

Issuance and transmission of the European protection order by the Romanian judicial authorities. Some critical opinions. *De lege ferenda* proposals¹

Professor **Ion RUSU**²

Abstract

The objective of the study aims at examining the provisions of Law no. 151/2016 on the European protection order and amending and supplementing certain legislative acts, starting from the transposition into the national law of the provisions of the European legal instrument. Also, in this study we have formulated some critical opinions, supplemented by de lege ferenda proposals which aim the improvement of the national criminal legal system. The innovations consist of both the conducted examination, supplemented by the interpretation of provisions of the Romanian law, the formulated critical opinions and the de lege ferenda proposals. The paper can be helpful to academics, particularly students of law faculties and practitioners in the field.

Keywords: protection measure; protected person; issuing State; executing State.

JEL Classification: K14, K33

1. Introduction

The permanent expansion of transnational crime at European level “prompted the Member States to adopt new decisions, the ultimate goal being to continuously improve the complex activity of international judicial cooperation in criminal matters and therefore reducing this type of crime. In the European Union in the recent years they were promoted more legal instruments meant to help improving cooperation between judicial authorities of Member States and ensuring an appropriate climate of public safety.”³

Recognition and enforcement in a Member State of some judgments by which there were applied sanctions of criminal law involving deprivation or non-deprivation of liberty by a competent court of another Member State was and still

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² Ion Rusu - “Danubius” University of Galati, lawyer of Vrancea Bar, Romania, av.ionrusu@yahoo.com

³ Minodora-Ioana Rusu, *Supporting and protecting the victims of crime in the European Union. Some general considerations*, „Acta Universitatis Danubius Juridica”, vol. 12, No. 2/2016, p. 74.

is a complex issue, involving primarily mutual trust in the judicial decisions adopted by another Member State.⁴

Against this background, the Stockholm Programme - An open and secure Europe serving and protecting citizens thereof⁵ reaffirmed the need to extend mutual recognition between Member States of the European Union for all types of judgments and decisions of judicial nature, which may be criminal or administrative.

Moreover, “one of the objectives assumed by the EU was to maintain and develop an area of freedom, security and justice, having as cornerstone the principle of mutual recognition of judgments in criminal and civil matters”.⁶

On the other hand, in the recent doctrine it was claimed that “providing a space of freedom, security and justice, an objective assumed by the EU is not possible without joint concrete action in the two main directions.

The first direction regards the adoption of legislative acts, so as to ensure judicial cooperation in criminal matters between Member States, and the second one involves the establishment of some European institutions with concrete tasks on preventing and combating cross-border crime.”⁷

At the same time, the Stockholm Programme has asked the Commission and Member States to examine the ways of improving the legislation and the practical support measures for the protection of victims, which should receive special protection in the Union.

On the other hand, it should also be taken into consideration the fact that the protection of victims, especially in criminal proceedings, but not only, it was improper for the Union’s standards.

Against this background, it was adopted Directive 2011/99 / EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.⁸

Under the depositions of article 21 of the mentioned European legal instrument, the Member States were required to implement the laws, regulations and administrative provisions necessary to comply with it, by 11 January 2015 informing the Commission.

Although there was the necessary time, Romania has not transposed within the period mentioned above in its internal law that Directive, until much later, i.e.

⁴ Ion Rusu, *Transferring sentenced persons, held in other member states of the European Union in order to execute the Sentence or the measure involving deprivation of liberty in a penitentiary or medical unit in Romania. Critical reviews*, „Acta Universitatis Danubius Juridica”, vol. 12, No. 1/2016, p. 31.

⁵ Published in OJ C 115 of 4.5.2010, p. 1.

⁶ Minodora-Ioana Rusu, *op. cit.*, p. 74.

⁷ Bogdan Birzu, *Cooperation agreement between the European Central Bank and Europol for Combating Euro Counterfeiting. Some critical opinions*, „Acta Universitatis Danubius Juridica”, vol. 12, No. 2/2016, p. 84.

⁸ Published in the Official Journal of the European Union L 338/2 of 21.12.2011.

