

**LAW No. 302 of 28 June 2004**  
**on international judicial co-operation in criminal matters**  
**as amended and supplemented by Law No. 224/2006**

**TITLE I**

**GENERAL PROVISIONS**

**CHAPTER I**

**SCOPE OF APPLICATION AND GENERAL PRINCIPLES OF INTERNATIONAL JUDICIAL CO-OPERATION IN CRIMINAL MATTERS**

**ARTICLE 1**

**Scope of application**

This law applies to the following forms of international judicial co-operation in criminal matters:

- a) extradition;
- b) surrender based on a European Arrest Warrant;
- c) transfer of proceedings in criminal matters;
- d) recognition and enforcement of judgements;
- e) transfer of sentenced persons;
- f) judicial assistance in criminal matters;
- g) other forms of international judicial co-operation in criminal matters.

(2) This law does not apply to the specific modalities of international police co-operation, where, under the law, they are not under judicial control.

**ARTICLE 2**

**The meaning of certain terms and phrases**

For the purposes of this law, the following terms and phrases are thus defined:

- a) *Requesting State* – the State that submits a request in the fields regulated by this law;
- b) *Requested State* – the State to which a request in the fields regulated by this law is sent;
- c) *central authority* – the authority thus designated by the Requesting State or by the Requested State, in the application of international conventions;
- d) *judicial authority* – law courts and the public prosecutor's offices attached to these, set up according to Romanian law, as well as the authorities having this capacity in the Requesting State, according to the latter's declarations in the applicable international instruments;
- e) *prosecuted person* – the person who is the object of an international warrant for prosecution;
- f) *extraditable person* – the person who is the object of an extradition procedure;
- g) *extradited or extradited person* – the person whose extradition has been approved;
- h) *active extradition* – the extradition procedure in which Romania has the capacity of requesting State;
- i) *passive extradition* – the extradition procedure in which Romania has the capacity of requested State;
- j) *requested person* – the person who is the object of a European Arrest Warrant;
- k) *sentence* – any penalty or security measure imposed following the commission of an offence;
- l) *security measure* – any measure depriving of or restricting freedom, which has been ordained to supplement or replace a penalty, through a criminal judgement;
- m) *judgement* – a court decision handing down a sentence;
- n) *Sentencing State* – the State where the person who can be or has already been transferred was sentenced;
- o) *Executing State* – the State where the convict can be or has already been transferred in view of serving the sentence or security measure imposed;
- p) *national of a Sentencing or an Executing State* refers, in Romania's case, to a Romanian citizen.
- r) For the purposes of Title III of this law, the *issuing judicial authority* is the judicial authority of a European Union Member State that is competent to issue a European Arrest Warrant according to the law of that State;

s) For the purposes of Title III of this law, the *executing judicial authority* is the judicial authority of a European Union Member State that is competent to execute a European Arrest Warrant, according to the law of that State.

ş) For the purposes of Title III of this law, the *Issuing Member State* is the Member State of the European Union in which a European Arrest Warrant has been issued.

t) For the purposes of Title III of this law, the *Executing Member State* is the Member State of the European Union to which a European Arrest Warrant is sent

### **ARTICLE 3**

#### **Limits of judicial co-operation**

The application of this law is subject to Romania's interests of sovereignty, security, public policy and others, as defined by the Constitution.

### **ARTICLE 4**

#### **Pre-emption of international law**

(1) This law shall be applied based on and for executing the norms concerning judicial co-operation in criminal matters, as comprised in the international judicial instruments to which Romania is a Party, which it supplements in situations that are not regulated therein.

(2) The co-operation with an international criminal court or a public international organisation, according to the relevant provisions of special international instruments, such as the statutes of international criminal courts, shall be examined by a distinct legal procedure; however, this law may be applied accordingly, for supplementation, if necessary.

### **ARTICLE 5**

#### **International courtesy and reciprocity**

(1) In the absence of an international convention, judicial co-operation can take place by virtue of international courtesy, upon request sent through diplomatic channels by the Requesting State and with a written assurance of reciprocity from the competent authority in that State.

(2) In the case provided in the previous paragraph, the present law is the common law in the matter for the Romanian judicial authorities.

(3) The absence of reciprocity does not prevent the execution of a request for international judicial co-operation in criminal matters, if it:

a) proves to be necessary because of the nature of the act or of the need to fight against certain serious forms of crime;

b) may contribute to an improvement of the defendant or convict's status or to his social reinsertion;

c) may serve to clarify the judicial status of a Romanian citizen.

3

### **ARTICLE 6**

#### **Assurance of reciprocity**

If the Romanian State submits a request under this Law, based on international courtesy, the assurance of reciprocity shall be given by the Minister of Justice, for each case, any time it is necessary, at the reasoned request of the competent Romanian judicial authority.

### **ARTICLE 7**

#### **Applicable law**

Requests sent to the Romanian authorities in the fields regulated by this Law shall be fulfilled according to the Romanian norms of procesual criminal law, unless this Law provides otherwise.

### **ARTICLE 8**

#### **Repealed.**

### **ARTICLE 9**

#### **Repealed.**

### **ARTICLE 10**

#### ***Non bis in idem***

(1) International judicial co-operation is not admissible when, in Romania or in any other State, criminal prosecution has taken place for the same act and if:

a) a final decision has ordained acquittal or cessation of the criminal trial;

b) the penalty applied in this cause, through a final sentence, has been served or was the object of pardon or amnesty, either as a whole or for the part of it left unserved;  
(2) Paragraph (1) shall not apply if assistance is requested in order to review the final decision, for one of the reasons that justify the promotion of a means of extraordinary judicial review provided in the Romanian Criminal Procedure Code.

(3) Paragraph (1) shall not apply where an international treaty to which Romania is a party contains conditions that are more favourable as regards the principle of *non bis in idem*.

#### **ARTICLE 11**

**Repealed.**

#### **ARTICLE 12**

##### **Confidentiality**

Romania is obliged to make sure, to the extent possible, upon request from the Requesting State, of the confidentiality of requests sent to it regarding the fields regulated by this Law, and of any documents attached to such requests. In the event that it would be impossible to ensure confidentiality, Romania shall notify the foreign State, which shall decide.

#### **CHAPTER II**

### **GENERAL PROVISIONS ON THE PROCEDURE OF INTERNATIONAL JUDICIAL CO-OPERATION IN CRIMINAL MATTERS**

#### **ARTICLE 13**

##### **Romanian central authorities**

**Requests uttered in the fields regulated by Titles II and IV to VII of this Law shall be sent through the following central authorities**

Requests for international judicial assistance in criminal matters shall be sent through the following central authorities:

- a) The Ministry of Justice, if they concern extradition and the transfer of sentenced persons or if they refer to the activity of judgement or to the stage of enforcement of criminal judgements;
- b) The Public Prosecutor's Office attached to the High Court of Cassation and Justice, if they refer to activities from the stage of investigation and criminal prosecution;
- c) The Ministry of Administration and Interior, if they refer to the criminal record.

#### **ARTICLE 14**

##### **Direct transmission**

(1) Requests for judicial assistance in criminal matters may be sent directly by the requesting judicial authorities to the requested judicial authorities, in the event that the international judicial instrument applicable in the relation between the Requesting State and the Requested State regulates this type of transmission.

(2) With the exception of the cases mentioned in para.(1), requests for judicial assistance in criminal matters may be sent directly by the requesting judicial authorities to the requested judicial authorities in case of emergency; however, a copy of these shall be sent simultaneously to the Ministry of Justice or to the Public Prosecutor's Office attached to the High Court of Cassation and Justice, according to case.

(3) The procedure mentioned in para.(1) and (2) shall be used also for transmitting replies to emergency requests for judicial assistance in criminal matters.

(4) In the case under para. (1) and (2), direct transmissions may be made through the International Criminal Police Organisation (Interpol).

#### **ARTICLE 15**

##### **Other modalities of sending the requests**

(1) To send requests, based on agreement between the Requesting and the Requested States, the proper electronic means may be used as well, in particular the fax, when available, if the authenticity and confidentiality of the request, as well as the credibility of the data sent, are guaranteed.

(2) The previous paragraph shall not prevent the use of the avenues of emergency provided in Article 14.

## **ARTICLE 16**

### **Domestic competence**

The competence of Romanian authorities for submitting a request in the fields regulated by this Law or for executing such a request is established by the provisions of the following Titles of this law, as well as by other relevant normative acts.

## **ARTICLE 17**

### **Languages used**

(1) Requests under Titles II and IV to VII addressed to Romania and the documents attached to them shall be accompanied by a translation into Romanian, English or French. Where the documents above are translated into a language other than Romanian, the central authority that is competent under Article 13 or the competent judicial authority, in the event of direct transmission, shall have it urgently translated.

5

(2) The requests in para. (1) uttered by Romanian authorities and the documents attached to them shall be accompanied by translations into one of the languages mentioned in the judicial instrument applicable in relation with the Requested State. Requests uttered on grounds of international courtesy and documents attached thereto shall be translated into the official language of the Requested State. The translation of requests and documents attached shall be provided by the authority that is competent to utter the request.

(3) Replies to requests addressed to Romania shall be drawn up in Romanian, and the translation of replies into the official language of the Requesting State or into English or French is optional, unless the international judicial instrument applicable ordains otherwise.

(4) Where the reply to a request uttered by Romanian authorities is not in Romanian or is not accompanied by a translation into Romanian, the central authority competent under Article 13 or the competent judicial authority, in the event of direct transmission, shall take measures to have it translated

## **ARTICLE 18**

### **Deduction of the arrest**

(1) The length of arrest served abroad for the accomplishment of a request uttered by Romanian authorities based on this Law shall be taken into account within the Romanian criminal procedure and shall be deducted from the length of the penalty imposed by the Romanian courts.

(2) The requested Romanian authorities are obliged to provide to the competent authorities of the Requesting State the information needed for deducting the arrest served in Romania, based on a request sent to Romanian judicial authorities.

## **ARTICLE 19**

### **Repealed.**

## **ARTICLE 20**

### **Costs**

(1) Costs caused by the execution of a request uttered under this Law are usually incurred by the Requested State.

(2) However, the Requesting State or judicial authority shall incur:

- a) the indemnities and remunerations of witnesses and experts, as well as their travelling expenses;
- b) costs of the handing over of objects;
- c) costs of the transfer of persons to the territory of the Requesting State or to the seat of a judicial authority;
- d) costs of the transit of a person from the territory of a foreign State or from the seat of a judicial authority to a third State;
- e) costs of a video conference used for carrying out a request for judicial assistance;
- f) other costs deemed as extraordinary by the Requested State according to the human and technological resources used for carrying out the request.

(3) Following an agreement between the requested Romanian authorities and the requesting foreign authorities one may derogate, in exceptional cases, from the provisions of para. (2).

(4) Costs that are to be paid by Romania shall be paid from the State budget and be included, as appropriate, in the budget of the Ministry of Justice, of the Public Ministry and of the Ministry of Administration and Interior

## **ARTICLE 21**

### **The handing over of objects and goods**

6

(1) If a request concerns or involves the handing over of objects or goods, these may be handed over when they are not indispensable for proving a criminal act the prosecution or trial of which is of the competence of Romanian judicial authorities.

(2) The handing over of objects and of other goods may be postponed, or may be conditioned by restitution.

(3) Para. (1) and (2) shall not infringe upon the rights of *bona fide* third parties and upon the rights of the Romanian State when these objects and goods may enter its property.

(4) Objects and goods shall be handed over only based on a final judgement approving this and issued by the competent judicial authority.

(5) In case of requests for extradition, the handing over of the objects and goods mentioned in paragraph (1) may take place even if extradition is not approved, particularly because of the extraditable person's escape or death.

## **TITLE II**

### **EXTRADITION**

#### **CHAPTER I**

##### **Passive Extradition**

###### **Section 1**

###### **Conditions for extradition**

## **ARTICLE 22**

### **Persons subject to extradition**

According to this law, upon request from a foreign State, persons who are in Romanian territory and who are under criminal prosecution or brought to justice for the commission of an offence, or who are wanted for serving a penalty or a security measure in the Requesting State, may be extradited from Romania.

## **ARTICLE 23**

### **Persons exempt from extradition**

(1) The following may not be extradited from Romania:

- a) Romanian citizens, if the conditions mentioned in Article 24 are not met;
- b) persons who were afforded asylum by Romania;
- c) foreign persons enjoying jurisdiction immunity in Romania, according to the conditions and limits established through conventions or other international agreements;
- d) foreign persons summoned from abroad for being heard as parties, witnesses or experts by a requesting Romanian judicial authority, subject to the immunities provided by international conventions.

(2) The capacity of Romanian citizen or political refugee in Romania shall be assessed at the date when the judgement on extradition becomes final. If this capacity is acknowledged between the date when the judgement of extradition becomes final and the date agreed upon for surrender, a new judgement shall be delivered on the case.

## **ARTICLE 24**

### **Extradition of Romanian citizens**

(1) 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:

7

a) the extraditable person domiciles in the Requesting State at the date when the request for extradition is uttered;

b) the extraditable person has also the citizenship of the Requesting State;

c) the extraditable person 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.

(2) In the events provided in para. (1) a) and c), when extradition is being 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 judgement, the extradited person will be transferred to Romania to serve the penalty.

(3) Romanian citizens may be extradited also based on the provisions of bilateral treaties and based on reciprocity.

(4) In view of finding whether the conditions in paragraphs (1) to (3) are met, the Ministry of Justice may request the production of a document issued by the competent authority of the Requesting State.

#### **ARTICLE 24<sup>1</sup>**

##### **Mandatory grounds for refusing extradition**

(1) Extradition shall be refused if:

a) The right to a fair trial under the European Convention for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on 4 November 1950 or under any other relevant international instrument ratified by Romania, has not been observed;

b) there are serious reasons to believe that extradition is being requested in order to prosecute or punish a person for reasons of race, religion, sex, nationality, language, political or ideological opinion or belonging to a certain social group;

c) the person's status is at a risk of worsening for one of the reasons shown in b);

d) the request is uttered in a case that is pending with extraordinary courts, others than those created by the relevant international instruments, or in view of serving a penalty imposed by such a court;

e) it refers to an offence of political nature or to an offence related to a political offence;

f) it refers to a military offence that is not an offence of ordinary law.

(2) The following shall not be deemed as political offences:

a) attempts against the life of the leader of a State or against that of a member of his family;

b) crimes against humankind as provided by the Convention for the prevention and punishment of crimes of genocide, adopted on 9 December 1948 by the General Assembly of the United Nations;

c) offences provided in Art. 50 of the Geneva Convention of 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, in Art. 51 of the Geneva Convention of 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, in Art. 129 of the Geneva Convention of 1949 Relative to the Treatment of Prisoners of War and in Art. 147 of the Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War;

d) any similar violations of war laws, which are not provided in the Geneva Conventions mentioned in c);

e) the offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, adopted in Strasbourg on 27 January 1977 and in other relevant international instruments;

8

f) offences mentioned in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 17 December 1984 by the General Assembly of the United Nations;

g) any other offence the political nature of which has been removed by the international treaties, conventions or agreements to which Romania is a Party.

#### **Article 24<sup>2</sup>**

##### **Optional grounds for refusing extradition**

(1) Extradition may be refused when the act that motivates the request is the object of pending criminal proceedings or when this act may be the object of criminal proceedings in Romania.

(2) Extradition of a person may be refused or postponed where the surrender of such

person is likely to entail particularly serious consequences for him or her, especially because of his/her age or health. In the event that extradition is refused, Article 25 para.(1) shall apply accordingly

#### **ARTICLE 25**

##### **Transfer of criminal proceedings in case of refusal to extradite**

(1) A refusal to extradite an own citizen or a political refugee obliges Romania, upon request from the Requesting State, to submit the case to its competent judicial authorities, in order for the criminal prosecution and trial to take place, if appropriate. For this purpose, the Requesting State should send to the Ministry of Justice in Romania, free of charge, the files, information and objects that regard the offence. The Requesting State shall be informed of the results of its request.

(2) Should Romania opt for the solution of refusing to extradite a foreign national who was accused or convicted in another State for one of the offences in Art. 85 para. (1) or for any other offence for which the law of the Requesting State provides the penalty of imprisonment with a special maximum of at least 5 years, the examination of its own competence and the exercise, if necessary, of criminal action shall take place *ex officio*, without exception and without delay. The Romanian authorities shall decide according to the same conditions as those for any serious offence provided and punished by the Romanian law.

#### **ARTICLE 26**

##### **Double incrimination**

(1) Extradition may be allowed only if the deed of which the person the extradition of whom is being requested has been accused or for which he has been convicted is provided as an offence both in the law of the Requesting State and in Romanian law.

(2) By derogation from para.(1), 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.

(3) 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.

#### **ARTICLE 27**

##### **Fiscal offences**

(1) In matters of fees and taxes, of customs and currency exchange, extradition shall be granted according to the international agreement applicable, for acts that have a correspondent, according to Romanian law, in offences of the same nature.

9

(2) Extradition cannot be refused for the reason that Romanian law does not levy the same type of fees or taxes or does not comprise the same type of regulations in matters of fees and taxes, customs or currency exchange as the legislation of the Requesting State.

#### **ARTICLE 28**

##### **Seriousness of the penalty**

Extradition shall be granted by Romania, in view of criminal prosecution or trial, for acts the commission of which entails, according to the legislation of the Requesting State and to Romanian law, a custodial penalty of at least one year, and in view of serving a penalty, only if it is at least 4 months long.

#### **ARTICLE 29**

##### **Capital punishment**

If the act for which extradition is requested is punished by death in the law of the Requesting State, extradition can be granted only under the condition that the Requesting State provide guarantees deemed as sufficient by the Romanian State, that the capital punishment will not be executed, and that it is to be commuted.

#### **ARTICLE 30**

##### **Penalty with suspension of service**

A person sentenced to a custodial penalty with conditional suspension of service may be extradited in case of partial suspension, if the part of the penalty still to be served meets the requirements of seriousness provided in Art. 28 and there are no other legal impediments

for extradition.

#### **ARTICLE 31**

##### **Offences committed in a third State**

In case of offences committed on the territory of a State other than the Requesting State, extradition may be granted when Romanian law ascribes the competence of prosecution and judgement to the Romanian judicial authorities for offences of the same type that are committed outside Romanian territory, or when the Requesting State proves that the third State on the territory of which the offence was committed will not request extradition for that act.

#### **ARTICLE 32**

##### **Lack of prior complaint**

Extradition shall not be granted if, according to both Romanian law as well as the legislation of the Requesting State, criminal action can be initiated only upon prior complaint from the injured person, and this person is opposing the extradition.

#### **ARTICLE 33**

##### **The right to defence**

Romania shall not grant extradition if the extraditable person would be tried in the Requesting State by a court that does not provide the fundamental safeguards of procedure and protection of the right to defence or by a national court set up especially for that case, or if the extradition is requested in view of service of a penalty delivered by that court.

#### **ARTICLE 34**

##### **Judgement *in absentia***

(1) If extradition of a person is requested in view of service of a penalty handed down in a judgement *in absentia* against this person, Romania may refuse extradition for this purpose,

10 if it deems that the trial procedure has disregarded the right to defence acknowledged to any person accused of having committed an offence. However, extradition shall be granted if the Requesting State provides safeguards deemed as sufficient to guarantee the extraditable person's right to a new trial that would safeguard his right to defence. Such a decision of extradition entitles the Requesting State either to try the case again, in the presence of the convict, if the latter has no objections, or, if otherwise, to prosecute the extradited.

(2) When Romania announces the person whose extradition has been requested, about the judgement delivered against him *in absentia*, the Requesting State shall not take this announcement to be a notification that entails effects upon the criminal proceedings in this latter State.

