with the file) and the contact details should be indicated;
- information about the reimbursement of the costs should also be indicated.

Note: This is for general information only. It does not give legal advice on the operation of the extradition law and should not be relied on as legal advice.

FREEZING ORDERS (in relation with EU Member States)

§1. Legal Framework

a. EU instrument:

Council Framework Decision No. 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, published in the Official Journal of the European Union No. L 196 of 2 August 2003.

b. Key legislation: Title VII Chapter 2 Section 3 of the Law no. 302/2004 on international judicial cooperation in criminal matters

Competent authorities:

Issuing: The freezing order is issued by the public prosecutor at the stage of criminal prosecution, and by the law court at the trial stage.

Executing: The freezing order is executed by the prosecution office of the tribunal, at the stage of criminal prosecution, and by the tribunal at the trial stage, in whose jurisdiction the property is located for which the freezing order has been issued. If the freezing order concerns several items of property that are located in the jurisdictions of two or more competent Romanian judicial authorities, the competence to recognize and execute the freezing order shall belong, depending on the stage of the proceedings, either to the Prosecution Office of the Tribunal of Bucharest or to the Tribunal of Bucharest.

If the freezing order concerns property that is involved in pending criminal proceedings or in proceedings that have been decided by final judgment, the competence shall belong to the prosecution office of the tribunal at the stage of criminal prosecution and to the tribunal at the trial stage, regardless of the degree of jurisdiction of the Romanian judicial authority that has been called upon to solve the case or that has pronounced the judgment.

Central authority: no central authority was indicated by law. However MJ or the Prosecution Office of the Courts of Appeal may be contacted.

Procedure:

At whichever stage of the proceedings, the Romanian judicial authority shall recognize any freezing order without any further formality and shall forthwith take the measures required for

its immediate execution, in the same way as for a measure taken by a Romanian judicial authority, unless one of the grounds for non-recognition or non-execution provided or one of the grounds for postponement is applicable. Whenever it is necessary to ensure that the evidence taken is valid, the executing Romanian judicial authority shall also observe the formalities and procedures expressly indicated by the issuing judicial authority, provided that such formalities and procedures are not contrary to the constitutional principles.

A report on the execution of the freezing order – based on the report drawn up by the judicial body who carried out the freezing order – shall be made forthwith by the executing Romanian judicial authority to the competent authority in the issuing State by any means capable of producing a written record.

Any additional coercive measures rendered necessary by the freezing order shall be taken in accordance with the applicable procedural rules of the Criminal Procedure Code.

Preliminary measures

Whenever a Romanian judicial authority receives a freezing order, it shall check, within 24 hours of the date of receipt, whether the order is accompanied by the certificate or by any other equivalent document, and by translations into Romanian. If the documents have not been translated, the Romanian judicial authority shall request that the issuing judicial authority should send the translation within 3 days. After receiving the translation, the Romanian judicial authority shall, within 24 hours of the date of receipt, check whether it has competence. If the Romanian judicial authority considers that it does not have the competence to recognize and enforce the freezing order, it shall forthwith and *ex officio* send the freezing order to the competent Romanian judicial authority in view of execution and inform thereof the judicial authority of the issuing State. If the freezing order does not contain sufficient information to determine competence, the Romanian judicial authority may request additional information from the issuing judicial authority, appointing a time limit of up to 3 days for this. At the trial stage, the assignment of the case shall take place according to the legal provisions in force in this matter, and the hearing date must not be later than 5 days after the assignment of the case.

Languages: Romanian

Note: This is for general information only. It does not give legal advice on the operation of the extradition law and should not be relied on as legal advice.

CONFISCATION ORDERS (in relation with EU Member States)

§1. Legal Framework

a. EU instrument:

Framework Decision No. 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, published in the Official Journal of the European Union No. L 328 of 24 November 2006

b. Key legislation: Title VII Chapter 2 Section 4 of the Law no. 302/2004 on international judicial cooperation in criminal matters

Competent authorities:

Issuing: the law courts

Executing: the district court in the jurisdiction of which the property is located

If the confiscation order concerns: a) several items of movable property that are located in the jurisdiction of different tribunals, the competence shall belong to the Tribunal of Bucharest; b) several items of movable property and one item of immovable property, the competence shall belong to the tribunal in whose jurisdiction the immovable item of property is located; c) several items of immovable property, located in the jurisdiction of different tribunals, the competence shall belong to the tribunal in whose jurisdiction the item of the highest value is located.

For multiple confiscation orders, transmitted by several issuing Member States in relation to the same property, the competence shall belong to the tribunal that was first seized.

Central authority: MJ - provides assistance to the law courts and transmits and receives confiscation orders whenever direct contact is not possible.

Procedure

Preliminary measures: whenever a court receives a confiscation order, it shall, within 24 hours from receipt, check whether the order is accompanied by a Romanian translation.

If the confiscation order has not been translated, the court shall request the competent authority of the issuing State to transmit the translation within 5 days. The case shall be assigned according to the applicable legal provisions, to a panel of one judge, and the hearing must take place within 5 days. If the court considers that it does not have the competence to recognise and execute the confiscation order, it shall *ex officio* forward the confiscation order to the court that has competence to recognise and execute it, informing thereof the competent authority of the issuing State. If the confiscation order does not contain sufficient information to establish competence, the court may request to the competent authority of the issuing State the transmission of additional information or of the certificate in Art. 187⁵⁰, unless the certificate was sent initially, and shall appoint a time limit of up to 5 days for the competent authority of the issuing State to transmit such documents.

Rules on the recognition and execution of confiscation orders: The confiscation order issued by a competent authority in a Member State shall be recognised without further formality, unless any of the grounds for non-recognition apply. A confiscation order issued by a competent authority of a Member State and recognised by a Romanian law court shall be executed without delay, unless any of the grounds for postponement apply.

Governing law: The execution of confiscation orders shall be governed by Romanian law, and the Romanian authorities alone shall be competent to decide on the procedures for execution and to determine all the measures relating thereto.

Language: Romanian