07.20.2016, with the Law no. 151/2016 on the European protection order and amending and supplementing certain legislative acts.⁹

In the current study we have examined the provisions of the Romanian law by which it was transposed into the Romanian law the European legal instrument to which we referred in general, regarding the procedure of issuing and transmission of a European protection order by the Romanian judicial authorities, formulating critical opinions and *de lege ferenda* proposals.

Given the importance of the investigated issue and for didactic purposes, we divided the work into several sections as follows:

- The definition of terms used within the law;
- The scope and competence of Romanian judicial bodies;
- The necessary conditions for issuing a European protection order;
- The application for and issuance of the European protection order;
- The form, content and duration of the European protection order;
- The cases for extending, modifying the content or revoking the European protection order.

We have also made some critical observations supplemented by appropriate *de lege ferenda* proposals aimed at the improvement of Romanian and European legislative system.

We should mention also that given the recent publication of the Romanian legislative act and a certain lack of interest in researching this field, this study represents an absolute novelty in the Romanian doctrine.

2. Definition of some terms

In the Romanian law the *European Protection Order* is defined as a *decision by a judicial or equivalent authority of a Member State in relation to a protection measure against which a judicial or equivalent authority of another Member State has imposed the measure or appropriate measures under its national law, to further ensure the protection of the protected person.*

The definition of the European protection order adopted by the Romanian legislator is taken from the European legal framework instrument, namely Directive 2011/99 / EU, art. 2, par. (1).

We note a perfect identity between the two definitions, basically the Romanian legislator presented the definition of this institution as provided in the European legislative act, the only difference being the replacement of the term *adopts* by *decides*.

Throughout the Romanian law also other terms are defined, namely:

a) protection measure - a decision in criminal matters, adopted in the issuing State, which are imposed on the person causing danger one or more of the following prohibitions or restrictions to prevent the protected person committing a

⁹ Published in the Official Monitor of Romania, Part I, no. 545 of July 20, 2016.

criminal offense which could endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, namely:

- (i) a prohibition from entering into certain localities, places or defined areas where the protected person resides or visits;

- (ii) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronically, by mail, fax or any other means;

- (iii) a prohibition or regulation on approaching the protected person within a certain distance.

b) the *Protected person* – the natural person benefiting from the protection stemming from a protection measure ordered by the issuing State;

c) the *person causing danger* - an individual whom there have been imposed one or more of the prohibitions or restrictions referred to above in letter a);

d) *Issuing State* - the Member State in which it has been ordered a protection measure underlying the issuance of a European protection order;

e) *Executing State* - the Member State which has submitted a European protection order, for recognition and enforcement thereof;

f) *State of surveillance* – the EU Member State to which it has been transferred a final judgment by which a court ordered against an individual who committed a crime one of the sanctions or measures referred to in art. 170¹, respectively article 170¹⁷ of Law no. 302/2004 on international judicial cooperation in criminal matters, republished, as amended and supplemented.

The definition of terms given by the Romanian legislator is taken from the European legal instrument respectively art. 2, par. (2) - (7) where the terms listed are defined as follows:

- *Protection measure* - means a decision in criminal matters, adopted in the issuing State in accordance with national law and its procedures, by which one or more of the prohibitions or restrictions referred to in art. 5 shall be imposed on a person causing danger to protect a person protected by a criminal act that might endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity (art. 2, par. (2) of Directive 2011/99/EU).

We mention that in art. 5 of the European legislative act, to which the reference is made in the above text, there are provided the following:

A European protection order may be issued only when the issuing State has already adopted a protective measure, imposing on the person causing danger one or more of the following prohibitions or restrictions:

(a) a prohibition from entering into certain localities, places or different areas where the protected person resides or visits;

(b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, by electronic means or ordinary mail, fax or any other means; or

(c) a prohibition or regulation on approaching the protected person to a smaller distance than the one provided.

A comparative examination of the way it is defined in both laws the protection measure, which allows us finding some identity elements almost perfect, with some minor differences in the wording is, without affecting its core.

Regarding the phrases: *the protected person*, *the person causing danger*, *issuing and executing state* provided in the European legislative act, we specify that their translation into the Romanian law was achieved in an identical way, i.e. their meaning does not differ in relation to the meaning given by the Romanian legislator.