#### **ARTICLE 35**

##### **Periods of time limitation**

(1) 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.

(2) The submitting of the request for extradition shall interrupt the period of time limitation previously not expired.

#### **ARTICLE 36**

##### **Amnesty**

Extradition shall not be allowed for an offence that has been amnestied in Romania, if the Romanian State was competent to prosecute this offence, according to its own criminal law.

#### **ARTICLE 37**

##### **Pardon**

A pardon act adopted by the Requesting State shall render the request for extradition inoperative, even if the other conditions for extradition were met.

#### **Section 2**

##### ***The procedure of extradition from Romania***

#### **ARTICLE 38**

##### **The request for extradition and the documents attached**

(1) A request for extradition, made in writing by the competent authority of the Requesting State, shall be addressed to the Ministry of Justice. If the request is being made through diplomatic channels, it shall be sent without delay to the Ministry of Justice. Another way of transmission may be agreed upon directly by the Requesting State and the requested Romanian State.

(2) To support the request, the following shall be attached:

- a) according to the stage of the criminal trial, the originals or the authenticated copies of the final sentence, with a mention of the fact that it has become final, of the decisions handed down following the exercise of means of judicial review, of the warrant for the service of imprisonment, and respectively, the originals or authenticated copies of the preventive arrest warrant, of the prosecutor's charges and of other documents that have legal power. The authentication of copies shall be provided free of charge by the competent court or public prosecutor's office, as appropriate;
- b) a presentation of the deeds for which extradition is being requested. The date and place of their commission, their legal classification and references to the legal provisions that are applicable to them shall be provided in the most accurate manner possible;
- c) a copy of the legal provisions applicable or, if this is not possible, a statement concerning the law applicable, as well as the most accurate distinctive marks of the extraditable person and any other information likely to determine the latter's identity and nationality;
- d) data concerning the length of the penalty not served, in case of requests for extradition of a sentenced person who has served only part of the penalty.

#### **ARTICLE 39**

##### **The procedure for passive extradition**

(1) Extradition from Romania shall be decided upon by the Judiciary.

(2) The procedure of passive extradition is urgent and takes place also during the judicial recess.

(3) The role of the Ministry of Justice consists of exercising the competences bestowed upon it, as a central authority, by the law and the international treaties to which Romania is a party.

(4) In the exercise of its competences as a central authority, the Ministry of Justice mainly performs, through its specialised directorate, the following activities:

- a) receipt of the request for extradition;
- b) examination of the request for extradition and of the documents attached thereto, from the point of view of international regularity, according to Article 40.
- c) transmission of the request for extradition and of the documents attached to it to the competent general prosecutor, according to Article 42.
- d) reasoned restitution of the request for extradition and of the documents attached thereto, in the cases in Article 40 para. (4).
- e) execution, in collaboration with the Ministry of Administration and Interior, of the final decision that ordained extradition.
- f) communication to the central authority of the Requesting State, of the solution given to the request for extradition or to the request for provisional arrest in view of extradition, delivered by the competent judicial authority

#### **ARTICLE 40**

##### **The international regularity check**

(1) The international regularity check is aimed at checking whether the extradition request and the documents attached thereto comply with the provisions of applicable international treaties, including with the declarations made by Romania based on the provisions of certain multilateral conventions.

(2) Through its specialised directorate, the Ministry of Justice shall, within 3 working days from the date of receipt of a request, perform the international regularity check provided in para. (1), in order to find whether:

- a) between Romania and the Requesting State there are conventional norms or there is reciprocity for extradition;

- b) the request for extradition is accompanied by the documents set forth in the applicable international treaty;
  - c) the request and the attached documents are accompanied by translations, under Article 17;
  - d) there exists one of the limits for granting judicial co-operation, according to Article 3.
- (3) Where the extradition of a Romanian citizen is being requested, during the international regularity check, the Ministry of Justice shall check also the existence of reciprocity concerning the extradition of own nationals.

12

(4) If the international regularity conditions provided in para.(2) a) and b) and in para.(3) are not met, as well as when it finds the existence of the situation provided in para.(2) d), the Ministry of Justice shall return the request and the attached documents, explaining the reasons. If the request for extradition and the attached documents are not accompanied by translations into Romanian, the competent public prosecutor's office shall take measures to provide a translation as soon as possible.

(5) In the event of requests for provisional arrest in view of extradition, the international regularity check shall be performed within 24 hours from the receipt of the request

#### **ARTICLE 41**

##### **Concurrence of requests**

(1) If extradition is requested by several States either for the same act or for different acts, Romania shall decide, while taking into account all the circumstances and, in particular, the seriousness and the place of commission of the offences, the dates when the requests were lodged, the nationality of the requested person, the existence of extradition reciprocity in relation to Romania and the possibility of a further extradition towards another Requesting State.

(2) The Ministry of Justice shall urgently notify the concurrence of requests to the competent authorities of the Requesting States.

#### **ARTICLE 42**

##### **Notification of the competent public prosecutor**

Except for the cases of restitution provided in Art. 39 para. (2), the request for extradition and the documents attached to it shall be sent by the Ministry of Justice, within 48 hours, to the general prosecutor attached to the court of appeal in the jurisdiction of which the extraditable person domiciles or has been seen or, if the location of the person is unknown, to the general prosecutor from the prosecutor's office attached to the Court of Appeal in Bucharest.

#### **ARTICLE 43**

##### **Representation of the Requesting State**

(1) Within the procedure of passive extradition, the Requesting State shall be represented by the central authority and the Public Ministry in Romania. At the express request of the Requesting State, its own representatives may participate to the resolution of the extradition request, with the approval of the competent court.

(2) Para. (1) shall apply accordingly also for active extradition.

#### **ARTICLE 44**

##### **The judicial procedure and special rules of competence**

(1) The judicial procedure of extradition is of the competence of the court of appeal within the jurisdiction of which the extraditable person domiciles or has been identified and to the public prosecutor's office attached to it.

(2) Requests for extradition shall be solved by the criminal section of the competent court of appeal, in a panel of two judges.

(3) The decision handed down regarding the request for extradition is subject to appeal on points of law, according to Articles 54 para.(8) and Art. 55.

(4) The norms of criminal procedure concerning prosecution, trial and enforcement shall apply for the procedure of extradition as well, to the extent that this law does not provide otherwise.

13

## **ARTICLE 45**

### **Provisional arrest and notification of the court**

- (1) The competent general prosecutor or the public prosecutor whom he designates shall, within 48 hours from receipt of the request for extradition and of the documents attached to it, proceed to identifying the extraditable person, to whom he shall hand the arrest warrant, as well as the other documents sent by the authorities of the Requesting State.
- (2) After identification, the competent general prosecutor shall immediately notify the competent court of appeal, in order for it to decide upon the measure of provisional arrest in view of extradition of the extraditable person and of continuing the judicial procedure of solving the request for extradition.
- (3) Provisional arrest in view of extradition shall be ordained and extended by the same panel empowered to solve the request for extradition, through a conclusion handed down in the council chamber. This conclusion may be appealed against separately on points of law within 24 hours from its pronouncement. The case shall within 24 hours be forwarded to the appellate court, which shall try the appeal within 24 hours. Appeals lodged against conclusions ordaining arrest shall not stay the enforcement thereof.
- (4) The extraditable person regarding whom the measure of provisional arrest has been taken shall be placed in arrest with the police.
- (5) During the resolution of the case, the court shall re-examine *ex officio* every 30 days the need to maintain the measure of provisional arrest, and may ordain, according to case, either extension or the replacement of this measure by the measure of obligation not to leave the country or locality.
- (6) Each extension granted according to para.(5) may not exceed 30 days. The total length of provisional arrest shall not exceed 180 days.
- (7) In case of admission of the request for extradition, provisional arrest in view of extradition shall be extended, every 30 days, until the extradited is surrendered, subject to observance of the terms in para. (5) and (6). Provisional arrest shall cease *de jure* if the extradited person is not taken over by the competent authorities of the Requesting State within 30 days from the date agreed upon for surrender according to Art. 59 para.(6).
- (8) With the exception of the case in Art. 59 para.(6), the court may, either *ex officio*, upon notification from the competent public prosecutor or upon request from the extraditable person, ordain the cessation of the arrest in view of extradition if the extradited person is not taken over by the competent authorities of the Requesting State within 15 days from the date agreed upon for surrender.
- (9) If against the extraditable person the Romanian judicial authorities have issued a warrant for preventive arrest or a warrant of service of imprisonment, for acts committed in Romanian territory, the warrant for provisional arrest in view of extradition shall take effect from the date when the person concerned is no longer under the rule of the warrant for preventive arrest or of the warrant for service of imprisonment.

## **ARTICLE 46**

### **Provisional arrest in cases of emergency**

- (1) In cases of emergency, the competent authorities of the Requesting State may request the provisional arrest of the requested person, even before the drawing up and sending of the formal request for extradition.
- (2) A request for provisional arrest in view of extradition must specify the existence of a warrant for preventive arrest or of a warrant for service of a penalty applied by a final court judgement against the requested person, a brief presentation of the acts, which needs to specify the date and place of commission and mention the legal provisions applicable, as well as the available data regarding the identity, citizenship and location of this person.
- 14
- (3) Requests for provisional arrest in view of extradition shall be sent to the Ministry of Justice in view of performing the check in Article 40, which Article shall apply accordingly. The request may be sent by any means that leave a written record and the authenticity of which may be verified.
- (4) A request for provisional arrest in view of extradition may be executed only when

there is no doubt concerning the competence of the requesting authority and the request contains the elements mentioned in paragraph (2).

(5) Art. 45 shall apply accordingly.

(6) The court may, either *ex officio*, upon notification from the competent public prosecutor or upon request from the extraditable person, ordain the cessation of the provisional arrest in view of extradition if, within 18 days from the taking of the measure, the Romanian State is not notified with a request for extradition, accompanied by the documents mentioned in Art. 38. Provisional arrest ceases *de jure* after 40 days, if in this time interval the request for extradition and the necessary documents are not received, unless a bilateral treaty specifies a different limit for the duration of provisional arrest.

(7) The provisional release does not exclude a new provisional arrest in view of extradition, nor does it exclude extradition, should a request for extradition be received later on.

#### **ARTICLE 47**

##### **Detainment in view of extradition**

The competent general prosecutor or the public prosecutor whom he designates may ordain, by a reasoned ordinance, the detainment for no more than 24 hours, according to the Criminal Procedure Code, of a person wanted by the International Organisation of Criminal Police (Interpol), the provisional arrest in view of extradition of whom is requested by the competent authorities of the Requesting State.

#### **ARTICLE 48**

##### **The procedure with the court of appeal**

(1) In the first hearing, the court shall take a statement from the extraditable person, who shall be assisted free of charge by an interpreter and a defender appointed *ex officio*, if there is no chosen lawyer. The presence of the public prosecutor is obligatory. The procedure shall be public, unless the extraditable person or the public prosecutor opposes its publicity, and it shall be also oral and contradictory.

(2) The extraditable person or the session prosecutor may request that the court allow a supplementary term of 8 days, for sufficiently justified reasons. The public prosecutor's office shall be obliged to contribute to the collection of data and documents needed in order to establish whether the conditions are met for an extradition and to ordain the seizure and depositing with the court of the objects referred to in Art. 21.

(3) After the questioning, the extraditable person may opt either for voluntary extradition, or for continuation of the procedure, in case of opposition to extradition.

#### **ARTICLE 49**

##### **Voluntary extradition**

(1) An extraditable person shall have a right to declare before the court that he renounces the benefits of defending himself against the request for extradition that are provided to him by the law, and that he gives his consent to being extradited and surrendered to the competent authorities of the Requesting State. His statement shall be recorded in an official record, signed by the president of the judgement panel, by the court clerk, by the extraditable person, by his lawyer and by the interpreter. If the court finds that the extraditable person is fully

15  
aware of the consequences of his option, the court, taking note of the public prosecutor's conclusions also, examines whether there are any impediments for extradition. If it is found that voluntary extradition is admissible, the court shall take act of this through a sentence and ordain upon the measure of preventive arrest to be taken until the extraditable person is surrendered. This sentence is final and shall be drawn up within 24 hours, and an authenticated copy of it shall be sent at once to the Ministry of Justice, which shall proceed according to the law.

(2) Under the conditions mentioned in para.(1), the extraditable person may declare that he renounces the application of the speciality rule provided in Art. 11.

#### **ARTICLE 50**

##### **Simplified extradition**

In the case mentioned in Article 49, it is no longer necessary to present a formal

request for extradition and the documents provided in Art. 38 para. (2) if it is thus provided in the international convention applicable in relation to the Requested State or if the legislation of that State allows such a simplified extradition procedure and it has been applied to requests for extradition uttered by Romania.

#### **ARTICLE 51**

##### **Opposition to extradition by the extraditable person**

- (1) Should the extraditable person oppose the request for extradition, he shall be able to defend himself orally and in writing; and also to bring evidence.
- (2) After hearing the extraditable person, the file of the case shall be made available to the latter's defender for presenting, in writing, within 8 days, a reasoned opposition to the request for extradition and for showing the evidence allowed by Romanian law. The number of witnesses shall not exceed two.
- (3) Opposition may be founded only upon the fact that the person arrested is not the person requested or that the conditions for extradition are not met.
- (4) Once the opposition has been presented or the time limit for presenting it has expired, the public prosecutor may request a term of 8 days to reply to the opposition or to produce evidence, according to para. (2).

#### **ARTICLE 52**

##### **Production of evidence**

The evidence approved by the court shall be produced within 15 days, in the presence of the extraditable person assisted by the defender and, if necessary, by an interpreter, as well as in the presence of the public prosecutor.

#### **ARTICLE 53**

##### **Additional information**

- (1) Should the information provided by the Requesting State prove insufficient for allowing the Romanian State to hand down a decision in the application of this law, the competent court shall request the information needed. It shall appoint a term of 2 months for this.
- (2) The request for additional information, as well as the reply shall be sent by one of the means mentioned in Article 38.

#### **ARTICLE 54**

##### **Resolution of the case**

16

- (1) After examining the request for extradition, the evidence and the conclusions of the extraditable party and of the public prosecutor, the court of appeal may
  - a) ordain, in case of concurrence of requests as provided in Art. 40, a connection of the cases, even if they refer to different acts or are registered with different courts of appeal. The jurisdiction belongs to the court of appeal that was the first notified;
  - a) ordain, in case of need for additional information from the Requesting State according to Art. 53, a postponement of the resolution of the request for extradition for a term of 2 months. The request may be reiterated, and then a last term of 2 more months shall be granted;
  - b) find, through a sentence, whether or not the conditions for extradition are met.
- (2) The court of appeal is not competent to decide upon the correctness of the prosecution or conviction for which the foreign authority is requesting extradition, nor upon the desirability of the extradition.
- (3) Should the court of appeal find that the conditions for extradition are met, it shall decide to allow the request for extradition and ordain the maintenance of the provisional arrest in view of extradition, until the extradited person is surrendered, in Art. 59.
- (4) The decision ordaining extradition shall be reasoned within 5 days from its handing down.
- (5) In case of temporary or conditional extradition, the court shall make mention in the enacting terms of the sentence, of the conditions provided in those Articles.
- (6) Where the request for extradition is allowed, if any objects are to be handed over according to Art. 21, this shall be mentioned in the sentence, perhaps attaching an inventory

of the objects.

(7) Should the court find that the conditions for extradition are not met, it shall reject the request and ordain the release of the extraditable person. The decision shall be reasoned within 24 hours and sent to the general prosecutor attached to the court of appeal, which shall send it at once to the specialised compartment in the Ministry of Justice.

(8) Decisions upon extradition may be appealed against on points of law by the competent general prosecutor and by the extraditable person, within 5 days from its handing down, with the Criminal Section of the High Court of Cassation and Justice. An appeal on points of law lodged against a decision that rejected a request for extradition shall stay the execution thereof. An appeal on points of law lodged against a decision that ordained extradition shall stay the execution, except for the provisions regarding the provisional arrest in view of surrender.

(9) An appeal lodged against a decision rejecting a request for extradition shall stay the execution. An appeal against a decision ordaining extradition shall stay the execution, subject to the provisions on provisional arrest in view of extradition.

#### **ARTICLE 55**

##### **Judgement of the appeal on points of law and notification of the decision**

(1) After the sentence of the court of appeal is reasoned, the file of the case shall be at once forwarded to the Criminal Section of the High Court of Cassation and Justice.

(2) Upon receiving the file, the president of the Criminal Section of the High Court of Cassation and Justice shall appoint a term for judgement regardless of the existence of other pending cases, with priority.

(3) The appeal on points of law shall be judged within 10 days, by a panel of 3 judges.

(4) To solve the appeal on points of law, the panel president may designate one of the judges or an assistant magistrate to make a written report.

(5) The file of the case shall be returned to the court of appeal within three days from resolution of the appeal on points of law.

17

(6) The final decision upon extradition shall be notified to the general prosecutor attached to the court of appeal that judged the case in first instance, and to the specialised directorate within the Ministry of Justice.

#### **ARTICLE 56**

##### **Analogy**

Art.54 para.(8) and Art.55 shall apply accordingly also where the court decides upon postponement of extradition, upon conditional admission of extradition, upon consent for extension of the object of extradition and upon re-extradition to a third State.

#### **ARTICLE 57**

##### **Escape of the extradited**

An extradited who, after having been surrendered to the Requesting State, escaped before the resolution of the case or before serving the penalty for which extradition was granted, and who returns to or is identified in Romania, shall be arrested and surrendered once again, based on a warrant issued by the competent judicial authority of the Requesting State, unless the latter breached the conditions on which extradition was granted.

##### **Section 3**

##### ***Effects of extradition from Romania***

#### **ARTICLE 58**

##### **Surrendering the extradited**

(1) An excerpt of the final court decision ordaining extradition shall be deemed as necessary and sufficient legal basis for surrendering the extradited.

(2) The Ministry of Justice shall at once inform the Ministry of Administration and the Interior, which shall establish the place and date of the surrender and shall ensure the surrender of the extradited person under escort.

(3) The date of surrender shall be appointed within 15 days from the date when the decision of extradition became final.

#### **ARTICLE 59**

### **Terms for surrender of the extradited**

(1) The Ministry of Justice shall at once make known to the competent authority of the Requesting State the solution adopted with respect to the extradition, and it shall also send it an excerpt of the final decision.

(2) Any solution of total or partial rejection shall be reasoned.

(3) In case of approval of extradition, the Requesting State shall be informed of the place and date of surrender, as well as of the length of arrest in view of extradition served by the extraditable person.

(4) The place of surrender shall be, usually, a border point of the Romanian State. The Romanian Ministry of Administration and the Interior shall ensure the surrender, and then it shall notify this to the Ministry of Justice. The extraditable person shall be surrendered and taken over under escort.

(5) Except for the case in para. (6), if the extraditable person is not taken over at the appointed date, he may be released within 15 days from this date; this term may be extended only by 15 days more.

(6) In case of *force majeure* that prevents the surrender or taking-over of the person subject to extradition, the State concerned shall inform the other State of this matter. Both States shall agree upon a new date of surrender, and para. (4) is applicable.

18

### **ARTICLE 60**

#### **Postponed surrender**

(1) The existence of a criminal trial pending with Romanian judicial authorities against the extraditable person or the fact that the extraditable person is serving a penalty of imprisonment, shall not prevent extradition.

(2) In the cases mentioned in para.(1), the surrender of the extradited may be postponed. In case of postponement, extradition may take effect only after the criminal trial has ended, and in case of sentence to a custodial penalty, only after this penalty has been served or deemed as served.

(3) The surrender of an extradited may be postponed also when it is found, based on medical expertise, that he is suffering from a disease that poses a threat to his life.

(4) In case of postponement of surrender while extradition has been approved, the court shall issue a warrant for provisional arrest in view of extradition. If the extradited person is, at the time when the request for extradition is allowed, under the rule of a warrant for preventive arrest or a warrant for service of imprisonment issued by the Romanian judicial authorities, the warrant for provisional arrest in view of extradition shall enter force at the date when the reasons that justified the postponement cease to exist.

### **ARTICLE 61**

#### **Temporary or conditional surrender**

(1) In the case under para. 1 of Art. 60, the extradited person may be surrendered temporarily, if the Requesting State proves that a postponement of surrender would cause serious prejudice, such as expiry of the period of time limitation, on the condition that this surrender is not detrimental to the criminal trial pending in Romania and that the Requesting State give guarantees that, once the procesual acts for which the extradition was granted are completed, it shall return the extradited.

(2) Upon request from the Requesting State, sent by one of the means provided in this law, temporary surrender shall be approved, through a conclusion handed down in the council chamber, by the president of the criminal section of the court of appeal that tried in first instance the request for extradition.

(3) In view of solving the request, the court shall analyse the meeting of the criteria in para.(1), also requesting the endorsement of the judicial authority with which the cause is pending or, the case being, that of the executing court.

(4) Should the person surrendered temporarily be serving a penalty or a security measure, its service shall be deemed as suspended starting with the date when the person was surrendered to the competent authorities of the Requesting State until the date when he is returned to the Romanian authorities.

## **ARTICLE 62**

### **Transit**

- (1) The transit, in Romanian territory, of an extradited who is not a Romanian citizen, may be granted on condition that no reasons of public policy is opposed to this and that the offence is extraditable, according to the Romanian law.
- (2) Should the extradited person have Romanian citizenship, the transit shall not be granted unless the situation is one in which the extradition of Romanian citizens can be approved.
- (3) Transit is granted upon request from the State concerned, made and sent by the means in Art. 38 para. (1), to which shall be attached at least the warrant for preventive arrest  
19  
or the warrant for service of the penalty of imprisonment that justified the granting of extradition.
- (4) Decisions regarding transit shall be made by the Ministry of Justice.
- (5) The Ministry of Justice shall at once notify its decision to the competent authority of the Requesting State and to the Ministry of Administration and the Interior.
- (6) In case of air transit, when no landing on Romanian territory is intended, it is sufficient that a notification be made by the competent authority of the Requesting State to the Romanian Ministry of Justice. In case of forced landing, this notification shall have the same effects as a request for provisional arrest in view of extradition, and the Requesting State shall immediately address a formal request for transit. Paragraph 3 shall apply accordingly.
- (7) An extradited who is in transit shall remain in a state of provisional arrest for the duration of his stay in Romanian territory.

## **ARTICLE 63**

### **Re-extradition to a third State**

- (1) Outside the case in Art. 11 para. (1) b), Romania's consent is required in order to allow the Requesting State to surrender to another State the person who was surrendered to it and who is wanted by the third State for offences previous to the surrender. Romania may request that the documents in Art. 38 para. (2) be presented.
- (2) Art. 54 and 55 shall apply accordingly.

## **CHAPTER II**

### **ACTIVE EXTRADITION**

#### **Section 1**

##### ***Conditions for requesting extradition***

## **ARTICLE 64**

### **Obligation to request extradition**

The extradition of a person against whom the competent Romanian judicial authorities have issued a warrant for preventive arrest or a warrant for service of imprisonment or to whom a security measure was imposed shall be requested from a foreign State on the territory of which he was located, in all cases where the conditions provided in this law are met.

## **ARTICLE 65**

### **Legal framework**

- (1) Section I of Chapter I of this Title shall apply accordingly if Romania is the Requesting State.
- (2) In addition to the condition concerning the seriousness of the penalty provided in Art. 28, there is a supplementary condition in order for Romania to be able to request the extradition of a person in view of criminal prosecution: criminal action must have been initiated against that person, according to the conditions mentioned in the Criminal Procedure Code.

#### **Section 2**

##### ***The procedure for requesting extradition***

## **ARTICLE 66**

### **Competence**

The competence to draw up and send requests for extradition on behalf of Romania belongs to the Ministry of Justice.

#### **ARTICLE 66**

##### **International search in view of extradition**

“(1) Where a warrant for preventive arrest or for penalty service cannot be carried out because the defendant or convicted person is no longer in Romanian territory, the court that issued the warrant for preventive arrest or the executing court, where appropriate, at the request of the prosecutor notified by the police, shall issue a warrant for international search in view of extradition, which shall be sent to the Centre for International Police Co-operation in the Ministry of Administration and the Interior, in view of dissemination through the relevant channels.

(2) The warrant for international search in view of extradition shall contain all the elements needed for identifying the person sought, a summary of the factual situation and data on the legal classification of the acts.

(3) The warrant for international search may include also the request for provisional arrest in view of extradition, under Article 68.

(4) A notice entered into the Schengen Information System shall be equivalent with a warrant for international search in view of extradition.

#### **ARTICLE 67**

##### **The procedure for active extradition**

(1) As soon as it is informed, by any means that leave a written record and the authenticity of which can be verified, by the Centre for International Police Co-operation from the Ministry of Administration and the Interior, through its specialised structure, or by the Ministry of Justice, about the fact that a person who is sought internationally or wanted by the Romanian judicial authorities for enforcing a warrant for service of imprisonment or a warrant for preventive arrest, has been located in the territory of a foreign State, the executing court or the court that issued the warrant for preventive arrest shall establish, through a reasoned conclusion, whether the conditions set forth in this Law are met for requesting extradition.

(2) The Centre for International Police Co-operation is obliged to inform, through its specialised structure, the executing court or the court that issued the warrant for preventive arrest, as soon as the corresponding Central National Interpol Office notifies the fact that the person who is the object of the warrant has been located. The information shall be sent directly, and a copy thereof shall be sent to the Ministry of Justice.

(3) The court shall decide through a conclusion, handed down in the council chamber by a single judge, with the participation of the prosecutor and without summoning the parties. The conclusion shall not be handed down in a public session and shall be entered into a special register.

(4) The conclusion in para. (3) may be appealed against on points of law by the prosecutor, within 24 hours from its handing down. The case file shall be forwarded to the appellate court within 24 hours. The appeal shall be tried within 3 days by the higher-ranking court. The appellate court shall return the case file to the first court within 24 hours from the resolution of the appeal.

(5) The final conclusion finding that the legal conditions are met for requesting extradition, together with the documents in Article 38 para.(2), shall be sent at once to the Ministry of Justice. The final conclusion finding that the conditions are not met for requesting extradition shall be sent to the Ministry of Justice within 3 days from its pronouncement.

21

(6) Within 48 hours of the receipt of the conclusion finding that the conditions are met for requesting extradition and the attached documents, the Ministry of Justice shall perform, through its specialised directorate, an international regularity check, under Article 40, which shall apply accordingly.

(7) Depending on the conclusions of the international regularity check, the specialised directorate of the Ministry of Justice shall either draw up the extradition request and send it

and the attached documents to the competent authority of the Requested State, or draw up a reasoned document suggesting to the Ministry of Justice to notify the general prosecutor attached to the High Court of Cassation and Justice, in view of initiating the procedure for revision of the final conclusion that ordained the request for extradition. In both cases, it shall inform the Centre for International Police Co-operation within the Ministry of Administration and the Interior. If it finds the documents to be incomplete, before drawing up and sending the extradition request, the specialised directorate of the Ministry of Justice may require the competent court to send within 72 hours the additional documents needed according to the appropriate international treaty.

(8) When it is found that the conditions of international regularity are not met for requesting extradition, the Minister of Justice shall send a reasoned notification to the general prosecutor attached to the High Court of Cassation and Justice, in view of initiating the procedure for revision of the final conclusion that ordained the request for extradition. The Minister of Justice may not request initiation of the procedure of revision for any other reasons than those relating to the conclusions of the international regularity check.

(9) Requests for revision shall be uttered within 5 days of the notification of the final conclusion to the Ministry of Justice and shall be solved within 24 hours.

(10) If it finds that the request for revision is justified, the court shall cancel the conclusion appealed against. Where the court finds that the request for revision is not justified, it shall reject it and uphold the conclusion. The revision court's decision shall be final and must be notified within 24 hours from pronouncement to the minister of justice and to the general prosecutor attached to the High Court of Cassation and Justice.

(11) Requests for extradition and the documents attached thereto, together with the documents in Article 38 para.(2) and by certified translations into the language of the Requested State or into English or French, shall be sent to the competent authority of the Requested State, through one of the channels provided in Article 38 para.(1).

(12) Where the person sought is not provisionally arrested in view of extradition, the procedure provided in this Article shall be confidential until the Requested State receives an extradition request

#### **ARTICLE 67<sup>1</sup>**

Withdrawal of the extradition request

(1) Where the extraditable person is no longer under the power of the warrant for preventive arrest or of the warrant for penalty service, the competent court shall, either *ex officio* or at the prosecutor's request, establish through a reasoned conclusion that the legal conditions for requesting extradition no longer exist and shall at once ordain the withdrawal of the extradition request. This decision shall be sent to the Ministry of Justice within 24 hours from its pronouncement. The Ministry of Justice shall withdraw without delay the extradition request and announce this to the Centre for International Police Co-operation within the Ministry of Administration and the Interior.

(2) Article 67 shall apply accordingly.

#### **ARTICLE 67<sup>2</sup>**

**Transmission of additional information at the request of the Requesting State**

22

(1) Where, in order to solve an extradition request, the authorities of a foreign State request the transmission of additional information, it shall be sent to it within the time limit set by the authorities of the Requested State, either through the Ministry of Justice or directly, by the competent court.

(2) The task of having the documents translated belongs to the Ministry of Justice or, where appropriate, to the competent court.

#### **ARTICLE 68**

**Requests for provisional arrest in view of extradition**

"(1) In cases of emergency, such as the imminence of the departure from the territory of the Requested State of persons subject to an international warrant for search in view of extradition, the competent court may request, before uttering an extradition request, the provisional arrest of those persons, in view of extradition.

(2) Where the request for provisional arrest in view of extradition is uttered after the warrant for international search has been sent, the latter shall be sent to the Centre for International Police Co-operation within the Ministry of Administration and the Interior.

(2<sup>1</sup>) The procedure in paragraphs (1) and (2) is confidential, until the requested person is provisionally arrested in view of extradition. The fact of having requested provisional arrest in view of extradition shall be entered into a special register.

(3) The Romanian authorities are obliged to withdraw their request for provisional arrest in view of extradition, if the extraditable person is no longer under the rule of the warrant for preventive arrest or for penalty service.

#### **ARTICLE 69**

##### **Re-judgement of the extradited**

The assurance of re-judgement of the case in the presence of the extradited person, under Article 34 paragraph (1), shall be provided by the Ministry of Justice.

#### **ARTICLE 70**

##### **Request for re-extradition to Romania**

Article 63 shall apply accordingly if Romania requests to a foreign State the reextradition of a person whose extradition has previously been granted to the latter by a third State.

#### **Section 3**

##### **Effects of extradition into Romania**

#### **ARTICLE 71**

##### **Taking over the extradited**

The provisions concerning the surrender/taking-over of the extraditable person included in Art. 58 and 59 shall apply accordingly in the case of persons extradited from abroad into Romania.

#### **ARTICLE 72**

##### **Receipt of the extradited**

(1) When brought to Romania, an extraditable person shall be at once handed over to the prison administration or to the competent judicial authority, according to case.

(2) Should the extradited have been sentenced *in absentia*, he shall be re-judged, upon request, while observing the rights in Art. 34 para.(1).

#### **ARTICLE 73**

##### **Notification of the solution**

23

The Ministry of Justice shall inform the competent Romanian judicial authority of the manner in which the request for extradition was solved by the Requested State and, the case being, of the length of provisional arrest in view of extradition, so that it may be deducted according to Art. 18.

#### **ARTICLE 73<sup>1</sup>**

##### **The speciality rule**

(1) A person surrendered as an effect of extradition shall not be prosecuted, tried or detained in view of serving a penalty, or subjected to any other restraint of his/her personal freedom for any act that is previous to the surrender, other than the one that motivated the extradition, unless:

- a) Romania as the State that surrendered the person so consents; the Requesting State shall make a request for this, together with the documents in Article 38 paragraph (2) and a judicial official record of the extradited's statements; this consent may be given when the offence for which it is being requested itself entails extradition under this Law;
- b) while being able to do so, the extradited person has not left the territory of the State to which he was surrendered, within 45 days from his final release, or when he returned after having left;

(2) The Requesting State may however take the necessary measures in view of, on the one hand, a possible sending of the person away from its territory, and on the other hand, an interruption in the period of time limitation according to its legislation, including the recourse to a procedure *in absentia*.

(3) When the classification of the act incriminated is to be amended during the procedure, the extradited person shall not be prosecuted or tried except to the extent that the elements that make up the re-classified offence would allow extradition.

(4) In the case in paragraph (1) a), the request to the foreign State shall be uttered by the Ministry of Justice, based on a conclusion by the court that has competence to solve the case in first instance, at the reasoned proposal of the Public Ministry or based on a conclusion by the court with which the case is pending, where extradition has been granted after the beginning of the trial of the extradited person, as the case may be.

#### **ARTICLE 73<sup>2</sup>**

##### **Effects of conditional extradition**

(1) Where extradition has been granted subject to a condition, the court that requested extradition shall take the measures needed in view of observing the condition imposed by the Requested State and shall provide guarantees in this respect.

(2) Where the condition imposed is the resending of the extradited person into the territory of the Requesting State, the court shall ordain that such person be escorted to the border in view of being taken over by the competent authorities of the Requesting State.

### **CHAPTER III**

#### **COMMON PROVISIONS**

##### **ARTICLE 74**

###### **Costs**

(1) Costs regarding the procedure of extradition performed in Romanian territory shall be incurred by the Romanian State, through the budgets of the authorities and institutions involved, according to the competences given to each of them by this Law. Article 20 para.(4) shall apply accordingly.

(2) Transit costs shall be incurred by the Requesting State.

24

##### **ARTICLE 75**

###### **Extradition fraud**

The surrender of a person by expulsion, readmission, re-escort to the frontier or another measure of the same type is prohibited whenever it conceals a will to elude extradition rules.

##### **ARTICLE 76**

###### **Representation of the Requesting State in the extradition procedure**

(1) During the procedure of passive extradition, the Requesting State shall be represented by the central authority and by the Public Ministry from Romania. At the express request of the Requesting State, its own representatives may participate, with the approval of the competent court, to the resolution of the request for extradition.

(2) The previous paragraph shall apply accordingly for the procedure of active extradition.

### **CHAPTER III<sup>1</sup>**

#### **Provisions for the implementation of legal instruments relating to extradition and adopted within the European Union**

##### **ARTICLE 76<sup>1</sup>**

###### **Scope of application**

(1) This Chapter is aimed at implementing the provisions of the Convention of 10 March 1995 on simplified extradition procedures between the Member States of the European Union and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, as well as the provisions regarding extradition included in the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, Schengen, in relation to the Member States of the European Union that have uttered statements on the non-application of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union for acts committed prior to a certain date.

(2) Chapters I and II of this Title shall apply accordingly, however without affecting the obligations that emerge from accession to the Convention of 10 March 1995 on simplified

extradition procedures between the Member States of the European Union, and to the Convention of 27 September 1996 relating to extradition between the Member States of the European Union.

#### **ARTICLE 762**

##### **Political offences**

In the application of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, no offence may be considered to be a political offence.

#### **ARTICLE 763**

##### **Statutory limitation, amnesty and other causes that remove criminal liability or the consequences of sentencing**

(1) As regards the statutory limitation of criminal liability and penalty service, only the provisions included in the legislation of the Requesting State shall be applicable.

(2) Amnesty granted by Romania shall not prevent extradition, unless the act provided in criminal law is of the competence of Romanian courts.

25

(3) The absence of a prior complaint or of another condition required for initiating criminal action under Romanian law, shall not affect the obligation to extradite.

#### **ARTICLE 764**

##### **Extradition in matters of excise taxes, value-added tax and customs**

Romania shall grant extradition for acts provided in criminal law in matters of excise taxes, value-added tax and in matters of customs, under the Law.

#### **ARTICLE 765**

##### **Entry into the Schengen Information System**

An entry into the Schengen Information System shall have the same effect as a request for provisional arrest in view of extradition, within the meaning of Article 16 of the European Convention on Extradition, concluded in Paris on 13 December 1957.

#### **ARTICLE 766**

##### **Simplified extradition**

Simplified extradition shall apply in relations with the Member States of the European Union, without checking the special conditions provided in Article 50, whenever the conditions in Article 49 are met

#### *TITLE III*

*Provisions on co-operation with the Member States of the European Union in the application of the Council Framework Decision No. 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*

### **CHAPTER I**

#### **GENERAL PROVISIONS**

#### **ARTICLE 77**

##### **Definition of the European Arrest Warrant**

(1) The European arrest warrant is a judicial decision issued by the competent judicial authority of a Member State of the European Union, with a view to the arrest and surrender to another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

(2) Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and confidence, in accordance with the provisions of the Council Framework Decision No. 2002/584/JHA of 13 June 2002, published in the Official Journal of the European Communities No. L 190/1 of 18 July 2002.

#### **ARTICLE 78**

##### **The competent Romanian authorities**

(1) In Romania, the law courts have been designated as issuing judicial authorities.

(2) The executing Romanian judicial authorities are the courts of appeal.

(3) The Romanian Central Authority is the Ministry of Justice.

#### **ARTICLE 79**

##### **Contents of the European Arrest Warrant**

- (1) A European Arrest Warrant shall contain the following information:
- (a) identity and nationality of the requested person;
  - (b) name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
  - (c) mention of the existence of a final court decision, or a warrant for preventive arrest or of any other enforceable court decision having the same effect, which falls under the provisions of Articles 81 and 85 of this Law;
  - (d) nature and legal classification of the offence, in particular with respect to Article 85;
  - (e) a description of the circumstances under which the offence was committed, including the time, place, and degree of participation of the requested person;
  - (f) the penalty handed down, if the judgement has remained final, or the penalty provided in the law of the Issuing State for the offence committed;
  - (g) if possible, other consequences of the offence.
- (2) The European Arrest Warrants shall be drawn up according to the model provided in the annex that is a part of this law.
- (3) An European Arrest Warrant sent to the competent authority of another Member State shall be translated into the official language(s) of the Executing State or into one or several official languages of the Institutions of the European Communities, which are accepted by the Executing State, according to the declaration deposited with the General Secretariat of the Council of the European Union.
- (4) European Arrest Warrants sent to the Romanian authorities for execution shall be translated into Romanian, English or French.

#### **ARTICLE 80**

##### **Costs**

Costs for the execution of a European Arrest Warrant in Romanian territory shall be incurred by Romania. The other costs shall be incurred by the Issuing State.

#### **CHAPTER II**

#### **ISSUING A EUROPEAN ARREST WARRANT**

#### **ARTICLE 81**

27

##### **The object of and conditions for issuing a European Arrest Warrant**

- (1) The court that issued the warrant for preventive arrest during criminal prosecution or trial or the executing court shall issue, either *ex officio* or at the prosecutor's request, a European arrest warrant, under the following conditions:
- a) in view of conducting criminal prosecution or trial, if the act is punished by the Romanian criminal law with a custodial penalty of at least 1 year;
  - b) in view of penalty service, if the penalty applied exceeds 4 months;
- (2) The court that issued the European arrest warrant may request that the executing judicial authorities hand over property that is to be used as evidence.
- (3) Where the requested person is sought internationally in view of extradition, the court shall inform without delay the Centre for International Police Co-operation within the Ministry of Administration and the Interior about the fact that a European arrest warrant has been issued.