Regarding the phrase *executing State*, the European legislative act stipulates that it means *the Member State to which it was transferred a judgment within the meaning of article 2 of Council Framework Decision 2008/947 / JHA of 27 November 2008 on the principle of mutual recognition to judgments and probation decisions in order to supervise the probation measures and alternative sanctions¹⁰, or a decision on supervision measures, within the meaning of article 4 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union the principle of mutual recognition to decisions on supervision measures as an alternative to detention.¹¹*

Thus, according to art. 2 of Council Framework Decision 2008/947 / JHA, the phrase *judgment* means any final judgment or order of a court in the sentencing State, by which it is established that a natural person has committed a crime and it is applied:

- (a) a prison sentence or any measure of deprivation of liberty, in the case where the decision of parole was given passed under that judgment or by a subsequent probation decision;
- (b) a suspended sentence;
- (c) a sentence with a delay of the defendant's serving of a sentence
- (d) an alternative sanction.

At the same time, art. 4 of Council Framework Decision 2009/829 / JHA, defined the term *decision on supervision measures*, which means *an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing State in accordance with the laws and procedures of its national law during criminal proceedings and impose to an individual as an alternative to detention, one or more supervision measures.*

The *legal supervision measures* mean the *obligations and instructions imposed on a natural person, in accordance with the national laws and procedures of the issuing State.*

Summarizing it, we find that the direction expressed by the European legislator the phrase *supervision state* means the *Member State to which he was transferred to the recognition and enforcement of a judgment which concerns a measure of probation or an alternative sanction within the meaning of Council Framework Decision 2008/947/JAI or a supervision measure taken as an alternative to detention, as it is defined in the framework Decision 2009/829 / JHA.*

¹⁰ Published in OJ L 337 of 16.12.2008, p. 102.

¹¹ Published in OJ L 294 of 11.11.2009, p. 20.

With reference to Romanian law, we find that the term *state surveillance* means the Member State of the European Union to which it has been transferred to a final judgment by which a court ordered against an individual who committed a crime, one of the sanctions or measures under Articles 170¹ respectively art. 170¹⁷ of Law No. 302/2004 on international judicial cooperation in criminal matters, republished, as amended and supplemented.¹²

We should note that the Romanian legislator has transposed into national law the two European legal instruments to which the European legislator refers to, with the definition of surveillance state, by Law no. 300/2013 amending and supplementing Law no. 302/2004 on international judicial cooperation in criminal matters.¹³

Thus, in art. 170¹ of Law no. 302/2004 it is provided the scope and meaning of certain terms used by the Romanian legislator; at par. (1) art. 170¹ of Law no. 302/2004 there are provided the following surveillance measures which can be imposed to an individual who committed a crime:

- *the obligation for the person to inform the competent authority of the executing State of any change of residence, in particular the purpose of receiving summons for attending a hearing or to a criminal trial;*
- *the obligation of not entering in certain localities, places or defined areas in the issuing or execution state;*
- *the obligation to remain in a particular place, where applicable, at certain times;*
- *the obligation containing the limitations on leaving the territory of the executing State;*
- *the obligation to report at specified times to a specific authority;*
- *the obligation to avoid contact with specific persons in connection with the offense alleged to be committed;*
- *the obligation of not engaging in certain activities in connection with the offense alleged to be committed, which may include the involvement in a specified profession or field of activity;*
- *the obligation of not driving a vehicle;*
- *the obligation to deposit a certain sum of money or to give another type of guarantee, which may be provided either in a number of installments or one time;*

¹² Published in the Official Monitor of Romania, Part I, no. 594 of 1 July 2004, as amended and supplemented, republished in the Official Monitor of Romania, Part I, no. 377 of 31 May 2011; After republishing, the enactment framework has been amended and supplemented by two other legislative acts: Law no. 318 of 11 December 2015 on the establishment, organization and functioning of the National Administration of seized Goods, amending and supplementing certain acts, published in the Official Monitor of Romania, Part I, no. 961 of 24 December 2015 and Emergency Ordinance no. 18/2016 amending and supplementing Law no. 286/2009 on the Criminal Code, Law no. 135/2010 on the Code of Criminal Procedure and supplementing Art. 31 par. (1) of Law no. 304/2004 on judicial organization, published in the Official Monitor of Romania, Part I, no. 389 of May 23, 2016.