#### **ARTICLE 82**

##### **Transmission of the European Arrest Warrant**

- (1) When the location of the requested person is known, the Romanian issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.
- (2) The issuing judicial authority may decide to issue an alert for the requested person in the Schengen Information System (SIS), through the National Alert Information System. To this end, Article 95 of the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, Schengen.
- (3) An alert in the Schengen Information System shall be equivalent to a European Arrest Warrant accompanied by the information set out in the annex. For a transitional period, until the Schengen Information System is capable of transmitting all the information described in

the annex, the alert shall be equivalent to a European arrest warrant pending the receipt of the original.

### **ARTICLE 83**

#### **Transmission procedure**

- (1) The Romanian judicial authorities may send the European Arrest Warrant by any secure means of transmission that produces a written record, on condition that it allows the executing judicial authority to establish its authenticity.
- (2) If the location of the requested person is unknown, the European Arrest Warrant may be sent through the Schengen Information System, through the secure telecommunications system of the European Judicial Network, when it becomes available, through the Ministry of Justice, by means of the International Criminal Police Organisation (Interpol) or through any other means that produces a written record, under conditions allowing the executing judicial authority to establish its authenticity.
- (3) If the issuing judicial authority does not know the executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network or through the specialised directorate within the Ministry of Justice, in order to obtain that information from the executing Member State.
- (4) All difficulties concerning the transmission or checking the authenticity of a European arrest warrant shall be dealt with by direct contacts between the issuing judicial authority and the executing judicial authority or with the support of the Ministry of Justice.
- (5) After sending a European arrest warrant, the Romanian issuing judicial authority may send any additional information needed for executing the warrant.
- (6) The Romanian issuing judicial authorities shall send a copy of the European arrest warrant to the Ministry of Justice.

28

### **ARTICLE 84**

#### **Temporary transfer and hearing of the requested person during the execution of a European arrest warrant**

- (1) When a European Arrest Warrant has been issued in the case provided in Art. 81 para. 1 a), the issuing Romanian judicial authority may request to the executing judicial authority, before the latter decides upon the definitive surrender, a temporary surrender to Romania of the requested person, in order for him to be heard, or it may request an authorisation for taking the statement of this person on the territory of the State that is executing the warrant.
- (2) If the executing judicial authority, after having approved the surrender of the requested person, ordains the suspension of surrender until the end of a pending trial or until a penalty applied in the Executing State is served for an act that is different from the one that is the subject of the European Warrant, the issuing Romanian judicial authority may request a temporary surrender of the person in view of a hearing or trial.

### **CHAPTER III**

#### **EXECUTION OF EUROPEAN ARREST WARRANTS**

### **ARTICLE 85**

#### **Acts that allow surrender**

- (1) If the European Arrest Warrant has been issued for one of the acts listed below, regardless of the name given to these offences in the Issuing Member State, and which is sanctioned in the Issuing Member State by imprisonment or a custodial security measure of a minimum of 3 years, surrender shall be granted even if the condition of double incrimination is not met:
  1. participation in a criminal organisation;
  2. terrorism;
  3. trafficking in human beings;
  4. sexual exploitation of children and child pornography;
  5. illicit trafficking in narcotic drugs and psychotropic substances;
  6. illicit trafficking in weapons, munitions and explosives;
  7. corruption;

8. fraud, including that affecting the financial interests of the European Communities within the meaning of The Convention of 26 July 1995 on the protection of European Communities' financial interests;
9. laundering of the proceeds of crime;
10. counterfeiting of currency, including the euro;
11. computer-related crime;
12. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
13. facilitation of unauthorised entry and residence;
14. murder, grievous bodily injury;
15. illicit trade in human organs and tissue;
16. kidnapping, illegal restraint and hostage-taking;
17. racism and xenophobia;
18. organised or armed robbery;
19. illicit trafficking in cultural goods, including antiques and works of art;
20. swindling;
21. extortion;
- 29
22. counterfeiting and piracy of products;
23. forgery of administrative documents and trafficking therein;
24. forgery of means of payment;
25. illicit trafficking in hormonal substances and other growth promoters;
26. illicit trafficking in nuclear or radioactive materials;
27. trafficking in stolen vehicles;
28. rape;
29. arson;
30. crimes within the jurisdiction of the International Criminal Court;
31. unlawful seizure of aircraft/ships;
32. sabotage.

(2) For acts other than those provided in para.(1), surrender may be subject to the condition that the acts motivating the issuing of the European Warrant be offences according to the Romanian law, regardless of their elements or of their legal classification.

## **ARTICLE 86**

### **Preliminary procedures**

- (1) When a Romanian judicial authority receives a European Arrest Warrant but is not competent to solve it, it shall send the warrant to the judicial authority that is competent to execute it and shall inform thereof the issuing judicial authority.
- (2) The executing Romanian judicial authority shall first check if the European Arrest Warrant is accompanied by translations according to Art. 79 para. (4) of this law. If the warrant is not translated, the executing Romanian judicial authority may notify this to the issuing judicial authority, so that the latter may provide a translation as soon as possible, or it may ordain the translation to be made, if possible. The procedure shall be suspended until the translation is received.
- (3) The executing Romanian judicial authorities shall as soon as possible inform the Ministry of Justice of the receipt of all the European Arrest Warrants that are sent to them for being executed.

## **ARTICLE 87**

### **Special conditions**

- (1) The execution of a European Arrest Warrant by the executing Romanian judicial authorities may be subject to the following conditions :
  - a) if the European Arrest Warrant was issued in view of service of a penalty applied through a decision *in absentia* or if the person concerned was not legally summoned regarding the date and place of the court session that led to the decision *in absentia*, the issuing judicial authority shall provide a safeguard deemed as sufficient that the person who is the object of the European Arrest Warrant will be able to obtain a re-judgement of the cause in the issuing

Member State, in his presence;

b) if the offence based on which the European Arrest Warrant was issued is sanctioned by life imprisonment or by a security measure involving lifelong deprivation of freedom, the legislation of the issuing Member State must provide the possibility of reviewing the penalty or security measure imposed or release on parole, after the service of at least 20 years of the penalty or security measure imposed, or the application of measures of clemency.

(2) While not infringing upon paragraph 1, Romanian citizens shall be surrendered based on a European Arrest Warrant issued in view of criminal prosecution or trial on condition that, should a penalty depriving of freedom be handed down, the person surrendered be transferred to Romania to serve the penalty.

30

## **ARTICLE 88**

### **Grounds for refusing execution**

(1) The executing Romanian judicial authority shall refuse to execute a European Arrest Warrant in the following cases:

a) when the information it possesses shows that the requested person was tried with a final sentence for the same acts by a Member State other than the Issuing State, on condition that, in case that there was a conviction, the sanction was served or is being served or the period of time limitation for service has expired, the penalty was pardoned or the offence was amnestied or another reason that prevents execution occurred, according to the law of the Sentencing State;

b) when the offence on which the European Arrest Warrant is based is covered by amnesty in Romania, if the Romanian authorities are competent, according to Romanian law, to prosecute that offence;

c) when the person who is subject to the European Arrest Warrant is not criminally liable, according to Romanian law, because of his age, for the acts on which the European Arrest Warrant is based.

(2) The executing Romanian judicial authority may refuse to execute a European Arrest Warrant in the following cases:

a) in the case under Article 85 para. (2) of this law; exceptionally, in matters of fees and taxes, customs and currency exchange, the execution of the European Arrest Warrant may not be refused because the Romanian legislation does not levy the same type of fees or taxes or does not contain the same regulations in matters of fees and taxes, customs and currency exchange as the legislation of the issuing Member State;

b) when the person who is the object of the European Arrest Warrant is undergoing criminal proceedings in Romania for the same act as the one that reasoned the European Arrest Warrant;

c) when a final decision for the same acts was handed down in another Member State of the European Union, against the person who is the object of the European Arrest Warrant;

c1) where a European arrest warrant has been issued in view of executing a penalty, if the requested person is a Romanian citizen and the competent Romanian court ordains execution of the penalty in Romania, according to Romanian law;

d) when the requested person has been tried with a final sentence for the same acts in a third State that is not a Member State of the European Union, on the condition that, in case that there was a conviction, the sanction was served or is being served or the period of time limitation for service has expired, or that the penalty was pardoned or the offence was amnestied according to the law of the Sentencing State;

e) when the European Arrest Warrant refers to offences that were committed, according to the Romanian law, in Romanian territory;

f) when the European Warrant includes offences that have been committed outside the territory of the Issuing State and the Romanian law does not allow the prosecution of these acts when they were committed outside Romanian territory;

g) when, according to the Romanian legislation, the period of time limitation for liability for the offence that is the object of the European Arrest Warrant or for service of the penalty applied, has expired, provided that the acts would have been of the competence of the

Romanian authorities.

h) when the competent Romanian judicial authority has decided either not to prosecute, or to cease the prosecution of the requested person for the offence on which the European Arrest Warrant is based.

## **ARTICLE 88i**

### **Preliminary procedures**

31

(1) As soon as the court of appeal receives a European arrest warrant or an alert within the Schengen Information System, the president of the criminal section shall forward the case, according to the law, to a panel of two judges.

(2) The court shall check whether the European arrest warrant contains the information set forth in Article 79 para.(1).

(3) If the court finds the information provided by the issuing Member State to be insufficient in order to allow it to decide on surrender, it shall request that the necessary additional information be furnished as a matter of urgency by the issuing judicial authority and fix a time limit for the receipt thereof, while observing the maximum time limits provided in Article 95.

(4) The issuing judicial authority may at any time and at its own initiative send any information that it deems useful.

(5) Where the European arrest warrant contains the requisite information and is translated according to Article 79 para.(4), the court shall ask the general prosecutor attached to the court of appeal to take the measures needed in order to identify the requested person, arrest him/her and bring him/her before the court.

## **ARTICLE 89**

### **Arrest of the requested person**

(1) Within 24 hours from the arrest, the requested person shall be brought before the competent court.

(2) The court shall inform the requested person of the existence of a European Arrest Warrant against him/her, of its contents, of the possibility for him/her to consent to being surrendered to the Issuing Member State, as well as of his/her procesual rights.

(3) The court ordains the arrest of the requested person by means of a reasoned conclusion.

(4) The arrested person shall be placed in detention.

(5) The requested person's arrest shall be notified to the issuing judicial authority.

## **ARTICLE 90**

### **Hearing the arrested person**

(1) The court shall hear the requested person within 48 hours from his/her arrest.

(2) The arrested person shall first be asked of his/her consent to the surrender.

(3) If the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel. The court shall make sure that the arrested person consented to the surrender voluntarily and in full awareness of the legal consequences of his/her consent, and particularly of its irrevocable nature. The court shall follow the same procedure also in the event of renunciation of entitlement to the speciality rule.

(4) Should the arrested person consent to the surrender, an official record shall be made and signed by the requested person, by the panel members, by the representative of the Public Ministry and by the court clerk. The same official record shall include also, where appropriate, the mention of renunciation of entitlement to the speciality rule.

(5) In the event that the arrested person does not consent to be surrendered, the court shall hear him/her.

(6) The requested person's objection to the surrender may be based only on an error regarding his/her identity or on the existence of grounds for non-execution of the European arrest warrant.

(7) The court may appoint, while observing the maximum time limits in Article 95, a time limit for providing the evidence suggested by the arrested person and by the public

32

prosecutor or for the transmission of additional information by the issuing judicial authority, regarding the grounds for refusal of surrender or for conditional surrender.

(8) In all cases, the public prosecutor shall utter conclusions.

(9) During this procedure, the court shall ordain, after hearing the prosecutor's conclusions, every 30 days, through a conclusion, whether the measure of detention is to be upheld or the requested person is to be released, and in the latter case it shall take all the requisite measures to avoid the requested person's absconding, including the preventive measures provided in the law.

(10) When making the decision provided in the previous paragraph, the court shall take account of all the circumstances of the case and of the need to ensure the execution of the European arrest warrant.

#### **ARTICLE 91**

##### **Rights of the person arrested on the basis of a European arrest warrant**

(1) The arrested person is entitled to be informed about the contents of the European arrest warrant.

(2) The arrested person is entitled to be assisted by legal counsel, either chosen by him/her or appointed *ex officio* by the court.

(3) The arrested person who does not understand or speak Romanian is entitled to be assisted by an interpreter provided free of charge by the court.

#### **ARTICLE 92**

##### **Temporary surrender or taking the statement of the requested person**

(1) In the cases in Article 81 para.(1) a), if the issuing judicial authority so requests, the temporary surrender of the requested person to the issuing Member State may be approved, or his/her statement may be taken.

(2) Where temporary surrender has been granted, it shall take place under the conditions and for the duration agreed upon by the issuing and executing judicial authorities. In all cases, the requested person must return to Romania in order to participate in the procedure of surrender based on the European arrest warrant.

(3) If temporary surrender is not granted or not requested, the Romanian executing judicial authority shall take a statement of the requested person, with the participation of the person designated by the issuing judicial authority, if appropriate, according to the law of the issuing Member State. The requested person shall be heard according to the Romanian Criminal Procedure Code and under the conditions agreed upon by the judicial authorities involved. In all cases, the procesual rights of the requested person must be observed.

#### **ARTICLE 93**

##### **Execution of the European arrest warrant where the requested person has consented to the surrender**

(1) Where the requested person has consented to the surrender, the court decision taking note of such consent shall take the same legal effects as the decision of surrender provided in Article 94.

(2) The decision in para.(1) shall be final.

#### **ARTICLE 94**

##### **The decision on the execution of a European arrest warrant**

(1) The court shall render a decision on the execution of a European arrest warrant within 5 days of the hearing of the requested person.

33

(2) Where the information communicated by the issuing Member State is insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the maximum time limits set in Article 95.

#### **ARTICLE 94<sub>1</sub>**

##### **Means of judicial review**

(1) The conclusions mentioned in Article 89 para.(3) and Article 90 para.(9) may be appealed against on points of law within 24 hours from their pronouncement.

(2) The decision in Article 94 may be appealed against on points of law within 5 days from

its pronouncement.

(3) Appeals on points of law that are submitted in written form must be reasoned.

(4) Where the appeal on points of law is submitted orally, it must be reasoned within 24 hours of its submission, in the case under para.(1) and within 5 days, in the case under para.(2).

(5) Applications for appeal on points of law and their reasons shall be communicated to the party concerned.

(6) If an appeal is lodged, the case shall be sent, as soon as the appeal is reasoned or upon expiry of the time limit for reasoning it, to the Criminal Section of the High Court of Cassation and Justice.

## **ARTICLE 94<sub>2</sub>**

### **The solving of appeals**

Appeals on points of law lodged under the conditions in Article 94<sub>1</sub> shall be solved as priorities, within 3 days from the sending of the case record to the High Court of Cassation and Justice.

## **ARTICLE 95**

### **Time limits**

(1) The European Arrest Warrant shall be solved and executed in emergency procedure.

(2) Should the requested person consent to the surrender, a decision shall be handed down within 10 days from the court session in which the requested person expressed consent to surrender. The decision shall be final and enforceable.

(3) If the requested person does not consent to the surrender, a decision shall be handed down within 60 days from the arrest.

(4) When, for justified reasons, a decision cannot be handed down within the time limits mentioned in the previous paragraphs, the court may postpone the handing down for 30 days, while announcing this to the issuing judicial authority, together with the grounds for postponement and while maintaining the measures necessary in view of surrender.

(5) When, for exceptional reasons, the time limits in this Article cannot be observed, the executing Romanian judicial authority shall inform the Eurojust, specifying the reasons for the delay.

## **ARTICLE 96**

### **Surrendering the requested person**

(1) Surrender shall be performed by the police, following a prior notification to the authority designated for this purpose by the issuing judicial authority regarding the place and date appointed, within 10 days from the handing down of the court decision on surrender.

(2) If, for reasons independent of the will of one of the Issuing or Executing States, surrender cannot be performed within this time limit, the judicial authorities involved shall

34 immediately make contact in order to appoint a new date for surrender. In this case, surrender shall take place within 10 days from the newly appointed date.

(3) Exceptionally, surrender may be postponed temporarily, for serious humanitarian reasons, such as the existence of sufficient grounds to believe that surrender would obviously jeopardise the requested person's life or health. The European Arrest Warrant shall be executed as soon as these reasons cease to exist. In this respect, the executing judicial authority shall at once inform the issuing judicial authority and they shall agree upon a new date for surrender. In this case, surrender shall take place within 10 days from the new date thus appointed.

(4) Should the maximum time limits for surrender expire while the person concerned was not received by the Issuing State, the requested person shall be released. However, this shall not be grounds for refusing the execution of a future European Arrest Warrant based on the same acts.

(5) In all cases, at the time of surrender, the executing Romanian judicial authority shall make known to the issuing judicial authority the length of deprivation of freedom undergone by the person requested, so that it may be deducted from the penalty or security

measure to be imposed.

#### **ARTICLE 97**

##### **Postponed or conditional surrender**

(1) Where the requested person is being criminally prosecuted or tried by the Romanian judicial authorities for an act other than the one that motivates the European Arrest Warrant, the executing Romanian judicial authority may, even if execution of the warrant has been ordained, stay the surrender until the end of the trial or until the penalty is served.

(2) In the situation provided in para. (1), the executing Romanian judicial authority may grant, if the issuing judicial authority so requests, a temporary surrender of the requested person, according to the conditions agreed upon in writing with the issuing judicial authority.

#### **ARTICLE 98**

##### **The handing over of articles**

(1) Upon request from the issuing judicial authority or *ex officio*, the executing Romanian judicial authority shall ordain the handing over, according to the Romanian law, of articles that are evidence or that were acquired by the requested person following the commission of the offence that reasoned the issuing of a European Arrest Warrant, while not violating the rights that the Romanian State or third parties may have upon them. Articles shall be returned at the end of the criminal trial.

(2) The articles in para.(1) shall be handed over even if the European Arrest Warrant cannot be executed because of the requested person's death or escape.

(3) Should the articles be subject to confiscation in Romania, the executing judicial authority may refuse to hand them over or may do so temporarily, if this is required by the proper course of a criminal trial pending with Romanian judicial authorities.

#### **ARTICLE 99**

##### **Concurrence of requests**

(1) Where two or more Member States have issued a European Arrest Warrant regarding the same person, the Romanian judicial authority shall decide upon the priority of execution, taking into account all the circumstances and, in particular, the place of commission and the seriousness of the offence, issuing dates of the warrants, as well as whether the warrant was issued in view of criminal prosecution, of trial or in view of service

35  
of a penalty or security measure. The executing Romanian judicial authority may request, if necessary, the endorsement of Eurojust regarding this decision.

(2) In case of concurrence between a European Arrest Warrant and a request for extradition made by a third State, the executing Romanian judicial authority shall decide while taking into account all the circumstances and particularly those in para. (1) and those provided in the convention on extradition applicable in relation to the third State. Should the priority be given to the request for extradition, Title II shall apply.

(3) Should it decide to grant priority to the request for extradition, the executing Romanian judicial authority shall make this known to the authority that issued the European Arrest Warrant.

(4) This Article shall not infringe upon obligations emerging from the capacity of Party to the Statute of the International Criminal Court.

#### **CHAPTER IV**

#### **OTHER STIPULATIONS**

#### **ARTICLE 100**

##### **The speciality rule**

(1) Consent for the prosecution, trial, sentencing or detention of a person for other acts committed prior to his/her surrender based on a European arrest warrant shall be presumed if the executing Member State notified the General Secretariat of the Council of the European Union with regard to such consent, unless the executing judicial authority ordains otherwise in its decision of surrender.

(2) Except in the cases referred to in paragraphs (1) and 4, a person surrendered to Romanian authorities may not be prosecuted, tried, or deprived of his or her freedom for another offence committed prior to his or her surrender, unless the executing Member State

consents. To this end, the Romanian issuing judicial authority shall send the executing judicial authority a request for authorisation, accompanied by the information in Article 79 para.(1).

(3) Where Romania is the executing Member State, the issuing Member State shall request the authorisation referred to in para.(2), and the Romanian executing judicial authority shall decide, within 30 days from receipt of such request, whether the offence concerned by the request was the reason for surrender under this Law and without affecting the guarantees in Article 87.

(4) The previous paragraphs shall not apply under one of the following circumstances:

- a) When the requested person expressly renounced the speciality rule before the executing judicial authority, before the surrender.
- b) When the requested person renounced, after surrender, the use of the speciality rule in connection to certain offences previous to his surrender. The statement of renunciation of the speciality rule shall be given before the competent judicial authority of the issuing Member State, and an official record shall be drawn up according to the internal law of the latter State. The requested person shall have a right to be assisted by a lawyer. Renunciation of the speciality rule must be willed and in full awareness of its consequences.
- c) When, while having had the possibility to leave the territory of the Member State to which he was surrendered, the person concerned did not do so within 45 days from his final release, or when he returned to this territory after having left it.
- d) When the offence is not sanctioned with a custodial penalty.
- e) When, at the end of the criminal trial, no custodial penalty and no security measure is applied.

36

## **ARTICLE 101**

### **Transit**

(1) For approval of transit of a person in Romanian territory in view of executing a European Arrest Warrant, the Issuing State must provide the following data:

- a) the existence of a European Arrest Warrant;
- b) the identity and citizenship of the requested person;
- c) the legal classification of the act;
- d) a description of the circumstances in which the offence was committed, including the date and place.

(2) The request and the information mentioned in para.(1) need not be provided in case of air transit without a stopover, unless there is forced landing.

(3) The request and the information regarding transit shall be to the Ministry of Justice that shall forward them at once to the Court of Appeal of Bucharest.

(4) The Court of Appeal of Bucharest shall hand down a conclusion regarding the request for transit, in a panel of two judges of the Criminal Section, in the council chamber, on the day of its receipt.

(5) The conclusion is final and shall be sent at once to the Ministry of Justice, which shall immediately forward it to the Issuing State.

(6) Should the requested person have Romanian citizenship, transit shall only be granted if the condition under Art. 87 para. (2) is met.

## **ARTICLE 102**

### **Subsequent surrender**

(1) Consent upon surrender of a person by the Romanian State to another Member State, based on a European Arrest Warrant issued for an offence committed prior to his/her surrender, shall be considered to have been given by all the Executing States that informed the General Secretariat of the favourable stipulation in this matter, unless the executing judicial authority declares the opposite in the decision of surrender.

(2) In any case, the consent of the Romanian executing judicial authority to the subsequent surrender of the person requested by an issuing Member State to another State shall not be necessary where the requested person:

- a) while having had the chance to leave the territory of the State to which he/she was

surrendered, did not do so within 45 days from his final release, or returned to this territory after having left it.

b) consented to being surrendered to a Member State other than the Executing State, based on a European Arrest Warrant. Consent shall be given before the competent judicial authority of the issuing Member State and shall be recorded in an official record drawn up according to the latter State's internal law. The requested person has a right to be assisted by a lawyer. Consent must be expressed freely and in full awareness of its consequences.

c) renounces the speciality rule, according to Article 100 para. (3) and (4) a) to c).

(3) In situations not regulated by para.(1) and (2), the approval of the Romanian executing judicial authority is required, which shall be requested according to Art. 82, while attaching to the request the information mentioned in Art. 79 para. (1) accompanied by a translation.

(4) When Romania did not make the information referred to in para.(1), the consent of the Romanian State upon surrender of a person by the Issuing State to a third State, based on a European Arrest Warrant issued for an offence previous to the surrender to the Romanian State, shall be given based on a request for authorisation made by the Issuing State. The request shall be approved by the Romanian executing authority within 30 days from receipt, if the offence that motivates the request is a reason for surrender according to the present Law, and without affecting the guarantees in Article 89.

37

(5) Paragraphs (1) to (4) shall apply accordingly where Romania is the issuing Member State.

## **ARTICLE 103**

### **Surrender after extradition**

(1) If the requested person was extradited into Romania from a third State, by which the person was protected by the provisions on speciality rule contained in the agreement based on which he was extradited, the executing Romanian judicial authority shall request authorisation from the State that extradited the person so that he can be surrendered to the Issuing State. The terms mentioned in Art. 95 shall begin from the date when the speciality rule no longer applies.

(2) While solving the request for authorisation, the executing Romanian judicial authority shall continue to ensure the material conditions required for an actual surrender.

## **ARTICLE 104**

### **Subsequent extradition**

(1) The extradition of a person who was surrendered to Romania based on a European Arrest Warrant, requested afterwards by a State that is not a Member of the European Union, may not be granted without the consent of the executing judicial authority that approved the surrender.

(2) If the Romanian judicial authorities approved the surrender of a person to another Member State of the European Union, based on a European Arrest Warrant, and the issuing judicial authorities request consent for extraditing the requested person to a third State that is not a Member of the European Union, consent shall be given according to the bilateral or multilateral instruments to which Romania is a party, while taking into account the request for extradition.

## **ARTICLE 105**

### **Immunities and privileges**

(1) When a person referred to by a European Arrest Warrant enjoys immunity in Romania, the executing judicial authority shall at once request the competent authority to remove this privilege.

(2) Should the removal of immunity be of the competence of another State or of an international organisation, the request shall be made by the judicial authority that issued the European Arrest Warrant. The executing judicial authority shall notify this to the issuing judicial authority.

(3) While the request for withdrawal of immunity referred to in para.(2) is being solved, the executing judicial authority shall take the measures it sees necessary to guarantee the actual surrender once the person no longer enjoys immunity.

(4) The terms in Article 95 shall begin from the date when the executing judicial authority was informed of the removal or withdrawal of immunity.

(5) When a person referred to by a European Arrest Warrant is in Romania following his extradition from a third State that is not a member of the European Union, and the surrender is limited to the offence for which it was granted, the terms in the previous paragraph shall start when the authorities of the State that extradited the requested person give their consent for the speciality rule to lose its effect, and the person may be surrendered to the State that issued the European Arrest Warrant. Until the decision is made, the executing judicial authority shall take the measures necessary for surrender, if required.

#### **ARTICLE 106**

##### **Relation with other legal instruments**

38

The conditions, requirements and procedure for the issuing and execution of a European Arrest Warrant are those established in this law, except for those provided in bilateral or multilateral conventions to which Romania is a party, which simplify or facilitate the surrender procedure, according to paragraph 2 of Art. 31 of the Framework-Decision No. **2002/584/JAI** of the Council of the European Union of 13 June 2002 on the European Arrest Warrant and Surrender Procedures between Member States.

#### **ARTICLE 107**

**Repealed.**

#### **ARTICLE 108**

##### **Transitional provisions**

(1) This Title shall apply to the European Arrest and Surrender Warrants issued after its entry into force, even when they refer to acts that are previous to this date.

(2) The extradition procedures pending at the time when this Title enters force shall continue to be solved according to Title II.

TITLE IV

### **TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS**

#### **CHAPTER I**

#### **REQUESTS FOR TRANSFER OF CRIMINAL PROCEEDINGS**

#### **ARTICLE 109**

##### **General provisions**

The exercise of criminal proceedings or the continuation of proceedings initiated by the competent Romanian judicial authorities for an act that is an offence according to Romanian law, may be transferred to a foreign State under the conditions set forth in this Title.

#### **ARTICLE 110**

##### **Conditions**

Transfer of criminal proceedings may be requested only if the requested State has jurisdiction over the case and extradition cannot be requested or, where extradition has been requested and refused.

#### **ARTICLE 111**

##### **Procedure**

(1) Transfer of criminal proceedings shall be requested by the competent body of criminal prosecution, if the proceedings refer to criminal prosecution, or by the court with which the case is pending in first instance, if the proceedings refer to a trial.

(2) Requests for transfer of criminal proceedings shall be made based on a reasoned conclusion in which the court ordains the transfer. To this end, at the request of the Public Ministry or, as appropriate, *ex officio*, the court that is competent to try the case in first instance or, as appropriate, the court with which the case is pending, shall check whether the legal conditions are met for ordaining transfer of criminal proceedings.

(3) The conclusion in para.(2) may be appealed against on points of law within 5 days from its pronouncement, for those present, or from its service, for those absent.

(4) The final conclusion ordaining transfer of proceedings shall stay the period of time limitation for criminal liability, as well as the continuation of the criminal proceedings already initiated, subject to acts and steps of urgent nature.

(5) The request in para.(1) shall be sent to the Prosecutor's Office attached to the High Court of Cassation and Justice or to the Ministry of Justice, under Article 13, accompanied by authenticated copies of all the procedural steps taken in that particular case.

#### **ARTICLE 112**

##### **Transmission of requests**

The Ministry of Justice or, where appropriate, the Prosecutor's Office attached to the High Court of Cassation and Justice, shall ensure the transmission of requests for transfer of criminal proceedings by one of the means provided in this Law.

#### **Article 113**

##### **Effects of transfer**

(1) After the approval of the transfer of criminal proceedings by the Requested State, no other proceedings for the same act can be initiated by the Romanian judicial authorities.

(2) Suspension of the period of time limitation for criminal liability shall be maintained until the cause is solved by the competent authorities of the Requested State.

(3) Romania shall regain its right to initiate, or, the case being, resume criminal prosecution for that act if:

a) the Requested State informs it that it cannot complete the criminal prosecution that was transferred to it;

b) it subsequently takes cognisance of a reason that, according to this law, would prevent the request for transfer of criminal proceedings.

(4) In case of conviction, the decision handed down in the proceedings initiated or continued in the Requested State, once it is final, shall be mentioned in the judicial record and take the same effects as if it had been handed down by a Romanian court.

#### **CHAPTER II**

#### **TAKING OVER CRIMINAL PROSECUTION OR CRIMINAL PROCEEDINGS**

#### **ARTICLE 114**

##### **Requests for taking over the criminal proceedings**

(1) Any request for taking over the criminal proceedings made by a foreign State to the Romanian public prosecutor's offices or courts shall be forwarded, according to case, to the Ministry of Justice or to the public prosecutor's office attached to the High Court of Cassation and Justice.

(2) Requests for taking over the criminal prosecution shall be solved by the public prosecutor's office attached to the court of appeal that has jurisdiction over the domicile or the location of the requested person. Requests for taking over a trial shall be solved by the criminal section of the court of appeal that has jurisdiction over the domicile or location of the requested person.

(3) The competent general prosecutor or the public prosecutor designated by him shall decide upon the request according to the Criminal Procedure Code.

(4) Requests for taking over a trial shall be sent by the Ministry of Justice to the public prosecutor's office attached to the court of appeal that is competent to solve it. The competent general prosecutor shall notify his proposal for admission or rejection of the request to the court of appeal.

(5) Once invested with a request for taking over a trial, the competent court of appeal shall ordain upon the admissibility of the request, through a reasoned conclusion.

The conclusion may be appealed against in points of law within 5 days from its handing down.

40

(6) If the request is deemed as admissible, the trial shall continue according to the Criminal Procedure Code.

(7) Romania shall inform the Requesting State, through one of the authorities mentioned in para.(1), according to case, the manner in which the request for transfer of criminal proceedings was solved and shall send to the competent foreign authority a copy of the final decision handed down in this cause.

#### **CHAPTER II<sub>1</sub>**

**Provisions for the implementation of the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, Schengen**

**ARTICLE 114<sub>1</sub>**

**Application of the *non bis in idem* principle**

(1) A person who has been finally judged by a Member State of the Schengen Area may not be prosecuted or tried by another for the same acts provided that, where he is sentenced, the sentence has been served or is currently being served or can no longer be carried out under the law of the sentencing State.

(2) Nevertheless, para.(1) shall not apply where:

- a) the acts to which the foreign judgment relates took place in whole or in part in Romanian territory. In this case, this exception shall not apply if the acts took place in part in the territory of the Member State where the judgment was given;
- b) the acts to which the foreign judgment relates constitute an offence against State security or other equally essential interests of Romania;
- c) the acts to which the foreign judgment relates were committed by a Romanian official in violation of the obligations of his office.

(3) The exceptions in para.(2) shall not apply where the Member State concerned has, in respect of the same acts, requested the taking over of criminal prosecution or has granted the extradition of the person concerned.

**TITLE V**

***Recognition and enforcement of criminal judgements and judicial documents***

**CHAPTER I**

***Recognition and enforcement of foreign criminal judgements and judicial documents***

**ARTICLE 115**

**General provisions**

(1) For the purposes of this Chapter, *foreign criminal judgement* shall mean any judgement rendered by the competent court of another State.

(2) For the purposes of this Chapter, *foreign judicial document* shall mean a judicial document issued by a competent foreign judicial authority.

(3) The competence of the foreign court or judicial authority shall be verified through the Ministry of Justice.

**ARTICLE 116**

**Conditions for recognition**

(1) Recognition in Romanian territory of a foreign criminal judgement or of a foreign judicial document may take place if:

41

- a) Romania has assumed such an obligation through an international treaty to which it is a party;
- b) the right to a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Rome on 4 November 1950 and ratified by Romania through Law No. 30/1994, has been observed;
- c) it has not been rendered for a political offence or for a military offence that is not an offence of ordinary competence;
- d) complies with the public policy of Romania;
- e) the judgement or document is capable of producing legal effects in Romania according to Romanian law;
- f) the same person has not been sentenced for the same acts in Romania;
- g) the same person has not been sentenced for the same acts in another state whose sentence has been recognised by Romania;

(2) Foreign criminal judgements may be recognised in Romania also if they do not meet the condition in para.(1) a), based on reciprocity. To this end, the competent court shall request that the Ministry of Justice verify whether the condition of reciprocity is met.

(3) The execution of a judgement is possible, regardless of the verification of the conditions

in para.(1), also where it refers to a Romanian citizen whose extradition was previously granted by Romania to the foreign State that rendered the judgement.

#### **ARTICLE 117**

##### **The procedure for recognition at the request of a foreign State**

(1) The application for recognition of a foreign criminal judgement, uttered by the competent authority of the requesting foreign State shall be sent by the Ministry of Justice to the general prosecutor attached to the court of appeal that has jurisdiction over the domicile or residence of the sentenced person.

(2) The sentenced person shall be summoned, and together with the summons he/she shall be handed also the foreign judgement and the documents attached thereto, in a language that he/she understands.

(3) The sentenced person shall be entitled to be assisted by a lawyer, either chosen by him/her or appointed *ex officio* and, where appropriate, by an interpreter.

(4) The court shall, after hearing the prosecutor and the sentenced person, if it finds the legal conditions to be met, recognise the foreign criminal judgement or the foreign judicial document. Where the penalty imposed through that judgement has not been served or has been partially served, the court shall replace the penalty not served or the rest of the penalty still to be served with a corresponding penalty under Romanian criminal law.

(5) Where the foreign criminal judgement relates to real estate, the request shall be sent to the general prosecutor attached to the court of appeal that has jurisdiction over that real estate.

(6) The Court of Appeal shall render a judgement in the council chamber, which judgement may be appealed against on points of law. This judgement shall be notified to the prosecutor's office and to the Ministry of Justice.

#### **ARTICLE 118**

##### **The special procedure of recognition by main action**

(1) Recognition of criminal judgements rendered by foreign law courts or of other foreign judicial documents may be effected by a law court also by means of main action, on the application of the sentenced person or the prosecutor.

(2) In this event, the competence shall belong to the first instance court that has territorial jurisdiction over the sentenced person.

42

(3) Article 117 para.(3) to (6) shall apply accordingly

#### **ARTICLE 119**

##### **The procedure for recognition by auxiliary action**

Recognition may be effected also by means of auxiliary action, within ongoing criminal proceedings, by the prosecutor at the stage of prosecution or by the law court at the stage of judgement.

#### **ARTICLE 120**

##### **The enforcement of judgements rendered in administrative proceedings**

Execution of judgements rendered in administrative proceedings, for acts equivalent to offences, as defined by the Hague Convention of 28 May 1970 on the International Validity of Criminal Judgements, shall be possible only if the person concerned has had the chance to exercise a means of judicial review with a law court.

#### **ARTICLE 121**

##### **Preventive measures**

Before deciding on the recognition of a foreign criminal judgement, the court may, at the request of the foreign State, sent through the Ministry of Justice, or *ex officio*, ordain the preventive arrest of the person related to by the judgement the recognition of which is being requested, or take another measure to prevent his/her escape from Romanian territory.

#### **CHAPTER II**

##### **Enforcement abroad of Romanian criminal judgements and judicial documents**

#### **ARTICLE 122**

##### **Applicable law and the effects of enforcement**

(1) The enforcement of a foreign criminal judgement shall be effected according to

Romanian law.

(2) Foreign criminal judgements recognised and enforced in Romania shall take the same effects as judgements rendered by Romanian courts.

(3) The foreign State requesting enforcement is the only one that has competence to decide upon extraordinary means of judicial review initiated against the judgement that is to be enforced.

(4) Amnesty and pardon may be granted both by the foreign State and by Romania.

(5) The foreign State shall inform Romania about the occurrence of any of the cases that entail cessation of enforcement, under para.(4).

(6) Commencement of penalty execution in Romania shall entail renunciation of the foreign state of execution in its own territory, unless the sentenced person eludes penalty service. In the latter case, the foreign state shall reacquire the right to execute the penalty from the time when it is informed about the total or partial non-execution of the penalty.

#### **ARTICLE 123**

##### **Conditions for uttering a request for recognition and enforcement**

(1) Romanian courts may request recognition and enforcement by a foreign State of a court judgement in any of the following cases:

a) where the sentenced person is a national of the requested state or of a third State or is stateless and domiciles in such a State, and under the law of the requested State extradition of the sentenced person to Romania in view of penalty service is inadmissible or the foreign State refused extradition.

43

b) where the sentenced person is a Romanian national who domiciles in the requested State or has also the nationality of the requested state, and the foreign state refuses extradition.

(2) The uttering of a request for recognition and enforcement is admissible also where the sentenced person is serving a penalty in the requested State for an act other than that which entailed his/her sentencing by Romania.

(3) Where a request is uttered for recognition of a criminal judgement that imposed a penalty, the length of such penalty must exceed one year.

(4) Paragraph (1) shall not apply, if the circumstances of the case so require, based on a treaty concluded with the foreign State, when the security measure of expulsion is applied.

(5) Recognition shall be requested subject to the condition of non-aggravation, in the foreign state, of the penalty imposed through the judgement rendered in Romania.

(6) Recognition abroad of judicial documents issued by competent Romanian authorities shall take place under the conditions of the applicable international treaty.

#### **ARTICLE 124**

##### **Effects of recognition**

(1) Recognition and enforcement by a foreign State of a request for recognition uttered by Romanian courts shall entail renunciation by Romania of the enforcement of that judgement in Romanian territory.

(2) If the sentenced person eludes penalty service, the right to enforce the judgement shall be reacquired by Romania from the time it is informed of the total or partial non-execution of the penalty.