¹³ Published in the Official Monitor of Romania, Part I, no. 722 of December 11, 2013.

- *the obligation to undergo therapeutic treatment or treatment for addiction;*
- *the obligation to avoid contact with specific objects in relation to the offense alleged to be committed.*

In art. 170¹⁷ par. (2) of Law no. 302/2004 it is provided the meaning of terms and expressions as follows:

a) *the judgment* - any final decision by a court order against an individual who committed a crime one of the following sanctions:

- (i) suspension of sentence under supervision;
- (ii) conditional sentence;
- (iii) parole;
- (iv) an alternative sanction;

b) *suspension of sentence under supervision* – the punishment with imprisonment or a measure of deprivation of liberty whose execution is wholly or partly suspended, by imposing one or more probation measures;

c) *conditional sentence* - a measure by which the application of a sentence has been conditionally deferred, by imposing one or more probation measures, or in which one or more probation measures are imposed instead of a custodial sentence or a measure of deprivation of liberty;

d) *parole* - early release of the convicted person after serving part of the custodial sentence or a measure of deprivation of liberty, by imposing one or more probation measures;

e) *alternative penalty* - any other sanction of deprivation of liberty, imposed on individuals by a court order, as a result of an offense other than a financial penalty, which consists of an obligation or coercive measure which has an independent existence;

f) *probation decision* - a judicial or administrative decision taken on the basis of a judgment, by which it was applied a measure of probation or it was ordered parole;

g) *probation measures* - all measures, obligations or restrictions as stipulated in art. 170²⁰, set in the task on an individual in connection with suspension under probation or parole, the delay of applying the punishment or parole.

We should note that according to art. 170²⁰ of the concerned legislative act, *foreign judgments may be recognized and enforced in Romania if the probation measures or alternative sanction established by judgment or it falls within the following categories:*

a) *the obligation for the sentenced person to inform a specific authority of any change of residence or place of work;*

b) *the obligation of not entering into certain localities, places or defined areas in Romania or the issuing State;*

c) *the obligation of not leaving the territory of the executing State;*

d) instructions relating to behavior, residence, education and training, leisure activities, or containing limitations on the modalities of conducting professional activity;

e) the obligation to report at specified times to a specific authority;

f) the obligation to avoid contact with specific persons;

g) the obligation to avoid contact with certain objects that were used or could be used by the sentenced person for committing a criminal offense;

h) the obligation to compensate, in financial terms, the damage caused by the offense and/or an obligation to provide proof of compliance with such obligations;

i) the obligation to provide a community service;

j) the obligation to cooperate with the probation service or other institution or social service having responsibilities in respect of sentenced persons;

k) the obligation to undergo therapeutic treatment or treatment for addiction;

l) the obligation to communicate any information that could be controlled the means of existence of the convicted person.

3. Scope and competence

Under the depositions of the Romanian law, a European protection order may be issued, or where appropriate, recognized and enforced if the protected person has established domicile or residence or dwelling for a period of time or is to establish domicile, residence or to live for a while in a EU member state other than that in which it was ordered the protection measure.

In the case where Romania is the issuing State, the competent judicial authority to issue a European protection order is the judicial body whose role is on the case in which it was disposed the protection measure on the basis of which it was sought the issuance of the European protection.

Assuming that in the case in which it was disposed the protection measure on the basis of which it requests issuing a European protection order, it was a final conviction judgment, the competence for issuing the European protection order belongs to the appointed judge, according to art. 554 of the Criminal Procedure Code.

If in the case in which it was disposed the protection measure based on which it was required the issuance of the European protection order it was decided the delay of the sentence, the jurisdiction lies with the court which issued in the first instance the conditional sentence.

From the interpretation of the Romanian special law provisions it results that in Romania the competent judicial body to issue a European protection order may be:

- The prosecutor;
- The judge assigned for the execution of sentences;
- The preliminary chamber judge;

- The judge of rights and freedoms;
- The court.