#### **CHAPTER III**

#### **ARTICLE 125**

##### **The procedure for uttering a request for recognition and enforcement of a criminal judgement**

(1) Requests for recognition and enforcement of a criminal judgement in a foreign State shall be uttered by the executing court, either *ex officio* or at the request of the competent prosecutor or of the defendant, whenever the conditions in Article 123 are met.

(2) To the request shall be attached the documents set forth in the applicable international treaty or, in the absence of a treaty, at least the final judgement and the warrant for penalty service.

(3) When the sentenced person's consent is required, it shall be given in the council chamber of the executing court, unless the sentenced person is abroad; in this event, consent

may be given before a Romanian consular official or before the foreign competent judicial authority.

(4) If the defendant is in Romania and has not himself/herself uttered the request in para. (1), the competent prosecutor shall notify him/her.

(5) The absence of a reply from the sentenced person shall be equivalent to a consent to uttering the request, and this shall be notified to him/her.

## **TITLE VI**

### **TRANSFER OF SENTENCED PERSONS**

#### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **ARTICLE 126**

44

**Repealed.**

##### **ARTICLE 127**

###### **Applicable law**

(1) This Title shall apply in the field of transfer of sentenced persons, under the norms comprised by international treaties to which Romania is a party, and in their absence, based on reciprocity.

(2) This Title shall apply also, as a supplementation, to situations that are not regulated by the international treaties referred to in para. (1).

(3) This Title shall be without prejudice to the rights and obligations that emerge from international norms concerning the transfer abroad of detainees in view of being heard as witnesses or in view of confrontation.

(4) In its request for transfer of a sentenced person, Romania shall specify the international instrument based on which the request is made.

##### **ARTICLE 128**

###### **The objective of transferring sentenced persons**

(1) A person who has received a final sentence in Romanian territory may be transferred to the State the national of which he is, in view of serving the penalty, according to this law.

(2) On grounds of conventional reciprocity, para. (1) shall apply accordingly if a Romanian citizen has been sentenced in another State.

(3) The sentenced person may address the Sentencing State or the Executing State, in order for him to be transferred for serving the penalty.

(4) Transfer may be requested either by the Sentencing State or the Executing State.

##### **ARTICLE 129**

###### **Conditions for transfer**

A sentenced person may be transferred in view of serving the penalty only on the following conditions:

a) the convict is a national of the Executing State;

b) the decision is final;

c) at the date of receipt of the request for transfer, the sentenced person still has at least 6 months left to serve from the length of the penalty. In exceptional cases, based on an agreement between the States involved, transfer may take place even if the part of the penalty still to be served is under 6 months.

d) Transfer shall be consented to by the sentenced person or, if, according to his age or physical or mental condition, one of the two States finds it necessary, by the person's representative. Consent shall not be requested in case of escaped convicts who take refuge in the Executing State the nationals of which they are;

e) the acts that entailed the sentence are offences according to the law of the Executing State;

f) the Sentencing State and the Executing State must agree upon the transfer; otherwise the transfer may not take place.

##### **ARTICLE 130**

###### **Requests and replies**

(1) Requests for transfer, as well as replies to them, must be written.  
(2) Requests shall be sent by the competent authority of the Requesting State to the competent authority of the Requested State. Replies shall be sent in the same manner.

45

(3) The authority that is competent according to para. (2) is, for Romania, the Ministry of Justice, and for the foreign State, for the purposes of this law, the competent central authority.

(4) The Romanian Requested State shall inform the foreign Requesting State, as soon as possible, of its decision regarding the acceptance or refusal of the transfer requested.

#### **ARTICLE 131**

**Repealed.**

#### **ARTICLE 132**

##### **Legal framework**

This Chapter shall apply accordingly if Romania is the Executing State.

#### **CHAPTER II**

#### **PROCEDURE**

##### *Section 1*

##### *Romania as Sentencing State*

#### **ARTICLE 133**

##### **Obligation to provide information**

(1) The Ministry of Justice shall make sure that any person sentenced by a Romanian court, to whom this law may be applied, and to whom this Title may be applied, shall be informed, in writing, of the exact contents of the ruling international convention.

(2) If the sentenced person addressed the Romanian State as a Sentencing State, in view of his transfer, the Ministry of Justice shall inform of this the competent central authority of the Executing State, as soon as possible, after the sentence remains final.

(3) The information must include:

- a) the sentenced person's name, date and place of birth;
- b) if available, the sentenced person's address in the Executing State;
- c) a presentation of the acts that entailed the sentence;
- d) the nature, length and date of commencement of penalty service.

(4) If the sentenced person addressed the Executing State, in view of his transfer, Romania shall, upon request, provide that State with the information mentioned in para.

(3).

(5) The sentenced person must be informed, in writing, of any act performed by any of the two States in the application of para. (1)-(4), as well as of any decision made by one of these States regarding the request for transfer.

#### **ARTICLE 134**

##### **Supporting documents**

(1) In order for the request for transfer to be solved, Romania shall request the following documents from the Executing State:

- a) a document or a statement to certify that the sentenced person is a national of the Executing State;
- b) a copy of the legal provisions of the Executing State, showing that the acts that entailed the handing down of the judgement in the Sentencing State are offences according to the law of the Executing State;
- c) a statement containing information regarding the procedure that will be used in order to execute the judgement. Art. 145 and Art.146 shall apply accordingly.

46

(2) Except for the case when one of the two States does not agree with the transfer, Romania shall send the following to the Executing State:

- a) An authenticated copy of the final sentence, as well as a copy of the legal provisions applicable;
- b) a document mentioning the length of the sentence that was already served, including information on any provisional detention, on the reduction of the penalty,

or another document regarding the status of sentence service;  
c) the statement of consent for transfer, as provided for in Art. 129 d);  
d) if available, any forensic report or findings or any other medical documents attesting the sentenced person's mental and physical condition, the treatment undergone by him in Romanian territory and any recommendations for the treatment to be continued in the Executing State, as well as, in case of sentenced minors, a copy of the social inquiry report for this case;

(3) Romania may request to the Executing State the transmission of any of the documents in para. (1) before making the request for transfer or before handing down the decision accepting or refusing transfer.

(4) Para. (3) shall apply accordingly if the Executing State requests transmission of the documents in para.(2) by the Romanian State.

#### **ARTICLE 135**

##### **Consent of the sentenced person**

(1) Romania shall act in such a manner as for the person who is to give his consent for transfer based on Art. 129 d) to do so willingly and in full awareness of the legal consequences that arise from it.

(2) Romania must give the Executing State the chance to check, through a consul or another official designated in agreement with the Executing State, whether this consent was given according to para. (1).

#### **ARTICLE 136**

##### **Effect of transfer for the Sentencing State**

(1) The taking over of the sentenced person by the authorities of the Executing State shall suspend penalty service in Romania.

(2) Romania may no longer ensure or continue the execution of the sentence if the Executing State deems that execution of the sentence is completed, according to the law.

#### **ARTICLE 137**

##### **Extraordinary means of judicial review against the sentence**

(1) The right to exercise the extraordinary means of judicial review in order to cancel or amend the final sentence shall belong to Romania, as a Sentencing State. The sentenced person may exercise or, the case being, request the exercise of extraordinary means of judicial review, even after the transfer.

(2) Para. (1) has no connection to the procedure of conversion of the sentence, as regulated in Art. 146.

#### **ARTICLE 138**

##### **Preliminary procedure**

(1) A request for transfer uttered by a foreign national sentenced by a Romanian court shall be sent to the Ministry of Justice. Upon receipt of such request, the Ministry of Justice shall request the urgent transmission by the National Prisons Administration, of the documents and information referred to in Article 133 para. (3) and Article 134 para. (2) a) to d).

47

(2) After receiving the documents and information in para. (1), the Ministry of Justice shall have them translated and then shall send them, together with the request for transfer, to the central authority of the executing State, from which it shall request, transmission of the documents in Article 134 para.(1), as well as the judgement of acceptance of the request for transfer.

(3) Para. (2) shall not be applicable where the Romanian authorities hold information or documents that entail mandatory refusal of transfer. Such a solution may be rendered by the competent court of appeal, at the request of the general prosecutor of the court, *of office* or at the request of the Minister of Justice.

The sentence by the court of appeal shall be reasoned, and may be appealed against on points of law within 5 days from its pronouncement.

(4) Where the solution of refusal of transfer, provided in para. (3), remains final, the Ministry of Justice shall announce this, as soon as possible, to the central authority of the

executing State. The sentenced person shall be informed in due time, under Article 133 para. (5), through the National Prisons Administration.

## **ARTICLE 139**

### **Solutions**

(1) Where the procedure for solving a request for transfer continues, all the documents, including those provided by the executing State, shall first be subjected to the international regularity check by the Ministry of Justice. Article 40 shall apply accordingly. After finding the conditions to be met, the Ministry shall send the request and the supporting documents, with translations, to the general prosecutor attached to the competent court of appeal. The documents submitted by the competent foreign consular office in relation to the request for transfer, under Article 135 para.(2), shall be attached to the case record.

(2) The general prosecutor shall, upon receipt of the request and documents in para.(1), take a statement from the sentenced person, to make sure that the latter has given his consent for the transfer, either personally or through a representative, according to the conditions in Art.134 para.(1). The sentenced person's statement shall be taken down into an official record, signed by the public prosecutor and by the sentenced person.

(3) The general prosecutor shall notify the court of appeal that has jurisdiction over the place of detention or, where the sentenced person has not begun serving the penalty, over his/her domicile, in view of solving the request for transfer. Also, before notifying the court of appeal, the general prosecutor shall check whether the sentenced person is involved in any criminal proceedings that are pending with Romanian judicial authorities, and announce its findings to the court. Where the obtainment of information would lead to a delay in the transfer procedure, the general prosecutor shall ordain notification of the court of appeal, and the information shall be obtained before the first main hearing date.

(4) The request shall be judged in the council chamber, with the participation of the prosecutor, and while summoning the person sentenced, and, if appropriate, with the participation of an interpreter. At his/her request, the sentenced person may be assisted by a defender, either chosen by him/her or, in the absence of a choice, appointed *ex officio*. The request shall be tried in emergency procedure and as a priority, and the judgement shall be reasoned within 5 days from its pronouncement and communicated to the Ministry of Justice.

(5) The sentence may be appealed against in points of law within 5 days from its handing down, either by the general prosecutor of the court of appeal, *ex officio*, or upon request from the Minister of Justice, as well as by the sentenced person. Para. (4) shall apply accordingly.

48

(6) The Ministry of Justice shall inform the central authority of the Executing State of the final solution handed down by the Romanian courts on the request for transfer, as soon as possible. Art. 138 para. (5) Thesis 2 shall apply.

(7) If the transfer of the sentenced person is accepted, the Ministry of Justice shall inform of this the Ministry of Administration and the Interior, which shall ensure the surrender under escort.

(8) In the event of a person who, after having been sentenced through final criminal judgement by a Romanian court, escapes, where penalty service has begun or, where it has not begun, eludes penalty service, taking refuge in the territory of his/her State of nationality, Romania may request that State to take over the execution of the penalty imposed. Such request shall be uttered by the executing court, where the person is eluding penalty service, or by the court having jurisdiction over the place of detention, where the sentenced person had begun penalty service. The request may include also a requirement that the State in the territory of which the sentenced person took refuge take the measure of arrest or any other measure meant to guarantee that the sentenced person will remain in its territory until the judgement on the request for take over of execution is communicated. The documents in Article 133 para. (3) and Article 134 para. (2) a), b) and d) shall be attached to the request. After they are translated, the request and the attached documents shall be sent to the Ministry of Justice in view of communication to the central authority of the requested State.

## **ARTICLE 140**

### **Optional refusal of transfer**

Requests for transfer of a sentenced person may be refused, mainly, for the following reasons:

- a) the person was sentenced for serious offences that have had a deeply negative echo among the public in Romania;
- b) the penalty provided in the law of the Executing State is obviously heavier or lighter in relation to the one established by the Romanian court's decision;
- c) there are sufficient clues to suggest that, once he is transferred, the sentenced person would be released either immediately or within a term that is much too short when compared to the length of the penalty still left to be served according to Romanian law;
- d) the sentenced person has not repaired the prejudice caused by the offence, has not paid the costs incumbent upon him through the Romanian court's decision and has not guaranteed the payment of compensations;
- e) if there are sufficient clues to suggest that the Executing State will not observe the speciality rule.

### **Section 2**

#### ***Romania as Executing State***

#### **ARTICLE 141**

##### **Required documents**

(1) Romania is obliged to provide, upon request from the Sentencing State, the documents in Art. 134 para. (1).

(2) Art. 134 para. (2) and (3) shall apply accordingly.

#### **ARTICLE 142**

##### **Consent of the sentenced person**

Through the Ministry of External Affairs, Romania shall request that the competent Romanian consular office obtain from the sentenced person or from his representative a  
49

statement on his consent to the transfer, expressed freely and in full awareness of the legal consequences of a transfer of the sentenced person to Romania.

#### **ARTICLE 143**

##### **Evidence required for solving a request**

(1) The Romanian consular office shall be required to draw up a document on the social and family status of the sentenced person, while taking into account his own statements and also specifying his chances of readapting in Romania

(2) Romania shall request that the central authority in the Sentencing State provide a copy of the sentenced person's criminal record, as well as information regarding any relations that he might have had with social environments that harbour crime.

#### **ARTICLE 144**

##### **Effects of transfer for the Executing State**

(1) The competent Romanian authorities are obliged:

a) either to continue execution of the judgement, at once or based on a court decision, according to the conditions in Art. 145.

b) or change the sentence, through a court judgement, thus replacing the penalty imposed in the sentencing State with a penalty provided in Romanian legislation for the same offence, under Article 146.

(2) Upon request from the Sentencing State, Romania is obliged to make known to the Sentencing State, before the sentenced person's transfer, which of the two procedures in para. (1) is to be followed.

(3) The penalty shall be ruled by the law of the Executing State.

#### **ARTICLE 145**

##### **Continuation of execution**

Should Romania choose to continue the execution of the penalty imposed in the Sentencing State, it shall respect the type and length of the penalty provided in the sentence.

#### **ARTICLE 146**

### **Conversion of sentence**

(1) Should the type of penalty imposed or its length be incompatible with the Romanian legislation, Romania may, by court decision, adapt this penalty to the one provided in Romanian law for the acts that entailed conviction. This penalty must correspond as much as possible to the type of penalty imposed by the Sentencing State and it may not under any circumstances aggravate the sentenced person's situation.

(2) If the sentence is changed, the procedure provided in the Romanian legislation shall apply. As for the scope of conversion of the penalty and for the criteria applicable, the Romanian court must observe the following conditions:

- a) it shall be obliged to discover the acts to the extent that they are mentioned, either explicitly or implicitly, in the sentence handed down by the Sentencing State;
- b) it may not convert a custodial penalty into a monetary fine;
- c) it shall fully deduct, from the penalty, the length of deprivation of freedom already served by the sentenced person;
- d) it shall not aggravate the criminal status of the sentenced person, nor shall it be obliged to observe the inferior limit of the penalty possibly provided in the legislation of the Sentencing State for the offence(s) committed.

50

(2) Where the procedure for changing the sentence takes place after the sentenced person's transfer, Romania shall keep that person in detention or take other measures to ensure his presence in Romania until the end of this procedure.

### **ARTICLE 147**

#### **Cessation of service**

Penalty service shall cease as soon as Romania is informed by the Sentencing State of any decision or measure that entails impossibility of continuing the execution.

### **ARTICLE 148**

#### **Information on service**

(1) Romania shall provide information regarding penalty service to the Sentencing State in the following situations:

- a) when the penalty has been served or deemed as served;
- b) if the sentenced person has escaped;
- c) if the Sentencing State requests a special report.

(2) To this end, in the cases in para. (1) a) and b), the National Prisons Administration shall periodically send to the Ministry of Justice information on penalty service. In the situation in para. (1) c), the information shall be sent, at the request of the Ministry of Justice.

### **ARTICLE 149**

#### **Acceptance or rejection of requests**

(1) Should the Romanian Ministry of Justice receive a request for transfer from a Romanian national sentenced in another State, it shall notify this to the central authority in the Sentencing State, requesting it to provide the information in Art. 133 para.(3), the documents in Art. 134 para.(2), as well as a statement specifying whether the competent authorities consent to the transfer.

(2) If the request for transfer is refused, the Ministry of Justice shall notify this to the sentenced person.

(3) If the request is approved, the Ministry of Justice shall send the documents in Art. 134 para. (1) to the central authority of the Sentencing State.

(4) As soon as the Ministry of Justice receives the statement of consent from the sentencing State, it shall send the documents to the general prosecutor attached to the competent court of appeal, which shall in his turn, notify the court of appeal in view of recognising the foreign judgement and enforce it, under Article 145 or Article 146, as appropriate. Article 116 shall apply accordingly.

(5) The decision shall be motivated within 3 days and may be appealed against in points of law within 10 days from notification. The decision shall be notified to the sentenced person by fax or by other means of transmission, through the central authority

of the Sentencing State, by the Ministry of Justice, as soon as possible.

(6) The court of appeal shall issue a warrant for penalty service, which the Minister of Justice shall send to the competent central authority of the Sentencing State, in view of the sentenced person being transferred.

(7) The surrender of the sentenced person shall take place, usually, on the territory of the Sentencing State, and his take over by Romania shall be handled by the Ministry of Administration and the Interior, while notifying the Ministry of Justice.

(8) A sentenced person who was transferred to Romania can no longer be criminally prosecuted for the same offence as the one that was the object of the sentence abroad.

#### **ARTICLE 150**

51

#### **The judicial authorities competent**

The judicial authorities competent in the procedures referred to in Art. 149 are: the Court of Appeal in Bucharest and the public prosecutor's office attached to it.

#### **ARTICLE 151**

#### **Convergent regulations**

Art. 149 shall be supplemented by Art. 138 and 139, which shall apply accordingly.

#### **ARTICLE 152**

#### **Optional refusal of transfer**

Mainly, a request for transfer of a sentenced person may be refused if:

- a) the trial in which the sentence was handed down did not take place according to the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (b) a sentence has been handed down in Romania against the sentenced person for the same act, or a criminal procedure is pending that has as object the same act as the one that entailed the sentencing of this person abroad;
- c) the sentenced person has left Romania and established domicile in another State, and his connections to Romania are no longer significant;
- d) the sentenced person has committed a serious offence that is likely to alarm society, or has had close relations with members of criminal organisations, likely to cast doubt upon his social reinsertion in Romania.

#### **Section 3**

#### **Other stipulations**

#### **ARTICLE 153**

#### **Amnesty, pardon and commutation of penalty**

The competent Romanian authority may grant amnesty, pardon or commutation of the penalties imposed to the sentenced persons referred to in this law.

#### **ARTICLE 154**

#### **Transit**

(1) Romania may allow a request for transit on its territory of a sentenced person, if the request was made by a third State that has itself agreed with another State upon transfer to or from its territory.

(2) Romania may refuse the transit:

- a) if the sentenced person is a Romanian citizen or a stateless person domiciling in Romania;
- b) if the act that entailed the sentence is not an offence according to the Romanian criminal law.

(3) Requests for transit and replies shall be sent through the channel in Article 130 para.(2). The Ministry of Justice decides whether to approve the transit.

(3<sub>1</sub>) The Ministry of Justice shall at once communicate the decision made to the competent authority of the requesting State and to the Ministry of Administration and the Interior.

(4) If requested transit, Romania may maintain the sentenced person in detention for the period that is strictly necessary for transiting its territory. Detention shall be ensured by the Ministry of Justice.

(5) At the request of the requesting State, Romania as the State requested to grant transit, may provide the assurance that the sentenced person will not be prosecuted or detained, subject to para. (4), nor subjected to any other measure restricting freedom in Romanian territory, for acts or sentences that are previous to his/her departure from the territory of the sentencing State. The assurance shall be given by the Ministry of Justice.

(6) A request for transit is not required if the Romanian air space is being used, and no landing on Romanian territory is envisaged.

#### **ARTICLE 155**

##### **Super-authentication**

Except for the documents referred to in Art. 134 para.(2) a), the documents sent in the application of this law shall not require a super-legalisation.

#### **ARTICLE 156**

##### **Expenses**

Expenses made in the application of this Title shall be incurred by the Executing State, except for expenses made exclusively on the territory of the Sentencing State.

### **CHAPTER III**

#### **FINAL PROVISIONS**

#### **ARTICLE 157**

##### **Temporal application**

This Title shall apply to the service of penalties handed down both before, as well as after this law's entry into force.

### **TITLE VII**

#### ***Judicial assistance in criminal matters***

#### **CHAPTER I**

##### ***International judicial assistance***

#### **ARTICLE 158**

##### **The object of judicial assistance**

For the purpose of this Chapter, international judicial assistance shall comprise mainly the following activities:

- a) international letters rogatory;
- b) hearings by videoconference;
- c) appearance in the requesting State of witnesses, experts and prosecuted persons;
- d) service of procedural documents drawn up or submitted in criminal proceedings;
- e) judicial records;
- f) other forms of judicial assistance.

#### **ARTICLE 159**

##### **The general contents of a request for judicial assistance and the documents attached thereto**

“(1) A request for judicial assistance must specify:

- a) the name of the requesting judicial authority and the name of the requested judicial authority;
- b) the object of and the reasons for the request;

53

- c) the legal classification of the acts;
- d) the data for identifying the accused, the defendant or the sentenced person, or the witness or expert, as appropriate;
- e) the legal classification and the summary of the facts.

(2) Depending on the nature and the object of the request, supporting documents shall be attached to it, as appropriate.

(3) The documents attached to a request for judicial assistance need to be certified by the requesting judicial authority, and shall be exempt of any other formalities of superlegalisation.

#### **ARTICLE 160**

##### **International letters rogatory**

International letters rogatory in criminal matters are the form of judicial assistance that consists in the authorisation given by a judicial authority in one State to an authority in another State, which is empowered to accomplish, on its behalf, certain judicial activities relating to a certain criminal proceeding.

#### ARTICLE 161

##### **The object of letters rogatory**

(1) The object of a request for letters rogatory shall be mainly:

- a) locating and identifying persons and articles; hearing defendants, injured parties and other parties, witnesses and experts, as well as confrontation; searches, seizure of articles and documents, sequestration and special confiscation; on-site investigations and reconstruction; expert opinions, technical-scientific findings and forensic findings; transmission of information needed in a particular proceeding, audio and video interception and recording, examination of archive documents and specialised files, and other such procedural steps;
- b) transmission of articles to be produced in evidence;
- c) transmission of documents or records.

(2) Where the requesting State wishes for the witnesses or experts to take an oath, it shall expressly so request, and Romania shall comply with the request if Romanian law does not prohibit it.

(3) Romania shall send only certified copies or certified photostat copies of documents or records requested. Where the requesting State expressly requests the transmission of originals, every effort shall be made to comply with the request.

#### ARTICLE 162

##### **The date and place of execution of letters rogatory**

(1) On the express request of the requesting State, Romania shall state the date and place of execution of the letters rogatory. Officials and interested persons mentioned by the requesting State may assist and collaborate in the execution of letters rogatory, within the limits allowed by Romanian law.

(2) Para. (1) shall apply accordingly where assistance is requested by Romanian authorities.

#### ARTICLE 163

##### **Searches, seizure of property and documents and sequestration**

(1) Letters rogatory for search or seizure of property and documents and sequestration shall be subject to the following conditions:

a) that the offence motivating the letters rogatory is an extraditable offence where Romania is the requested State;

54

b) that execution of the letters rogatory is consistent with the law Romania.

(2) The conditions in para. (1) may entail application of the rule of reciprocity.

#### ARTICLE 164

##### **Handing over of property and documents**

(1) Romania may delay the handing over of any property, records or documents requested, if it requires them in connection with pending criminal proceedings.

(2) Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned to Romania as soon as possible unless Romania waives the return thereof.

#### ARTICLE 165

##### **Hearing by videoconference**

(1) 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.

(2) 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.

(3) Requests for a hearing by video conference shall contain, in addition to the information

referred to in Article 159, 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.

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

(5) The judicial authorities competent to apply this Article are the courts of appeal, during trial, and respectively the Prosecutor's Office attached to the High Court of Cassation and Justice, during criminal prosecution.

(6) 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.

(7) 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.

(8) The provisions of the Criminal Procedure Code shall apply accordingly.

55

(9) This Article 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.

(10) 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, unless the latter expressly waived the reimbursement of all or part of such costs.

(11) This Article shall apply accordingly where assistance is requested by Romanian judicial authorities.

ARTICLE 166

#### **Spontaneous transmission of information**

(1) Romanian judicial authorities may, without prior request, forward to the competent authorities of a foreign State information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving State in initiating criminal proceedings, or might lead to a request for judicial assistance by that State.

(2) Romania may impose conditions on the use of the information sent, according to para.(1). The receiving State shall be bound by the conditions imposed.

ARTICLE 167

#### **Controlled delivery**

(1) Romanian judicial authorities shall authorise, upon request, under the conditions provided in Romanian law, controlled deliveries, within the framework of criminal proceedings relating to extraditable offences.

(2) Controlled deliveries shall take place in accordance with Romanian law.

(3) This Article shall apply accordingly where assistance is requested by Romanian judicial authorities.

#### ARTICLE 168

##### **Covert investigations**

(1) Romania and a foreign State may agree to assist one another in the conduct of investigations by officers under covert or false identity.

(2) The competent Romanian authorities shall decide, in each individual case, according to Romanian law.

(3) The actual modalities of carrying out the investigation and the legal status of the officers concerned shall be agreed between the Romanian and foreign judicial authorities, under Romanian law.

#### ARTICLE 169

##### **Joint investigation teams**

(1) In view of facilitating the resolution of a request for rogatory letters, joint investigation teams may be set up for a specific purpose and a limited period, which may be extended by mutual consent. The composition of the team shall be agreed upon.

(2) A joint investigation team may, in particular, be set up where:

a) pending proceedings with the requesting State require difficult and demanding investigations having links with both States;

b) a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States concerned.

56

(3) A request for the setting up of a joint investigation team may be made by any of the States involved. The team shall be set up in one of the States in which the investigations are expected to be carried out.

(4) Requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

(5) The members of the team who are designated by Romanian authorities shall be referred to as "members", while members from the foreign State shall be referred to as "seconded members".

(6) A joint investigation team shall operate in the territory of Romania under the following general rules:

a) the leader of the team shall be a representative of the competent Romanian judicial authority;

b) the team shall carry out its operations according to Romanian law. The members and seconded members of the team shall carry out their tasks under the leadership of the person in a).

(7) Seconded members of the joint investigation team shall be entitled to be present when any procedural steps are taken, unless the leader of the team decides otherwise.

(8) Where the joint investigation team needs procedural steps to be taken in the requesting State, seconded members may request their own competent authorities to take those steps.

(9) A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the State which has seconded him or her for the purpose of the criminal investigations conducted by the team.

(10) Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the States involved may be used for the following purposes:

a) for the purposes for which the team has been set up;

b) subject to the consent of the State where the information was obtained, for detecting, investigating or prosecuting other criminal offences;

c) for preventing an immediate and serious threat to public security, and without prejudice to the provisions of b);

d) for other purposes to the extent that this is agreed between the States setting up the team.

#### ARTICLE 170

### **Cross-border observations**

(1) Subject to any contrary provisions existing in the convention applicable in relation to that State, the agents of a foreign State who, within the framework of a judicial investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the abovementioned person, shall be authorised to continue their observation in the territory of Romania, based on a request for judicial assistance which has been previously submitted. On request, the observation may be entrusted to the competent Romanian authorities.

(2) The request for judicial assistance referred to in para. (1) must be sent to the Prosecutor's Office attached to the High Court of Cassation and Justice and contain all the relevant information on the case, according to the provisions of the applicable convention. Through its authorisation, the Prosecutor's Office attached to the High Court of Cassation and Justice may impose certain conditions.

(3) When, for particularly urgent reasons, prior authorisation of Romania cannot be requested, the foreign officers conducting the observation within the framework of a criminal

57  
investigation shall be authorised to continue in Romanian territory the observation of a person presumed to have committed any of the offences listed in para. (5), provided that the following conditions are met :

a) the crossing of the border shall be notified at once, during the observation, to the Prosecutor's Office attached to the High Court of Cassation and Justice, as well as to the structure of the Border Police operating within the border crossing point;  
b) a request for judicial assistance submitted in accordance with paragraph (1) and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

(4) The observation referred to in paragraphs (1) and (2) shall be carried out only under the following conditions:

a) the officers conducting the observation must observe this Article and Romanian law;  
b) subject to the situations in para. (3), the officers shall, during the observation, carry a document certifying that authorisation has been granted;  
c) The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity;  
d) The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by Prosecutor's Office attached to the High Court of Cassation and Justice through the authorisation; their use shall be prohibited save in cases of legitimate self-defence;  
e) Entry into private homes and places not accessible to the public shall be prohibited;  
f) The officers conducting the observation may neither stop and question, nor arrest, the person under observation;  
g) All operations shall be the subject of a report to the Prosecutor's Office attached to the High Court of Cassation and Justice, which may require that the officers conducting the observation appear in person;  
h) The authority of the State from which the observing officers have come shall, when requested by the competent Romanian authority, assist the enquiry subsequent to the operation in which they took part, including legal proceedings;  
i) the authorities of the State from which the observing officers have come shall, at the request of the Romanian authorities, contribute to the proper course of the investigation subsequent to the operation in which they took part, including legal proceedings.

(5) The observation in para. (3) may take place only for one of the following acts:

a) homicide, assassination and murder;  
b) serious sexual offences, including rape and sexual abuse of children;  
c) destruction and aggravated destruction, committed through arson, explosion or any other such means;  
d) counterfeiting and forgery of means of payment;

- e) aggravated theft and robbery, as well as receiving stolen goods;
- f) extortion;
- g) kidnapping;
- h) traffic in human beings and related offences;
- i) traffic in narcotic drugs or precursors;
- j) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances;
- k) illegal carriage of toxic and dangerous waste;
- l) smuggling of aliens;
- m) blackmail.

58

(6) The observation in para.(3) shall cease where the authorisation has not been obtained within 5 hours of the border being crossed, as well as at the request of the Prosecutor's Office attached to the High Court of Cassation and Justice.

#### ARTICLE 171

##### **Interception and recording of conversations and communications**

(1) In view of solving a criminal case, the judicial authorities of the requesting State or the competent authorities thus designated by the requesting State may make a request to the Romanian authorities for judicial assistance relating to the interception of telecommunications and their immediate transmission to the requesting State or to the interception of the recording and of the subsequent transmission of the recording of telecommunications to the requesting State, where the prosecuted person:

- a) is in the territory of the requesting State and the latter needs technical assistance to intercept communications from the target;
- b) is in Romanian territory, in the event that the communications from the target can be intercepted by Romania;
- c) is in the territory of a third State, which has been informed and if the requesting State needs technical assistance for intercepting communications from the target.

(2) Requests made under this Article must meet the following conditions:

- a) specify and confirm the issuing of an order or a warrant for interception and recording, within the framework of criminal proceedings;
- b) contain information that would allow the target of the interception to be identified;
- c) specify the criminal acts that are the object of the criminal investigation;
- d) mention the duration of interception;
- e) if possible, contain sufficient technical data, in particular the number for connecting to the network, in order to allow the processing of the request.

(3) Where the request is made under para.(1) b), it must contain also a description of the facts. The Romanian judicial authorities may require any other additional information needed for establishing whether the requested measure would have been taken in a similar national case.

#### ARTICLE 172

##### **Confiscation**

Property emerging from the offence on which a request for letters rogatory is based shall be confiscated under the legal provisions in force.

#### ARTICLE 173

##### **The principle of speciality for letters rogatory**

Romania shall not use the documents and information it receives from the requesting State for any other purpose than that of fulfilling the letters rogatory.

#### ARTICLE 174

##### **Provisional measures**

At the request of the requesting State, the provisional measures provided in Romanian law may be taken for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.

#### ARTICLE 175

##### **Appearance of witnesses or experts**

(1) Where the personal appearance of a witness or expert is needed before the Romanian judicial authorities, the requesting judicial authority shall make a mention in this respect, in the request for service of summons.

(2) In the case in para. (1), the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable. The Romanian judicial authority that ordained the summoning may, through the request, ask the requested State to grant the witness or expert an advance, the amount of which shall be refunded from the specially allocated fund for judicial expenses.

(3) If the appearance in person of a witness or expert is requested to the Romanian authorities by a foreign State, where the witness or expert declares that he/she will appear in person, the latter may request the payment of an advance from the amount of the travelling and subsistence expenses. The court shall specify in a conclusion the amount of money requested by the witness or expert, the banking unit where the amount of money is to be deposited in the name of the witness or expert, and at the disposal of the competent Romanian judicial authority. The court's conclusion and the written statement by the witness or expert shall both be sent to the requesting State, through any of the channels in Article 14 or Article 15.

#### ARTICLE 176

##### **The amount of costs**

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by Romania as a requesting State shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

#### ARTICLE 177

##### **Non-appearance by a witness or expert**

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of Romania as the requesting State and is there again duly summoned.

#### ARTICLE 178

##### **Refusal to testify**

Where a witness who complies with the summons and appears before the Romanian judicial authority, refuses either partially or totally to testify, he may not be subjected to any measure of restraint or prevented in any other way to leave Romania, even if, under Romanian law, such refusal would be an offence or could entail coercive measures.

#### ARTICLE 179

##### **Immunities**

(1) A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of Romania as the requesting State shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of Romania in respect of acts or convictions anterior to his departure from the territory of the requested State.

(2) If during the proceedings a witness could be arrested who is suspected of having committed an offence in relation to his testimony before the judicial authorities of Romania as the requesting State, other than that of having refused to testify, one shall take into consideration whether the interests of justice would be better protected by entrusting the prosecution, if possible, to the requested foreign State.

60

(3) A person, whatever his nationality, summoned before the judicial authorities of Romania as the requesting State to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested State and not specified in the summons.

(4) The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his

presence is no longer required by the Romanian judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

#### ARTICLE 180

##### **Temporary transfer of detained persons into the territory of the requesting State**

(1) A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting judicial authorities shall be temporarily transferred to the territory of that State, provided that he shall be sent back within the period stipulated by the requested judicial authority and subject to the provisions of Article 179 in so far as these are applicable.

(2) For applications with the Romanian judicial authorities, the competence to solve the application shall belong to the court that has venue over the place of detention. To this end, the court shall ordain that the person in custody be heard, in the presence of a lawyer chosen or appointed *ex officio*, as well as of an interpreter, where appropriate, in the council chamber, with the participation of the prosecutor. The person in custody shall be informed of the object of the request and asked to state whether he agrees to be temporarily transferred into the territory of the requesting State in view of being heard as a witness. His statement shall be recorded in minutes signed by the president of the judgement panel, the court clerk, the interpreter and the defendant.

(3) Where the person in custody does not consent, the court shall ordain dismissal of the application. Such order shall be final and served to the Ministry of Justice within 48 hours from its pronouncement.

(4) Where the person in custody consents to the temporary transfer, the court shall check whether the conditions in para. (6) are met, and shall ordain acceptance or dismissal of the request, as appropriate. The order may be appealed against on points of law, within 24 hours from its pronouncement, by the competent prosecutor. The appeal shall be solved within 3 days.

(5) The order in para. (4) shall be served to the Ministry of Justice within 24 hours from its becoming final. The Ministry of Justice shall inform the central authority of the requesting State about the decision of the Romanian judicial authority. The court order of temporary transfer of the person in custody shall be served on the Ministry of Administration and the Interior, which shall ensure the surrender under escort of the person in custody, under para.

(8).

(6) Transfer may be refused:

- a) if his presence is necessary at criminal proceedings pending in the territory of Romania;
- b) if transfer is liable to prolong his detention;
- c) if there are other overriding grounds for not transferring him to the territory of the requesting State.

(7) The person transferred shall remain in custody in the territory of the requesting State and, if appropriate, in the territory of the State requested for transit, unless the Romanian competent judicial authority requests his release, under the conditions of the Criminal Procedure Code.

61

(8) The place where the detainee is to be surrendered to the requesting State and the place where he is to be taken over from the requesting State shall be a Romanian border checkpoint. The detainee shall be surrendered and taken over under escort. The Ministry of Administration and the Interior shall ensure the surrender and take-over, while keeping the Ministry of Justice informed.

(9) Paragraph (7) shall apply accordingly where Romania is the requesting State.

(10) In the event of applications submitted by Romanian judicial authorities, subject to Article 154 para. (2) a) and b), transit of the territory of a third State by the person in custody shall be granted at the request made by the Ministry of Justice to the central authority of the State requested for transit. Such request must be accompanied by all the necessary documents.

#### ARTICLE 181

##### **Temporary transfer of detained persons into the territory of the requested State**

(1) Where a request for judicial assistance sent to the requested State presupposes the taking of certain procedural steps that require the presence of a person who is in custody in Romania, the Romanian requesting judicial authority may temporarily transfer this person into the territory of the State where the investigation is to take place, provided that between the Romanian authorities and those of the requested State there is an agreement in this respect. The means for temporarily transferring the person and the time limit by which he needs to be sent back to Romania shall be set forth in that agreement.

(2) The person transferred shall remain in custody in the territory of the requested State and, if appropriate, in the territory of the State requested for transit, unless the Romanian competent judicial authority requests his release.

(3) The period spent in custody in the territory of the requested State shall be deducted from the duration of detention to be served by that person in Romanian territory.

#### ARTICLE 182

##### **Personal appearance by transferred sentenced persons**

Article 180 and Article 181 shall apply accordingly to persons who are in custody in Romania, following their transfer in view of serving a penalty imposed in the territory of the sentencing State, when personal appearance in view of revision of trial is requested by the sentencing State.

#### ARTICLE 183

##### **Protection of witnesses**

Witnesses heard according to this Title shall enjoy protection as appropriate, according to the legislation in force.

#### ARTICLE 184

##### **Service of procedural documents**

(1) Procedural documents shall be served under this Title and in accordance with the provisions of the relevant international treaties.

(2) Procedural documents shall mean, mainly, summons to parties or witnesses, indictment, other documents of criminal prosecution, court judgements, applications for judicial review or documents relating to the execution of a penalty, the payment of a fine or the payment of court costs.

(3) Requests for judicial assistance relating to the service of procedural documents, submitted to the Romanian judicial authorities, shall be fulfilled at the stage of trial by the first instance court that has venue over the domicile or place of detention of the person who

62  
is to receive the documents, and at the stage of criminal prosecution by the prosecutor's office attached to that court.

#### ARTICLE 185

##### **Service and proof of service**

(1) Service of procedural documents may be effected by simple transmission to the person to be served. If the requesting State expressly so requests, service shall be effected by Romania in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

(2) Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Romanian requested authority that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting State. Romania shall, if the requesting State so requests, state whether service has been effected in accordance with Romanian law. If service cannot be effected, the reasons shall be communicated immediately by Romania to the requesting State.