4. The Conditions for Issuing a European Protection Order

Under article 4, par. (1) of the special law, the European Protection Order may be issued at the request of the protected person, if the following conditions are met:

a) the protected person resides or dwells at times or has established or will establish domicile or residence in another Member State of the European Union, to whom it seeks recognition and enforcement of a European protection order;

b) the protected person has the status of injured party in a criminal trial in progress or in which a final judgment of conviction was passed or to postpone the sentence or is a family member of the injured party, beneficiary of any measure referred to in letter c);

c) the person causing danger has the quality of perpetrator, convicted or person to which the conditional sentence was ordered in criminal proceedings under letter b), and against him it was established at least one of the following measures:

- (i) one of the obligation under art. 215, par. (2), letter b) or d) of Law no. 135/2010, as amended and supplemented, imposed with the measure of judicial control or judicial review on bail; we mention that in art. 215, par. (2), letter b) of the Criminal Procedure Code it is provided the obligation of not entering in certain places established by the judicial body or to move only in the places established by him, and in letter d) the obligation of not returning to victims' family home, to other participants in the crime, witnesses or experts or other persons appointed by the judicial body and not to communicate with it directly or indirectly, by any means;
- (ii) the requirement laid down in art. 221, par. (2), letter b) of Law no. 135/2010, as amended and supplemented, imposed during house arrest; in art. 221, par. (2), letter b) of the Criminal Procedure Code, it is provided the obligation of the under house arrest person of not communicating with the injured party or members of his family, with other participants in the crime, witnesses or experts and other persons determined by the judicial body;
- (iii) one of the obligations referred to in art. 85, par. (2), letter e) or f) of Law no. 286/2009 on the Criminal Code, as amended and supplemented, imposed to the defendant after passing the delay of the sentence execution; in art. 85 par. (2), letter e) of the Criminal Code it is provided the obligation of the person against whom passing the delay of the sentence execution was ordered, that during the period of supervision measure not to communicate with the victim or members of his family, with the people who committed the crime or other

persons established by the court or not approaching them, and in letter f) it provides for the obligation of not being in certain places or at certain sports events, cultural or other public meetings established by the court;

- (iv) one of the obligation under art. 101, par. (2), letter d) or e) of Law no. 286/2009, as amended and supplemented, during arrangement imposed on the convicted person on conditional release; in art. 101 par. (2), letter d) of the Criminal Code it is provided the obligation of person on whom it was ordered the conditional release of not being in certain places or at certain sports events, cultural or other public gatherings, established by the court and in letter e) there is the requirement of not communicating with the victim or members of his family, with the participants in the offense or others established by the court or not to approach them;
- (v) one of the obligation under art. 121, par. (1), letter c) or d) of Law no. 286/2009, as amended and supplemented, imposed to the defendant when applying an educational measure of non-deprivation of liberty; in art. 121, par. (1), letter c) Criminal Code it is provided the obligation of not being in certain places or at certain sports events, cultural or other public gatherings, established by the court and in letter d) it provides for the minor's obligation of not approaching and communicate with the victim or members of his family, with the participants in the offense or other persons determined by the court;
- (vi) the prohibition of one of the rights referred to in art. 66, par. (1), letters l) -o) of Law no. 286/2009, with subsequent amendments established by the court along with the accessory penalty or complementary penalty of prohibition of exercising certain rights; in art. 66, par. (1), letters l) -o) of the Criminal Code, there are provided the following rights:
 - The right to be in certain places determined by the court;
 - The right to be in certain places or at certain sports events, cultural or other public gatherings established by the court;
 - The right to communicate with the victim or members of his family, the people who committed the crime or others established by the court, or to approach them;
 - The right to be closer to home, work, school or other places where the victim conducts social activities, as determined by the court;

d) issuing the European protection order is necessary to remove a threat to which is or will be exposed the protected person.

Also, for a decision about issuing the European protection order there will be taken into account the period or periods that the protected person will have his domicile, residence, or dwell in the executing State, the proportionality of the measure, the actual danger of the protected person and any other relevant circumstances.

From the interpretation of legal norms, it results that for issuing a European protection order it is necessary to be fulfilled cumulatively the conditions stipulated in the provisions of art. 4 of the special law. In the event of failure of one of the conditions, the prosecutor, court or judge delegated with the execution will not issue a European protection order, even if all other conditions are met.

5. The application for and issuance of the European protection order

If Romania is the issuing state, the request for issuing a European protection order is submitted by the protected person or through a representative, at the competent judicial body, and the wrongly sent request will be directed administratively to the competent judicial body.

In the event that a request for the issuance of the European protection order is addressed to the judicial authorities in Romania, when it is the executing State, the request will be sent immediately administratively to the competent court, which shall send it further to Competent Authority of the issuing state.

The court, the judge of preliminary chamber, the judge of rights and freedoms and the judge delegated with the execution rule by reasoned closing statement and the prosecutor by ordinance.

The reasoned closing statement and the ordinance by which it was admitted the application for a European protection order is final, it is not subject to appeal, while the reasoned closing statement and the ordinance by which it was declined the application for a European protection order can be challenged by appeal within 3 days of communication. The appeal shall be settled in the council chamber, summoning the protected person, the person causing danger and the prosecutor within three days. The absence of the cited people does not prevent solving the case.

Jurisdiction of the complaint falls within the higher court of appeal or, where appropriate, preliminary chamber judge or the rights and freedoms of the superior court or the superior prosecutor.

The reasoned closing statement and the ordinance shall be communicated to the person causing danger and the protected person.

The reasoned closing statement and the ordinance on issuing a European protection order, a copy of the European protection order and any other subsequent documents are kept in the case file on which the protection measure has been ordered.

The European protection order shall be issued in four original documents, of which one shall be kept to the case, one is communicated to the competent authority of the executing State, one communicated the protected person and the last shall be communicated to the person causing danger.

6. The form, content and duration of the European protection order

If it is determined that they meet the conditions mentioned above (art. 4 of the Special Law), the competent judicial authority shall accept the application made by the protected person and issue the European protection order by filling out the form set out in Annex 1 of the law.

Regarding the section of the mentioned form relating to prohibitions, restrictions or obligations imposed on the person causing danger shall be filled depending on the protection measures provided in the special law (those of art. 4).

In terms of duration on which it is issued the European protection order, we specify that it corresponds to the duration where the protected person resides or dwell at times and has established or will establish domicile or residence in another Member State of the Union European, without exceeding the duration for which the measure relied on the issuance thereof.

7. The transmission, extending cases, amending or revoking the content of the European protection order

Once adopted, the issuing judicial authority shall transmit the European protection order to the competent authority of the executing State, by any means leaving a written record, direct means, and further communication between the two institutions being accomplished through this way.

If the issuing judicial authority of Romania has no information on the competent authority of the Member State which is to receive and execute the European protection order, this would be done via the contact points of the European Judicial Network, the National Member of Eurojust or Eurojust National Coordination System.

The power to rule on the European protection order lies with the issuing judicial authority, which, whenever it decides upon the protection measure, it will also decide on the European Protection Order.

If the protection measure has been terminated or revoked, the European Protection Order will be revoked.

The provision for revocation shall also issue four copies, one of which is kept in the case file, and three copies are sent to the protected person, the person causing danger to the protected person and the executing authority of the Member State.

Assuming that the protective measure under which it was issued the European Protection Order is replaced by another with another protection measure with different content, the competent authority may issue a new European protection order.

If the protection measure on the basis of which it was issued the European Protection Order is replaced by another measure, which however has the same content, the European Protection Order is maintained.

If the measure of protection under which a European protection order has been issued is extended, the European Protection Order will be further extended.

According to the Romanian law, the decision on maintaining the European protection order is not communicated to the executing State.

The law also provides that any decision on Romanian European protection order, taken in accordance with the above provisions, shall be communicated to the judicial body responsible for implementing the provisions of art. 6, par. (5) of the Special Law.

Under art. 10, par. (8) of the Special Law, *if, after the recognition and enforcement of a European protection order, the protection measure is contained in a judgment on a probation measure or alternative sanction, according to art. 170¹⁷ of Law No. 302/2004, republished, as amended and supplemented, and the judgment has been recognized and enforced in another State, other than the executing State and State of supervision or the issuing State has made subsequent decisions under art. 170⁴¹-170⁴³ of Law no. 302/2004, republished, with subsequent amendments, affecting the obligations contained in the protection measure, the European Protection Order can be revoked, maintained or extended, or it can be issued a new order of protection.*

8. Critical opinions and *de lege ferenda* proposals

Within this research, besides some positive elements, we have identified at least questionable some provisions of the Special Law, which in practice may cause some malfunctions.