#### ARTICLE 186

##### **Time needed for service**

The summons to appear addressed to a prosecuted person who is in Romanian territory, shall be sent to the Romanian competent authorities no later than 40 days before the date set for appearance. This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

## ARTICLE 187

### **Service by post**

(1) The Romanian judicial authorities may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other State, provided that the international legal instrument applicable in relation to that State provides this.

(2) In the case in para. (1), procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the issuing authority, regarding his or her rights and obligations.

## ARTICLE 187<sup>1</sup>

### **Service of documents and data**

(1) Romania shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a requesting foreign State and needed in a criminal matter, to the same extent that these may be made available to Romanian judicial authorities in like case.

(2) In any case other than that provided for in paragraph (1), the request shall be complied with in accordance with the conditions provided for by Romanian law.

## ARTICLE 187<sup>2</sup>

### **Transmission of information**

(1) Romania shall inform a foreign State of all criminal convictions and subsequent measures in respect of nationals of that foreign State, entered in the judicial records. Such information shall be communicated at least once a year.

(2) Where the person concerned is a national of two or more States, the information shall be given to each of the States concerned, unless the person is a national of Romania

63

(3) Romania shall send to any foreign State concerned, at its request, in special cases, a copy of the convictions and measures in para. (1), as well as any other information pertaining to these, in order to allow it to determine whether domestic measures are needed.

## ARTICLE 187<sup>3</sup>

### **The competent Romanian authority**

(1) The information referred to in Article 187 shall be sent via the Ministry of Justice.

(2) The information of the same kind, received from the competent authorities of foreign States within the framework of the information exchange, shall be received by the Ministry of Justice, which shall send them to the competent authorities, in view of proceeding according to their powers in what regards the recognition and, respectively, the registration of foreign criminal judgements.

## CHAPTER II

### **Provisions on judicial assistance that apply in relation to the Member States of the European Union**

#### *SECTION 1*

#### ***Provisions for the implementation of the Convention from 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, Schengen, 19 June 1990***

## ARTICLE 187<sup>4</sup>

### **Granting of assistance**

According to this Section, mutual assistance shall be granted also:

- a) in proceedings brought by the administrative authorities, in respect of acts which are punishable in Romania or the requesting State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- b) in proceedings for claims for damages arising from wrongful prosecution or conviction;
- c) in proceedings in non-contentious matters;
- d) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
- e) in the service of judicial documents relating to the enforcement of a sentence or preventive measure, the imposition of a fine or the payment of costs for proceedings;

f) in respect of measures relating to the deferral of delivery or suspension of enforcement of a sentence or a preventive measure, to conditional release or to a stay or interruption of enforcement of a sentence or a preventive measure.

ARTICLE 187<sup>5</sup>

#### **Assistance in matters of fees and excise duty**

(1) Romania shall grant, according to the provisions of the European Convention of 20 April 1959 on mutual assistance in criminal matters, judicial assistance as regards infringements of the laws and regulations on excise duties, value added tax and customs duties.

(2) Where Romania is the requesting State, it shall not forward or use information or evidence obtained from requested State for investigations, prosecutions or proceedings other than those referred to in its request, without the prior consent of the requested State.

(3) The judicial assistance provided in this Article may be refused where the alleged amount of duty underpaid or evaded does not exceed EUR 25.000 or the RON equivalent thereof, or where the presumed value of the goods exported or imported without

64

authorisation does not exceed EUR 100.000 or the RON equivalent thereof, unless, given the circumstances or the identity of the accused, the case is deemed to be extremely serious by the requesting State.

(4) The provisions of this Article shall apply also when the judicial assistance requested concerns acts punishable only by a fine by virtue of being infringements of the rules of law in proceedings brought by the administrative authorities, where the request for assistance was made by a judicial authority.

ARTICLE 187<sup>6</sup>

#### **Search and seizure**

(1) Article 163 para. (1) shall not apply in relation to the States-party to the Convention applying the Schengen Agreements.

(2) In relation to the States in para. (1), the execution of letters rogatory for search or seizure may however be made dependent on the following conditions:

a) the act giving rise to the letters rogatory is punishable under Romanian legislation and that of the requested State by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Parties by an equivalent penalty and under the law of the other Party by virtue of being an infringement of the rules of law which is prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;;

b) execution of the letters rogatory is consistent with Romanian law.

ARTICLE 187<sup>7</sup>

#### **Transmission by post of procedural documents**

(1) In the event of transmission by post of procedural documents, where there is a reason to believe that the addressee does not understand the language in which the document is drafted, the document, or at least the important passages in it, must be translated into (one of) the language(s) of the Member State in the territory of which the addressee is staying. If the authority forwarding the document knows that the addressee speaks only some other language, the document, or at least the important passages thereof, must be translated into that other language.

(2) An expert or witness who has failed to answer a summons to appear, sent to him by post, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of constraint, unless subsequently he voluntarily enters into the territory of Romania and is here again duly summoned. The authority sending a summons to appear by post shall ensure that this does not involve a notice of penalty.

(3) If the act on which the request for assistance is based is punishable under the law of both States by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters, the procedure outlined in

paragraph (1) must in principle be used.

(4) Procedural documents may be forwarded via the judicial authorities of the requested Member State, where the addressee's address is unknown or where a formal service is required.

ARTICLE 187<sup>8</sup>

### **Cross-border observation**

In applying this Section, the list in Article 170 para. (5) is hereby supplemented with the following acts:

- a) manslaughter;
- b) serious fraud;

65

- c) money laundering;
- d) illicit traffic in nuclear and radioactive substances;
- e) participation in criminal organisations, mentioned in the Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union;
- f) offences of terrorism provided in the Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

ARTICLE 187<sup>9</sup>

### **Cross-border pursuit**

(1) Officers of a foreign State who, as part of a criminal investigation, are pursuing in their country a person who has been caught in the act of committing one of the offences in para.(5) or who participated in such an offence may continue pursuit in Romanian territory without prior authorisation where, given the particular urgency of the situation, it is not possible to notify the competent authorities of Romania in advance, by means of direct communication, such as the telephone, fax, radio, about their entry into their territory, or where the Romanian competent authorities were unable to reach the scene in time to take over the pursuit.

(2) Para. (1) shall apply also where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty.

(3) The pursuing officers of the foreign State shall, not later than when they cross the Romanian State border, contact the Romanian competent authority. The hot pursuit will cease as soon as the Romanian competent authority so requests. At the request of the pursuing officers, the Romanian officers shall take the necessary measures in order to establish the person's identity or to make an arrest, according to the law.

(4) Hot pursuit may be carried out only in accordance with the following general conditions:

- a) The pursuing officers must comply with Romanian legislation and they must obey the instructions issued by the competent Romanian authorities;
- b) pursuit shall be solely over land borders;
- c) entry into private homes and places not accessible to the public shall be prohibited;
- d) The pursuing officers shall be easily identifiable, either by their uniform, by means of a visible inscription on their clothes or by accessories fitted to their vehicles; the use of civilian clothes combined with the use of unmarked vehicles without the aforementioned identification is prohibited;
- e) the pursuing officers may carry their service weapons; their use shall be prohibited save in cases of legitimate self-defence;
- f) After each operation referred to in paragraphs 1, 2 and 3, the pursuing officers shall appear before the competent Romanian authorities and shall report on their mission; at the request of those authorities, they shall remain at their disposal until the circumstances surrounding their action have been sufficiently clarified; this condition shall apply even where the hot pursuit has not resulted in the arrest of the person pursued;
- g) The authorities of the State from which the pursuing officers have come shall, when requested by the Romanian authorities, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings;
- h) Once the pursued person has been apprehended as provided for in paragraph (6), for the

purpose of being brought before the competent Romanian authorities that person may only be subjected to a security search; handcuffs may be used during the transfer; objects carried by the pursued person may be seized.

(5) The pursuit in para. (1) may take place only for one of the following acts:

a) manslaughter, murder;

b) rape;

66

c) destruction and aggravated destruction, committed through arson, explosion or any other such means;

d) forgery of money and other assets;

e) aggravated burglary and robbery and receiving stolen goods;

f) extortion;

g) kidnapping and hostage taking;

h) trafficking in human beings and related offences;

i) illicit trafficking in narcotic drugs or precursors;

j) breach of the laws on arms and explosives, nuclear matters and other radioactive matters;

k) illegal carriage of toxic and dangerous waste;

l) leaving the site of an accident without approval from the police or the prosecutor who is performing on-site investigation, by the driver of any vehicle that has been involved in an accident which has resulted in death or injury to the corporal integrity or health of one or several persons.

(6) Where the competent Romanian authorities do not request cessation of the pursuit and to the extent that they are unable to intervene with sufficient speed, the foreign officers who are conducting the pursuit may keep in their custody the person being pursued, until the Romanian officers establish the identity or until the person is held for questioning or placed under preventive arrest, where appropriate, under the conditions set forth in the law, while at once informing of this the Romanian officers.

(7) A person who, following the action provided for in paragraph (6), has been arrested by the Romanian competent authorities may, whatever that person's nationality, be held for questioning. The provisions of the Criminal Procedure Code shall apply accordingly. If the person is not a Romanian citizen, that person shall be released not later than six hours after the arrest was made, not including the hours between midnight and 9.00 a.m., unless the Romanian competent authorities have previously received a request for that person's provisional arrest for the purposes of extradition in any form whatsoever.

ARTICLE 187<sup>10</sup>

#### **Liability of foreign officers**

(1) During the operations and activities mentioned in Article 187<sup>8</sup> and Article 187<sup>9</sup>, the foreign pursuing officers shall be equated with the persons who have the same capacity in Romania in what concerns the offences committed against them or by them.

(2) In the event that, in the course of the operations in Article 187<sup>8</sup>, the foreign officers cause damage, the State whence they came shall be liable for this damage, according to Romanian law.

(3) The State whose officers have caused damage to any person in the territory of Romania shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

(4) Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, Romania shall refrain in the case provided for in paragraph 2 from requesting reimbursement of damages it has sustained from another State.

SECTION 2

#### ***Other provisions on judicial assistance, applicable in relations with the Member States of the European Union***

ARTICLE 187<sup>11</sup>

#### **Information about bank accounts**

67

(1) At the request of the authorities of a Member State of the European Union, the

Romanian authorities shall ordain the taking of the requisite steps in view of identifying bank accounts, whatever their nature, which are controlled or held in a bank unit in Romania, by a natural or legal person who is under criminal investigation, and shall provide to them the numbers of the bank accounts, as well as any other details. The information shall include also data on the accounts for which the person under investigation has a mandate, to the extent that such information was expressly requested and may be provided within a reasonable time.

(2) The data in para. (1) shall be provided only to the extent that the information is available to the bank where the accounts are.

(3) The data in para. (1) shall be provided only if the criminal investigations concerns, as appropriate:

a) an offence punishable by a custodial penalty or a warrant for service of imprisonment for a maximum period of at least 4 years, in the requesting State, and at least 2 years in the requested State, or

b) an offence mentioned in Article 2 of the Convention on the establishment of a European Police Office (*the Europol Convention*) of 1995 or the annex thereto, or

c) to the extent that the offence is not provided in the Europol Convention, an offence provided in the Convention of 1995 on the Protection of the European Communities' Financial Interests, in the Additional Protocol of 1996 or in the Second Additional Protocol of 1997.

(4) Where the information in para. (1) is requested, the requesting authority shall mention the following in its request:

a) the reasons for which the information requested is believed to have substantial value in the investigation of that offence;

b) the elements based on which it was established that banks in Romanian territory have or control those bank accounts and, to the extent of availability, the names of the banks involved;

c) any other available data that may facilitate the execution of the request.

(5) A request uttered under para. (1) shall be subject to the following conditions:

a) execution of the request must be compatible with Romanian law;

b) the act that is under criminal investigation must be an offence according to Romanian law.

(6) In the event of requests uttered by Romanian authorities, this Article shall apply accordingly.

ARTICLE 187<sup>12</sup>

#### **Information on bank transactions**

(1) Upon request, Romanian authorities shall provide details on the bank accounts specified by the requesting foreign authorities, as well as on the bank transactions that passed, during a certain period, through one or more of the bank accounts specified in the request, including details on any sender or recipient of account.

(2) The data in para. (1) shall be provided only to the extent that it is available to the bank holding those accounts.

(3) Where the information in para. (1) is requested, the requesting authority shall show in its request the reasons for which the information requested is considered to have substantial value in the investigation of that offence.

(4) A request uttered under para. (1) shall be subject to the following conditions:

a) execution of the request must be compatible with Romanian law;

b) the act that is under criminal investigation must be an offence according to Romanian law..

(5) In the event of requests uttered by Romanian authorities, this Article shall apply accordingly.

68

ARTICLE 187<sup>13</sup>

#### **Monitoring of bank transactions**

(1) Romanian authorities shall, at the request of the authorities of a Member State of the European Union, ensure the monitoring, for a determinate period, of bank transactions passing through one or more of the bank accounts specified by the requesting authorities.

(2) Where the information in para. (1) is requested, the requesting authority shall show in its request the reasons for which the information requested is considered to have substantial value in the investigation of that offence.

(3) The competent Romanian judicial authorities shall authorise, under the conditions set forth in Romanian law, the monitoring of bank accounts. The Romanian and foreign judicial authorities shall establish according to Romanian law how the actual monitoring is to take place.

ARTICLE 187<sup>14</sup>

#### **Confidentiality**

Banks shall observe confidentiality, both with regard to the transmission of the information to the requesting authorities, and to the ongoing criminal investigation, and they may not reveal such information to the client or to any other person.

ARTICLE 187<sup>15</sup>

#### **Obligation to provide information**

(1) The Romanian requested authority shall inform the requesting State without delay where, during the execution of a request, additional investigations are needed which could not be foreseen or specified by the requesting authority in its initial request.

(2) After it is informed, according to para. (1), the requesting State may utter an additional request, under Article 187<sup>16</sup>.

(3) Para. (1) shall apply also where the additional investigations need to be performed by the authorities of a different Member State or of a third State.

ARTICLE 187<sup>16</sup>

#### **Additional requests**

(1) Where the authorities of the requesting State utter an additional request, it shall include only the data needed to identify the initial request, as well as other additional data needed.

(2) Whenever the requesting authorities are taking part alongside Romanian authorities in the execution of the request for assistance, they may present the additional request in para.(1) directly to the requested Romanian authority. A copy thereof shall be sent to the Ministry of Justice or to the Prosecutor's Office attached to the High Court of Cassation and Justice, as appropriate.

ARTICLE 187<sup>17</sup>

#### **Bank secrecy**

Bank secrecy may not be called upon as grounds for refusing cooperation relating to requests for assistance uttered by the authorities of a Member State of the European Union.

ARTICLE 187<sup>18</sup>

#### **Transmission of decisions of refusal**

Decisions of refusal of judicial assistance shall be transmitted to the Secretariat of the Council of the European Union and the EUROJUST.

### **TITLE VIII**

#### **FINAL PROVISIONS**

69

#### **ARTICLE 188**

On the date when this law enters force, the following shall be abrogated: a) Law No. 296/2001 on extradition, published in the Official Journal of Romania Part I, No. 326 of 18 June 2001;

b) Law No. 704/2001 on international judicial assistance in criminal matters, published in the Official Journal of Romania, Part I, No. 807 of 17 December 2001;

c) Law No. 756/2001 on the transfer abroad of sentenced persons, published in the Official Journal of Romania, Part I, No. 2 of 4 January 2002;

d) the Government Ordinance No. 69/1999 to facilitate the application of international conventions in matters of transfer of sentenced persons, to which Romania is a Party, in what concerns the surrender-take over of sentenced persons, approved by Law No. 113/2000, published in the Official Journal of Romania, Part I, No. 415 of 30 August 1999;

d) Art. 519-521 of Section III of Chapter VI of Title IV of the Special Part of the Criminal Procedure Code;

e) any other contrary provisions.

ARTICLE 189

(1) This Law shall enter force 60 days after its publication in the Official Journal of Romania, Part I, except for the provisions of Title III, as well as for those of Chapter III<sub>1</sub> in Title II, Chapter III<sub>1</sub> in Title IV and Chapter II in Title VII, which are to enter force at the date of Romania's accession to the European Union.

(2) Beginning with the date of Romania's accession to the European Union, the provisions of Title III shall replace, in relation to the Member States of the European Union, the provisions on extradition, unless the Member State in the territory of which the sought person is staying has uttered declarations on the non-application of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union for acts committed prior to a certain date.

***This Law was adopted by the Parliament of Romania, in observance of Article 75 and Article 76 paragraph (1) of the republished Romanian Constitution.***

ANNEX

**EUROPEAN ARREST WARRANT**

This warrant has been issued by ..... the competent judicial authority.

I request that the person mentioned below .....be arrested and surrendered to the judicial authorities, (for the purposes of conducting a criminal prosecution or executing a custodial penalty or security measure).

a) Information regarding the identity of the requested person:

Name: .....

Forename(s): .....

Maiden name, where applicable): .....

Aliases, where applicable .....

Sex: .....

Nationality: .....

Date of birth: .....

Place of birth: .....

Residence and/or known address: .....

Language(s) which the requested person understands (if known):

70

Distinctive marks/description of the requested person: .....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person who may be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

b) Decision on which the warrant is based

1. Arrest warrant or final judicial decision:.....

Type: .....

Final and enforceable judgement: .....

Reference: .....

c) Indications on the length of the sentence:

1. Maximum length of the penalty or the security measure of deprivation of freedom which may be imposed for the offence(s):

.....

.....

2. Length of the penalty or the security measure depriving of freedom imposed:

.....

Remaining sentence to be served:

.....

.....

d) Decision rendered in absentia and in court proceedings during which the person was absent or not represented :

- The person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia

- The person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender to the judicial authorities (if such guarantees can be given in advance):

Specify the legal guarantees:

.....  
e) Offence (s):

This warrant relates to in total ..... offence(s).

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....  
.....  
Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....  
I. Tick one or more of the following offences punishable in the issuing Member State by a sentence to a maximum of at least 3 years as defined by the laws of the issuing Member State:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- 71
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of The Convention of 26 July 1995 on the protection of European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting of currency, including the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;

- ☐ crimes within the jurisdiction of the International Criminal Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage.

II. Full descriptions of offence(s) not covered by section I above:

.....  
 .....

f) Other circumstances relevant to the act and/or to the person of the accused/defendant (optional information):  
*(NB This could cover remarks on extraterritoriality, interruption of periods of time limitation)*

.....  
 .....

g) This warrant pertains also to the seizure and handing over of property which may be required as evidence.

This warrant pertains also to the handing over of property held by the requested person for committing the offence:

Description and location of the property (if known):

.....  
 .....

h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by life detention penalty:

- the legal provisions of the issuing Member State that stipulate the review of the penalty applied or regarding parole, after service of at least 20 years of the penalty applied, and/or

72

- the legal provisions of the issuing Member State that stipulate the application of measures of clemency to which the person requested is entitled, according to the law or practice of the issuing Member State, which may determine non-service of the penalty.

i) The judicial authority which issued the warrant:

Official name: .....

Name of its representative: .....

Post held (title/grade): .....

File reference: .....

Address: .....

Tel: (country code) (area/city code) (...) .....

Fax: (country code) (area/city code) (...) .....

E-mail: .....

Contact details of the person to contact to make necessary practical arrangements for the surrender : ...

.....

Where a central authority has been made responsible for the transmission and reception of European arrest warrants:

Name of the central authority: .....

Contact person, if applicable (title/grade and name) .....

.....  
 Address: .....

Tel: (country code) (area/city code) (...) .....

Fax: (country code) (area/city code) (...) .....

E-mail: .....

Signature of the issuing judicial authority and/or its representative:

.....

Name: .....

Post held (title/grade): .....

Date: .....

Official stamp (if available)