Thus, regarding the demand of issuing the European protection order, the Romanian law does not require the protected person to supplement the application with evidence showing the need to issue a European protection order.

We believe that in this respect the provisions of art. 5 of the law should be supplemented by a new paragraph containing that the protected person is obliged to present evidence on the Member State where he intends to live, reasons, etc.

Another critical remark relates to the provisions of article 8 of the Special Law regarding the duration of the European protection order, which in our opinion should be proved by the protected person, by expressly mentioning of the evidence in the application. We consider that a mere statement made even in written application is not likely to justify it.

We deem it necessary to supplement the provisions of article 8 with certain provisions that concern the obligation of the protected person to specify in the application the evidence that justifies the deadline which it requires in the application.

The provisions of art. 10, par. (3) of the Special Law provides that, *if the protection measure was issued on the basis of which the European protection order is replaced by another protection measure with different content, the competent authority may issue a new order of protection.*

We believe that in this case, the replacement of the protective measure with another measure, it is mandatory the issuance of a new order of protection.

In this respect, the above provisions, the term “may” can be eliminated, as it induces a possible alternative of the issuing Romanian judicial body.

The provisions of art. 10, par. (4) provide that the *European protection order may be extended if the measure which was the basis of its issuance is prolonged*.

We appreciate that this provision is incomplete as in order to extend the European protection order it is necessary firstly for the protected person to request this extension, an aspect which is not provided by the law.

On the other hand it should be checked the conditions provided by the law and the necessity of their cumulative fulfillment, an aspect which also not required by the law.

Due to these reasons, we believe that the provisions of art. 10, par. (4) of the Special Law should be supplemented by other provisions to regulate the above issues.

Under art. 10, par. (6) of the Special Law, *the decision on maintaining the European protection order is not communicated to the executing State*.

We believe that this stipulation is wrong, and we appreciate that the text should be altered and to provide that any decision to maintain the European protection order must be communicated to the executing Member State.

9. Conclusions

We appreciate that the adoption of the Romanian legislative act under review was an objective necessity, resulting from the obligations assumed by Romania along with signing the European legal instruments, as a member of the European Union.

Also we point out that according to the depositions of art. 21 of Directive 2011/99 / EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, the European legislative act had to be transposed into the national law by 11 January 2015, the provisions were violated by Romania.

The examination of the enactment of transposition into the national law of the European legal instrument highlights both the positive elements and some provisions which are at least questionable, if not inappropriate.

As one general conclusion one can appreciate the necessity and usefulness of the Romanian legislative act transposing into the national law of a European legal instrument, the ultimate goal being that of improving the complex work of judicial cooperation in criminal matters in the European Union space.

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7. Framework Decision 2008/947 / JHA of 27 November 2008 on the principle of mutual recognition to judgments and probation decisions with a view to supervising probation measures and alternative sanctions, published in OJ L 337 of 16.12.2008, p. 102;
8. Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, the principle of mutual recognition to decisions on supervision measures as an alternative to detention, published in OJ L 294 of 11.11.2009, p. 20;
9. Law no. 302/2004 on international judicial cooperation in criminal matters, republished, as amended and supplemented, published in the Official Monitor of Romania, Part I, no. 594 of 1 July 2004, as amended and supplemented, republished in the Official Monitor of Romania, Part I, no. 377 of 31 May 2011; after republishing, the enactment framework has been amended and supplemented by two other legislative acts: Law no. 318 of 11 December 2015 on the establishment, organization and functioning of the National Administration of seized Goods, amending and supplementing certain acts, published in the Official Monitor of Romania, Part I, no. 961 of 24 December 2015 and Emergency Ordinance no. 18/2016 amending and supplementing Law no. 286/2009 on the Criminal Code, Law no. 135/2010 on the Code of Criminal Procedure and supplementing art. 31, par. (1) of Law no. 304/2004 on judicial organization, published in the Official Monitor of Romania, Part I, no. 389 of May 23, 2016;
10. Law no. 300/2013 amending and supplementing Law no. 302/2004 on international judicial cooperation in criminal matters, published in the Official Monitor of Romania, Part I, no. 722 of 11 December 2013.